

SENATE COMMITTEE ON
JUDICIARY

February 3, 1993 Hearing Room C
1:00 p.m. Tapes 14-16

MEMBERS PRESENT: Sen. Dick Springer, Chair
Sen. Neil Bryant
Sen. Jeannette Hamby
Sen. Bob Shoemaker
Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Grattan Kerans

STAFF PRESENT: Bill Taylor, Committee Counsel
Kirk Bailey, Committee Clerk

ISSUES DISCUSSED: Public Hearing

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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.

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TAPE 14, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:00pm.

SB 210: Provides that decrees, orders, and settlement agreements in divorce,
annulment and separation proceedings may provide that retirement
benefits from any public employer retirement system, including
Public Employees' Retirement System, be paid to spouse or

WITNESSES:

LAURA PARRISH, OREGON STATE BAR
BRAD CREVELING, OREGON STATE BAR
BOB ANDREWS, PERS, LEGISLATIVE LIAISON

010 CARL MYERS, OREGON STATE BAR: Introduces Laura Parrish.

018 LAURA PARRISH: Submits and reviews written testimony and amendments
(EXHIBIT A & B) in support of the bill.

094 BRAD CREVELING: Problem with PERS is that spouse cannot start benefits
until member does so.

>Second aspect is entire benefit must be paid out in one benefit option.

125 SEN. BRYANT: Why didn't Retirement Equity Act address?

CREVELING: Act doesn't apply to government plans, only private plans.

131 SEN. BRYANT: That was the decision of Congress?

CREVELING: Believes so.

134 SEN. BRYANT: Benefit mandate is done to protect spouse?

CREVELING: Yes. Correct.

136 SEN. BRYANT: Disadvantage in the long term because they cannot maximize benefit?

CREVELING: Disadvantage to the member.

138 SEN. BRYANT: Couple could go to court for resolution through litigation, but are hesitant to do so after establishing the divorce decree? Court could retain jurisdiction to do that?

PARRISH: Some question whether court can do so. Property divisions are non-modifiable. Only custody, child support and visitation are modifiable. Pensions are divided as assets.

158 SEN. BRYANT: Otherwise, parties might have to provide a stipulated modification?

PARRISH: Right, even when parties agree court may not be able to act. This legislation gives parties control.

167 SEN. BRYANT: Administrative costs to PERS?

PARRISH: PERS is preparing estimates. Costs are likely. Concerned about the cost of not doing it, however. PERS is already having to deal with these cases.

185 SEN. BRYANT: Pre-retirement, is it difficult to determine PERS retirement value.

CREVELING: No.

189 SEN. HAMBY: REA applies only to private sector, not federal employees?

PARRISH: Yes.

194 TAYLOR: Explain applicability?

198 CHAIR SPRINGER: Assumes OSB will deal with applicability
and retroactive provisions of the bill.

TAYLOR: Refers to bill, p. 4. for Parrish to respond.

211 CREVELING: Responds to SEN. HAMBY's former question.

214 SEN. SHOEMAKER: REA applies to private and public employees?

216 CREVELING: Provisions dividing benefits do not apply to
federal employees. They are covered under other systems.

232 SEN. SHOEMAKER: Under SB 210, is there any limitation to
benefits accrual pre and post divorce? If spouse is entitled to half of plan
that includes benefits accrued pre-divorce?

CREVELING: Generally correct.

SEN. SHOEMAKER: Divorced spouse also shares pre-divorce vesting? Does
bill allow pre-divorce amount to go in both directions?

250 PARRISH: Bill doesn't change courts ability to divide
benefits equitably, deals with mechanics of dividing benefits.

262 SEN. SHOEMAKER: Pre-divorce benefits handled differently than
post divorce? Can pre-divorce pot be handled in different ways?

CREVELING: Believes so. Spouse can take pre-divorce amount to half.
Member could take their half however they want.

278 SEN. SHOEMAKER: Differ from REA?

CREVELING: No. Brings it into alignment with REA.

SEN. SHOEMAKER: Differ from Federal civil service?

CREVELING: Yes. Civil Service handled differently, organized
differently.

299 TAYLOR: Retroactive application?

PARRISH: Yes.

304 TAYLOR: Example?

PARRISH: Provides retroactive example.

319 TAYLOR: Spouse could rearrange payment?

PARRISH: Only retroactive to court orders that specifically divided

PERS benefit.

PARRISH: Provides example of divorce case with PERS benefit issue.

399 BOB ANDREWS: PERS agrees with concepts of bill.
>Needs amendment.
>Need to assure no increase to actuarial costs.
>Prefer statutes over rules to set forth decree order of settlement.

