

HOUSE JUDICIARY  
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room  
Tapes - 75

MEMBERS PRESENT:

Rep. Veral Tarno, Chair  
Rep. Floyd Prozanski, Vice-Chair  
Rep. Peter Courtney  
Rep. Jerry Grisham  
Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel  
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:           Public hearing and work session on SB 65  
                          Public hearing and work session on SB 117-A  
                          Public hearing and work session on SB 226-A  
                          Public hearing and work session on SB 227-A  
                          Public hearing and work session on SB 429-A  
                          Public hearing and work session on SB 448  
                          Public hearing and work session on SB 430-A

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

003     CHAIR TARNO:   Convenes meeting at 8:33 A.M.

OPENS the PUBLIC HEARING on SB 65

005     CLAYTON LANCE, OREGON STATE BAR, CRIMINAL LEGISLATIVE SUBCOMMITTEE:  
Testimony in support of SB 65. [EXHIBIT A]

036     REP. LEWIS:    You mentioned "defense counsel" in your letter, is this more of an advantage to the defense than it is to the prosecution?

039     LANCE:        No, I don't believe so. If you look at the relating clause, we're referring to ORCP 55H, but we're not eliminating all the other clauses in ORCP 55H.

060     CHAIR TARNO:  In the case of a grand jury, it would only subpoenaed by the prosecution, the defense could not subpoena those documents into a grand jury hearing?

062     LANCE:        No, only the state could.

070     REP. PROZASNKI: We believed ORCP 55H did in fact apply at one time to criminal proceedings and we had to go through the procedure, this would basically codify it to the point where it will apply and set up safe guards as well as the efficiency of delivering the records?

075     LANCE:        Yes, you are accurate. Most district attorney's office's in the past believed that ORCP 55H did apply.

CLOSES the PUBLIC HEARING on SB 65-A  
OPENS the WORK SESSION on SB 65-A

086                    MOTION: REP. COURTNEY: Moves SB 65-A to the full committee with a do pass recommendation.

088                    VOTE: In a roll call vote all members are present and vote AYE.

090                    CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 65-A  
OPENS the PUBLIC HEARING on SB 117-A

100     MIKE DINGEMAN, OREGON STATE POLICE: Testimony in support of SB 117-A.  
[EXHIBIT B]

136     DAINA VITOLINS, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Testimony in support of SB 117-A.

142     CHAIR TARNO:  Are there any problems in making this an exception to the hearsay rule?

144     VITOLINS: I don't believe so.

CLOSES the PUBLIC HEARING on SB 117-A  
OPENS the WORK SESSION on SB 117-A

153 MOTION: REP. COURTNEY: Moves the -A3 amendments [EXHIBIT C] to  
SB 117-A.

156 CHAIR TARNO: The motion CARRIES.

157 MOTION: REP COURTNEY: Moves SB 117-A as amended to the full committee  
with a do pass recommendation.

159 VOTE: In a roll call vote all members present vote AYE. REP. GRISHAM  
is  
EXCUSED.

162 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 117-A  
OPENS the PUBLIC HEARING on SB 430-A

170 REPRESENTATIVE BRYAN JOHNSTON, DISTRICT 31: Testimony in support of  
SB 430-A.

211 TRACEY CORDES, CRIMINAL JUSTICE COUNCEL: Testimony in support of SB  
430-A.  
[EXHIBITS D & E]

282 ALICE PHALAN, EXECUTIVE DIRECTOR, OREGON DISPUTE RESOLUTION COMMISSION :  
Testimony in support of SB 430-A. [EXHIBIT F]

331 CHAIR TARNO: In the bill it says mediation shall not be used for two  
issues, family disputes  
and sex crimes. Does that mean mediation can be used for other felony  
crimes?

337 CORDES: Yes, it could.

338 CHAIR TARNO: Does that include murder?

339 CORDES: Theoretically, but I think there is a huge difference between  
the theoretical possibility and what would actually happen.

341 CHAIR TARNO: I did not see it outlined in the bill anywhere that does  
draw some limitations.

341 REP. JOHNSTON: One of the other states that has a mediation program in  
criminal matters is the state of New York. They have a limitation that  
says class C felonies and below. What we did in drafting this is put it  
into the district attorney's hands.

