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**SENATE COMMITTEE ON CRIME & CORRECTIONS**

**March 10, 1997 Hearing Room B**

**1:00 P.M. Tapes 31 - 32**

**MEMBERS PRESENT:**

**Sen. Shirley Stull, Chair**

**Sen. Jeannette Hamby, Vice-Chair**

**Sen. Avel Gordly**

**Sen. Eileen Qutub**

**Sen. Veral Tarno**

**Sen. Cliff Trow**

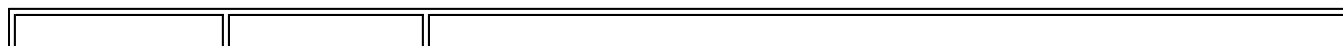
**STAFF PRESENT:**

**Nikola Jones, Counsel**

**Julie Clemente, Administrative Support**

**MEASURE/ISSUES HEARD: Public Hearing: SB 936**

**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
<b>Tape 31, A</b>		
003	Chair Stull	Opens meeting at 1:07 p.m.
<b><u>OPENS PUBLIC HEARING ON SB 936</u></b>		
010	Norman Frink	<p>Chief Deputy District Attorney, Multnomah County - Testifies in support of SB 936.</p> <p>&gt;views as the most significant piece of legislation that law enforcement and victims will have before the legislature this year. Explains.</p> <p>&gt;reported during interim the efforts being made to present a responsible, limited, and narrowly defined bill to implement Measure 40</p>
		References Summary of SB 936 [ <b>Exhibit A</b> ]
037	Dale Penn	<p>Marion County District Attorney and Co-Chair of the District Attorney's Association Legislative Committee. Association fully supports SB 936.</p> <p>&gt;high priority</p> <p>&gt;successful in condensing down into one bill the key concepts that voters wanted</p> <p>&gt;very important to quickly put forward implementing legislation</p> <p>&gt;urges keeping SB 936 intact</p> <p>&gt;believes strongly that these measures as written are fair statements of voters' will</p> <p>&gt;elevates rights of victims in particular situations</p>
074	Helen Smith	<p>Chief Deputy District Attorney, Multnomah County - Manages Victims' Assistance Unit. Testifies in support of SB 936.</p> <p>&gt;victims stand behind this measure</p>
081	Sen. Gordly	Accurate to say this bill is the product of a working group and if so, would you name the people and their organizational affiliations.
	Frink	<p>Leaves the question of specific names to Judge Gardner.</p> <p>&gt;Criminal Defense Bar, Attorney General's Office, Oregon State Bar,</p>

		Department of Corrections, ACLU and others were represented.
091	Sen. Gordly	Were there dissenting voices or views?
	Frink	<p>Wide-ranging discussions within the work group about many sections</p> <ul style="list-style-type: none"> <li>&gt;no vote system</li> <li>&gt;tried to arrive at a consensus</li> <li>&gt;effort made to achieve broad consensus</li> <li>&gt;some concern - voter registration requirement -</li> <li>&gt;basic premise of the group was that Measure 40 had passed and was the law</li> <li>&gt;concern regarding the voter registration requirement - explains</li> </ul>
153	Frink	<p>Continues:</p> <ul style="list-style-type: none"> <li>&gt;bill as a whole is a carefully balanced compromise between competing views of this committee</li> <li>&gt;consensus of proponents and opponents</li> </ul>
175	Mark Gardner	Special Counsel to the Attorney General, Department of Justice, submits written testimony in support of SB 936. <b>[Exhibit B]</b>
222	Timothy Sylwester	<p>Department of Justice, Appellate Division. Here to bring the Committee up to date on the current judicial actions in respect to Measure 40.</p> <ul style="list-style-type: none"> <li>&gt;Measure 40 has been struck down as unconstitutional by one court and a part of the Measure has been struck down by one judge in Marion County</li> <li>&gt;Attorney General's office continues to aggressively defend the constitutionality of Measure 40</li> <li>&gt;Have several cases pending in the Oregon Supreme Court that questioned constitutionality - 6 months to a year before final decisions</li> <li>&gt;important to get statutory provisions in effect</li> <li>&gt;year's worth of criminal cases to be reversed and retried</li> </ul>
257	Jef Van Valkenburgh	Assistant Attorney General, General Counsel Division, Oregon Department of Justice. Here to answer questions regarding sentencing.
267	Sen. Trow	What basically are the challengers saying about the Measure?
	Van	Several. Primary ones relate to the manner in which it was enacted.

