

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 100

MEMBERS PRESENT:

SEN. NEIL BRYANT, Chair
SEN. RANDY MILLER, Vice-Chair
SEN. KEN BAKER
SEN. JEANNETTE HAMBY
SEN. PETER SORENSON
SEN. DICK SPRINGER
SEN. SHIRLEY STULL

STAFF PRESENT:

BILL TAYLOR, Committee Counsel
DIANE DUSSLER, Committee Assistant

MEASURES HEARD:

SB 118 - PUBLIC HEARING
SB 194 - PUBLIC HEARING
SB 430 - PUBLIC HEARING
SB 660 - PUBLIC HEARING
SB 764 - PUBLIC HEARING
SB 65 - WORK SESSION

SB 107 - WORK SESSION
SB 194 - WORK SESSION
SB 430 - WORK SESSION
SB 669 - WORK SESSION
SB 764 - WORK SESSION

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

Opens WORK SESSION on SB 65

008 BILL TAYLOR, Legal Counsel: Proponents of bill were unable to make previous meeting. Hospitals suggest incorporating procedures for subpoenaing hospital records in criminal cases to 55H.

020 - discusses proposed amendment to SB 65-1 [EXHIBIT A]

023 MOTION: CHAIR BRYANT: Moves to suspend rules.

025 VOTE: Hearing no objections, rules are suspended. All members present vote AYE.

033 DALE PEN, District Attorney, Marion County: Testifies in support of SB 65. Has no objections to amendments.

033 - expresses concern to proposal to amend 55 H

055 - would like to exempt 55 H, 2b sub 3

059 - endorses idea that with an affidavit the custodians of records can mail record

066 CLAYTON LANCE, Oregon State Bar, Legislative Subcommittee: A criminal defense lawyer can subpoena records to their office, if this isn't amended.

070 - intent is to bring the records only into court

078 MOTION: CHAIR BRYANT: Moves to ADOPT SB 65-1 amendments.

100 VOTE: Hearing no objections, the amendment is ADOPTED. All members present vote AYE.

103 MOTION: CHAIR BRYANT: Moves to conceptually ADOPT amendment to SB 65 relating to ORCP 55 H, (2), (b), (3) in SB 65 that section would not be affected by remainder of bill.

VOTE: Hearing no objections, the amendment is ADOPTED. All members present vote AYE.

110 SEN. BAKER: In the original bill Section 2 is deleted, and we are retaining Sections 3 and 4 in SB 65-1.

116 TAYLOR: It appears to be a technical change.

113 MOTION: SEN. BAKER: Moves SB 65 AS AMENDED be sent to the Floor with a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE.

SEN. SORENSON will carry the bill to the Floor.

Closes WORK SESSION on SB 65

Opens WORK SESSION on SB 107

WITNESSES: Mike Reynolds, Department of Justice

130 TAYLOR: Explains amendments are same as submitted to Legislative Counsel [EXHIBIT B].

198 MIKE REYNOLDS, Department of Justice: Do you have a specific question?

215 SEN. SORENSON: I was hoping this bill would result in lower costs to society with citizens using it to challenge local governments.

219 REYNOLDS: Explains he is responding to letter from Marion County Counsel.

251 - it is an incorrect assumption to assume every action will be subject to government review

270 SEN. SORENSON: Would it be fair to say SB 107 will reduce costs?

276 REYNOLDS: This is our belief. This will speed the process up, and make it easier for court to solve disputes.

296 -there will not be battles over jurisdiction

310 MOTION: SEN. SPRINGER: Moves to ADOPT SB 107-1 amendments.

312 VOTE: Hearing no objections, the amendments are ADOPTED. All members present vote AYE.

325 MOTION: SEN. SPRINGER: Moves SB 107 AS AMENDED to the Floor with a

DO PASS Recommendation.

