

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.

Measures Heard HB 2199 HB 2203

JOINT SESSION HOUSE/SENATE JUDICIARY COMMITTEES

January 18, 1991Hearing Room 357 1:00 p.m.House Judiciary Tapes 4 - 7

MEMBERS PRESENT:

SENATE JUDICIARY Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice Chair Sen. James Bunn Sen. Jeanette Hamby Sen. Bob Shoemaker Sen. Richard Springer

MEMBER EXCUSED: Rep. Ray Baum

HOUSE JUDICIARY Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

HOUSE MEMBER EXCUSED:

Rep. Ray Baum

STAFF PRESENT: Ingrid Swenson, Senate Judiciary Committee Counsel Bill Taylor, Senate Judiciary Committee Counsel Greg Chaimov, House Judiciary Committee Counsel Holly Robinson, House Judiciary Committee Counsel Mark Thorburn, Senate Judiciary Committee Assistant Jeffrey K. Steve, Committee Assistant

WITNESSES: Bill Linden, State Court Administrator Judge Paul Lipscomb, District Court Judge, Marion County Judge Michael McElligott, Circuit Court Judge, Washington County Keith Tichner, Oregon State Bar, Board of Governors Bob Boiven, Oregon State Bar, Board of Governors Mary Hoyt, Chair, Task Force On Sex Offenses Against Children Representative Peter Courtney Don Welch, Director, Clackamas County Juvenile Court Orin Bolstad, Ph.D., Executive Director, Morrison Center Vern Faatz, Chair, Board of Parole Silvan Simmons, Member, Task Force On Sex Offenses Against Children

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.

TAPE 4, SIDE A

148 CHAIR MILLER: Calls meeting to order. The first presentation is a

report on the impact of measure 5 on the courts. A second presentation is the report of the governor's Task Force on Sex Offenders Against Children.

168 BILL LINDEN: STATE COURT ADMINISTRATOR/ EXHIBIT A.

-Details Exhibit A. (OJD -Measure 5 Implications)

-Almost all of our operating funds come from the state's general fund.

210 CHAIR MILLER: Your budget request for this year is the \$232 million (See p. 1, Exhibit A)

212 LINDEN: That is the request that is reflected in the governor's budget.

214 CHAIR MILLER: What was the amount allocated for the last biennium?

215 LINDEN: Our base budget for this biennium ending June 30, 1991, is \$203 million. The difference is our share of the roll-up costs that almost every state agency is seeing as their base as recomputed for the 1991-1993 biennium. Three new judges will come on beginning June 30, 1991. In the 1989-1991 biennium they cost about \$1.98(?) and in the next biennium the cost is greater, approximately \$1.3 million. Complan changes and comparable worth adjustments, and S & S inflation all add up to our new base figure of \$232 million.

232 REP. JOHNSON: Is the operating budget of the OJD the "total budget" minus the "indigent defense" budget? [Referring to Exhibit A]

239 LINDEN: No. The page 1 figures include indigent defense. The page 2 figures and page 3 figures separate our operating budget from our indigent defense budget. Our operating budget is about \$160 million and our indigent defense budget is about \$73 million.

262 REP. CLARK: What would the various adjustments in changes from the indigent defense task force do to the indigent defense budget?

267 LINDEN: We need to wait until we hear from the Spangenburg group.

-With respect to the indigent defense program, the new resources that have come into the judicial branch, by and large, have gone into the indigent defense program and the program has needed these funds because of needed expansion. In January of 1987, the indigent defense program was \$12 million in the hole.

336 REP. PARKS: Have you given any thought about transferring the indigent defense program to another agency?

345 LINDEN: If you move that program under the Executive branch, or create an independent board to administer that system, the staff in my office that are currently doing that job would go with the program. You don't need to create a new bureaucracy. You move the resources that already exist to where the program is located.

354 REP. MANNIX: Have you given consideration to any recommendations for having a statewide public defenders' system?

356 LINDEN: Within our version of the independent indigent defense system bill there is language that would allow either the agency, or the

commission established under that bill to create a state public defenders system.

376 REP. MASON: On what authority are you reducing your budget? The governor really doesn't have any budgetary authority over you.

