

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: Informational Hrg. SB 945 (PUB) SB 947 (WRK) SB 946 (PUB) SB 654 (WRK) SB 212 (WRK) SB 754 (WRK) SB 882 (WRK) SB 731 (WRK)

SENATE COMMITTEE ON THE JUDICIARY

April 10, 1991Hearing Room C 12:40 p.m.Tapes 103 - 106

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

WITNESSES: THE HONORABLE KIP LEONARD, DISTRICT COURT  
JUDGE THE HONORABLE PAUL LIPSCOMB, DISTRICT COURT JUDGE DAVID FACTOR,  
OREGON CRIMINAL JUSTICE COUNCIL DALE PENN, OREGON DISTRICT ATTORNEYS  
ASSOCIATION KATHRYN ASHFORD, CRIMINAL JUSTICE COUNCIL DAN KENNEDY,  
EXECUTIVE DEPARTMENT BUDGET AND MANAGEMENT DIVISION VERLYN THOMAS,  
PROFESSIONAL LAND SURVEYORS OF OREGON

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TAPE 103, SIDE A

003 CHAIR COHEN: Calls the meeting to order at 12:40 p.m. Discusses agenda for the day.

INFORMATIONAL HEARING

025 DAN KENNEDY, EXECUTIVE DEPARTMENT BUDGET AND MANAGEMENT DIVISION:  
Submits Exhibits A and B.

- The Executive Department bears the responsibility for issuing the prison population forecast. Use the National Council on Crime and Delinquency Model. The exhibits represent our second forecast; had a dry run last November. That model showed a drastic increase in the number of inmates. This spring, there were changes in underlying assumptions. This has lead to a population projection significantly lower than what we've had before that closely mirrors what our actuals are. By end of current biennium, will actually have fewer inmates than what we have today. The number of parolees and post-prison supervision

is projected to grow at a very high rate.

087 CHAIR COHEN: You have a better shot at predicting the parolees because you know when they're coming out, right? Or are you talking about recidivism here?

091 KENNEDY: No; that would be under new admissions.

092 CHAIR COHEN: So you count them under new admissions regardless of how they got there?

093 KENNEDY: That's correct.

093 CHAIR COHEN: Whether its new crimes or they're being violated.

094 KENNEDY: That's correct.

096 CHAIR COHEN: And these are not probationers; these are only parole and post -prison supervision folks.

098 KENNEDY: That's correct.

- We need to get a better model of admissions growth and we need a model for probationers.

104 CHAIR COHEN: So part of that growth on parole and post supervision is we're keeping them longer? Sentencing guidelines have extended some of those parole periods, so by the time we get to 2000, we're keeping some of those people longer than we would have?

113 KATHRYN ASHFORD, CRIMINAL JUSTICE COUNCIL: The primary factor driving the number of parolees and post-prison supervision folks up is the continued effects of Ballot Measure 10 which provided that inmates sentenced under the pre- guidelines system would serve out their full sentence under supervision. That effect will continue to play out as old cases are released from the prison and subject to longer periods of supervision than had previously been the case and longer than what they will serve under the guidelines.

127 SEN. HILL: The guidelines as they are now are based upon what? Given we're talking about renting prison space in Ontario, were our guidelines based on the use of that space?

135 ASHFORD: The guidelines were originally developed to work within the projected capacity, including the completion of Snake River. In the long term, the guidelines were projected to require, by 1999, 7894 beds. The completion of Snake River would bring the system's capacity to . . .

148 CHAIR COHEN: Is Snake River Ontario?

149 KENNEDY: Yes.

150 CHAIR COHEN: Comments about terminology.

- All of Snake River or 500 of Snake River?

153 ASHFORD: The plan then was 648 at Snake River. That would bring the total projected system capacity to 7255.

159 SEN. HILL: So we did take Snake River into consideration when formulating the guidelines. If we don't utilize any of the capacity at Snake River, what does that do?

168 KENNEDY: We're still working under the assumption that we're going to try to rent out medium security beds at Snake River, run the minimum security portion, and phase in the operation at Snake River. That would mean the rest of the system would be pretty close to capacity.

176 CHAIR COHEN: So you're planning right now, if you don't open Snake River at all, that you are going to be 216 beds short . . . . at what point in time?

184 KENNEDY: There are many factors involved. There are temporary beds that are in use sometimes. There is also the intensive management unit opening at Oregon State Penitentiary which has 196 beds, but its hard to count those as general beds. With Snake River on line, we have an extended capacity of 7255, but not all those beds are available at any given time.