	Valkenburgh	>requires that an initiative measure address only one subject
	Sen. Trow	If a challenge on that basis succeeds, is the complete measure discounted?
	Van Valkenburgh	Yes. Other challenge is that it revises the Oregon constitution. >our position is that it does not violate either
291	Sen. Trow	Other provisions with regard to freedom of speech or rights of the defendant that would seem to violate constitutional rights?
	Van Valkenburgh	Don't think that Measure 40 has that effect. Explains
303	Sen. Trow	Continues questioning Van Valkenburgh for clarification
314	Gardner	At this particular point in time, it's not possible to challenge the Measure as to the individual provisions. Continues
	Sen. Trow	Either of those been asking for an appeal of the decision
	Gardner	If a defendant was found guilty, that could be raised on appeal.
337	Sen. Gordly	In the work group discussions and analysis of how the bill was crafted, how did you talk about dispirit impacts?
	Gardner	Could you be a little bit more specific.
	Sen. Gordly	Refers to report on racial and ethnic bias in our judicial system that states that people of color receive harsher treatment.
	Gardner	It did not come up. The ballot measure applies to all Oregonians equally.
	Van Valkenburgh	Issue did come up in context with the provision of restricting juries to registered voters. >made that provision waivable by the district attorney in individual cases
391	Sen. Gordly	Have you consulted with any of the state advocacy commissions?
	Van Valkenburgh	No
	Sen. Gordly	Is there room to follow up at this point?
	Van Valkenburgh	Willing to talk to anyone, never too late.
423	Chair Stull	Point of clarification - we look to the Attorney General's office as the best opinion of what the likely outcome will be. Would that be a correct interpretation?
	Van Valkenburgh	I would hope so.
<b>TAPE 32, A</b>		
015	Sen. Trow	Did the Attorney General's office have any reservations about the bill?
		Any time there is a compromise, there are areas you would like to

	Van Valkenburgh	change. Explains. >we are supporting the bill as written
024	H. Chip Lazenby Lazenby	Legal Counsel to Governor - Part of the work group that worked to bring measure to current form. States that the Governor supports clear recognition of the rights of crime victims within our legal system. He opposed Measure 40 because it was poorly written and vague. However Measure 40 passed and has become the law of the State. It was the work groups intent to identify the most critical aspects of concern for the courts and to explore possible remedies for those problems.  >release authority of courts and truth in sentencing  >silent who was to inform the crime victims of their rights  This bill does help the courts by giving them the tools to comply with the open court provisions. Continues.  >SB 936 gives the State the burden of producing some evidence at the release hearing  >important that the court received assistance and direction from the legislature in these matters  >law enforcement agencies to provide some initial notice. Continues.
060	Lazenby	Governor continues to be concerned about the provisions of this bill.  >limitation of criminal juries to registered voters  >net effect is to reduce the availability of minority groups  >traditional under-registration insures that most criminal matters will be held before white juries  Continues: The governor does not support the codification of the jury selection provision clause that is currently in the bill.  >already in the constitution  The Governor hopes that this Committee will limit the scope of this legislation only to those provision necessary to implement Measure 40. >would then have the Governor's support
086	Sen. Trow	Change the bill to open criminal juries to everyone. Are we free to do that?
		Oregon constitution now requires that juries be drawn only from registered voters.

	Lazenby	>direct result of Measure 40 >doubtful if state lawyers have the ability to waive constitutional requirements. Continues.
101	Sen. Trow	Continues to question Lazenby for clarification.
118	Chair Stull	Questions data used for the presumption that it precludes people of color or gender to not participate in the jury process.
	Lazenby	Not a preclusion of participation, reduced participation. Explains >there may be some valid reasons for wanting to revert to registered voters. Continues.
152	Dan Noelle	Sheriff, Multnomah County. Testifies in support of SB 936.  Discusses the serious on-going problem he is facing in Multnomah County regarding good time, SB 1145 sentencing and boot camp. Good time is important to the jail system because it is one of the ways in a jail you are able to control discipline and maintain inmates in an orderly fashion. Inmates know they will receive a reduced sentence if they obey the rules. It allows for creative sentencing for those assigned at the county level for less than one year.  >SB 936 provides an option to allow the judge up front to say whether the inmate is eligible for good time of SB 1145. Conflicts between SB 1145 and Measure 40 are creating serious working issues on a day-to-day basis.
185	Sen. Trow	How does this bill take care of those conflicts?
	Noelle	Explains. Currently the judge has to sentence the inmate with the victim present in court and has to outline the sentence for the inmate. SB 1145 provides a mechanism that once the person is sentenced, we are supposed to move the inmate back and forth within the system to gain compliance. Continues.  >the two seem to be completely in conflict  >SB 936 gives us guidance
204	Sen. Trow	Continues questioning Sheriff Noelle for clarification.
230	DeeDee Kouns	President, Crime Victims United. Urges passage for SB 936.  >needed legislation to go with Measure 40 to give parties standards to go by  >save court time, money and appeals  Talks of the major reason: the people of Oregon, the voters have been making themselves clear for a very long time - capital punishment - victims bill - Denny Smith bill. Continues.

