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SENATE COMMITTEE ON CRIME & CORRECTIONS

March 31, 1997 Hearing Room B

1:00 P.M. Tapes 50 - 51

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 613, SB 691

Public Hearing and Work Session: SB 770

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 50, A		
003	Chair Stull	Opens meeting at 1:16 p.m.
<u>OPENS PUBLIC HEARING ON SB 613</u>		
007	Steve Dole	Crime Victims United. Testifies in Support of SB 613. States that the main reason this bill is here is that juries are not instructed on the deliberation process. They can chose any of the number of charges that are brought in a criminal case. Happens frequently in murder cases and person-to-person felonies. Gives example.
051	Dole	Much discussion about jury reform. Make jurors smarter about the law.
059	John Bradley	Deputy District Attorney, Multnomah County District Attorney's Office. Testifies in support of SB 613. Speaks to the legal issues and gives some background: >explains how a jury is instructed >jurors voting in the minority
106	Bradley	Judges won't instruct that a case can be retired if the jury is hung. Continues. >ignorance of the jury is a coercive force Discusses three parts of SB 613 Section #1 >acquit or convict on the main charge >found guilty on lesser, cannot come back on greater Section #2 >multiple defendants - joint trials - creates problem >equalize challenges on both sides
203	Bradley	Section #3 >offers conceptual amendment [Exhibit A]
		Marion County District Attorney, Legislative Co-Chair, Oregon District Attorney's Association. Testifies in support of SB 613.

221	Dale Penn	<p>>Supports amendment</p> <p>>This bill clarifies process making it clear so that the jury understands what its process is and how to proceed. The legal process is able to respond appropriately. Gives example.</p> <p>>Section 2 is necessary to know what to do when there are multiple defendants</p>
342	Penn	<p>Continues:</p> <p>>very technical bill</p>
372	Sen. Gordly	Does this come up often?
	Penn	Cannot quantify it. Explains.
392	Sen. Qutub	If this bill passes and becomes law, will the judge's instructions be different?
	Penn	Yes. Continues.
	Sen. Qutub	Continues for clarification regarding hung juries.
	Penn	<p>Replies. With SB 613, many judges would do that. Explains.</p> <p>>stronger language - judges would feel safer</p>
440	Sen. Hamby	Points out a possible change in the amendments.
TAPE 51, A		
027	Jim Arneson	<p>Oregon Criminal Defense Lawyers Association. Organization is not taking any position on bill's concept. Addresses sections separately.</p> <p>Section #1</p> <p>>Defense should have the same right as the state in requesting a jury poll and to stipulate that the jury may consider any lesser included offense.</p> <p>Section #2</p> <p>>agrees with Bradley and Penn that there is confusion throughout state as to proper method of handling peremptory challenges</p> <p>Section #3</p> <p>>appears that purpose of Section 3 is inconsistent with Section 1. Explains.</p>
081	Sen. Trow	Fairly typical of what the law is in other states?
	Arneson	The law as being suggested in Section 1 would probably be the majority

		rule. Continues.
094	Sen. Tarno	Multiple case load, try the more serious offense first?
	Arneson	My recollection would be: If there was an acquittal of the major charge and found guilty of the lesser, could not be retired on the more serious.
110	Sen. Gordly	Refers to the statement that there is confusion around the state regarding the use of peremptory challenges in cases with more than one defendant and there maybe a need for a fix. Anyone else working on this?
	Arneson	This is the only fix that is out there at this time.
125	Bradley	Has not objected to amending line 17. Suggests wording. >both have to stipulate
146	Bradley	Section #3 - Explains his previous explanation.
<u>CLOSES PUBLIC HEARING ON SB 613</u>		
<u>OPENS PUBLIC HEARING ON SB 770</u>		
167	John Bradley	Multnomah County District Attorney's Office. Testifies in support of SB 770. Discusses bill's background and gives examples. Practice has been that both sides will stipulate beyond what the sentence would be under sentencing guidelines for certain offenses. Gives example. Most judges will follow. Questions have been raised by other judges if this is proper. >change the law where parties agree to a sentence up to the maximum sentence the person could receive. Benefits system, defendant, and the victim. >cases where Measure 11 sentence is too severe and guidelines were too lenient
219	Sen. Gordly	Questions language in Section 2(2), line 5.
	Bradley	There is an existing statute. Continues.
	Nikola Jones	Committee Counsel. Clarifies by example.
245	Chair Stull	Point of clarification. Assurance that it is not the intent of district attorneys to use this to avoid prosecuting Measure 11 cases.
	Bradley	No, it is not. Explains.
264	James	Oregon Criminal Defense Lawyers Association. Testifies in support of SB 770. Discusses the difficulty of trying to reach appropriate sentence.

