

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 131

MEMBERS PRESENT:

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

MEMBER EXCUSED:

SEN. RANDY MILLER, Vice-Chair

STAFF PRESENT:

BILL TAYLOR, Committee Counsel
DIANE DUSSLER, Committee Assistant

MEASURES HEARD:

SB 590 - PUBLIC HEARING
SB 793 - PUBLIC HEARING
SB 871 - PUBLIC HEARING
SB 872 - PUBLIC HEARING
SB 1109 - PUBLIC HEARING
SB 118 - WORK SESSION
SB 188 - WORK SESSION
SB 302 - WORK SESSION
SB 590 - WORK SESSION
SB 607 - WORK SESSION
SB 871 - WORK SESSION
SB 1140 - 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 , A

003 CHAIR BRYANT: Opens meeting at 3:00 p.m.

Opens WORK SESSION on SB 118

WITNESSES: Julia Hinkely, Oregon State Police, Crime Laboratory
Jim Arneson, Oregon Criminal Defense Lawyer's Association
David Fidanque, Executive Director, Oregon American Civil Liberties Union

007 BILL TAYLOR: Explains proposed amendments SB 118-5, and SB 118-6
[EXHIBITS A & B].

025 SEN. SORENSON: Does this change any of testimony from State Police or
ACLU?

035 CHAIR BRYANT: I believe the ACLU and OCDLA still oppose the bill. The
changes are satisfactory to the State Police.

090 SEN. STULL: In reference to SB 118-5 amendment, lines 7-9 the 50
nanograms, is it how long it stays in the system or if it is recently
digested?

093 JULIA HINKLEY, Oregon State Police, Crime Laboratory: Both could be the
case. A heavy abuser has substantial amounts in the system.

140 SEN. SORENSON: Will the court find this unconstitutional?

150 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: I don't
know.

200 DAVID FIDANQUE, Executive Director, Oregon American Civil Liberties
Union: The rationale of Oregon Supreme Court in upholding the implied
consent law for the breath analyzers was not based on implied consent, but
on warrantless search.

215 - urine test cannot be calibrated to impairment

220 MOTION: CHAIR BRYANT: Moves to ADOPT SB 118-1 amendments from the State
Police.

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

230 MOTION: CHAIR BRYANT: Moves to ADOPT SB 118-5 amendments.

235 SEN. STULL: Expresses philosophical opposition to lines 6-9.

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

270 MOTION: CHAIR BRYANT: Moves to ADOPT SB 118-6 amendments from Restaurant
and Lodging Association.

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

280 MOTION: CHAIR BRYANT: MOVES SB 118 AS AMENDED be sent to the Floor with
a DO PASS recommendation.

315 VOTE: 6 - 0 MOTION CARRIES
the bill to the Floor. AYE: Baker, Bryant, Hamby, Sorenson, Springer, Stull

Submitted for the record testimony from Wayne Schumacher [EXHIBIT U].
Submitted for the record testimony from Jill Vosper [EXHIBIT V].

Closes WORK SESSION on SB 118

Opens WORK SESSION on SB 188

WITNESSES: Kingsley Click, Acting Court Administrator
Ann Christian, Director, Indigent Defense Fund

336 KINGSLEY CLICK, Acting Court Administrator: Testifies in support of SB
188 with proposed amendments [EXHIBIT C].
379 - explains amendments

450 CHAIR BRYANT: Do we have similar functions where funds are collected
and returned to the public defense account?

452 CLICK: No.

TAPE 129, A

045 CHAIR BRYANT: Ways and Means likes to allocate money and know how it is
spent.

079 ANN CHRISTIAN, Director, Indigent Defense Fund: My current resources
are insufficient to undertake review of counsel's expenses and
certification of fees.

