

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.

Informational Mtg. Measures Heard: SB 451 (PUB) SB 452 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

March 1, 1991Hearing Room C 1:05 p.m.Tapes 45 - 48

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

MEMBER EXCUSED: SEN. PETER BROCKMAN

VISITING HOUSE MEMBER:

REP. MARIE BELL

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

WITNESSES: REPRESENTATIVE MIKE BURTON DR. LAREN BAYS,
MEMBER OF THE BOARD, ASSOCIATION OF BEHAVIORAL TREATMENT OF SEXUAL
ABUSERS DR. STEVEN MUSSACK, PSYCHOLOGIST RON REITMAN, UNIT DIRECTOR,
OREGON FORENSIC PSYCHIATRIC CENTER, RESIDENTIAL SEX OFFENDER UNIT FOR
INMATES ROGER LITTLE, ACTING DIRECTOR, OREGON PSYCHIATRIC CENTER,
PROBATION SEX OFFENDER UNIT BARBARA MCGUIRE, COMMUNITY CORRECTIONS
COORDINATOR, DEPARTMENT OF CORRECTIONS BRUCE JANES, MACLAREN SCHOOL SEX
OFFENDER PROGRAM MARCIA MORGAN, GOVERNOR'S TASK FORCE ON CORRECTIONS
PLANNING KATHLEEN BOGAN, CRIMINAL JUSTICE COUNCIL ROSS SHEPARD, OREGON
CRIMINAL DEFENSE LAWYERS ASSOCIATION

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TAPE 45, SIDE A

004 CHAIR COHEN: Convenes meeting at 1:05 p.m.

- Bill introductions: LC 3882 from the Oregon State Bar Law Related Education Committee; LC 2589 from Sen. Peg Jolin on behalf of Mike Madsen; LC 3809 and LC 380 8 from Marion County; LC 3712 from the Children Services Division; LC 272 1 from the City of Portland; LC 2261, LC 2260, LC 2258, and LC 2257 from the Oregon Criminal Justice Council; LC 3748 from the Oregon Bankers' Association et. al.; LC 375 1 from Oregon Department of Corrections; and LC 3915 from the Oregon State Bar Revision Committee.

087 MOTION: Sen. Hill moves for the introduction of the bills as committee bills.

089 CHAIR COHEN: Calls for objections; hearing none, so ordered; Sens. Brockman and Hamby excused.

- Comments on today's witnesses and bills.

100 INGRID SWENSON, COMMITTEE COUNSEL: The witnesses today are just trying to give the committee general information.

107 SEN. SHOEMAKER: Recalls joint session with the House Judiciary Committee on this subject.

114 SWENSON: We've heard from the Task Force on Sex Offenses Against Children and others.

116 CHAIR COHEN: Refers committee to Exhibit A.

123 DR. LAREN BAYS, MEMBER OF BOARD, ASSOCIATION OF BEHAVIORAL TREATMENT OF SEXUAL ABUSERS: Refers to "Handout A" of Exhibit C and discusses the number of victims, types, incidents of heterosexual and homosexual incest and other sex offenses, and profile of offenders.

- Praises study found in Exhibit B, but the techniques for treatment that he is talking about today were not included in that study.

- There are two patterns of relapse.

- 1) People who have a compulsive pattern, similar to someone with an addiction.

- 2) Other types of offenders.

- Cites various figures regarding the recidivism rates of the two groups. Refers to handouts "B," "C," "D" "E" of Exhibit C.

235 SEN. HAMBY: Has all the studies that you're referring been consistent in checking up on reoffenders?

240 BAYS: Each study has different criteria.

- There is no consistency, but there is an upcoming study that addresses that issue very well.

- Refers to "Handout E" from Exhibit C.

- Sex offenders who are treated may reoffend, but they reoffend at less intensity, and it takes them longer to do so, than someone who is not treated.

- The figures are still coming in, but handouts "Fa" and "Fb" in Exhibit C reflect the primary study about whether treatment works. Discusses figures that have come in so far.

- Of every 100 offenders:

- 20% no matter what you do will be unaffected by treatment

- 20% will not reoffend even without treatment

- 20% will reoffend, but with treatment, will not offend again

- 40% will reoffend with treatment, but they'll have fewer victims and less

severe crimes over time

- Discusses costs of treatment versus costs of failing to treat in "Handout G" in Exhibit C.

