

SENATE COMMITTEE ON  
JUDICIARY

April 26, 1993      Hearing Room C  
1:00 p.m.      Tapes 125 - 126

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

MEMBERS EXCUSED:    Sen. Gordon Smith

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

ISSUES DISCUSSED:    Public Hearing on SB 852, SB 966, SB 749, SB 855.  
                      Work Session on SB 728, SB 732, SB 463, SB 1046.

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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 125, SIDE A

003      CHAIR SHOEMAKER: Opens hearing at 1:08 p.m.

PUBLIC HEARING

SB 852:

Provides that medical situation of parent is criterion to be considered in determining whether amount of child support parent is ordered to pay is correct.

005      KIRSTEN TADOROVICH, SENATOR STAN BUNN: Testifies in support of SB 852 .

022      TED MASON, LINCOLN CITY: Testifies in support of SB 852.

SB 966:

Allows member of organized militia who is called to and enters active military service of United States to delegate powers as parent or guardian of minor child to another person for up to four years.

090 KIRSTEN TODOROVICH, SENATOR STAN BUNN: Testifies in support of SB  
966 .

093 LTE. MIKE CALDWELL, OREGON NATIONAL GUARD: Submits and reviews  
written  
testimony on SB 966. (EXHIBIT C)

116 JAN BUNN, DAYTON: Submits and reviews written testimony in support of  
SB  
966. (EXHIBIT B)

134 SEN. SHOEMAKER: Is there ever a problem when one parent is called  
and  
chooses to put a third person into this position even when there is  
still a parent at home?

CALDWELL: I haven't heard of a situation like that. The guardianship  
arrangement would apply as long as a parent is with the minor.

155 SEN. HAMBY: What would be done if there were a pending divorce  
or  
separation?

SEN. SHOEMAKER: If two parents are having difficulty and one goes off  
to  
war and picks a third person as the guardian while the other parent is  
still around?

152 CALDWELL: A Power of Attorney is assigned to the spouse and  
preparation  
is done before the soldier leaves. I don't remember anything like this  
happening.

SB 855: Creates priority for payment of delinquent child support out of  
estate  
of decedent.

195 JANIE BURCART, SENATOR RON CEASE: Testifies in support of SB 855.  
- Child support should be given a higher priority than other  
unsecured, unpaid bills.

238 SEN. SHOEMAKER: So, it wasn't your specific request that the priority  
be  
placed after medical and hospital expenses and before taxes?

BURCART: My request is that it be placed as high as we can get it.  
Listed first the is support of the current spouse and children.

256 SEN. SHOEMAKER: It sounds like delinquent child support should  
be  
included in the first category.

BURCART: I'd argue for that. It should be at the top of the Bill.

263 SEN. WEBBER: There can often be huge amounts of uncollected  
child support and some of these cases would wipe out all other claims.

273 SEN. HAMBY: What are the ORS 114.065 limitations?

TAYLOR: Reads from ORS 114.065.

288 DAVID ALLEN, PORTLAND: Testifies in support of SB 855.  
- The first priority under the statute goes to the present needs of  
family of the deceased.

304 SENATOR RON CEASE: Testifies in support of SB 855.  
- My interest was to put something in the law to give a family the  
chance to get something. The way the law is put together they're  
pretty much at the bottom.

311 ALLEN: The lower categories are receiving a windfall under  
Oregon Probate Law.

353 BURCART: Most women have no idea that their unpaid child support  
gives them no value in Oregon probate law.  
- This will cost the state nothing and some women can go off  
welfare.

371 KARL STECKER, ODAA: Testifies in support of SB 855.

SB 749: Defines "unreasonable noise" for purposes of crime of  
disorderly conduct.

395 CHAIR SPRINGER: Senator Adams, the sponsor, has withdrawn his  
request for a work session or all other consideration to SB 749.

SB 728: Creates crime of joyriding.

411 CHAIR SPRINGER: Gives overview of SB 728-1 amendments. (EXHIBIT D)  
- "Vehicular Trespass" is the more appropriate term.

TAPE 126, SIDE A

004 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 728-1 amendments with  
the further amendment that where it states "frolic" the word "trespass" be  
inserted.

