

SENATE COMMITTEE ON
JUDICIARY

February 5, 1993 Hearing Room C
1:00 p.m. Tapes 17-18

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 17, SIDE A

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

SB 72: Allows person under jurisdiction of Psychiatric Security Review Board to apply for discharge or conditional release from state hospital once every 10 months.

WITNESSES:

MARY CLAIR BUCKLEY, CO-DIRECTOR, PSYCHIATRIC SECURITY REVIEW BOARD
ARLENE WOOD, FRIENDS OF FORENSIC
HARRIS MATARAZZO, PRIVATE ATTORNEY
BOB JOONDEPH, OREGON ADVOCACY CENTER

026 MARY CLAIR BUCKLEY: Reviews Psychiatric Security Review Board and hearing processes. Explains effect of bill.
>Bill is needed to reduce hearing days to reach 20% reduction. Expects to save \$12,000.
>Requests amendment to ensure that bill is retroactive to all individuals in the system and not just new clients.

065 BILL TAYLOR, COMMITTEE COUNSEL: Reviews proposed language.

072 CHAIR SPRINGER: What is the amount of biennial savings?

BUCKLEY: All else equal, save 12 hearing days which cost \$1000 daily for a total savings of \$12,000. Additional hearings would reduce savings.

084 SEN. BRYANT: Can Board have a hearing on its own motion?

BUCKLEY: There is a provision for hospital request, board doesn't make request. If hospital felt client should be released they could make request.

112 ARLENE WOOD: Submits and reviews written testimony (EXHIBIT A) in opposition to the bill.

155 SEN. HAMBY: Is there an alternative to hearings?

WOOD: I can't think of anything. They have to have hearing.

163 SEN. HAMBY: Every six months?

WOOD: They can request one every six months. Required every two years.

168 SEN. HAMBY: Was the committee given further statistics?

171 CHAIR SPRINGER: Yes there was other testimony on number of hearings.

Given financial situation, would you agree that because of cost problems, hospitals have an incentive to try to release patients as soon as possible?

WOOD: Yes. The goal is conditional release.

195 HARRIS MATARAZZO: Opposed to bill.

>Bill will mean patients only get a hearing from 10 -12 months. Delay hearings.

>Doubts it will achieve cost savings. Appeals of hearing decisions cost

between \$2000-3,000. With only a few additional appeals projected savings will not be realized. Bill will result in more appeals.
>Cost of compromising clients access to hearings. \$12,000 is not worth individuals rights.

277 SEN. WEBBER: Average length of stay?

MATARAZZO: Doesn't have those statistics.

282 SEN. WEBBER: People are all deemed dangerous, or guilty but insane?
So everyone fits into that category or its predecessor?

MATARAZZO: Guilty but insane. Not guilty by reason of insanity.

287 SEN. WEBBER: Average length of stay longer than couple of years?

BUCKLEY: Guesses so, no figures.

290 SEN. WEBBER: Compared to others who committed same offenses but
under Parole Board jurisdiction with psychological hold?

BUCKLEY: No comparison. Jurisdiction typically lasts longer than
parole or probation.

299 MATARAZZO: Board system is noted as model system. Doesn't urge
fixing a program that is not broken.

325 SEN. WEBBER: About 75% are released on action of Board rather
than petition for hearing?

MATARAZZO: Of patient requested hearings, 25% are favorable Board
decision.

337 BUCKLEY: Over 24 month period, 128 patient requested hearings.
98 remained committed.

345 SEN. WEBBER: Significant subset of all your hearings?

BUCKLEY: Yes, 25% of one-third.

350 CHAIR SPRINGER: Assume right to counsel?

MATARAZZO: Yes.

359 CHAIR SPRINGER: Contract or case by case?

MATARAZZO: There is a contract.

361 CHAIR SPRINGER: Could be savings in court appointed attorney costs?

MATARAZZO: Outweighed by cost of appeal.

370 SEN. WEBBER: Fewer hearings you would ultimately result in
fewer appeals.

BOB JOONDEPH: Submitted written testimony only (EXHIBIT B).

SB 296: Requires Department of Justice to create advisory committee.

WITNESSES:

JIM HILL, LEGISLATIVE ASSISTANT, SENATOR HAMBY

ANNABELLE JARAMILLO, OREGON COMMISSION ON HISPANIC AFFAIRS
BRENDA PETERSON, ASSISTANT ATTORNEY GENERAL
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
BILL LINDEN, STATE COURT ADMINISTRATOR

394 JIM HILL: Submits and reviews written testimony (EXHIBIT C) on behalf of Richard Burr, NAACP Legal Defense Fund, in support. Submits additional information from Amnesty International, Michelle Wecksler and Seiji Shiratori (EXHIBITS D, D-1 & U).
TAPE 18, SIDE A

090 SEN. WEBBER: Cost?

HILL: No, some discussion with Marla Ray from Attorney General about potential costs.

