

SENATE COMMITTEE ON
JUDICIARY

March 10, 1993 Hearing Room C
1:00 p.m. Tapes 47-49

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 Assistant

ISSUES DISCUSSED: Public Hearing on SB 224
 Public Hearing and Possible Work Session on HB 2216
 Work Session on SB 137, SB 138, SB 139, SB 223

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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 47, SIDE A

003 VICE-CHAIR SHOEMAKER: Opens the hearing at 1:07 pm.

PUBLIC HEARING

SB 224: Creates Public Defense Services Commission.

WITNESSES:

CHIEF JUSTICE WILLIAM CARSON
BILL LINDEN, STATE COURT ADMINISTRATOR
JIM ARNESON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
SALLY AVERA, STATE PUBLIC DEFENDER
ROSS SHEPARD, OREGON DISTRICT ATTORNEYS ASSOCIATION

010 CHIEF JUSTICE CARSON: Testifies in support of the bill.
 >Judicial Conference unanimously supports bill.

018 BILL LINDEN: Submits and reviews written testimony in support of
the
bill (EXHIBIT A).

160 SEN. SHOEMAKER: There appear to be two questions, the advisability of
a
commission and where it should be lodged? Is it critical to be with

Executive?

LINDEN: Preferable, but if it needs to be with the judicial branch then they could go along.

171 SEN. SHOEMAKER: Funding could differentiate between commission and other departments?

LINDEN: Correct. 1985 legislation had commission in judicial branch with clear language about appointments.

180 SEN. WEBBER: If placed in the executive, would governor have different role in budgeting?

LINDEN: Governor would have to include appropriation in executive budget. Otherwise it would have to be in judicial budget.
>Currently judicial branch includes Judicial Fitness Commission, State Appellate Defender and Council on Court Procedures with separate budgets and requests.

193 SEN. WEBBER: What is Governors authority over those programs?

LINDEN: Programs are on same status as judicial budget meaning they formulate budget and make recommendations.

212 SEN. WEBBER: Location determines who gets to make cuts?

LINDEN: Correct.
>In judicial branch dialogue would be more directly with Legislature.

217 SEN. SHOEMAKER: If commission is placed in judicial branch will members be appointed by chief justice?

LINDEN: In 1985 legislation all appointments were made by chief justice. A majority should be appointed by chief justice.

234 CARSON: If its going to be in the judicial branch appointments would be made by chief justice or Supreme Court.

243 SEN. SHOEMAKER: Which do you prefer?

CARSON: Consults with all six.

246 SEN. SHOEMAKER: More accountable if authority lodged in one position.

CARSON: That is acceptable.
>There are models for both methods so it depends on what the committee

thinks is appropriate.

258 SEN. HAMBY: Refers to written testimony concerning amendment regarding contracting through the office of state court administrators.

LINDEN: Clarifies amendment.

>Provides for contract authority within state court administrator's office.

267 SEN. SHOEMAKER: You will be submitting an amendment along those lines?

LINDEN: At work session.

272 TAYLOR: How was bill developed, genesis of bill?

LINDEN: Summarizes history of bill.

310 SEN. SHOEMAKER: What would commission do?

313 LINDEN: Powers are fairly broad.

>Reviews section of bill which concern responsibilities, powers, authority.

>Commission sets compensation, standards, procedures, rules, contracts,

mediates disputes, etc.

>Policy setting body.

346 SEN. SHOEMAKER: How are policy decisions made today?

LINDEN: Currently, state court administrator has significant authority in this area.

>Structure is less democratic now than it would be under the commission.

370 SEN. SHOEMAKER: Essentially you just do it now?

LINDEN: In consultation with chief justice.

374 SEN. SHOEMAKER: You feel questions are sufficiently policy related to deserve independent body to make decisions.

LINDEN: Yes, some of the decisions would benefit from broader base of discussion.

398 JIM ARNESON: Testifies in opposition to the bill.

>Legislature should wait for upcoming Oregon State Bar review.

TAPE 48, SIDE A

013 SEN. SHOEMAKER: If this subject has been repeatedly before the

Legislature, why is OSB just getting to it?

ARNESON: No idea.
>continues testimony in opposition.
>Bill entails additional cost to PERS

029 SEN. SHOEMAKER: Does bill mean a change in public defender status?

ARNESON: Speaks of creating public defender but gives authority for
creating that system to commission.
>continues testimony.

043 SEN. SHOEMAKER: Where should commission be lodged?

ARNESON: In judiciary.
>Continues testimony.
>Stable funding is biggest concern.

057 SEN. SHOEMAKER: If commission is placed in judicial branch would
that
remove constitutional problem?

ARNESON: Yes.

