

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 376, WS

SENATE COMMITTEE ON JUDICIARY

April 1, 1991Hearing Room C 1:00 p.m.Tapes 83 - 85

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair
Sen. Peter Brockman Sen. Jim Bunn Sen. Bob Shoemaker Sen. Dick Springer

MEMBER EXCUSED: Sen. Jeannette Hamby

STAFF PRESENT: Ingrid Swenson, Committee Counsel Kate Wrightson,
Committee Assistant

WITNESSES: Judge Paul Lipscomb, Marion County
District Court Jas Adams, Office of the Attorney General Michael Wells,
Family Law Section, Oregon State Bar Nori Cross, Oregon Judicial
Department Carl Stecker, Oregon District Attorneys Association David
Heynderickx, Legislative Counsel Ross Shepard, Oregon Criminal Defense
Lawyers Association

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 83, SIDE A

003 CHAIR COHEN: Calls hearing to order at 1:10 p.m.

SB 376, REVISES PROCEDURES FOR IMPOSITION OF SANCTIONS FOR CONTEMPT OF COURT, WORK SESSION

009 CHAIR COHEN: Reviews intended purpose of bill.

017 JUDGE PAUL LIPSCOMB, MARION COUNTY DISTRICT COURT: The contempt power is an important power; it gives us the ability to enforce a judgment, order, or decree. Without that power, there are no teeth in our decisions, especially in civil cases. -The problem is that the contempt power is ill-defined in Oregon. It is not clear in the statutes, or elsewhere. -This bill helps the confusion and fills in procedural gaps. It is a road map for the future. -Contempt is probably not going to be more frequently invoked as a result of this bill.

085 SEN. HILL: In our last work session, we changed the burden of proof for contempt. Our concern was that actions meriting incarceration needed a strict standard. -We could also leave the standard at "clear & convincing" for non-incarceration penalties. -Is this an important distinction?

100 LIPSCOMB: People who don't work with the two standards don't see how hard it is to get "beyond reasonable doubt." -"Reasonable doubt" means "to a moral certainty," and that shouldn't be lightly assumed for all contempt. There are good reasons why the standard is confined to certain issues.

128 SEN. HILL: I would like to leave the standard at "beyond reasonable doubt" when incarceration is involved, but when it is not, I would like the standard to be "clear and convincing."

135 SEN. BUNN: I have no problem with changing line 16, page 3.

143 CHAIR COHEN: Submits -10 amendments (Exhibit A).

152 SEN. HILL: Moves to adopt the -10 amendments to SB 376.

156 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

175 JAS ADAMS, OFFICE OF THE ATTORNEY GENERAL: The original bill summarizes

Supreme Court precedent. If the intent is to codify existing case law, "wilful" does that. -The concept of "bad intent" is incorporated into "wilful."

241 SEN. SHOEMAKER: You have testified both that "wilful" should, and should not, include "bad intent." Which do you plan to argue in your appeal?

248 ADAMS: I am going to argue that no separate finding of bad intent is required.

254 SEN. SHOEMAKER: What about the Grover case?

257 ADAMS: Grover says that "wilful" will suffice.

261 SEN. SHOEMAKER: Will you ask for reversal on the precedent of Grover?

263 ADAMS: The issue is really that of separate findings.

292 SEN. SHOEMAKER: Do you want us to define "wilful" for you?

294 ADAMS: I would like the Legislature to adhere to existing law.

308 SEN. SHOEMAKER: That is the problem: if we accept your statement that the two terms are redundant, are we not creating a legislative history that "wilful" includes "bad intent," and that both "wilful" and "bad intent" must be found?

313 ADAMS: You could create legislative history by saying that "wilful" means "knowingly, with a bad intent."

338 SEN. BUNN: Isn't the Couey case currently the law until the Supreme Court makes a decision? -Doesn't our language uphold the appellate decision?

347 ADAMS: There is no Supreme Court case that holds a separate standard for bad intent. -The appellate decision on Couey has created something new.

