

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 SB 401 (WRK) SB 382 (WRK) SB 405 (WRK) SB 463 (PUB) Info. Hearing

SENATE COMMITTEE ON THE JUDICIARY

February 27, 1991Hearing Room C 1:30 p.m.Tapes 43 - 44

MEMBERS PRESENT:SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR
SEN. PETER BROCKMAN SEN. JIM BUNN SEN. JEANNETTE HAMBY SEN. BOB
SHOEMAKER SEN. DICK SPRINGER

STAFF PRESENT: INGRID SWENSON, COMMITTEE COUNSEL BILL TAYLOR,
COMMITTEE COUNSEL MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: STEVE RODEMAN, OREGON CREDIT UNION LEAGUE
BONNIE SERKIN, DEBTOR-CREDITOR AND REAL ESTATE SECTIONS, OREGON STATE
BAR JOHN KAUFFMAN, CLACKAMAS COUNTY CLERK AND REPRESENTING THE OREGON
ASSOCIATION OF COUNTY CLERKS ELYSE CLAWSON, ASSISTANT DIRECTOR,
DEPARTMENT OF CORRECTIONS

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TAPE 43, SIDE A

004 CHAIR COHEN: Chair moves to rescind the introduction of LC 2927 concerning the therapeutic use of marijuana. Calls for objections; hearing none, so ordered. Sens. Hill and Shoemaker are excused.

- Have three bill introductions: LC 3632 at the request of the Oregon Department of Corrections, LC 2573 at the American Civil Liberties Union, and LC 3796 at the request of the Oregon Psychological Association. Calls for objections; hearing none, so ordered. Sens. Hill and Shoemaker excused.

SB 401

042 CHAIR COHEN: Is this O.K. with the State Treasurer's office? We have an O.K. from the Oregon Department of Insurance and Finance (Exhibit A).

050 BILL TAYLOR, COMMITTEE COUNSEL: Reads letter from Steve Smith, Deputy State Treasurer (Exhibit B).

- Reminds committee that there were amendments (Exhibit C).

058 MOTION: The Chair moves for the adoption of the amendments. Any clarification of the amendments needed?

064 TAYLOR: There's a memo that analyses the amendments (Exhibit D).

066 CHAIR COHEN: Do the amendments need to be changed in any way?

067 TAYLOR: No.

068 CHAIR COHEN: Calls for objections to adoption of the amendments. Hearing none, so ordered.

070 MOTION: The Chair moves SB 401 to the floor as amended with a "do pass"

recommendation.

072 VOTE: Motion passes unanimously; Sen. Hill excused.

SB 382

078 CHAIR COHEN: Had two proposed amendments at the last work session (Exhibits E and F). We have further amendments (Exhibit G).

086 STEVE RODEMAN, OREGON CREDIT UNION LEAGUE: The proposed amendments (Exhibit G) resolve the differences between the Oregon Credit Union League and the Debtor-Creditor Section of the Bar. Explains amendments.

096 BONNIE SERKIN, DEBTOR-CREDITOR AND REAL ESTATE SECTIONS, OREGON STATE BAR: Both the Debtor-Creditor and the Real Estate Sections like the amendments (Exhibit G).

100 CHAIR COHEN: Indicates to committee that the witnesses are referring to Exhibit G.

- These amendments will substitute for the

116 SERKIN: It incorporates everything that you've seen before.

118 TAYLOR: This would be the dash 3 amendments.

119 CHAIR COHEN: Does this take care of everything that were in the dash 1 amendments?

120 RODEMAN: Yes.

121 CHAIR COHEN: Don't have to include anything else to accomplish what you want to do?

122 SERKIN: That's correct.

125 SEN. BUNN: The amendments are an improvement, but still have concern about protecting the second mortgage holder. Will support the amendments, but will oppose the bill unless the amendments are more inclusive.

135 MOTION: The Chair moves for the adoption of the dash 3 amendments with understanding that they'll go through legislative counsel. Calls for objections. Hearing none, so ordered.

149 SEN. BUNN: If you increase the amount of the first mortgage, are

you increasing their priority?