385 LINDEN: That is correct. We put these figures together at the request of the governor's transition team.

394 REP. MASON: It is important to note that the relationship between the governor and your garden variety agencies is one thing, the relationship between the governor, the executive department, and the independent elected constitutional officers is totally different. The officers, if they wanted to, could submit any budget they wanted.

405 LINDEN: The motivating factor behind our decision to voluntarily cut our budget is that we are entering into a whole new world as far as we are concerned in terms of resources available to run government.

TAPE 5, SIDE A

004 LINDEN: The tentative budget reduction items we have given to the ways and means committee are outlined in some detail in the material I gave you (Exhibit A).

084 REP. BAUMAN: According to your budget plan, you suggest reducing the Indigency Verification Program by 50%. I thought that the Program was instituted to reduce court costs. Why now should we reduce a program to save money if it is indeed saving money? Further, such a decision could create costs in another area and not save any money.

105 LINDEN: The idea behind the verification program was to save money wherever it was put in operation. It is not a traditional function of the judicial branch and if we have to make a choice between keeping our courtrooms open, or running a verification program, that is not a difficult choice even though it may create costs in other areas such as, the Indigent Defense Program.

117 REP. BAUMAN: The cost of the indigency verification program is on the judicial side while the savings is on the indigency side.

120 LINDEN: This is another good reason why the two budgets need to be as legislatively separated as possible.

122 REP. BAUMAN: However, for us to cost the indigency side \$900,000 so we can save the judicial side \$900,000 is real smoke and mirror budget processing and I don't think we want to proceed that way.

127 LINDEN: We are not costing the indigent defense side \$900,000 by cutting that program in half. We would be targeting those counties where the program either has not been paying for itself in its first year of operation, or those where the cost has been a break-even proposition.

134 REP. BAUMAN: When the issue comes up you will be providing the county-by-county figures?

135 LINDEN: Yes.

138 SEN. BUNN: I have a similar concern. If our reaction to ballot measure 5 is to pass the buck for example, state shift to county, county shift to city, city shift to state, are we doing anything to accomplish the goal of cutting the cost of government?

147 LINDEN: The item concerning the Indigency Defense Verification Program is the only cost shift you'll find in our proposal and there is a specific reason for that. The DAs totally control how expensive our grand jury system is. The court role is simply to select the grand jurors. Our theory is, let the responsibility for paying follow the entity that is creating the actual expense.

156 SEN. BUNN: Don't they also create the expense by deciding how many cases they are going to prosecute. It seems that we have the same situation throughout the system.

157 LINDEN: This is why I am glad the prosecution funding responsibility is with the county.

-The Department thought that that grand jury issue needed to be discussed because we have literally no control over it at all.

167 SEN. BUNN: I think it is important to take into account that as the counties are already facing cutbacks any shift to them is going to affect them and we need to deal with it.

172 REP. MASON: Four ways to save money:

-First, revision of the Uniform Bail Schedule for traffic fines. Under who's jurisdiction is the Uniform Bail Schedule?

185 LINDEN: I believe the Supreme Court.

186 REP. MASON: I suggest that you look closer at the bail fund since the amounts on the Uniform Bail Schedule translate out to real dollars to both the arresting jurisdiction and the prosecuting jurisdiction. I think that this is a viable revenue source.

-Second, elimination of the ability of the district court to reduce fines on mail pleas. Right now the courts can respond to these letters and reduce fines. If you restrict this ability you can raise more funds.

-Third, a lot of cases are being unnecessarily charged as aggravated murder. Every time the court makes such a charge it evokes the "cadillac defense" which is a very expensive defense.

-Fourth, expanding the idea of accelerated pleas.

216 JUDGE PAUL LIPSCOMB, DISTRICT JUDGE FOR MARION COUNTY: Within the last 18 months the Supreme Court revised the bail schedule and there was a substantial increase in revenue, especially in the speeding ticket area. Most of the work in this area has already been done.

-The violations bureau is a good idea.

237 REP. MASON: Are judges still reducing people's fines on the mail pleas?

238 LIPSCOMB: Not as dramatically as in the past.

-Accelerated pleas are happening in most counties because it is a position the courts have been forced into due to lack of judicial resources.