366 SEN. BUNN: Under the amendment which we made last week, if bad intent is not established, contempt does not exist.

371 ADAMS: A separate finding would have to be made.

376 SEN. BUNN: You advocate the removal of "bad intent," and say that "wilful" is enough.

381 CHAIR COHEN: If the Supreme Court upholds Couey, then it would agree with case law.

394 SEN. BUNN: With that in mind, it seems important that we make a policy decision.

405 SWENSON: The committee needs to decide whether to use the current standard, and use "wilful" only, or whether to change the current standard and use both. -Not everyone thinks Couey changes the current standards.

TAPE 84, SIDE A

007 SEN. HILL: Don't the most serious offenses require both "wilful" and "bad intent?"

011 ADAMS: Punitive damages require "deliberate disregard of societal norms." -The average offense only requires that someone deliberately disregard the law. -"Wilful" means intentionally, knowingly, and something extra. It is a very strong standard.

020 SEN. HILL: Is there any criminal offense that requires bad intent to be shown?

023 ADAMS: Even aggravated murder doesn't use these words.

030 SEN. HILL: Is there a standard that is higher than "wilful"?

032 ADAMS: I don't think the current Criminal Code uses "wilful." I think it only uses "intentional."

045 CHAIR COHEN: I am willing to stay with "wilful," as long as the Supreme Court is able to rule that there may be a double standard.

047 SEN. SHOEMAKER: What we do here will become statutory; it's not a Supreme Court matter.

054 SWENSON: The Court will look to legislative intent. The committee needs to decide whether to change the law.

057 SEN. SHOEMAKER: We could define "wilful" and make it controlling on courts of the future.

061 ADAMS: The only definition of "wilful" in case law is an 1897

decision that defines it as "knowingly and with bad intent."

070 SEN. SHOEMAKER: I am still troubled by the definition which you apparently used in your argument, which includes that findings of wilfulness automatically include a finding of bad intent.

080 ADAMS: I think that the standard is "wilful," and the problem is how one defines that term.

087 SEN. SHOEMAKER: Intentional, and with knowledge that what you are doing was forbidden.

088 ADAMS: Yes. That is why "bad intent" is so misleading. It is subjective, and introduces the concept of a separate motive. -Contempt is simply the deliberate flouting of a court order.

094 SEN. SHOEMAKER: Moves to retain "wilful," defined as "intentionally and with knowledge that it was forbidden conduct."

097 CHAIR COHEN: I agree.

106 SEN. BUNN: I think that the Court of Appeals has set a new standard. -If we believe that they have come to a conclusion, I think that the language we adopted last week is better.

133 CHAIR COHEN: This definition will not go into the statute. It is only for legislative history.

147 MOTION CARRIES, WITH SENATOR BUNN VOTING NAY. SENATOR HAMBY WAS EXCUSED.

152 ADAMS: There is a difference between incarceration ordered as a remedial penalty and incarceration imposed as a punitive sanction.

182 SEN. SHOEMAKER: Should there be a substantive difference between standards for remedial and punitive prison sentences?

188 ADAMS: Yes. The Department of Justice is opposed to a standard of "beyond a reasonable doubt" for remedial sanctions.

217 CHAIR COHEN: You recommend deletion of "other than confinement" on line 2 of the -10 amendments.

235 ADAMS: The next sentence could be deleted as well.

239 SEN. BUNN: Is there any reason to believe that it is harder to meet the "beyond reasonable doubt" standard in remedial cases than in punitive cases?

243 ADAMS: The standard is equally hard, regardless of the setting.

254 MICHAEL WELLS, FAMILY LAW SECTION, OREGON STATE BAR: I have used the contempt power in family law cases. -Though confinement is not often used in those cases, I don't think the standard should be raised.

278 SEN. BUNN: How does this apply to a current refusal to accept a court order? -It seems that a remedial case is easier to do: either the person complies or doesn't.

290 WELLS: If you are trying to prove contempt for failure to comply

with a court order, it would be harder to prove if the standard was "beyond reasonable doubt." -If the failure to comply was already proven, then the issue is already clear. -They are different things.