	Arneson	>opportunity for both sides for bargaining in good faith within the full range of sentences and penalties
293	Chair Stull	Remarks for clarification. What safeguards are in place so that this will not be a mechanism of abuse of Measure 11 offenses?
	Bradley	No law preventing a district attorney from doing this currently. This is not to take anything from Measure 11. It is to codify the existing practice and do it legally. Explains. >insure consistency
345	Sen. Qutub	For clarification, give us an example for a particular situation.
	Bradley	Replies. Gives example.
388	Sen. Gordly	Questions for clarification regarding process followed in Multnomah County
	Bradley	Yes.
437	Sen. Gordly	Continues questioning for clarification.
	Bradley	Replies. Trying to treat equally situated defendants similarly. Continues.
TAPE 50, B		
030	Sen. Hamby	Speaks of statistics showing disparity by county regarding the ethnic portion of young people currently being sentenced. Would like an assured consistency statewide.
	Bradley	In our county, we try to keep the best statistics we can. Continues.
047	Chair Stull	Comments: There is a real distortion. Continues.
	Bradley	Replies. Downward spiral maybe due to many things. Continues.
062	Sen. Trow	Gives example of conviction that seemed excessive. We need the flexibility you are talking about. This kind of bill would be beneficial. Continues.
	Bradley	Replies. You make an offer to someone and they turn it down. Continues.
082	Sen. Tarno	Is it safe to say this allows the flexibility?
	Bradley	Yes.
087	Phillip Lemman	Executive Director, Criminal Justice Commission.
	Sen. Gordly	Does the Commission have the ability to track how the bill gets implemented in different counties?
	Lemman	Right now, if the court and prosecutor's offices throughout the state do a good job filling out the forms, that would provide us with the data we need. Continues.
122	Sen. Gordly	Continues questioning for clarification on tracking.

	Lemman	States concerns: >how would it be applied and what would be the effect. Continues.
<u>CLOSES PUBLIC HEARING ON SB 770</u>		
<u>OPENS WORK SESSION ON SB 770</u>		
179	Sen. Tarno	Comments positively about SB 770.
189	Sen. Tarno	MOTION: Moves SB 770 to the floor with a DO PASS recommendation.
	Chair Stull	Calls for discussion
	Sen. Gordly	Remarks that she will probably vote for the bill on the floor, but will oppose it now. Needs more time to think about the bill.
		VOTE: 5-1 AYE: 5 - Hamby, Qutub, Tarno, Trow, Stull NAY: 1 - Gordly
	Chair Stull	The motion CARRIES. SEN. TARNO will lead discussion on the floor.
<u>CLOSES WORK SESSION ON SB 770</u>		
<u>OPENS PUBLIC HEARING ON SB 691</u>		
212	John Bradley	Deputy District Attorney, Multnomah County District Attorney's Office. Testifies in support of SB 691. Gives committee background. During the interim of 1996, HB 3488 was passed into law and takes effect on July 1, 1997. Pertains to persons having history of committing property crimes. Because of the haste in which the bill was passed, some things were left out. SB 691 makes minor adjustments including modifying procedure for proving previous convictions. Discusses conceptual