335 VOTE: 4 - 3 MOTION FAILS
AYE: Hamby, Sorenson, Springer
NAY: Baker, Miller, Stull, Bryant

350 CHAIR BRYANT: I would like to propose a conceptual motion that has this bill apply to state agencies.

360 SEN. BAKER: Would that set up two parallel tracks?

374 REYNOLDS: We currently have two tracks. It would be a simple process to amend bill to have it apply only to the state.

425 MOTION: SEN. MILLER: Moves to suspend the rules and reconsider the vote by which they would move SB 107 to the Floor with a DO PASS recommendation, immediately.

427 VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE.

430 MOTION: SEN. MILLER: Moves to change his vote from nay to aye.

431 VOTE: Without objection, so ordered. The bill passes to the Floor with a DO PASS recommendation.

4 - 3 MOTION CARRIES
AYE: Hamby, Miller, Sorenson, Springer
NAY: Baker, Bryant, Stull

TAPE 98, A

Closes WORK SESSION on SB 107

Opens PUBLIC HEARING on SB 194

WITNESSES: Kingsley Click, Acting State Court Administrator
Brian Bemuse, Program Manager for Implementation of Measure 11, Department of Corrections
Jeff Farr, Budget Finance Director, Oregon Judicial Department
Susan Browning, Program Manager, Oregon Judicial Department

050 KINGSLEY CLICK, Acting State Court Administrator: Testifies and submits

written testimony with proposed amendments in support of SB 194 [EXHIBIT C].

110 - continues

150 - explains amendment

165 CHAIR BRYANT: Sections 2,3,4 of original bill would be deleted?

170 CLICK: No, Sections 1 and 2 will be deleted.

188 BRIAN BEMUS, Program Manager for Implementation of Measure 17, Department of Corrections: Testifies in support of SB 194.

197 SEN. SPRINGER: Do we have a sense of how much money out there that can be collected?

205 JEFF FARR, Budget Finance Director, Oregon Judicial Department: We do not have a good handle on accounts receivable. It is a record keeping issue.

- amounts to millions of dollars most of which is uncollectable
- currently are doing a better job

229 SEN. SPRINGER: Is there money out there that we should recognize as uncollectable?

241 FARR: Yes, we should have an administrative write off on an annual basis.

255 SUSAN BROWNING, Program Manager, Department of Revenue: Testifies and submits written testimony with proposed amendments on SB 194 [EXHIBIT D].

We take no position
and request you consider two issues: fee structure and staffing resources.
301 - we have prepared a fiscal impact statement

311 CHAIR BRYANT: Can you give me an idea of your range of charges?

313 BROWNING: We charge all agencies 20% for collections of their accounts.

347 CHAIR BRYANT: Kingsley, have you had a chance to review this proposed amendment?

355 CLICK: That is a policy issue. I don't know what is required to set a percentage.

400 CHAIR BRYANT: Do you get involved in surcharge negotiations?

402 CLICK: No, it is 20%.

Closes PUBLIC HEARING on SB 194

Opens WORK SESSION on SB 194

410 MOTION: CHAIR BRYANT: Moves to conceptually ADOPT amendments as outlined in Ms. Click's testimony with deletions of Sections 5, 6, and 7.

412 VOTE: Hearing no objections, the amendments are ADOPTED. All members present vote AYE.

415 MOTION: CHAIR BRYANT: Moves to ADOPT amendment proposed by Susan Browning.

417 VOTE: Hearing no objections, the amendments are ADOPTED. All members present vote AYE.

420 MOTION CHAIR BRYANT: Moves SB 194 AS AMENDED to Ways and Means

with a DO PASS recommendation.

423 VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE.

Closes WORK SESSION on SB 194

Opens PUBLIC HEARING on SB 669

WITNESSES: Charles Stull, City of Keizer, Association of Chiefs of Police

450 CHARLES STULL, Oregon Association of Chiefs of Police: Testifies and submits written testimony with proposed amendments on SB 669 [EXHIBIT E].

