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SENATE COMMITTEE ON CRIME & CORRECTIONS

March 5, 1997 Hearing Room B

1:00 P.M. Tapes 26 - 27

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 496

SB 568

SB 575

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 26, A		
003	Chair Stull	Calls meeting to order at 1:15 p.m.
<u>OPENS PUBLIC HEARING ON SB 568</u>		
010	Sen. Tarno	<p>Representing District 24. Testifies in support of SB 568. Gives brief history regarding origination of SB 568. Resulted of conversations had last year with a friend who is involved with California State Correctional System and is well aware of California's "Three Strikes and Your Out" system. Currently 15,000 on their second strike sentence.</p> <p>>not going to stay in California for 3rd strike</p> <p>>Washington also has similar statute</p> <p>>tighter than California statute - narrowed language to include measured felonies - gives examples</p> <p>>addressed only those measured felonies in Oregon</p>
031	Sen. Trow	Questions term "persistent offender."
	Sen. Tarno	Legislative Counsel drafted with that language. Explains.
036	Sen. Trow	Continues - other states are imprisoning groups of people who are not dangerous at tremendous costs. Would we be contributing to this?
	Sen. Tarno	Not in my opinion. Explains.
044	Sen. Trow	Continues for clarification.
	Sen. Tarno	Violence against a person crime.
	Sen. Trow	<p>What if you gave the Court the discretion - not mandate -</p> <p>>"may" instead of "shall"</p>
	Sen. Tarno	It's an option.
055	Sen. Tarno	Trying to pattern the other state's language. Continues.
060	Sen. Gordly	Questions language on lines 12 & 13. Help me grasp what you are saying?
067	Sen. Tarno	Commit two crimes in same act. Explains.
	Sen. Gordly	Follows for clarification - fiscal impact?
	Sen. Tarno	Haven't received fiscal's report.
074	Nikola Jones	Committee Counsel. Replies. Fiscal doesn't have all the information. Amendment Sen. Trow spoke of would have a big impact.

081	Sen. Qutub	Refers to Sen. Gordly's question regarding lines 12 & 13.
	Sen. Tarno	That would be one offense.
088	Jones	Replies for clarification with explanation.
097	Tom Hart	<p>Marion County District Attorneys Office representing the Oregon District Attorney's Organization. Testifies in support of SB 568. Association supports bill in theory. Have some of the same concerns regarding application of language.</p> <ul style="list-style-type: none"> >willing to work on the language >comments on concerns giving examples >"same person felony" is of concern >appropriate for some judicial discretion when tied to a person felony
158	Hart	<p>Continues.</p> <ul style="list-style-type: none"> >most serious offenders against persons - third time >concerns regarding lines 12 & 13 - wordy - gives examples
197	Hart	<p>Continues giving examples.</p> <ul style="list-style-type: none"> >if a firearm was used >gun minimum language >agrees with Sen. Tarno's need for tight language but not so tight it might hamper us
242	Hart	<p>Continues with examples.</p> <ul style="list-style-type: none"> >person could have five or six serious person felonies and not be subject to this
250	Sen. Hamby	Did Sen. Trow indicate language that would depart up only or judicial discretion?
	Sen. Trow	Suggest word change to give courts discretion.
244	Sen. Trow	Are we likely to have people who are so labeled and get locked away but shouldn't be there. How could we keep that from happening?
255	Hart	<p>Replies. Don't have any specific examples. Continues.</p> <ul style="list-style-type: none"> >how do you define "serious offender" >suggests that certain classes of offenses could be better delineated. Explains.
301	Sen. Qutub	Questions California and Washington laws. How do they differ with these person felonies?