350 PHALAN: There has been a couple of instances of mediation where there  
has been a murder, that has only been in the instances of where the  
perpetrator is already incarcerated and the victim has asked to do that in  
a setting so that that can assist them in the process of becoming whole.

364 CORDES: There are two protections written into the bill and there is a  
third protection which is a program reality.

385 CHAIR TARNO: When you say law enforcement agencies you are not  
referring to local police?

389 CORDES: Yes, we are.

399 CHAIR TARNO: So if the law enforcement wants to use the mediation  
process and the local district attorney says no, who prevails?

402 CORDES: It's going to depend a little bit on the facts of that  
situation.

410 REP. JOHNSTON: The short answer is the district attorney would  
prevail. If the law enforcement agency does not tell the district attorney  
about the offense, it's not going to happen.

428 CHAIR TARNO: I have a little problem with giving local law enforcement  
the kind of flexibility and authority to just actually bypass the  
prosecutory process.

437 REP. PROZANSKI: It may be another tool that law enforcement can use.  
It would seem to me that the department's are going to set guidelines or  
restrictions on officers.

449 REP. JOHNSTON: At every step in the criminal justice process there is  
the discretion of the individuals. This bill, we've been asked before "why  
is this necessary", because there are already 9 programs up and running in  
the state and the reality is that jurisdictions can do what we're asking  
them to do here without this law.

TAPE 75, A

030 REP. PROZANSKI: What are the standards for programs being accepted by the Dispute Resolution Commission?

036 PHALAN: We have 15 Community Dispute Resolution Programs and those programs all must meet standards. Explains procedures.

049 REP. PROZANSKI: There are 15 programs now? Are these programs interconnected in any way?

051 PHALAN: Yes, there are 15 programs. We are not setting up a monopoly.

057 REP. JOHNSTON: We are developing another piece of the court's vision.

CLOSES the PUBLIC HEARING on SB 430-A  
OPENS the WORK SESSION on 430-A

068 MOTION: REP. COURTNEY: Moves SB 430-A to the full committee with a do pass recommendation.

072 REP. LEWIS: I'm concerned we are not confining this to certain misdemeanors and the lesser felonies.

080 VOTE: In a roll call vote all members vote AYE. REP. GRISHAM is EXCUSED.

083 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 430-A  
OPENS the PUBLIC HEARING on SB 226-A

090 VIRGINIA LINDER, SOLICITOR GENERAL, DEPARTMENT OF JUSTICE: Testimony in support of SB 226-A. [EXHIBIT G]

137 REP. LEWIS: Didn't we just send out a house bill that has something to do with habeas corpus?

140 ROBINSON: We heard a bill a couple weeks ago that moved some of these cases and limited the ability to appeal certain types of cases to the Court of Appeals.

147 LINDER: I believe that bill is was the bill that is eliminating the right to appeal in disciplinary cases.

153 REP. PROZANSKI: You have worked with all sides of this issue, and everyone is in agreement with these changes?

156 LINDER: Yes.

CLOSES the PUBLIC HEARING on SB 226-A  
OPENS the WORK SESSION on SB 226-A

162 MOTION: REP. PROZANSKI: Moves SB 226-A to the full committee with a do pass recommendation.

164 VOTE: In a roll call vote all members present vote AYE. REP. GRISHAM is EXCUSED.

166 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 226-A  
OPENS the PUBLIC HEARING on SB 227-A

177 VIRGINIA LINDER, SOLICITOR GENERAL, DEPARTMENT OF JUSTICE: Testimony in support of SB 227-A. [EXHIBIT H]

207 REP. COURTNEY: An appeal was filed, or the Court of Appeals would not review the lower court record, correct?

210 LINDER: That is correct. The appeal has been filed at this point.

212 REP. COURTNEY: So no briefs have shown up at this point?

213 LINDER: We're not sure a brief always has to show up. In the current practice we usually have a blue brief, an appellant's brief in hand.

215 REP. COURTNEY: Who is going to do it? It's assigned to a judge, he or she and their law clerks review the record, and they come back with a decision short of hearing any kind of oral arguments?

220 LINDER: The process here is the parties will present a motion to the court that describes the process, it will be a joint motion in which both parties are filing with the court. We will describe what we see the problem to be, and why we believe the case should be sent back to the trial court for the fix.

