

SENATE COMMITTEE ON
JUDICIARY

April 6, 1993 Hearing Room B
1:00 p.m. Tapes 88-89

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

MEMBERS EXCUSED: Sen.

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

ISSUES DISCUSSED: Work Session on SB 210, SB 233, SB 234, SB 353, SB 408,
SB
 545, SB 361, SB 660, SB 501, SB 586.

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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 88, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:30 pm.

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

006 CHAIR SPRINGER: Bill carried over for future work session due to new amendments.

SB 233: Extends statute of limitations to six years for tort actions arising out of sexual intercourse, sexual penetration, sexual contact and deviate sexual intercourse.

SHARON GROOVER, CITIZEN: submits written testimony only in support of the bill (EXHIBIT A).

011 BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill and relevant testimony from public hearing. No amendments.

020 MOTION: SEN. HAMBY: moves SB 233 be sent to the floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

025 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

SB 234: Repeals limitation on bringing action based on conduct constituting child abuse that requires that action be brought before plaintiff attains 40 years of age.

ROGER HENNAGIN, CITIZEN: submits written testimony only in support of the bill (EXHIBIT B).

027 TAYLOR: Reviews bill and relevant issues. No amendments.

037 CHAIR SPRINGER: Comments on letters received on the issue.

039 MOTION: SEN. HAMBY: moves SB 234 be sent to the floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

045 CHAIR SPRINGER: The motion CARRIES.

SEN WEBBER will lead discussion on the floor.

SB 353: Expands criteria used to set earlier release date of prisoner by State Board of Parole and Post-Prison Supervision.

047 TAYLOR: Reviews bill, SB 353-1 amendments by Bill Taylor (EXHIBIT C & D) and SB 353-2 amendments by (EXHIBIT E & F).

056 SEN. HAMBY: Comments and reviews amendments.

066 Committee discusses generally and clarifies SB 353-1 and SB 353 -2 amendments.

105 MOTION: SEN. HAMBY: moves to ADOPT SB 353-2 amendments, dated 3/25/93.

Clarifies bill requestor.

121 VOTE: Hearing no objection, amendments are ADOPTED.

128 MOTION: SEN. HAMBY: moves SB 353, AS AMENDED, be sent to the floor
with
a DO PASS recommendation.
VOTE: In a roll call vote, all members present vote AYE.

135 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

SB 408: Provides that aggravating factors must be proven beyond
reasonable
doubt in order to be considered by court for purposes of
imposing
departure sentence under sentencing guideline rules.

138 TAYLOR: Reviews bill and amendments from Counsel (EXHIBIT G &
H).
Suggests Ross Shepard and Fred Avera present additional information.

153 ROSS SHEPARD, OCDLA: Judges capable of decision based on facts
in
trial. No need for further evidentiary hearings.

161 FRED AVERA, ODAA: Concurs with shepard.
>Court can review aggravating and mitigating information as a part of
its decision.

170 CHAIR SPRINGER: Holds bill for witnesses to formulate amendments.

177 SEN. SHOEMAKER: Do you have the proposed amendments? Do they cover
the
issue?

AVERA: Yes.

182 SEN. SHOEMAKER: Need time for further review?

AVERA: Amendments don't really address particular problem.

185 CHAIR SPRINGER: Excuses witnesses to formulate amendments and
recesses
consideration on SB 408.

SB 545: Provides that person may obtain writ of assistance to
enforce
custody provisions of order.

190 TAYLOR: Reviews bill and SB 545-1 amendments (EXHIBIT I).
Sponsor
concurs with amendments.

203 CHAIR SPRINGER: Reviews effect of the bill.

208 DAVID NEBEL, OREGON LEGAL SERVICES: Submits written testimony
in
support of the bill (EXHIBIT J).
>Clarifies amendments.

219 MOTION: CHAIR SPRINGER: moves to ADOPT SB 545-1 amendments,
dated

3/30/93.

VOTE: Hearing no objection, the amendments are ADOPTED.

222 MOTION: CHAIR SPRINGER: moves SB 545, AS AMENDED be sent to the
floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

228 CHAIR SPRINGER: The motion CARRIES.

SEN. TRICIA SMITH will lead discussion on the floor.

SB 361: Authorizes court or hearings officer to order obligor to
make

periodic, lump sum or other payments toward support arrearage.

234 TAYLOR: Reviews bill and SB 361-2 amendments (EXHIBIT K & L).

254 CHAIR SPRINGER: Who is from Marion County District Attorney's
office?

256 TAYLOR: Carl Stecker was here at previous hearing.

>Reviews reasons for amendments.

265 CHAIR SPRINGER: What about first language presented in amendments?

TAYLOR: Believes it is language from Stecker.

273 CHAIR SPRINGER: Member questions?

278 SEN. SHOEMAKER: When codified will subsection 1 be split to amend
ORS

25.080 and ORS 25.210? Does it matter?

288 CHAIR SPRINGER: Having difficulty tracking language.

290 SEN. SHOEMAKER: Is language clear to general public?

>Should we say court but not hearings officer?

