

SENATE COMMITTEE ON JUDICIARY

April 16, 1999 Hearing Room 343

1:00 p.m. Tapes 125 -128

MEMBERS PRESENT: Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Qutub

Sen. Tarno

MEMBER EXCUSED: Sen. Bryant

STAFF PRESENT: William E. Taylor, Counsel

Anne Tweedt, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: SB 70 - Public Hearing

SB 546 - Public Hearing

SB 854 - Public Hearing

SB 917 - Public Hearing

SB 975 - Public Hearing

SB 983 - Public Hearing

SB 996 - Public Hearing

SB 1075 - Public Hearing

SB 1215 - Public Hearing

SB 1283 - Public Hearing

SB 1292 - Public Hearing

SB 843 - Public Hearing

SB 844 - Public Hearing

SB 1171 - Public Hearing

SB 1175 - Public Hearing

SB 1176 - Public Hearing

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 125, A		
003	Vice-Chair Courtney	Calls the meeting to order at 1:03 p.m.
<u>SB 1075 PUBLIC HEARING</u>		
010	Rep. Karen Minnis	State Representative, House District 20 Introduces Mary Ann and David Anderson, parents of a constituent.
015	Mary Ann Anderson	Resident of Friday Harbor, Washington Submits written testimony and testifies in support of SB 1075 (EXHIBIT A).
115	David Anderson	Resident of Friday Harbor, Washington Submits written testimony in support of SB 1075 which modifies the factors the court must consider in determining child custody in domestic relations matters (EXHIBIT A).
119	Kathy Osbourne	Juvenile Rights Project Testifies as neutral on SB 1075. Discusses concerns with the bill as written. SB 1075 needs a time limit on the abuse section so that a parent is not forever denied custody despite rehabilitation.
<u>SB 70 PUBLIC HEARING</u>		
148	David Sparks	Deputy Administrator, Oregon Occupational Safety and Health Division

		<p>(OR-OSHA)</p> <p>Submits written testimony and testifies in support of SB 70 which creates the crimes of assaulting public servant, intimidating public servant and intimidating judge (Class C felony) (EXHIBIT B).</p>
157	Scott Crampton	<p>Assistant Attorney General, Department of Justice (DOJ)</p> <p>Testifies in support of SB 70. Indicates it is an important safeguard for the staff who work in the courts, the jurors, and the judicial officers.</p>
<u>SB 854 PUBLIC HEARING</u>		
175	Counsel Taylor	<p>SB 854 subjects certain meetings of the Oregon State Bar to the public meeting laws and opens those meetings to the public. The ñ3 amendments replace the entire original bill and exempt lawyer-legislators from the Oregon State Bar continuing education requirements, except in the area of ethics (EXHIBIT C).</p>
186	Steve Cyr	<p>Oregon State Bar, Minimum Continuing Legal Education Board (MCLE) Board</p> <p>Testifies against the ñ3 amendments stating that there is a separation of power issue. In addition, the MCLE Board feels SB 854 would open the door to more and more exemptions and make the task of protecting the public from unqualified legal help more difficult.</p>
212	Counsel Taylor	<p>Hasn't the Oregon State Bar Board of Governors recommended that lawyer-legislators receive some CLE credit for service in the legislature?</p>
216	Cyr	<p>Yes, on a pro rata basis. That is not the position of the MCLE Board.</p>
<u>SB 917 PUBLIC HEARING</u>		
235	Gary Harkins	<p>President, Association of Oregon Corrections Employees</p> <p>Submits written testimony and testifies in support of SB 917 which requires state employees who work with inmates to have proper training (EXHIBIT D).</p>
256	Michael Taaffe	<p>Administrator, Inmate Work Programs, Department of Corrections (DOC)</p> <p>Submits written testimony and testifies in opposition to SB 917 (EXHIBIT E). Indicates the current statute, ORS 421.445, adequately provides sufficient protection for state employees working with inmates.</p>
277	Dave Cook	<p>Director, Department of Corrections</p> <p>Testifies in opposition to SB 917.</p>