153 CHAIR COHEN: That's SB 405.

154 SEN. BUNN: Under this bill, if the first mortgage was \$100,000, and you extended that by \$25,000, would the priority be \$100,000 or \$125,000?

161 RODEMAN: In a commercial context, it would be \$125,000; in a consumer context, if it fits the perimeters about being a residence, it would be \$100,000.

164 SERKIN: This provision is only for construction loans. Most line of credit mortgages have been used for other things, like revolving lines of credit. Those would be limited to the face amount of the mortgages. This is done mostly for construction loans for improvements; there are very few second mortgagees when there are construction loans for improvements.

176 TAYLOR: If there were a construction loan, it would also mean the value of the property has gone up because the property has been improved?

178 SERKIN: That is correct.

184 MOTION: Sen. Shoemaker moves SB 382 with the amendments to the floor with a "do pass" recommendation.

189 SEN. BUNN: He is very uncomfortable with anything that makes a second mortgage holder subject to a greater amount than what they were subject to when they lent money.

195 SEN. HILL: Have the amendments gone through Legislative Counsel?

196 CHAIR COHEN: No; they're on their way. We'll take another look at them before we pass it out.

199 VOTE: Motion passes 6 to 1; Sen. Bunn voting no.

SB 405

217 SERKIN: The bill repeals a portion of ORS 86.095 that is a trap to both lawyers and financial institutions. Explains the problem. The bill does not touch the policy decisions in the statute; it just removes the trap.

255 SEN. SHOEMAKER: Concerned that the second lien holder can be adversely affected by adjustments in the terms of the first mortgage and he can hardly be expected to aware that the first lien holder can adjust things in these fashions and not affect the first lien holder's priority. - In workout situation, these are appropriate; in fact, they often save the second lien holder.

- Would it be possible to make some change so that renegotiations can occur only when a loan is in trouble?

288 SERKIN: Seldom seen it happen in any situation other than a workout. Discusses instance of adjustment of initial interest rate.

302 SEN. SHOEMAKER: What if the lender and the borrower have another transaction that they are negotiating and, if there are limits on terms on the other transaction, they get around that by bumping up interest rates in the earlier loan?

313 SERKIN: That could happen. Would not like to see any amendment at all if there were an exception carved out in the manner Sen. Shoemaker is proposing. It would tend to get into definitional problems. The proposal does not add anything to the notice given to the second mortgage holder. The acts permitted by the statute are relatively mild in their effect upon the second mortgage holders.

352 SEN. SHOEMAKER: Has there been any abuse under the present statute?

356 SERKIN: Not aware of first mortgage holders amending the terms of the obligations and impairing the collateral of the second mortgage holder in any wholesale manner.

- Seen this problem just in workouts where the lenders are impaired in their ability to negotiate new terms.

366 SEN. BUNN: Sees no reason why it is more detrimental to a second mortgage holder to be told that negotiations can take place without you than that you have to sign off before it happens. Can't second mortgage holders tell the first mortgage holder and the lender that he will sign off once he's satisfied and then they can renegotiate?

383 SERKIN: The second mortgagee can do that. Have seen second mortgagees who have refused to subordinate, which is what would be required now, just because of their interest in the property and how they became a second mortgagee. They had become second mortgagees unwilling, were unwilling to cooperate, and the workout failed because of it.

- Also possible for the second mortgagee to negotiate for limitations on the first mortgagees ability to advance when their going into the second mortgage position.

400 SEN. BUNN: You're saying that the problem arises when the first mortgage holder is unaware of the statutory requirements, but you're also saying that the second mortgage holder is somehow going to be aware of those same requirements that now limit their protection. Would prefer that if there is going to be an error, that the error be to the benefit of saying that you do not renegotiate without that party.

412 SERKIN: What happens is that everyone is unaware until the workout is completed and then the second mortgage holder comes in and asserts lien priority as to whatever was redone.

416 SEN. BUNN: But under the status quo, the second mortgage holder has the ability to assert themselves in the process; under SB 405, they would not have that ability.

419 SERKIN: That's correct.

423 MOTION: Sen. Shoemaker moves SB 405 to the floor with a "do pass" recommendation.

428 CHAIR COHEN: Reminds committee that the bill has been amended so the bill does not apply to mortgages that are executed before the effective date of the act.