		amendments which will make the bill more consistent. >adds aggravated theft
266	Bradley	Continues: >clarifies how prior convictions are proved >cleans up some language to effectuate what legislature intended >page 2, lines 3-17: - clarification >line 14, added criminal mischief in the second degree
298	Sen. Trow	Questions inchoate offense.
	Bradley	Replies. Not a completed crime. Explains.
313	Shawn Miller	Northwest Payphone Association. Testifies in support of SB 691. Discusses how property crimes affect small business by destroying property. Talks of adding criminal mischief in the second degree. Gives Committee an example of the problem.
401	Joe Gilliam	National Federation of Independent Business. Testifies in support of SB 691. Repeat offender who makes the crime a game. Becomes a real problem for the small business owner whose insurance doesn't cover because he has raised the deductible to afford the insurance. >coverage is out of pocket
435	Chair Stull	Comments on how the public depends on working public payphones.
456	Sen. Trow	Questions for clarification regarding numbers flowing into our prison system.
	Miller	No.
TAPE 51, B		
038	Jim Arneson	Oregon Criminal Defense Lawyers Association - Introduces John Conners, Metro Public Defenders Office, Portland. Gives some background on Mr. Conners.
046	John Conners	Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 691. Comments that this problem of repeat offenders is readily solved by the current sentencing guidelines. Continues. >give the court the options in righteous cases >better way for those cases to be handled
<u>CLOSES</u> <u>PUBLIC</u> <u>HEARING</u> <u>ON SB 691</u>		

089	Chair Stull	Comments on proposed amendments - work session to be scheduled
	Sen. Trow	Referencing SB 691: Asks for some idea what this will do to our ability to incarcerate people.
	Chair Stull	Fiscal impact statement will be coming.
100	Chair Stull	Declares meeting adjourned at 2:50 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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EXHIBIT SUMMARY

A - Proposed Amendments to SB 613 - John Bradley - 1 pg

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SENATE COMMITTEE ON CRIME & CORRECTIONS

March 31, 1997 Hearing Room 50

5:15 P.M. Tapes 52 - 53

MEMBERS PRESENT:

Sen. Shirley Stull, Chair

Sen. Jeannette Hamby, Vice-Chair

Sen. Avel Gordly

Sen. Eileen Qutub

Sen. Veral Tarno

Sen. Cliff Trow

VISITING MEMBERS: Rep. Jane Lokan, Chair

Rep. Richard Devlin

Rep. Ryan Deckert

Rep. Steve Harper

STAFF PRESENT:

Nikola Jones, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD: Informational Meeting Regarding Privatization of Prisons in Oregon

Public Hearing on SB 960

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 52, A		
003	Chair Stull	Calls meeting to order at 5:27 P.M. >overview presentation
016	Sen. Gordly	Questions Chair of procedure in hearing persons traveling distances to testify.
	Sen. Stull	Volunteers to stay past allocated time to hear any testimony from those traveling a great distance.
034	Charles Jones	<p>Senior Vice President, Business Development, Wackenhut Corrections Corporation. Distributes: Ten Questions About Privatization [Exhibit A] and State of Oregon, Overview of Prison Privatization [Exhibit B]</p> <p>Begins presentation with an overview of Wackenhut Corporation. Discusses that they view privatization as a comprehensive plan with key decisions required which will have a long term financial and operational impact on the State. Prison privatization has come to include not only the transfer of infrastructure from the public to private sector, but the fast-track design and construction, ending with the contracted operation of a facility by the private sector. Continues with a variety of options from which the State may choose to proceed. Each option has distinct features and includes different approaches to delivering essential services.</p> <p>>global development because it works</p> <p>>all populations from work release through maximum security</p>
099	Jones	<p>Discusses public/private partnership in the State of Texas</p> <p>>work release program/prison industry program</p> <p>>paid a standard industry wage</p> <p>>made significant advances with industry within a prison</p> <p>>other programs - dedicated to drug rehabilitation</p>

		>educational programs
143	Jones	Discusses how services are delivered. Providing for the incarceration in a public/private partnership with the Department of Corrections (DOC). Under direction and control of the government where DOC sets the standards. Discusses American Correctional Association standards (ACA) and areas covered by those standards: >training and requirements of the individuals who work in the prisons >terms of the contract >facility would be designed in partnership with the DOC
217	Jones	Discusses four components of privatization >design >development/construction
301	Jones	Continues testimony. >finance - state can choose to provide the capital - revenue bonds - tax exempt debt and >some states require the private vender provide the capital
387	Jones	Discusses operation/facilities management: Option of engaging a private company to manage the facility or placing it under the DOC for management.
414	Sen. Gordly	How many states do you operate in?
	Jones	19 states
	Sen. Gordly	Are annual government audits performed?
	Jones	Every contract is audited.
	Sen. Gordly	Audits public information?
TAPE 53, A		
012	Sen. Qutub	Questions prison industries. Do you transport those good interstate?
	Jones	Yes
	Sen. Qutub	How do you deal with the federal law regarding wages?
	Jones	Replies. We have run into every possible opposition. Explains.
027	Sen. Qutub	Questions regarding the certification required by the federal government on inmate wages for production of products. Aware of any problems with that program?

