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SENATE COMMITTEE ON CRIME & CORRECTIONS

March 12, 1997 Hearing Room B

1:00 P.M. Tapes 33 - 36

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: Work Session: SB 440

Public Hearing: SB 936

Public Hearing

& Work Session: HJR 2

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 33, A		
003	Chair Stull	Opens meeting at 1:09 p.m.
<u>OPENS WORK SESSION ON SB 440</u>		
008	Nikola Jones	Committee Counsel - Gives overview of SB 440-1 amendments [Exhibit A] and packet contents
018	David Lesh	Deputy District Attorney, Multnomah County District Attorney's Office. Discusses proposed amendments and reasons for same. [Exhibit A]
059	Sen. Tarno	How do you differentiate between damages & injures?
	Lesh	When describing destruction to property - the same
	Sen. Tarno	Questions subsection (c)
	Lesh	Applies only to mail within the letter box itself. Continues.
075	Sen. Trow	Speaks of damages during holiday pranks such as Halloween. A Class C felony to someone who commits a prank?
	Lesh	Generally that's not going to be the case. Explains >District attorneys have to have some discretion. Continues.
130	Sen. Trow	By stiffening penalties, will this lessen the incidents of this crime?
	Lesh	Absolutely do. Explains. >criminals who commit this crime do so as a profession.
156	Sen. Trow	Remarks of the drug habits of these people - will still have to feed that habit when released.
		Replies: >overwhelming majority of people will be sentenced to probation

	Lesh	<p>>term will be for 2 years - standard that they receive drug treatment</p> <p>>if they want to get off drugs and are on probation, help is there</p> <p>>have to want to be helped</p>
183	Sen. Trow	Continues for clarification.
	Lesh	That is going to happen. A lot of people re-offend in all types of crimes
	Sen. Trow	Continues for clarification. Because of increased penalties in other activities, criminals have moved over to this type of crime. Increase penalties here and they will move back.
	Lesh	<p>I like to think of mail theft as being a hole in the law. Explains</p> <p>>this bill isn't offered as a solution for the fundamental problems with drug addition</p> <p>>can't afford not to do anything about it</p>
212	Sen. Trow	Continues for clarification. Speaks of filling of prisons that costs heavily. Money spent at other end of the problem would be cost effective
23	Sen. Tarno	For clarification. Does this exclude a relative or friend from picking up mail from my home?
	Lesh	If someone has permission they are not committing a crime.
244	Chair Stull	Speaks of special arrangements to have a Parole and Probation Officer present to speak to Sen. Gordly's questions.
255	Sen. Gordly	Speaks of her interest and concern regarding impacts this bill would have on parole and probations.
	Kevin Bowers	Probation & Parole Officer Supervisor, Multnomah County Department of Community Corrections. States that without having an estimate of the numbers, it would be difficult. Based on discussions with Mr. Lesh, offender with a single conviction would be put on probation as a low-risk case and monitored that way. Every effort is made to refer these cases to treatment agencies.
297	Sen. Qutub	Discusses previous testimony and the fact that this type of crime is responsible for millions of dollars in losses not to mention the impact on victim's lives. That is a cost to society that cannot be ignored. In addition

		the costs to victims is something we cannot allow to continue.
330	Sen. Qutub	MOTION: Moves to ADOPT SB 440-1 amendments dated 03/03/97.
		VOTE: 6-0
	Chair Stull	Hearing no objection, declares the motion CARRIED.
338	Sen. Trow	Questions fiscal impact and that the bill should be referred to the Committee on Ways and Means. Explains reasons.
355	Chair Stull	States that her understanding that bills with \$50,000 or more impact goes to Ways & Means for consideration
	Sen. Hamby	Speaks of the process from one house to the other if a bill has a fiscal impact.
	Sen. Trow	Continues for clarification on fiscal impact issue
	Sen. Qutub	\$50,000 or over, goes to Ways & Means
400		>Committee continues discussion on issue
422	Sen. Qutub	MOTION: Moves SB 440 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0
	Chair Stull	Hearing no objection, declares the motion CARRIED. SEN. QUTUB will lead discussion on the floor.
	Testimony received for the record from Mike Ramsby, Sergeant, Oregon State Police Criminal Investigation Services Division in support of SB 440. [Exhibit G]	
	<u>CLOSES WORK SESSION ON SB 440</u>	
	<u>OPENS PUBLIC HEARING ON SB 936</u>	
		Chief Deputy District Attorney, Multnomah