059 SEN. SHOEMAKER: If funded in judicial branch that would address
funding
problem?

ARNESON: The judicial department has been a strong advocate for
indigent defense and can expect that to continue.

071 SALLY AVERA: Submits and reviews written testimony in opposition to
the
bill (EXHIBIT B).

111 SEN. SHOEMAKER: What is public defender's office?
>What is its authority, power, responsibility?

116 AVERA: Provides background on public defenders office.
>34 staff members
>Responsible for indigent defense. 3700 cases per biennium.
>Represent over 90% of indigents on appeal.

140 SEN. SHOEMAKER: How is public defender committee governed?

AVERA: Appointed by chief justice. Once appointed the board exercises
its own authority on budget and policy.

145 SEN. SHOEMAKER: How many members and tenure?

AVERA: Six, terms are four years and usually members serve two terms.

148 SEN. SHOEMAKER: Roll over every two years?

AVERA: Yes.

151 SEN. SHOEMAKER: How would committee and commission differ?

AVERA: Problem is risk that is created.

>No definition of what happens to resources.
>Bill potentially splinters appellate representation.

169 SEN. SHOEMAKER: Those are powers given to commission in the bill,
are
those powers currently vested in Legislature?

AVERA: Yes.

172 SEN. SHOEMAKER: Essentially it is a delegation of powers
from
legislature to a commission to administer the public defender system?

AVERA: Correct.

>Given history and performance, the bill places public defender at
risk
and threatens appellate provisions.

188 SEN. WEBBER: Could you provide numbers on the amount the bill does
not
save? Fiscal impact?

AVERA: Reviews budget.

>Office is preparing appeals for less than \$1000 per case.

211 ROSS SHEPARD: Submits letter from Oregon District
Attorneys
Association in opposition to the bill (EXHIBIT C).

219 SEN. SHOEMAKER: Conducts committee business on SB 212.

224 MOTION: SEN. SHOEMAKER: moves to RECONSIDER SB 212 and return
to
committee for further review.

VOTE: Hearing no objection, SB 212 is reconsidered.

232 BILL TAYLOR, COMMITTEE COUNSEL: Reviews LC drafts.

LC 3718: (EXHIBIT M): At the request of Task Force against Sex
Offenses.

LC 3716: (EXHIBIT N): At the request of Task Force against Sex Abuse.

LC 3609: (EXHIBIT O): At the request of Oregon Association of Chief's

of Police, Oregon Council on Police Associations, Oregon State

Sheriffs

Association

LC 2143: (EXHIBIT P): At the request of Interim Judiciary Committee.

LC 991: (EXHIBIT Q): At the request of Oregon Trial Lawyers

Association.

LC 2578: (EXHIBIT R): At the request of Oregon Criminal Justice

council.

LC 2581: (EXHIBIT S): At the request of Oregon Criminal Justice

Council

LC 3625: (EXHIBIT T): At the request of Interim Judiciary Committee.

LC 3724: (EXHIBIT U): At the request of Oregon Realtors Association.

LC 3563: (EXHIBIT V): At the request of Oregon Commission on Hispanic

Affairs.

LC 3042: (EXHIBIT W): At the request of Oregon Criminal Defense
Lawyers
Association.

269 VOTE: Hearing no objections, LC drafts are introduced.

Public Hearing and Possible Work Session

HB 2216: Requires juveniles within jurisdiction of juvenile court
for
certain conduct from which it appears sexual act occurred to be
tested for HIV.

WITNESSES:

TOM HART, OREGON DISTRICT ATTORNEYS ASSOCIATION
JANE EDWARDS, CRIMINAL JUSTICE SERVICES DIVISION
LLOYD ATHERTON, HEALTH DIVISION

278 TOM HART: Testifies in support of the bill.

306 JANE EDWARDS: Submits and reviews written testimony in support of
the
bill (EXHIBIT D & E).

363 TAYLOR: If person in subsection 2 consents to HIV test would
law
enforcement agencies get results?

EDWARDS: No, only if test is ordered by judge.
>Test is only ordered if defendant refuses to consent to test.

378 TAYLOR: That is after victim has asked judge for test of defendant?

EDWARDS: Yes. Defendant has been convicted and is ordered to take
test, results could go to law enforcement agencies.

387 TAYLOR: Subsection 2 refers to victim requesting test? Would
victim
include state or district attorney?

EDWARDS: No, state law refers only to individual, not state as
entity.

401 TAYLOR: So when there is no victim there is nobody to request test
and
results would not go to law enforcement?

EDWARDS: Correct.

407 SEN. SHOEMAKER: What is the reason for expanding requirement for
test
to any sexual act?

EDWARDS: Federal definition speaks to this and is broader.
>Addresses victim rights and victims peace of mind.

