

SENATE JUDICIARY
COMMITTEE

March 25, 1993 Hearing Room B
1:00 p.m. Tapes 67-69

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Gordon Smith
 Sen. Bob Shoemaker, Vice Chair
 Sen. Catherine Webber

VISITING MEMBERS: Senator Kerans, District 20
 Senator Bryant, District 27

STAFF PRESENT: Bill Taylor, Committee Counsel
 Kate Wrightson, Committee Coordinator
 Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing on SJR27, SB 679, SB 680, SB 640
 Work Session on SB 240

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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 67, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:10 p.m.

PUBLIC HEARING

SJR27: Proposes constitutional amendment to replace death penalty for aggravated murder with life imprisonment without release for parole.

SB 679: Modifies provisions relating to aggravated murder to conform to constitutional amendment replacing death penalty with life imprisonment without possibility of release or parole.

SB 680: Requires Oregon Criminal Justice council to compile information concerning time spent and costs incurred in aggravated murder prosecutions.

WITNESSES:

 SENATOR KERANS, DISTRICT 20
 MARK KRAMER, OREGON COALITION TO ABOLISH THE DEATH PENALTY
 MARCUS THOMAS, AMNESTY INTERNATIONAL

RUTH HEFNER, OREGON COALITION TO ABOLISH THE DEATH PENALTY
CINDY PERRY, AMNESTY INTERNATIONAL
DENNIS TAPP, AMNESTY INTERNATIONAL
DAVID FIDANQUE, ACLU OF OREGON
DAVID GROOM, OREGON COALITION TO ABOLISH THE DEATH PENALTY
ROLLIE SMITH, ECUMENICAL MINISTRIES
RODNEY PAGE, ECUMENICAL MINISTRIES
DAVID FACTOR, OCJC CRIMINAL COUNCIL
LES GUSTAFSON-ZOOK, MENNONITE CENTRAL COUNCIL
PAUL LARUE, ORFOR
MARK KRAMER, OREGON COALITION TO ABOLISH THE DEATH PENALTY
HUGO BODAU, NATIONAL COALITION TO ABOLISH THE DEATH PENALTY

015 SENATOR KERANS, DISTRICT 20. Testifies in support of SJR27, SB 680
and
SB 679.

138 SEN. SHOEMAKER: Without having something to compare aggravated
murder
costs to it doesn't tell us what the alternatives are. Would it be
useful to collect information on non-aggravated murder prosecutions?

SEN KERANS: That would be good.

146 SEN. SHOEMAKER: Would that be a relevant thing to compare?

SEN. KERANS: Yes, because its the difference we're looking for.

154 MARK KRAMER, OREGON COALITION TO ABOLISH THE DEATH PENALTY.
Offers

written testimony in support of SJR27 and SB 679. (EXHIBIT A, B)
- Refers to section 7
- Feels that prosecuted minors receiving life without parole is too

harsh.

- Wants to draft an amendment that would give retain life with 30
for
17 year olds.

355 PROFESSOR HUGO BODAU, TUFTS, NATIONAL COALITION TO ABOLISH
DEATH

PENALTY: Testifies in support of SJR27, SB 678, SB 680.
- The public prefers life in prison over death penalty
- The all too infallible conviction of the innocent

TAPE 68, SIDE A

003 BODAU: Continues testimony.
- Death penalty trials are more expensive
- Life imprisonment costs are still incurred by the state in
addition
to the capital punishment trial expenses.

099 RODNEY PAGE, EXECUTIVE DIRECTOR, ECUMENICAL MINISTRIES OF
OREGON:

Submits written testimony in support of SJR 27, SB 679, SB 680 and SB
640. (EXHIBIT C)

124 SEN. SHOEMAKER: What is your reaction to a jury being able to decide
on
life imprisonment or death? Would this be an appropriate amendment?

146 KRAMER: In 1989 we added life without parole as an option. Jury
prefer
this approach. Public opinion polls also support this.

169 SEN. SHOEMAKER: You would rather just go for the brass ring?

KRAMER: We already have life without parole as an option.

173 SEN. SHOEMAKER: Is it set up the same way? Do we have it really?

KRAMER: The current system is if all jurors answer a certain question
yes unanimously, the person gets death sentence. If no, then have to
choose between the two.

180 SEN. HAMBY: Disappointed by Victims Rights organizations. Would
still
not believe it was life unless it was in the Constitution. Do you
think
SJR27 will help them?

KRAMER: Yes. This puts it in the Constitution.

210 CHAIR SPRINGER: Dave Factor is here to answer questions.

218 DAVID FACTOR, CRIMINAL JUSTICE COUNCIL:

- Doesn't know the exact costs of prosecution of aggravated murder cases.
- Thinks that having Corrections as one of the agencies involved added to the Bill is important
- Concern is the appropriations to make this bill happen
- Is there subsequent Ways and Means referral to this bill?