435	Helen Smith	<p>County District Attorney's Office. Refers to Mr. Frink's discussion with Sen. Gordly regarding a study he did regarding voter's registration. Obtained further information which is presented to the Committee as [Exhibit B]</p> <p>>concerns raised in the committee regarding minority issues and jury service - seem to be addressed - Multnomah County</p>
TAPE 34, A		
030	Sen. Gordly	<p>Wants to be sure information is same as was delivered to her office before she comments.</p> <p>>insufficient picture about the minority jury pool issue. Asks that Ingrid Swenson take a look this information and compare with information she is providing.</p> <p>>better picture of the what the issue is and what is at stake</p>
045	Smith	<p>Refers to proposed 936-1 amendment [Exhibit C]- page 18, line 40. The "or" after the words Oregon constitution should have been a comma (,).</p> <p>>clerical error</p>
060	Charles Moose	<p>Chief of Police, Portland, Oregon. Not here representing the City of Portland, but to offer my very clear support because of strong concern and passion for victims. Discusses that the criminal law system over the years has become a system that works for the people who work in that system. This is a chance to loop in those people who have suffered.</p> <p>Touches on high points:</p> <p>>notification efforts are reasonable and necessary - some sense of closure</p> <p>>allow us to better target our resources and energies to match the desires of the victims</p> <p>>community policing - a key piece in our efforts is individual responsibility and community responsibility - have to be involved in our democratic system</p> <p>>ways to assure and increase the numbers of minorities registered to vote</p>

		>need to be committed to your community and individually responsible and involved
111	Moose	there are ways to solve the numbers issues - people who serve on juries are committed to their community >urges passage of SB 936
125	Sen. Gordly	Very glad to see Chief Moose here and participating in this discussion. >comments very helpful
131	Chair Stull	Comments on her appreciation of Chief Moose's contribution.
136	Steven Kanter	Constitutional Law Professor. Testifies in opposition to SB 936. Comments briefly on Sections 1 & 37 of the bill. >urges Committee to "first do no harm." Much or all of Measure 40 is going to be declared unconstitutional at some level, at some time in our court systems. Explains.
184	Kanter	Continues: Other than the victims sections, much of Measure 40 is going to disappear and most of SB 936 will do more harm than good. Explains. Discusses what should be done: >strengthen true victims rights by improving efficiency of the restitution system >treat victims of crimes with true dignity and respect >firm set trial dates >face-to-face apologies
228	Kanter	Continues: Measure 40 picked up almost none of those. Continues. >selectively send out individual referendum repealers - take these measure out >actions consistent with fundamental principles of the constitution Comments on his confidence in Oregon's voters. Not one in five understood Measure 40. Continues.

		>mentions clauses for repeal and explains reasons
308	Sen. Trow	Questions friendly information that the prosecutor didn't want to come forward. Could he keep it from coming forward?
	Kanter	I don't think so. Explains.
312	Sen. Trow	If we pass this bill and the courts strike down Measure 40, do we have something on the books that is essentially unconstitutional?
	Kanter	Quite possibly. Explains. Continues: >a risk that a requirement for voter registration for a jury member could be struck down >expanding not restricting jury service - reduce exemptions
349	Sen. Qutub	Do you know of any policy in the state or community that is asking minorities not to become registered voters?
	Kanter	Certainly hope not. Continues.
385	Sen. Qutub	Suggests making sure that there are a lot of registered voters that are minorities that can serve on juries. Was there a problem with previous law regarding jury selection?
	Kanter	Serious constitutional questions - not reflective of the community >anything we can do to expand commitment to the community through voting registration and voting is to the good
	Sen. Qutub	Legislature doesn't need to do anything. Explains.
	Kanter	As individuals we can do more to encourage people it is a valuable and responsible thing to do.
408	Kanter	Continues. Comments on Section 2: >prior to 1961, the 4th amendment had no application to Oregon
TAPE 33, B		
		Continues: If you like Measure 40, why do you need to repeat it in the statute?

