

SENATE COMMITTEE ON JUDICIARY

February 08, 1999 Hearing Room 343

3:00 PM Tapes 28 - 29

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 400

SB 394

SB 395

HB 2259

HB 2261

SB 58

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 |
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TAPE 28, SIDE A

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| 007 | Chair Bryant | Calls meeting to order at 3:10 PM. |
| 010 | Bill Taylor | Introduces LC 2172 which excludes the pet of the deceased from his estate. Sen. Brown is the bill sponsor. |
| 019 | Chair Bryant | MOTION: Moves to ADOPT LC 2172 amendments dated 02/08/99. |
| | | VOTE: 6-0-1 EXCUSED: 1 - Sen. Qutub |
| Chair Bryant | | Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor. |
| 36 | Alan Truss | Oregon Humane Society Testifies in favor of LC 2172. States that pets left without owners should be exempt from probate statutes. |
| <u>SB 400 PUBLIC HEARING</u> | | |
| 54 | Christine Chute | Department of Justice, Assistant Attorney General Testifies and submits written testimony in support of SB 400. (EXHIBIT A) Explains that SB 400 removes the requirement that the harassed individual answer the telephone. |
| 91 | Ingrid Swenson | Oregon's Criminal Defense Lawyers' Association Testifies in opposition to SB 400. States that SB 400 is too broad. Asserts that the bill should address answering machine messages. |
| 115 | Sen. Burdick | Does law protect repeated telephone calls as long as the recipient doesn't answer? |
| 118 | Swenson | They shouldn't be considered criminal activity, although they are unpleasant. |
| 121 | Sen. Burdick | What if someone other than the intended target answers the telephone? Would |

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| | | that be considered harassment? |
| 124 | Swenson | If the one who answers prohibits the caller to contact him, the next call could be considered harassment. |
| 132 | Chair Bryant | Discusses the current definition of telephone harassment that addresses communicative purpose. If someone intentionally dials a telephone number, isn't making the telephone call a communicative purpose? |
| 138 | Chute | Explains the situations when SB 400 assumes lack of communicative intent. Discusses the limited scope of SB 400. |
| 186 | Swenson | Discusses how the ambiguous nature of interpersonal communication makes determining communicative intent impossible. |
| 203 | Chair Bryant | Forbidding someone to telephone you is a clear statement. |
| 205 | Swenson | Discusses the ambiguous nature of communication depending upon the context and tone of voice. States that harassment should be defined by the message, not by a caller's attempt to telephone someone. |
| 217 | Chair Bryant | Asks for clarification of the witnesses' position on SB 400. |
| 234 | Chute | Ms. Swenson supports the requirement for the recipient to answer the telephone whereas I oppose it. |
| 244 | Sen. Tarno | Doesn't placing a call after being forbidden to do so imply intent to annoy or harass? |
| 249 | Sen. Burdick | Discusses the method to block caller identification machines and thereby avoid the ramifications of SB 400. |
| 262 | Sen. Courtney | States that many homes do not have modern telephone technology. |
| 304 | Taylor | Discusses the definition of telephone harassment with regard to whether one answers the telephone. |
| 351 | Chair Bryant | Closes SB 400 Public Hearing. |
| 355 | Taylor | Introduces LC 2151 forbids trapping of wild or domestic animals for commercial or recreational uses. |
| 366 | Chair Bryant | MOTION: Moves to ADOPT LC 2151 amendments dated |

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| | | 02/08/99. |
| | | VOTE: 6-0-1 EXCUSED: 1 - Sen. Qutub |
| | Chair Bryant | Hearing no objection, declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor. |
| <u>SB 394 PUBLIC HEARING</u> | | |
| 372 | Christine Chute | Department of Justice, Assistant Attorney General Testifies and submits written testimony in support of SB 394. (EXHIBIT B) Discusses the legislative history of setting inmate release dates. Explains that SB 394 reinstates the some of the old standards. Explains that proposed amendments to SB 394 will reinstate the entire standard. |
| TAPE 29, SIDE A | | |
| 001 | Diane Rea | Chair, Parole Board and Post-Prison Supervision Testifies in support of SB 394. Explains that SB 394 will codify in statute the current inmate release standard. |
| 20 | Chair Bryant | Discusses the Department of Justice SB 394 amendment and asks if it applies to all Parole Board decisions made after July 3, 1993. |
| 23 | Rea | Yes, that is the date of the 1993 amendment. Explains which inmates SB 394 would affect. |
| 45 | Bill Mayhar | Citizen of the Jury Asks how many Senate Judiciary Committee members are attorneys. |
| 75 | Chair Bryant | Recesses SB 394 Public Hearing. |
| <u>SB 400 PUBLIC HEARING</u> | | |
| 78 | Bill Mayhar | Citizen of the Jury |