296 CHAIR SPRINGER: That or delete reference to hearings officer?

298 SEN. SHOEMAKER: But you do want hearings officer to order periodic
lump

sum or other payments?

300 CHAIR SPRINGER: That authority already exists.

307 TAYLOR: Reviews and clarifies bill and effect.

SEN. SHOEMAKER: Understands intent, but will it be clear?

317 CHAIR SPRINGER: Legislative counsel has authority to make
technical

changes to ensure intent, if necessary.

324 SEN. SHOEMAKER: Reviews first sentence and second sentence. Are
same

proceedings appropriate for motion? Do we need to tie the sentences

together?

342 DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION: No
additional
guidance on the bill but does not object to rescheduling to allow for
further clarification of the bill.

363 CHAIR SPRINGER: Without answer today we will carry over for
future
hearing.

SEN. SHOEMAKER: Suggests further review by Legislative Counsel.

375 CHAIR SPRINGER: Carries bill over for future hearing.

SB 660: Modifies filing time for Abuse Prevention Act restraining
order.

377 TAYLOR: Reviews bill and SB 660-1 amendments (EXHIBIT M).

410 CHAIR SPRINGER: SB 660-1 amendments?

TAYLOR: Yes.

414 DAVID NEBEL, OREGON LEGAL SERVICES: Reviews amendments. No
objections.

424 MOTION: CHAIR SPRINGER: moves to ADOPT SB 660-1 amendments,
dated
3/30/93.

VOTE: Hearing no objection, the amendments are ADOPTED.

428 MOTION: CHAIR SPRINGER: moves SB 660, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

436 CHAIR SPRINGER: The motion CARRIES.

SEN. TRICIA SMITH will lead discussion on the floor.

SB 501: Establishes procedures for superintendent of state mental
hospital
to follow when court has ordered defendant committed to
superintendent's custody because court has reason to doubt
defendant's capacity to stand trial.

441 TAYLOR: Reviews bill and SB 501-2 amendments (EXHIBIT N).

461 CHAIR SPRINGER: Calls witnesses.

TAPE 89, SIDE A

023 BOB JOONDEPH, OREGON ADVOCACY CENTER: Reviews amendments. Sponsor
of
amendments.

036 DR. RICHARD HULTENG, MENTAL HEALTH DIVISION: Requires examiner to
conduct examination at the hospital to determine defendant's
competency
and whether treatment would return to capacity in reasonable period.

043 JOONDEPH: Continues review of amendments.

056 CHAIR SPRINGER: Calls Dale Penn and Ross Shepard.

058 DALE PENN: Have not seen amendments.

059 CHAIR SPRINGER: Questions whether bill is moving away from
original
focus?
>Polls members on amendments. Questions about page 4.
>Questions whether or not amendments are making it more difficult for
judges to make a determination? Requires judge to project
possibilities
in the future.
>Concerned that this extends farther than originally anticipated.

083 DR. HULTENG: Worked with similar system in Michigan.
>Only used in small number of cases.

097 JOONDEPH: The only substantive difference is the decision
making
process initially. All others are mostly technical in nature.

111 DR. HULTENG: Another small substantive change would give court
option
to seek commitment under MRDD.

115 JOONDEPH: Notes amendment to line 16 in SB 501-2 amendments,
clarifies
problem in the initial bill.

126 SEN. SHOEMAKER: Needs some education here.
>Clarifies provisions on page 4, line 10. What are ORS references -
ORS
426.070 and ORS 427.235-.290?

133 JOONDEPH: Standard commitment statutes in Oregon law.
>426 is mental health commitment. 427 is mental retardation.

137 SEN. SHOEMAKER: What is standard of proof that crime has been
committed
required for commitment?

JOONDEPH: There is no decision on crime, only on requirements for
mental disturbance.
>At this stage criminal charges would have been dismissed.

149 SEN. SHOEMAKER: Isn't there a problem of proof? What happens in
this
situation?

JOONDEPH: Present dangerousness is standard, on clear and convincing evidence requirement.

158 SEN. SHOEMAKER: Clear and convincing not just probable cause? And that is in all proceedings?

159 JOONDEPH: Yes. There is an automatic 6 month review under 426 and 1 year review under 427.

172 PENN: First opportunity to review SB 501-2 amendments.
>Consent decrees are not obtained very often. Reviews examples.
>Expresses concern about new standard for court.

235 ROSS SHEPARD, OCDLA: Concurs with Dale Penn.

240 CHAIR SPRINGER: If necessary, proponents and others can meet to revise amendments.
>Carries bill over for future consideration.

SB 586: Specifies related or nonrelated foster parent who has established emotional ties with child may file motion to intervene and petition court for custody, guardianship,, visitation or other generally recognized right of parent or person in loco parentis.

250 TAYLOR: Reviews bill and amendments from Bill Linden (EXHIBIT O).

273 BILL LINDEN, STATE COURT ADMINISTRATOR: Reviews amendments.
>Amendments would clarify that indigent defense fund could not be used.