096 CHAIR BRYANT: Do you have any idea how much money this will raise?

100 CLICK: With 60% collection rates it would be \$3.2 million per biennium.

150 CHRISTIAN: Explains indigent defense costs.
200 - discusses verification process

250 CHAIR BRYANT: We need to have an impartial review process.

265 SEN. SORENSON: Asks for clarification on compensation of appointed
counsel in lines 18-19, page 21.

320 CHAIR BRYANT: We won't work the bill today. Expresses desire to set
up an independent review process on murder, and aggravated murder cases.

390 SEN. SPRINGER: When you set these policies, is it by administrative
rule, or a hearing, or an edict?

400 CLICK: The Judicial Department isn't part of the administrative rule
process. The Chief Justice can sign what he wants. We do have an internal
policy.

450 CHAIR BRYANT: Discusses when work group can meet on this.

Closes WORK SESSION on SB 188

TAPE 128, B

Opens PUBLIC HEARING on SB 1109

WITNESSES: Todd Foster, representing Sen. Trow
Carl Strecker, District Attorney Association
Jo Ann Peterson, DMV
Layne Barlow, Oregon Men's PAC
Michael Fogle

050 TODD FOSTER, representing SEN. TROW: Testifies in support of SB 1109.
060 - submits written testimony with proposed conceptual amendments from
Kenneth Sherman [EXHIBIT D]

080 CARL STRECKER, District Attorney Association: Testifies in support of
SB 1109.

090 - explains bill deterrent effects
130 - explains letter to Mr. Brawner

147 JO ANN PETERSON, DMV: Testifies and submits written testimony in
support of SB 1109 [EXHIBIT E].

180 LAYNE BARLOW, Oregon Men's PAC : Testifies and submits written
testimony in opposition to SB 1109 [EXHIBIT F].
230 - continues

270 SEN. SPRINGER: What is your objection?

273 BARLOW: I object to codifying the acceleration.

290 MICHAEL FOGLE: Testifies in opposition to SB 1109 which is based on
punitive action.
350 - continues

380 SEN. SORENSON: Asks for positive suggestions on how to help the
situation.

400 FOGLE: Take each individual's situation into account. Bring back
accountability for actions.

430 BARLOW: Suggests safeguard of due process, equal access to system with
new forms that are easy to fill out
458 - bad faith accusations should be nailed for costs

Closes PUBLIC HEARING on SB 1109

Opens PUBLIC HEARING on SB 871

TAPE 129, B

WITNESSES: Fred Avera, Polk County District Attorney
Erik Wasman, Department of Justice
Jim Arneson, Oregon Criminal Defense Lawyer's Association
David Fidanque, Executive Director, Oregon Civil Liberties Union

040 FRED AVERA, Polk County District Attorney, Oregon District Attorney's
Association:
Introduces self.

050 ERIK WASMAN, Department of Justice: Testifies and submits proposed
amendments in support of SB 871 [EXHIBIT G].

079 AVERA: Testifies in support of SB 871. Clients should not be punished
for lawyer's unethical conduct.

112 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: Testifies in
opposition to SB 871.

124 - explains opposition to bill; it is bad policy to tie the hands of the
court in deciding when evidence should be suppressed in criminal
proceeding

153 DAVID FIDANQUE, Executive Director, American Civil Liberties Union:
Testifies in opposition to SB 871.

160 - rationale for exclusion of evidence used by Oregon Supreme Court
differs from US Supreme Court

Closes PUBLIC HEARING on SB 871

Opens PUBLIC HEARING on SB 872

WITNESSES: Fred Avera, Oregon District Attorney's Association
Erik Wasmann, Department of Justice
Jim Arneson, Oregon Criminal Defense Lawyer's Association
David Fidanque, Executive Director, Oregon American Civil Liberties Union

203 FRED AVERA, Oregon District Attorney's Association: Testifies and
submits proposed amendments in favor of SB 872 [EXHIBITS I & J].