296	Sen. Tarno	What has happened to bring this bill forward for consideration at this time?
298	Harkins	We believe the safety of the public is at risk. Staff members, untrained in security, are supervising inmates. They are instructed to call 911 if there is a problem.
305	Sen. Tarno	Have there been assaults on staff members?
306	Harkins	We have had numerous incidents. Training in security issues should be provided.
<u>SB 975 PUBLIC HEARING</u>		
333	Vice-Chair Courtney	SB 975 prohibits a public body from disclosing information about undercover employee of criminal justice agency and specifies procedures.
347	James Rice	Oregon Criminal Defense Attorney's Association Testifies in opposition to SB 975.
<u>SB 983 PUBLIC HEARING</u>		
384	David Nebel	Oregon Law Center Submits written testimony and testifies in support of SB 983 which would strengthen existing protections against retaliation in employment matters (EXHIBITS F & G) .
Tape 126, A		
042	Sen. Tarno	On page two, Section 5, of SB 983, damages for unlawful employment retaliation are established at "less than 480 times and no more than 7,200 of the employee's average hourly wage." How were these figures established?
045	Nebel	That amount is equal to the amount earned from two months to forty months of employment.
047	Sen. Tarno	Is it the same kind of formula used in other states?
049	Nebel	I don't know, but I can try to find out.
051	Sen. Brown	This bill would apply to all employees, not just farm workers?
052	Nebel	That is correct.

053	Sen. Brown	My concern is that giving a reason for dismissal may be burdensome to the employer.
056	Nebel	This would be required only upon request of the employee.
<u>SB 1215 PUBLIC HEARING</u>		
070	Sen. Marylin Shannon	State Senator, District 15 Submits written testimony and testifies in support of SB 1215 (EXHIBIT H). SB 1215 would give people the choice when they got married to choose to have a covenant marriage. In a covenant marriage the partners agree to go through pre-marital counseling and counseling if a divorce is considered.
085	Sen. Brown	Who would pay for this counseling?
089	Sen. Shannon	The partners would pay for it.
091	Sen. Brown	It is my understanding that Louisiana has established this type of marriage? Have you had any reports about their experience?
096	Sen. Shannon	No, I haven't. I wish we had a record of success.
110	Sen. Brown	Have you talked to family law attorneys about this bill?
112	Sen. Shannon	Yes, one.
114	Sen. Brown	When I began practicing Family Law, most family law practitioners were very pleased to have no fault divorce. It eliminated the requirement that one party must be proven at fault.
119	Sen. Shannon	That is true. The choice of a covenant marriage would not be mandated; it would be an option.
<u>SB 1292 PUBLIC HEARING</u>		
150	Andy Simrin	Deputy Public Defender, Marion County, Oregon Criminal Defense Lawyers Association Testifies in support of SB 1292 that would prohibit trials in correctional institutions. The prejudice in the mind of the jury, when holding a trial in such an institution is insurmountable. Indicates there is litigation in the federal courts to enjoin such trials.

202	James Rice	President, Oregon Criminal Defense Lawyers Association Testifies in support of SB 1292. Believes holding a trial in a correctional institution is unconstitutional, as the institution is not a public place.
243	Dave Cook	Director, Department of Corrections Submits written testimony and testifies in opposition to SB 1292 (EXHIBIT I). Indicates that interested parties should allow a chance for these trials to work. There are sufficient benefits in cost and security for this to be tried.
264	Kingsley Click	State Court Administrator Submits written testimony and testifies in opposition to SB 1292 (EXHIBIT J). Indicates that the courts should make the decision as to whether the practice should continue once it has been adequately tried.
301	Vice-Chair Courtney	Indicates that he has received a telephone call from Judge Francisco Yraguen from Vale, Oregon in opposition to SB 1292.
308	Sen. Burdick	If a member of the public wants to attend a trial held in a correctional institution, what would you do?
313	Cook	We haven't had that experience yet. The trial area is in the visitor's center, which is open to the public. There is video transmission available at the courthouse in Vale.
327	Rice	Discusses what it was like to watch a trial on video.
350	Taylor	Does Lane County do arraignments in the jail?
353	Rice	Some counties do, but that is really not the equivalent of a trial.
370	Taylor	Do you know of any state that holds jury trials within correctional institutions?
372	Click	I have not inquired, so I don't know.
387	Vice-Chair Courtney	Reopens the public hearing on SB 917.
<u>SB 917 PUBLIC HEARING</u>		
396	Mary Botkin	American Federation of State, County and Municipal Employees (AFSCME) Testifies in support of SB 917. AFSCME believes the lack of appropriate security