Lists factors that should be considered.
>Significant organizational impact. Increases staff and resources.

\$1.975 million for start-up in biennium 1993-95, \$377,618/biennium for
1995-1997.

462 CHAIR SPRINGER: May refer to Ways and Means, or Labor.

SB 137: Allows State Board of Parole and Post-Prison Supervision to
discharge
parolee if parolee has substantially complied with conditions of
parole.

WITNESSES:

VERN FAATZ, PAROLE BOARD

ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS

DALE PENN, MARION COUNTY D.A., DISTRICT ATTORNEY'S ASSOCIATION

TAPE 15, SIDE A

043 VERN FAATZ: Submits and reviews written testimony (EXHIBIT C) in
support
of bill.

126 SEN. SHOEMAKER: Would bill release individual from sentence if
person
is determined to no longer be a threat?

FAATZ: That is correct. Would discharge sentence.

135 SEN. SHOEMAKER: Under present rules, if they are determined
as
non-threatening they remain in case banking?

FAATZ: Reviews sentencing three sentencing and parol options based on
date of offense. Explains post prison supervision situations.

152 SEN. SHOEMAKER: Not satisfied with case bank responsibility because
of
expense?

FAATZ: That is right. Also it is reasonable to release individual when
it is clear they require no supervision.

163 SEN. SHOEMAKER: What happens if person reoffends, start process
over
again?

FAATZ: Yes.

168 SEN. SHOEMAKER: If during case banking, person reoffends then
sanction
is to revoke parole?

FAATZ: Yes and no. Present system person could be placed on active
status with supervision and that's all, or re-indicted.

176 SEN. SHOEMAKER: Wouldn't have to start at indictment stage, could
bring
them back into system?

FAATZ: Yes.

180 SEN. SHOEMAKER: Ballot measure required that offenders would serve
full
sentence? Is this contrary to the ballot measure?

FAATZ: That's correct. Yes it is.

187 SEN. SHOEMAKER: Is there another way to do this that would
accomplish
the same things?

FAATZ: There may be a way, but I don't know what it is.

200 SEN. SHOEMAKER: Why not simply release from parole, rather than
release
from sentence?

FAATZ: Tracking is the problem.

207 SEN. SHOEMAKER: Why would you need to do that?

FAATZ: Perhaps we wouldn't. Leaves open some options, parole board
could become involved again. Issues would have to be worked out
between
district attorney's and parole board.

220 SEN. SHOEMAKER: Could work out with a system of rules, and that
would
be a way to avoid going back over the entire system?

FAATZ: People are already taken all the way through again.

237 CHAIR SPRINGER: Conferring with Sen. Hannon about working together
on
issues of fiscal impact.

248 SEN. WEBBER: 8000 people on active parole? Doesn't include those
on
non-active supervision?

FAATZ: 8200 people on parole. Some on non-active status.

254 SEN. WEBBER: Where is bulk of expense for supervision? Those between
6

months and 3 years?

FAATZ: defers to CLAWSON.

ELYSE CLAWSON: Of 8200 about 9% are on case banked status. Most of supervision is for people who are on for three years.

269 SEN. WEBBER: Would 6 month component achieve savings needed?

CLAWSON: No.

274 SEN. WEBBER: Which of time periods is your focus, first 6 months or intermediates?

CLAWSON: Gearing at property offenders, less serious offenders being on supervision for less time and person to person offenders being on supervision being on supervision for a year.

287 SEN. WEBBER: Which sentences would be continued for full term?

FAATZ: Those for murder, dangerous offenses and sex offenses. However board would have the option to terminate supervision after three years for those groups.

302 SEN. WEBBER: Interested in a more expansive amendment.

CLAWSON: Also allows board to extend time of supervision for offenders who are considered a dangerous risk.

310 ELYSE CLAWSON: Submits and reviews written testimony (EXHIBIT D). Comments on situation under measure 5. Increased resources utilized in this area. Would need additional resources if we don't change this population.

385 DALE PENN: Bill proposed in relation to Measure 5. District attorney's

are concerned about it.

>Notes political and philosophical issues about ballot measures.

>Comments on subsection 2, about rule-making authority outside of Legislature. Oppose that type of mechanism. Gave rise to problems in the 80's. Believes this mechanism will create more problems than it corrects. Decisions must be available to public debate. Opposes administrative action.

>Opposes subsection 1 because of previous ballot measures. >Other bills deal with Measure 5. Need to have a plan for seeing which bills make it

through and avoid the confusion of many different bills.

TAPE 14, SIDE A

034 SEN. SHOEMAKER: Would it make sense to avoid total discharge,
but
remove him from tracking without losing the option to recommit if they
reoffend?

