

SENATE COMMITTEE ON JUDICIARY

February 3, 1999 Hearing Room 343

3:00 PM Tapes 24 - 25

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Tarno

MEMBER EXCUSED: Sen. Qutub

STAFF PRESENT: Bill Taylor, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: SB 29

SB 83

SB 345

SB 389

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 24, A		
004	Chair Bryant	Calls meeting to order at 3:15 PM.
<u>SB 29 WORK SESSION</u>		
007	Bill Taylor	Presents 11 amendments to SB 29 that removes the sunset provision to the law passed last session. (EXHIBIT A)
022	Chair Bryant	Continuing the sunset would be unnecessary since the federal statutes have not changed.
023	Chair Bryant	MOTION: Moves to ADOPT SB 29-1 amendments dated 02/02/99.

		<p>VOTE: 5-0-2</p> <p>EXCUSED: 2 - Sen. Nelson, Sen. Qutub</p>
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
024	Chair. Bryant	MOTION: Moves SB 29 to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 5-0-2</p> <p>EXCUSED: 2 - Sen. Nelson, Sen. Qutub</p>
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>CHAIR BRYANT will lead discussion on the floor.</p>
<u>SB 83 PUBLIC HEARING</u>		
64	Bill Taylor	Explains present law that includes a bicycle as a motor vehicle. SB 83 reduces the Driving Under the Influence of Intoxicants (DUII) penalty for a bicyclist.
77	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association</p> <p>Testifies in support of SB 83. Explains the intent of SB 83: to apply a less severe penalty for Driving Under the Influence of Intoxicants for bicyclists than for motorists. Intoxicated bicyclists pose significantly less public risk than intoxicated motor vehicle drivers.</p>
113	Chair Bryant	Are bicyclists currently subject to DUII arrests?
114	Swenson	Yes. Explains the current statute regarding DUII arrests. The current law refers to "vehicles" instead of motor vehicles.
117	Chair Bryant	Is the term "vehicle" defined in statute?
118	Swenson	No. The courts interpret it to include motorized and non-motorized vehicles. Explains sections of the bill that excludes bicycle DUII arrests from the current statutes. The current statutes more appropriately apply to motor vehicle DUII arrests.
146	Chair Bryant	Skateboards and other non-motorized vehicles could present similar issues.
149	Sen. Burdick	Suggests a review of the term "bicycle" in the proposed law.
163	Sen. Tarno	The current law applies to vehicles on premises open to the public. Does this include a sidewalk?
168	Swenson	Under current law, it is not legal to operate a bicycle or a motor vehicle on a sidewalk.

175	Sen. Brown	Is operating a bicycle under the influence of intoxicants a big problem?
178	Swenson	No, I can recall about 10 cases.
184	Sen. Brown	Is anyone injured, other than the bicyclist? Is that an issue?
186	Swenson	I don't know.
189	Sen. Burdick	Bicyclist-pedestrian accidents are the concern. Bicyclists are disadvantaged to motorists.
196	Swenson	SB 83 was drafted to refer to bicycles. Other non-motorized vehicles may need to be included.
200	Sen. Courtney	Have you encountered angry clients cited for DUII while bicycling?
201	Swenson	They were not angry, but surprised that the law applies equally to bicycles and motor vehicles.
210	Sen. Courtney	This issue should concern the Legislature. Intoxicated bicyclists share roads with motorists.
216	Swenson	SB 83 proposes that intoxicated bicyclists are less of a public risk than intoxicated motorists. This should be reflected as Class C Misdemeanor rather than a Class A Misdemeanor.
221	Sen. Courtney	If someone is intoxicated, whether on a bicycle or in a motor vehicle, he is a public menace. I'm not sympathetic to lowering the penalty for bicyclists.
238	Chair Bryant	Bicyclists would still be punished as a serious violation.
242	Sen. Courtney	Yes, but the proposed penalty goes from a Class A Misdemeanor to a Class C Misdemeanor.
235	Sen. Brown	I'm supportive of the amendments because the bicyclist poses a greater risk to himself than others. A less severe penalty fits the offense.
256	Chair Bryant	Dale Penn of the District Attorney Association supports the bill amendments to SB 83 as well.
259	Sen. Burdick	Having drugs on the road is a real concern.
274	Sen. Brown	Do indigents receive representation for Class A and Class C misdemeanors?
277	Taylor	They can receive representation for both. However, SB 83 allows a district attorney to treat a DUII arrest on a bicycle as an infraction.
280	Sen. Brown	Using Indigent Defense funds to represent clients arrested for bicyclists arrested for DUII is unwise.
286	Bruce Hoffman	Oregon State Police Testifies and submits written testimony in opposition to SB 83. (EXHIBIT B) 321 States intoxicated bicyclist injury and death statistics from 1989 to present. Presents reasons to maintain severe sanctions for problem drinkers, regardless of the vehicle they drive.
307	Chair Bryant	If a problem drinker didn't have the option of bicycling, would he be more tempted to drive?