439 VOTE: Motion passes by 5 to 2 vote; Sens. Brockman and Bunn vote no.

TAPE 44, SIDE A

SB 463

016 JOHN KAUFFMAN, CLACKAMAS COUNTY CLERK AND REPRESENTING THE OREGON ASSOCIATION OF COUNTY CLERKS: Paraphrases written testimony (Exhibit H).

- The Oregon Land Title Association and the Oregon State Bar have no position on this bill and the Oregon Bankers' Association support it.

- Have one amendment to the bill that repeals ORS 205.325.

063 CHAIR COHEN: We do not have the amendment.

067 KAUFFMAN: The language in ORS 205.135 that is being deleted by the bill gives the clerk the authority to prepare a true copy of a document that is illegible and ORS 205 .325 provides for a fee when providing that service.

075 CHAIR COHEN: We'll get those amendments ready for work session.

077 SEN. BUNN: What do you do with a document where the text is illegible but has a legible signature on it? If you have to replace the text, but the person who signed is no longer available, do you record the one you can't read and add to it something you can to provide the reference?

089 KAUFFMAN: What we're proposing is that the person presenting the document for recording can replace the text without getting any signature.

092 SEN. BUNN: Wouldn't the original document with the signature have to go into the record also?

094 KAUFFMAN: That would certainly work.

096 SEN. BUNN: So in many cases, we can have two documents recorded to get to the point of having a legible copy of one.

098 KAUFFMAN: Would like to see the original document be brought back for recording with the legible text so it's all recorded at one time.

104 SEN. BUNN: Might we end up in a situation where someone brings in something that may or may not be the same text as the original?

114 KAUFFMAN: What we might do is take the second document and include a statement that this document is being recorded to clarify and identify what was illegible in the first document.

121 CHAIR COHEN: Need for John Kauffman to work with Sen. Bunn before the work session.

123 SEN. BUNN: Very concerned about that, once something is signed, the integrity of that document is protected.

128 SEN. SHOEMAKER: Pursues the same point. Compares advantages of current statutes with the language that the bill would insert. Asks what was wrong with the original statute.

148 KAUFFMAN: What the clerks wanted to do originally was to revoke the language that the clerk was required to substitute the illegible text. Also concerned about the clerks' rejection of documents because of illegibility. The clerks would not have a problem with not amending ORS 205.135 as it is proposed in the bill, leave section 2 in, and go back to the original language of paragraph of ORS 205.135.

165 SEN. SHOEMAKER: That would help. You might still want to amend ORS

205 .135(1) to permit reference to a public record which contains the original text.

- The bill does not suggest any change in provision giving clerks the authority to reject a document, so a clerk under your proposal can still could reject the document. Shouldn't that language be tighten up?

183 KAUFFMAN: No. Want to keep the process allowing the clerk to say to person to come back with something legible. "Rejection" might be too strong a term. We can propose amendments at work session to answer this.

INFORMATIONAL HEARING

200 CHAIR COHEN: Discusses importance of developments in community corrections.

214 INGRID SWENSON, COMMITTEE COUNSEL: Introduces witnesses.

222 ELYSE CLAWSON, ASSISTANT DIRECTOR, DEPARTMENT OF CORRECTIONS: This report will focus primarily on the supervision side of community services. There will be another report in March on the numbers of particular kinds of services, the types of services, the number of offenders who go through those services, etc. Will also be able to highlight some promising programs.

- 51% of offender population are felony probation, 20% are felony parole, and 29% are misdemeanors.

- There are a number of specialized supervision programs, treatment programs, services programs, and sanction programs. Discusses what types of supervision programs there are.

- Paraphrases mission statement in Exhibit I.

- Paraphrases goals to achieve the mission in Exhibit I.

- We need to clearly define what the purpose of our program is. The purpose may be different for different kinds of offenders. Cites examples.

- Paraphrases community services branch accomplishments listed in Exhibit I.

- Discusses content of attachment three of Exhibit I. Notes that Crook and Jefferson counties may soon be moving from Option III to Option II.

