

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 342, PH SB 343, PH SB 616, WS SB 619, WS SB 620, WS SB 103, WS SB 490, PH SB 491, PH

SENATE COMMITTEE ON JUDICIARY

March 4, 1991Hearing Room C 1:00 p.m.Tapes 49 - 51

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 Kate Wrightson, Committee Assistant

WITNESSES: Judge Stephen Herrell, Multnomah County
Circuit Court Ellen Jones, Juvenile Rights Project Alan Young, Oregon
Juvenile Department Directors Association Larry OgilSB ie, Oregon
Juvenil Department Directors Association Mark McDonnell, Multnomah
County District Attorney's Office Kathleen Bogan, Oregon Criminal
Justice Council William Linden, State Court Administrator Erik Wasmann,
Department of Justice Joan Smith, Public Utilities Commission Lou
McCanna, Public Utilities Commission Jerry Justice, Association of
Oregon Counties Mic Alexander, Oregon Trial Lawyers Association Charles
Williamson, Oregon Trial Lawyers Association John Powell, State Farm
Insurance

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TAPE 49, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:15 p.m.

SB 342, PRESCRIBES PROCEDURE FOR FILING NOTICE OF APPEAL IN JUVENILE
CASES,

PUBLIC HEARING

008 JUDGE STEPHEN HERRELL, MULTNOMAH COUNTY CIRCUIT COURT: Testifies in favor of SB 342. -Bill would bring appellate procedures for juvenile cases in line with appeals procedure for all other cases. -Practice of filing "informal notices" causes confusion in courts and results in defective appeals. -Provision in statute is seldom used, but has been

used by appellate court to allow defective appeals in juvenile cases. A provision in the criminal code allows defendant relief from defective filing. -If SB 342 were to pass, there is no provision in the juvenile code concerning technically defective notices of appeal.

050 CHAIR COHEN: We can fix that.

051 HERRELL: I suggest that a provision similar to ORS 138.071 be added to the bill, to prevent such problems.

SB 343, PROVIDES THAT JUVENILE MAY BE DETAINED AFTER ADJUDICATION AND PRIOR TO DISPOSITION FOR 14 DAYS, PUBLIC HEARING

065 HERRELL: Testifies in favor of SB 343. -Reviews intended purpose of bill. -Courts have no specific authority to hold adjudicated juvenile, pending disposition and final judgement. -Currently, courts read "adjudication on merits" as meaning "before final judgment," but it needs to be spelled out. -Submits letter from Judge Hargreaves (Exhibit A). -Original drafting of bill provided for a 28 + 28 day period, instead of a 14 + 14. -There is potential for abuse here: not just by a judge but by anyone in the system.

126 CHAIR COHEN: One would have to show good cause, rather than just hold a juvenile for the longest time possible.

129 HERRELL: Yes. -Judge Hargreaves addresses that, but I don't feel that he has read that section of the bill correctly. -As I read it, the 14-day period can be extended over the child's objection if good cause is shown.

138 CHAIR COHEN: Yes.

139 SEN. SPRINGER: I would like to have Judge Hargreaves here to testify. -I am not well-informed about current practice in detention facilities around the state. -Any proceeding like this causes disruption in juveniles' lives. We need to ensure that educational and other programs are available to juveniles in detention.

152 HERRELL: Last session, a bill was passed which authorized post-adjudication detention if the county met programming requirements such as those mentioned by Sen. Springer.

166 SEN. SPRINGER: Many people supported the movement to upgrade the Donald E. Long Home. What if other juvenile facilities are insufficient as well?

174 HERRELL: It's time to support programs which we say are important. People say that juveniles are high priority, but we put money into the criminal system instead.

187 SEN. SHOEMAKER: You mentioned that others want to extend this time period to 28 + 28 days. What were the reasons for a 14 + 14 day period?

195 CHAIR COHEN: I, and others on the Law Improvement Committee, decided what courts could be reasonably expected to do.

215 HERRELL: A placement decision can usually be made in 14 days. -The problem is with CSD's ability to find foster beds for difficult juveniles: those with multiple problems, sex offenders, fire setters, etc. -Oregon does not have ability to buy beds for these children. -We send many of them to training schools because that's where the beds are.