324	Hoffman	Explains his concern about excluding intoxicated bicyclists from interlock devices and driver suspension statutes. Explains the differences in arrest procedures for Class A and Class C Misdemeanors.
337	Sen. Tarno	Can't police act on an informant's information to make a citizen's arrest for a Class C Misdemeanor?
342	Hoffman	Yes. That procedure is more cumbersome than making a Class A Misdemeanor arrest.
364	Sen. Burdick	Do you have statistics on bicyclists indirectly versus directly involved in accidents? Do you have information on bicyclist-pedestrian accidents?
370	Hoffman	No. Our statistics reflect bicycle-motor vehicle accidents.
380	Chair Bryant	Closes SB 83 Public Hearing.
<u>SB 49 WORK SESSION</u>		
396	Sen. Tarno	Does this bill simply reinstate subsection 3 of section 1?
410	Taylor	Presents SB 49's amendments to Committee. (EXHIBIT C)
430	Chair Bryant	The amendments make the rules for impeachment of a witness substantially similar to those for establishment of witness bias.
432	Taylor	Explains the amendments that establish a procedure for a witness to rehabilitate himself after impeachment.
442	Sen. Brown	MOTION: Moves to ADOPT SB 49-3 amendments dated 02/02/99.
		VOTE: 6-0-1 EXCUSED: 1 - Sen. Qutub
Chair		Hearing no objection, declares the motion CARRIED.
446	Sen. Brown	MOTION: Moves SB 49 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1 EXCUSED: 1 - Sen. Qutub
Chair		Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor.
TAPE 25, SIDE A		
<u>SB 389 PUBLIC HEARING</u>		

019	Bradd Swank	State Court Administrator's Office Testifies in opposition to SB 389, Section 4. Explains that this section grants access to the State Court Administrator's computer network. Opposes page 7, line 23 that makes the State Court Administrator's Office register a public record because this it is not currently available on computer. This register contains scheduling and filing information. Explains the difficulty in allowing the public access to the register while barring ability to enter data into the computer file. States that the State Court Administrator's office will program the network to resolve this situation.
061	David Schuman	Deputy Attorney General Testifies in support of SB 389 and states intention to withdraw Section 4 from SB 389. Explains sections 2 and 3 that permit a judge to request medical and therapeutic records if he has good cause. Clarifies the definition of "good cause." Discusses a judge's need to know information and patient-doctor confidentiality issues.
112	Sen. Brown	You're asking the parent to help the state prove its case.
117	Schuman	Yes, when the information is material in juvenile jurisdiction cases.
122	Chair Bryant	Procedurally, does the judge make a motion to access the juvenile's records?
125	Schuman	Yes, the judge would request the records. However, we need to clarify this procedure.
128	Chair Bryant	How would a judge become aware that related medical records exist?
133	Schuman	Frequently, a referral to a service provider is in the court records.
136	Sen. Brown	Does the judge request the information and determine its necessity?
139	Schuman	Yes, but the current language in the statute is not clear about that.
142	Taylor	Does SB 389 refer only to records held by public entities or publicly-funded entities.
146	Schuman	Yes. We will make that clear in our amendments?
160	Bob Joondeph	Oregon Advocacy Center Testifies and submits written testimony in opposition to SB 389. (EXHIBIT C) Discusses how SB 389 is a disincentive for patients to enter therapeutic treatment.
197	Chair Bryant	SB 389 allows a parent to refute a judge's need to access records relating to a juvenile jurisdiction case.
206	Taylor	Absent any evidence from the parent, the records would be disclosed.
212	Sen. Brown	Explains that parents are at the mercy of courts in juvenile jurisdiction cases. Parents who fail to cooperate with court authority compromise their chances of securing custody of their children.
220	Chair Bryant	What if parents refuse to sign medical release forms? Would they have an adversarial relationship with the child protection agency?
222	Sen. Brown	Yes. They have no choice if they want custody of their children.