094 SEN. WEBBER: Comments on existing statutes and Oregon Criminal Justice Council. Are you aware of their study?

HILL: Heard that may be the case.

103 SEN. WEBBER: Would this be duplicative?

HILL: Would make it mandatory that study be distributed to jurors.

108 SEN. WEBBER: Could be distributed without statutory requirement?

HILL: Yes, you could do that if distributed before sentencing.

113 SEN. BRYANT: NAACP favor death penalty?

HILL: NAACP Legal Defense Fund has done extensive research on death penalty, don't know position.

119 SEN. BRYANT: Difficult and time consuming to carry out death sentence?

HILL: Cost not the most important issue in a decision of life and death.

136 SEN. BRYANT: Defense attorney's could use racial statistics concerning the death penalty in the sentencing phase.

HILL: Oregon has one hispanic on death row, 8 caucasians. Decision should be carefully weighed.

158 ANNABELLE JARAMILLO: Submits and reviews written testimony (EXHIBIT E) in support of bill.

204 BRENDA PETERSON: Submits and reviews written testimony (EXHIBIT F)

in
opposition to this bill.

301 ROSS SHEPARD: Testifies in support.
>Inappropriate for Department of Justice to be the agency involved.
>Criminal Justice Council is appropriate vehicle.
>Requests representatives from OCDLA and Department of Justice.

317 BILL LINDEN: Testifies in support.
>Recommends Criminal Justice Council as appropriate agency.
>Opposes Supreme Court or Court of Appeals justice sitting on the
committee. Designated representative would be acceptable.
>Bill adds element to sentencing phase and the effect on time and
money
is not known.

OREGON COMMISSION ON BLACK AFFAIRS submitted additional testimony (EXHIBIT
G)
in support of the bill.

SB 251: Allows court to award same temporary relief pending appeal of
certain
domestic relations suits as court can award prior to issuing
decree.

WITNESSES:

CARL MYERS, OREGON STATE BAR
GILL FEIBLEMAN, CHAIR, OSB FAMILY AND JUVENILE LAW SECTION
BILL LINDEN, STATE COURT ADMINISTRATOR
BETTY UCHYTIL, CHILDRENS SERVICES DIVISION
DAVID NEBEL, LEGAL AID PROGRAMS

344 CARL MYERS: Submits and reviews written testimony with
proposed
amendments (EXHIBIT H) on behalf of Michael Wells, Family and Juvenile
Law Section, OSB , in support.

396 GILL FEIBLEMAN: Reviews sections of bill.
>Section 5 amendment attached to Wells testimony. Adds language on
visitation to bill.
>Bill brings statutes up to date with current judicial practice. Law
has not been revised for a long time.

TAPE 17, SIDE B

043 CHAIR SPRINGER: Opposition?

FEIBLEMAN: None, not aware of Linden's concerns. Particularly, section
5 would not result in cost increases.

061 BILL LINDEN: Submits and reviews written testimony with
proposed
amendments (EXHIBIT I). Wells has reviewed and agrees initially.

077 BETTY UCHYTIL: Submits and reviews written testimony (EXHIBIT J)

in

support of intent. Supports generally with amendments to section 5.

097 DAVID NEBEL: Submits and reviews written testimony (EXHIBIT K).
Opposed
to section 5.

114 TAYLOR: Opposed to language put as it relates solely to visitation?

NEBEL: No.

SB 223: Allows parties to support orders to initiate proceedings to
modify
support obligations in same manner as public enforcement agencies.

WITNESSES:

CARL MYERS, OREGON STATE BAR

BILL LINDEN, STATE COURT ADMINISTRATOR

CARL STECKER, MARION COUNTY DISTRICT ATTORNEY

122 CARL MYERS: Submits and reviews written testimony (EXHIBIT L) on
behalf
of Michael Wells, in support.
>Opposition from Bill Linden.

154 SEN. BRYANT: Private parties can now move for change in
support
obligations?

MYERS: Yes.

157 SEN. BRYANT: Confused by testimony.

MYERS: Clarifies testimony.

176 BILL LINDEN: Submits and reviews written testimony (EXHIBIT M)
in
opposition to the bill.
>Opposed on resource and financial grounds.

236 SEN. BRYANT: substantial compliance? De minimis rule?

LINDEN: Cannot say there is an across the board rule, courts have
probably developed a consistent approach.

251 CARL STECKER: Testifies in support.
>Reduces workloads on local agencies.
>Caseloads have trend increase. 30% of current workload is dedicated
to
modification services. Substantial part of case load.

274 CHAIR SPRINGER: Written testimony on number of cases for
support
enforcement. What are the number of cases.

STECKER: 3000 cases, 250 modifications in last annual cycle, 400
modifications since 1990. Attorney General probably close to 6000

modifications per year.

SB 112: Authorizes State Board of Parole and Post Prison Supervision to make determination regarding dangerousness of offender based on certain mental conditions.