302 SEN. BUNN: Isn't the second remedial, and the first punitive?

304 CHAIR COHEN: We appear to have some confusion over what is punitive and what is remedial.

314 NORI CROSS, OREGON JUDICIAL DEPARTMENT: Punitive sanctions are punishments for past acts. Remedial sanctions are either to coerce compliance or to compensate for damages occasioned by a past act. -Under case law, compensation is not considered punishment.

327 SEN. BUNN: I didn't understand that a financial penalty could be considered a remedial penalty.

333 CROSS: Compensation is not considered a penalty under this bill. -Punishment is different than a compensatory grant of relief to a party that has been injured.

347 SEN. BUNN: I did misunderstand that. -In the context of our amendment dealing with incarceration, we are dealing strictly with past behavior for punitive sanctions, versus compelling behavior for remedial sanctions.

354 CROSS: Generally, yes. There is a provision, in the definition of remedial contempt, that there is also compensation available for past acts.

359 SEN. BUNN: We have created a double standard when dealing with confinement.

370 CROSS: I think so.

372 SEN. BUNN: It doesn't seem that compelling behavior is harder to prove than past behavior. -I understand that the two burdens are different, but it doesn't seem any harder, in remedial cases, to reach "beyond reasonable doubt" than it would be in punitive cases.

385 CROSS: I am not qualified to answer.

388 CHAIR COHEN: Any time you begin a remedial case, you might have to prove the higher level, because it might eventually be a punitive sanction.

408 CARL STECKER, OREGON DISTRICT ATTORNEYS ASSOCIATION: In remedial cases,

the problem is up front and you have to make a determination of the ultimate remedy.

428 SEN. BUNN: Don't you currently have a similar circumstance for certain misdemeanors, where you decide whether incarceration may be a factor?

433 STECKER: Under current standard, yes. The court is required to apprise a contemnor of possible incarceration as an ultimate remedy.

TAPE 83, SIDE B

006 SEN. BUNN: In other misdemeanor cases, you have the same situation when the district attorney decides whether or not to seek incarceration. -That decision is made going into the case, not during the process.

012 STECKER: Those charging decisions can be dealt with in advance.

016 SEN. BUNN: I am not convinced that we have created a significant burden.

020 SEN. SHOEMAKER: I'm not sure that it makes much difference. -In a remedial case, we can only incarcerate someone until the contempt stops.

041 WELLS: This is too important to get lost in details. Sen. Bunn does have a legitimate concern.

060 SWENSON: In response to Sen. Shoemaker's earlier question, the court does have an inherent power. They may take legislative intent into consideration, but they may feel that they can overrule that intent. -Submits hand-engrossed version of bill (Exhibit B). -Reviews proposed language respecting shareholders.

105 SEN. SHOEMAKER: Moves to adopt page 1a of the hand-engrossed version of SB 376.

111 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

119 SEN. SHOEMAKER: There was some confusion on line 26 of page 2, on the difference between "incident" and "conduct."

121 SWENSON: The committee asked to discuss that here, in light of current jeopardy law. -The current case law on jeopardy applies, in criminal contempt cases, and bars any criminal case for the same conduct.

153 CHAIR COHEN: Do we need an amendment?

157 SEN. BUNN: On line 26, the language "the same conduct" should be "the same incident."

164 CROSS: We have used the term "act" elsewhere in the bill.

172 DAVID HEYNDERICKX, LEGISLATIVE COUNSEL: Our previous discussion centered on whether this language might authorize additional imposition of penalties for prior conduct, which was not the same incident.

205 SEN. BUNN: It appears that some may read this bill in a manner which is clearly not our intent.

227 CROSS: The current statute uses the language "the same misconduct."

247 STECKER: Such a change would help us to interpret the statute.

248 SEN. HILL: Moves to change "conduct" to "act" on line 26 of page 2.

252 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

266 SEN. HILL: Moves to adopt page 2A of the hand-engrossed version of

SB 376 .

267 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

287 SEN. BUNN: Moves to amend line 44, page 4, and line 16, page 5, by changing "six months" to "three months."

303 CROSS: The six-month limit is derived from the federal limit on incarceration before a defendant is entitled to a jury trial.