	Jones	Replies. Portion that the inmates gets to keep meets or exceeds that requirement.
038	Rep. Lokan	Questions litigation experience?
	Jones	Contractual disputes between DOC ? None. >Indemnify the jurisdiction against all liability in all private contracts.
054	Lokan	Questions the citizen law suits.
	Jones	Typically over the number of citizens employed. Continues.
068	Rep. Devlin	Questions the staff compliment of the John R. Lindsay facility in Texas.
	Jones	3.5 - 4 inmate ratio per full time employee - approximately 260 full time employees
	Rep. Devlin	Continues for clarification.
	Jones	Medical care is provided within the prison if we design facility. Continues.
	Devlin	Questions pay range and benefits for correctional officers.
	Jones	Entry level pay range at that facility would be between \$25,000 - \$27,000
110	Devlin	Refers to a facility in Texas where Oregon inmates escaped. Your facility?
	Jones	No
114	Sen. Trow	If you operated a prison for the state, how would you be compensated?
	Jones	Compensated on a per diem rate. Explains
	Sen. Trow	How do you make your profit?
	Jones	Delivering the facility in a lesser time at a lesser cost >efficiencies in staffing >management structure >avoid overtime and cost overruns >offers motivating factors for moving through the system
158	Sen. Hamby	Speak to the cost advantage of a larger facility versus a smaller one.
	Jones	Depending on the services desired we would encourage facilities of not less than 500/600. To gain the maximum efficiencies somewhere between 1,00/1,500 beds. Continues.
183	Sen. Hamby	Corrections officers in your total run facilities allowed to carry weapons?
	Jones	Officers do not carry weapons. Continues.
201	Sen. Qutub	Questions procurement and service of food.
	Jones	Replies. Number 1 and 2 causes of unrest within a prison are the quality of food

		and health care. Continues.
230	Sen. Gordly	Questions problems with escapes and gangs.
	Jones	Replies: Grown with some difficulty. Continues.
285	Sen. Gordly	Continues questioning. How have you dealt with the aids population?
	Jones	Each state has a comprehensive program. Explains.
299	Rep. Devlin	Do you utilize any trustees?
	Jones	No inmates supervising inmates.
	Rep. Devlin	Questions company's last major disturbance.
	Jones	Wouldn't classify any of them as major. Explains.
326	Sen. Hamby	Asks for a cost estimate per inmate, per day on a 1,000 bed medium security facility.
	Jones	Replies: Including debt service, care, etc. Mid to upper \$30's.
349	Sen. Gordly	Are any of the 19 states death penalty states?
	Jones	Yes.
	Sen. Gordly	How is that carried out?
		Handled exclusively by the state.
367	Rep. Harper	Questions costs.
	Jones	Replies. Cites examples.
412	Chair Stull	Questions off site work crews.
	Jones	Confined. Explains.
TAPE 52, B		
016	Chair Stull	Re-affirms that institutions are at all times in full compliance.
020	Sen. Gordly	Have any states or counties terminated any contracts?
	Jones	No contracts terminated.
025	Sen. Gordly	Questions information received to the contrary.
	Jones	Monroe County, Florida? Explains.
041	Sen. Qutub	Questions for clarification regarding Florida incident.
	Jones	Replies. There was a requirement from the state that staffing be increased. Continues.
053	Sen. Tarno	Questions training.