331 CHAIR COHEN: What is the definition of treatment? Is it possible to classify people and to put them into treatment modes? Are there well known types of treatment that are more efficacious than others?

345 BAYS: Good question; let me address it later.

- Discusses the prerequisites for any sexual crime to occur.

- Enhancing criminal's self-esteem does not work as a form of treatment.

- Discusses elements of effective treatment; none of these cure sexual deviancy, but teach skills so offender can recognize when their heading in the wrong direction.

TAPE 46, SIDE A

023 BAYS: Discusses early precursors for sexual offenders.

- Describes typical pattern of relapse. To avoid relapse, try to teach planning, teach avoidance and escape strategies, and encourage reporting.

- Polygraphs are essential for treatment.

- Describes the "abstinence violation effect."

- The essential components of a sex offender treatment are good supervision, including knowing the details of the offenders history that would come from a good presentence investigation report, pleythsmographic evaluations, therapy that addresses decision making, cognitive skills, etc., and the polygraph.

120 CHAIR COHEN: How intensive is the treatment that you're talking about? Does it vary depending upon the classification of the offender?

129 BAYS: Has to be a determination of dangerousness; that's where the PSI is helpful. Once that determination is made, can divide into categories. All sorts of other issues also involved.

140 SEN. HILL: Is it a situation where people are not cured?

146 BAYS: There might be a component in some sexual offenders that we'd call addictive behavior. There are many others who have different patterns of behavior. We try to teach all offenders that the potential for reoffense is in all of them and then teach them some skills.

158 SEN. HILL: Saying that someone is never really cured? Explains concern.

167 BAYS: We know that people with a history of violent offenses tend to begin burning out at about the age of 35 or 40. If offender is homosexual or bisexual child molester, that person has a high recidivism rate and needs extremely long supervision.

- We try to teach self-efficacy.

- 60% of offenders are going to reoffend.

185 SEN. SHOEMAKER: Couldn't medications that decrease arousal be included in a sex offender's treatment program?

196 BAYS: Many clinics use depro provera as a component of their treatment program, but we can't force people to take medication.

205 SEN. SHOEMAKER: Might offenders agree to taking medication to avoid going to prison?

209 BAYS: Many do.

210 SEN. SHOEMAKER: And then you've taken away one of the elements?

211 BAYS: Yes.

212 CHAIR COHEN: Not sure it's all that simple.

215 BAYS: Sooner or later, they come off the medication.

216 SEN. HAMBY: We do compel the use of antabuse. Ideally, the time to catch them is at that remorseful stage.

- There's some similarity to drug addiction?

225 BAYS: For one cell of this group.

227 SEN. HAMBY: Apologizes for arriving late. Could you speak to the cognitive behavioral approach with the drug dependant individual? And how successful are the programs we have which use that approach?

232 BAYS: I've already addressed that; want me to go further with that?

234 SEN. HAMBY: No.

- Are there programs using the cognitive behavioral therapy that are really successful?

241 BAYS: That's not my area of expertise.

242 SEN. HAMBY: Well, in that one cell when you likened it to drug dependency . . .

244 BAYS: Knows the person who promoted the relapse prevention model, but I don't know the accuracy levels of that.

248 SEN. HAMBY: I still have problems with that therapeutic approach. You're in practice with Dr. Barry Maletzky?

249 BAYS: Yes.

251 SEN. HAMBY: Are any of his clients on full time depro provera for long term . . .

254 BAYS: The tendency is to put people on depro provera for about a year.

269 CHAIR COHEN: Introduces Steve Mussack.

280 DR. STEVEN MUSSACK, PSYCHOLOGIST: Paraphrases written testimony (Exhibit D). In addition:

- At least 80% of sexual offenders started their behavior at age 14 or before.

- More likely to reoffend post-incarceration than pre-incarceration.

354 CHAIR COHEN: Is there a sufficient way to categorize those who can be maintained with some reasonable expectation in the community?

361 MUSSACK: The most viable individuals to treat within the community in an initial probationary type of supervisory status are those who've never been caught before with no prior felonies of any type, even if many offenses were committed before being caught.

- There's also the issue of whether violence or force has been employed.