241 SEN. SHOEMAKER: Do you think that a 14 + 14 period is an appropriate standard? Does it provide ample time?

248 HERRELL: Most juveniles ought to be placed in that time. -If we are held to this requirement, some juveniles would be very hard to place and would end up in training schools.

255 SEN. SHOEMAKER: Would it make sense to have a 14 + 14 + 14 day period?

257 HERRELL: It would be better for those who need the time. -I don't feel that strongly about it. I'm satisfied with the 28 days.

SB 342, PRESCRIBES PROCEDURE FOR FILING NOTICE OF APPEAL IN JUVENILE CASES,

PUBLIC HEARING

280 ELLEN JONES, JUVENILE RIGHTS PROJECT: Testifies against SB 342. -Submits written testimony (Exhibit B). -Removing the "informal" language from statute may impede the appeals process.

299 CHAIR COHEN: You will work with counsel for your proposed amendments?

301 JONES: Yes. -We also agree with Judge Herrell that there needs to be some provision which provides relief if there is an inappropriate request for the appeals process.

SB 343, PROVIDES THAT JUVENILE MAY BE DETAINED AFTER ADJUDICATION AND PRIOR TO DISPOSITION FOR 14 DAYS, PUBLIC HEARING

308 JONES: Testifies against SB 343. -Submits and summarizes written testimony (Exhibit C). -We are concerned that the additional 14 days will allow juveniles to be warehoused in detention. -14 days is not sufficient for psychiatric examinations or other requirements imposed by courts.

324 SEN. SHOEMAKER: What period do you recommend?

325 JONES: We propose that the period be cut to seven days.

326 SEN. SHOEMAKER: Seven days, with the option for an additional seven?

327 JONES: We are just saying seven days between adjudication and disposition.

337 ALAN YOUNG, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION: Testifies in support of SB 343. -Does not agree with 14 + 14 day period. -Prefers period of 28 days. -Pre-disposition provisions will apply to a limited number of cases, usually serious crimes, where neither the Juvenile Department nor CSD have access to that juvenile, pending adjudication. -Fourteen days is too little time to complete all necessary examinations before placement.

361 CHAIR COHEN: Why wouldn't those examinations be done pre-adjudication?

363 YOUNG: In many cases, juveniles are precluded, by their defense attorneys, from contact with Juvenile Department people. -In the majority of cases, planning is done pre-adjudication, but these problem

cases may have restricted access. -Detention guidelines require that any child held in detention in excess of five judicial days must have access to educational and other services.

409 SEN. SPRINGER: How many of these exceptional situations are there, that need to be held longer for evaluation? -Are there options for community placement, or are they nonexistent?

426 YOUNG: It is true that those options don't exist. -Those children who need to be held pending disposition are not the children who would be in community placement anyway.

TAPE 50, SIDE A

013 SEN. SPRINGER: What are the relative costs of detention per day, as opposed to contracted community based placement?

017 YOUNG: There are ten juvenile detention facilities in Oregon with about 200 available beds. -In 1989, the average cost per child per day in those facilities was \$86. -It is probably higher in community based placements.

029 LARRY OGILSB IE, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION: The issue of finding treatment options is a big one, but the key problem is that we sometimes don't have access to a child until post-adjudication. -The system is motivated by questions of what is good for the juvenile and what is cost-effective.

036 SEN. SHOEMAKER: Access to a juvenile is controlled by the juvenile's counsel?

037 OGILSB IE: Pre-adjudication, yes.

038 SEN. SHOEMAKER: Would it make sense to have the period of post-adjudication time depend upon whether you had access to the juvenile or not?

041 OGILSB IE: That would be an option. -It would be a function of the court to determine the length of that time.

043 SEN. SHOEMAKER: The bill limits the period to 14 + 14 days. -Should it be more? -It could depend on whether Juvenile Department staff has access to the child prior to adjudication. -That factor is within control of counsel.

052 OGILSB IE: We are, or should be, dealing with very few juveniles. -A child who is going into community based placement should never be in detention post- adjudication.

055 SEN. SHOEMAKER: Then do we need the law at all?

057 YOUNG: 28 days is realistic. -Bill would make pre-adjudicative detention consistent with Uniform Trial Court Rules, which gives 56 days as a maximum, and 28 days if in detention, prior to adjudication.