VOTE: Hearing no objection the amendments are ADOPTED.

010 MOTION: CHAIR SPRINGER: Moves that SB 728 as amended be sent to  
the  
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Senator Smith  
is EXCUSED.

016 The motion is ADOPTED. SEN. WEBBER will CARRY.

SB 732: Establishes a procedure for trial of violations.

018 TAYLOR: Gives overview of SB 732-1 amendments. (EXHIBIT F, E)

050 SEN. RASMUSSEN: Do the amendments deal with the second go around  
of  
someone convicted of a violation in any way?

FRED AVERA, ODAA: This bill doesn't get into that. If the crime was  
committed with a culpable mental state the second offense becomes a  
felony. The bill tells us how we are to litigate that violation  
offense.

071 ROSS SHEPARD, OCDLA: Submits and reviews written testimony in support  
of  
SB 732. (EXHIBIT G)  
- The current Federal constitutional law says that an uncanceled  
conviction could not be used to enhance a second conviction.

075 SEN. SHOEMAKER: Should that be specific in the statute?

SHEPARD: I think that's the state of the constitutional law.

077 SEN. SHOEMAKER: I thought we were going to codify this within  
ORS  
Chapter 161. Has that been decided unnecessary?

SHEPARD: No, it should be part of the bill. We need that amendment.

084 CHAIR SPRINGER: We can do that conceptually and have LC add a  
new  
Section 1 and renumber the remaining sections.

086 MOTION: SEN. SHOEMAKER: Moves to ADOPT SB 732-2 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

090 MOTION: SEN. SHOEMAKER: Moves to amend the new section with  
the  
effective date of January 1, 1994.

VOTE: Hearing no objection the amendment is ADOPTED.

101 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 732-2 as further amended.

VOTE: Hearing no objections the amendments are ADOPTED.

103 MOTION: CHAIR SPRINGER: Moves that SB 732 as amended be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Senator Smith is EXCUSED.

109 The motion is ADOPTED. SEN. SHOEMAKER will CARRY.

SB 463:

Requires police officer to have probable cause to believe crime has been committed before officer may ask for consent to search.

SB 1046:

Exempts from civil forfeiture any property that is seized based on consensual search of motor vehicle unless multilingual notice of rights if provided and written consent is obtained.

TAYLOR: Suggests that committee consider SB 463 and SB 1046 together.

126 DEAN RENFROW, OREGON STATE POLICE DEPARTMENT: Submits and reviews

written testimony in opposition to SB 463. (EXHIBIT I)

- We want to develop a bilingual consent form.

196 SEN. HAMBY: Was your testimony spoken to the SB 463-1 amendments?

RENFROW: Yes.

207 CHAIR SPRINGER: Let's move to the issue of the two bills. I don't know

if we have any language agreed on yet.

226 JIM ARNESON, OCJC: Testifies on SB 463 and SB 1046.

- SB 463 would require reasonable suspicion before a search could occur.

- In sub section 4 reasonable suspicion couldn't be based upon gender.

- We narrowed written consent to apply only to requests to consent arising from vehicle stops.

- In SB 1046 in Section 2 we added the word "solely".

- The amendments to SB 463 are broader than we intended.

343 SEN. SHOEMAKER: Is it your intent regarding forfeiture, under SB 1046,

that those same limitations would apply therefore; protection would only

apply to a search following a traffic violation stop?

DAVE FIDANQUE, ACLU: Testimony regarding SB 463 and SB 1046.

- SB 463-1 deals solely with the issue of forfeitures.
- It would limit the situations in which the officer could go ahead and request consent.
- SB 1046 deals with post-seizure situations.

415 SEN. RASMUSSEN: If we eliminate from lines 8 and 9 the language from  
the  
-1 amendments, take out the word "suspicion"; what would be your  
response.

ARNESON: It deals with folks after the request to search has already  
occurred. Most will consent to search based on our statistics. If you  
take out "reasonable suspicion" we are back to where we started.

TAPE 125, SIDE B

003 ARNESON: Continues testimony.

014 SEN. RASMUSSEN: I'm concerned about telling the police that they  
can't  
ask to search. It seems that police officers are disproportionately  
searching Hispanics. I want to make it clear that people can say  
"no".

