

SENATE COMMITTEE ON  
JUDICIARY

May 24, 1993           Hearing Room C  
1:00 p.m.   Tapes 169 - 170

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

VISITING MEMBERS:  Sen. Tricia Smith  
                    Rep. Kate Brown  
                    Rep. George Eighmy

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

ISSUES DISCUSSED:   Work Session on SB 904, SB 340, SB 372, SB 852, SB  
811 .  
      Public Hearing   &   Possible Work Session   on   HB 2143,  
HB  
214 4, HB   2281, HB 3577, SB 691.

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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 169, SIDE A

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

      SENATOR TRICIA SMITH, DISTRICT 17: Testifies in support of SB 904-4  
and  
      SB 904-5 amendments. (EXHIBIT C, D, I)  
      - The -4 belong to OCDLA and the -5 belong to Sen. T. Smith

073   CHAIR SPRINGER: Is it possible that this is subject to abuse  
by  
      prosecutors just looking for a another count to load up on a charging  
instrument?

076   ROSS SHEPARD, OCDLA: Testifies in support of SB 904-4 amendments.

079   JANET ARENZ, ACLU: Testifies in support of SB 904-5 amendments.  
      - There are eight other states that include gender in their

intimidation statutes.

104 MOTION: CHAIR SPRINGER: Moves to ADOPT sections 1-4 of SB  
904 -5  
amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

113 SEN. T. SMITH: Gives overview of Section 5.

119 MOTION: CHAIR SPRINGER: Moves to ADOPT Section 5 of SB 904-5  
amendments.

VOTE: Hearing no objection the amendment is adopted.

128 SEN. T. SMITH: Section 29 a is change in the "in camera" statute.

135 SHEPARD: My concern is there will be constitutional difficulties if  
the  
public is far from these proceedings

140 REP. KATE BROWN, DISTRICT 13: Testifies in support of SB  
904 -5  
amendments.

- If we delete "out of the presence of the public" there's no point  
in having a rape shield law.

- The sole purpose of the hearing is to determine whether or not  
the  
victim's past sexual history is admissible to determine the issue  
of  
consent.

ARENZ: We won't oppose the bill if it includes this amendment.

183 SEN. G. SMITH: Does Oregon have an equal rights amendment that  
would  
make these kinds of gender specific laws unconstitutional?

SEN. T. SMITH: These aren't gender specific laws. These are rape  
statutes.

190 SEN. G. SMITH: I want to make sure that we don't have a  
constitutional  
conflict.

SEN. T. SMITH: Rape can occur with either gender as the rapist.

203 SEN. SHOEMAKER: Are you sure that this is pre-trial?

SHEPARD: I think its at the discretion of the court, so you're  
correct.

REP. BROWN: It was my understanding that it was a preliminary hearing  
for the most part.

214 DALE PENN, POLK COUNTY D.A.: The Oregon Supreme Court has  
considered

this statute and the issuer requires a 15 day pre-trial notice. The specific issue decided was that the statute is constitutional. It is intended for pre-trial notice and determination.

SHEPARD: The court didn't consider this particular issue.

237 SEN. SHOEMAKER: The statute that's amended by section 29 is one that  
is applied pre-trial.

240 DAVE FIDANQUE, ACLU: Testifies in support of SB 904-4 amendments.

268 MOTION: CHAIR SPRINGER: Moves to ADOPT the sections 6-29 of SB  
904 -5 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

272 SEN. T. SMITH: Section 38 is deleted in the -5 amendments and we want  
to adopt OCDLA language.

310 FIDANQUE: ACLU is opposed to this provision because it would  
criminalize some acts of sexual conduct between consenting adults.

348 SEN. G. SMITH: When you talk about licensure that isn't related  
to Ministers, is it?

356 SEN. T. SMITH: We couldn't include the clergy because they  
aren't licensed by the state.

SEN. SHOEMAKER: That would include doctors and teachers? I'm okay with  
the SB 904-4 amendments.

385 MOTION: CHAIR SPRINGER: Moves to ADOPT Section 34 of SB  
904 -4 amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

TAPE 170, SIDE A

003 SEN. T. SMITH: ACLU opposes the language in section 40.

014 FIDANQUE: We are opposed to language on pg.45, line 8,9 in the  
-5 amendments. Its opening the door to preventive detention, which is  
prohibited by the Oregon Bill of Rights.