068 SEN. BUNN: I sense some difference between your testimony and the bill itself. -You discussed the first 28-day period, and then 28 more days upon the child's consent. -The bill seems to provide for a first, and then a second, period, and then yet more time with the juvenile's consent.

074 YOUNG: I think you are describing pre-adjudicative detention, which

is on page 2, line 39, of the bill.

082 SEN. BUNN: Lines 44 and following are pre-adjudicative? -The bill provides for three time periods?

087 YOUNG: It provides two time periods for pre-disposition.

088 CHAIR COHEN: We are discussing post-adjudication.

089 SEN. BUNN: Requests clarification of testimony.

097 YOUNG: The period may be extended with child's consent.

109 MARK MCDONNELL, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE:
Testifies against SB 343. -Multnomah County doesn't have this problem.
-We are concerned that in some situations, particularly with sex
offenders, 28 days is not enough to get the child placed in community
based treatment. -The alternative is to send the child to McLaren, and
we want to find other options. -Juveniles just want to get out of
custody. -We don't think ORS needs to be changed at this time.

129 SEN. SHOEMAKER: Are you arguing that, after adjudication and before
detention, there should be no limit?

131 MCDONALD: Yes.

134 CHAIR COHEN: The judges would say that they can't hold juveniles at
all, under current law.

137 MCDONALD: Provides example. -Child had been in custody for 46 days,
and is now in the Donald E. Long Home. His case had unusual
circumstances, because his attorney was reported to the Bar for
employing a private investigator who was a pedophile.

146 SEN. SHOEMAKER: If we don't change the law, there is an absolute
limit on detention to 56 days unless the child consents.

152 CHAIR COHEN: Mr. McDonnell says he can manage placement in 56 days.

153 SEN. SHOEMAKER: He said that he wanted an open end, if they
couldn't manage placement.

155 MCDONALD: As I read the bill, there are two 14-day periods between
adjudication and disposition.

156 SEN. SHOEMAKER: Under present law, without SB 343, a child may be
held for a maximum of 28 days, except for good cause shown, which adds
another 28 days. -It doesn't distinguish between pre- and
post-adjudication.

164 MCDONALD: I read it as providing 14 + 14 days between adjudication
and disposition.

166 SEN. SHOEMAKER: Yes. If we don't pass this bill, you won't be able
to hold juveniles for more than 56 days total, regardless of when
adjudication occurs.

172 MCDONALD: Isn't it true that this only refers to pre-adjudication?

174 SEN. SHOEMAKER: It doesn't distinguish.

177 SWENSON: If you read the language "pre-adjudication" to mean

"pre-final judgment," then that allows extension to the 56-day limit.
-That may be an inappropriate reading of the language, in which case only pre-adjudication, and not pre-disposition, detention is affected.

185 MCDONALD: If the bill does not limit us to 28 days of detention, then we have no opposition.

188 SEN. SHOEMAKER: The bill doesn't control other subsections of ORS concerning juveniles, does it?

194 CHAIR COHEN: Some people wanted to hold juveniles post-adjudication, pre-disposition. They needed authorization to do it.

198 MCDONALD: We have not had a problem in Multnomah County, and we don't need this bill.

203 CHAIR COHEN: This bill concerns the time between adjudication and disposition.

SB 616, RELATING TO THE OREGON CRIMINAL JUSTICE COUNCIL, WORK SESSION

234 CHAIR COHEN: Reviews intended purpose of bill.

238 KATHLEEN BOGAN, OREGON CRIMINAL JUSTICE COUNCIL: Reviews intended purpose of bill.

250 CHAIR COHEN: Do you have amendments?

251 BOGAN: Submits Judicial Department amendments (Exhibit D).

263 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: Reviews proposed amendment.

292 BOGAN: We had no intention to change standard. -We want to repeal a section with language that didn't relate to our responsibilities.

307 CHAIR COHEN: Moves to adopt amendments to SB 616 proposed by the Judicial Department, dated 3/4/91. -Asks if committee has objections to adoption of these amendments.