192 CHAIR COHEN: If you don't open it and you fully utilize Coos Bay, at what point will you be 200 beds short?

198 KENNEDY: In the '91 - '93 biennium, we're not predicting that we'll be short beds.

200 CHAIR COHEN: At what point will you need to open Snake River?

207 KENNEDY: September, 1993.

209 CHAIR COHEN: So you'll have to open in September, 1993 based on the current projections?

212 KENNEDY: Correct.

- The population projection is based on current law; we don't try to second guess what's going to happen in the coming legislature.

219 CHAIR COHEN: But even if you go with these radically changed figures, you're still looking at September, '93.

225 KENNEDY: That's correct.

227 CHAIR COHEN: We need to understand that better.

235 SEN. HILL: If we do not open Snake River, would you adjust the matrixes then?

244 CHAIR COHEN: He's from the Executive Department.

- Asks Ms. Ashford to answer the question.

252 ASHFORD: If it was clear that the capacity was not going to be available, yes.

258 SEN. SHOEMAKER: Struck by the contrast in the projections made in '91 and in '89. Would be interested in an explanation.

262 CHAIR COHEN: Have heard from Mr. Kennedy that they're November projections were just a first cut.

265 SEN. SHOEMAKER: We made a lot of decisions in 1989 based upon projections that we were going to be overwhelmed with prisoners.

268 CHAIR COHEN: Ms. Ashford needs to answer that, but let's have Mr. Kennedy restate with respect to the most recent forecast in November.

270 KENNEDY: This is only the second time that we've run this model;

hesitates to draw comparisons between what happen in this forecast and what happened a few years ago. What was done a couple years ago reflected what was actually happening in the prison system; no one had any way of knowing that it would level out so rapidly.

278 CHAIR COHEN: Not sure who "us" is.

- Some other people . . . . (inaudible) . . . . is not that far off from the projections the Council made to us.

- Last legislative session, the Executive Department and the Governor went way beyond the projections of the Council. And this legislature went with those projections. Asks Ms. Ashford to address that.

304 ASHFORD: Refers committee to page three of Exhibit B to explain the differences that Chair Cohen has mentioned.

311 CHAIR COHEN AND SEN.S HAMBY, HILL, AND SHOEMAKER: Trying to find the graph Ms. Ashford is referring to.

321 ASHFORD: Compares projections of the Oregon Criminal Justice Council and of the Executive Department.

395 CHAIR COHEN: Better data meaning you've got Corrections collecting information about who's there that you've never had before.

397 ASHFORD: And how long they're expected to stay.

399 SEN. HAMBY: As to Ontario, has there been an estimated cost factor in opening it?

405 KENNEDY: You're referring to the start-up costs that we're going to incur very shortly. The total will be \$8 million and we'd still have to go through about \$3 million that's in the Governor's budget.

418 SEN. SHOEMAKER: Could you explain the boxes that run from 1/89 to 4/91?

422 ASHFORD: Those boxes represent actual prison population as of the first of the month for each of those months.

- The flatness of the boxes after the end of 1989 reflect the stability that the Department of Corrections has seen.

442 SEN. SHOEMAKER: And the line that runs through the boxes?

443 ASHFORD: That's a line produced by the software package that drives the trend between the boxes.

447 SEN. SHOEMAKER: Is there any way to learn how the projection that you've made in January, '89 corresponds to the actual prison count since then to see how close to the mark you were?

453 ASHFORD: As of April 1 of this year, we're thirty inmates off.

- However, during the last two years, our projections indicated that the prison population would be relatively flat for the first year and increase steeply thereafter, but the opposite has occurred. That has to do with the way temporary leave was phased out and some dynamics in the parole return process that were not anticipated.

475 CHAIR COHEN: We're impressed.

478 SEN. SPRINGER: How about the arrest, conviction, or probation

rates? Is that information available and does it help us understand the total picture? Are the guidelines distorting this somehow?

TAPE 104, SIDE A

043 ASHFORD: The question is what's accounting for the relatively stability in the prison population?

046 CHAIR COHEN: Is there some way that we're not arresting people who ought to be arrested and so on?

051 SEN. SPRINGER: Does this mean the crime rate is going down?

059 ASHFORD: Crime rates peaked about five years ago and have since decreased. Felony filings in the court have increased between 1980 and 1988 and have been relatively flat over the last year. Not sure about the causes of those trends.

- The guidelines have had relatively little impact on what they're seeing at Corrections because of the way guidelines are phased in; still a very small percentage of the admissions going into the prison system and they're a small percentage of the prison population.