025 SEN. T. SMITH: Section 40 sets out to determine the conditions  
of release.

051 PENN: The reason we need this definition is that even though there

is  
the statutory criteria without this language you see that the only thing  
magistrate can take into account is conditions to insure that the  
defendant will appear for trial. This would bring into the release  
definition the concept of danger to the victim.

069 SHEPARD: These statutes will remain unchanged and the court,  
without  
this change, does have authority to limit the activities of a release  
defendant.

FIDANQUE: The problem is where this language is being put. The  
inclusion of the word "insure that the defendant doesn't engage in  
domestic violence" places a burden on the judge in determination.

084 SEN. SHOEMAKER: You can't keep someone locked up and call it a  
release.  
There is always the risk that he won't reappear. Why isn't that  
analysis  
incorrect?

FIDANQUE: I don't know.

112 REP. BROWN: The release language in the -4 amendments are more  
accurate.

T. SMITH: The conditions for release are more tightened in the -4  
amendments, therefore, we support the language in sections 36-37.

135 MOTION: CHAIR SPRINGER: Moves to ADOPT section 36-37 of SB  
904 -4  
amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

140 SEN. SHOEMAKER: I'm still concerned about the warrantless arrest.

SEN. T. SMITH: We passed that. There was no disagreement. If the No  
Contact provision is violated the police officer with probable cause  
can  
arrest without warrant.

155 REP. BROWN: This mirrors the Family Abuse Prevention Act.

SEN. T. SMITH: There is one more change to the No Contact provision.  
In  
-5 we have added a waiver provision. The victim can go to court and  
ask  
the magistrate for a waiver of the No Contact provision. That is in  
section 41.

175 SHEPARD: The victim probably won't be represented by an attorney

and

this could be a complicated proceeding.

PENN: This is envisioned under most county procedures on domestic violence restraining orders. Many judges will require victims who come in and ask for a waiver to do it under oath.

195 FIDANQUE: We support this provision in section 41 and ask that you  
add this language to section 42.

SEN. T. SMITH: We don't support language in section 42, which establishes the conditional release. We don't feel that a No Contact provision should be waived at the time of release.

MOTION: CHAIR SPRINGER: Moves to ADOPT section 41 of SB 904-5 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

211 SEN. T. SMITH: We would like section 42 without the ACLU language,  
no waiver.

is QUIGLEY: There's another difference in section 32 and 39 of -5, which  
a "shall" and a "may" difference. Is that intended?

221 SEN. T. SMITH: There is no contention. We'd like it to be "shall".

PENN: You want to take the victim out of the decision making process  
at this point.

255 SHEPARD: If the committee adopts that analysis then there should  
be waiver language under the conditional release also.

SEN. SHOEMAKER: The two sections seem inconsistent. There should be some reference.

263 PENN: I don't think there would be a problem if you specifically  
tie into the judicial waiver.

SEN. SHOEMAKER: In addition to the word "shall", in section 42, lines  
24-26 of the -5 amendments there will be a cross reference to section  
41 in the -4 amendments.

PENN: And add "except as provided in section 41", which does talk  
about the judicial proceeding.

288 MOTION: CHAIR SPRINGER: Moves to ADOPT the language of "shall"  
in  
section 42 of the SB 904-5 amendments including Sen. Shoemaker's and  
Dale Penn's additional conceptual amendments to that section.

VOTE: Hearing no objections the amendments are ADOPTED.

300 REP. GEORGE EIGHMEY, DISTRICT 14: Submits and reviews testimony  
in  
support of SB 904 amendments. (EXHIBIT E)

SEN. T. SMITH: Sections 43-46 are the changes in the statutes that  
increase the crime category relating to domestic violence. We deleted  
language that dealt with DUUI.

407 SHEPARD: The committee should stay away from the pattern of  
practice  
language.

CHAIR SPRINGER: Are we in every case going to be able to allege a fist  
fight as an enhanced crime and then prove prior bad acts in front of a  
jury? What's the prejudicial affect of that?

SHEPARD: Under proposed language an offense done 10 years ago might be  
used to enhance current crime, There clearly may be due process statue  
of limitations problems.

TAPE 169, SIDE B

005 PENN: The philosophy is the same as the murder by abuse  
statute.  
Victims of domestic violence can't and won't report prior assaults,  
therefore there are repeat offenses. There should be an aggravated  
crime involved when you have a prior incidence.

030 CHAIR SPRINGER: My sense is that there can be prior assault that  
is  
apart from the domestic violence context.

SEN. T. SMITH: Another situation which frequently occurs is abusive  
people go through different partners, but the pattern continues.