241 REP. LEWIS: I want to make sure I understand the difference between SB 226-A that related to meritless prisoner petitions for habeas corpus relief.

244 LINDER: This relates to criminal appeals only.

250 REP. LEWIS: I notice we don't have any fiscal impact statements, do you know what kind of savings we're getting from this?

252 ROBINSON: There is a fiscal impact statement in your packet.

257 LINDER: We estimate an approximate reduction of about \$44,000 per biennium.

CLOSES the PUBLIC HEARING on SB 227-A  
OPENS the WORK SESSION on SB 227-A

268 MOTION: REP. PROZANSKI: Moves SB 227-A to the full committee with a do pass recommendation.

270 VOTE: In a roll call vote all members are present and vote AYE.

273 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 227-A  
OPENS the PUBLIC HEARING on SB 429-A

286 DAVID FACTOR, EXECUTIVE DIRECTOR, SENTENCING GUIDELINES BOARD:  
Testimony in support of SB 429-A. [EXHIBIT I]

333 CHAIR TARNO: Refers to [EXHIBIT I]. These are the proposed amendments to the A engrossed bill? Does it remove line 15?

334 FACTOR: It does not remove that line, it would require a presentence investigation for virtually all felony sex offenses.

348 REP. LEWIS: I thought we had just done a bill on presentence reports. So you are conforming the language to the bill through this amendment?

354 FACTOR: That is correct in part. Subsection (a) on that amendment is identical to the language you adopted in HB 2683.

370 JESSE WM. BARTON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION, OCDLA:  
Testimony on SB 429-A. [EXHIBIT J]

TAPE 74, B

048 REP. LEWIS: This bill has already been to the senate side, did you testify on the senate side?  
Did you propose these same amendments?

052 BARTON: Yes, I did testify but our intention was to use a different senate bill to propose these amendments.

086 REP. PROZASNKI: Do you believe an individual should be held accountable for their conduct on each episode of occurrence?

088 BARTON: Yes.

090 REP. PROZASNKI: Why should the state be penalized by permissibly joining matters that have occurred on different dates, separate crimes, and why shouldn't the person be held accountable and be sentenced accordingly to each of those conducts?

092 BARTON: It's the cost savings I am emphasizing here. There is also a "both ends of the stick" kind of problem.

107 REP. PROZANSKI: The question really comes to a matter of cost either on the back end by giving credit to the defendant because he's been permissibly joined for two trials or costing more in the front end by having the state conduct separate criminal trials.

111 BARTON: That is correct.

114 DALE PENN, MARION COUNTY DISTRICT ATTORNEY, DISTRICT ATTORNEY'S ASSOCIATION: Testimony in opposition to OCDLA amendments to this bill.

180 ROBINSON: Refers to [EXHIBIT I].

183 PENN: This is a very complicated issue and we have no objections to the remainder of the bill, we believe all these other changes are very helpful to sentencing guidelines.

210 REP. LEWIS: If we leave this language in section 1, you feel you will be restricted from using "upward departure"?

213 PENN: Yes, because in leaving that in the statute then you would be validating this rule change.

220 REP. PROZASNKI: If we have a person who has been convicted of four more property

felonies, they go into block E of the sentencing guidelines. Are you saying that you would not be able to use any additional prior convictions above the four?

228 PENN: No, in that situation if you have someone who has twenty prior burglaries, you could say under guidelines if there is no person crimes, as far as you get them is category E.

250 REP. LEWIS: Refers to sentencing guideline grid. [EXHIBIT I]

255 FACTOR: Explains "upward departure".

288 REP. PROZANSKI: You may want to go over the 200 percent or 400 percent rule so Rep. Lewis can understand what an actual "upward departure" could be.

292 FACTOR: If you look at the example that Mr. Penn gave, the rapist with 2 priors, they would be in a crime seriousness category 10 and a criminal history score B. We would call them a 10-B with a presumptive prison sentence of 120 months. By departure, the court could impose a sentence of 240 months, we call that the 200 percent rule.

305 REP. PROZANSKI: In the back of your testimony you have it listed mitigating factors, could you go over what those are so we will know what the court would be considering besides persistent involvement?