234	Joondeph	Explains that SB 389 with its proposed amendments will pertain to all records. Discusses SB 389's ambiguity in specifying which medical records a judge could access. Explains that SB 389 differs from the uniform public records law because the burden of proof is on the patient rather than the requesting party. Also, SB 389 fails to address therapist-client relationships.
287	Taylor	It mentions physician-patient relationship. The bill is silent on therapist-client relationship.
295	Kathie Osborn	Juvenile Rights Project Testifies in support of SB 389. Describes legal representation in dependency and jurisdiction cases. Suggests amendments to bill, including changing "essential" evidence to "relevant" evidence. "Relevant" is currently defined in statute, but "essential" is not.
345	Sen. Brown	Have you handled any termination cases?
346	Osborn	Yes.
350	Sen. Brown	Do parents generally release their records in such cases?
354	Osborn	Yes.
386	Sen. Brown	Is it difficult to win a termination hearing if the parent refuses to release requested medical information?
392	Osborn	Yes. Most likely, the parent will lose custody of the child.
420	Sen. Burdick	What percentage of a parent's treatment is self-initiated?
429	Osborn	Most of a parent's treatment is mandated from the start of the court custody to the return of the child. The courts cannot mandate treatment prior to jurisdiction.
445	Joondeph	Explains that SB 389 fails to limit the scope of a judge's inquiry into a parent's medical records.
TAPE 24, SIDE B		
018	Sen. Burdick	Maybe we should allow for protection of a person's records if treatment is self-initiated.
026	Sen. Brown	Aren't most dependency cases settled out of court?
030	Osborn	Yes.
036	Sen. Brown	Does the state generally win in jurisdiction cases?
040	Osborn	Yes, the state wins most of those that proceed to trial.
043	Chair Bryant	What is the impact of not implementing this law?
048	Osborn	There is none, since the courts generally obtain this information. SB 389 would provide a statutory basis for obtaining it.
057	Chair Bryant	Closes SB 389 Public Hearing.

SB 345 PUBLIC HEARING

063	Diane Middle	Board on Public Safety Standards and Training Testifies and submits written testimony in support of SB 345. (EXHIBIT D) Explains that SB 345 establishes a definition of public service provider and exclusions. Explains need for offering accreditation to law enforcement training programs and creating trainee scholarships.
158	Middle	Specifies training program accreditation plan and cost assessment. Clarifies the role of police officers in the role of expert witnesses.
205	Chair Bryant	As experts, they can set their wage. If the testimony is for hire, it loses its credibility.
208	Middle	No, we prohibit this because it compromises our agency. Reviews the process and cost of an officer being subpoenaed.
222	Chair Bryant	As an expert witness, the officer does not have to make a deposition until his fee is met. This conflict of interest compromises his testimony.
229	Middle	Yes, but we don't have the statutory authority to set the fee.
235	Chair Bryant	I'm not sure you need that statutory authority.
242	Sen. Courtney	Questions if SB 345 will strip Western Oregon State University of its police training function. Reviews the legislative history of the bill.
260	Middle	Not necessarily. Explains how the bill will create an efficient law enforcement officer training program and administrative oversight.
321	Sen. Courtney	Is this bill related to the State Police proposal to build a forensic lab at Western Oregon University?
331	Middle	No.
336	Sen. Tarno	What is your definition of private entity?
338	Middle	It means programs outside of our constituent base. Explains fee compensation and assessment procedures.
416	Sen. Courtney	Do you think police officers should be trained prior to assuming duties?
419	Middle	Absolutely.
441	Mary Botkin	American Federation of State, County and Municipal Employees Testifies in opposition of SB 345's exclusion of juvenile law enforcement officers as potential training recipients. These officers deal with serious juvenile crime, not the historical juvenile truancy problems.
471	Chair Bryant	Closes SB 345 Public Hearing.
472	Chair Bryant	Adjourns meeting at 4:40 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Manager

EXHIBIT SUMMARY

- A. SB 29-1, LC Amendments dated 2/2/99, Bill Taylor, 1p
- B. Written testimony in opposition of SB 83, Bruce Hoffman, 1p
- C. Written testimony in opposition of SB 389, Bob Joondeph, 2pp
- D. Written testimony in opposition of SB 345, Dianne Middle, 5pp