- Do see difference between pure incest offenders and non-related child offenders.

- Another issue is familial support, which enhances the ability to provide community based supervision.

- Therapeutic intervention greatly enhances the quality of community based supervision.

- Increasing numbers of offenders who voluntarily come in for treatment.

- People who turn themselves in and plead guilty are treated harsher by the judicial system than those who plead not guilty and go through the courts. Discusses the damage that it causes victims. Wants something in the laws to give incentive to offenders to plead guilty.

455 CHAIR COHEN: As long as you have a treatment program coming along?

457 MUSSACK: The incentives don't preclude some utilization of punishment.

- Persons who are found guilty and drags victims through additional trauma are continuing their sexual perpetration; often worse for victim to go through the courts than being abused. Cites examples.

- Strongly favors the use of polygraphs, pleythysmographic assessments, etc.

TAPE 45, SIDE B

035 SEN. HILL: There's a conflict between the law and what you're trying to achieve. As an attorney, if you can get your client off, you're going to tell him to plead not guilty.

044 MUSSACK: I've worked with a number of attorneys; the majority of clients I end up working with are post-conviction who were originally referred to me while entering the court system.

048 SEN. HILL: That would be best for

049 MUSSACK: Yes.

050 CHAIR COHEN: Last session, through the guidelines, we put a lot more of these people into prison. We want them to understand that their behavior is not acceptable and then have shorter prison terms and treatment.

062 MUSSACK: Second offenders should receive long sentences and then be mandated into therapy post-release.

- For first offenders without experience with the prison system, a taste of it has more impact than a long term sentence. The longer in prison, the more likely to view it, as opposed to treatment, as the lesser of two evils.

083 SEN. HILL: You're assuming that the only way to get a person into treatment is to be arrested and involved in the legal system first. The best thing is to get people to come in before they get involved with the law.

090 MUSSACK: Discusses why people don't seek treatment before arrest and the problems that therapists face when people do that.

109 CHAIR COHEN: Is it possible to have treatment be efficacious while people are locked up? E.g., a sex offender dormitory. Can you have a beneficial program in prison if you follow it up on the outside?

128 MUSSACK: Yes you can.

- There are some offenders who are an increasing risk, etc., and increasing the number of beds would be great. Supports the continuing availability of the forensic unit. Unfortunately, the number of beds is dramatically insufficient.

148 CHAIR COHEN: Do you think that will help people when they come out of prison?

150 MUSSACK: It is a benefit; they will also need involvement in an after-care treatment program. Discusses model in Alaska.

163 CHAIR COHEN: Anything else?

165 MUSSACK: I have an extreme concern about the impact of the judicial system on victims; we need some incentive for guilty pleas.

177 CHAIR COHEN: Is it imperative that the victim get support treatment or is that not a good use of money?

182 MUSSACK: The victim's assistance program has provided life saving help. Cites examples.

189 CHAIR COHEN: We have limited money; would you include the victim's assistance program in the expenditure of funds? How important is it to the whole scheme of what is proposed here?

198 MUSSACK: Victims assistance for abused children is an extreme act of prevention of abuse in the next generation. One of things that is commonly occurring to adult offenders is that they're being sentenced to at least help defray the costs of intervention for the children they've harmed.

227 RON REITMAN, UNIT DIRECTOR, OREGON FORENSIC PSYCHIATRIC CENTER, RESIDENTIAL SEX OFFENDER UNIT FOR INMATES: Explains background of the state's forensic units, the program's admission process, its admission criteria, what happens in treatment, what the treatment is like, what happens to the inmates, and the program's success rate.

- In all cases, the inmate must request treatment.

- In process of revising admission criteria; lists admission factors.

- The presentence investigation is critical to evaluate inmate against admission criteria.

- Long waiting list and anticipates increase.
- 1100 of Oregon's prison population of 6200 are in for sexual offenses. Under sentencing guidelines, even more offenders will be going into prison; in 1986, 24% of sex offenders were sent to prison; under sentencing guidelines, up to 97% will go to prison. Will need to prioritize admissions into program. Cites how that will work; extreme cases will not be admitted at all.

422 SEN. HAMBY: When you present your written comments to the committee, could you estimate the percentage of offenders who would be deleted from your priority one list?