347 MOTION FAILS, WITH SENATOR BUNN VOTING AYE, AND SENATORS BROCKMAN, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING NAY. SENATOR HAMBY WAS EXCUSED.

348 SEN. BUNN: Moves to amend line 25, page 5, by changing "a judge may" to "a judge shall."

355 CHAIR COHEN: Submits -8 amendments to SB 376 (Exhibit C). -These amendments use the term "should."

373 SWENSON: The code of judicial ethics requires judges to excuse themselves in circumstances where there is bias, or an appearance of bias. Putting this in the contempt statutes makes it something which may be raised on appeal. It provides for peremptory challenge of judges, as is standard in criminal cases.

393 CHAIR COHEN: These amendments reflect current court practices.

397 CROSS: Yes. The amendments remove any time limitation on filing challenges.

418 SEN. BUNN: The -8 amendments are an improvement on the original, but I still would like to make that change.

TAPE 84, SIDE B

006 SEN. SHOEMAKER: What is the difference between the sentence added in the amendments, and the proposed sentence in the bill, with "may" changed to "shall"?

020 CROSS: I don't think this language is the standard by which affidavits of prejudice are judged. -If "shall" were added, the burden would shift to the court to make the determination, without burden on the party.

032 SEN. SHOEMAKER: Are any of the grounds referred to, such as bias, appearance of bias, or circumstances where objectivity could reasonably be questioned, available in an affidavit of prejudice proceeding?

037 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Chapter 14 presently provides that the party state that he or she cannot receive a fair hearing. The burden is then on the judge, to disprove the allegation. -We are satisfied with the removal of the first sentence.

046 SEN. BUNN: Moves to adopt the -8 amendments to SB 376, effectively withdrawing his earlier motion.

052 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

057 CROSS: Sen. Shoemaker had raised the question of damages included in the language of section 4, lines 42 & 43.

066 SEN. SHOEMAKER: Are they consequential, or noneconomic, damages?

067 CROSS: Consequential damages may be, and probably are, economic.

070 SEN. SHOEMAKER: I want to distinguish between consequential and noneconomic (tort) damages.

079 CROSS: As a contract measure of damages, consequential damages encompass something different from the tort measure. -I have not found a case that defines the extent of compensation which the court can order. Current language says "compensation to indemnify a party for loss occasioned by the contempt." -Our intent was not to expand what is currently available.

109 SEN. SHOEMAKER: In effect, we are talking about "special damages."

111 CROSS: I believe that those are typically available, but I can't answer for every case.

116 WELLS: It is unlikely that a court would award any noneconomic damages. In fact, they normally award only "out-of-pocket" expenses.

137 SEN. BUNN: Moves to adopt the -1 amendments (Exhibit D) to SB 376.

152 CROSS: Explains why Department of Justice does not support -1 amendments.

166 SEN. BUNN: My understanding is that the intent of line 44, page 4, was to set an absolute six month limit on incarceration as a remedial penalty.

176 CROSS: Six months is the current law. We were not seeking to change that.

190 SEN. BUNN: If we want to limit incarceration as a remedial penalty, then we need a limit.

249 MOTION FAILS, WITH SENATORS BUNN AND HILL VOTING AYE, AND SENATORS BROCKMAN, SHOEMAKER, SPRINGER, AND COHEN VOTING NAY. SENATOR HAMBY WAS EXCUSED.

266 CROSS: Reviews intended purpose of -7 amendments (Exhibit E). -The original bill was broader than intended. -We rewrote it so that sanctions must be imposed by an appealable judgment. If sanctions are imposed, then a person should appeal within the thirty day limit already available, regardless of any concurrent proceedings. -We have given the courts an option to suspend imposition of sanctions, and not to enter the judgment until the end of related proceedings. -Appeals on punitive sanctions proceed as in criminal proceedings; appeals on remedial sanctions proceed as in civil cases.

319 SEN. SHOEMAKER: What is the difference between those two proceedings?

321 CROSS: They differ in what rights obtain on appeal.

334 SEN. SHOEMAKER: Are you proposing any changes in present procedure?

342 CROSS: One slight change: a provision for appeal by both parties.

362 HEYNDERICKX: The reference to ORS 138 will alert people that the state will not be able to appeal the denial of the imposition of a punitive sanction.