TAPE 97, B

470 - certification is an option not a requirement for reserve police officers

110 CHAIR BRYANT: Currently, can you use retired officers as reserve officers?

112 STULL: We can use anyone who passes a series of in-house requirements.

Closes PUBLIC HEARING on SB 669

Opens WORK SESSION on SB 669

120 MOTION: SEN. STULL: Moves to ADOPT amendments.

122 VOTE: Hearing no objections, the amendments are ADOPTED. All members present vote AYE.

125 MOTION: SEN. STULL: Moves SB 669 as AMENDED to the Floor with a DO PASS recommendation.

127 VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE.

Sen. Stull will carry the bill to the Floor.

Closes WORK SESSION on SB 669

Opens PUBLIC HEARING on SB 430

WITNESSES: Tracey Cordes, Program Manager, Criminal Justice Council
Alice Phalan, Executive Director, Oregon Dispute Resolution Commission
Stephen Donnell, Oregon Mediation Association
Rep. Brian Johnston, District 31, Dispute Resolution Commission

160 TRACEY CORDES, Program Manager, Criminal Justice Council: Testifies and submits written amendments on SB 430 [EXHIBIT G].

180 ALICE PHALAN, Executive Director, Oregon Dispute Resolution Commission:

Testifies and submits written testimony in support of SB 430
[EXHIBIT H].

221 STEPHEN DONNELL, Oregon Mediation Association: Testifies and submits
written testimony on SB 430 [EXHIBIT I].
285 - expresses concern over what place mediation has in criminal matters

290 CHAIR BRYANT: There isn't a double jeopardy defense here.

300 DONNELLEY: My concern is what duress would person be under to stop
criminal proceedings.

311 CHAIR BRYANT: Mediation does not mean the person is found guiltless.

353 REP. BRIAN JOHNSTON, House District 31, Dispute Resolution Commission:
Purpose of bill is to act culturally on this. Gives positive points of
bill:

380 - good for victim, has high compliance

382 - victim never understands why they are the victim, they get that answer

here

403 - recidivism rate is lower

412 - good for perpetrator

438 SEN. BAKER: Does this include justice courts?

440 REP. JOHNSTON: The amendments include city courts, but I don't know the
answer to justice courts.

445 SEN. BAKER: You would like it to include all courts.

447 REP. JOHNSTON: Yes.

Closes PUBLIC HEARING on SB 430

Opens WORK SESSION on SB 430

TAPE 98, B

040 MOTION: CHAIR BRYANT: Moves to ADOPT amendments SB 430-1.

042 VOTE: Hearing no objections, the amendment is ADOPTED. All members
present vote AYE. SEN. HAMBY, MILLER are EXCUSED.

043 MOTION: SEN. BAKER: Moves to conceptually ADOPT amendment to SB 430
by adding Justice Courts.

045 VOTE: Hearing no objections, the amendments are ADOPTED. All members
present vote AYE. SEN. HAMBY, MILLER are EXCUSED.

065 MOTION: Moves SB 430 AS AMENDED to the Floor with a DO PASS
recommendation.

067 VOTE: Hearing no objections, the amendments are ADOPTED. All members
present vote AYE. SEN. HAMBY, MILLER are EXCUSED.
Sen. Sorenson will carry the bill to the Floor.

Closes WORK SESSION on SB 430

Opens PUBLIC HEARING on SB 118

WITNESSES: Jim Stevenson, Captain, Director of Patrol Division, Oregon
State Police

Charles Hayes, Lieutenant, Oregon State Police

Julie Hinkley, Criminalist, Oregon State Police Forensic Services Division

085 JIM STEVENSON, Captain, Director of Patrol Division, Oregon State
Police: Testifies in and submits written testimony in support of SB 118
[EXHIBIT J]. Explains bill is to deal with impaired driver.

114 CHARLES HAYES, Lieutenant, Oregon State Police: Testifies and submits
written testimony in support of SB 118 [EXHIBIT K].

170 - explains how urine specimen is obtained

190 JULIA HINKLEY, Criminalist, Oregon State Police Forensic Services
Division: Testifies and submits written testimony in favor of SB 118
[EXHIBIT L]. Explains procedures on urine specimens.