327 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

333 SEN. HILL: Moves SB 616, as amended, to the floor with a "do pass" recommendation, subject to review by Legislative Counsel.

336 CHAIR COHEN: Asks if committee has objections to the motion.

339 MOTION CARRIES UNANIMOUSLY.

SB 619, RELATING TO PRE-TRIAL RELEASE OF DEFENDANTS, WORK SESSION

351 BOGAN: Reviews intended purpose of bill. -Submits proposed amendments (Exhibit E). -Reviews intended purpose of amendments. -Want to make Oregon law resemble California law.

396 CHAIR COHEN: These amendments have not been to Legislative Counsel yet. I am not ready to move this bill.

398 SEN. BUNN: Are all of these incidences ones where arrest is optional?

400 BOGAN: No. Some may have that option, but most do not. -We are not

suggesting that someone be arrested if they refuse to sign the citation.

414 SEN. BUNN: What happens if the individual refuses to sign? What option remains to the officer issuing the citation?

417 BOGAN: If there is no option for arrest in that situation, there is no other option for that officer. -We don't want to add another level of punishment.

425 SEN. BUNN: If the offense has arrest as an option, and the person will not sign, they can be arrested. What happens to the person who refuses to sign a citation for an offense which does not have arrest as an option?

431 BOGAN: The statute is already set.

435 SEN. BUNN: Are we creating a situation where, in some cases, a non-signer can be arrested and in others, there is nothing that can be done?

444 BOGAN: Yes.

TAPE 49, SIDE B

011 SEN. SHOEMAKER: That doesn't sound too manageable. What does happen if a person cited for a non-arrestable offense refuses to sign the citation?

015 BOGAN: It would proceed the same way that it proceeds now, with a citation that is unsigned. The citation can still be issued.

018 SEN. SHOEMAKER: If a peace officer cannot get a signature, can he file that citation without the signature?

021 BOGAN: The citation can be filed, though there may be a challenge that it was incorrectly completed.

022 SEN. SHOEMAKER: Shouldn't we address the problem of how to file a citation without a signature?

028 BOGAN: I would defer to counsel for the best way to proceed on that.

030 CHAIR COHEN: It's not a question of a new sanction. The problem is whether the citation can be filed or not.

037 SEN. SHOEMAKER: An alternative to a signed citation might be an affidavit from the officer, stating that the person cited refused to sign the citation.

039 BOGAN: We would then need to add language stating that an unsigned citation is still a valid citation.

042 CHAIR COHEN: Asks if committee has further instructions for amendments to the bill.

046 SEN. BUNN: I would like an idea of how much of a problem this is. We may be creating a bigger problem than exists now.

049 BOGAN: Judge Ellis felt that this is a very significant problem. I don't know how big it is outside of Multnomah County.

058 SEN. BUNN: In California, if a citation is not signed, what do they do?

060 BOGAN: I will check on that with counsel.

062 CHAIR COHEN: Holds bill for another hearing, pending new amendments.

SB 620, MODIFIES PROCEDURE FOR IMPOSING PROBATION FOR MISDEMEANORS COMMITTED ON OR AFTER NOVEMBER 1, 1989, WORK SESSION

073 BOGAN: Reviews intended purpose of bill.

086 CHAIR COHEN: I have talked to several judges who don't want this to be retroactive. They would prefer that we attach an emergency clause.

097 SWENSON: The bill itself raises that issue. -Submits Justice Department amendments, dated 2/18/91. (Exhibit F) Reviews intended purpose of amendments. -Amendments make explicit the bill's retroactive effect. -If committee wished bill to be prospective only, another amendment would be necessary. -Amendments also concern revocation of probation, and eliminate misdemeanors from provisions governing such revocation. -Pages 1 to 3 of their amendments addresses the question of probation. -Page 4, Section 3, addresses the aspect of jail sentences.

130 CHAIR COHEN: What is the pleasure of the committee on this bill?

135 SEN. SHOEMAKER: Are we discussing the issue of retroactivity?

136 CHAIR COHEN: Yes.

137 SEN. SHOEMAKER: The Department of Justice seems persuasive enough about retroactivity. -If someone wants to contest this, let them contest. This appears to be on strong legal ground.