433 CHAIR COHEN: Moves for adoption of amendments to section 11 of SB 376, appearing on page 3 of the -7 amendments.

435 SEN. SHOEMAKER: The reference to ORS 183 needs to be changed to ORS 138 .

436 CHAIR COHEN: Moves for adoption of amendments to section 11 of SB 376 and the change of "ORS 183" to "ORS 138", appearing on page 3 of the -7 amendments, effectively withdrawing her earlier motion.

437 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

TAPE 85, SIDE A

006 CHAIR COHEN: Introduces -9 amendments (Exhibit F).

022 STECKER: Reviews intended purpose of amendments.

041 CHAIR COHEN: Are these amendments satisfactory to you?

045 STECKER: Yes.

046 SEN. HILL: Moves to adopt the -9 amendments to SB 376.

058 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR HAMBY WAS EXCUSED.

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

Submitted by: Reviewed by:

Kate Wrightson Ingrid Swenson AssistantCounsel

EXHIBIT LOG:

A	-	Amendments to SB 376 - Staff - 1 page	B -	Hand-engrossed
version of SB 376 - Staff - 26 pages	C -	Amendments to SB 376 -		
Staff - 1 page	D-	Amendments to SB 376 - Staff - 1 page		
E	-	Amendments to SB 376 - Staff - 5 pages	F-	Amendments to
SB 376 - Staff - 1 page				

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 102, WS SB 376, WS SB 373, WS SB 638, WS SB 1187, PH SB 1006, PH SB 942, PH SB 948, PH SB 1008, PH

SENATE COMMITTEE ON JUDICIARY

April 1, 1991Hearing Room C 7:00 p.m.Tapes 86 - 88

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair
Sen. Peter Brockman Sen. Jeannette Hamby Sen. Bob Shoemaker Sen. Dick Springer

MEMBER EXCUSED: Sen. Jim Bunn

STAFF PRESENT: Ingrid Swenson, Committee Counsel Bill Taylor,
Committee Counsel Kate Wrightson, Committee Assistant

WITNESSES: Kathleen Haley, Psychiatric Security
Review Board Harris Matarazzo, Psychiatric Security Review Board Nori
Cross, Oregon Judicial Department Carl Stecker, Oregon District
Attorneys Association Jack Oleson, Attorney John Powell, State Farm and
North Pacific Insurance Companies James McIntyre, Office of the
Multnomah County District Attorney Frank Brawner, Oregon Bankers
Association Gary Lindberg, American Bankers Association Jack Landau,
Department of Justice Larry Ruh, Pro Bono Committee, Oregon State Bar
Michael Keeney, Marion-Polk Legal Aid Bob Cannon, Marion County Legal
Counsel Keith Burns, Oregon Financial Services Association Kirk Hall,
Professional Liability Fund, Oregon State Bar Phil Goldsmith, Attorney

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 86, SIDE A

002 CHAIR COHEN: Calls hearing to order at 5:07 p.m.

SB 102, RELATING TO PSYCHIATRIC SECURITY REVIEW BOARD, WORK SESSION

023 KATHLEEN HALEY, PSYCHIATRIC SECURITY REVIEW BOARD: Reviews intended purpose of SB 102.

036 SEN. BROCKMAN: The only thing this bill does is change 30 days to 20?

037 HALEY: Yes.

039 HARRIS MATARAZZO, PSYCHIATRIC SECURITY REVIEW BOARD: Submits and summarizes written testimony (Exhibit A).

066 SEN. HILL: Moves SB 102 to the floor with a "do pass" recommendation.

071 MOTION CARRIES, WITH SENATORS BROCKMAN, SHOEMAKER, HILL, AND COHEN VOTING AYE. SENATORS BUNN, HAMBY, AND SPRINGER WERE EXCUSED.