080 CHAIR COHEN: What we did with the sentencing guidelines was increase sentences for violent crimes. We're going to see some demand for Snake River based on what we did with the guidelines. The more difficult and serious cases take longer to get through the criminal justice system and are not yet showing up here. We have not yet taken the hit that we took by enhancing sentencing guidelines; we enhanced some of the penalties with the guidelines last session.

103 ASHFORD: The impact of the length of stay, particularly for those serving long term, is a long term impact that the system does not feel right away. That's what drives the long term numbers up.

109 SEN. HAMBY: I'm confident that the Council is tracking legislation and its potential for any additional need for beds.

112 ASHFORD: One bill that I would flag for the committee is HB 2390. Explains potential effect of the bill.

122 CHAIR COHEN: When we get that bill, hope you'll be here to help us sort it out.

130 SEN. HILL: Where is the department's budget in the process now?

132 KENNEDY: Think we begin budget hearings next week.

134 SEN. HILL: And I'm trying to get some idea of the connection between this information and what's being proposed.

137 KENNEDY: We do see some changes as a result of this information, but we see the plan to rent beds at Ontario is still on track.

141 SEN. HILL: And it's based on this information that we've just received?

142 KENNEDY: That's correct.

142 SEN. HILL: And so the budget process has taken into account that we don't need all the space that we have right now, correct?

146 KENNEDY: By the way we work our way through the budget, we will have taken that into account.

148 SEN. HILL: How long are we talking about renting these beds?

151 KENNEDY: Currently, the plan is to rent those beds through the '91 - '93 biennium. Conceivable that we can rent beds beyond that, depending on what the capacity is at Ontario and how many people would trickle in from the Oregon system.

SB 947

172 INGRID SWENSON, COMMITTEE COUNSEL: There is a hand engrossed version (Exhibit C) and amendments (Exhibit D) proposed by the Oregon Criminal Justice Council. There are also amendments to the guidelines (Exhibit E) that would be incorporated into the bill.

186 CHAIR COHEN: What is the memorandum of April 9, 1991 (Exhibit F)?

189 DAVID FACTOR, OREGON CRIMINAL JUSTICE COUNCIL: This was prepared in response to the request for information in regards to forecast information. This bill enhances penalties in addition to those three amendments in HB 3462. The rule amendments (Exhibit E) do have some potential impact for increasing penalties.

196 CHAIR COHEN: So sub 18, you go through the bottom of the first page . . . .

197 FACTOR: This is just a list of rule amendments that may have some impact.

199 CHAIR COHEN: And some impact which what?

200 FACTOR: Some could go down because some of the amendments build back in some judicial discretion, but by the addition of new person felonies to that definition, that would only go up.

204 CHAIR COHEN: So there's some up and the only way you're going down is by judicial discretion.

205 FACTOR: That's correct.

207 CHAIR COHEN: Then the technical amendments (Exhibit E) are?

210 FACTOR: Explains the amendments to rules 10-002(2) and 04-006(4).

244 CHAIR COHEN: We also have a proposed technical amendments (Exhibits G and H) to the felony guideline rules which we will deal with in the last section of the bill.

- Recommends that we delete section 2 and section 5 from the bill; that is included in the dash one amendments (Exhibit D).

- The District Attorneys have requested that we delete section one of the bill; this is not part of the dash one amendments.

288 SEN. HILL: What section was that again?

289 CHAIR COHEN: Section one.

- Section one is still in the hand engrossed bill (Exhibit C); sections two and five have been deleted.

- And we have included in the dash one amendments the technical amendments (Exhibit I) from the Criminal Justice Council.

300 MOTION: The Chair moves the dash one amendments.

302 CHAIR COHEN: Summarizes the dash one amendments.

- Anything else that the dash one amendments deal with?

308 SWENSON: No.

309 SEN. HAMBY: Six, because we have already spoken to it.

309 CHAIR COHEN: Right.

310 SEN. SHOEMAKER: Don't they also make a change in section eight?

311 CHAIR COHEN: They do, but those are the dash one.

313 SEN. SHOEMAKER: Line 31 and 32 of page 5 of the bill provides, as in regards to fire arm violations, that for felonies committed after the guidelines, the judge may impose a lesser sentence. This is the only section where we have specifically dealt with the relationship of the guidelines on other statutorily mandated sentences. Am I on track?

329 CHAIR COHEN: Asks David Factor to explain section eight and the amendments.

332 FACTOR: The amendment proposed to section eight is limited in its scope. Explains the amendment.

341 CHAIR COHEN: So this conforms the guidelines to the gun minimum statute?

342 FACTOR: That's correct.

343 SEN. SHOEMAKER: "Just want to make it a matter of legislative record, and I hope I am correct in this, that our dealing specifically with this, in this circumstance, does not imply anything regarding the relationships of the guidelines to other statutory sentences for other crimes that are clearly unrelated to this crime."