141 CHAIR COHEN: I disagree.

146 SEN. SHOEMAKER: Does the judge think this is ex post facto, or does he just think it is impractical?

147 CHAIR COHEN: He thinks that it would cause a big problem, and would set bad policy.

162 CHAIR COHEN: Moves to adopt Section 2 of the amendments offered by the Department of Justice, dated 2/18/91. -Asks if committee has objections to the adoption of Section 2 of these amendments.

164 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

170 BOGAN: The bill raises the issue of retroactivity, not only Section 3 of the Department of Justice amendments.

175 CHAIR COHEN: What if we decided not to make it retroactive? We would add new language and an emergency clause.

181 SWENSON: If you wanted to make it expressly prospective, you could say "misdemeanors committed on or after the effective date of this act." -That leaves a gap for offenses which occurred between 11/1/89 and the effective date.

185 CHAIR COHEN: Those would be up to litigation, as they would be if we wanted to leave it retroactive.

187 BOGAN: Those cases would not be eligible for jail as a condition of probation until the effective date of this act with the emergency clause.

191 SEN. BROCKMAN: I would like to talk to my district attorney about this. -How widespread is this?

196 BOGAN: This is a very widespread problem. We get calls from all over the state.

199 SEN. BROCKMAN: I would like to talk to a judge about the retroactivity issue.

201 CHAIR COHEN: Everyone should think about doing that.

204 SEN. BROCKMAN: I think we should get some more information about this. -How can we recapture these people?

209 BOGAN: The argument is whether you can recapture them. -The Department of Justice has an argument about this, and so do the judges. -Some judges might prefer to have it now, with the emergency clause.

216 CHAIR COHEN: That is one judge's opinion, and members might want to call judges from their own districts to get their opinions.

221 SEN. SHOEMAKER: Whether we decide for retroactivity or not, all misdemeanants not yet sentenced are subject to the recapture rule. -Retroactivity only affects those sentenced after 11/1/89, and prior to 7/1/91. -If we fixed it, it would be for the future.

231 SWENSON: The dates refer to date of offense, not to date of sentence.

232 SEN. SHOEMAKER: Not the date of the sentence?

233 SWENSON: No: date of the offense.

234 SEN. SHOEMAKER: That's important. That persuades me for retroactivity.

240 SWENSON: That is a question which the court would have to decide, if SB 620 was passed as written, and then was challenged.

247 SEN. SPRINGER: Were the district attorneys asked for their opinion?

252 SEN. BUNN: I think that either way would be good, but I prefer to make it retroactive. The tool should be available, even though there may be a risk of challenge.

258 ERIK WASMANN, DEPARTMENT OF JUSTICE: We share concerns that this needs to be done quickly. -Retroactive intent could be upheld on appeal. -The idea is that the provision which makes jail a condition of probation does not expand the sentencing maximum provided by statute.

293 SEN. SHOEMAKER: Why do you want this done today? The emergency clause would make it effective on July 1, 1991.

296 CHAIR COHEN: It would become effective on passage. We have an obligation to move this.

303 SEN. SHOEMAKER: Assume that we make it retroactive. A sentence is

imposed, which the defendant challenges. What happens to his sentence? Would it be stayed, pending appeal?

309 WASMANN: We are talking about two classes of defendants: (1) those already sentenced; and (2) those who come before court after the effective date.

318 SEN. SHOEMAKER: This could be either.

325 WASMANN: I don't know. I'm not an expert.

327 SEN. SHOEMAKER: What happens to sentence if the sentencing decision is appealed?

328 WASMANN: I don't believe that current practice is to stay parts of sentences.

333 SEN. SHOEMAKER: If it's not stayed, then the appeal would be very expedited.

335 WASMANN: From the defendant's point of view, the outcome is moot. Misdemeanors have short jail terms anyway.

340 SEN. SHOEMAKER: Unless it were stayed. If you stay a sentence for one, it is stayed for all, which would make it retroactive.

345 WASMANN: Not necessarily. That decision would be made judge by judge.

347 CHAIR COHEN: If we left out Section 3 of the Department of Justice amendments, then this would be left to the courts to decide.

360 SEN. SHOEMAKER: That section does not cover the point of my question. -If we clearly make it retroactive, then what is the practical effect of that in the courts?