048	Kanter	<p>>Section 37 - to repeal two sections of the Oregon Criminal Procedure Code.</p> <p>>Taking away two valuable sections without careful thought. Explains.</p> <p>>Fruit of the Poisonous Tree Doctrine</p>
097	Kanter	Urges the Committee to focus on fixing the system instead of taking on this bill.
103	Sen. Qutub	Comments - highly respects opinion. Speaks of our criminal justice system as becoming a "criminal" justice system. Refers to trial and defense lawyers who really don't care about truth and justice, but just wanting to get their client off. Continues.
123	Kanter	<p>Agrees that the heat has been turned up, especially for victims. Continues.</p> <p>>most crimes are not murder - for a lot of crimes, restitution would be a step in the right direction.</p> <p>>will take a serious non-partisan effort - overcome stereo-typical views we have of different parts of the system</p>
153	Sen. Gordly	Very last statement you made is one that I believe is one that should be reflected on. Continues:
168	Edwin Peterson	<p>Former Chief Justice of the Oregon Supreme Court. Also Chair of a task force to look into racial issues within the justice system. Here to talk about one line of the bill. Refers to page 5, line 6 - requirement of voter registration to sit on a jury in a criminal case. Asks that that line be removed.</p> <p>>in order for the jury system to work, you want a cross section of the community</p> <p>>amended law because we weren't getting that</p> <p>>jury pools picked from voter's lists, Department of Motor Vehicles (DMV) drivers - not unique</p> <p>trend county over</p>
		<p>Discusses things learned from the study:</p> <p>>system using now, still under representation of some minority groups</p>

200	Peterson	<p>>recommends the enlargement of the pool base - gives examples</p> <p>>so much apathy in this state - suggests retaining of the voter registration requirement would be a regression</p>
262	Sen. Gordly	Who were the members of the task force and how did you collect your information?
	Peterson	<p>>consisted of 18 people including 5-6 judges, number of lawyers, several public members.</p> <p>>conducted hearings throughout the state</p> <p>>conducted a very detailed polling by questionnaire of people who were involved in the judicial system</p> <p>>data together - sat down and compiled report</p>
300	Sen. Qutub	<p>Regarding the disparity within juries - based upon those actually called - also count those who ask to be excused?</p> <p>>comments on payment/non-payment of salaries during time serving on juries.</p>
	Peterson	<p>Report addressed that problem. Explains.</p> <p>>important thing regarding SB 936 - enact a law that will ensure that a cross section of the community will be called to serve as jurors</p>
376	Sen. Qutub	If taken out of SB 936, don't we still have to deal with Measure 40?
	Peterson	Don't know the answer.
348	Sen. Trow	Refers to prior testimony where victims found it very difficult to be members of a jury. Is that valid?
	Peterson	Suggested reducing or eliminating the preemptory challenge. Continues.
383	Angel Lopez	<p>Member, Commission on Hispanic Affairs for the State of Oregon and former member of the Oregon Supreme Task Force on Racial and Ethnic Issues and the Judiciary System. Submits written testimony in opposition to SB 936. [Exhibit D]</p> <p>Talks of his background and how being a minority, he didn't feel part of the larger community. Felt he was destined to live his life in spite of politics, justice and the powers that be. Speaks of his professional credentials and his position of trust within the</p>

		<p>Hispanic community.</p> <p>>defense attorney - represents criminals - most are guilty - most plea</p> <p>>not a person who wants to get his client off</p> <p>>what needs to be done is to assure the court that defendant won't be back</p>
474	Lopez	Speaks of his dialogue with clients regarding how many Latinos will be on the jury and asking for the assurance of a fair trial.
TAPE 34, B		
039	Lopez	<p>Continues:</p> <p>>talks about the protection of the law</p> <p>>picking juries from voter roles and DMV roles - not good enough</p> <p>>more inclusion of minorities not less</p> <p>>make it harder to get out of jury duty</p>
069	Sen. Tarno	<p>Questions "trial by my peers".</p> <p>>folks from the same area where I live</p>
	Lopez	It would be one representing all walks of life. Explains.
	Sen. Tarno	How can we objectively create that type of pool?
	Lopez	Replies: Enact provisions to make it harder to refuse jury service. Continues.
089	Sen. Gordly	What evidence can you relate that gives you some assurances that we are making some progress?
	Lopez	<p>Speaks of his specific sub-assignment - how effective were interpreters - not necessarily effective</p> <p>>today we have an Interpreter Certification Program</p>
	Peterson	Interpreters were the biggest problem that existed within the courtroom - also an area that could be remedied
127	Peterson	<p>Other recommendations:</p> <p>>preemptory challenge based on race</p> <p>>recommendations in chapter on juries have not been</p>