356 FACTOR: That's fair to say.

358 SWENSON: Both the dash one amendments and the hand engrossed version of the bill need to delete section ten.

362 CHAIR COHEN: "Ingrid is making an addition to dash one."

364 SEN. HILL: Add it to your motion?

365 CHAIR COHEN: Yes.

367 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: If accurately going to portray, you should delete section two and allow section ten to repeal the law that has been repealed by court cases.

391 CHAIR COHEN: Let's not do that. I just as soon leave it all stand as it is so we can have a clean argument in those court cases.

- If we're going to leave section two, then we need to delete section ten and make that clear.

399 PENN: I think that is clear and I don't have any problem with it.

402 CHAIR COHEN: Calls for objections to the dash one amendments. Hearing none, so ordered.

- Need to address the last section with respect to guideline amendments.

413 SWENSON: It's section nine; section six in the hand engrossed version (Exhibit C). David Factor has explained the contents of the proposed technical amendment (Exhibit E).

- David Factor has also referred to the material on page 47, appendix four, of the guidelines (Exhibit H).

428 CHAIR COHEN: Better take time to find it.

430 SEN. SHOEMAKER: What are we referring to?

431 CHAIR COHEN: The package that has the box; page 47 of the box.

441 SWENSON: In appendix four at the top of the page, this proposed change came to the Council. They took no action, but recognized that this particular language was disapproved in a court case.

- The committee might wish to consider deleting it before adopting the guidelines.

453 CHAIR COHEN: Asks Dale Penn to testify.

- Seeks advice as to what to do with part of appendix four that has been declared unconstitutional.

TAPE 103, SIDE B

025 PENN: This language needs to be removed. The difficulty in trying to leave it open and doing it at a later time depends on what you decide to do with other bills. Discusses the House bill that is coming over.

038 CHAIR COHEN: In any case, we want to put into the appendix whatever we do. We have to replace something there with whatever bill we pass.

043 FACTOR: The narrower question is what to do with the proposed amendments regarding definitions in the scheme or network and not the removal of the whole appendix four. Discusses House bills. The Council and the Board would prefer the direction regarding the placement in the rules than in a statutory scheme.

056 CHAIR COHEN: So you don't have any objections to us deleting the definitions of scheme or network in the guidelines?

057 FACTOR: No.

060 PENN: Upon the court case, the language is not going to be sufficient, so by adopting it in this bill, it would be more confusing. It would be better to remove it.

063 MOTION: The Chair moves to delete the appropriate definitions that are contained in the guidelines in appendix four.

071 CHAIR COHEN: Calls for objections; hearing none, so ordered.

- Calls for objections to the proposed technical amendments (Exhibit E) offered by the Criminal Justice Council. Hearing none, so ordered.

- Last outstanding issue is from Dale Penn.

088 PENN: Discusses amendments in Exhibit J.



093 CHAIR COHEN: We need to find the page in the guidelines themselves?

- Back to the boxed document (Exhibit H).

096 FACTOR: It's on the top of page nine.

098 CHAIR COHEN: Bottom of page eight and top of page nine.

SB 946 and 947

101 PENN: Discusses language that Exhibit J would add and rationale behind it.

123 CHAIR COHEN: Invites comments.

- Offers advice to Dale Penn regarding Exhibit J.

132 FACTOR: We're aware of the amendments. Discusses the intent of the Board in adopting the rule amendment. Don't have concern about whose going to do some functions so long as the defendant does not have that obligation and this material is provided to the court in a timely fashion.

149 PENN: Discusses use of "and/or" in Exhibit J.

SB 947

154 SEN. SHOEMAKER: When the local corrections authority prepares a criminal history, do they prepare it for the district attorney?

156 PENN: Explains what happens in his county.

161 SEN. SHOEMAKER: So the answer is yes?

162 PENN: Yes.

163 SEN. SHOEMAKER: Would it work to say "criminal history prepared for the court by or for the district attorney?"

168 PENN: Open to any suggestion. Expresses concern about not including local corrections authority.

174 CHAIR COHEN: How about if we work on the language and come back to it?

- Closes off debate on any further amendments to the guidelines.

184 SEN. HILL: When are we likely to have this bill back in front of us?

185 CHAIR COHEN: It's ready to go.

186 SEN. HILL: Wants to bring up one subject.

- Concerning the issue of sentence disparity and sentence neutrality, one of the reasons for the sentencing guidelines as to come up with something that was racially neutral. Notice that, in conclusion of chapter 5 (Exhibit K), you say that you cannot conclude why racial disparities are there. When will you have enough information to come to some kind of conclusions?