TAPE 46, SIDE B

001 REITMAN: Would be glad to send the figures to you once the criteria is finally established.

- Once an inmate is admitted to program, he is assigned to one of two groups. Describes what happens once in program.
- Discusses disadvantages of purely prison-based treatment.
- It's critical that the inmate accept responsibility for his behavior; many don't and choose to leave the program.
- Program attempts to treat those areas identified during the evaluation; the evaluation tends to break the inmates into five categories.
- Have a couples group and involves the family whenever possible.
- Every inmate before discharge has a complete relapse prevention plan that has been developed and practiced as well as a detailed discharge contract identifying after-care treatment recommendations, etc.

071 CHAIR COHEN: Shouldn't we be putting our dollars into people who are more amendable?

076 REITMAN: That is the direction we're going with these new admission criteria.

- Since 1979, 229 men have been in the program and 60% have not since committed a known crime.

092 SEN. HAMBY: 60% have not been caught.

093 REITMAN: No known offense.

- 76% have committed no known sexual offense.
- The figures improve the longer the inmate was in the program.
- Recidivism is not the only measure of success.
- Follow up is critical; need comprehensive system-wide approach to treat a multi-faceted problem.

112 ROGER LITTLE, ACTING UNIT DIRECTOR, OREGON PSYCHIATRIC CENTER, PROBATION SEX OFFENDER UNIT: Sex offending is not a mental illness or a personality disorder; it's incredibly varied. The majority of offenders can be safely treated in the community. Cites examples.

- Paraphrases Exhibit E.

- Cites number of offenders at the Probation Sex Offender Unit, the number of offenses, and the number of victims.

154 CHAIR COHEN: Identifies the information she wants.

165 LITTLE: Cites recidivism figures of PSO patients; says it's as low as any program in the country.

177 CHAIR COHEN: The length of stay is what?

178 LITTLE: About two years for successful completion. For those who we kick out or who quit, it's been about a year.

182 SEN. HAMBY: Could you expand on statement that only two have reoffended?

183 LITTLE: Of those who've completed the program.

184 SEN. HAMBY: Only two have reoffended?

185 LITTLE: That we know.

- There's obviously more reoffenses and the recidivism rate can only increase as time goes on.

194 CHAIR COHEN: How closely do you work with community based programs once the offenders leave your program?

196 LITTLE: Work fairly closely with private providers. Tries to have the offender spend less time at program and more time with private providers where they're paying the bill.

202 CHAIR COHEN: Does working with the community based programs alter your recidivism rate?

205 LITTLE: Those folks haven't been out long enough to measure the impact of the change.

206 CHAIR COHEN: Are you going to do that eventually?

207 LITTLE: If we survive.

- Recently, probation officers are specializing across the state in the supervision of sex offenders.

- Sex offenders on probation are much more compliant than those on parole.

220 CHAIR COHEN: The longer period of time, case specialization in the community, and . . .

222 LITTLE: Specialized treatment

223 CHAIR COHEN: And involvement with private consulting treatment and whatever resource you can bring in the community.

- Anything else?

227 LITTLE: Must be aware of the variety of problems associated with sex abuse, such as drug and alcohol use. If these other problems aren't addressed, then the treatment won't work.

235 CHAIR COHEN: There's all sort of problems associated with sex

abuse.

240 LITTLE: And they're not all unrelated.

250 BRUCE JANES, MACLAREN SCHOOL SEX OFFENDER PROGRAM: Most adult sex offenders begin as adolescents. Best response is to treat problem when it begins rather than when its been going on for a long time.

- There is no research that clearly says what the long-term outcome is of treating adolescent sex offenders. (Exhibit F).

- Describes how recidivismrate is determined for adolescent sex offenders.

- Discusses advantages of the polygraph.

- Have lack of resources for placement of youngsters once they are out of treatment.

- Have a "no refusal" policy for treatment; anyone who is committed to MacLaren is offered treatment.

- Best evaluations of whether a youngster is amendable to treatment do not occur until they are in treatment.