205 - discusses screening process

250 - discusses false positive issue

272 CHAIR BRYANT: On constitutional questions, if you have reasonable
suspicion you request a warrant, what is your response?

280 HAYES: We use telephonic search warrant with some counties and some
judges recognize telephonic search warrants.

296 CHAIR BRYANT: How long does it take to get the warrant?

300 HAYES: It takes a little over an hour.

309 CHAIR BRYANT: Is there anything in your testing to tell you when
marijuana was last inhaled?

318 HINKLEY: Again, it has to be a team concept as my analysis would not
show impairment levels.

- nearly all drugs will stay in system

350 CHAIR BRYANT: What amount of training do officers receive?

355 HAYES: It is 72 hours of classroom and 100 hours or more of hands on evaluations.

378 CHAIR BRYANT: What is the cost of doing an urinalysis?

385 HINKELY: Probably three dollars a sample.

420 SEN. SORENSON: Will this allow an officer to request an urine sample for careless driving?

425 STEVENSON: No.

465 SEN. SORENSON: In the states with this legislation, has there been modification of testing due to a constitutional question?

470 HAYES: Not that I am aware of.

TAPE 99, A

080 SEN. SORENSON: Has the Attorney General given you a legal opinion?

089 STEVENSON: No.

142 SEN. SORENSON: Will there be other types of tests in future?

148 HINKELY: That is hard to predict.

160 SEN. BAKER: Questions what has been added to bill.

186 TAYLOR: Distributes SB 118-1 amendments [EXHIBIT M].

221 SEN. HAMBY: What happens to the specimen?

227 HINKELY: After completion of test, it is returned to originating agency.

270 DAVID FIDANQUE, Executive Director, Oregon American Civil Liberties Union: Testifies in opposition to SB 118.

300 - this will not give you evidence of impairment

314 - urine sample doesn't tell you when person had something in system

350 - haven't heard how long a controlled substance will remain in system

370 - would not oppose test that shows level of impairment with probable cause

415 SEN. HAMBY: Are you aware of any other states taking blood sample?

420 FIDANQUE: In some states it is easier to get a blood sample than in Oregon.

454 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: Testifies and submits written testimony in opposition to SB 118 [EXHIBIT O].

470 - issue is whether there is compelling policy reason to over look requirements for search warrant or consent

TAPE 100, A

040 - this is a search with no compelling reason

050 - will increase expenses

100 JOHN POWERS, Oregon Criminal Lawyers Defense Association: Testifies in

opposition to SB 118.

160 - believes there are few people using drugs on road

178 - system is fallible

224 - believes audio and visual cameras are better way to determine incapacity

260 BARBARA STOEFFLER, Oregon Legislative Liaison, MADD: Testifies and submits written testimony in support of SB 118 [EXHIBIT P].

320 - continues

393 MIKE McCALLUM, Director, Government Relations, Oregon Restaurant Association: Testifies in favor of SB 118-1 with proposed amendment [EXHIBIT Q].

447 - 40% voluntarily submitted to test had another intoxicating substance in system

475 - we need to know at what level they will be responsible

490 - suggests eliminating lines 12-13, and let urine test apply across board

TAPE 99, B

050 JERRY COOPER, Governor's Advisory Committee on DUI: Testifies in support of SB 118.

080 - many judges don't want to use telephonic search warrants

Closes PUBLIC HEARING on SB 118

Opens PUBLIC HEARING on SB 764

WITNESSES: Dennis Mulvihill, Washington County, Association of Counties
Jack Jones, Jefferson County
Dan Heuvel, Lane County Sheriff's Office
Kathy Page

140 DENNIS MULVIHILL, Washington County, Association of Counties: Testifies

in support of SB 764. Inmates are entitled to health care which counties

pay for. This bill allows counties and state to charge for the health

care.