210 FACTOR: Its in those areas where discretion still remains in the guidelines that the disparity makes itself most apparent.

219 CHAIR COHEN: Asks Katherine Ashford and Dale Penn to testify.

- Is there any way we can collect research that can point the finger at why we are having disparities? What types of cases are the disparities located?

243 ASHFORD: Would like the Council to do an in-depth study during the interim; describes what it would look at. None of the needed information comes to us through the reporting set up under the guidelines.

255 CHAIR COHEN: Part of how they get sentenced is whether they happen to have jobs and education.

257 SEN. HILL: Wants to get something determined about what is going on. There are indications that the problem has actually gotten worse under the sentencing guidelines.

297 PENN: Have not seen Exhibit K. Caution that we don't know what sentencing guidelines have done; cites reasons why. The Multnomah County District Attorney's office is not engaged in racial discrimination by their filing practices. Stresses in his own office that you don't look at one's job or color when deciding to charge a case. Don't know what this tells us about sentencing practices. Some of racial disparities due to neighborhoods, etc. Should be looked at, but confident that there is not a policy of racial prosecution.

359 SEN. HAMBY: Factor you've neglected to touch on is motor vehicle theft.

- Would love to see some additional inquiry into . . . .

369 PENN: Don't mean to say that this is not a problem. Endorses the idea of more review.

374 CHAIR COHEN: Thanks witnesses. The bill is ready to go.

383 MOTION: Sen. Hill moves SB 947 as amended to the floor with a "do pass"

recommendation.

389 VOTE: Motion passes unanimously.

SB 654

397 CHAIR COHEN: Discusses agenda for the rest of the day and SB 654.

416 BILL TAYLOR, COMMITTEE COUNSEL: Describes what the bill will do. There are dash two amendments (Exhibit L) and a hand engrossed version (Exhibit M). Explains the amendments.

435 CHAIR COHEN: We've had a lot of testimony on the bill. Reviews content of the testimony.

- How many other states allow surveyors to do this?

446 TAYLOR: Not sure, but Mr. Thomas is here.

448 CHAIR COHEN: A quick number, Mr. Thomas?

449 VERLYN THOMAS, PROFESSIONAL LAND SURVEYORS OF OREGON: Over twenty states have right of entry statutes.

459 CHAIR COHEN: Thanks witness; calls for further comments.

464 SEN. SHOEMAKER: What's the sense of the committee on this?

474 CHAIR COHEN: You and Sen. Bunn were not at the public hearing and Sen. Springer is a no.

476 SEN. HAMBY: I wasn't at the hearing either.

479 CHAIR COHEN: So there you are.

- The other bill that was up, a construction lien law, was much more complicated than this and may not have that one at all.

TAPE 104, SIDE B

034 TAYLOR: Cites an example of the problems of land surveyors.

046 SEN. SHOEMAKER: This bill isn't limited to those situations.

047 TAYLOR: That's correct.

048 SEN. SHOEMAKER: So it would appear, when a routine survey is being made, upon notice to a landowner, the surveyor would be free to go on the property, ignoring private property.

050 TAYLOR: That's correct.

051 CHAIR COHEN: The proponents are registered and they have a chapter, their own ethics, and so on. They're just not licensing people to go out and look for drugs or other personal things.

- If the committee isn't comfortable with it, we'll set it over.

056 SEN. HAMBY: Uncomfortable with the "attempts to provide."

057 CHAIR COHEN: Their testimony was that, if they send a notice, you'll never know, unless you get a certified mail back, whether it was received or not.

- Don't sense that the committee is willing to move on the bill.

- Asks Sen. Brockman if he wants to move the bill.

065 SEN. BROCKMAN: No.

066 CHAIR COHEN: We'll set it aside.

SB 754

067 CHAIR COHEN: Comments on letters received at the earlier hearing from interested parties.

076 TAYLOR: Describes the bill. There are dash one amendments (Exhibit N). Explains the amendments.

- Sen. Shoemaker raised the issue about the landowner being compensated; that is already in current law. Explains ORS 376.175.

091 SEN. SHOEMAKER: Do we have a hand engrossed?

092 TAYLOR: No.

- The amendments reference ORS 376.180; explains what that statute does.

103 CHAIR COHEN: Basically, it hooks up the considerations for payment?

106 TAYLOR: Yes. We are adding one additional element to it; explains that element.

114 MOTION: Sen. Bunn moves the amendments.

115 CHAIR COHEN: Calls for objections. Hearing none, so ordered.

118 MOTION: Sen. Bunn moves SB 754 as amended to the floor with a "do pass"

recommendation.