376 WASMANN: I can't answer more definitely.

378 SEN. SHOEMAKER: We need to know this.

383 SEN. HILL: If we deleted Section 3 of the Department of Justice amendments, would that provide the option for judges which Sen. Bunn proposed?

389 SWENSON: It would not make it optional.

394 SEN. BUNN: My intent was not to make it ambiguous, but to state retroactivity and allow the judge to decide whether to impose such a sentence or not. -I would like to make this retroactive and send it out now, or we could make it effective on date of passage and send it out today.

410 CHAIR COHEN: Moves SB 620, as amended, to the floor with a "do pass" recommendation.

414 SEN. SHOEMAKER: Asks if "as amended" includes Section 3 of the Department of Justice amendments.

416 CHAIR COHEN: No. -Withdraws her earlier motion.

424 SEN. BUNN: Moves for adoption of Section 3 of the Department of Justice amendments, dated 2/18/91.

432 MOTION FAILS, WITH SENATORS BUNN AND SHOEMAKER VOTING AYE, AND SENATORS BROCKMAN, HAMBY, SPRINGER, HILL, AND COHEN VOTING NAY.

440 SEN. HILL: Moves SB 620, as amended, to the floor with a "do pass" recommendation.

449 MOTION CARRIES UNANIMOUSLY.

TAPE 50, SIDE B

SB 103, PROVIDES THAT UNITARY ASSESSMENT TAKES EFFECT JULY 1, 1992, WORK SESSION

015 CHAIR COHEN: Reviews intended purpose of bill.

018 LINDEN: Submits proposed amendments, dated 2-15-91 (Exhibit G). -We have no objections to the Public Utilities Commission's potential amendments. -They were included because they statutorily receive funds, though not in practice. -We hope this will be revenue neutral.

041 SWENSON: We have the -1 amendments, but we don't have written amendments from PUC.

045 CHAIR COHEN: What about the State Marine Board?

046 LINDEN: They are a recipient agency, but they are not a problem.

051 CHAIR COHEN: According to them, they seem to have a problem. They contend that they are facing a deficit of 35% - 40% in the 1991-93 biennium.

054 LINDEN: I don't know how they got that.

058 JOAN SMITH, PUBLIC UTILITIES COMMISSION: Proposes amending SB 103 by deleting reference in line 3 to ORS 796.990, and by deleting all of Section 10.

066 CHAIR COHEN: We will need a written copy of your proposed amendments.

069 LOU MCCANNA, PUBLIC UTILITIES COMMISSION: SB 103's fiscal analysis estimates \$136,470 of lost revenue for PUC, in the 1991-93 biennium. These funds are a portion of funds which support the Commission's rail safety program. We want to be deleted from the bill so that we can maintain our programs.

080 CHAIR COHEN: Requests witness to state proposed amendments.

081 MCCANNA: Reviews proposed amendments.

094 CHAIR COHEN: Confirms proposed amendments.

096 LINDEN: Confirms proposed amendments.

100 SEN. HILL: Moves amendments proposed by Public Utilities Commission, subject to review by Legislative Counsel.

106 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

107 SEN. HAMBY: Does this bill as amended now have a positive financial impact?

109 LINDEN: I believe that it is still a neutral impact. If there is any over-collection of revenue, it would go into the unitary fund reserve account.

118 SEN. BROCKMAN: [QUOTE] "Does this bill have a subsequent referral to Ways & Means? I want to be sure that the State Marine Board is taken care of."

124 CHAIR COHEN: Yes, it will be referred to them.

131 JERRY JUSTICE, ASSOCIATION OF OREGON COUNTIES: We also want it to go to

Ways & Means.

139 SEN. HILL: Moves SB 103, as amended, to the Senate Ways & Means Committee with a "do pass" recommendation.

144 MOTION CARRIES UNANIMOUSLY.

152 SEN. HILL: Did we adopt the -1 amendments?

153 SWENSON: No.

154 CHAIR COHEN: Moves to reconsider committee vote on SB 103.

164 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

165 SEN. SHOEMAKER: Moves for adoption of the -1 amendments to SB 103.

168 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

169 SEN. HILL: Moves SB 103, as amended, to the Senate Ways & Means Committee with a "do pass" recommendation.

170 MOTION CARRIES UNANIMOUSLY.

SB 490, AUTHORIZES ATTORNEY FEES FOR INSURED WHO IS PREVAILING PARTY IN SPECIFIED PROCEEDINGS, PUBLIC HEARING

192 MIC ALEXANDER, OREGON TRIAL LAWYERS ASSOCIATION: Testifies in favor of SB 490. -Submits written testimony (Exhibit H). -Reviews intended purpose of bill.