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| | | Testifies in opposition to SB 400. Asserts that telephone harassment is a victimless crime. States that the Constitution forbids prosecution of an offender if no one is harmed by his actions. |
| 123 | Chair Bryant | Closes SB 400 Public Hearing. |
| <u>SB 394 PUBLIC HEARING</u> | | |
| 125 | Bill Mayhar | Citizen of the Jury Testifies in opposition to SB 394. States SB 394 withholds due process from inmates. Relates incarceration and court experiences in Marion County. Presents a speech on the distinction between rule and law. Asserts that an inmate's psychological status and freedom are mutually exclusive. |
| 185 | Chair Bryant | Closes SB 394. |
| <u>SB 395 PUBLIC HEARING</u> | | |
| 193 | Bill Mayhar | Citizen of the Jury Testifies in opposition to SB 395. Asserts that habeas corpus is not honored. Relates personal experience of incarceration. Compares Oregon procedures and federal procedures in handling habeas corpus requests. |
| 209 | Sen. Tarno | Do you agree with the language in the highlighted section of SB 395? |
| 215 | Mayhar | This bill deals with irrelevant issues. |
| 221 | Chair Bryant | Clarifies that SB 395 facilitates the habeas corpus process. |
| 233 | Mayhar | Discusses a hypothetical case of habeas corpus. |
| 252 | Chair Bryant | From your testimony, it sounds like you are in favor of SB 395. |
| 255 | Mayhar | Explains why he favors deleting little laws that take away people's rights. |
| 298 | Thomas Castle | Department of Justice Trial Division Testifies and submits written testimony in support of SB 395. (EXHIBIT C) Discusses habeas corpus cases with regard to inmates transferred to a subsequent correctional facility. SB 395 allows courts to dismiss habeas corpus cases at the time of inmate transfer. |
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| 325 | Joseph V. Ochoa | Marion County Circuit Court Judge Testifies in opposition to SB 395. (EXHIBIT D) Discusses the purpose of Habeas corpus as it differs from tort and civil rights proceedings. Discusses situations when a Habeas corpus should and should not be dismissed. States that some cases are transferred with the inmate to a subsequent facility without judicial review. |
| 396 | Chair Bryant | Do you have any suitable amendments to SB 395? |
| 397 | Ochoa | Yes, they are in my written testimony. |
| 407 | Chair Bryant | Asks Mr. Castle to address Ochoa's concerns on SB 395. |
| 401 | Castle | We are neutral on requiring judicial review of all habeas corpus petitions at the time of inmate transfer. |
| 419 | Sen. Courtney | How many habeas corpus petitions are filed per year? Which counties handle the most petitions? |
| 421 | Castle | Approximately 200-250 per year. Discusses the increase of habeas corpus petitions in counties that have expanding correctional facilities. |
| TAPE 28, SIDE B | | |
| 005 | Sen. Courtney | How does the Attorney General's Office in Salem handle habeas corpus petitions in distant counties? |
| 011 | Castle | Discusses the methods of handling cases when they proceed to trial. |
| 027 | Chair Bryant | Discusses LC amendment drafting procedures. Closes SB 395 Public Hearing. |
| <u>HB 2259 PUBLIC HEARING</u> | | |
| 96 | Mary Ellen Johnson | Department of Justice Crime Victims' Assistance Testifies and submits written testimony in support of HB 2259. (EXHIBIT E) Discusses the uses of crime victims' compensation payments and reasons to exclude life insurance proceeds and community contributions from payment calculations. |
| 123 | Sen. Nelson | Would you want to exclude a \$3 million life insurance policy? |
| 126 | Johnson | Crime victims generally do not have extravagant life insurance policies. Discusses the funeral payment and grief counseling services funded by crime victims' |