235 ERIK WASMANN: Testifies and submits written testimony in favor of SB
872 [EXHIBIT H].
264 - explains amendments

313 JIM ARNESON, Oregon Criminal Defense Lawyer's Association: Testifies in
opposition to SB 872.

360 - thinks rule would go around constitutional question

416 DAVID FIDANQUE, Executive Director, American Civil Liberties Union:
Testifies in opposition to SB 872.

453 BOB OLSON, Oregon State Bar: Expresses concern that it is the wrong
forum as advocates should be using existing forum for disciplinary rules.

TAPE 130, A

050 DALE PEN, District Attorney's Association: Testifies on SB 872.
053 - explains amendments are not an attempt to amend disciplinary rules
073 - explains rules for prosecutor
104 - represented person is actively engaging in conspiracy

Closes PUBLIC HEARING on SB 872

Opens WORK SESSION on SB 871

130 MOTION: CHAIR BRYANT: Moves to ADOPT amendment to SB 871.

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

140 MOTION: CHAIR BRYANT: Moves SB 871 AS AMENDED to the Floor with a DO
PASS recommendation.

150 VOTE: 4-2 MOTION CARRIES
AYE: Baker, Bryant, Hamby, Stull,
NAY: Springer, Sorenson

Sen. Stull will carry the bill to the Floor.

Re-opens PUBLIC HEARING on SB 872

155 CHAIR BRYANT: Would it cause a problem to say before you talk to person
on another matter that you advise him of his right to talk to an attorney?

158 PEN: There are some instances where that happens. The difficulty in is
the undercover situation.

185 ARNESON: I don't think advice of counsel would do it as they don't have
rights at that point.

Closes PUBLIC HEARING on SB 872

Opens WORK SESSION on SB 302

WITNESS: Brenda Rocklin, Assistant Attorney General, Department of Justice

200 BRENDA ROCKLIN, Assistant Attorney General, Department of Justice:
Explains bill is a cost saving measure as it bypasses Court of Appeals.
220 - cuts out layer of review that isn't needed

230 MOTION: SEN. HAMBY: Moves SB 302 to the Floor with a DO PASS
recommendation.

233 VOTE: 5 - 1 MOTION PASSES
AYE: Baker, Bryant, Hamby, Springer, Stull
NAY: Sorenson
Sen. Hamby will carry the bill to the Floor.

Closes WORK SESSION on SB 302

Opens WORK SESSION on SB 607

245 TAYLOR: Explains SB 607-2 proposed amendments [EXHIBIT K].

250 MOTION: SEN. HAMBY: Moves SB 607 AS AMENDED be sent to the Floor with a
DO PASS recommendation.

252 VOTE: Hearing no objections, the motion CARRIES. All members present
vote AYE.
Sen. Springer will carry the bill to the Floor.

Closes WORK SESSION on SB 607

Opens PUBLIC HEARING on SB 590

WITNESSES: Todd Foster, representing Sen. Trow
Amy Jacobson
Kitty MacPherson, Linn County Mental Health Association

295 TODD FOSTER, representing SEN. TROW: Testifies in favor of SB 590.

307 AMY JACOBSON: Testifies in favor of SB 590.

331 KITTY MacPHERSON, Linn County Mental Health Association: Testifies
and submits written testimony in support of SB 590 for commitment changes
[EXHIBIT P].

390 KAREN HIGHTOWER, Assistant Legal Counsel, State Court Administrator's
Office: Testifies and submits written testimony from Kingsley Click with
proposed amendments [EXHIBITS L & M].

420 - explains proposed technical amendments

Closes PUBLIC HEARING on SB 590

Opens WORK SESSION on SB 590

440 MOTION: SEN. SORENSON: Moves to ADOPT hand engrossed SB 590 amendments.

443 VOTE: Hearing no objections, the amendments are ADOPTED. All members
present vote AYE. SENS. BAKER, BRYANT ARE EXCUSED.