292 CHAIR SPRINGER: Does not really change existing law or policy?

LINDEN: Believes this is existing law.

301 TIM TRAVIS, JUVENILE RIGHTS PROJECT: No objections to the amendments.

318 TAYLOR: No constitutional right to counsel?

TRAVIS: Interesting question, but not willing to address.

324 CHAIR SPRINGER: Reviews testimony in previous hearings.

334 MOTION: SEN. SMITH: moves to ADOPT Linden amendments to SB 586.
VOTE: Hearing no objection, the amendments are ADOPTED.

339 MOTION: SEN. SMITH: moves SB 586, AS AMENDED, be sent to the floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE.

346 CHAIR SPRINGER: The motion CARRIES.

SEN. SMITH will lead discussion on the floor.

SB 408: Provides that aggravating factors must be proven beyond reasonable doubt in order to be considered by court for purposes of imposing departure sentence under sentencing guideline rules.

361 CHAIR SPRINGER: Work off hand-engrossed bill.

369 FRED AVERA, ODAA: Reviews new amendments submitted to counsel.
>Propose to amend line 13, subsection 2, clarifying that if mitigating or aggravating information presented at trial no need to recall witnesses and testimony the court has already considered.
>Court could use information from trial for determination.

390 TAYLOR: Reviews amendment which states "evidence received during course of the trial on matters resulting in the conviction may be considered by the court in determining if fact was justified and departure sentence exists."

396 CHAIR SPRINGER: Keeping additional language on printed bill?

AVERA: Some objections to that, but amendments have solved most of the objections.

405 ROSS SHEPARD: No objections to amendments.

409 SEN. SHOEMAKER: Word "parties" doesn't fit sentence on line 11.
What is intended ?

SHEPARD: Meant to refer to either side so it should be "parties have".
Could apply to state or defense.

422 SEN. SHOEMAKER: Could it be moving party? Don't we need to designate party?

SHEPARD: Can sometimes be both.

430 AVERA: Perhaps "proponent" would be acceptable?

SEN. SHOEMAKER: That would work.

447 MOTION: CHAIR SPRINGER: moves to ADOPT SB 408 hand-engrossed amendments as further amended by Avera on line 13 and inserting "proponent" on line 11.

VOTE: Hearing on objection, the amendments are ADOPTED.

459 MOTION: CHAIR SPRINGER: moves SB 408, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

468 CHAIR SPRINGER: The motion CARRIES.

SEN. SHOEMAKER will lead discussion on the floor.

478 SEN. SHOEMAKER: Amendments are acceptable to David Factor?

DAVID FACTOR, CRIMINAL JUSTICE COUNCIL: Yes.

TAPE 88, SIDE B

SB 501: Establishes procedures for superintendent of state mental hospital to

follow when court has ordered defendant committed to superintendent's

custody because court has reason to doubt defendant's capacity to

stand trial.

035 CHAIR SPRINGER: Reconsiders bill.

042 BOB JOONDEPH: Requests SB 501-1 amendments.

044 TAYLOR: Provides SB 501-1 amendments and hand-engrossed version of the bill (EXHIBITS P & Q).

046 JOONDEPH: Reviews changes to SB 501-2 amendments.

>Eliminate lines 1 - 7 and lines 18 - 21.

>On SB 501-1 amendments; remove lines 1 & 2 and insert into SB 501-2

amendments.

>Describes impact of amendments.

074 MOTION: SEN. HAMBY: moves to ADOPT SB 501-2 amendments, dated 4/6/93,

as further amended.

078 SEN. SHOEMAKER: Clarifies amendment on page 3, line 12, superintendent

has to determine one way or another?

SEN. HAMBY: Clarifies with reference to line 18.

096 VOTE: Hearing on objection, the amendments are ADOPTED.

097 MOTION: SEN. HAMBY: moves SB 501, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

101 CHAIR SPRINGER: The motion CARRIES.

SEN. HAMBY will lead discussion on the floor.

103 SEN. SMITH: Requests recognition as an aye vote on SB 233 and SB

234 .

106 CHAIR SPRINGER: No objections.

108 CHAIR SPRINGER: Adjourns hearing at 2:35 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

- A - Testimony on SB 233, Sharon Groover, 1 page
- B - Testimony on SB 234, Roger Hennagin, 1 page
- C - Amendments to SB 353, 2 pages
- D - Amendments to SB 353, 1 page
- E - Amendments to SB 353, Sen. Hamby, 2 pages
- F - Amendments to SB 353, 2 pages
- G - Amendments to SB 408, Bill Taylor, 1 page
- H - Amendments to SB 408, 1 page
- I - Amendments to SB 545, 1 page
- J - Amendments to SB 545, David Nebel, 2 pages
- K - Amendments to SB 361, 1 page
- L - Amendments to SB 361, 1 page
- M - Amendments to SB 660, Bill Linden, 1 page
- N - Amendments to SB 501, 2 pages
- O - Amendments to SB 586, Bill Linden, 2 pages
- P - Amendments to SB 501, 4 pages
- Q - Amendments to SB 501, 1 page