121 VOTE: Motion passes unanimously.

SB 882

127 CHAIR COHEN: Asks Ingrid Swenson to explain the bill. Summarizes past testimony and concerns.

132 SWENSON: There is a hand engrossed version of the bill (Exhibit O) and a letter (Exhibit P). Explains the amendment.

144 CHAIR COHEN: Up to eight hours in any calendar day.

146 MOTION: Sen. Hamby moves the dash one amendments.

147 CHAIR COHEN: Calls for objections. Hearing none, so ordered.

151 MOTION: Sen. Hamby moves SB 882 as amended to the floor with a "do pass" recommendation.

155 VOTE: Motion passes; Sens. Brockman, Bunn, and Springer voting no.

SB 731

166 CHAIR COHEN: Discusses the bill.

172 SWENSON: At the last hearing, Sen. Shoemaker inquired about the legislative history. The law clerk for the committee has looked into it and found that there was no discussion at the time section 811.182 was adopted of the fact that 811.185 already existed.

179 CHAIR COHEN: Are there any amendments?

180 MOTION: Sen. Springer moves SB 731 to the floor with a "do pass" recommendation.

183 VOTE: Motion unanimously passes.

SB 212

189 CHAIR COHEN: Comments on the bill.

193 SWENSON: There are dash one amendments (Exhibit Q). Explains the amendments.

200 MOTION: Sen. Hill moves the amendments.

202 CHAIR COHEN: Calls for objections; hearing none, so ordered.

205 MOTION: Sen. Hill moves SB 212 as amended to the floor with a "do

pass"

recommendation.

208 VOTE: Motion passes unanimously.

SB 946

212 CHAIR COHEN: Let's hold it over.

SB 945

214 CHAIR COHEN: Invites witnesses to testify; describes bill.

227 FACTOR: Discusses history of the proposed misdemeanor sentencing guidelines.

- There is a section by section analysis of the bill (Exhibit R), proposed amendments (Exhibit S), brief overview of the misdemeanor guidelines (Exhibit T), a rule packet (Exhibit U), and a legislative overview (Exhibit V) of the bill.
- Discusses Council's legislative directive.
- 400 misdemeanors on the statutes, but only 50 are routinely prosecuted. Those 50 have been identified as "listed" misdemeanors; the others are "unlisted."
- Discusses history of the Council's work on this project and goals behind the guidelines.

305 THE HONORABLE PAUL LIPSCOMB, DISTRICT COURT JUDGE: Explains past opposition to felony sentencing guidelines.

- Explains initial concerns about misdemeanor guidelines; eventually, lost most of those concerns. These are much better than the felony guidelines; they protect judicial discretion.

348 SEN. SHOEMAKER: If this grants a good deal of discretion to the judge . . . .

351 LIPSCOMB: It retains a good deal of the trial court's discretion.

353 SEN. SHOEMAKER: If we don't move from judicial discretion, why have the guidelines?

358 LIPSCOMB: I sense that you come from the philosophy that judicial discretion is a bad thing.

359 SEN. SHOEMAKER: No.

363 LIPSCOMB: Judges are not particularly well trained sentencers when we take the bench. This is a good educational tool. It's also a good guidebook for the prosecutors and the defense attorney.

- In Marion County, trying to implement something along these lines.

397 SEN. BUNN: Assume that this would be a starting point for developing a grid?

401 LIPSCOMB: We tried to avoid the grid.

402 SEN. BUNN: If a judge has somebody on DWS, what is your starting point?

406 LIPSCOMB: What you're holding really reflects . . . .

408 CHAIR COHEN: Is it the 45 sanction units that's the bottom line for DWS as opposed to 60 units for sex abuse? Is that part of what you're talking about?

413 LIPSCOMB: Yes, but if you look under each category, you'll see that the presumptive sentence component differs considerably from one category to another.

- Misdemeanor sentencing happens very fast; we run through 40 or 50 per day per judge when sentencing. Don't have time to think about the sentences; you're reacting or responding.

430 CHAIR COHEN: Is there a rank priority? Where do you start?

431 SEN. BUNN: If I'm sentencing somebody, what is the first tool that I go to to find the presumptive sentence?

434 LIPSCOMB: The presumptive sentence is spelled out in the protocol. There's a protocol for each category for sentences and the judges refer to the sentencing protocol for that category.

