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**SENATE COMMITTEE ON CRIME & CORRECTIONS**

**April 18, 1997 Hearing Room B**

**1:00 P.M. Tapes 75 - 77**

**MEMBERS PRESENT:**

**Sen. Shirley Stull, Chair**

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

**Sen. Eileen Qutub**

**Sen. Veral Tarno**

**Sen. Cliff Trow**

**MEMBER EXCUSED: Sen. Avel Gordly**

**STAFF PRESENT:**

**Nikola Jones, Counsel**

**Julie Clemente, Administrative Support**

**MEASURE/ISSUES HEARD: Public Hearing: SB 1126, SJR 30**

**Work Session: SB 613**

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 75, A</b>		
004	Chair Stull	Calls meeting to order at 1:11 p.m.
<b><u>OPENS WORK SESSION ON SB 613</u></b>		
009	Nikola Jones	Reviews the bill and amendments for the committee.
022	Sen. Hamby	<b>MOTION: Moves to ADOPT SB 613-5 amendments dated 04/17/97.</b>
		<b>VOTE: 4-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 2 - Sen. Gordly, Sen. Trow</b>
	Chair Stull	<b>The motion CARRIES.</b>
027	Sen. Hamby	<b>MOTION: Moves SB 613 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 2 - Sen. Gordly, Sen. Trow</b>
	Chair Stull	<b>The motion CARRIES.</b>  <b>SEN. QUTUB will lead discussion on the floor.</b>
<b><u>CLOSES WORK SESSION ON SB 613</u></b>		
<b><u>OPENS PUBLIC HEARING ON SB 1126</u></b>		
038	Tom Hart	<b>Marion County District Attorney's Office on behalf of the Oregon District Attorney's Association.</b> Defers to Michael & Roxanne Livingston.
	Michael	<b>Private Citizen</b> asking for consideration in passage of SB 1126.

043	<b>Livingston</b>	Presents written testimony. <b>[Exhibit C]</b>
056	<b>Roxanne Livingston</b>	Presents written testimony in support of SB 1126. <b>[Exhibit C]</b>
092	M. Livingston	<p>Continues testimony.</p> <ul style="list-style-type: none"> <li>&gt;outlines changes in law included in the SB 1126 -1 amendments <b>[Exhibit B]</b></li> <li>&gt;Section 1: Authorizes conviction for first degree manslaughter.</li> <li>&gt;Section 2: serious physical injury</li> <li>&gt;Section 3: Increases from 48 to 21 days, the minimum period of imprisonment.</li> <li>&gt;Section 4: Creates the crime of entrusting a vehicle to a person known at the time to be suspended for DUII.</li> </ul>
142	M. Livingston	<p>Continues testimony:</p> <ul style="list-style-type: none"> <li>&gt;Section 5: Prohibits the issuance of hardship permits</li> <li>&gt;Section 13: Authorizes the court to order forfeiture of the person's ownership interest in the vehicle</li> <li>&gt;Section 15: Repeals diversion</li> </ul>
190	Hart	<p>Testifies in support of SB 1126. Discusses that significant inroads have been made in raising the awareness, but the numbers are up. Very few strict liability crimes such as driving under the influence.</p> <ul style="list-style-type: none"> <li>&gt;assault and homicide statutes</li> <li>&gt;mental state</li> </ul>
233	Hart	<p>Continues: Drinking and driving is risky.</p> <ul style="list-style-type: none"> <li>&gt;criminal negligence.</li> <li>&gt;from a policy standpoint: Someone who has been there before is well beyond any other mental state. Continues.</li> <li>&gt;will work with Livingston and Legislative Counsel to deal with the mental state appropriately</li> <li>&gt;if the repeal of diversion was left in bill - lose at fiscal impact</li> </ul>
		Other provisions get to the heart of the issue. Continues.

283	Hart	>some accountability for persons who lend automobiles to people who have been - need to get their attention - take their vehicle  >rest of bill is solid good public policy  >encourages Committee to adopt an amended version
310	Sen. Trow	Questions statistics to help understand the numbers regarding persons arrested for first time and go off to diversion successfully and never re-offend.
	Hart	Do not have that information - will try to find out.
	Sen. Trow	Continues questioning regarding diversion.
	Hart	Questions for clarification regarding Sen. Trow's question.  >have to enroll in and successfully complete a program
	Sen. Trow	Continues questioning witness.
	Hart	Currently no requirement for admission of guilt. Explains.  >certain judges that will allow repeated offenses
364	Sen. Trow	Can they drive?
	Hart	Yes.
386	Sen. Trow	Continues questioning for clarification
<b>TAPE 76, A</b>		
019	Sen. Trow	Good reason to keep that program otherwise?
	Hart	Replies: Good policy to try to reach out to people who don't understand the nature of what they are doing. Goal is to get them to quit drinking and driving. Continues.  >huge fiscal impact
036	Sen. Trow	Increasing penalties actually changes behavior?
	Hart	Replies:
048	R. Livingston	The states that have the toughest laws, have a lower rate.
	M. Livingston	Follows on Sen. Trow's questions.  >repeal diversion  >trial courts have the same authority
077	Sen. Trow	A lot of people like that, or just a few?
	M. Livingston	Replies. Offers some Oregon statistics.
095	Sen. Hamby	Comments:  >driving without insurance, licenses suspended - equally dangerous. >use of the boot

