

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 220, WS SB 219, WS SB 223, WS SB 757, PH

SENATE COMMITTEE ON JUDICIARY

April 15, 1991Hearing Room C 1:00 p.m.Tapes 109 - 110

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: John Ellis, Department of Justice Colleen
Sealock, Support Enforcement Division Maureen McKnight, Oregon Legal
Services Phil Yarnell, Adult & Family Services Thomas Tongue, Joint
Committee on the Creation of New Judgeships Sen. John Brenneman Richard
Hammersley, Lincoln County Bar Judge Paul Lipscomb, Marion County
District Court Duncan Wyse, Oregon Progress Board Jim Ziern, Oregon
Progress Board

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TAPE 109, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:20 p.m.

SB 220, ESTABLISHES MAXIMUM AMOUNT OF UNEMPLOYMENT BENEFITS THAT CAN BE
GARNISHED TO SATISFY DELINQUENT SUPPORT OBLIGATIONS, WORK SESSION

003 TAYLOR: Reviews history and intended purpose of bill. -Submits and
reviews -6 amendments (Exhibit A).

015 CHAIR COHEN: Clarifies meaning of -6 amendments.

026 JOHN ELLIS, DEPARTMENT OF JUSTICE: Explains existing statute.

037 SEN. SPRINGER: Can the court consider Social Security (or other)
benefits if the obligor becomes disabled?

046 ELLIS: Yes. We propose to rewrite ORS 25.285, which currently says
that anyone can have a child support modification without proving change
of circumstance, if it is two years past the order and they can prove
noncompliance. -Explains Federal constraints.

067 SEN. SHOEMAKER: I have been approached by people who believe that

the formula used to establish child support does not meet the requirements of the legislation which establishes it.

080 CHAIR COHEN: That issue is often debated; the question is if we should change the formula.

100 ELLIS: Some people can't afford to support themselves and also pay child support.

142 SEN. SHOEMAKER: Did your administrative rules go through Legislative Counsel?

144 ELLIS: Yes.

145 SEN. SHOEMAKER: They comply with the law.

146 ELLIS: Yes.

147 SEN. SHOEMAKER: Any charge that they do not comply would go to the courts.

152 SEN. HILL: Moves to adopt the -6 amendments to SB 220.

158 MOTION CARRIES UNANIMOUSLY, SENATOR BUNN EXCUSED.

159 SEN. HILL: Moves SB 220, as amended, to the floor with a "do pass" recommendation.

167 MOTION CARRIES UNANIMOUSLY, SENATOR BUNN EXCUSED.

SB 219, REMOVES PARTIES' RIGHTS TO JURY TRIAL ON ISSUE OF PATERNITY, WORK SESSION

170 CHAIR COHEN: Reviews history and intended purpose of bill.

183 TAYLOR: Reviews intended purpose of -1 amendments (Exhibit B).

206 SEN. HAMBY: Moves to adopt the -1 amendments to SB 219.

220 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

221 SEN. HILL: I am not sure that there is any reason to remove jury trials. -Moves to adopt the -2 amendments to SB 219.

262 CHAIR COHEN: The fiscal impact statement (Exhibit C) says that we would save \$2,000 to \$4,000 each biennium in jury expenses.

264 COLLEEN SEALOCK, SUPPORT ENFORCEMENT DIVISION: That is correct.

265 SEN. HILL: I think that even one case taken to a jury is worth the cost.

274 SEN. SHOEMAKER: I agree with Senator Hill.

298 SEN. HAMBY: I think that the medical evidence precludes any need for a jury trial, which may be clouded by emotionalism.

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

309 SEN. HAMBY: Moves SB 219, as amended, to the floor with a "do pass" recommendation.

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

SB 223, PROVIDES FOR ADMINISTRATIVE ENFORCEMENT OF OUT-OF-STATE CHILD SUPPORT ORDERS, WORK SESSION

322 TAYLOR: Introduces -2 amendments and amendments proposed by Oregon Legal Aid (Exhibits D & E). -Reviews -2 amendments.

370 SEN. HILL: Moves to adopt the -2 amendments to SB 223.

373 SEN. BROCKMAN: What is the fiscal impact of these amendments?

388 ELLIS: The impact is \$8,000, which is negligible. -The bill's other impacts are considerable, but that of the -2 amendments is minor.

411 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATOR BUNN WAS EXCUSED.

TAPE 110, SIDE A

001 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: Reviews history and intended purpose of amendments.

070 PHIL YARNELL, ADULT AND FAMILY SERVICES: We support these amendments.

072 CHAIR COHEN: What about the fiscal impact?

074 YARNELL: The impact applies if we don't eliminate current provisions.

078 CHAIR COHEN: Not dealing with section 3 creates an impact.

084 YARNELL: Yes.

085 CHAIR COHEN: What about the process of notification? Will you be able to handle that?

087 YARNELL: Yes.

088 SEN. SHOEMAKER: How important is the emergency clause?

091 MCKNIGHT: AFS might be more interested than we are.

094 YARNELL: If that poses a problem, we can delete it.

095 CHAIR COHEN: We need justification.

115 SEN. HAMBY: Moves for adoption of Legal Aid amendments to SB 223, pending review by Legislative Counsel.

120 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS.