		<p>implemented</p> <p>>Chief Justice has a standing committee that is working on it right now</p>
145	Sen. Trow	<p>What can be done to change the situation - Latinos on juries - wrong lists?</p>
	Lopez	<p>If we focus on voter registration lists - never enough</p> <p>>utility payment lists would help - DMV lists - some improvement</p>
	Chair Stull	<p>Calls Timothy Sylwester for clarification of Steven Kanter's testimony.</p>
163	Timothy Sylwester	<p>Department of Justice, Appellate Division.</p> <p>Speaks that Professor Kanter's objections are to Measure 40 itself and not to the implementation legislation (SB 936)</p> <p>>Department of Justice disagrees that Measure 40 is unconstitutional</p> <p>>jury selection provisions: Measure 40 expressly reserves a defendant's rights under the federal constitution: Explains.</p> <p>>disagrees that limiting jury selection simply to voter roles violates the US constitution - no defendant ever cited a case. Explains.</p> <p>>bill allows for broader selection process - district attorney may waive the limitation.</p> <p>>reads Section 9, page 4 of SB 936 regarding that subject - continues</p>
221	Sen. Trow	<p>Seems it would be a little fairer that both the prosecution and the defense should have that ability. Why only the prosecution only?</p>
	Sylwester	<p>That is what the Oregon constitution now requires. Explains.</p>
	Sen. Trow	<p>Continues for clarification.</p>
	Sylwester	<p>It could. Continues</p> <p>>concern - important to make the statutory changes now to implement Measure 40 because of the risk that numerous criminal cases could be over turned in the future. Explains.</p>

		>courts around the state are applying the jury selection procedures portion of Measure 40 - continues
255	Sen. Gordly	Is that being done consistently in the same manner throughout the state?
	Sylwester	My understanding is that it is being applies in some counties, in some counties, it isn't. Explains. >currently the statute requires non-registered voters to be part of the jury - statutory violation >enact SB 936 - sunset clause - for next two years will exclude from the jury if the district attorney wants them excluded - continues
317	Sen. Trow	Kanter said we were running the risk anyway.
	Sylwester	He is wrong. >under the current state of the law no possibility that convictions will be reversed
340	Sen. Trow	How do most states do it? - Restrictions?
	Sylwester	Not sure. >not surprising if most states had a board-based jury selection provision
<u>CLOSES PUBLIC HEARING ON SB 936</u>		
387	Chair Stull	Puts Committee at ease at 2:58 p.m.
	Chair Stull	Reconvenes at 3:25 p.m. Adjourns Committee until 5:30 p.m.
388	Chair Stull	Calls meeting to order 5:43 p.m.
<u>OPENS PUBLIC HEARING ON HJR 2</u>		
407	Chair Stull	Comments on the three outstanding questions remaining at the Attorney General Office for opinions on HJR-2. >Ms. Townsend will comment on the remaining

		Measure 17 questions.
Tape 35,A		
035	Susanne Townsend	Department of Justice, Attorney-in-Charge, Government Services Division. [Exhibit F] >discusses proposal Attorney General has made with respect to the amendments for Ashurst-Sumners [Exhibit E] >left an argument regarding requirement of participation in the federal program - explains >fixes Ashurst-Sumners problem completely
052	Sen. Tarno	Keep the blue jeans running?
	Townsend	Yes. Continues.
056	Chair Stull	Comments on reasons for not being able to expand work opportunities.
072	Townsend	Right - would like avoid any litigation. Continues >makes violation of federal statute a felony
083	Chair Stull	Is HJR 2 in compliance with federal law with the amendments?
	Townsend	Measure itself was never out of compliance with federal law. Explains.
	Chair Stull	Continues for clarification - Do you believe the corrections and amendments being proposed will get to all of the constitutional issues?
107	Townsend	Replies. Our office is not aware of any other provision in the Measure that would totally prohibit the department from operating any inmate work program. Continues. >cannot guarantee what a court does down the road won't make life difficult Discusses remaining Measure 17 questions: [Exhibit F] - will not impact amendments presented [Exhibit E]
177	Chair Stull	Continues questioning Townsend for clarification >timeline for part 2
186	Jef Van Valkenburgh	Assistant Attorney General, General Counsel Division, Oregon Department of Justice. Questions Chair Stull as to direction.

	Chair Stull	We will have Mr. Marks do that.
195	Sen. Qutub	Questions compliance with federal law, what would we pay the inmates?
	Townsend	Provisions with the most impact - department has to pay prevailing wage. Continues. >restriction in federal law that you cannot withhold more than 80% - receive at least 20% >able to pay prevailing wage - restrictions have been problem in the interpretation
215	Chair Stull	PIE Program (Prison Industries Enhancement Program) - comments for Committee's clarification.
	Townsend	Deductions for listed items cannot exceed 80% of the gross wages
234	Sen. Trow	Possible to deduct for anything else?
	Townsend	Not above the 80%. Continues. >federal statute - must go through a review and certify that the program doesn't compete with private industry
251	Chair Stull	Continues to comment. If we adopt this particular language and if that federal law is repealed, are we going to have to do anything to our constitutional law?
	Townsend	No. Explains.
264	Sen. Qutub	What is the prevailing wage?
	Townsend	Explains process used.
	Sen. Qutub	Continues for clarification regarding wage.
	Townsend	Refers to industries people for answer.
282	VanValkenburgh	Reads from federal law.
	Sen. Qutub	Continues for the wage dollar amount. >Asks if it would be reasonable for inmates to pay for participation in rehabilitation and recreational programs.
298	Van Valkenburgh	Wouldn't impact this. So long as inmates can retain 20% of their gross wages.
	Sen. Qutub	Continues subject for clarification.
312	Townsend	I think there might be a possibility if the participation in the program was voluntary.
	Van Valkenburgh	Also a provision in federal law - possible inmates could enter into some other arrangements.
		Governor's Senior Policy Advisor. Requests that Jef