274 SEN. HAMBY: Can we expect the council to provide relevant data
to
Oregon prior to a November 1994 vote?

FACTOR: Tough question. Have collected homicide cases for a greater
period of time. Cost analysis has never been part of the study, so
cannot be certain about the time line.

318 SEN. SHOEMAKER: Did you say that the bill as drafted permits
a
comparison between aggravated and non-aggravated murder?

FACTOR: No.

327 SEN. SHOEMAKER: Could you define a non-aggravated murder category
that
would permit a relevant comparison?

FACTOR: One of these other Bills removes one of the categories of what is currently could be prosecuted as aggravated murder. Removes it from aggravated murder and makes it murder.

369 RUTH HEFNER COOMBS, OREGON COALITION TO ABOLISH DEATH PENALTY:
Submits
and reviews written testimony in support of SJR27, SB 679, SB 680.

(EXHIBIT F)

TAPE 67, SIDE B

010 MARK THOMAS, AMNESTY INTERNATIONAL: Submits and reviews testimony
in
support of SB 679, SB 680, SB 640. (EXHIBIT D)

040 CINDY PERRY, AMNESTY INTERNATIONAL: Submits and reviews testimony
in
support of SJR27, SB 679. (EXHIBIT E)

060 DUANE McCABE, CAPITOL DEFENDERS: Testifies in support of SJR27 and
SB
679.
- Explains cost of trial process.
- Would not have expense of two trials if Bill made into law.

081 SEN. SHOEMAKER: Why do you have to prepare for both
trials
simultaneously?

McCABE: The penalty trial must begin after a few days.

087 SEN. SHOEMAKER: Theoretically we could change that statute. Would
it
make sense to do that?

McCABE: Yes.

096 DAVE GROOM, OCDLA: Cannot testify for OCDLA in behalf of these
bills
because he was served today by a client with a motion to disqualify
the
public defender's office from his case based on testimony given by
council at a previous legislative hearing in '89.

118 DAVE FIDANQUE, ACLU: Testifies in support of SJR27, SB 679 and SB
680 .
Bill
- Highest priority is opposition to any exceptions to the Oregon
of Rights.
- Art. 1, Sec. 40 in SJR27 is the most obvious of those exceptions
which has been adopted by the people.
- This is an abomination to the Bill of Rights.
- Eliminating the death penalty takes precedence over concern with

Art. 1, Sec. 40.

167 ROLLIE SMITH, ECUMENICAL MINISTRIES OF OREGON: Submits and reviews written testimony in support of SB 640, SB 679, SB 680 and SJR27.

(EXHIBIT G)

205 DENNIS TAPP, AMNESTY INTERNATIONAL: Testifies in support of SB 679, SB 680 and SJR27.

215 LES GUSTAFSON-ZOOK, MENNONITE CENTRAL COMMITTEE and OREGON COALITION TO ABOLISH DEATH PENALTY: Submits and reviews testimony in support of SB 679, SB 680 and SJR27. (EXHIBIT H)

234 PAUL LARUE, FELLOWSHIP OF RECONCILIATION: Submits and reviews written testimony in support of SJR27, SB 679 and SB 680. (EXHIBIT I)

SB 640: Provides that person convicted of aggravated murder is not subject to death penalty if person is mentally retarded.

WITNESSES:

MICHAEL BAILEY, ARC OF OREGON
JANNA STARR, ARC OF OREGON
JAMES TOEWS, MENTAL HEALTH DIVISION
BRENDA PETERSON, DEPARTMENT OF JUSTICE

278 MIKE BAILEY, ARC OF OREGON: Testifies in support of SB 640 - Uses Wesley Allen Dodd as example.

329 JANNA STARR, ARC OF OREGON: Submits and reviews written testimony for SB 640. Wants an exemption of the death penalty. (EXHIBIT J)

369 JAMES TOEWS, MENTAL HEALTH DIVISION: Submits and reviews written testimony in support of SB 640. (EXHIBIT K)

TAPE 68 , SIDE B

003 TOEWS: Continues testimony.

024 SEN. HAMBY: "For the record, could you expand on the adaptive behavior with an I.Q. of 79 and how that individual might function."

TOEWS: This gets into a lot of hairsplitting exercises. Essentially the way the borderline category definition works, a person with a mental I.Q. between 69-70 has significant behavior deficits in two or more

major life areas, i.e. mobility, sensory. Mild mental retardation.

040 SEN. HAMBY: Based on the standards set in 1977 there should be
no
disagreement?

TOEWS: There is always some disagreement between experts.

053 TAYLOR: Is this the same bill that passed the Senate for last
session
with a 28-02 vote?

SEN. WEBBER: Yes.

058 SEN. SHOEMAKER: Would there still be the probability of giving
a
mentally disabled person convicted of aggravated murder a sentence of
life without parole?

