

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes -57

MEMBERS PRESENT:
SEN. NEIL BRYANT, Chair
SEN. KEN BAKER
SEN. JEANNETTE HAMBY
SEN. PETER SORENSON
SEN. DICK SPRINGER

MEMBER EXCUSED:
SEN. RANDY MILLER Vice-Chair
SEN. SHIRLEY STULL

STAFF PRESENT:
BILL TAYLOR, Committee Counsel
DIANE DUSSLER, Committee Assistant

MEASURES HEARD:
SB 429 - PUBLIC HEARING
SB 430 - PUBLIC HEARING
SB 448 - PUBLIC HEARING
SB 481 - PUBLIC HEARING
SB 851 - PUBLIC HEARING
SB 429 - WORK SESSION
SB 448 - WORK SESSION
SB 851 - WORK SESSION

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 54, A

003 CHAIR BRYANT: Calls the meeting to order at 3:00 p.m.

Opens PUBLIC HEARING on SB 851

WITNESS: Chuck Wilson, Chief Deputy Legislative Counsel

010 CHUCK WILSON, Chief Deputy Legislative Counsel: Testifies in favor of
SB 851 to revise erroneous material in Oregon statutes.

Closes PUBLIC HEARING on SB 851

Opens WORK SESSION on SB 851

042 MOTION: SEN. HAMBY: Moves SB 851 be sent to the Floor with a DO PASS
recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members present vote
AYE. SENS. MILLER, STULL are EXCUSED. SEN. SORENSON will carry the
to the Floor. bill

Closes WORK SESSION on SB 851

Opens PUBLIC HEARING on SB 429

WITNESSES: Jim Ellis, Circuit Judge, Multnomah County
David Factor, Criminal Justice Council
Jason Carlile, Deputy District Attorney, Linn County
Ingrid Swenson, Oregon Criminal Defense Lawyer's Association
Jesse Barton, Oregon Criminal Defense Lawyer's Association

059 JIM ELLIS, Circuit Judge, Multnomah County, Vice Chair and Acting Chair
of Criminal Justice Council: Testifies in favor of SB 429. Explains bill

is an attempt to clean up unclear areas or drafting errors in guidelines
rules.

100 DAVID FACTOR, Criminal Justice Council: Testifies and submits proposed
amendments in favor of SB 429. [EXHIBIT A]

136 CHAIR BRYANT: My district attorney concern is with Section 4; why
give defendant another opportunity when on probation?

146 ELLIS: Another district attorney felt this is the vehicle to put a sex offender into treatment.

175 CHAIR BRYANT: My district attorney's second concern is to the stipulation to a grid block.

182 FACTOR: The grid block, Section 2, must reflect person's criminal history and seriousness of crime.

225 ELLIS: Stipulation creates a non-existent history.

242 CHAIR: Wouldn't certain prior convictions be a factor?

246 FACTOR: This is the persistent involvement issue. You can't double count convictions.

275 ELLIS: Oregon makes distinction between person and non-person crimes in determining effect of prior convictions.

290 SEN. BAKER: Section 7 advances the appeal date.

292 FACTOR: That is the misdemeanor jail cap. It has a 2 year sunset provision.

310 - proposed amendment is a housekeeping amendment.

345 JASON CARLILE, District Attorney, Linn County: Testifies against SB 429 by addressing problems with bill. The sentencing guidelines grids can be used for optional probation matters.

401 CHAIR BRYANT: Can't you argue with judge that optional probation wouldn't be appropriate in certain cases?

408 CARLILE: Our position is they shouldn't be able to do that for certain crimes. We would prefer to see language deleted.

455 CHAIR BRYANT: If you stipulate to grid block and it doesn't fits the crime, will the judge play ball with you?

460 CARLILE: Judge knows criminal history score and seriousness of the crime.

472 CHAIR BRYANT: Are "substantial" and "compelling" defined?

477 CARLILE: Is it whatever judge says is substantial and compelling on that day.

TAPE 55, A

046 CARLILE: Next is the aggregating factor or persistent involvement. My first concern is why does it need to be a conviction?

060 - if guidelines apply you can't depart upward with previous offenses

085 - has concern about distance from school provision for drug offenses

143 BILL TAYLOR: I believe the difference in drug offenses would have to be done in the context of the bill.

167 INGRID SWENSON, Oregon Criminal Defense Lawyer's Association: Introduces Mr. Barton.

172 JESSE BARTON, Oregon Criminal Defense Lawyer's Association: We have same problems with Section 2 as does Mr. Carlile. Guidelines will hinder the plea bargaining process which defeats the original intent.