		>current driver's license required to purchase a vehicle
	M. Livingston	Goal there was to separate the person from the car.
125	<b>Ingrid Swenson</b>	<p><b>Oregon Criminal Defense Lawyers Association.</b> Testifies in opposition to SB 1126.</p> <p>Discusses that current law allows for appropriate treatment. Essentially three offenses that occur when a homicide occurs as a result of a motor vehicle accident.</p> <ul style="list-style-type: none"> <li>&gt;manslaughter in the first degree</li> <li>&gt;manslaughter in the second degree</li> <li>&gt;criminally negligent homicide</li> <li>&gt;recklessness still can be proven even if you are intoxicated</li> </ul>
176	Swenson	<p>Discusses new language proposed in subsection C in Section 1 and states her concerns.</p> <p>Continues</p> <ul style="list-style-type: none"> <li>&gt;different penalties based on your state of mind</li> </ul>
235	Swenson	<p>Our opinion is that the current laws adequately allows for the appropriate penalties for persons who violate those laws.</p> <ul style="list-style-type: none"> <li>&gt;doesn't single out those who drive under the influence unless that fact is relative to that accident</li> <li>&gt;addressing the problem of drunk driver - deal with offense directly</li> <li>&gt;Measure currently in the House making a second or third DUII conviction a felony; currently only a misdemeanor in Oregon.</li> <li>&gt;Section 3: current law for a first offense authorizes one of two mandatory penalties</li> <li>&gt;Section 4: entrusting a motor vehicle - strikes me as an appropriate crime - suggests wording - "and are currently suspended"</li> </ul>
319	Swenson	<p>Continues: With respect to eligibility of persons for hardship permits: &gt; result would probably be an unintended one of many, many uninsured accidents</p> <ul style="list-style-type: none"> <li>&gt;do have to have insurance for a hardship permit</li> <li>&gt;Section 14: forfeiture provision - not unfairly penalizing people</li> </ul>

		who aren't criminally involved - gives example
367	Chair Stull	Questions for clarification. Why should a citizen not be allowed to go through a civil process?
	Swenson	Discusses position on civil forfeiture. It can be a criminal penalty in essence. Continues.
405	Sen. Qutub	Questions for clarification regarding sentencing.
	Swenson	Replies. Certainly should be aware of their behavior. Continues.
449	Sen. Tarno	Give me some help. How we can get the message out there.
<b>TAPE 75, B</b>		
030	Swenson	Comments. Agree that you need to keep working, never solved permanently. Suggests looking more directly at the offense itself. Continues.
038	Sen. Trow	Comments regarding the lack of statistics for a complete picture.
048	Sen. Qutub	Would like information from places who have succeeded. Continues.
055	Sen. Trow	Continues his comments.
062	M. Livingston	Responds to point Ms. Swenson made. It was not the intent of the Manslauder 1 amendment to create a mental state. Continues for clarification.
073	Sen. Trow	Questions for clarification.
	M. Livingston	No. Explains.
082	Sen. Tarno	Comments on Felony Drink Driving in California. Is that what you are trying to accomplish here?
	M. Livingston	Replies. Put the language in the form that squarely presents the policy decision of the committee and the legislature. Continues.  >part of the constant repetition may come from the fact that we keep the same category of offense
099	<b>Kelly Taylor</b>	<b>Department of Transportation.</b> Submits written testimony regarding SB 1126. Department takes a neutral position. <b>[Exhibit D]</b>
145	Sen. Trow	Questions for clarification regarding hardship designation.
	Taylor	Questions for clarification. Will try to get the information requested.
	Sen. Trow	Continues - How many violate the hardship designation?
172	Taylor	Replies. Continues.
184	Sen. Tarno	Do the insurance companies notify promptly?
	Taylor	Yes they do.
189	Chair Stull	Comments on the state's requirement of insurance and questions the ability to apply and make it applicable to every license.
		Comments on previous legislation. We are working on that