	Hart	Not familiar. Can get answers for you.
328	Sen. Qutub	Property crimes included?
	Chair Stull	Much broader in California than it is here.
	Hart	Agrees.
330	Sen. Qutub	Continues for clarification. Would have to commit the very same crime to get the life sentence?
	Hart	Confident that a court would give it the plain meaning of the language. Explains.
350	Sen. Gordly	References the Oregon Supreme Court's Task Force Report findings on racial and ethnic bias in the judicial system. Are you familiar with those recommendations and findings?
	Hart	Somewhat familiar. Continues.
366	Sen. Gordly	Is there a possibility if we adopt this as law, we would see a further problem with minority over-representation?
	Hart	No, I don't see that. Explains. >doesn't see this law sanctioning one group more heavily than another
400	Ingrid Swenson	Oregon Criminal Defense Lawyers Association. Testifies in opposition of SB 568. Refers to article published last summer from the Enda McConnell Clark Foundation regarding the impact of criminal law, public safety and the perception of the public. [Exhibit A] Summarizes article for the Committee. >roll imprisonment plays major topic of discussion >not effective in reducing overall rate of crime
TAPE 27, A		
037	Swenson	Discusses graphs concerning crime rate >peak age is 18 >racial composition is a national phenomenon as well >Relative to their populations, there are seven times as many minorities in prison as whites.
		There is racial bias in our system. Continues >mandatory sentencing laws have a higher tendency for racial bias >refers to charts 10 & 11 >study makes some recommendations

067	Swenson	<ul style="list-style-type: none"> >need to examine policies that have been successful >going beyond traditional punishments >judges be given a broader menu of sentences >graph on final page ranks the 50 states in order of their relationship of incarceration rate and child well-being. >in 1994, Oregon put a higher percentage into child development and protection
125	Jess Barton	<p>State Public Defender's Office representing the Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 568. Discusses what he sees this measure's impact to be.</p> <p>First, responds to Sen. Trow's question regarding laws already on Oregon's books.</p> <ul style="list-style-type: none"> >There is. Explains >guidelines didn't define the term "persistent" - left to the courts to define <p>Responds to Sen. Gordly's question regarding lines 12 & 13.</p> <ul style="list-style-type: none"> >lines 12 & 13 defines "persistent" - agrees with this language and recommends it being left in tact. Explains. >Oregon already has a law that does what this law is hoping to do. Continues.
111	Chair Stull	"Denny Smith Law" included in the Committee's packet
	Barton	>How much do you want to spend on incarcerating old people?
195	Barton	<p>Refers to Sen. Trow's suggestion of changing "shall" to "may".</p> <ul style="list-style-type: none"> >excellent suggestion - some problems with that - explains <p>An addition point about this bill:</p> <ul style="list-style-type: none"> >sentencing guidelines classifies many crimes as person felonies - proportionality problems >to avoid the constitutional concerns, the bill would have to be amended to include some sort of standards for the court to follow
		<p>Comments on testimony for points of clarification and a different perspective:</p> <ul style="list-style-type: none"> >appreciates having chart - Oregon up until 1994 was doing well in

241	Chair Stull	<p>showing a high net percentage of recourses to children.</p> <p>>part of the concern is that many of the victims involved are children - kids hurting kids</p> <p>>prior to Measure 11, only locking up 12% of felons in Oregon</p> <p>>again, we will make a good faith effort to meet the needs of all of our children</p> <p>>regarding locking up elderly people - is someone doesn't want the time, shouldn't do the crime</p>
301	Sen. Tarno	<p>My intent was just to narrow the scope to those predator-type individuals who don't seem to want to learn a lesson.</p> <p>>would appreciate your help</p>
314	Swenson	<p>Feels that it is worthwhile looking at the Dangerous Offender Statute as a model. Explains.</p> <p>>Oregon's reputation nationally is a "One Strike and Your Out" state. Continues.</p>
345	Sen. Qutub	<p>Comments:</p> <p>>appreciates the sharing this study</p> <p>>have seen other studies which show just the opposite</p> <p>>regarding crime "peak" of young people</p> <p>>older people - regardless, we provide medical care through public assistance</p> <p>Questions statistics for judge's ability to depart upward.</p>
391	Barton	<p>Replies. Aggravating factor -</p> <p>>always get fairly long guidelines sentences</p>
414	Sen. Trow	<p>Tells of his appreciation for the testimony and good information.</p> <p>>in Oregon it is not cost effective to lock people up at the current rate</p> <p>>tough on crime in different ways</p> <p>>prevent things at an early age. Continues</p> <p>>spend money at the tail end instead of the front end where you could turn people around</p>
<u>CLOSES</u>		