- Gives the history of the Oregon Case Management System and paraphrases description of the system in Exhibit I. We've very little information as to what works in terms of supervision. Gives examples of what we don't have. What we do have is some accepted standards from states who have done it for number of years and are doing it now.

- Seeing some research that intensive supervision may be impacting criminal behavior. Some states seeing cost savings as result. We are also beginning to see that supervision coupled with programs may be working. Supervision alone probably does not work nor do programs without supervision.

- Need system accountability balanced with need for local flexibility. Explains statement.

TAPE 43, SIDE B

013 CLAWSON: Back to paraphrasing description of the case management

system in Exhibit I.

- Paraphrases information in attachment five in Exhibit I. Specifies amount of time needed for a parole/probation officer to complete contact on each level described in the attachment as well as other tasks.

083 SEN. SPRINGER: Are you broken down by regions or county by county?

084 CLAWSON: County by county.

085 SEN. SPRINGER: How is the risk analysis organized in the county? How does this work out in terms of intensity of supervision applied to available resources across the state? Explains concern.

098 CLAWSON: It's a complicated, long, and involved answer. Essentially, this is risk of recidivating, not just dangerousness.

104 SEN. SPRINGER: Hopes there some correlation between the sentencing guidelines' matrix and how this works.

106 CHAIR COHEN: Probably not; some of the most serious crimes have a less risk of recidivism.

113 CLAWSON: This is much more related to predictability to recidivate and less based on the current crime as the current guidelines are. Cites example.

- This system is based on the difficulty of managing the offender and the resources that are required. There are a number of things to override this. Cites examples.

- It's a statewide system. The scoring instruments and the standards are the same statewide.

- We do have, by county, figures on how many offenders score out and at which category. There are problems in knowing whether the variances between the counties can absolutely be attributed to actual variances in the counties or to something else. Cites examples.

166 SEN. SPRINGER: Will you be able to later look, county by county, at the revocation rate? Is that a fair measure of whether you've properly allocated resources? Also, since you're assuming more responsibility for misdemeanants, how is that going to vary county by county and what is the revocation for them?

175 CLAWSON: We can tell you, county by county, what the revocations are. That is not, necessarily, an indication of how many resources ought to be in that community. Cites example.

- There are a number of factors that go into revocation.

188 SEN. SPRINGER: My sense is that whether to revoke someone may depend on how adequate the judges feel the resources are for supervision.

194 CLAWSON: To some degree, that may be part of the issue.

- The average, statewide, in terms of the number of people who score out at particular risk scores, are: 13.9% are high risk, 38.8% are medium risk, 26.8% are low risk, and 20.5% are limited risk.

208 CHAIR COHEN: Are we talking about parole and probation?

209 CLAWSON: Yes.

212 CHAIR COHEN: How long have you actually been trying to get pieces of this classification system up and running?

214 CLAWSON: We began development almost three years ago. Gives detailed history of the development of the system.

221 CHAIR COHEN: Really talking about less than two years of full implementation then?

222 CLAWSON: That's correct. And there's still a great amount of work to be done.

228 SEN. HAMBY: How did you determine the amounts of time spent on different types of caseload?

240 CLAWSON: Explains how the study was done.

252 SEN. HAMBY: And we have no other state or appropriate check for what it might take, in any other kind of situation, to conduct this kind of a visit?

261 CLAWSON: Yes, we do. We looked at a number of other states to see how we compared with those who've done time studies with similar systems. We came out in the middle. We can provide additional information.

270 SEN HAMBY: No; it just sounded initially like it took considerably longer than what I would anticipate.

273 CHAIR COHEN: I assume they do more than just check their home, like counselling.

276 CLAWSON: They're meeting with the offender; there's also travel time, court time, and so on.

- Discusses attachment six in Exhibit I.

- In November, 1989, total caseload was 27,318; projected for June, 1991 is 36,573.

- Felony probation moved from 15,939 to 20,928.

- Misdemeanor probation moved from 7,710 in 1989 to a projected 9,382 in June, 1991.

- Parole changed from 1989's 3,669 to 91's 6,661.

- Paraphrases attachment seven in Exhibit I.