		>great distrust of the government by the people
287	Kouns	<p>Talks of the same group of people who say the measures are unconstitutional, vague, or poorly written</p> <p>&gt;if we don't get opposition, what we have done doesn't amount to much</p> <p>&gt;this body can't afford not to deal with the will of the people</p> <p>&gt;victims deserve all of our concern</p> <p>&gt;doesn't recall any victim saying that their offender was treated too harshly - exactly the opposite</p> <p>&gt;to be a registered voter is the simplest thing in the world. Explains.</p>
339	Bob Kouns	<p>Legislative Representative, Crime Victims United. Testifies in support of SB 936.</p> <p>Discusses that this is the will of the voters. It was passed by a significant majority of the people.</p> <p>&gt;members of this Committee will be moving to the floor a good government bill</p> <p>Discusses that compromises were made and if a member of the work group, would have fiercely resisted a couple of them. What is done is done. This is a very workable bill. Urges Committee to move it with dispatch as written.</p>
369	Sen. Trow	<p>Talks of his personal experience with jury duty.</p> <p>Why is voter's registration so important to you?</p>
	Kouns	Replies. Understand that many who hold driver's licenses are not citizens. Continues.
<b>TAPE 31, B</b>		
023	Kouns	<p>For myself this is a very deep-felt philosophic issue. Explains.</p> <p>&gt;it's about whether you are concerned about your community and your state</p>
035	Kouns	I have never been allowed on a jury. Explains.
	Sen. Trow	Your not automatically excluded because you are victims?
	Kouns	Yes there are. Explains.
057	Sen. Trow	<p>Agrees. Not a fair way of excluding someone from a jury.</p> <p>&gt;because a person is not registered is not a fair reason either</p>

	Kouns	They have the right to register. Continues.
059	Kevin Mannix	Attorney and former member of the House. Discusses the fact that Measure 40 has passed and is part of the constitution. If statutes are inconsistent they fall by the wayside - Measure 40 remains. Talks of implementation and that it would be helpful if judges didn't have to consistently remind attorneys regarding ORS statutes and helpful to have guidance over the rough edges but not necessary. Speaks of the jury selection changes and the ramifications that followed.
098	Mannix	Continues. If you are worried about racism and diversity, eliminate the pre-emptory challenges . Explains.  >Why isn't the state doing more to register minorities?  Under Measure 40, judges have to impose a sentence and that sentence has to be carried out. Carefully written not to preclude a judge from including in the sentence the concept of good time or early release. Explains.  >number of things in SB 936 that appear to be good and a number of things that warrant further discussion
146	Sen. Trow	Support or oppose the bill.
	Mannix	Now, I would not support it.  >the bill belongs to the legislature, not work groups  >this is the neutral body that gets to make the determination
156	Sen. Trow	If we did not send this bill out, what would the consequences be?
	Mannix	People uncomfortable for a while in the judicial system. Continues.
	Sen. Trow	Really not necessary.
	Mannix	Good and helpful, but not necessary.
165	Sen. Qutub	Comments about the issue of people at the table.  >participating and getting consensus, however - - - -
	Mannix	Relieved to hear that the Governor wasn't completely signed on to this. Continues.
200	Steve Doell	Member, Crime Victims United. Submits written testimony in support of SB 936. <b>[Exhibit C]</b>  >asks for consideration - there are movements across the country for severe jury reform. Explains
260	Sen. Gordly	Requests clarification from Mr. Frink regarding the role of crime victims on juries.
		Discusses that under the law there is no automatic exclusion for crime victims. Explains.