446 CHAIR COHEN: The protocol is where?

447 FACTOR: This is a short hand version of the rules.

450 CHAIR COHEN: Show us the rules; it says division 25?

453 FACTOR: That's correct.

459 CHAIR COHEN: Division 25; statement of principles (Exhibit U)?

461 FACTOR: That's correct.

465 SEN. BUNN: There will be a system so a judge can look at a crime category and say that a crime fits with this presumptive sentence?

470 LIPSCOMB: Right. This (Exhibit T) was prepared for your benefit; the one for judges would be somewhat more detailed.

474 SEN. BUNN: If you look at theft II, where does jail fall in?

486 FACTOR: In response to that, Judge Leonard was prepared to walk through the operation of the rules.

490 LIPSCOMB: In general, we tried to stay away from departure type terminology.

TAPE 105, SIDE A

032 THE HONORABLE KIP LEONARD, DISTRICT COURT JUDGE: Walks committee through statement of purposes and principles (Exhibit U).

- Misdemeanor guidelines aren't similar to felony guidelines.

- Sentence based upon the facts for the particular crime. The facts of the crime will determine where the defendant will be placed within six categories listed in Exhibit T.

- The fifty misdemeanors mentioned earlier have already been placed into those categories; the remaining misdemeanors would be categorized according to the facts involved and not according to the name of the

particular crime.

- If one of the fifty misdemeanors do not fit the category, the judge has the discretion to go to another category.

- Each category has a sentencing protocol. Defines the term. The sentencing protocol is listed in the appendixes in the back of Exhibit U.

103 SEN. BUNN: Is one day a sanction unit?

105 LEONARD: One day of jail is a sanction unit. Cites page 10, rule 253 -29-030. That also includes other situations, such as residential treatment.

- The sentencing protocols are those things determined to be the focus of a sentence that falls typically within the category that the crime has been placed in. Cites examples.

- If judge finds that an individual is not appropriate for sentencing in the protocol that is listed, he has the ability to impose a nonpresumptive sentence; the judge is then free to free sentence within the boundaries of what is allowable for that crime.

- There are limitations on presumptive sentences.

- The rules include a number of statements concerning probation to see to it that the terms of probation are met. Most probations will be bench probations; no great use of supervised probation.

191 SEN. SHOEMAKER: Reviews presumptive sentence provisions on page six of Exhibit U. Are all imposition of greater or lesser sanction units within a nonpresumptive sentence?

207 LEONARD: No. Explains answer.

- Jail sanction units as a sentence or condition of probation have initial limitations if a presumptive sentence is imposed. If it is a nonpresumptive sentence, then the judge is limited only by statute.

- Can reserve sanction units.

- The supervision of sanction units can be delegated to a supervisory authority, such as a probation officer. Explains why and cites examples.

270 SEN. BUNN: Regarding revocation of probation, last session we dealt with a bill that took away the ability to reject probation and just take your sentence. To opt out of your probation, all you have to do is commit a violation, correct?

279 LEONARD: They could.

280 SEN. BUNN: So the way you described it, if somebody does . . . .

281 LEONARD: If they violated their probation to opt out of it, the judge still has the ability to continue the probation or to revoke the probation and sentence them.

285 SEN. BUNN: But at any point the individual is sentenced, it could never exceed the statutory authorization minus time served, can it?

288 LEONARD: No.

289 SEN. BUNN: An individual could be extremely obnoxious and probation is useless . . . . I'll deal with this another time.

293 LEONARD: It would probably be a useless act on the part of the judge to try to continue somebody on probation if they've demonstrated an extreme unwillingness to participate in probation. Would have available under sentencing guidelines what I have available to me now up to the maximum provided for by law.

- This scheme doesn't change that; all it does is change the way that probation works.

313 SEN. BUNN: If you're punishing a probation violation, are you using part of those sanction units? What happens if you have punishment units that are not incarceration?

333 LEONARD: If community service is imposed as a sanction unit, then the individual would be given credit for that time served. If not imposed as a sanction unit, but merely as a condition of probation, then the individual would not be given credit for it.

- This proposal does not change the sentencing laws that we have now. Cites example.

- Discusses the ability of a supervisory authority to supervise a person's probation and enforce the probation through the use of sanction units.

- The nonpresumptive sentences may be tailored to the particular facts of the crime and the judge has available any sentencing option that he has now.

- Statutorily mandated sentences are kept as they are.

- Plea agreements remain unchanged. Can plea bargain as at present, but if the sentence falls within the presumptive range, the court would need to recognize the presumptive range unless the parties agree that it would be a nonpresumptive sentence.

- An individual's prior record is not dealt with as it is in felony guidelines.

- Reasons for a nonpresumptive sentence are to be set out in the record.

- Rules don't apply to where person would be found guilty except for insanity.

- Guidelines encourage limited lengths of probation.