048 CHAIR SPRINGER: Its not just for the court to consider, but the  
evidence  
presented in the trial that is very prejudicial, even though there's  
been no prior conviction.

SEN. T. SMITH: Our intent is only to target domestic violence.

SEN. SHOEMAKER: Is physical contact defined in this bill?

057 SHEPARD: Its defined by case law, not in the statutes.

SEN. SHOEMAKER: It seems awfully broad and menacing. The Chair's concerns that it could sweep more broadly than we intend are justified.

069 PENN: This language was taken from the Murder by Abuse statutes. I suggest we restrict it to the same victim and narrow the scope. A first offense would be a misdemeanor, but a second offense could be aggravated.

089 CHAIR SPRINGER: I guess the question is are we talking about bad acts or conviction?

SHEPARD: I think it should be a conviction.

094 PENN: I think its better to use pattern of practice because domestic violence includes huge numbers of prior assaults never reported or prosecuted and arrests that can't be prosecuted.

CHAIR SPRINGER: My concern is it will take just one trial judge to say the pattern of practice is too vague, therefore you end up losing the statute for the next two years.

118 PENN: That is the reason why the Murder by Abuse statute has a specific definition.

126 SEN. WEBBER: The language is constitutional? I would like to have it if we can find a way to put it in there.

SEN. T. SMITH: If you adopt the -5 amendments do you want to delete the phrase "or another person"?

135 SEN. SHOEMAKER: We should use the word "define" instead of "describe".

140 MOTION: CHAIR SPRINGER: Moves to ADOPT the substitution of "define" for "describe" in section 44, line 21 and on line 24 delete "another person". Plus, the same change on pg. 49, lines 12 & 13, lines 22 & 23 and pg. 48, lines 5 & 6 of SB 904-5 amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

158 SEN. T. SMITH: There is one additional change. The last section deals with allowing evidence of abuse as a defense. The -5 amendments delete that language. The -4 amendments don't.

169 SHEPARD: Seven other states have codified the abused spouse syndrome. The -4 amendments are the best state law.

SEN. SHOEMAKER: Is there a difference between the -4 amendments section 42 and the bill section 52.

SHEPARD: Yes.

178 PENN: The difficulty is that once this is raised it must be disproved beyond a reasonable doubt. It isn't the intent for this to become a new defense to every murder case.

SEN. T. SMITH: The proponents feel that Oregon should recognize this as an important aspect of self defense claims.

218 CHAIR SPRINGER: Do you prefer the language in the original bill or the -4 amendments?

SEN. T. SMITH: I didn't look at the -4 language.

REP. BROWN: The -4 amendment language is alright.

224 SEN. SHOEMAKER: Would it be possible to limit it to a domestic violence case?

REP. BROWN: That would be fine as long as domestic violence included abuse against children.

243 PENN: Another reason for opposition is we're are unaware of a trial where this evidence has been excluded.

REP. BROWN: There are several woman in jail who plea bargain in self defense cases.

294 PENN: I don't believe this is a gender issue, this is a fact issue.

331 MOTION: SEN. SHOEMAKER: Moves to ADOPT the word "abuse" for "domestic violence" in sect. 42, pg. 47, lines 4, 30 of SB 904-4 amendments. Plus, delete subs 3-5, leaving sub 6.

VOTE: Hearing no objection the amendments are ADOPTED.

351 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 904-5 amendments as



further

amended, including some incorporation of the language from SB 904-4 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

358 FIDANQUE: I have the answer to the question on release decision issue.

The provisions that are amended in sections 39-40 are the general definition provisions of the release statute. The amendments we object to would change what the judge takes into account in all release decisions.

408 SEN. SHOEMAKER: I would be concerned if this would have the affect of not releasing.

SEN. T. SMITH: We don't believe there's anything that would prevent release.

TAPE 170, SIDE B

013 QUIGLEY: There is one more area of discussion in section 45-46 of the -5 amendments.

SHEPARD: Its the creation of new crimes.

SEN. T. SMITH: In the case of a Class B where a deadly weapon is used, if a pattern of practice of abuse exists assault is a serious crime.

035 MOTION: CHAIR SPRINGER: Moves to ADOPT section 45-46 of SB 904 -5 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

045 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 904-1 and SB 904-2 amendments.

VOTE: Hearing no objections the amendments are ADOPTED

050 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 905-5 amendments as further amended.