PENN: Prefers that option to straight discharge.

052 SEN. SHOEMAKER: Support it over current system?

PENN: Support case-banking over discharge, support alternative over
current situation and discharge. Would like debate to address whether
there are other options available?

062 SEN. HAMBY: Requests clarification of case-banking? Case-banking
is
banking without supervision?

PENN: That's my understanding.

SEN. SHOEMAKER: Case banking does require some resources.

079 CHAIR SPRINGER: Potential negative public perception of case
banking?

PENN: One of reasons opposed to section 2. The idea of changing things
after setting a system is a problem.

116 SEN. SHOEMAKER: Section 3 d? Reaction to difference in 3a, 3b.

PENN: Philosophically do not like over-ride option available to board.
Public has been told that when an offender is sentenced that is what
they serve. Don't like saying one thing and doing another.

139 SEN. HAMBY: Come up with a name other than case banking.

143 SEN. WEBBER: Important financial impacts here, requests
corrections
provide some visual information on financial breakdowns.

CLAWSON: Happy to provide fiscal impacts.

187 SEN. SHOEMAKER: Could we get information on ballot measure 10.

FAATZ: Comments that ORS 144.305 (ballot measure 10) would requires
offenders to remain under supervision to the date of their sentence,
except they may be placed on inactive supervision after 3 years.

203 CHAIR SPRINGER: Refers to 1987 session laws.

SB 138: Provides that Department of Corrections shall determine probation violations and impose sanctions for violations.

WITNESSES:

JUDGE JAMES ELLIS, CIRCUIT JUDGE, MULTNOMAH COUNTY
ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS
BOB GRINDSTAFF, DIRECTOR, JACKSON COUNTY COMMUNITY CORRECTIONS
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

216 JUDGE ELLIS: Submits and reviews written testimony (EXHIBIT E) on behalf of the Criminal Justice Council in support of the bill.
>Provides means for dealing with probation violations administratively.
>South Carolina uses this administrative program which was implemented incrementally.
>Long term this will be financially beneficial to the state.

397 ELYSE CLAWSON: Submits and reviews written testimony (EXHIBIT F).

438 FAATZ: Board of Parole has developed similar systems utilized on the county level.

TAPE 15, SIDE B

030 BOB GRINDSTAFF: Jackson county was a pilot county for Parole Sanctions Project. Positive experience with this method.
>Parole and probation officers have adapted and focused on altering offender behavior.
>Reduces time delays and provides for immediate sanction.
>Reduces jail time and jail costs.

057 SEN. HAMBY: Opposition? Any opposition in Jackson?

GRINDSTAFF: No criticism from D.A.'s or judges.

064 TAYLOR: Positive impact on indigent defense?

ELLIS: Best estimate. Most people choose court appointed lawyer when faced with possible jail time. This bill will reduce need for court appointed counsel.
>Officers have particular expertise in determining what to do with parole offenders, lawyers and judges don't.
>More violations will be punished. Policy can be made by rule.

116 CHAIR SPRINGER: Extent of understanding between judges and officers about when to send to jail or not grant a hearing?

ELLIS: Not much common understanding. Practices vary greatly. Comments on example situations bill would clarify.

159 SEN. SHOEMAKER: Bill does some things we haven't talked about.
Section

5? What is that?

ELLIS: Gap filler from the original sentencing guidelines.

208 SEN. SHOEMAKER: Section 8, changes conditions of probation?

ELLIS: Trying to match conditions of probation, parole, post-prison supervision. Broadened to grant county officers more authority.

229 CLAWSON: Clarified conditions in some cases.

239 CHAIR SPRINGER: Reviews LC's.

LC 1268 (EXHIBIT G)

241 CHAIR SPRINGER: Reviews LC 1268 relating to post conviction relief which extends the time for filing post relief petition. At request of Oregon Criminal Defense Lawyers Association.

LC 3012 (EXHIBIT H)

247 CHAIR SPRINGER: Reviews LC 3012 which authorizes payment on an accelerated death benefits under life insurance policy to policy holder or certificate holder. At request of Kenneth Evanson.

253 MOTION: CHAIR SPRINGER moves introduction of LC 1268 and LC 3012.
>Hearing no objection, so ordered.

268 ROSS SHEPARD: OCDLA opposes on several philosophical, constitutional and legal grounds.
>Bill raises separation of powers problems. Probation and violations can be determined only by judicial branch, not an executive function. Perry v. Woolard (247 OR 145). Court held probation decision should be made judicially.
>Unlawful delegation of legislative authority to executive by allowing department to formulate rules. Hillman v. N. Wasco County PUD (213 OR 264).
>Concerned that direct relationship between officer and parolee will lead to coerced waiver of counsel. Violation of constitutional right to counsel.

