

SENATE COMMITTEE ON
JUDICIARY

April 16, 1993 Hearing Room C
1:00 p.m. Tapes 111-112

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

MEMBER EXCUSED: Sen. Jeannette Hamby

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

ISSUES DISCUSSED: Public Hearing on SB 735, SB 728, SB 720, SB 1047.
 Work Session on SB 732.

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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 111, SIDE A

003 CHAIR SPRINGER: Opens hearing at 1:05 p.m.

PUBLIC HEARING

SB 735:

 Directs Oregon Community Children and Youth Services Commission to
 conduct study regarding implementing American Bar Association
resolution
 concerning appointment of guardians ad litem for children in legal
 system.

007 JIRARD WEIGLER, PORTLAND: Testifies in support of SB 735.

 - The system is overloaded because there are too many cases.
 - There is field work and court presentation in Child Advocacy
work.
 - The CSD is overloaded and getting the facts (field work) is
 difficult.
 - The Voluntary Lawyers Association and the CASA system are used.
 - The purpose of this bill is to have a youth commission perform a
 study over the next two years about ways to improve child

representation of abuse and neglect.

114 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews
written
testimony in support of SB 735. (EXHIBIT B)
- Quality of representation - Must upgrade training of juvenile
lawyers.

161 JOHN RAKOWITZ, CSD: Testifies in support of SB 735.
167 JOHN BALL, YOUTH COMMISSION: Testifies in support of SB 735.
- No State General Fund impact.

184 SEN. SHOEMAKER: Announces the letter from the State Court
Administrator
suggesting an amendment. (EXHIBIT A)
- We should discuss this and have testimony on it.

210 KINGSLEY KLINK, DEPUTY STATE COURT ADMINISTRATOR: Submits and
reviews
proposed amendments to SB 735.
- Concerned about the wording and whether it would imply a
conclusion
before a study.
- The resolution discusses having either an attorney or CASA for
every child .

271 SEN. RASMUSSEN: Would you have any objection to us adding some
language
to the amendment?

WEIGLER: The Federal Child Abuse Prevention and Treatment Act of 1972
requires language that says that every child in a neglect case shall
have a guardian or CASA.

TAPE 112, SIDE A

003 WIEGLER: Continues testimony. Reads resolution for the record.

018 SEN. RASMUSSEN: My question was, do you object to the language of
some
amendment dealing with that? I understand you don't think it needs it.
It is a minor point.

026 WEIGLER: If there's some adjustment of the language that would
leave
more flexibility for the study I have no problem with that.

029 SEN. SHOEMAKER: Would it make any sense to talk about implementing
and
then make reference to a law rather than an ABA Resolution? Could make
reference to the Oregon law that imposes this upon us? Then we're
studying the implementation of something we've already decided to do.

WEIGLER: Absolutely. That makes sense.

036 JOHN BALL, YOUTH COMMISSION: Testifies in support of SB 735 amendment.

- Mr. Rakowitz has started data collection on how children are really represented in Oregon.

052 SEN. SHOEMAKER: A reference to the Oregon statute could be inappropriate?

BALL: It wouldn't bother us at all.

WORK SESSION

SB 732: Establishes procedure for trial of violations.

059 TAYLOR: Gives overview of SB 735 -1 amendments. (EXHIBIT C)

092 FRED AVERA, ODA: Gives explanation of a certain amendment.

098 TAYLOR: Continues overview. Refers to Section 5 and violations.

104 ROSS SHEPARD, OCDLA: We have agreed upon some language that is fair.

Inserts language on Line 15, Section 5.

120 AVERA: Assumes the Legislature would make these changes a part of ORS

Chapter 161.

127 CHAIR SPRINGER: Should we think of an effective date other than 90 days

after Sine Die? Like January 1, 1994?

AVERA: It might be good to have certainty as to a date.

149 CHAIR SPRINGER: Let's go with January 1, 1994.

- When a person requests a trial in Multnomah County they're required to post a large amount of bail. Is that taking place around the state?

159 SHEPARD: I recently had to appear on a traffic ticket and didn't have to

post bail because I appeared.

57 CHAIR SPRINGER: I guess its not an issue, but the problem with Multnomah

County is that people were not showing. It penalizes those who want to have a trial

AVERA: There is a bill in the house for "entry of a default". They charge high bail so the people show up.

175 EDWARD JONES, OCDLA: Multnomah County is a jurisdiction where
many
misdemeanors are being treated as violations and this leads to the
question of "right to trial".

211 TAYLOR: I thought the case was decided on the Legislative History not
on
the Constitutional issue. I'm not sure that issue has been decided.

JONES: These are serious cases the committee should consider before
passing this bill.

244 AVERA: This bill is aimed at ORS 161.565. There are few cases that
are
designated violations in the statute. This bill is intended to cover
only those cases that are reduced from misdemeanors.

259 TAYLOR: Reads part of opinion from the Court of Appeals.

SHEPARD: This is an unsettled area of the law in Oregon.

ELIZABETH BALDWIN: I think you're buying into a lot of litigation and
problems.

315 SEN. SHOEMAKER: What difference does it make whether the same
facts
could, but for a ten, be a misdemeanor? I'm not quite seeing why there
is a real problem here.

BALDWIN: There are problems and I'll deal with the highlights.

- One is still arrested, second offense is still felony and social
disfavor on whole thing. It remains on record and one can still be
arrested and enhanced later.

