

SENATE COMMITTEE ON
JUDICIARY

April 19, 1993 Hearing Room C
1:00 p.m. Tapes 113 - 114

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

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

ISSUES DISCUSSED: Public Hearing on SB 1043, SB 1044, SB 1094.
 Work Session on SB 735, SB 137, SB 138, SB 139,
SB
140 , SB 141.

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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 113, SIDE A

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

PUBLIC HEARING

SB 1043: Adopts amendments to specified rules of State Sentencing Guidelines Board.

011 DAVID FACTOR: Submits and reviews proposed amendments in support of SB 1043. (EXHIBIT A)
 - Section 1 approves each of the amendments
 - Sections 2-10 make amendments to certain current statutes that are implicated by these rule amendments.

SB 1044: Expands duties and membership of Oregon Criminal Justice Council.

042 DAVID FACTOR: Submits and reviews proposed amendments to SB 104 4.
 (EXHIBIT B)

088 SEN. SHOEMAKER: Section 2 decides what private non-profit entity is to be selected. I don't see anything in the bill that spells that out.

FACTOR: Those members were members by virtue of their office. There needs to be some direction as to who makes that appointment.

096 CHAIR SPRINGER: Its the request of the senate president that we refer this to the Trade and Economic committee since it deals with re-organization.

FACTOR: Continues overview of proposed amendments.

130 REG MADSEN, SUPERINTENDENT, STATE POLICE: Testifies in support of SB 1044.

154 LLOYD SMITH, LEDS: Testifies in support of SB 1044.
- We have a Central Data Base of arrest warrants
- State wide criminal records/rap sheets
 ^ Sex Offender Registrants
 ^ Domestic Abuse Restraining Orders
 ^ Drug Manufacturers
 ^ Psychiatric Security Review Board Pick-up orders
- Uniform Crime Statistics System

225 SEN. SHOEMAKER: Is it customary that it's lodged with the state police?

SMITH: It varies.

235 SEN. SHOEMAKER: Why was the decision made to put it with the state police? What are the reasons for doing that rather than the Department of Justice?

MADSEN: It was decided because we're involved in computerized criminal history type information that goes hand in hand with LEDS.

249 SEN. SHOEMAKER: I'm not interested in the mechanics just the policy reasons.

SMITH: The ID Services Bureau and crime lab are part of the Oregon State Patrol rather than the Oregon Department of Justice.

263 SEN. SHOEMAKER: Is there any information that's put into LEDS that is Semi-confidential to certain law enforcement agencies.

SMITH: No. There is information that isn't shareable with other users such as DMV.

277 CHAIR SPRINGER: I assume the Governor's Budget is structured
to
accomplish this change?

SMITH: Yes.

280 CHAIR SPRINGER: How many positions are we talking about?

SMITH: There are 17 positions in LEDS.

283 CHAIR SPRINGER: What are you doing about the restraining orders
and
domestic violence?

SMITH: A statute was passed that requires restraining orders to be
filed
with the Sheriff and that he enter it into LEDS.

294 SEN. WEBBER: Isn't there a requirement to start reporting
domestic
violence crimes?

SMITH: Yes. A bill was passed last session to require statistics on
Domestic Violence.

340 SEN. HAMBY: Tell me about the additional task of distributing
the
Anti-drug abuse dollars.

SMITH: That isn't part of the law enforcement data system.

354 TAYLOR: Could LEDS be adjusted so a re-arrest record could be
obtained?

SMITH: The system would have to be expanded.

378 TAYLOR: So you are unable to cross reference future arrest
and
convictions four or five years down the road?

SMITH: There would have to be some tie to the actual treatment or
completion of the program.

414 FACTOR: Senator Hamby, in response to your question, Section 1 of
the
bill creates a new duty in the Criminal Justice Council to allow them
to
accept, receive and disburse Federal drug abuse block grant dollars.

TAPE 114, SIDE A

003 FACTOR: Continues testimony.

SB 1094:

Direct Oregon Criminal Justice council to study and make
recommendations
concerning imposition and collection of fines, fees and other
financial
obligations imposed as part of criminal convictions.

021 DAVID FACTOR: Submits and reviews written testimony in support of
SB
1094.(EXHIBIT C)

055 PAUL LIPSCAMB, MARION COUNTY DISTRICT COURT: Testifies in support of
SB
1094

087 SEN. SHOEMAKER: Is there any chance that there could be problems
by
having fines for different offenses?

FACTOR: That's a possibility. Each offense is assessed a number of
units and ranked according to the seriousness of the crime, not the
economic status of the offender.