260 JUDGE MICHAEL McELLIGOTT, CIRCUIT JUDGE FOR WASHINGTON COUNTY: On

the letter reduction issue (mail pleas), due to budget cuts we lost people to staff the Violations Bureau and started having the judges handle this. Some judges don't reduce bails at all, while others reduce some and raise others. I don't believe that your proposal will lead to significant reductions.

-With respect to aggravated murder, it is difficult to decide in the beginning whether a given case will end up as aggravated murder, yet in many cases it is important to label it as such in order to carry out the proper investigation. There are, however, some cases that have been erroneously labeled "aggravated."

307 REP. PARKS: What about replacing live court reporters with a recording system? How much would that save? Secondly, I think there is a consensus about allowing the local judges to make their own decisions with respect to what persons would be laid off due to this reporting system. Also, what is your opinion about establishing a system of earlier retirement.

333 LINDEN: We do not have a plan to treat stenographic court reporters differently under the current budget cuts. We think that judges should have the right to choose whether to use court reporters. I could get some impact figures for you if the legislature decided to layoff these people.

354 McELLIGOTT: I do not have a stenographic reporter. I have an inability to do significant trials. Recording systems do not work satisfactorily for cases that have to be reviewed. In significant trials, more than one a day, you really need both.

TAPE 4, SIDE B

004 LINDEN: There is danger with basing the layoffs on performance rather than seniority due to the possible litigation.

013 LIPSCOMB: Right now we are short-staffed enough that we do not make any collection efforts for any fines, restitution payments, etc. These are general fund dollars and they would have a significant impact if we had the resources to go after them.

044 REP. CLARK: Judge, do you not have the authority to contract that out for collection?

045 LIPSCOMB: I don't believe that we do.

046 LINDEN: There is a bill that would give clear authority to move accounts over to DOR and I believe out into the private sector.

048 LIPSCOMB: If there is any further cutbacks in Marion County we obviously have to protect our core activities which are processing cases and deciding cases. We have discouraged small claims at the counter and redirected them to Justice Court because they can get quicker service there. This has an impact on the general fund, because the County is glad to get the small claimant filings at the district court level because they are money makers for the county.

061 SEN. COHEN: We have heard from Mr. Linden that by shifting that task to the justice court you are cutting back on general fund dollars which comes back to feed your salaries.

070 LIPSCOMB: I agree with you, but we are still under a constitutional obligation to protect our core activities.

075 LINDEN: I understand the reasons behind what Marion County is doing, but I thoroughly disagree with it.

085 McELLIGOTT: My office is under great stress already. I handled over 188 separate cases involving 255 separate people over a two day period. This is an enormous pace.

138 McELLIGOTT: No matter where you make cuts you are going to cost someone their job. When you talk about cuts in my court, you're talking about human beings.

-I have \$35,000 for capital which is nothing. I have \$350,000 for services and supplies over the biennium. My phone bill, my postage, my data processing and my tapes for the recorders come to \$340,000 and I haven't bought any pens yet. We do not have middle management.

178 REP. JOHNSON: The biggest reduction proposed here is \$15 million for reducing personnel. You testified that was 279 positions at \$26,000, or \$27,000 each. Is that right?

185 LINDEN: Their salary is \$1370 a month.

197 KEITH TICHNER AND BOB BOIVEN, OREGON STATE BAR BOARD OF GOVERNORS

206 TICHNER: I am most concerned that the legislature not lose sight of the task of insuring the public's right to the judicial system.

-Attorney fees: The Board would not like to reduce fees for indigent defense. The Board will be introducing a bill to decriminalize some things as a means of reducing costs.

-There is one proposal that the courts reduce jury trials from 12 to 6 in civil cases. I am aware of some jurisdictions around the country where one jury system is used. I believe that the Bar would not be in favor of such a decision.

-Why does the state not have to pay filing fees when they decide to prosecute?

286 REP. MANNIX: Does the bar have any proposals coming up to reduce the costs of the judicial system, make it more efficient and come up with new revenue sources?