		training puts employees at risk.
Tape 125, B		
033	Sen. Tarno	Are there documented cases where we had security problems?
036	Bodkin	There are stories.
042	Brian Delashmutt	Association of Oregon Corrections Employees Indicates that Gary Harkins testimony which was previously submitted (Exhibit D) has several examples of the types of problems which have occurred.
044	Bodkins	There are several examples where non-security staff have been injured or placed at risk. The Department of Corrections needs more staff and money.
055	Vice-Chair Courtney	Closes public hearing on SB 917 and reopens the public hearing on SB 975.
<u>SB 975 PUBLIC HEARING</u>		
060	Brian Delashmutt	Oregon Council of Police Associations Testifies in support of SB 975. SB 975 was written to provide privacy for employees of criminal justice agencies.
<u>SB 1283 PUBLIC HEARING</u>		
086	Counsel Tweedt	SB 1283 would require the Office of Medical Assistance Programs to provide an impartial grievance procedure for any enrollee or subcontractor to use to seek resolution of disputes.
091	Hersh Crawford	Office of Medical Assistance Programs (OMAP), Department of Human Resources Submits written testimony and testifies as neutral on SB 1283 (EXHIBIT K). Discusses the need for clarification of SB 1283. Until the terms are made clear, it is not possible to assess the impact on OMAP. Indicates that there are procedures in place for appeals of actions taken by OMAP.
160	Vice-Chair Courtney	Have you spoken to Sen. Shannon or former Rep. Lonnie Roberts about this bill?
161	Crawford	I have not.
<u>SB 844 PUBLIC HEARING</u>		

172	Vice-Chair Courtney	SB 844 is in response to a request by the principal of North Salem High School to create school safety zone legislation. School intruders can be moved off the school grounds, but not away from public thoroughfares directly adjacent to the school. Allowing them to remain there is almost as disruptive. Indicates that the 11 amendments are an attempt to ensure the constitutionality of SB 844 (EXHIBIT L).
199	Kathie Osborn	Juvenile Rights Project Testifies in opposition to SB 844. Schools traditionally are in residential areas, containing dwellings and parks within 1000 feet of the school grounds. People in their homes and using park facilities would be in violation of this legislation.
222	James Rice	Oregon Criminal Defense Lawyers Association Testifies in opposition to SB 844. Although the concern is real, I don't believe this gives the school administration much more power than they currently have to address this problem.
238	Counsel Taylor	Discusses disorderly conduct, as it relates not just to safety but also as a nuisance. Would you have suggestions to tie this more closely to the school?
254	Osborn	I would be happy to work on attempting to tie this more closely to the school grounds.
265	Counsel Taylor	Thank you for helping us to work on this.
271	Rice	I would be happy to work on it also.
273	Vice-Chair Courtney	Thank you. I would like to see if we could do something here to assist the schools with this problem.
284	Sen. Tarno	I like the concept and hope we can do something.
288	Sen. Qutub	Why was the bill that addresses this same problem in Georgia declared unconstitutional?
302	Vice-Chair Courtney	Discusses the Georgia legislation.
314	Counsel Taylor	Discusses the constitutionality of previous legislation in Oregon.
329	Rice	I also believe there is a potential problem with violating the citizen's right of freedom of assembly.
349	Osborn	I would be willing to do research on the Georgia legislation.