378 SEN. SPRINGER: If we look at these number county by county, would there be much variation?

380 CLAWSON: In terms of the numbers put on casebank?

381 SEN. SPRINGER: Yes. Rephrases the question. And if there is variation, what accounts for that difference?

397 CLAWSON: Essentially, the only people under the current classification system who should legitimately be on casebank are those who score a 12 on a 0 to 12 scale. 0 to 6 are high risk; 7 to 9 are medium, 10 and 11 are low, and 12 is limited. But today, every case that scores between 9 and 12 is put on the casebank because of the lack of resources.

- There is not a uniform distribution statewide, but it's fairly close. Can provide more detailed information.

419 SEN. SPRINGER: That would be helpful.

420 CLAWSON: Many of these offenders should not be put on the casebank and many of them bounce back out because of violations.

436 SEN. BUNN: Assumes that the reason for all the banking is the lack of money of the supervisors.

441 CLAWSON: Yes.

442 SEN. BUNN: Is there a way to say that it would cost so much to cover everyone adequately and we can expect so much in dollar savings?

456 CLAWSON: We did determine how much it would cost to supervise people at the standards that we've currently set. What the cost savings would be is a difficult number to determine.

465 CHAIR COHEN: What would it cost?

472 CLAWSON: Our original budget request was about 48% increase over our current budget of \$42 million.

TAPE 44, SIDE B

024 SEN. BUNN: It's important to look at other states and estimate savings to avoid making unwise short-term decisions.

040 CLAWSON: I'd be happy to come up with whatever I can and to come up with the costs of actually staffing that. Costs savings will be long-term.

048 SEN. HILL: What is happening to your budget?

050 CLAWSON: We'll be going to Ways and Means in April. The Governor's budget recommends a 10% cut in community corrections. We've reduced the general fund on the probation and parole side currently spent on misdemeanors by 75%; we'll be focusing only on person to person and sex offender misdemeanors. 20% reduction on the amount we're now spending on parole cases. That's \$6 million out of probation and parole . .

060 CHAIR COHEN: And you have \$2.2 million for a 48% increase?

061 CLAWSON: For just the supervision side; not including the program side.

062 SEN. HILL: Are you taking to Ways and Means the amounts that Sen. Bunn was mentioning?

065 CHAIR COHEN: I assume that pits their side of corrections against the other side.

073 CLAWSON: We will be presenting at Ways and Means the Governor's budget and what it's impact will be on us.

078 SEN. BUNN: As part of that impact, are you going to show estimates of the short term fiscal impact, including additional costs in other areas, such as people who'll recidivate back into the system, etc.?

093 SEN. HILL: Pitting one side against the other is really the

problem; the two sides have to coordinate together, not compete against each other.

103 CLAWSON: Agrees that there needs to be a balance between prison, supervision, sanctions, etc.

113 SEN. HAMBY: Do you have any indicators as far as success of any kinds of programs versus cost effectiveness? And are you making effort to evaluate the community programs?

120 CLAWSON: Yes we are. By the end of March, we'll have a great deal of that data.

124 CHAIR COHEN: Checks with Clawson and other witnesses whether they want to come back at another time since some committee members have to leave.

188 SEN. HILL: Would like to get idea of what the cuts are going to mean when Elyse Clawson comes back.

197 CLAWSON: Do have those figures for state-wide; will ultimately have those figures by county.

202 SEN. HILL: State-wide is fine.

203 CHAIR COHEN: Adjourns meeting at 3:05 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A - Letter on SB 401 from Div. of Finance and Corporate Securities
- Committee Staff - 1 page B - Letter on SB 401 from Oregon State
Treasury - Committee Staff - 1 page C - Proposed Amendments to SB
401 - Committee Staff - 3 pages D - Analysis of Proposed
Amendments to SB 401 - Committee Staff - 6 pages E - Proposed
Amendments (382-1) to SB 382 - Committee Staff - 1 page
F - Proposed Amendments (382-2) to SB 382 - Committee Staff - 1
page G - Proposed Amendments to SB 382 - Steve Rodeman - 2 pages
H - Testimony on SB 463 - John Kauffman - 2 pages
I - Information Packet on Department of Corrections Community
Services Branch - Elyse Clawson - 18 pages