271 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: We were concerned whether this bill affected PEP arbitrations: it does not. -We have asked to have additional amendments prepared by Legislative Counsel.

293 CHAIR COHEN: Are you referring to the -1 amendments (Exhibit I)?

294 WILLIAMSON: No. Apparently, Legislative Counsel is still working on them. -Reviews intended purpose of -1 amendments.

303 CHAIR COHEN: Are the -1 amendments acceptable to you?

304 WILLIAMSON: Yes.

309 SEN. HILL: Do the -1 amendments do more than what you wanted?

311 WILLIAMSON: Legislative Counsel thought it was better to delete the

existing language and redraft the statute. In the process, they omitted some important things. -The -1 amendments fix that problem.

324 SEN. HILL: The -1 amendments?

325 WILLIAMSON: Yes.

328 CHAIR COHEN: Are we expecting more amendments?

329 TAYLOR: We need to go back to Legislative Counsel to ensure that we have included everything that needs to be there.

332 WILLIAMSON: We requested an additional amendment to line 27, which would also exempt underinsured and uninsured motorists.

341 JOHN POWELL, STATE FARM INSURANCE: Asks to appear at next hearing, after time to review proposed amendments. -Will submit paper currently being written on this area of arbitration. -Wants to show extent of arbitration picked up by bill, which does more than change language.

365 CHAIR COHEN: Agrees with witness.

SB 491, AUTHORIZES CIVIL ACTION BY INSURED IF INSURER COMMITS SPECIFIED ACTS WITH INTENT TO INDUCE INSURED TO SETTLE FOR AMOUNT INSURER KNOWS IS LESS THAT AMOUNT DUE UNDER POLICY, PUBLIC HEARING

386 MIC ALEXANDER, OREGON TRIAL LAWYERS ASSOCIATION: Reviews intended purpose of bill. -Based on Unfair Claims Settlement Practices Act. -Insured must prove intent. -Insurer must wilfully commit acts.

TAPE 51, SIDE A

BILL INTRODUCTION

003 CHAIR COHEN: Reviews Legislative Counsel drafts to be submitted as committee bills. -LC 3840, relating to pro bono services by district attorneys and Attorney Generals, at the request of the Oregon State Bar Pro Bono Committee. -LC 3811, relating to class action recovery, at the request of Phil Goldsmith. -LC 3674, relating to limitation on video game devices, at the request of Senator Cohen. -Asks if committee has objections to introduction of these as committee bills.

021 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BROCKMAN WAS EXCUSED.

022 CHAIR COHEN: Reviews LC 3852, relating to personal visits at penal and correctional institutions, at the request of Senator Springer. -Asks if committee has objections to introduction of this as a committee bill.

027 SEN. BUNN: Objects to introduction of LC 3852 as a committee bill.

029 HEARING NO FURTHER OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BROCKMAN WAS EXCUSED.

033 CHAIR COHEN: Adjourns hearing at 3:07 p.m.

Reviewed by: Reviewed by:

Ingrid Swenson Bill Taylor Counsel Counsel

Submitted by:

Kate Wrightson Assistant

EXHIBIT LOG:

A - Testimony on SB 343 - Judge Stephen Herrell - 2 pages
B - Testimony on SB 342 - Ellen Jones - 2 pages
C - Testimony on SB 343 - Ellen Jones - 3 pages
D - Amendments to SB 616 - Kathleen Bogan - 1 page
E - Amendments to SB 619 - Kathleen Bogan - 2 pages
F - Amendments to SB 620 - Staff - 4 pages G- Amendments to
SB 103 - William Linden - 4 pages H - Testimony on SB 490 - Mic
Alexander - 2 pages I - Amendments on SB 490 - Staff - 1 page