ARNESON: An officer will try to extend the stop by asking for consent.  
This is where the problem is.

045 DALE PENN: We can't agree to SB 463 under any conditions.  
- Oregon will be the only state that will have no capability for  
preventive law enforcement.  
- SB 1046 We would want it to say that there be a requirement, in  
forfeiture law, that a card be used.  
- We will agree to increase the cash seizure minimum to \$15,000 to  
protect people who don't use banks.  
- We feel SB 1046 can provide the protection of innocent people.

120 TAYLOR: Gives overview of proposed SB 463-1 amendments. (EXHIBIT H)

FRED AVERA, ODAA: Gives overview of proposed amendments to SB 463.  
- Numbers 2 and 3 delete the requirement to sign the card.  
- Number 4 stops the seizure of small amounts of cash. We don't  
mean  
to create a presumption that if you have more than \$10,000 you're a  
drug dealer.

ELIZABETH JARAMILLO, HISPANIC COMMISSION: I still have some concern  
about sections 2 and 3.

244 BILL LINDEN, ODAA: We may be able to establish a statewide tracking  
of  
consent searches and establish a percentage of signed and unsigned  
cards  
and find the reasons for un-signed cards.

SEN. RASMUSSEN: Then you'll teaming up with the Hispanic Commission to  
see to it that this goes to the House?

266 LINDEN: Yes. We support SB 1046, but not SB 463.

SEN. SHOEMAKER: Could the D.A.s live with a provision in the written  
consent requirement that accept as a court shall otherwise order a  
person who consents?

LINDEN: This is a real difficulty for us because the word "written"  
was  
a major problem. The concern was "what is consent?" in criminal law  
cases.

309 SEN. WEBBER: Does the bill mention anything about recouping money  
when  
there is a forfeiture and a bilingual notice is given out?

JARAMILLO: Not this time.

315 LINDEN: We have no problem with adding that.

325 CHAIR SPRINGER: We could conceptually accept the requirement  
of  
multilingual notice.

FIDANQUE: In the forfeiture statute there's a provision requiring  
notice  
to the person from whom the property is seized as to the procedures  
for  
filing a claim.

354 SEN. SHOEMAKER: Was there discussion about including in the notice  
the  
possible consequences of being searched?

AVERA: That's what the precise notification would be about.

366 SEN. SHOEMAKER: So, the conceptual amendment would include  
consequences  
of the search.

TAYLOR: The other part would include written instructions in English  
and  
Spanish?

385 JARAMILLO: It would be multilingual.

TAPE 125, SIDE B

003 LINDEN: The statute concerns the right to refuse. There will be major problems if we get into "the consequences" debate.

SEN. SHOEMAKER: I agree and it would be appropriate if we just add "common possible consequences". You don't have to have the notice spell out every possible consequence.

025 LINDEN: Something along the lines that a search could yield evidence for a criminal or civil case against you.

029 CHAIR SPRINGER: If we're talking about more specific language I get nervous if we don't have it in writing.

TAYLOR: Starting on line 10...reads from bill.

040 AVERA: We could live with it if it says "and is further advised that evidence found in the search could be seized and used against the person in criminal and civil prosecutions".

057 TAYLOR: How about adding at the end, "including the use of the property in criminal civil forfeiture proceedings".

068 SEN. HAMBY: If there is any way at all of keeping the reading level low we should do that.

075 CHAIR SPRINGER: We'll come back to this.

083 CHAIR SPRINGER adjourns at 2:40 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal  
Assistant

Bill Taylor  
Administrator

#### EXHIBIT LOG

- B - Testimony on SB 966-Jan Bunn-1 pg.
- C - Testimony on SB 966-Mike Caldwell-1 pg.
- D - Proposed SB 728-1 amendments-staff-1 pg.
- E - Proposed SB 732-2 amendments-staff-1 pg.
- F - Machine engrossed SB 732 amendments-staff-1 pg.



- G - Testimony on SB 732-Ross Shepard-1 pg.
- H - Proposed SB 463-1 amendments-staff-2 pgs.
- I - Testimony on SB 463-Dean Renfrow-5 pgs.