355	Vice-Chair Courtney	Thank you. Reopens the public hearing on SB 546.
<u>SB 546 PUBLIC HEARING</u>		
382	Steven Naito	<p>Attorney</p> <p>Testifies in support of SB 546 with amendments. Discusses the rules of corporate law which were designed for large corporations and the difficulty minority shareholders have in a closely held corporation since the market forces do not apply in the same way and the investment motivations are more complex. The majority shareholder has the ability to oppress the minority holder under the corporate laws. Under ORS 60.661 the minority shareholder was given the ability to sue for dissolution of the corporation based on the oppression of the minority shareholder. There is no standard for oppression in the statutes. Discusses the "reasonable expectation standard" definition of oppression in SB 546. The "reasonable expectation standard" is currently used in contract law.</p>
Tape 126, B		
071	Brent Bullock	<p>Oregon State Bar, Executive Committee of the Business Law Section</p> <p>Testifies and submits written testimony in opposition to SB 546 (EXHIBIT M). Indicates that Oregon law currently does not permit majority shareholders to act oppressively towards minority shareholders. The courts have broadly interpreted oppression of minority shareholders. A specific definition of oppressive has been difficult to draw up since each set of facts and circumstances are different. Discusses various other options that are currently available to deal with the problems of minority shareholders.</p>
197	Brendan McDonnell	<p>Oregon State Bar, Executive Committee of the Business Law Section</p> <p>Testifies in opposition to SB 546. Indicates his agreement with the previous testimony.</p>
240	Naito	We are more than happy to discuss any issues or language that the Executive Committee of the Business Law Section wants to address. My intent is to have a better law. I would be happy to work on the bill, but want to do this in a timely fashion. I believe the version of the bill which Mr. McDonnell and Mr. Bullock were working from is the old version.
270	Bullock	Indicates his letter does include the old version of the bill.
298	Sen. Brown	Does the Executive Committee have a work plan to deal with this issue?
303	Bullock	We are tracking many bills so it is difficult to say how soon we could get this together.
320	Vice-Chair Courtney	Asks if they could please cooperate and work on SB 546 to get it in shape so it

		can be passed on.
SB 996 PUBLIC HEARING		
384	Sharon Hill	Legislative Assistant, Sen. Avel Gordley, State District 10 Testifies in support of SB 996. Indicates that Sen. Gordley has been working with the National Rifle Association to try to prevent accidental death with firearms. Out of those discussions came the need for a violent injury data system.
427	Katy King	Health Division, Department of Human Resources Testifies in support of SB 996 (EXHIBIT M).
486	Counsel Tweedt	Why is the Legislative Counsel's Office going to staff the project created by SB 996 if the Health Division has all the information?
492	Hill	There is specific information that the police have access to and the Health Division doesn't. The child fatality information is the only information that there is a cross agency sharing of information. We want to inter-relate the all the data related to violent injury in order to target the issues and strategies.
Tape 127, A		
039	Counsel Tweedt	The Legislative Counsel's Office has been designated to do the staff work. I'm not sure that is the best place.
046	Vice-Chair Courtney	Closes the public hearing on SB 996 and reopens the public hearing on SB 1215.
<u>SB 1215 PUBLIC HEARING</u>		
052	Sen. Charles Starr	State Senator, District 5 Testifies in support of SB 1215. SB 1215 offers the option of a covenant marriage and has the potential of making marriages stronger. Strengthening marriage would assist with many social ills. Covenant marriage is currently a possibility in Louisiana. Discusses pre-marital and marital counseling.
104	Sen. Brown	Discusses the benefits of no fault divorce and asks if covenant divorce would not be more difficult on the children.
118	Sen. Starr	I'm sure that might be the case, however, if we save any of these marriages, we'd be miles ahead.
132	Ken McDermot	Legislative Assistant, Sen. Charles Starr, Senate District 5

		Louisiana has had the law less than 2 years. There have been no divorces, but mandatory counseling sessions have been required and have occurred. Since the law was passed 3% of the marriages that have occurred are covenant marriages but many don't know of this possibility. It is still too early to have much data.
152	Sen. Qutub	Although it may be that amicable dissolution of marriage is easier for the children than a rancorous dissolution, there are many studies showing that the kids doing the worst are those who have only one parent. Discusses testimony about child abuse and how that relates to single parent or stepfamily homes. Discusses that it is too easy to go in and out of marriage.
199	Sen. Brown	I have read Judith Wallerstein's books regarding the effects of child abuse and divorce on children and thought they were fascinating and very sad.
214	Vice-Chair Courtney	Closes the public hearing on SB 1215 and reopens the public hearing on SB 1292.
<u>SB 1292 PUBLIC HEARING</u>		
223	Judge Francisco Yraguen	Circuit Court Judge, Malheur County Testifies in opposition to SB 1292 that would forbid trials in Correctional Institutions. Believes it is too soon to outlaw this possibility. Discusses Exhibit J, submitted by the Department of Justice that supports holding trials in the Snake River facility.
393	Sen. Cliff Trow	State Senator, District 18 Submits written testimony and testifies in support of SB 1292 which forbids the holding of a trial in a correctional institution (EXHIBITS O & P).
Tape 128, A		
<u>SB 843 PUBLIC HEARING</u>		
053	David Schreiner	Keizer, Oregon Submits written testimony and testifies in support of SB 843 (EXHIBIT Q).
083	Sheila McIlrath	Salem, Oregon Submits written testimony and testifies in support of SB 843 (EXHIBIT R).
103	Sheldon Nichols	Salem, Oregon