341 SEN. SHOEMAKER: Later does trouble me.

CHAIR SPRINGER: As another sanction you lose your license or your
right
to apply for future licenses?

BALDWIN: The judge can do that.

363 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 732-1 AMENDMENTS
with
additional recommendations and specifically to add these changes to
ORS
161. First, the language from page 1, line 26; second, additional
language in section 5, page 2, line 15; and last, further amend the
effective date of Jan. 1, 1994.

VOTE: Hearing no objection the amendments are ADOPTED.

PUBLIC HEARING

SB 728: Creates crime of joyriding.

383 ROSS SHEPARD, OCDLA: Testifies in support of SB 728. (EXHIBIT D)

TAPE 111, SIDE B

003 SHEPARD: Continues testimony.

008 TIMOTHY TRAVIS: Submits and reviews written testimony in support of SB

728.

(EXHIBIT E)

- This bill will save money for the state since the D.A. doesn't have to be involved in this case unless it goes to trial.

026 CHAIR SPRINGER: The new name suggested is "vehicular trespass".

SB 1047:

Allows defendant who is incarcerated to appear by television or telephone for purpose of giving judgment.

039 ROSS SHEPARD, OCDLA: Testifies in support of SB 1047.

- Video transmission only applies to a sentence. Does not apply to change of plea.

053 PAUL SNIDER, AOC: Testifies in support of SB 1047.

- Provides for safeguards of consultation with counsel.

067 TAYLOR: On lines 26 and 27; If the probationer appears should that say

"parolee"?

SHEPARD: Yes.

SB 720:

Increases amount of substance necessary for certain crimes involving controlled substances.

087 EDWARD JONES, OCDLA: Testifies in support of SB 720.

- It attempts to amend the state sentencing guidelines grid.

- Level 8 offense - leads to presumptive prison term i.e.

possession

of five ounces or more of Marijuana.

- Amended to back this down to Level 7 - people with no prior record

would get presumptive probation sentences.

- It would leave more prison beds open for official offenders. Just

10% of jails are occupied by drug offenders

- Under the guidelines 15% are going to prison.

-The original bill removes judge's discretion. The DA now decides.

The Legislature must now closely define who should and shouldn't go to prison.

- The 2nd amendment will adjust amount of Marijuana that leads to a mandatory prison sentence.

- What is a commercial drug offense? These amendments characterize certain offenses as commercial drug offenses.

- We want to reserve prison space for drug wholesalers.

240 ELIZABETH BALDWIN, OCDLA: Submits and reviews written testimony in

support of SB 720. (EXHIBIT F)

- Senators are concerned that HB 2390 ('91), the current drug classification law, gives no opportunity to explain circumstances away.

previous record. - We're trying to make room to eliminate people with out a

from - We took the definition of Commercial Drug Offense, on page 2,

Federal Guidelines.

- The definitions on Delivery and Manufacture need to be changed.

The delivery definition would mean just what it says (no intent involved).

TAPE 112, SIDE B

003 BALDWIN: Continues testimony.

- The definition of Manufacture: we would limit it to real manufacturing. Eliminates packaging and re-packaging language.

023 JONES: This bill offers 150 beds next year and 330 by 1997.

029 BALDWIN: Gives Washington as an example of what Oregon will look like

if we continue with current guidelines. Last year in Washinton drug offenses went up 900%.

057 FRED AVERA, ODAA: Testifies in opposition to SB 720.

category - There should be two levels: "not so serious" in probation

and "serious" should be in security category.

- It would take five convictions before a Level 7 commercial dealer is convicted.

- Pure cocaine doesn't exist, therefore, detectable quantities are looked for.

AVERA: Continues testimony.

- The number of drug offenders in prison is less than 15%.

Pre-guideline offenders were less likely to go to jail, while guideline offenders have caused the illusion of a large percentage increase.

- The packaging language has been in the bill since 1977.

216 RUSS SPENCER, SHERIFFS' ASSOCIATION: Testifies in opposition to SB
720 .

CHAIR SPRINGER: Do you have any sense on how much we are spending in the Criminal Justice system (prosecute drug addiction/use) as opposed to Health Care (education and treatment)?

254 AVERA: I don't know what the numbers are. We need to spend more money on treatment and education. Part of the solution is enforcement and the other part education.

268 SPENCER: Everyone in law enforcement is a strong advocate of treatment and early intervention with children, "but unfortunately it's not a perfect world".

275 JONES: When we have a statute where its mandatory prison and 50% of the people convicted don't go to prison, what does that tell you? It says that the set point is too low and we have to rely on prosecutorial discretion to sort out those 50%.

BALDWIN: Dale Penn mentioned the "stair step approach" to law enforcement. This bill isn't designed to get the big dealers. It used to be under old statutes that it was a more serious offense to grow one Marijuana plant than to possess a half ton of cocaine. Under current guidelines the crimes would be the same. We have an irrational drug law. Rapists and man slaughterers should get a heavier sentence than someone possessing five ounces of Marijuana.

338 CHAIR SPRINGER adjourns meeting at 2:55 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

- A - Testimony on SB 735-Bill Linden-1 pg. *
 - B - Testimony on SB 735-Timothy Travis-3 pgs.
 - C - Proposed Amendments to SB 732-staff-1 pg.
 - D - Testimony on SB 728-Ross Shepard-1 pg.
 - E - Testimony on SB 728-Timothy Travis-2 pgs.
 - F - Testimony on SB 720-Elizabeth Baldwin-1 pg.
- * Submitted written testimony only.