292 TICHNER: I can't tell you that we do. I do know that the public affairs committee of the board of governors is looking at ways that we might bring some proposals to you.

297 REP. MANNIX: I would encourage the bar to come up with proposals.

304 BOIVEN: With respect to suspension of civil cases that Mr. Linden mentioned earlier it impacts a far wider audience than just the attorneys.

INFORMATIONAL HEARING: GOVERNOR'S TASK FORCE ON SEX OFFENSES AGAINST CHILDREN

362 MARY HOYT, CHAIR OF THE TASK FORCE ON SEX OFFENSES AGAINST CHILDREN: EXHIBIT B (SEX OFFENSES AGAINST CHILDREN, JULY 1990): Details report submitted to subcommittee. See Exhibit B.

-This report came about at the request of governor Goldschmidt.

TAPE 5, SIDE B

062 REP. COURTNEY: Briefly discusses his experience serving on the task force.

113 MARY HOYT: Details report. EXHIBIT B.

121 DON WELCH, DIRECTOR CLACKAMAS COUNTY JUVENILE COURT: The Task Force plans to introduce some legislation to:

-Secure a speedy trial for the child abuse victims. The majority of victims are young and an extended court process is very hard on children.

-Regarding the statute of limitations issue, the Task Force proposes that so long as a person was a victim before they were 18 the statute of limitations extends to age 23.

154 REP. MANNIX: There is going to be an amendment to that law which will extend the age to 25 and will provide that for civil remedies there be extended a certain amount of time from the date of discovery.

160 WELCH: There are a number of other issues.

-One, there is a problem with the family abuse prevention statute with respect to this area. The statute does not allow mothers, who are themselves minors, to seek remedy. The statute does not extend to children. Clackamas County has sought to remedy this situation by allowing these individuals to come before the courts.

-Two, the expunction of juvenile records does not exist. An individual who is the subject of a juvenile court record which includes sex offense is by reason of that record also the owner of a record which is not expungeable. Instead of having a statute that modifies expunction, what the Task Force seeks is to have informal probation extended to 5 years.

-Three, there exists a statute that states that where a person is under 10 years of age and is unavailable to testify then prepared testimony can be used so long as there is corroboration. This is restricted specifically to criminal and juvenile court proceedings. In the Task Force's opinion it should extend to proceedings involving domestic relations as well.

240 ORIN BOLSTAD, Ph.D., EXECUTIVE DIRECTOR, MORRISON CENTER: I have been involved in treating victims of sex offenders for the past 16 years and developing programs for treating sex offenders for the last seven years. In those seven years, my agency has treated over 250 sex offenders and in the past 15 years, 5,000 victims.

-What we have learned in the past 15 years includes:

- We know more about victims response to therapy and very little on perpetrators of those crimes.

-Girl victims of sex abuse are treated very successfully in outpatient treatment. Boy victims of sex abuse crimes are far less successfully treated.

-There is little success in outpatient treatment with children who victims of multiple abuse.

-Out of the 250 sex offenders that we have treated to date we know of only five who have repeated a sexually offending crimes. That does not mean that some have not gone on to commit other non-sexual crimes.

-A few key findings are:

-Unless you can hold a juvenile offender accountable for their crime you will not get very far in treatment. Firm legislative empowerment to hold youngsters fully accountable for their crime is essential. In our practice, juvenile offenders who were not adjudicated and not convicted were virtually untreatable.

-The younger we can deal with a sex offender, the better we can deal with the issue.

-There needs to be more funding for the treatment of juvenile offenders under the age of 12. There is virtually no funding for treatment of this age group. Right now these individuals are immune from prosecution, yet they may have committed a number of sexual crimes already.

395 BOLSTAD: In a seven year followup, the results of treating those youngsters intensively for one year is remarkably successful. When you intervene early your chance of success is very good. I don't believe that the amount of success that you are going to have in treating an adult sex offender is very great.

TAPE 6, SIDE A

006 SEN. COHEN: Then why do you state that our court system is unprepared to deal with the situation when really we need place attention on the victims early on and put our first dollars there and then see how to bring in the court?