313 FACTOR: Explains "mitigating" and "aggravating" factors.

351 REP. PROZANSKI: Regarding this amendment, was this discussed on the senate side?

353 FACTOR: Yes, it was.

358 PENN: This is a substantial change in the sentencing policy that greatly restricts the court in punishing criminal offenders.

369 CHAIR TARNO: Your suggesting on line 6 of the front page of the bill that we omit or delete OAR 253-08-002?

371 PENN: Yes.

385 INGRID SWENSON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION:  
Testimony on SB 429-A.

415 REP. PROZANSKI: What I am hearing is once a conviction has come down, we use that as a potential persistent involvement with their history. What I am hearing is that we should require a district attorney to take a determination presentencing as to where they are going to put them on the grid.

438 FACTOR: I would not encourage the parties to misrepresent to the court what the person's actually criminal history is.

TAPE 75, B

032 REP. PROZANSKI: Your telling me the intent at the time when guidelines went in effect supports the position that the Council's taking at this point?

037 FACTOR: The Sentencing Guidelines Board in adopting those rules, believed that the amendment presented to you as drafted in SB 429, reflects the original intent of the Guidelines Board, the drafter's.

041 PENN: This bill, this change, has been before the last two legislatures and specifically amended out, as I am asking you to do today because it is a substantial change in practice.

058 REP. PROZANSKI: I think there is merit to both sides. Regarding the other factors that can be used for "upward departure", is it your opinion that there are not going to be other aggravating factors that could be relied upon to have an "upward departure"?

068 PENN: There are times, if there are multiple factors, we will present all the factors to the court and we will ask the court to say "based upon any one of these four, I would have departed".

079 REP. COURTNEY: What's the problem, are the court's crowded or are the jail's jammed?

081 FACTOR: The problem the Guidelines Board is trying to address by proposing this amendment is a fundamental fairness issue and the notion of double counting.

CLOSES the PUBLIC HEARING on SB 429-A  
OPENS the WORK SESSION on SB 429-A

090 MOTION: REP. LEWIS: Moves to conceptually amend SB 429-A on page 1, line 6, by deleting OAR 253-08-002.

094 CHAIR TARNO: The motion CARRIES.  
096 MOTION: REP. LEWIS: Moves to adopt the conceptual amendments [EXHIBIT  
I].  
101 CHAIR TARNO: The motion CARRIES.  
102 MOTION: REP. LEWIS: Moves SB 429-A as conceptually amended to the full  
committee with a do pass recommendation.  
107 REP. PROZASNKI: I'm going to go ahead and vote this bill out to the  
full committee but I do  
have some concerns and I do reserve the right to change my position.

116 REP. LEWIS: Mr. Penn made the observation that this policy decision  
has been before the legislature in 1991 and 1993, which is after the  
adoption of the sentencing guidelines in 1989, and since it is in current  
practice I believe we should retain this tool for the district attorney's.

119 VOTE: In a roll call vote all members are present and vote AYE.  
121 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 429- A  
OPENS the PUBLIC HEARING on SB 448

130 INGRID SWENSON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION: Testimony  
on SB 448.

135 CHAIR TARNO: Ms. Swenson, all your going to do is delete "or arrested  
for" in line 11, page 3?

137 SWENSON: That is correct.

CLOSES the PUBLIC HEARING on SB 448  
OPENS the WORK SESSION on SB 448

136 MOTION: REP COURTNEY: Moves SB 448 to the full committee with a  
subsequent referral to Ways and Means with a do pass recommendation.

138 VOTE: In a roll call vote all members are present and vote AYE.

140 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on SB 448

145 CHAIR TARNO: With nothing further from the committee the meeting is  
adjourned.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson  
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Testimony to SB 65 - Lance - 1 page  
B - Testimony to SB 117-A - Dingeman - 3 pages  
C - Proposed amendment to SB 117-A - Staff - 1 page  
D - Testimony to SB 430-A - Cordes - 2 pages  
E - Testimony to SB 430-A - Cordes - 24 pages  
F - Testimony to SB 430-A - Phalan - 4 pages  
G - Testimony to SB 226-A - Linder - 5 pages  
H - Testimony to SB 227-A - Linder - 4 pages  
I - Testimony to SB 429-A - Factor - 23 pages  
J - Testimony to SB 429-A - Barton - 3 pages