326	Steve Marks	Van Valkenburgh discuss amendments before the Committee.
341	Van Valkenburgh	Discusses three major subject areas of amendments. [Exhibit E] >legal effect is to deprive legal suit against the state
363	Sen. Trow	Would that conflict with the Blue Jeans people in interstate commerce?
	Van Valkenburgh	Replies. Federal law is supreme to state law. Continues.
	Sen. Trow	Does not conflict?
376	Van Valkenburgh	Does not conflict. Continues. >additional language requested by the Governor's office >modify the definition of full time - legal effect is that DOC (Department of Corrections) has discretion of implementation
418	Kevin Mannix	Co-Author of Measure 17. Speaks of amendments and discusses the importance of not suddenly getting into contractual arguments with any institution with inmates. [Exhibit E] Continues. >precautionary measure >referring to interstate commerce, this language makes certain that clearly cannot be a problem >secondly, let legislative assemblies in the future address other issues regarding compensation programs
TAPE 36, A		
039	Mannix	Continues. Addresses the concerns of the Department of Corrections regarding safety. >terms "on-the-job training" and "work" are terms of art - continues >on-the-job training - apprenticeship programs - learning how to do a job >all of this part of the work program
060	Chair Stull	Comments on what is really necessary and appropriate for these changes in constitutional law.

		>\$1Million to run a general election in the state
	Mannix	Oregonians can be proud of the fact that we have a measure here that can be a national model. Continues.
071	Marks	Record is complete on the changes. Continues. >takes care of interstate commerce - very important to the Governor >provides us with the foundation and solid legal base to engage in partnerships with the private sector
093	Benjamin deHaan	Deputy Director, Oregon Department of Corrections. Indicates support for the amendments. [Exhibit E]
	Chair Stull	Take the opportunity at a future date.
111	Sen. Qutub	Questions hourly wage paid.
	deHaan	Can give you some estimates. Explains. >use the Dictionary of Occupational Trades and work with Employment Department >\$5 to \$8 per hour - minimum wage types of jobs >they don't get to keep all of the 20% - mandatory savings accounts >\$ limit set for personal items at the canteen >most send remainder home to support families - allowed no cash
	Sen. Qutub	Questions hi-tech. What do you do interstate with hi-tech?
	Gary Weber	Manager, Corrections Industries. Replies. Program of computerized mapping with state agencies - maps in draft or paper form and digitize. >minor contract with a private engineering firm >computerized drafting has tremendous potential in regards to private partnerships >market niches that seem to make sense - Explains.
159	deHaan	Explains hi-tech as opposed to low-tech - brooms
<u>CLOSES</u> <u>PUBLIC</u>		

<u>HEARING ON HJR 2</u>		
<u>OPENS WORK SESSION ON HJR 2</u>		
164	Sen. Trow	MOTION: Moves to ADOPT HJR 2-A6 amendments dated 03/12/97.
		VOTE: 5-0
		EXCUSED: 1 - Sen. Hamby
	Chair Stull	Hearing no objection, declares the motion CARRIED.
172	Sen. Trow:	MOTION: Moves HJR 2A be sent to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0
		EXCUSED: 1 - Sen. Hamby
	Chair Stull	Hearing no objection, declares the motion CARRIED.
		CHAIR STULL will lead discussion on the floor.
	Chair Stull	Declares meeting adjourned at 6:25 P.M.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Proposed -1 Amendments to SB 440 - Staff - 1 pg

B - Profile of Voter Registration & Turnout - SB 936 - Helen Smith - 2 pgs

C - Proposed -1 Amendments to SB 936 - Staff - 1 pg

D - Testimony in Opposition to SB 936 - Angel Lopez - 20 pgs

E - Proposed -A6 Amendments to HJR 2 - Staff - 5 pgs

F - Remaining Measure 17 Questions (HJR 2) - Susanne Townsend - 1 pg

G - Testimony in Support of SB 440 - Mike Ramsby - 2 pgs