WITNESSES:

VERN FAATZ, PAROLE BOARD

DALE PENN, MARION COUNTY DISTRICT ATTORNEY

ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

SUSAN TRIP, VOLUNTEER WITH LEGISLATIVE COMMITTEE, ODA

298 VERN FAATZ: Submits and reviews written testimony (EXHIBIT N).
>Amendment proposed by district attorney's.

373 DALE PENN: Testifies in support generally.
>Concerned about definitions of dangerous offenders and sentencing guidelines.
>Proposes increased sentencing capacity for dangerous offenders.
>Bill may allow dangerous offenders to be released earlier under presumptive sentence.

TAPE 18, SIDE B

032 TAYLOR: Cites p.5. subsection 2. of bill. Section doesn't reference subsection 2a. Does that create inference we are using different standard for section a?

043 PENN: Nothing to prove in section a, that's why it was excluded.
Section b and c must be proven beyond a reasonable doubt.

060 SEN. WEBBER: Number of people in this situation? Impact on beds?
FAATZ: Numbers are small. Dangerous offender evaluations about 10 per year.

PENN: Concurr. Marion County - approximately 4 per year. Reserved for extreme circumstances.

079 TAYLOR: Cites p.1, subsection b; is "shall" appropriate language?

FAATZ: Not opposed, language is almost copy of existing language in another section of code, however.

097 ROSS SHEPARD: Supports language change to "shall" cited by counsel.
>Concerned about p.2, ln 17. Present language is coerced involuntary questioning of prisoner. Suggests amendment: no prosecution for any

incident contained in statements of the prisoner. Delete language
"except as otherwise provided by law".

114 PENN: Provides exhibits to committee (EXHIBIT O & P). Information
from
Susan Trip provides examples of sentencing with amendments from HB
248 3.

143 SUSAN TRIP: Outlines statistics and problem scenarios.

SB 139: Modifies allocation formula for community corrections
enhancement
grants.

WITNESSES:

JOANNE FULLER, DEPARTMENT OF CORRECTIONS
DALE PENN, MARION COUNTY DISTRICT ATTORNEY

187 JOANNE FULLER: Submits and reviews written testimony (EXHIBIT Q)
on
behalf of Elyse Clawson, Assistant Director of Community Corrections,
in
support.

209 SEN. WEBBER: How much does this vary from existing distributions?
FULLER: A few counties will get decrease.
>Multnomah will receive greatest increase.
>Counties with greatest decrease Clackamas, Washington and Benton.

Officials in those counties agree with formula change.

225 SEN. WEBBER: Copy of rules?

FULLER: Will provide.

234 SEN. WEBBER: Does formula address particular crimes?

FULLER: Does address crimes, propose it be tied to workload of
probation supervision. Ties allocation of community corrections money
to allocation of field service money.

244 SEN. WEBBER: Some inequity there too. Variance between
implementation
in counties?

FULLER: Workload addresses that. Weigh offenders proportionally who
score high on the risk assessment.

DALE PENN: Supports this bill.

277 CHAIR SPRINGER: Reviews LC's.

LC 252 (EXHIBIT R): Relating to artificial insemination. At request
of
Representative Kate Brown & Family and Juvenile Law Section, Oregon State
Bar.

LC 1270 (EXHIBIT S): Relating to departure sentences. At request of Oregon Criminal Defense Lawyers Association.

LC 1485 (EXHIBIT T): Relating to support enforcement. At request of Association for Enforcement of Support and other Legal Services clients.

MOTION: CHAIR SPRINGER moves LC 252, LC 1270 and LC 1485.
>Hearing no objection, so ordered.

309 CHAIR SPRINGER: Adjourns at 2:45pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

A - Testimony on SB 72 - Arlene Wood - 1 page
B - Testimony on SB 72 - Bob Joondeph - 1 page
C - Testimony on SB 296 - Jim Hill - 17 pages
D - Testimony on SB 296 - Jim Hill - 4 pages
E - Testimony on SB 296 - Annabelle Jaramillo - 1 page
F - Testimony on SB 296 - Brenda Peterson - 15 pages
G - Testimony on SB 296 - Amazonas Olivella - 1 page
H - Testimony on SB 251 - Michael Wells - 3 pages
I - Amendments to SB 251 - Bill Linden - 9 pages
J - Testimony on SB 251 - Betty Uchytel - 1 page
K - Testimony on SB 251 - David Nebel - 1 page
L - Testimony on SB 223 - Michael Wells - 1 page
M - Testimony on SB 223 - Bill Linden - 4 pages
N - Testimony on SB 112 - Vern Faatz - 2 pages
O - Testimony on SB 112 - Susan Trip - 2 pages
P - Amendments to SB 112 - Susan Trip - 8 pages
Q - Testimony on SB 139 - Elyse Clawson - 1 page
R - LC 252 - Staff - 2 pages
S - LC 1270 - Staff - 2 pages
T - LC 1485 - Staff - 65 pages
U - Testimony on SB 296 - Seiji Shiratori - 4 pages.