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| | | contributions. |
| 142 | Chair Bryant | How long has your program existed? |
| 143 | Johnson | The Crime Victims' Compensation program started in 1977. |
| 145 | Sen. Courtney | Discusses the program's implementation during the 1981 Legislative session. |
| 146 | Johnson | Discusses the expansion of the program in 1987. |
| 155 | Chair Bryant | Closes SB 2259 Public Hearing. |
| <u>HB 2259 WORK SESSION</u> | | |
| 156 | Sen. Courtney | MOTION: Moves HB 2259 to the floor with a DO PASS recommendation. |
| | | VOTE: 6-0-1 EXCUSED: 1 ñ Sen. Qutub |
| Chair Bryant | | Hearing no objection declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor. |
| <u>HB 2261 PUBLIC HEARING</u> | | |
| 164 | Mary Ellen Johnson | Department of Justice, Crime Victims' Assistance Testifies and submits written testimony in support of HB 2261. (EXHIBIT F) Discusses the need for prompt issuance of compensation to a crime victim. This bill would eliminate statutory language that results in unnecessary delays. |
| 183 | Sen. Tarno | What specific services does your program offer? |
| 185 | Johnson | Discusses crime victim services including compensation for funeral expenses, loss of earnings, rehabilitation services, and grief counseling. |
| 198 | Chair Bryant | Requests a list of those benefits and the program participant and budgetary statistics. |

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| 204 | Johnson | Discusses how the Crime Victims Compensation program is funded. |
| 233 | Sen. Brown | What percent of crime victims do you serve? |
| 242 | Johnson | We serve about 1 in 10 crime victims. Discusses domestic violence victims' reluctance to request assistance. |
| 249 | Sen. Brown | What percent of your funds come from the Unitary Assessment Fund? |
| 258 | Johnson | About 8 percent. Discusses the distribution of those funds. |
| 289 | Chair Bryant | Closes HB 2261 Public Hearing. |
| <u>HB 2261 WORK SESSION</u> | | |
| 291 | Sen. Courtney | MOTION: Moves HB 2261 to the floor with a DO PASS recommendation. |
| | | VOTE: 6-0-1 EXCUSED: 1 ñ Sen. Qutub |
| | | Chair Bryant Hearing no objection, declares the motion CARRIED. SEN. TARNO will lead discussion on the floor. |
| <u>SB 58 WORK SESSION</u> | | |
| 302 | Taylor | Presents SB 58-1 amendments and the fiscal impact statement. (EXHIBIT H) |
| 325 | Sen. Courtney | MOTION: Moves to ADOPT SB 58-1 amendments dated 02/04/99. |
| | | VOTE: 6-0 EXCUSED: 1 ñ Sen. Qutub |
| | | Chair Bryant Hearing no objection, declares the motion CARRIED. |

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| 328 | Sen. Courtney | MOTION: Moves SB 58-1 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways And Means. |
| | | VOTE: 6-0 EXCUSED: 1 ñ Sen. Qutub |
| Chair Bryant | | Hearing no objection, declares the motion CARRIED. |
| 335 | Chair Bryant | Adjourns meeting at 4:30 PM. |

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Manager

EXHIBIT SUMMARY

A. Testimony in Support of SB 400, Christine Chute, 1p

- B. Testimony in Support of SB 394, Christine Chute, 3pp**
- C. Testimony in Support of SB 395, Tom Castle, 1p**
- D. Proposed Alternate Language for SB 395, Judge Joseph Ochoa, 2pp**
- E. Testimony in Support of HB 2259, Mary Ellen Johnson**
- F. Testimony in Support of HB 2261, Mary Ellen Johnson**
- G. Testimony in Opposition to SB 395, Tom Cropper, 1p**
- H. SB 58-1 amendments dated 02-15-99, Bill Taylor, 1p**