340 SEN. SHOEMAKER: Clarify last example concerning hearings without counsel?

SHEPARD: Probationer could have probation revoked at hearing after several minor violations sanctioned by probation officer. Counsel may have averted revocation if involved in the process.

356 SEN. HAMBY: Why would it be too late?

SHEPARD: Court is going to say you have had your chance after several probation violations.

362 SEN. SHOEMAKER: So, even though you do have counsel at hearing it is not effective counsel because of previous events?

SHEPARD: That's correct. Attorney plays an important role.

375 SEN. WEBBER: If hearings officer were not in corrections?

SHEPARD: Wouldn't help because it wouldn't solve constitutional problems.

382 SEN. WEBBER: Does officer in corrections contribute to possible coercive waiver of counsel?

SHEPARD: Believes so. In addition, if probation officer is advising probationer they may be engaging in the unauthorized practice of law.

SEN. HAMBY: How did defense attorney's feel about South Carolina?

SHEPARD: Do not have sufficient information on S. Carolina.

408 SEN. HAMBY: Does this proposal differ greatly from South Carolina.

410 ELLIS: No this is not taken directly from South Carolina, similar in concept.

420 SHEPARD: Will check with South Carolina. Continues and suggests judges use intermediate sanctions which would address the goals of this bill.

443 SEN. SHOEMAKER: Expand on intermediate sanctions suggestion?

SHEPARD: Expand the guidelines so court would have guidance and can impose sanctions on a progressive ladder of options.

460 SEN. SHOEMAKER: Then violations could be handled administratively by imposing the intermediate sanction judge imposed from the outset?

SHEPARD: Liken to suspended execution of sentence. That would work because it is judicially imposed.

474 SEN. SHOEMAKER: At the outset?

SHEPARD: Yes.

479 SEN. SHOEMAKER: That could all be handled by hearings officer?

SHEPARD: Within the judicial branch, yes.

485 SEN. WEBBER: Assuming hearings officers would be in corrections?
Is there funding?

TAPE 16, SIDE A

031 CLAWSON: Yes, funding transferred between corrections and parole board.

Funding for positions would all come under parole board.

038 SEN. SHOEMAKER: Constitutional problems?

ELLIS: Constitutional issue is always brought up when Legislature grants rule-making authority to executive.
>Nothing says only judges can impose punishment.
>Argument can not be made under sentencing guidelines. Probation is a sentence.

080 CLAWSON: Hearings officer can only sanction within the limits of the original sentence, they only carry out the sentence. Additional sanctions would have to be approved by court. This will result in fewer people in prison.

090 SEN. SHOEMAKER: How do you respond to Shepard's suggestion?

ELLIS: That is what we are proposing. Rules will be formulated, known by probationers and imposed under appropriate circumstances.

103 SEN. SHOEMAKER: No discretion within department of corrections regarding the sanction imposed for particular violation?

ELLIS: Discretion will be in rule-making.

106 SEN. SHOEMAKER: But once those are made.

ELLIS: Once they are made they are limitations.

110 SEN. SHOEMAKER: So there will be limited discretion?

ELLIS: Yes, instructions. So comparable violations are sanctioned comparably.

120 SEN. SHOEMAKER: Shepard suggesting rules be more precise to

eliminate
discretion?

ELLIS: That is exactly what they are proposing from the South Carolina model. Idea is to structure probation and parole.

136 SEN. SHOEMAKER: Another alternative, have it done legislatively?

ELLIS: Detailed but possible. Inflexible as the sentencing guidelines.

167 DALE PENN: Support SB 138.
>Counties have voluntarily tried this approach. This is the DROP program, basically.
>Concerned only about section 5. Need more flexibility than 30, 20,
10.

196 SEN. HAMBY: Weapons, should we be more definitive?

PENN: No problem being more specific. Could tie into current definitions for dangerous weapons on federal level.

VICE-CHAIR SHOEMAKER: Adjourns hearing at 3:00pm. Carry over SB 139,
SB 112, SB 72 to Friday hearing, 2/5/93.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

A - Testimony on SB 210 - Laura Parrish - 4 pages
B - Amendments to SB 210 - Laura Parrish - 2 pages
C - Testimony on SB 137 - Vern Faatz - 2 pages
D - Testimony on SB 137 - Elyse Clawson - 2 pages
E - Testimony on SB 138 - Judge Jim Ellis - 1 page
F - Testimony on SB 138 - Elyse Clawson - 2 pages
G - LC 1268 - Staff - 1 page
H - LC 3012 - Staff - 2 pages.