SB 376, REVISES PROCEDURES FOR IMPOSITION OF SANCTIONS FOR CONTEMPT OF COURT, WORK SESSION

076 CHAIR COHEN: Refers to hand-engrossed version and -7 amendments (Exhibits B & C).

095 SWENSON: Reviews needed technical amendments to -7 amendments.

130 CHAIR COHEN: Moves for adoption of technical amendments to -7 amendments.

132 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

139 NORI CROSS, OREGON JUDICIAL DEPARTMENT: Reviews proposed amendment on page 3 of hand-engrossed bill. -Amendment would delete provision which denies right to appointed counsel for defendants subject to remedial sanctions of incarceration for 30 days or less.

163 CHAIR COHEN: Moves to adopt amendment iterated on lines 15-22 of the -7 amendments.

167 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

171 CROSS: Reviews proposed amendment on line 23 of the -7 amendments. -Amendment would establish procedure for some issues arising from remedial proceedings.

190 SEN. HILL: Moves to adopt lines 23-25 of the -7 amendments.

196 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

198 CHAIR COHEN: Moves to amend the -7 amendments by deleting lines 29-36.

201 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

209 CROSS: Reviews proposed amendments to section 12. -Amendment would delete remainder of line 41 after "filed."

231 CHAIR COHEN: Moves to amend the -7 amendments by deleting the remainder of line 41, after the word "filed."

232 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

243 CROSS: Reviews proposed amendment to line 8 of the -7 amendments.

-Amendment would provide cross-reference and would specify the court's inherent power to appoint a special prosecutor under certain circumstances.

252 CHAIR COHEN: Moves to adopt lines 8-9 of the -7 amendments.

261 SEN. SHOEMAKER: On lines 14 and 15, we should add language concerning attorneys of an interested party, as we did in our previous amendments.

270 CHAIR COHEN: Moves to adopt lines 8-9 of the -7 amendments, and to add language concerning attorneys of interested parties to lines 14 and 15, effectively withdrawing her earlier motion.

275 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

287 CARL STECKER, OREGON DISTRICT ATTORNEYS ASSOCIATION: Reviews proposed amendment on line 30, page 9, of the hand-engrossed version of the bill.

295 CHAIR COHEN: Moves to adopt line 30, page 9, of the hand-engrossed version of SB 376.

297 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

309 SWENSON: Reviews proposed amendments on page 19 of the hand-engrossed bill. -Amendments relate to imposition by the court of fines and restitution orders, and the methods by which those orders are enforced. -Submits -5 amendments (Exhibit D).

372 CROSS: The Judicial Department would prefer as much discretion in fashioning effective remedies as possible. -The -5 amendments would provide that.

384 STECKER: The ODAA has no position.

394 SEN. SHOEMAKER: How does subsection 2, of section 27A, fit with our decision to require proof "beyond reasonable doubt"?

414 STECKER: Subsection 2 refers to conditions after the sentence is imposed. I do not see a conflict.

433 SWENSON: The amendment on page 5 of the hand-engrossed bill, which the committee just passed, addresses that question. -There is an alternative procedure, which removes any potential conflict.

445 SEN. SHOEMAKER: This does reverse the burden.

446 SWENSON: Yes. It creates a different set of standards.

TAPE 87, SIDE A

064 SEN. HILL: Moves to adopt the -5 amendments to SB 376.

066 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

071 STECKER: A recent ruling states that a contemnor defendant can assert a constitutional right against self-incrimination, in a civil remedial contempt. -If such a contemnor asserts that right, the district attorney is no longer able to prove the violation of the underlying

order. -Under criminal procedure, there is a process of transactional immunity which sidesteps this problem. -We would like to amend the bill to reflect this process.