318 SEN. HAMBY: Do all the community contractors use the polygraph?

320 JANES: No.

321 SEN. HAMBY: What percentage do?

322 JANES: Only 3 of the 12 use polygraphs.

323 CHAIR COHEN: We have a lack of qualified polygraph administrators in this state.

328 BARBARA MCGUIRE, COMMUNITY CORRECTIONS COORDINATOR, DEPARTMENT OF CORRECTIONS: Paraphrases Exhibit G.

- Describes program in Jackson County.

- Low recidivismrate.

- One of the problems is the availability of treatment resources for someone who is indigent; has significant impact on limiting behavior.

377 SEN. HAMBY: Was recidivismrate established only by use of the polygraph?

383 MCGUIRE: No. They looked into arrest records and into various court records for convictions; there may be undetected sexual behavior.

389 SEN. HAMBY: Then I don't think, just because they didn't show on leads, that you can say that 95% . . .

390 MCGUIRE: I would agree, but that's the highest in any program that we've looked at in a long time.

392 CHAIR COHEN: Would be interesting to do research, track the 173 offenders down, and have all of them do a polygraph with guarantee that none of it would be used against them.

399 MCGUIRE: That is something to explore for the next biennium.

403 CHAIR COHEN: Suggesting that we get somebody to write a grant to get that going now.

415 SEN. HILL: If you are treating someone and they admit that they have committed a crime, what is your responsibility?

423 JANES: We report all offenses that come up in treatment, regardless of how the offense is disclosed. We have not had a single prosecution. A few times, we've contacted the District Attorney and encouraged them not to prosecute because, if a kid is prosecuted for something that they disclosed in treatment, then the other kids hear about that and shut up. And we're trying to find out who the victims are so we can approach them and offer them treatment as well.

439 SEN. HILL: Don't know how to encourage use of the polygraph; the kids are saying that if I don't lie, then I can get prosecuted.

458 JANES: We've had over 500 felony disclosures, but not one prosecution. We tell the kids that we can't guarantee that they will not be prosecuted and that we are mandated to report, but that, to-date, no one has been prosecuted.

468 MCGUIRE: There may be confidentiality issues for private treatment providers that we don't know about.

TAPE 47, SIDE A

026 REP. BELL: In regards to juvenile offenders, what is the minimum age that a child should enter the court system?

032 JANES: The only way to document the offending behavior and respond to it is to have it adjudicated; lose a lot if you don't adjudicate. By not adjudicating, you're minimizing, in the child's mind, what was done; some kids even use that as a barrier to treatment.

048 CHAIR COHEN: The Clackamas County Adolescent Sex Offender Treatment operation says that they want everyone adjudicated and then have some way to have the records cleared. Don't know how we can do that.

055 JANES: Another problem with outcome studies with adolescents is that their records are expunged, so we can't do long term studies.

SB 451 and 452

065 REPRESENTATIVE MIKE BURTON: Regarding child sex offenders, have provided tape to Committee Counsel Ingrid Swenson that was made by TV Channel 12.

- This bill and SB 452 deals with adult sex offenders.

- SB 451 would require presentence investigations in sex cases; that's being done now only partially.

- SB 452 deals with the way we'd put sanctions together against sex offenders. Calls for extended period of parole and probation.

- Section one of the bill, at line 12, provides for absolute amounts of time for supervision; suppose to be "up to" those amounts.

117 MARCIA MORGAN, GOVERNOR'S TASK FORCE ON CORRECTIONS PLANNING: Many of the bills that will be coming regarding sex offenders will be enhancing penalties. The task force felt that many of those alternatives were too costly. SB 451 and SB 452 are much better way to provide direct, rapid, and comprehensive impact on public safety.

- Sex offender population is rapidly growing. 1200 sex offenders in prison; 2400 are on parole or probation.

- SB 451 would require presentence reports on all felony sex offenses. Key people in the criminal justice system say that they need as much information as possible to handle this population, but PSI's are not mandatory.