PUBLIC HEARING ON SB 568

TAPE 26, B

OPENS PUBLIC HEARING ON 496

028	Chris Gardner	Chairman, Children's Justice Act Task Force. Testifies in support of SB 496. >Comments on SB 568 and gives examples. Discusses that task force as raised this proposal in three previous sessions. >relates story - Do we have all the facts on the table? >We want to allow the use of evidence of other crimes. Explains. >There are times when sexual acts are so particular that they would fall under that category. Continues.
097	Gardner	by allowing evidence of other crimes to prove a sexual predisposition to molest children or to commit violence
104	Sen. Trow	Questions language on lines 22 - 24. Need to know what "evidence" means.
	Gardner	Would not be "heresay." Explains.
	Sen. Trow	Some good definition someplace?
	Gardner	Yes. Continues. >measure allows evidence in civil cases >competent evidence in any court, should be allowed in all courts >gives examples >final thing - Is there some protection? Gives examples.
152		"That balancing test is not to protect somebody from the prejudice of the jury but from undo prejudice." >A small change, but in certain instances that would allow highly probative evidence that everyone would conclude is relevant to the truth.
161	Chair Stull	As a point of clarification. There is some specific phenomenon directly correlated to certain pedophile behavior involving acts- specific kinds of things. Continues.

	Gardner	<p>That is exactly what we are getting at. Continues</p> <p>>number one defense is - "I would never would do anything like that."</p> <p>>proof that they would is relevant</p>
197	Tom Hart	<p>Marion County District Attorneys Office representing the Oregon District Attorneys Association. Testifies in support of SB 496. Supports bill conceptually. Explains.</p> <p>>make sure dealing with this particular issue everything fits - appropriately allows efficient administration of justice. Explains.</p> <p>>what is a "sexual predisposition" - clear up legislatively by intent wise</p> <p>>willing to work to achieve this goal</p>
239	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 496. Discusses the fact that if Measure 40 survives constitutional scrutiny there would be no need to legislate in this area. Continues.</p> <p>>abolishes the balancing test</p> <p>>character evidence</p> <p>>passage of a measure like this would cause innocent people to be convicted. Explains.</p> <p>>once the jury hears that this person has offended against 3 children - assumption will certainly be there</p> <p>>not a small change - very different approach to judging criminal liability - judged by character and not conduct</p>
310	Swenson	<p>Continues. You have to prove this is relevant - Gives an example.</p> <p>>currently in Oregon we have a rape shield law. Explains.</p> <p>>if Measure 40 survives and the State is allowed to use character evidence about defendants, you would have to apply the rules of evidence in a balanced way.</p>
372	Sen. Kate Brown	<p>Senate District 7. Testifies in support of SB 496. Office has had discussions with numerous people.</p> <p>>concerns about specific language - "sexual predisposition" was inappropriate. Suggests additional language - "a pattern of sexually deviant behavior or violence" as being better.</p> <p>>this term focuses on behavior and moves away from the ban against character evidence; also gets away from the suggestion of sexual</p>