VOTE: Hearing no objections the amendments are ADOPTED.

054 CHAIR SPRINGER: This may have a Fiscal Impact.

058 MOTION: CHAIR SPRINGER: Moves that SB 904 as amended be sent to the Floor with a DO PASS recommendation.

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

PUBLIC HEARING & POSSIBLE WORK SESSION

SB 691: Creates pilot program allowing immobilization of motor vehicle when driver's privileges

have been suspended for refusing to take or failing breath test.

077 SEIJI SHIRATORI, LEGISLATIVE ASSISTANT TO SEN. HAMBY: Submits and

reviews written testimony in support of SB 691. (EXHIBIT G)

- We would like adoption of the -A6 amendments. (EXHIBIT F)

CHAIR SPRINGER: Are you going to designate one county for the pilot project?

SHIRATORI: There are going to be a number of jurisdictions in counties and municipalities.

CHAIR SPRINGER: What if there is joint ownership of the vehicle?

104 SHIRATORI: There are exceptions made for joint ownership.

CHAIR SPRINGER: Would this only apply to non-commercial vehicles?

SHIRATORI: Yes.

113 ED MARGES, TRAFFIC SAFETY DIVISION: Testifies in support of SB 691.

SEN. SHOEMAKER: What does SFST mean?

MARGES: A Standard Field Sobriety Test.

127 SHIRATORI: Joint ownership of a vehicle is dealt with in section 3, sub 3.

SEN. SHOEMAKER: Give me an overview of the Flow Chart, please.

134 MARGES: Up to day 30 its a standard DUII process. After that the agency informs the person that the club is coming. They can then accept or reject the club.

CHAIR SPRINGER: Is this only the vehicle that was used at the time of the offense?

148 MARGES: The bill provides for the fact that there's a freeze put on the title at the time.

-5 SHIRATORI: There is a provision to prohibit transfer of title in the amendments.

158 TAYLOR: The -5 amendments weren't going to be considered because of

the  
concerns of bringing in lenders on the issue.

CHAIR SPRINGER: How would the club be installed? Who puts it on?

170 MARGES: The arresting agency goes to the place where the car is  
parked.

CHAIR SPRINGER: Will this get polished in the Transportation  
Committee.

176 SEN. WEBBER: We sent it here to get polished.

TAYLOR: Would lease vehicles be included?

183 SHIRATORI: That wasn't discussed.

CHAIR SPRINGER: It probably could. Sen. Hamby you can suggest  
conceptual amendment to deal with leased vehicles.

192 SEN. HAMBY: Could give 90 extra days on the lease.

215 MOTION: SEN. HAMBY: Moves to ADOPT SB 691-6 amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

223 MOTION: SEN. HAMBY: Moves that SB 691A as amended be sent to the  
Floor  
with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. WEBBER  
and  
SEN. RASMUSSEN are EXCUSED.

The motion is ADOPTED. SEN. HAMBY will CARRY.

#### WORK SESSION

SB 852: Provides that medical will of parent is criterion to be considered  
in  
determining whether  
amount of child support parent is ordered to pay is correct.

232 TAYLOR: Gives overview of bill. No opposition and no amendments.

236 MOTION: CHAIR SPRINGER: Moves that SB 852 be sent to the Floor with a  
DO  
PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN  
is EXCUSED.

The motion is ADOPTED. Sen. Bunn will CARRY.

258 SEN. WEBBER: I'd like to be recorded as an AYE vote on SB 691.

263 CHAIR SPRINGER adjourns hearing at 2:55 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal  
Assistant

Karen Quigley  
Bill Taylor  
Administrator

EXHIBIT LOG

- A - Testimony on SB 904-Sen. T. Smith-8 pgs.
- B - Testimony on SB 904-Sen. T. Smith-5 pgs.
- C - Testimony on SB 904-Sen. T. Smith-4 pgs.
- D - Proposed SB 905-5 amendments-Sen. T. Smith-51 pgs.
- E - Testimony on SB 904-Rep. G. Eighmey-5 pgs.
- F - Machine-engrossed and proposed SB 691-6 amendments-Sen. Hamby-5 pgs.
- G - Testimony on SB 691-Seiji Shiratori-1 pg.
- H - Machine engrossed SB 811 amendments-ACLU-5 pgs. \*
- I - Proposed SB 904-4 amendments-OCDLA-49 pgs.
- J - Testimony on SB 904-Sen. T. Smith-7 pgs.

\* Submitted written testimony only.