		Submits written testimony and testifies in support of SB 843 (EXHIBIT S).
125	Sharon Scott	Salem, Oregon Submits written testimony and testifies in support of SB 843 (EXHIBIT T).
174	Vice-Chair Courtney	Closes the public hearing on SB 843 and reopens the public hearing on SB 844.
<u>SB 844 PUBLIC HEARING</u>		
173	Jim Bingham	Assistant Principal, North Salem High School Submits written testimony and testifies in support of SB 844 (EXHIBIT U). Discusses high school security issues.
200	Counsel Taylor	Discusses whether the disruptive conduct around schools is best described as loitering or disorderly conduct. Suggests amendment language that may be appropriate.
<u>SB 1171, SB 1175, SB 1176, PUBLIC HEARING</u>		
240	Sen. Brown	SB 1171 sets up an external review process for consumers of managed care if they are concerned about a decision made by a managed care organization. Having an outside third party review inspires confidence (EXHIBITS V & W).
271	Connie Seeley	Research Director, Senate Democratic Leadership Office I am here to answer questions.
275	Elizabeth Beyers	Oregon Health Action Campaign Testifies in support of SB 1171.
291	Sylvia Kaley	Oregon Law Center Testifies in support of SB 1171.
307	Counsel Tweedt	How many other states have adopted this type of process?
312	Seeley	There are twenty states that actually have adopted external review legislation. Fourteen other states have legislation pending.
353	Sen. Brown	SB 1175 allows the health plan to authorize specialists as primary care providers for certain enrollees. A similar bill passed in 1997 that allowed obstetrician-gynecologists to be declared primary care providers.

388	Seeley	My understanding is that this is most often used when a chronic condition exists.
400	Counsel Tweedt	SB 1175 is specific in that it does offer this possibility for chronic illness.
410	Vice-Chair Courtney	Closes public hearing and adjourns at 3:45 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,
Administrative Support Counsel

EXHIBIT SUMMARY

A ñ SB 1075, written testimony from M. A. Anderson, 8 pp

B ñ SB 70, written testimony from Oregon OSHA, 1 pp

C ñ SB 854, -3 amendments dated 4/15/99, 1 pp

D ñ SB 917, written testimony from Gary Harkins, 4 pp

E ñ SB 917, written testimony from Michael Taaffe, 2 pp

F ñ SB 983, written testimony from Ramon Ramirez, 2 pp

G ñ SB 983, written testimony from D. Michael Dale, 2 pp

H ñ SB 1215, magazine article reprints, Sen. Shannon, 12 pp

I ñ SB 1292, written testimony, Dave Cook, 1 pp

J ñ SB 1292, letter from Linda Zuckerman, submitted by Kingsley Click, 2 pp

K ñ SB 1283, written testimony from OMAP, 3 pp

L ñ SB 844, -1 amendments dated 3/30/99, 1pp

M ñ SB 546, written testimony from Brent Bullock, 9 pp

N ñ SB 996, written testimony from Katy King, 3 pp

O ñ SB 1292, written testimony from Eric Cumfer submitted by Sen. Trow, 2 pp

P ñ SB 1292, written testimony from David Carlson submitted by Sen. Trow, 3 pp

Q - SB 843, written testimony and brochure submitted by David Schreiner, 39 pp

R ñ SB 843, written testimony from Sheila McIlrath, 1 pp

S ñ SB 843, written testimony from Sheldon Nicholl, 1 pp

T ñ SB 843, written testimony from Sharon Scott, 1 pp

U ñ SB 844, written testimony submitted by Jim Bingham, 1 pp

V ñ SB 1171, magazine article reprint submitted by Sen. Brown, 1pp

W ñ SB 1171, newspaper reprint submitted by Sen. Brown, 1 pp

X ñ SB 983, -1 amendments dated 4/15/99, 1 pp