430 SEN. SHOEMAKER: Present law states that test can be ordered
if

transmission may have occurred? Why is it expanded?

EDWARDS: Federal representatives recommended to include language.
>Burden is not on victim.

451 HART: Clarifies provisions.
>Addresses issue of informing law enforcement agencies. Result of
Gonzales case and amendments by Representative Mason.

499 SEN. SHOEMAKER: Where is that in the bill?

TAPE 47, SIDE B

034 HART: Page 2, line 3.
>Continues on concern about prospective acts and perpetrator.
>Agencies can be informed of individual with HIV.

049 SEN. SHOEMAKER: So law enforcement could have the information
if
needed?

EDWARDS: Correct.

057 HART: Reviews and clarifies additional provisions of the bill.

063 SEN. SHOEMAKER: So child must be found guilty?

HART: They would have been adjudicated under juvenile system as adults
are convicted under regular system.

075 DAVE FIDANQUE, ACLU: Testifies in opposition to the bill.
>Departure from current Oregon law which emphasizes voluntary testing
and treatment.
>Extends access to testing results with no standards or protections.

114 SEN. SHOEMAKER: Argument seems a little attenuated.

115 SEN. WEBBER: Can se specify intention in the record that
information
should not be included in LEDS?

117 FIDANQUE: That is just one issue. If purpose is to include
agencies
for prospective reasons then state it, rather than open the door.
>Suggests language correspond to language in current statute. >Ensure
counseling.

135 SEN. SHOEMAKER: Could you provide amending language?

FIDANQUE: Yes.

146 LLOYD ATHERTON: Testifies with reservations about the bill.
>Concerned with release of information to agencies on innocent
citizens
that may be in high risk groups.

176 SEN. HAMBY: How does counselor deal with a person like Gonzales,
what
does agency do?

184 ATHERTON: Division is working with corrections on the issue.
>Under review currently.
>Trying to protect public without undue release of information.

193 SEN. HAMBY: No solutions?

ATHERTON: Have suggestions in corrections area, but working on
others.

199 SEN. SHOEMAKER: Requests further information from Hart and Edwards
on
need for agencies to have information?

204 HART: Comments on Hamby's question, agencies do nothing at all.

241 SEN. HAMBY: What kinds of agents get information?

HART: Agencies are defined by statute as is victim.
>Information is necessary for helping victims, charging decisions and
sentencing.

289 SEN. HAMBY: Wouldn't you counsel victim to seek testing?

HART: Yes, agency does counsel victims to seek testing. Process is
very traumatic.

300 SEN. HAMBY: No consolation for a victim to be told that perpetrator
is
not on LEDS and think they are safe?

HART: Concurs. However, having AIDS information helps victim through
immediate knowledge.

318 SEN. HAMBY: Is the intention to have information available on LEDS?

HART: Yes, that seems appropriate.
>There is a strict structure for access to LEDS which would protect
privacy.

339 SEN. SHOEMAKER: Bill doesn't delineate reporting positive or
negative
results?

SEN. HAMBY: Hope not.

345 HART: For law enforcement if information is limited to only
positive
that would be acceptable.

358 SEN. SHOEMAKER: In juvenile provisions, doesn't say where
information
goes?

HART: It is the intention that the information go to victim, law enforcement, etc.

380 SEN. WEBBER: Any use for information in current case?

HART: No, only used after conviction.

393 SEN. WEBBER: Is test simply positive or negative.

HART: Positive or negative.

399 SEN. WEBBER: When we are talking about not reporting negative result refers only to law enforcement?

HART: Yes.

WORK SESSION

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

420 TAYLOR: Reviews bill.

>Concern about where bill should go, Ways and Means?

>Bill Linden recommends passage to Ways and Means.

450 MICHAEL WELLS, OREGON STATE BAR: Reviews hand-engrossed amendments (EXHIBIT F).

TAPE 48, SIDE B

029 SEN. HAMBY: Given \$5.8 million impact to general fund, what would fee for filing be?

WELLS: Fees vary. Lane county divorce filing is approximately \$210.

Modification filing fee should be much lower.

>Bar has no proposal for fee.

048 SEN. HAMBY: Intention is to cover through filing fees?

WELLS: Correct.

051 Discussion between SEN. SHOEMAKER and SEN. HAMBY concerning referral to Ways and Means.

065 WELLS: Bar supports process to avoid Ways and Means.

069 SEN. SHOEMAKER: Any opposition to the bill?

SEN. HAMBY: Doesn't believe so.

072 TAYLOR: How many cases brought and typical case?

>Wouldn't there have to be significant increase in income to affect the outcome?

WELLS: Yes. Reviews possible scenarios.

091 SEN. SHOEMAKER: Would allay concerns if formula included fees to cover costs.

WELLS: Correct, the purpose is not to have any fiscal impact.