159 JACK JONES, Jefferson County: Testifies in support of SB 764. County Commissions, Sheriff and jail managers support this.

174 CHAIR BRYANT: Do you still provide services if they can't pay?

180 JONES: That is correct.

183 DAN HEUVEL, Lane County Sheriff's Office: Testifies and submits written testimony in support of SB 764 [EXHIBIT R]. Enables counties to charge a reasonable fee for medical care.

227 SEN. SPRINGER: Discusses possible difference between someone held in custody pre-trial and someone convicted of crime.

248 KATHY PAGE: On the issue of equal treatment, we do not make a difference.

277 SEN. SORENSON: Is this a way for counties to be reimbursed if they are eligible for the Oregon Health Plan?

289 PAGE: Once they are incarcerated the Oregon Health Plan stops.

Closes PUBLIC HEARING on SB 764

Opens WORK SESSION on SB 764

343 TAYLOR: Can we require counties to adopt regulations?

345 CHAIR BRYANT: I think we can.

350 SEN. STULL: If they are in jail but not convicted and require service which has a charge, what happens?

360 PAGE: In Multnomah County, when person leaves and disputes fee the money is refunded.

400 SEN. HAMBY: There is a move to install pharmacists to dispense drugs in prison, shall we include that?

415 PAGE: The state board is trying to make medical care in correction facilities comparable to a hospital. We are working on compromising language.

445 MOTION: CHAIR BRYANT: Moves to Conceptually ADOPT amendment for Section 3 under Section 1 that if county and state would use subsection 2 they will adopted by rule a grievance system that will provide due process protection.

450 VOTE: Hearing no objections, the amendment is ADOPTED. All members present vote AYE. SEN. BAKER is EXCUSED.

TAPE 100, B

040 MOTION: SEN. HAMBY: Moves to conceptually ADOPT amendment to allow registered nurse to dispense medication.

042 VOTE: Hearing no objections, the amendment is ADOPTED. All members present AYE. SEN. BAKER is EXCUSED.

055 MOTION SEN. HAMBY: Moves SB 764 AS AMENDED be sent to the

Flo

with a DO PASS recommendation.

058 VOTE: Hearing no objections, the motion CARRIES. All members present vote AYE. SEN. BAKER is EXCUSED.

Submitted for the record testimony from Alan Melnick [EXHIBIT S]
Submitted for the record testimony from Robert Cantine [EXHIBIT I]
Submitted for the record testimony from John Foote [EXHIBIT U]

Closes WORK SESSION on SB 764

065 CHAIR BRYANT: Adjourns meeting at 6:30 p.m.

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Proposed Amendments to SB 65 - Staff - 1 page
B - Proposed Amendments to SB 107 - Staff - 7 pages
C - Testimony on SB 194 - Kingsley Click - 13 pages
D - Testimony on SB 194 - Susan Browning - 2 pages
E - Testimony on SB 669 - Charles Stull - 3 pages
F - Testimony on SB 669 - Charles Stull - 2 pages
G - Proposed Amendments to SB 430 - Tracy Cordes - 24 pages
H - Testimony on SB 430 - Alice Phalan - 4 pages
I - Testimony on SB 430 - Stephen Donnell - 4 pages
J - Testimony on SB 118 - James Stevenson - 3 pages
K - Testimony on SB 118 - Charles Hayes - 7 pages

L - Testimony on SB 118 - Julia Hinkley - 6 pages
M - Proposed Amendments to SB 118 - Staff - 2 pages
N - Proposed Amendments to SB 118 - Staff - 1 page
O - Testimony on SB 118 - Jim Arneson - 5 pages
P - Testimony on SB 118 - Barbara Stoeffler - 3 pages
Q - Proposed Amendments to SB 118 - 2 pages
R - Testimony on SB 764 - Dan Heuvel - 2 pages
S - Testimony on SB 764 - Jeannette Hamby - 1 page
T - Testimony on SB 764 - Robert Cantine - 1 page
U - Testimony on SB 764 - John Foote - 2 pages