120 SEN. SHOEMAKER: I understand the intent, but was wondering if you'd
get
into problems down the line if you end up having higher financial
penalties imposed for less serious offenses.

LIPSCAMB: That possibility exists under current law. Structured fines
allow the sting affect.

140 FACTOR: Part of the pilot project is the improved collection method.

170 SEN. WEBBER: How far and wide are you doing the pilot projects?

FACTOR: We have four in four separate counties.

176 SEN. WEBBER: Are you going to expand the projects?

FACTOR: Yes, this bill allows the continuation and expansion of the
projects.

185 SEN. HAMBY: Have you had a chance to review SB 140, which reduces
Class

C to Class A misdemeanors? Do you feel structured fines would work
better as we decriminalize our system?

FACTOR: It's possible that structured fines could be used in certain
types of offenses as a sole sanction.

214 SEN. HAMBY: If this legislature adopts the notion of
decriminalizing

would a judge, in a non-participating county, be free to move in this
direction? I guess not.

LIPSCAMB: There are two aspects. First, the way fines are assessed. It
would be hard for a non-participating judge to move into structured

fines. Second, fines that are used as an alternative sanction.

Non-participating counties could do this.

247 SEN. HAMBY: I'm wondering if there is some way to allow judges
the
option of exceeding the current statutory limits?

251 CHAIR SPRINGER: It may be appropriate to look at that issue and
provide,
in this bill or SB 140, maximums that are available for misdemeanors.

FACTOR: Its very rare that people bump up against that fine cap.

276 CHAIR SPRINGER: I'll ask counsel to prepare an amendment that
would
double those to \$5,000 for an A, \$2,500 for a B and \$1,000 for a C as
part of both SB 1094 and SB 140.

284 SEN. SHOEMAKER: I'm wondering if we're flirting with the idea of
letting
people either serve or pay the fine? I hope we aren't approaching
that.

LIPSCAMB: It has the opposite affect. We are getting indigents out of
jail much more effectively.

300 SEN. SHOEMAKER: I'm more focused on the felony parts. Fines shouldn't
be
an alternative to sentencing.

FACTOR: There is still judicial discretion. We're not looking to
replacing jail time.

WORK SESSION

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.

312 : TAYLOR: Gives overview of bill and the amendments from the
Court
Administrator's office. (EXHIBIT D)

350 TIMOTHY TRAVIS, YOUTH COMMISSION: Testifies on SB 735 amendments.
- The ABA recommendation is much broader.
- Must leave ABA language in there
- Mustn't remove the words "legal representation".

TAPE 113, SIDE B

004 TAYLOR: Mr. Wiegler did state that he could live with a reference to

a
statute as opposed to ABA language.

009 SEN. SHOEMAKER: I think we should give it more time.

TRAVIS: It appeared the bill was saying that whatever this group comes
up with we are going to implement.

020 SEN. HAMBY: We should pull the important language and put it
directly
into statutes.

024 JOHN RAKOWITZ, YOUTH COMMISSION: Testifies on SB 735 amendments.

032 SEN. RASMUSSEN: Line 5 and 6 says to look at substance and then
deal
with implementation if appropriate.

043 CHAIR SPRINGER: We'll hold bill till further notice.

CORRECTIONS PACKAGE

052 CHAIR SPRINGER: There is a significant fiscal impact associated
with
this legislation. Do you have questions regarding the fiscal impact,
Senator Webber?

062 SEN. WEBBER: A concern whether these bills should be separate
or
packaged together?

SB 137:

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

069 TAYLOR: Gives overview of SB 137-2 amendments, which are basically
the
bill itself. (EXHIBIT E)

094 CHAIR SPRINGER: Is there a revised fiscal impact statement?

TAYLOR: I believe there would be.

111 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: Our budget office prepared
a
new fiscal impact. Staff reductions are 26.5 and no change in total
dollars of the Governor's Budget.

131 SEN. SHOEMAKER: I'm struggling over Section 2. What does it
really
mean?

138 VERN FONCE, BOARD OF PAROLE & POST-PRISON SUPERVISION: A maximum of
180

days will be served for a parole violation. After 180 days and custody time has been used up, they can violate with the knowledge that we can not bring them back.