161 CHAIR COHEN: Do we have a fiscal impact statement yet?

166 INGRID SWENSON, COMMITTEE COUNSEL: We do not. We do have the prison impact statement. (Exhibit K).

168 REP. BURTON: The prison assessment impact is on SB 452, but it's not a revenue impact.

169 CHAIR COHEN: I'm interested in the revenue impact of the PSI's.

179 MCGUIRE: We estimate a fiscal impact of \$60,000; that's .5 FTE for the biennium.

183 SEN. SHOEMAKER: Was expecting a much higher figure. For the whole state?

184 MCGUIRE: Yes.

185 REP. BURTON: Remember, these are convicted felony sex offenders.

187 SEN. SHOEMAKER: How many are there?

188 SEN. HAMBY: It will require 218 to 252 additional reports each year; there are currently 600 offenders. (Exhibit H).

191 MCGUIRE: Also remember that we are already some PSI's on some sex offenders.

194 CHAIR COHEN: Theoretically, a judge and/or a management person could ask for one. Assumes that a portion of those PSI's already requested would be sex offenders.

198 MCGUIRE: Or if there is a departure from the sentencing guidelines.

200 LITTLE: Have done a survey of some probation officers in the counties, many with caseloads of 80 inmates, and their concerned that doing PSI's on all cases means less time for supervision.

209 CHAIR COHEN: That's another issue, but we need to be reminded that if we're going to have people with those kind of caseloads with those kind of people, then you're going to have to talk about the allocation of resources and smaller caseloads.

(More testimony on SB 451 taken later at hearing)

SB 452

219 MORGAN: SB 452 requires the state sentencing guidelines board to purpose amendments to the sentencing guidelines that would lengthen the supervision, both probation and post-prison, for certain sex offenses. It addresses a number of different factors. Specifies the maximum amounts of time the task force wants for certain offenses. Raises various crimes (Exhibit I) into Class B and Class C felonies. Directing the state sentencing guideline board to look at this and come back in 1993 with how this fits into the whole picture.

- The bill increases the amount of money for parole and probation officers.

260 CHAIR COHEN: Where is that?

262 REP. BURTON: That's Section 18.

267 CHAIR COHEN: So theoretically this committee can fill in a number and send it down.

268 REP. BURTON: Yes.

270 MORGAN: As to supervision, we're talking about varying degrees.

- It's important to have the polygraph, linkage with the parole/probation officer, a treatment component, and all three components can be more intensive.

288 REP. BURTON: Intent is to get a period of control beyond what it is currently for this type of offender. You're talking about behavioral control.

- There is a prison impact assessment (Exhibit K). These changes would require 146 beds. (Exhibit J).

314 SEN. HILL: On the sentencing guidelines, for the offenses that you mentioned, what is the sentence that is recommended under the guidelines?

319 REP. BURTON: They're ranked on page 2 of Exhibit K.

322 CHAIR COHEN: 37 months.

327 KATHLEEN BOGAN, CRIMINAL JUSTICE COUNCIL: Exhibit J shows the 146 bed figure. Exhibit K shows where the offenses would be classified under SB 452. SB 452 does upgrade several offenses.

344 SEN. SHOEMAKER: These impact assessments begin by saying "mandates supervision terms of 5, 10 and 20 years." Does not say "of up to." Does that assessment assume that the sentences are actually 5, 10, and 20 years and not up to 5, 10, and 20 years?

352 BOGAN: The prison bed impact has nothing to do with the supervision. The impact is based only on the reclassification of the offenses.

357 CHAIR COHEN: If you upgrade them, they're automatically go to fall into the next block and there will be a bed impact.

362 SEN. SHOEMAKER: But when you have a discretionary sentence

364 CHAIR COHEN: This is the supervision side.

365 BOGAN: The program bed impact (Exhibit J) is separate from the supervision; it only has to do with the reclassification of the offenses. The addendum impact (Exhibit K) is the supervision impact and that's not a prison bed impact at all, but an impact on the number of people on the caseload. The addendum impact assessment was done on what the bill says which is the supervision periods of 5, 10, and 20 years. That impact says that there will be a 4000 increase in the caseload; it does not talk about an increase in prison beds.

383 SEN. SHOEMAKER: The assessment deals with what the bill says, without the discretionary element in it?

384 BOGAN: Right.

- When the board comes back in 1993 and comes back with a scheme for longer

supervision, if it does not use for the offenders that outside limit, then the impact on the caseload would not be a great.