151 CHAIR COHEN: Perhaps we should pass the bill without these amendments.

153 STECKER: Would it be possible to amend only ORS 136.617?

155 CHAIR COHEN: Yes.

162 SEN. HILL: Moves to amend SB 376 by adopting language proposed by the ODAA, which applies to ORS 136.617.

175 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

181 SEN. HILL: Moves SB 376, as amended, to the floor with a "do pass" recommendation.

193 MOTION PASSES UNANIMOUSLY. SENATOR BUNN WAS EXCUSED.

SB 373, REQUIRES FIRE INSURANCE POLICIES TO CONTAIN PROVISION STATING THAT COMPANY WILL NOTIFY INSURED OF TIME LIMITATION FOR FILING ACTION, WORK SESSION

214 SEN. SPRINGER: Reviews intended purpose of bill. Submits -3 and -4 amendments (Exhibits E & F).

243 TAYLOR: Reviews history of bill. Submits hand-engrossed version of bill (Exhibit G).

307 JACK OLESON, ATTORNEY: Testifies in favor of SB 373, and in favor of retaining paragraph C.

392 JOHN POWELL, STATE FARM INSURANCE AND NORTH PACIFIC INSURANCE COMPANIES: Reviews -3 and -4 amendments.

447 SEN. HILL: Will you present any opposition to the bill?

451 POWELL: If we get a better idea, we will not act on that idea until we contact Sen. Springer.

463 SEN. SPRINGER: Moves to adopt the -3 and -4 amendments to SB 373.

475 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SEN. BUNN EXCUSED.

476 SEN. SPRINGER: Moves SB 373, as amended, to the floor with a "do pass" recommendation.

486 MOTION CARRIES, WITH SENATORS HAMBY, SHOEMAKER, SPRINGER, HILL, AND COHEN VOTING AYE, SENATOR BROCKMAN VOTING NAY, AND SENATOR BUNN EXCUSED.

TAPE 87, SIDE B

SB 638, PROVIDES THAT PERSON COMMITS UNLAWFUL DISCHARGE OF A WEAPON IF PERSON DISCHARGES FIREARM FROM VEHICLE WITHIN CITY LARGER THAN 15,000 PERSONS, WORK SESSION

040 SWENSON: Submits hand-engrossed version of the bill (Exhibit H), and -1 amendments (Exhibit I). -There is an error in the -1 amendments.

On line 3, add "or" before "upon".

058 JAMES MCINTYRE, OFFICE OF THE MULTNOMAH COUNTY DISTRICT ATTORNEY:
Proposes additional amendments to hand-engrossed bill: -On line 9, after
"fire alarm," insert "or dangerous weapon". -On line 10b, strike "or."
-On line 10c, strike "discharges deadly weapon."

109 SEN. HILL: Requests definition of dangerous weapon.

110 MCINTYRE: Any instrument or article which, under the circumstances
in which it is used, is readily capable of causing death or serious
physical injury.

112 SEN. HAMBY: What about BB guns?

113 MCINTYRE: That would be considered a dangerous weapon.

142 SEN. HILL: There has to be some difference between a BB gun and a
shotgun.

146 MCINTYRE: The important thing is the circumstance under which the
weapon is used.

182 SEN. HILL: What about pointing, but not firing?

193 CHAIR COHEN: The bill is limited to discharge.

195 SWENSON: Is "discharge" the appropriate verb if used about weapons
which are not guns?

198 MCINTYRE: "Discharge" is fine, since we are talking about
projectiles.

203 SEN. HAMBY: What about stun guns?

205 MCINTYRE: Multnomah County has ruled that a stun gun is not a
dangerous weapon.

218 SEN. BROCKMAN: Why are you proposing to delete "property" on line
14?

221 SWENSON: The language is misleading, because it may lead to an
assumption that merely protecting property is sufficient cause for use
of deadly force.

255 MCINTYRE: This bill has no effect on the use-of-force statutes
already in the Criminal Code.

267 SEN. HAMBY: Moves to adopt the -1 amendments to SB 638, as
explained by counsel and witness.

277 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS, SENATORS BUNN,
SHOEMAKER, AND SPRINGER EXCUSED.

278 SEN. HAMBY: Moves SB 638, as amended, to the floor with a "do pass"
recommendation.

283 MOTION CARRIES, WITH SENATORS BROCKMAN, HAMBY, HILL, AND COHEN
VOTING AYE. SENATORS BUNN, SHOEMAKER, AND SPRINGER WERE EXCUSED.

SB 1187, ENACTS ARTICLE 4A OF UNIFORM COMMERCIAL CODE RELATING TO FUNDS TRANSFERS, PUBLIC HEARING

300 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Testifies in favor of SB 118 7. Submits and reviews written testimony (Exhibit J).