186 CHAIR BRYANT: What about addressing the judge's concern on constitutional argument of crime meeting the grid?

220 BARTON: The parties stipulated to a departure. Comments on aggravated factors.

260 CHAIR BRYANT: Can you comment on persistent involvement.

264 BARTON: It hardly even goes in the defendant's favor. Aggravated factor allows for double dipping.

278 - we would like to see double dipping eliminated

308 - Section 8, could cause problems as burglary has 3 classifications

365 CHAIR BRYANT: Why not resolve the differences of grid block category in trial?

369 BARTON: It doesn't work out the way it should.

Closes PUBLIC HEARING on SB 429

Opens WORK SESSION on SB 429

399 CHAIR BRYANT: In Section 4, the optional probation on misdemeanors, I
lean toward stipulation of the grid.
422 - don't know what to do with persistent involvement factor
- no objection to changing "may" to "shall" in Section 8

462 SEN. BAKER: Section 10 has an emergency clause in it. Is there a
justification for that?

465 CHAIR BRYANT: No. It is our practice not to go with emergency clauses.

473 ELLIS: Concern is that cap might expire before bills goes into
effect, perhaps emergency clause could be limited to that subsection.

480 CHAIR BRYANT: Unfortunately, it is all under one bill.

482 SEN. SORENSON: Is it possible to split the bill?

486 CHAIR BRYANT: No. We only have one relating clause.

TAPE 54, B

049 MOTION: CHAIR BRYANT: Moves to AMEND SB 429, Section 1, line 7 by
deletion of 253-07-003; the deletion of block print language in lines
21-22, "the entire section" (SEN. BAKER); Section 8, page 2, line 43
change "may" to "shall", and drop the emergency clause except for Section
7.

VOTE: Hearing no objections, the amendment is ADOPTED. All members
present vote AYE. SENS. MILLER, STULL are EXCUSED.

Closes WORK SESSION on SB 429

Opens PUBLIC HEARING on SB 481

WITNESSES: Greg Brown, Administrative Lieutenant, Deschutes County Sheriff's

Department

Robert Glynn, Lieutenant, City of Bend Police Department
Loismae Benson, Deschutes County Justice Coalition
Ingrid Swenson, Oregon Criminal Lawyer's Association
David Fidanque, Executive Director, American Civil Liberties Union of

Oregon

Dwight Barber
Beverly Barber
Angela Barber
Keith Burns, Attorney, Oregon Financial Services Association

089 GREG BROWN, Administrative Lieutenant, Deschutes County Sheriff's
Department: Testifies and submits written testimony in favor of SB 481.
[EXHIBIT B]

140 - Deschutes County has had a reduction of 27 % in DUI's in 1994

153 ROBERT GLYNN, Lieutenant City of Bend Police Department: Testifies in
favor of SB 481.

160 LOISMAE BENSON, Deschutes County Justice Evaluation Coalition:
Testifies in favor of SB 481. AARP urges passage of this bill.

188 CHAIR BRYANT: What happens if person can't pay release fee or towing
charges?

191 BROWN: Explains procedures with towing and storage charges.

215 CHAIR BRYANT: How much does this cost Deschutes County?

217 BROWN: It isn't costing anything. Cities are getting some remuneration
for officer's time.

255 SEN. SORENSON: How would this work statewide, do you issue citation
and then not arrest?

273 BROWN: In criminal driving while suspended, they are stopped and given
a citation.

310 SEN. SORENSON: If a person isn't found guilty, and don't post money,
what happens to the car?

338 BROWN: They pay \$125 fee if eligible for release. If not, they can
file a claim for vehicle.

387 INGRID SWENSON, Oregon Criminal Defense Lawyer's Association: Testifies

in opposition to SB 481. We recognize need to remove dangerous drivers
from road.

- concern is people, who may be innocent of criminal behavior at that time,

have their vehicles seized

430 - bill creates incentives for people to ignore opportunity to vindicate

their rights

466 DAVID FIDANQUE, Executive Director, American Civil Liberties Union of
Oregon: Testifies in opposition to SB 481. We oppose civil
forfeitures on basis they are unconstitutional. State constitutional issues

on civil forfeiture have not been litigated in Oregon.