445 MOTION: SEN. SORENSON: Moves SB 590 AS AMENDED to the Floor with
a DO PASS recommendation.

447 VOTE: Hearing no objections, the motion CARRIES. All members present
vote AYE.
SENS. BAKER, BRYANT ARE EXCUSED.
Sen. Trow will carry the bill to the Floor.

Closes WORK SESSION on SB 590

Opens WORK SESSION on SB 1140

TAPE 131, A

WITNESSES: Bradd Swank, State Court Administrator's Office

050 TAYLOR: Explains bill.

070 BRADD SWANK, State Court Administrator's Office: Testifies and submits
written testimony with proposed amendments on SB 1140 [EXHIBITS N & O].
090 - take no position on substance of bill

120 MOTION: SEN. SORENSON: Moves to conceptually ADOPT amendments to SB

1140

to fill in blanks with Mr. Swank's information.

160 VOTE: Hearing no objections, the amendment is ADOPTED. All members
present vote AYE. SENS. BAKER, BRYANT ARE EXCUSED.

165 MOTION: SEN. SORENSON: Moves SB 1140 be sent to Ways and Means.

167 VOTE: Hearing no objections, the motion CARRIES. All members present
vote AYE. SENS. BAKER, BRYANT ARE EXCUSED.

Closes WORK SESSION on SB 1140

Opens PUBLIC HEARING on SB 793

WITNESSES: Tom Barrows, Oregon YMCA's
Heidi Anderson, Committee for Oregon's Children
Betty Uchyttil, Assistant Administrator, CSD
David Fidanque, Executive Director, American Civil Liberties Union

180 TOM BARROWS, Oregon YMCA's: Testifies and submits written testimony
with proposed amendments in support of SB 793 [EXHIBITS Q & R].

250 HEIDI ANDERSON, Committee for Oregon's Children: Testifies in support
of SB 793.
Explains dash 3 amendments [EXHIBITS T].

300 BETTY UCHYTIL, Assistant Administrator, CSD: Testifies and submits
written testimony with proposed amendments on SB 793 [EXHIBIT S].

350 - continues

365 - have implemented list of crimes, which if people had been convicted
of, they would not be certified by CSD

388 DAVID FIDANQUE, Executive Director, American Civil Liberties Union:
Relates information that House bill makes changes that might be a vehicle
for these proponents.

Closes PUBLIC HEARING on SB 793

460 SEN. HAMBY: Questions if remainder of audience has seen material on SB
282.

480 SEN. HAMBY: Adjourns meeting at 5:55 p.m.

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Proposed Amendments to SB 118 - Staff - 1 page
B - Proposed Amendments to SB 118 - Staff - 1 page
C - Proposed Amendments on SB 188 - Staff - 77 pages
D - Testimony on SB 1109 - Kenneth Sherman - 5 pages
E - Testimony on SB 1109 - Joanne Peterson - 1 page
F - Testimony on SB 1109 - Layne Barlow - 3 pages
G - Proposed Amendments on SB 871 - 1 page
H - Testimony on SB 872 - Erik Wasmann - 4 pages
I - Proposed Amendments to SB 872 - 1 page
J - Proposed Amendments to SB 872 - 1 page
K - Proposed Amendments to SB 607 - 3 pages
L - Testimony on SB 590 - Kingsley Click - 2 pages
M - Testimony on SB 590 - Kingsley Click - 3 pages
N - Proposed Amendments to SB 1140 - 4 pages
O - Testimony on SB 1140 - Bradd Swank - 7 pages
P - Testimony on SB 590 - Kitty MacPherson - 10 pages
Q - Testimony on SB 793 - Staff - 3 pages
R - Proposed Amendments on SB 793 - Tom Barrows - 6 pages
S - Proposed Testimony on SB 793 - Betty Uchyttil - 5 pages
T - Proposed Amendments to SB 793 - Staff - 2 pages
U - Testimony on SB 118 - Wayne Schumacher - 2 pages
V - Testimony on SB 118 - Jill Vosper - 2 pages