		predisposition >agrees with Ms. Swenson that this is a major change to the statute
TAPE 27, B		
<u>CLOSES PUBLIC HEARING ON SB 496</u>		
<u>OPENS PUBLIC HEARING ON SB 575</u>		
029	Gary Oxley	United Grocers/Plaid Pantry Convenience Store Chain and UST Public Affairs, Inc. Testifies in support of SB 575. Discusses SB 575 for the committee: >currently possession of tobacco is illegal >prohibit minors from attempting to purchase >require a fine, allow a judge to impose community service, and provides minor's drivers license be suspended or ability to obtain a drivers license be detained or deferred
053	Mark Nelson	Southland Corporation/7-11 Stores in Oregon. Testifies in support of SB 575. >agreed to signage in all stores regarding carding of minors >increased fines to clerks who sell to minors >agreed to the sting operations conducted by Office of Alcohol & Drug Abuse Programs >encourage and train clerks >voluntary program between police and grocery stores which allows for undercover police working in the stores >SB 575 is an extension of previous attempts and will have an impact >need to impact behavior of children under the ages of 18
092	Sen. Gordly	Other states down this particular path?
	Nelson	Yes. Many who have this particular kind of statute.
	Sen. Gordly	Comment further on what their experiences have been.

	Nelson	No. Will try to get that information for you. Continues. >misrepresentation of age violation would require community service or loss of driving privileges is unique to this bill
	Sen. Gordly	Continues: References sting operations. Any indication of how many of these cases we might see in our courts?
	Oxley	I don't know. Currently, no records have been kept. Refers to state sting operations - reduction rate has gone down substantially in clerks making the sales. Continues.
126	Sen. Trow	Suspend the drivers license and they keep driving.
	Nelson	You see that in the adult population. Continues. >answer just not on the retail side >some responsibility has to be placed on the individual who is breaking the law
	Sen. Trow	Maybe some other penalty would work better. Continues.
146	Chair Stull	Comments: May be a mutual opportunity to change behavior on both sides.
153	Ed Mouery	Lieutenant, Oregon State Police, Drug Enforcement Section. Submits written testimony on SB 575. [Exhibit B] Oregon State Police has no position on this bill.
166	Vice Chair Hamby	Confident that the earlier witnesses would be supportive of this amendment.
170	Sen. Gordly	How many young people are involved in the program?
	Mouery	Don't have a number. Explains.
119	Clark Campbell	State Office of Alcohol & Drug Abuse Programs. We've had statutes on the books for quite some time. Continues >federal block grant - funds to states - includes tobacco enforcement - standard of 20%. Explains >preliminary results running at 29% this year >requests amendment - line 1 Section 1 paragraph 1, before the word "no" add the words "except for inspections conducted under ORS 431.853" >everything else in bill is fine >agrees with putting the responsibility on the kids and not just the retailers
	Sen.	Did the federal regulations that you are following dictate that we have

224	Gordly	an approach that focuses on minors attempting to purchase?
	Campbell	Is your question did the Feds mandate stings using underage kids?
	Sen. Gordly	No. Did they mandate that we have a bill like this? Explains.
	Campbell	Feds mandated two things: >illegal to sell to kids >sting operation to see that the sales don't occur >left the buyer completely free >this bill makes the buyer responsible
243	Vice Chair Hamby	Comments that in her district the sting has been used very successfully. Continues.
253	David J. Fidanque	American Civil Liberties Union of Oregon. No position on SB 575 other than the penalty relating to the suspension of driving privileges. Explains. >recalls similar penalty of a minor in possession of alcohol - some connection between the offense and the penalty >there is no coalition between smoking and driving accidents >encourages another penalty
279	Sen. Gordly	Does language in bill allowing a judge to award a hardship permit get at the problem you have with this bill?
	Fidanque	Problem from our standpoint is to have a connection between the offense and the penalty. Continues
304	Sen. Qutub	What would you suggest?
	Fidanque	Like the idea of community service and financial penalty >notification of parents >some intervention and education with the parents
<u>CLOSES PUBLIC HEARING ON SB 575</u>		
	Vice Chair Hamby	Declares meeting adjourned at 2:58 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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EXHIBIT SUMMARY

A - Article Submitted in Opposition of SB 568 - Ingrid Swenson - 12 pgs

B - Testimony on SB 575 - Ed Mouery - 1 pg