331 GARY LINDBERG, AMERICAN BANKERS ASSOCIATION: Testifies in favor of SB 118 7. Submits and reviews written testimony (Exhibit K).

TAPE 87, SIDE B

SB 1006, SPECIFIES THAT ATTORNEY GENERAL, DEPUTY ATTORNEYS GENERAL AND ASSISTANTS MAY PROVIDE PRO BONO LEGAL SERVICES, PUBLIC HEARING

030 JACK LANDAU, DEPARTMENT OF JUSTICE: Testifies in support of SB 1006. Submits and summarizes written testimony (Exhibit L).

049 LARRY RUH, PRO BONO COMMITTEE, OREGON STATE BAR: Testifies in favor of SB 1006.

069 SEN. HAMBY: Has the Bar thought about encouraging legal assistants to offer pro bono work?

073 RUH: Although we have not discussed that, I think that it will probably occur.

091 MICHAEL KEENEY, MARION-POLK LEGAL AID: Testifies in support of SB 1006.

101 SEN. HAMBY: [QUOTE] "I would like to ask the Pro Bono Committee to consider my question, and perhaps next session come forward with a recommendation."

SB 942, ALLOWS COUNTY TO CHANGE AMOUNT OF FEE MORE THAN ONCE A YEAR, PUBLIC HEARING

110 BOB CANNON, MARION COUNTY LEGAL COUNSEL: Reviews history of bill. Submits and summarizes written testimony (Exhibit M).

SB 948, EXTENDS TIME FOR SECURED PARTY TO PERFECT PURCHASE MONEY SECURITY INTEREST TO PROTECT RIGHTS AGAINST TRANSFEREE IN BULK, LIEN CREDITOR OR CONFLICTING SECURITY INTEREST, PUBLIC HEARING

189 KEITH BURNS, OREGON FINANCIAL SERVICES ASSOCIATION: Testifies in favor of SB 948.

283 KIRK HALL, PROFESSIONAL LIABILITY FUND, OREGON STATE BAR: Testifies in opposition to the bill. -The Debtor-Creditor Section has not been consulted by proponents of the bill, to my knowledge.

352 BRAUNER: Reviews history of similar bills in previous sessions.

405 BURNS: We consulted the Debtor-Creditor Section of the Bar on March 4. -This bill affects much more than bankruptcies.

TAPE 88, SIDE A

SB 1008, RELATING TO CLASS ACTION, PUBLIC HEARING

002 PHIL GOLDSMITH, ATTORNEY: Submits and summarizes written testimony

(Exhibit N) and letter from Marcella Easley (Exhibit O).

127 SEN. HILL: How do you feel about pre-judgment interest?

128 GOLDSMITH: Although pre-judgment interest occurs in class action suits, as it does in other kinds of cases, it would not be affected by this bill.

136 CHAIR COHEN: Adjourns hearing at 7:12 p.m.

Submitted by: Reviewed by:

Ingrid Swenson Bill Taylor Counsel Counsel

Submitted by:

Kate Wrightson Assistant

EXHIBIT LOG:

A - Testimony on SB 102 - Harris Matarazzo - 3 pages
B - Hand-engrossed version of SB 376 - Staff - 26 pages
C - Amendments to SB 376 - Staff - 5 pages D- Amendments to
SB 376 - Staff - 2 pages E - Amendments to SB 373 - Staff - 1
pages F - Amendments to SB 373 - Staff - 1 pages
G - Hand-engrossed version of SB 373 - Staff - 1 pages
H - Hand-engrossed version of SB 638 - Staff - 3 pages
I - Amendments to SB 638 - Staff - 1 page J - Testimony on
SB 1187 - Frank Brawner - 5 pages K - Testimony on SB 1187 - Gary
Lindberg - 21 pages L - Testimony on SB 1006 - Jack Landau - 2
pages M - Testimony on SB 942 - Bob Cannon - 2 pages
N - Testimony on SB 1008 - Phil Goldsmith - 5 pages
O - Testimony on SB 1008 - Phil Goldsmith - 1 page