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SENATE COMMITTEE ON CRIME & CORRECTIONS

February 10, 1997 Hearing Room B

1:00 P.M. Tapes 9 -10

MEMBERS PRESENT:

Sen. Shirley Stull, Chair

Sen. Jeannette Hamby, Vice-Chair

Sen. Avel Gordly

Sen. Eileen Qutub

Sen. Veral Tarno

Sen. Cliff Trow

STAFF PRESENT:

Nikola Jones, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing

SB 331

SB 229

SB 227

Public Hearing & Work Session

SB 277

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 9, A		
003	Chair Stull	Opens meeting at 1:10 p.m.
		Housekeeping items: >tour on Wednesday >notebook
023	Nikola Jones	Committee Counsel >Explains Sentencing Guideline Grid in member's notebooks >1996 version - demonstration purposes only
<u>OPENS PUBLIC HEARING ON SB 331</u>		
036	Sen. Bill Dwyer	District 21. Gives background on SB 331 - Would increase penalties for distributing controlled substances to minors. >sends a clear message - if you want to use drugs, don't sell them to children
060	Sen. Hamby	Questions bed impact.
	Sen. Dwyer	Responds - no impact analysis
069	Sen. Hamby	Would like impact statement on bed capacity
	Sen. Dwyer	Responds.
	Sen. Hamby	Supportive of the concept.
087	Chair Stull	Discusses for clarification: >impact statements >economics of prison construction >numbers
		Addresses questions to law enforcement:

100	Sen. Trow	<ul style="list-style-type: none"> >is the level of penalty part of the problem >need harder penalties to solve the problem >current penalties too lenient
	Chair Stull	Responds.
109	Paul Snider	<p>Association of Oregon Counties - No position on SB 331.</p> <ul style="list-style-type: none"> >Discusses concerns: >look at bills and existing statutes collectively >time for another criminal code revision, last was in 1971 >take another possible approach to a criminal law revision, penalties only
174	Sen. Hamby	Asks that Snider walk Committee through current felony classifications
	Snider	Responds
194	Sen. Trow	Requests that staff obtain information for future reference.
	Snider	Don't know how this would work in terms with Sen. Dwyer's bill. Explains.
	Chair Stull	Clarifies guidelines
220	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association</p> <ul style="list-style-type: none"> >Defers testimony to Phil Lemman
237	Phil Lemman	<p>Executive Director, Criminal Justice Commission - no position on SB 331. Agency is directed by statute to administer the sentencing guidelines program.</p> <p>Discusses guidelines grid - gives background on process</p> <ul style="list-style-type: none"> >new felonies - establish a crime seriousness ranking >brought back to legislature for ratification >designation of person/non-person crimes
290	Lemman	<p>Continues:</p> <ul style="list-style-type: none"> >CJC together with the Department of Corrections do the bed impacts >try to have bed impact available by first work session
304	Sen. Trow	Questions inadequacies of penalties regarding drug sales to minors.
	Lemman	Depends on the definition of inadequate. Explains
		Asks for further clarification. Who can tell us if the penalty is the

324	Sen. Trow	problem?
	Lemman	Cannot answer. You have identified the debate. Continues. >generally, drug penalties in Oregon are less severe than other states
346	Ingrid Swenson	Oregon Defense Lawyers Association. Reviews the bill: >changes two things relating to drug sales/distribution to minors >no exemptions provided for the small quantity >optional probation category
409	Swenson	Continues: Assumption is that the courts will follow the guidelines >that part is of concern >message should be serious, but kept in context
TAPE 10, A		
030	Swenson	Continues to give examples >does have enough flexibility >important to keep things in some relationship to one another
049	James Arneson	Oregon Criminal Defense Lawyers Association Discusses one problem: >current guideline classification allows exemption for any drug for less than a 3 year difference
059	Swenson	Changing the drug schedule can have an impact. Explains.
071	Sen. Qutub	Interested in receiving a copy of the drug schedule
077	Sen. Trow	Asks again for clarification regarding punishment severity.
	Swenson	At some level punishment clearly deters crime. Continues >Oregon has severe punishments available >knows of no evidence that a significant change would take place
109	Arneson	>not very common in his district
121	Chair Stull	Discusses her concerns regarding the seriousness of the drug abuse problem among children. >schools have problems finding policy makers supporting a zero tolerance position