010 BOLSTAD: I agree that our first dollars should be for treatment, but my frustration is that we cannot get these children under the age of twelve into any kind of treatment unless they are adjudicated. They cannot be adjudicated because they are too young for any sex abuse laws to apply.

014 REP. CLARK: Is it correct to say that as a person gets older it is a kind of addiction?

015 BOLSTAD: In many respects it takes on common properties of addiction.

019 REP. CLARK: What is the correlation between possession and use of child pornography and juvenile sex offenders?

023 BOLSTAD: My understanding from the current research being done in this area is that there are many people who read pornography who do not go on to be sex offenders and there are certainly many sex offenders who do not have a history of being engaged in pornography. We cannot make any ipso facto deductions concerning this phenomena. In my experience, I have found that many of these sex offenders have a very high degree of investment of their time in pornography.

037 REP. MANNIX: If I understand you, instead of expending great resources on treatment programs for adult sex offenders we ought to be using those limited resources to deal with the child victims who are about to become the child perpetrators. Also, instead of worrying about adjudication of the offenders we should concentrate more on treatment of victims, possibly through the Children Services Division. This might

include giving the court the authority to decide who is a victim and the ability to place the victim in a treatment program.

048 BOLSTAD: This would be consistent with my own philosophy. Right now we are treating only 1 out of 5 child victims that enter into the CSD system and clearly we need to be doing more than that. 57% of the youngsters that I work with have been sexually abused. That means that a significant percentage were not victims of sexual abuse crimes. However, at least 80% of sex offenders have been abused themselves. The relation between abuse and criminality is evident. The best we can do is to intervene with children who are abused as early as possible and make that a major commitment.

063 REP. MASON: Our legal system is not capable of handling sex offenders below a certain age according to statute. You cannot be a sex offender below a certain age.

076 WELCH: That statute you refer to is restricted to the adult court system and these cases can be adjudicated in the adult system according to the Court of Appeals as long as you prove intent. The statutory prohibition against prosecution under the age of 14, or the common law concept of inability to commit rape have both been ruled inapplicable to a juvenile in Oregon.

081 REP. MASON: It seems to me that these instances of abuse are so pervasive, I don't know how you are going to find most of them.

085 COHEN: We know of one out of five that we are getting treatment so it's not hard to find them.

092 REP. MASON: How many juveniles down below 9 do we even have in the "do file" system?

094 WELCH: In the criminal law context, I think very few.

101 REP. SUNSERI: Did I understand correctly that if juvenile offenders are not held accountable they are untreatable?

104 BOLSTAD: In terms of the way we have provided treatment in the last 6 years, we have little success in taking referrals of juvenile sex offenders who have not been adjudicated.

105 COHEN: What age are you talking about?

106 BOLSTAD: Typically, between the ages of 13 and 18.

109 REP. SUNSERI: Your testimony to us is that that needs to be a focal point for treatment.

113 BOLSTAD: That is my experience.

125 COHEN: What is your price tag for this program?

126 HOYT: For the treatment of youthful sex offenders for one year we estimate about \$1.2 million in general funds. What is important to understand in considering this is the weight of public appreciation for the work of the Task Force. People testified that had never before spoken about their sexual abuse. The public concern necessitates continuation of this project. The treatment needs are overwhelming and money needs to be allocated.

149 COURTNEY: At this point there is no major constituency to take on

this issue. There is something strange about this area. There is no major momentum to deal with the problem.

173 REP. BRIAN: You were talking about the relative effect of treatment of young sex offenders. Could we not take the adult sex offender money out of corrections and shift it? Further, should we then forget about treating the adult sex offender, knowing that they will get out of prison?

193 BOLSTAD: I cannot tell you that all adults can be treated successfully. The older that the sex offender is and the more victims that they accumulate the likelihood of positive effects diminishes. Great focus should be put not only on treatment, but prevention.

217 COHEN: The adults are calling it "behavior control" instead of treatment.

223 BOLSTAD: What has frustrated me is that the adult treatment program of sex offenders allows the courts to extend treatment for a period as long as 2-3 years. I had to fight to get an extension from 6 months to 9 months for children sex offenders. There appears to be a bias against the treatment of children in how we spend our dollars.