482 SEN. BUNN: The criminal history does not apply to choosing which category, but it would determine how many sanction units might be given?

489 LEONARD: It would be a factor to be used by the judge in determining what sort of sentence may be imposed within the presumptive sentence range or as a factor the judge would use to decide that a nonpresumptive sentence is to be used.

TAPE 106, SIDE A

039 SEN. BUNN: But if a judge is to use the presumptive sentence, then someone that has ten convictions for theft two would still be in the category with thirty sanction units?

042 LEONARD: That would be the maximum number of units that can be



imposed as a condition of probation. If the judge wanted to give the individual a straight sentence and wanted to exceed that, it would need to be a nonpresumptive sentence.

- Sanction units under the different categories are better thought of as the amount of time you can give as a condition of probation.

052 SEN. HILL: Are there considerations for jail space?

056 LEONARD: We have given judges a range of time that they can impose; cites examples for explanation.

067 SEN. HILL: Looking at the situation where you just don't have any space; what do you do?

073 LEONARD: It's difficult to strictly take it into account because each county differs in their resources. Instead of coming up with some sort of matrix or grid that would dictate the amount of space that would have to be available or used, its better to allow each county to adjust their sentences according to what space they have and to encourage the use of alternate sanctions.

093 SEN. HILL: Can you sentence someone to jail even if there is no space?

094 LEONARD: You could.

095 FACTOR: That's also one of the reason for opting for a nonpresumptive sentence. Explains statement.

100 CHAIR COHEN: We will hear from the counties later.

- Asks Judge Leonard to mention his examples.

104 LEONARD: Cites examples of how the proposed misdemeanor sentencing guidelines would be used and cites the advantages of their use.

158 CHAIR COHEN: So it allows you to partial out the jail along with some of the other threats of punishment in smaller increments than what you'd normally give. Is that, basically, the advantage of what we're getting to?

164 LEONARD: It is. It also gives us:

- A limit on the number of sanction units that we're going to partial out as a condition of probation or to enforce probation.

- A limitation of when we're going to stop fussing around with the guy who continues to be a problem on probation.

- The possibility of allowing someone else to supervise the sanction units.

187 CHAIR COHEN: Invites witness to come back.

- Adjourns meeting at 3:10 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Ingrid Swenson Committee Assistant  
Committee Counsel

EXHIBIT LOG:

A - Prison Population Forecast - Dan Kennedy - 10 pages  
B - Data and Assumptions Underlying Prison Forecasts - Dan Kennedy  
- 3 pages C - Hand Engrossed Version of SB 947 - Oregon Criminal  
Justice Council - 5 pages D - Amendments to SB 947 - Oregon  
Criminal Justice Council - 1 page E - Proposed Technical  
Amendments to SB 947 - Oregon Criminal Justice Council - 1 page  
F - Memorandum on SB 947 - Oregon Criminal Justice Council - 2  
pages G - Felony Guidelines Rule Amendments re: SB 947 - Oregon  
Criminal Justice Council - 7 pages H - Amendments to Rules for the  
Implementation of Felony Sentencing Guidelines - Oregon Criminal Justice  
Council - 48 pages I - Proposed Amendments to SB 947 - Oregon  
Criminal Justice Council - 1 page K - First Year Report on  
Implementation of Sentencing Guidelines re: SB 947 - Oregon Criminal  
Justice Council - 98 pages L - Amendments to SB 654 - Committee  
Staff - 1 page M- Hand Engrossed Version of SB 654 - Committee  
Staff - 1 page N- Amendments to SB 754 - Committee Staff - 2  
pages O - Hand Engrossed Version of SB 882 - Committee Staff - 1  
page P - Letter re: SB 882 - Department of Corrections - 1 page  
Q - Amendments to SB 212 - Committee Staff - 1 page  
R - Section by Section Analysis of SB 945 - Oregon Criminal  
Justice Council - 3 pages S - Amendments to SB 945 - Oregon  
Criminal Justice Council - 1 page T - Misdemeanor Sentencing  
Guidelines re: SB 945 - Oregon Criminal Justice Council - 1 page  
U - Divisions 25 - 36 Misdemeanor Sentencing Guidelines Rules - Oregon  
Criminal Justice Council - 32 pages V - Legislative Overview of SB  
945 - Oregon Criminal Justice Council - 6 pages

EXHIBITS DISTRIBUTED TO COMMITTEE BUT NOT REFERRED TO DURING HEARING

W - Prison Impact Assessment re: SB 947 - Oregon Criminal Justice  
Council - 3 pages X - Amendments to SB 882 - Committee Staff - 1  
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