	Frink	<p>Continues to address jury issue. Passions inflamed by this bill are misplaced. Talks of his effort to check whether voter registration for certain minority groups is less. Explains.</p> <p>&gt;demographic statistics - not clear on a state-wide basis that there is a disparity in registration as opposed to voting</p> <p>&gt;not passing new policy - law until 8 years ago - as of December 5, it is the law</p> <p>&gt;makes it clear that the district attorney has the ability for waiver</p> <p>&gt;sunsetts the provision on January 31, 1999</p>
335	Frink	<p>Continues: Important for the proponents to support it. Explains.</p> <p>&gt;if you don't pass this in statute with the sunset clause - you have the potential of jury trials tried between now and the time Measure 40 is deemed lawful being retried. Continues.</p> <p>Discusses unanimous nature in other states. - Louisiana</p> <p>&gt;doesn't change the unanimity requirement in death penalty cases</p>
380	Sen. Gordly	Questions Mr. Frink's study.
	Frink	In response to the concerns raised, I attempted to look into this matter. Attempt is somewhat limited by the nature of the information available. Explains.
410	Sen. Gordly	Where are you looking and what are you looking at?
	Frink	<p>Local elections division offices and asking what the voter's registration rates are for individual precincts. Continues.</p> <p>&gt;entire premise on which we are having this discussion may not be the case</p>
<b>TAPE 32, B</b>		
042	Sen. Trow	Questions Frink for clarification
069	Chair Stull	Prior to Measure 40 we used DMV license information.
	Frink	As well as voter's registration lists. Continues.
083	Chair Stull	Explain how this bill reconciles with SB 1145
	Frink	<p>Replies: SB 1145 set a procedure whereby those offenders sentenced to 12 months or less would be under the control of the local supervisory authority. Continues.</p> <p>&gt;this bill allows the judge to rule on the eligibility for alternative sentence at the time of sentencing</p>
104	Sen. Trow	As this is happening, is the victim involved?

	Frink	Correct. Continues. >victim has an opportunity to be involved
	Sen. Trow	Continues for clarification.
	Frink	Correct.
118	Sen. Hamby	Directs comments to Sen. Trow. California is also considering the 10-2 judicial decision. Discusses her personal experiences with jury selection. >appalled at the number of reasons people use to get out of jury duty
135	David J. Fidanque	Executive Director, American Civil Liberties Union of Oregon. Submits written testimony. <b>[Exhibit D]</b>
201	Fidanque	Continues. These two rules are intended to help ensure that voters have a fair opportunity to know what they are voting on when they cast their ballots.
251	Fidanque	Continues. Every Oregonian has an interest in that right, not just those who are accused of crimes.
314	Fidanque	Continues. Finally, we have no position on the portions of the bill which attempt to fix the sentencing problems caused by Measure 40.
328	Sen. Gordly	Asks for comment on last witness's remark regarding Section 21, the defendant's right to waive a jury trial.
	Frink	The law in the State of Oregon until the 1930's was that all criminal trials were conducted by jury. >defendant had no right to have case tried by a court rather than jury >amended in the 1930's as an efficiency manner >over time that has come to be viewed as some type of right >Measure 40 makes it clear that both sides have the right to insist on a trial by jury >notion that it is unconstitutional has no support
388	Sen. Trow	Asks that someone from the Attorney General's office talk to the Committee regarding some of the points Mr. Fianque made.
	Sylwester	First off, with regards to bail - Measure 40 does not cut back on a defendant's rights under the federal constitution. Explains. >this intended to be a victim's rights bill >allows evidence to be offered >single subject's rule

447	Chair Stull	Asks that Frink and Sylwester come back on Wednesday to be available for further questions.
<b><u>CLOSES PUBLIC HEARING ON SB 936</u></b>		
	Chair Stull	Declares meeting adjourned at 3:00 p.m.

**Submitted by, Reviewed by,**

**Julie Clemente, Nicola Jones,**

**Administrative Support Counsel**

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**EXHIBIT SUMMARY**

**A - Summary of SB 936 - Norm Frink - 1 pg**

**B - Testimony in Support of SB 936 - Mark Gardner - 3 pgs**

**C - Testimony in Support of SB 936 - Steve Doell - 1 pg**

**D - Testimony in Opposition to portions of SB 936 - David J. Fidanque - 12 pgs**