		>if they are young enough, nothing will happen to them
143	Sen. Hamby	Would like to hear testimony from the Judicial Department
<u>CLOSES PUBLIC HEARING ON SB 331</u>		
<u>OPENS PUBLIC HEARING ON SB 277</u>		
150	Bill Taylor	Counsel to Judiciary Committee - Gives history of SB 277 >Supreme Court Justices raised issues regarding clarification of statutes through court opinions. >SB 277 is a basic law improvement bill that clarifies in statute what the courts found in its court opinion
189	Chair Stull	Did groups or individuals come forward in opposition?
	Taylor	No
<u>CLOSES PUBLIC HEARING ON SB 277</u>		
<u>OPENS WORK SESSION ON SB 277</u>		
197	Sen. Hamby	MOTION: Moves SB 277 to the floor with a DO PASS recommendation.
		VOTE: 5-0 EXCUSED: 1 - Sen. Tarno
	Chair Stull	Hearing no objection, declares the motion CARRIED. SEN. GORDLY will lead discussion on the floor.
<u>CLOSES WORK SESSION ON SB 277</u>		
<u>OPENS PUBLIC HEARING ON SB 229</u>		

216	Phillip Lemman	Executive Director, Oregon Criminal Justice Commission. Testifies in support of SB 229 [Exhibit A] >background >rule changes >crime rankings
297		Continues - reviews changes >OAR 213-01-000 >OAR 213-03-001 >refers to table as most concise summary of actions taken [Exhibit B]
328	Sen. Gordly	Average attendance at meetings?
	Lemman	Usually all
339	Sen. Trow	Do you evaluate existing crimes already in the grid and change their rankings?
	Lemman	We have the ability to do that. Explains
366	Lemman	Reviews [Exhibit B] - Felony Crime Seriousness Ranking and Classification
	Sen. Stull	Asks for explanation on SB 220-B ranking
384	Lemman	Continues >one ranking only - category 6
		>person crime/non-person crime
437	Chair Stull	Question regarding SB 943 >How is the sentence to be adjusted?
TAPE 9, B		
033	Lemman	Replies. Guidelines classification will affect a Measure 11 crime only to the extent a judge through the departure process, can go beyond Measure 11 minimum. Continues explanation of chart [Exhibit B]
061	Chair Stull	Asks for clarification -
	Lemman	You can be ranked regardless of dollar amount. Continues
	Chair Stull	Continues asking for clarification regarding classification.
	Lemman	Refers to page 4 of subcommittee's minutes on HB 2137 [Exhibit B] >range of conduct so broad

		>if not in one of the protected classes, significant injury needed before classified a 6.
101	Chair Stull	States concerns and gives examples: >people in certain environments take greater risks in spite of their training >feels catagory level should be higher
	Lemman	Responds
151	Lemman	Continues explanation: >person offenses >non-person offenses >continues with Misdemeanor Classifications
167	Chair Stull	Questions classification of HB 2692
	Lemman	Will get you more information on that. Recalls it was the nature of how it was classified. Explains.
182	Sen. Trow	Has there been general acceptance of what the Commission has done?
	Lemman	Replies. Only feed back was received from the Department of Justice. Explains.
222	Lemman	Calls attention to housekeeping amendments - [Exhibit A] >establishes rule changes take effect on November 1, 1997 >leadline for ORS 475.999 in Appendix 4 is misstated >discrepancy in subcategory listing for Burglary 1 between Appendix 2 and Appendix 3
248	Janine Robben	Medicaid Fraud Unit, Oregon Department of Justice. Submits written testimony in opposition of proposed amendments to SB 229. [Exhibit C] Requests the Committee: >amend CJC's recommendation regarding Making a False Claim for Health Care Payments to a ranking of 6 where claim was for goods or services which were not provided as billed and when claim was to a taxpayer-funded or government-administered insurer
315	Sen. Trow	Questions frequency of this type of crime.
	Robben	Doesn't think it will affect many beds. Explains.
	Sen. Trow	Is there more fraud than you convict?
	Robben	Yes. Explains