229 REP. BAUMAN: As soon as we get into the adversary system, we are not only throwing barriers in the way of treatment, it is costly. We are expending a large amount of money in allocating blame and not on treatment. If we allow the court to prosecute these juveniles for a crime that is not expungeable, they will carry the weight of this crime that they committed when they were 8 or 9 into their adult life and this will only drive us deeper into the adversary system.

277 BOLSTAD: The issue is not blame when you adjudicate, it is breaking through denial. Unless you can break through denial in the sex offender you are not going to get anywhere in treatment. There may be ways of breaking through denial without adjudication, but in dealing with sex offenders you are dealing with an avoidance of sexual issues and you fall into that trap when you have defense attorneys who coach their clients to deny.

295 COHEN: I think we need to refer this issue to a work session to try and come up with an intermediary way we can prevent denial that does not build up the adversarial system.

306 WELCH: I urge you to read HB 2413, which I think is a way of addressing the dilemma.

333 VERN FAATZ, CHAIR BOARD OF PAROLE

-The issue here is public protection, how you manage the offender when they are in the public.

-The Task Force proposes that the sex offender register with the law enforcement agency before they go back out into the public.

-There are currently about 6,300 people in the state institutions today. 20% of those people are sex offenders.

-The change would allow the judge to decide whether that juvenile would be registered. The nature of the registration would include description of the modus operandi of the offender so police know about the people in their community that behave in this way.

-We are expanding the list of crimes that would require registration to include:

-Incest with a child victim

-Using a child in a display of sexually explicit conduct

-Dealing depictions of a child in sexually explicit conduct

-Transporting child pornography into the state

-Paying for viewing of a child's sexually explicit conduct

387 COURTNEY: This would also allow police to go to this bank of information when there was suspicious activity, i.e. a report of a person hanging around a school yard in a suspicious manner, and prevent a crime before it happened.

TAPE 7, SIDE A

008 SILVAN SIMMONS: Mother of sex abused child and victim of sex abuse.

-If abuse happens within the family CSD is there, but if a child is abused by someone outside the family setting then CSD is not there and there is no opportunity for counseling. A child outside the system never gets any counseling. This situation happened to my own son who was sexually abused by a scout master. As a child outside the system, he never received any counseling.

-The Task Force is also concerned about the education process for professionals in the field. People do not have a realistic idea of what is involved in the area of sexual abuse.

034 REP. MASON: Do you think that a person can counsel when they have suffered abuse themselves?

042 SIMMONS: Definitely. In fact, someone who has not been the victim of abuse might be at a disadvantage because unless you have experienced this you might never know how it affects you. The healing process is the important issue.

-I also work on the Oregon Committee For The Prevention Of Child Abuse. Right no funding is available for this committee. I am working as a volunteer with the Stop It Coalition to keep the program open. In other states, the National Committees For The Prevention Of Child Abuse are dynamic programs.

-Attention needs to be given to:

-Development of Regional Assessment Centers where people can go if they suspect abuse. Often people are afraid to call Children's Services for fear of getting too involved. There should be some agency that people can call for information.

-Providing stronger security to prevent video tapes from going back into the community inappropriately.

-Closer scrutiny of people that put themselves out as experts who are unqualified. There should be some sort of registration process started.

-Developing programs whereby if the child is not in the home there are some supportive services available for the family.

-Prosecution of child molesters. Right now many parents go to the police to report a sex abuse crime and the Das fail to prosecute because the child can't go to court. It appears that if the DAs can't win they won't prosecute.

102 CHAIR MILLER: Adjourns meeting.

Submitted by:

Reviewed by:

Mark Thorburn
Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A Testimony on Effects of Measure 5 On Judiciary - Bill Linden - 26 pages
B Testimony on Sex Abuse Tax Force - Mary Hoyt - 58 pages

EXHIBITS SUBMITTED BUT WITNESS DID NOT TESTIFY

C Testimony on Sex Abuse Tax Force - Robert Y. Thornton - 21 pages
D Testimony on Effects of Measure 5 - Robert Y. Thornton - 9 pages