	Jones	Train employees typically on site. Continues.
	Sen. Tarno	Certification process involved?
	Jones	Yes.
	Sen. Tarno	Questions for clarification regarding ACA standards.
	Jones	Replies - within two years. Continues.
078	Sen. Tarno	Pending lawsuits?
	Jones	No. Explains.
085	Sen. Trow	Questions the handling of disciplinary problems.
	Jones	Replies. Monitor on site. Explains
	Sen. Trow	How do you assure that the inmates are treated humanely?
	Jones	Replies. Camera monitoring systems together with immediate response to complaints. Continues.
102	Bruce A. Bishop	Representing Harang, Long, Gary, Rudnick introduces James E. Mountain, Harrang, Long, Gary, Rudnick P.C. and Dana E. Moore, Director, Business Development, Corrections Corporation of America
119	Dana E. Moore	Director, Business Development, Corrections Corporation of America (CCA) Presents an overview of CCA including the company's full range of services including finance, design, construction, renovation and management. [Exhibit C] Emphasizes the importance of a complete, comprehensive contract. Encourages the Committee to visit one of their facilities in Central Arizona to see first hand the construction and staff quality as well as the educational and work opportunity programs available for the inmates.
141	Chair Stull	Questions their prison industries programs.
	Moore	Replies. In the United States, our prison programs are all on campus. Explains.
155	Sen. Gordly	Questions for clarification the tab marked "Union Partnership" [Exhibit C]
	Moore	Explains that their company looks forward to working with unions.
169	Sen. Hamby	Comments on the cost differential between Oregon and Nevada and requests comments on what costs would be in a state similar to Oregon.
	Moore	CCA will always be comparable with the local Department of Correction's pay scale. Continues. >employee stock option plan
218	Sen. Hamby	Questions the contracting of the full building.
	Moore	Replies. Twenty-year contract with Nevada. Continues.
	Sen. Hamby	Continues for clarification concerning the rental of beds in other states.
251	Rep.	How do you build community relations?

	Harper	
	Moore	Replies. Once it is there, the community wants it there. Explains. >purchase locally >hire locally - 80%
311	Rep. Devlin	Questions for clarification the question of working with visitors.
	Moore	Replies. We are part of the system and follow the same procedures. Explains.
341	Rep. Devlin	Granted access to the LED system?
	Moore	Replies. The final signature is from the contract monitor. Continues.
385	Bryan Hutchison	Corrections Officer, Multnomah County Sheriff's Office. Submits written testimony in opposition to SB 960. [Exhibit D]
TAPE 53, B		
041	Larry Wooten	Correctional Counselor, Department of Corrections, State of Oregon. Pendleton. Testifies in opposition to SB 960. States that Oregon doesn't seem to be the beneficiary of the service discussed by previous witnesses. Talks of inmates being shipped to Houston, Texas and his interviews with 20 of them upon their return. Inmates complained of cold food, warehouse conditions, leaking roofs and that their escape was easy.
081	Bob Matheny	Corrections Officer/Drill Instructor-Summit Program, Shudder Creek Correctional Facility, Coos Bay. Testifies in opposition of SB 960. Comments on his experience with Wackenhut Correctional Corporation and feels they do an excellent job. States the problem of saving money could be handled locally without going to privatization and urges the review of local policies for money saving ideas, bringing the suggestions to the attention of the community. Invites the Committee to come and visit Shudder Creek and review the Summit Program.
109	Sen. Hamby	Praises Shudder Creek.
	Matheny	Continues his comments on Shudder Creek and its program.
118	Sen. Qutub	Comments: I see how difficult it is to make significant/minor cuts in government. Continues. >valid thought - private prison comes - public sector becomes more efficient >there shouldn't be a fear - could be a partnership
	Matheny	Replies. We need to tighten up our own system.
160	Chair Stull	Comments. The fear of change often drives our emotions. Continues. >not intended to be an aggressive action against public employees.
		Correctional Officer, Powder River Correctional Institution. Testifies in opposition to SB 960. Discusses programs currently in effect at Powder River and

180	James Simpson	the positive effect on inmates. >more cost effective to spend money now through these programs
	Chair Stull	Declares meeting adjourned at 7:05 p.m.

Submitted by, Reviewed by,

**Julie Clemente, Nikola Jones,
Administrative Support Counsel**

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EXHIBIT SUMMARY

A - Ten Questions About Privatization - Charles Jones - 9 pgs

B - Overview of Prison Privatization - Charles Jones - 15 pgs

C - Presentation to the Oregon Legislature - Dana Moore - 80 pgs

D - Testimony in Opposition to SB 960 - Bryan Hutchison - 31 pgs