390 CHAIR COHEN: But the prison bed piece is going to be pretty well assured.

391 BOGAN: Yes.

392 SEN. SHOEMAKER: Because that's said in the guidelines.

393 CHAIR COHEN: You just up it into the grade.

394 BOGAN: That's right. The prison bed impact is based on what is done in sections 3, 4, 5, and 6 of this bill.

401 SEN. SHOEMAKER: Still puzzled. The guidelines are also a flexible document.

406 CHAIR COHEN: Asks Bogan to clarify what the sections are.

407 SEN. SHOEMAKER: You can explain it to me later.

- I have a logical problem here.

409 CHAIR COHEN: It's not a logical problem in terms of the classifications did fit into certain

411 SEN. SHOEMAKER: So you moved it up and all of a sudden it's in a different box. That means a different sentence. Therefore, you don't ever adjust the box.

416 CHAIR COHEN: You don't adjust the box.

- Bogan needs to respond the this.

417 BOGAN: Is the question how long people would be serving on supervision?

420 CHAIR COHEN: Not supervision; it's reclassification.

421 SEN. SHOEMAKER: Go ahead with your testimony; I'll get it another . . .

422 CHAIR COHEN: The matrix of the reclassification is what we need to understand.

423 BOGAN: Explains what happens if sex abuse in second degree is upgraded from Class A Misdemeanor to Class C Felony.

452 REP. BURTON: Explains figures on table 1 of Exhibit K regarding Sex Abuse II, Rape III, and Sodomy III.

483 CHAIR COHEN: And that doesn't mean that this policy is the correct one; we can still debate whether they ought to be moved up and

reclassified.

TAPE 48, SIDE A

037 REP. BURTON: Appreciates the difficulty in understanding the projections. Describes value of the projections. The policy decisions are up to the legislature.

- The assumption on the sentencing guidelines is that, if you upgrade the crimes, you balance against the number of available beds or get more beds.

SB 451 AND 452

054 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Mentions potential conflict of interest that he might have.

- On SB 451, in many counties, sentencing is done the same day as the time of conviction or change of plea, so if you mandate presentence reports in all of a certain type of cases, then those counties will not be able to follow that practice.

- Should focus on rape in the third degree and sodomy in the third degree; in many other states, these crimes are known as statutory rape, i.e., usually consensual sex with an underage female. If you elevate the crime severity of these offenses, you'll probably be sentencing an 18 year old male to mandatory prison for having sex with his girlfriend.

- Presentence reports are already being ordered in the appropriate sex offenses; don't need a blanket order on felony sex offenses.

- On SB 452, have the same concern about rape in the third degree and sodomy in the third degree.

- Recent Oregon Supreme Court case (State v. Lyons) ruled that polygraphs are not admissible in court, even if upon the stipulation of both of the parties. Concerned about how the use of polygraphs will work in a probation or a parole revocation proceeding if the probation, using the polygraph, found that the sex offender was reoffending.

115 CHAIR COHEN: We'll have you come back at the work session.

124 MCGUIRE: Here on behalf of Elyse Clawson. The Department of Corrections supports both bills with one caution: in parole and probation, we have serious resource problems and both of these bills will impact the department as to resources.

133 CHAIR COHEN: We have Clawson's testimony (Exhibits L and M).

- Adjourns meeting at 3:40 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A - "Sex Offenders in Oregon: Recommendations for Change and the Reality of Available Resources" - Marcia Morgan - 194 pages
B - "Successful Interventions with Sex Offenders: Learning What Works" - Committee Staff - 198 pages C - Collection of Assorted Article about Sex Offenders - Laren Bays - 79 pages D - Testimony on Child Molesters - Steven Mussack - 4 pages E - Testimony on the Probation Sex Offender Unit - Roger Little - 5 pages F - Testimony on MacLaren's Sex Offender Treatment Program - Bruce Janes - 5 pages
G - Testimony on Sex Offender Treatment and Supervision Programs - Barbara McGuire - 5 pages H - Memorandum Re: SB 451 - Criminal Justice Council - 4 pages I - Copy of ORS 163.305 et. seq. Re: SB 452 - Committee Staff - 4 pages J - Prison Impact Assessment Re: SB 452 - Criminal Justice Council - 2 pages K - Addendum Prison Impact Assessment Re: SB 452 - Criminal Justice Council - 4 pages
L - Testimony of Elyse Clawson Re: SB 451 - Barbara McGuire - 1 page M - Testimony of Elyse Clawson Re: SB 452 - Barbara McGuire - 1 page