	Taylor	Explains.
209	Chair Stull	How far along in the process are we?
	Taylor	Large companies are reporting; small companies just starting to report. Continues.
221	<b>Gerry Cooper</b>	<p><b>Legislative Chair, Governors Advisory Committee on DUII.</b> Submits example cases. <b>[Exhibit E]</b> Gives a brief history of his background.</p> <p>&gt;DUII diversion protects the system from becoming overwhelmed. Continues.</p> <p>&gt;One thing we do know, it provides for early intervention and may straighten out their life without going through the judicial process. Continues.</p> <p>&gt;Advisory Committee suggests continuation with diversion.</p>
276	Cooper	<p>Very much aware of the impact when a repeat offender continues to drive. Must protect the public.</p> <p>&gt;automatic 8-year revocation of driver's privileges</p> <p>&gt;Advisory Committee recommends that the word "recklessly" be inserted - tighten down so no uncertainty regarding what constitutes 'prior involvement'.</p> <p>&gt;diversion to count against the offender - do that by adding the words 'prior conviction' or 'prior participation'</p> <p>&gt;Refers to the Case Law. <b>[Exhibit E]</b> Gives example.</p>
353	Cooper	You don't have to go that far. Continues.
368	Sen. Tarno	Has a vehicle been ruled a dangerous or deadly weapon?
	Cooper	Dangerous weapon. Continues.
379	Sen. Trow	You sound very supportive of this legislation. Are there any parts you don't like?
	Cooper	The jail time. Explains.
	Sen. Trow	Continues questioning for clarification.
412	Sen. Trow	Continues for clarification regarding length of sentence.
	Cooper	Yes, I think that is the case. Continues.
<b>TAPE 76, B</b>		
014	Cooper	Continues testimony.
021	Sen. Qutub	Comments for clarification regarding number of years, not days.
026	Sen. Hamby	Help me remember - federal dollars still available?
	Cooper	I know that we qualify. Continues.

	Sen. Hamby	Continues questioning for clarification.
077	Sen. Hamby	Continues questioning the witness.
	Cooper	Suggests Committee Counsel be conscious of trying to show the legislative intent.
089	Cooper	Continues testimony: Area of vehicle forfeiture. >number of other bills
	Sen. Hamby'	Aren't going to object to the `boot'.
	Cooper	Replies. Find someone to go out and apply the boot. Continues. >opposed to the repeal of diversion
117	Chair Stull	For the record, reads a portion of Livingston's testimony. <b>[Exhibit C]</b>
<b><u>CLOSES PUBLIC HEARING ON SB 1126</u></b>		
<b><u>OPENS PUBLIC HEARING ON SJR 30</u></b>		
150	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyer's Association.</b> Testifies in opposition to SJR 30. Gives some history.  Reads some excerpts from a paper prepared by Wayne Westling.  >brief discussion of where the right to counsel came from and how the state and federal provisions compare
201	Swenson	Continues - Oregon provision is found in Article 1, Section 11 of the Oregon Constitution.  >Provides that in all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense occurred to be heard by himself and counsel.  >Discusses differences between state and federal.
218	Swenson	Continues: Under the Oregon Constitution that is not the case.  >doesn't define what constitutes a criminal prosecution solely with relation to the penalty that is going to be imposed  >Continues discussion regarding what Senate Joint Resolution 30 would do.
317	<b>Ann Christiensen</b>	<b>Director, Indigent Defense Services Division, Oregon Judicial Department.</b> Submits written testimony regarding Senate Joint Resolution 30 in addition to information regarding a fiscal report



		that will impact the measure. <b>[Exhibit F]</b>
389	Sen. Trow	Questions for clarification regarding estimation of costs.
	Christiensen	Better question for defense counsel. Continues.
414	Sen. Trow	Continues for clarification regarding costs.
<b>TAPE 77, A</b>		
014	Christiensen	Replies. There is concern expressed regarding impact to the courts going through the system totally unrepresented. Continues.
037	Sen. Qutub	Questions for clarification regarding a misdemeanor where there will be no prison sentence.
	Christiensen	Replies. That is at least what one would believe. Continues.
064	Chair Stull	Comments for clarification concerning the providing of indigent defense in some civil cases.
	Christiensen	Correct. Continues.
078	Chair Stull	Declares meeting adjourned at 3:08 p.m.

**Submitted by, Reviewed by,**

**Julie Clemente, Nikola Jones,**

**Administrative Support Counsel**

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**EXHIBIT SUMMARY**

**A - Proposed SB 613-5 Amendments - Staff - 1 pg**

**B - Proposed SB 1126-1 Amendments - Staff - 1 pg**

**C - Testimony in Support of SB 1126 - Michael and Roxanne Livingston - 7 pgs**

**D - Testimony On SB 1126 - Kelly Taylor - 1 pg**

**E - Case Law Exhibits (SB 1126) - Gerry Cooper - 14 pgs**

**F - Testimony On Senate Joint Resolution 30 - Ann Christensen - 5 pgs**

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