098 MOTION: SEN. SHOEMAKER: moves to ADOPT hand engrossed amendments, and conceptual amendment to add subsection 3 to effect that clerk of circuit court would collect fees sufficient to hear the case.

VOTE: Hearing no objections, the amendments are ADOPTED.

108 SEN. SHOEMAKER: Should hold bill for LC version including engrossed amendments?

111 SEN. HAMBY: Question about Linden's testimony and impact on the courts.

119 WELLS: In consultation with Linden and John Ellis, the figure on potential modifications is unclear.
>Potential users of modifications made by the bill will not result in undue burden on resources or time.

137 TAYLOR: Linden not opposed.

139 SEN. SHOEMAKER: Committee will revisit at later date.
>Resumes consideration on HB 2216

HB 2216: Requires juveniles within jurisdiction of juvenile court for certain conduct from which it appears sexual act occurred to be tested for HIV.

WITNESSES:

144 TED FAULK, CITIZEN: Testifies with reservations about the bill.

207 SEN. WEBBER: What is the time between infection and positive result?

FAULK: There is a window period between six weeks and six months.

221 SEN. WEBBER: Is change in language federally mandated?

FAULK: No idea.

228 SEN. SHOEMAKER: Presumably it is part of federal requirements.

232 SEN. SHOEMAKER: If test may be negative for six months, what effect

does that have on trial and sentencing?
>Victim may not know for six months or more?

FAULK: Because testing is only triggered by conviction, a significant period of time will have elapsed.

>No base-line testing for victim proximate to the crime risks losing any connection between victims HIV status and the criminal's.
>Continues testimony with reservations.

282 SEN. HAMBY: Is six months a firm date as to when the virus should appear?

FAULK: No, cases as far out as a year.

293 SEN. SHOEMAKER: Wouldn't victim have test for their own safety?

305 FAULK: If the victim sees a public health professional then they would be advised to have the test.
>Objects to punitive testing of convicted. There must be some medical reason to test criminal.

324 SEN. SHOEMAKER: If committee leaves mandatory language don't we still have same problem?

333 FAULK: Yes. Possible false negative result on the part of both the victim and the criminal.

341 SEN. SHOEMAKER: Mandatory language still only applies if victim or family requests?

FAULK: Correct.

SEN. SHOEMAKER: No inconsistency with that?

345 FAULK: No problem with mandatory language.
>Continues testimony with objections to inclusion of law enforcement agencies as recipients of testing information.

390 TAYLOR: Language on line 18 was taken out on the House side. Is a part of the current law.

394 SEN. SHOEMAKER: But is it required by the federal legislation?

TAYLOR: Assumes it is not required.

446 SEN. SHOEMAKER: Closes hearing on HB 2216.
>Opens hearing on SB 137, SB 138, SB 139.

463 SEN. WEBBER: Reads statement from Bob Skipper, Multnomah County Sheriff stating they will submit amendments to the bills.

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

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

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

WITNESSES:

TAPE 49, SIDE A

PAUL FRANK, FEDERATION OF OREGON PAROLE AND PROBATION OFFICERS submitted written testimony only in opposition to the bills (EXHIBIT L).

028 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: Reviews process leading to amendments to bills. Submits and reviews written amendments to SB 137, SB 138 and SB 139 (EXHIBITS H-K).

045 SEN. SHOEMAKER: Committee receives amendments for review at a later hearing.
>Adjourns hearing at 3:00 pm.

Submitted by: Reviewed by:

Kirk Bailey Bill Taylor
Assistant Administrator

EXHIBIT LOG:

A - Testimony on SB 224, Bill Linden, 12 pages
B - Testimony on SB 224, Sally Avera, 2 pages
C - Testimony on SB 224, Dale Penn, 1 page
D - Testimony on HB 2216, Jane Edwards, 2 pages
E - Testimony on HB 2216, Jane Edwards, 7 pages
F - Amendments to SB 223, Staff, 1 page
H - Amendments to SB 137, Elyse Clawson, 3 pages
I - Amendments to SB 137, Elyse Clawson, 4 pages
J - Amendments to SB 138, Elyse Clawson, 7 pages
K - Amendments to SB 139, Elyse Clawson, 1 page
L - Testimony on SB 137 & SB 138, Paul Frank, 10 pages
M - LC 3718, 1 page
N - LC 3716, 5 pages
O - LC 3609, 5 pages
P - LC 2143, 100 pages

Q - LC 991, 4 pages
R - LC 2578, 11 pages
S - LC 2581, 10 pages
T - LC 3625, 7 pages
U - LC 3724, 8 pages
V - LC 3563, 2 pages
W - LC 3042, 5 pages