TAPE 55, B

061 - bill is too broad, would sweep too many people into it with collateral
consequence

090 SEN. SORENSON: What is the nuisance in this?

095 SWENSON: Being cited for, or arrested for operating the vehicle.
111 - prostitution ordinance on forfeitures in Portland is similarly
constructed

119 TAYLOR: Judge said vehicle was not part of offense in prostitution
statute.

160 FIDANQUE: Discusses civil forfeiture statutes and nuisance provisions.

228 ANGELA BARBER: Testifies and submits written testimony in favor of SB
481. [EXHIBIT C]
260 - relates experience after being hit by drunken driver

320 BEVERLY BARBER: Testifies and submits written testimony in favor of SB

481 [EXHIBIT D]. Questions why law didn't stop driver with prior DUI's
from driving. Urges forfeiture of vehicles for DUI's offenses.

370 DWIGHT BARBER: Testifies in favor of SB 481. Describes daughter
experiences as result of accident.
440 - driver was habitual offender with 5 prior DUI's who completed
diversion program.
460 - medical bills were \$300,000 for eight months
490 - state will spend over one million dollars on daughter's life long care

TAPE 56, A

050 - cites statistics on medical costs, and DUI's offenses
100 - continues testimony
126 - reads testimony from Sandra Slate to be entered into record [EXHIBIT
E]

158 SEN. SORENSON: What is your opinion of confiscation of vehicle after
conviction of DUI?

163 D. BARBER: Thinks that is good upon conviction, but believes upon
arrest should be included.

185 SEN. SORENSON: Had that law been in effect the subsequent incidents
wouldn't have occurred.

207 D. BARBER: In California drivers agree to prior consent for testing
for DUI's when they get their license.

239 KEITH BURNS, Attorney, Oregon Financial Services Association: Testifies
and submits proposed amendments to SB 481 [EXHIBIT F].

Submitted for the record testimony from Richard Kuehmichel [EXHIBIT G]

Closes PUBLIC HEARING on SB 481

Opens PUBLIC HEARING on SB 430

WITNESSES: Ron Louie, Chief, Hillsboro Police Department
Lois Kenagy, Victims Offenders Resolution of Linn County

290 RON LOUIE, Chief of Hillsboro Police Department: Testifies in support
of SB 430.

We use dispute resolution mediation services on the neighborhood level and
through the schools. Some criminal justice cases can be diverted to this.

322 CHAIR BRYANT: Why do you need the bill if you can do it now?

324 LOUIE: Availability in law will allow other communities to use it.

360 LOIS KENAGY, Victim Offender Resolution of Linn County: Testifies in
favor of SB 430
433 - common defense against mediation is you are victimizing victim twice,
but no person is compelled to participate in mediation

Closes PUBLIC HEARING on SB 430

466 CHAIR BRYANT: Thursday we will bring back SJR4 and will have motion to

suspend 2/3 vote.

Opens PUBLIC HEARING on SB 448

TAPE 57, A

WITNESSES: Ingrid Swenson, Oregon Criminal Lawyer's Association
Walter Todd, Oregon Criminal Lawyer's Association

050 INGRID SWENSON, Oregon Criminal Lawyer's Association: Introduces Mr. Todd.

055 WALTER TODD, Oregon Criminal Lawyer's Association: Testifies in favor of SB 448 which allows innocent people, who have been arrested and not found guilty, to expunge their record for a major traffic offense.

070 - Oregon State Police do not have an opinion nor does Department of Motor Vehicles.

075 CHAIR BRYANT: Reads letter from League of Oregon Cities who would like to charge nominal fee to expungement. [EXHIBIT H]

080 SEN. BAKER: Page 3, line 11 looks like you are deleting the language "arrested for". Describes cases where he has done expungement in cases without convictions.

100 TODD: Your case is what this amendment was designed to correct.
103 - we are trying to bring arrest of traffic offense into expungement

Closes PUBLIC HEARING on SB 448

Opens WORK SESSION on SB 448

110 MOTION: SEN. BAKER: Moves SB 448 be sent to the Floor with a DO PASS recommendation.

112 SEN. SORENSON: Questions if cities can charge nominal fees.

VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE. SENS. HAMBY, MILLER, STULL are EXCUSED.

126 CHAIR BRYANT: Adjourns meeting at 5:40 p.m.

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Proposed Amendments to SB 429 - David Factor - 23 pages
B - Testimony on SB 481 - Greg Brown - 4 pages
C - Testimony on SB 481 - Angela Barber - 3 pages
D - Testimony on SB 481 - Bev Barber - 2 pages
E - Testimony on SB 481 - Sandra Slate - 1 page
F - Proposed Amendments to SB 481 - Keith Burns - 4 pages
G - Testimony on SB 481 - Richard Kuehmichel - 3 pages
H- Testimony on SB 448 - Sarah Hackett - 1 page