KRAMER: Yes. We have the same process. The jury still must find
sufficient mitigating evidence.

082 SEN. SHOEMAKER: The bill doesn't say what the standards of
the
proceedings are. So, what are the standards?

096 STARR: I think that mental retardation usurps the usage of those
tests.

098 SEN. SHOEMAKER: Then we need some guidelines that would allow the
jury
to sentence life without parole. These people are most likely to
commit
the crime again.

STARR: I don't think the evidence would bear out your assertion that
these would be the people most likely to re-commit the same kind of
crime.

119 BRENDA PETERSON, ASST. ATTORNEY GENERAL, DEPT. OF JUSTICE: Submits
and
reviews written testimony in opposition to SB 640. (EXHIBIT L)
- on procedural grounds only

176 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Submits
written
testimony in opposition to SB 640. (EXHIBIT M)
- "Allows murderers to manipulate the system."

233 CHAIR SPRINGER: If there is anything to gain by negotiating
the
proponents of SB 640 please get together with them.

234 SEN. HAMBY: Do you concur with the Department of Justice?

PENN: Yes. It would be much better to have a post-trial procedure.

242 SEN. HAMBY: Your concern about manipulation would be covered?

PENN: That would still be an issue.

249 SEN. HAMBY: Is there room to negotiate?

PENN: We don't want to create a situation where someone who is mentally disabled is executed. We will litigate a third process.

WORK SESSION AND INVITED TESTIMONY

SB 240: Eliminates statute of ultimate repose for product liability actions and negligence actions arising out of death, injury or damage resulting from silicone or saline breast implant or other implant or injection containing silicone.

WITNESSES:

DIANA GODWIN, WILLIAMS & TROUT-WINE
COONEY, OREGON MEDICAL ASSOCIATION

269 CHAIR SPRINGER: Council, what is the difference between SB 240-9 and SB 240-10 amendments?

271 TAYLOR: The -9 amendments are from the proponents of the bill and the -10 amendments come from the Oregon Medical Association. The main difference is that -10 would remove the doctors totally from the impact of the bill.

288 DIANA GODWIN, WILLIAMS & TROUT-WINE: Submits written testimony and SB 240-9 amendments. (EXHIBITS N,O,S)

375 SEN. BRYANT, DISTRICT 27: Testifies in support of SB 240.
- Has concerns about doctors in the hospital and lawsuits
- Concerned that if you go back more than five years, what type of records does one have that can assist in defending in a lawsuit.

TAPE 69 , SIDE A

003 SEN. BRYANT: Continues testimony.
- Medical malpractice is a hard situation to go through.
- If doctors can't be included then there may be a jurisdiction dispute.

024 GODWIN: Once the implant is implanted and it is sold here by a distributor then you have jurisdiction.

030 TAYLOR: An agreement at last hearing to take out the issue of extending

the bill to all products liability issues, which is set forth in Godwin's amendments. Unfortunately, the -10 amendments the same language isn't included.

046 COONEY, OREGON MEDICAL ASSOCIATION: Submits and reviews SB
240 -10 amendments. (EXHIBITS P,Q,R)

085 SEN. HAMBY: I would like to think this one through.

CHAIR SPRINGER: Then we will carry SB 240 over to another hearing.

089 CHAIR SPRINGER: Adjourns meeting at 3:09 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Bill Taylor
Administrator

EXHIBIT LOG

A -Testimony on SB 979, SJR27-M. Kramer-10 pgs.
B -Testimony on SB 679-Sylvia Loftus-9 pgs.
C -Testimony on SJR27, SB 679, SB 680, SB 680-Rodney Page-2 pgs.
D -Testimony on SB 679, SB 680, SB 640-Marcus Thomas-4 pgs.
E -Testimony on SB 679, SJR27-Cindy Perry-2 pgs.
F -Testimony on SB 679, SB 680, SJR27-Ruth Hefner-Coombs-1 pg.
G -Testimony on SB 679, SB 680, SB 640, SJR27-Rollie Smith-2 pgs.
H -Testimony on SJR27, SB 679, SB 680, SB 640-Gustafson-Zook-1 pg.
I -Testimony on SJR27, SB 679, SB 680, SB 640-Paul LaRue-4 pgs.
J -Testimony on SB 640-Janna Starr-3 pgs.
K -Testimony on SB 640-James Toews-2 pgs.
L -Testimony on SB 640-Brenda Peterson-5 pgs.
M -Testimony on SB 640-Dale Penn-2 pgs.
N -Testimony on SB 240-Diana Godwin-1 pg.
O -Proposed amendments SB 240-Diana Godwin-2 pgs.
P -Proposed amendments SB 240-Cooney-1 pg.
Q -Proposed amendments SB 240-Staff-2 pgs.
R -Proposed amendments SB 240-Staff-2 pgs.
S -Proposed amendments SB 240-Diana Godwin-6 pgs.