164 SEN. SHOEMAKER: What happens if you have a person who serves 6 months and is released to unsupervised parole and gets in trouble? Do you have any further hold on this person?

FONCE: Yes. We can bring him back to supervision or custody.

181 SEN. SHOEMAKER: If the Parole Board orders unsupervised parole then he is technically under supervised parole? How do you get him back onto supervised parole?

FONCE: If there is some reason to believe he has violated the law we can bring him back with a hearing.

197 SEN. SHOEMAKER: Should we do something to clarify that in lines 18 and 19?

FONCE: I don't think that's necessary. Section 1 covers it.

SB 138:

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

234 TAYLOR: Gives overview of SB 138-2 amendments, which are the bill.
(EXHIBIT F)

CHAIR SPRINGER: Ms. Clawson, should we continue to rely on the 4\14\93 fiscal impact?

260 ELYSE CLAWSON: Testifies on SB 138-2 amendments.
- I'm not aware of a change in the fiscal impact as a result of the amendments.

270 CHAIR SPRINGER: Suggest that the committee carries the package over for a few days. Recommend that we send it to Ways & Means at the request of Senator Trow.

290 SEN. SHOEMAKER: Will we be receiving an engrossed version?

CHAIR SPRINGER: The SB 138-2 are a reprint of entire bill.

SEN. SHOEMAKER: But it doesn't tell us how it differs from original

bill.

298 CLAWSON: We'll try to do that for you. There have been so many changes that we've actually ended up with a new bill.

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

314 TAYLOR: Gives overview of SB 139-1 amendments. (EXHIBIT G)

CLAWSON: I must submit something to you for the record that makes it clear that this doesn't change the county's allocation. (EXHIBIT K)

SB 140: Modifies definitions of various crimes of theft.

349 TAYLOR: Gives overview of SB 140-1 (EXHIBIT J) and proposed SB 140 amendments from the District Attorneys Association (EXHIBIT I).

367 CHAIR SPRINGER: Mr. Cooper has recommended an additional amendment that would speak to the Driving While Suspended (DWS) issue.
- We must also address the question of the increase in the misdemeanor fines.

402 SEN. SHOEMAKER: DWS is a Class C felony regardless of reason for the suspension?

CHAIR SPRINGER: Its usually for a DUII.

417 SEN. SHOEMAKER: You can be suspended simply because you can't afford liability insurance?

FACTOR: If suspension is result of no insurance then it's a Class A misdemeanor.

TAPE 114, SIDE B

005 JUDGE ELLIS, MULTNOMAH COUNTY: DWS laws are intricate. People who are on probation and have never had a moving violation are on felony probation for DWS because they were convicted under the Habitual Offender Act.

MOTION: CHAIR SPRINGER: Moves to ADOPT additional amendments to SB 140 from the ODAA.

VOTE: Hearing no objection the amendments are ADOPTED.

SB 141:

Repeals provision giving judge discretion to award credit against
prison

sentence for time served in jail on probation revocations.

048 CHAIR SPRINGER: There are no amendments.

057 TAYLOR: The package will be on Wednesday evenings agenda.

065 CHAIR SPRINGER: We will send the package to Ways and Means
Wednesday
night with additional amendments to SB 140.

075 CHAIR SPRINGER adjourns meeting at 2:35 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Bill Taylor
Administrator

EXHIBIT LOG

- A - Testimony on SB 1043-David Factor-34 pgs.
- B - Testimony on SB 1044-David Factor-9 pgs.
- C - Testimony on SB 1094-David Factor-4 pgs.
- D - Amendments to SB 735-staff-1 pg.
- E - Proposed SB 137-2 amendments-staff-2 pgs.
- F - Proposed SB 138-2 amendments-staff-14 pgs.
- G - Proposed SB 139-1 amendments-staff-3 pgs.
- H - Testimony on SB 140-OCJC-2 pgs. *
- I - Proposed amendments to SB 140-ODAA-1 pg. *
- J - Proposed SB 140-1 amendments-staff-3 pgs.
- K - Testimony on SB 139-Elyse Clawson-3 pgs.
- L - Testimony on SB 137 to SB 140-staff-1 pg.
- M - Testimony on SB 735-staff- 1 pg.

*Submitted written testimony only.