CLOSES
PUBLIC
HEARING ON
SB 229

OPENS
PUBLIC
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SB 227

349	Phillip Lemman	Executive Director, Oregon Criminal Justice Commission. Testifies in support of SB 227 [Exhibit D] Restores previous statutory authority that allowed sentencing guideline rules to take effect prior to legislative approval. >background >three changes to the statute >beneficial effects
413	Sen. Trow	Recalls procedure
	Lemman	Correct. Explains: >no requirement that legislature act affirmatively to approve as is the case now
433	Chair Stull	Asks for point of clarification.
	Lemman	Replies. >did not have the guidelines ranking work done >option not available Continues
TAPE 10, B		
031	Chair Stull	Will this require overtime pay, etc.
	Lemman	I don't think so. Explains.
	Chair Stull	How long has it taken in the past?
	Lemman	Can't answer that. Explains. >repeals 400% rule >your agenda drives our agenda
065	Chair Stull	States concerns. Can you comply without additional resources?

	Lemman	Statute must be reviewed within 4 months of writing. Explains.
077	Chair Stull	How often would the committee/subcommittee be involved?
	Lemman	Replies: >Commission has discretion to appoint whatever committees it deems necessary >advised that a practitioner committee be appointed >tight process - considerable staff work involved
098	Chair Stull	Requests information regarding: >timeline averages >impact >current ability to accomplish goal
	Chair Stull	Questions possible amendment regarding legislative overview
	Lemman	Replies. >gives options >if legislature doesn't act, we go back the way we were - problem not fixed >structure rules so they would sunset >require Commission to submit all rule changes >if legislature not able to act, would still have rankings in effect >retains ability to modify if unable to act
139	Sen. Gordly	Has Rep. Minnis provided you with language that defines what he would like to accomplish?
	Lemman	No. Explains
148	Chair Stull	When you evaluate a particular thing, what is the process of that evaluation?
	Lemman	Replies: >do not get copies of all floor debates >do get copies of the legislative minutes and copies of testimony >visible in the building

		>if legislature chooses not to exercise their authority to designate a category, it defaults to us >our responsibility to see where new crimes fit
182	Chair Stull	Asks for numbers from last session.
	Lemman	Replies: >doesn't remember bills from last session. Clarifies. >unusual for legislature to say it should be this
194	Sen. Qutub	What is different about this process?
	Lemman	Replies: >rules do go through the Legislative Counsel Committee process >they look for different things. Explains
209	Sen. Hamby	When did we revert to the old process?
	Lemman	"That was done in the statutes that abolished the council and created the commission." >Sen. Miller involved in process and has no problems with this legislation.
<u>CLOSES PUBLIC HEARING ON SB 227</u>		
	Chair Stull	Declares meeting adjourned at 2:45 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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EXHIBIT SUMMARY

A - Testimony in Support of SB 229 - Phillip Lemman, Executive Director, Oregon Criminal Justice Commission - 6 pgs

B - Sentencing Guidelines Subcommittee Activity, SB 229 - Phillip Lemman - 14 pgs

C - Testimony in Opposition to Proposed Amendments to SB 229 - Janine Robben, Medicaid Fraud Unit, Oregon Department of Justice - 3 pgs

D - Testimony in Support of SB 227 - Phillip Lemman, Executive Director, Oregon Criminal Justice Commission - 4 pgs