121 SEN. HAMBY: Moves SB 223, as amended, to the Committee on Ways & Means with a "do pass" recommendation.

131 MOTION CARRIES, WITH SENATOR BUNN PASSING.

SB 757, CREATES NEW DISTRICT COURT JUDGE POSITION IN WASHINGTON COUNTY, PUBLIC HEARING AND WORK SESSION

144 THOMAS TONGUE, JOINT COMMITTEE ON THE CREATION OF NEW JUDGESHIPS: Submits and reviews written testimony (Exhibit F).

274 SENATOR JOHN BRENNEMAN: Tongue Committee report should be implemented.

343 SEN. HAMBY: District court load seems seasonal. Is there a problem with timely disposition?

366 RICHARD HAMMERSLEY, LINCOLN COUNTY BAR: Reviews current situation in Lincoln County courts.

TAPE 109, SIDE B

002 HAMMERSLEY: Continues to review current situation. -Compares court statistics for the first quarters of 1990 and 1991. There were over 700 additional filings in the first quarter of 1991.

055 SEN. HAMBY: I hope that the committee recommendations are taken into account.

058 CHAIR COHEN: What kind of cases are you dealing with?

060 HAMMERSLEY: In circuit court, there are more domestic relations cases. In district court, there are many misdemeanors such as DUII and assault.

067 SEN. SHOEMAKER: Could this bill provide for a half-time pro tem judge?

073 HAMMERSLEY: I don't know. I thought that this committee had that statutory power.

079 SEN. HAMBY: I thought we did.

092 JUDGE PAUL LIPSCOMB, MARION COUNTY DISTRICT COURT: Submits and summarizes written testimony (Exhibit G). -Testifies in support of SB 757. -Proposes amending the bill to add an additional judge in Marion County, effective immediately.

184 CHAIR COHEN: Have you talked to the Tongue Committee or to the Chief Justice about the closure of the Woodburn courts?

193 LIPSCOMB: Yes. I have talked to both of them. It is fair to say that Chief Justice Petersen is concerned.

207 CHAIR COHEN: Perhaps the Tongue Committee should endorse your desire for a new judge.

232 SEN. HAMBY: On pages 11-13 of the Tongue Committee report, there are some recommendations for court efficiency. -There is a lack of cooperation between the district and circuit courts in Marion County, and a lack of efficiency in the whole Marion County court system.

253 LIPSCOMB: Judges work when they aren't in court, just as legislators work when not in hearing or on the floor.

370 SEN. HILL: Has there been a change in opinion about the needs of Marion County courts?

377 LIPSCOMB: The Bar and the Tongue Committee had different recommendations for us.

395 SEN. HILL: Why was the Bar's report not accepted by the Tongue Committee?

398 LIPSCOMB: The Judicial Administration Committee of the Bar met after the Woodburn courts had closed, when the Tongue Committee had already completed the majority of their report.

TAPE 110, SIDE B

018 SEN. BROCKMAN: How does a jurisdiction, such as Woodburn, decide not to hear misdemeanor cases?

020 LIPSCOMB: They merely make that decision. Woodburn is a municipal court.

034 SEN. SHOEMAKER: What is the fiscal impact?

037 LIPSCOMB: \$155,000 per year, for one judge. There are also startup costs.

065 SEN. HILL: Did you consider the Woodburn situation in your committee's recommendations?

067 TONGUE: In general, yes; in specific, no. -We are not recommending a new judgeship for Marion County in this session, though Judge Lipscomb has valid concerns. -Marion County will get additional staff monies in July.

OREGON BENCHMARKS

122 DUNCAN WYSE, OREGON PROGRESS BOARD: Explains Oregon Benchmarks. -We are speaking to all policy committees about Benchmarks relevant to their issues.

SB 947, RELATING TO FELONY SENTENCING GUIDELINES, WORK SESSION

145 CHAIR COHEN: We sent this bill to the floor, but Legislative Counsel thinks that we need to look at the final amendments.

150 SWENSON: Reviews need to reconsider bill.

OREGON BENCHMARKS

166 JIM ZIERN, OREGON PROGRESS BOARD: Reviews Benchmarks relating to Judiciary issues.

310 CHAIR COHEN: We have had discussion about inappropriate sentencing of minorities.

325 WYSE: Those are covered under social harmony benchmarks.

335 CHAIR COHEN: List it under crime, instead of social harmony.

365 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 - Amendments to SB 220 - Staff - 4 pages B- Amendments to
SB 219 - Staff - 1 page C - Fiscal impact statement for SB 219 -
Staff - 1 page D- Amendments to SB 223 - Staff - 4 pages
E - Amendments to SB 223 - Staff - 2 pages F- Testimony on
SB 757 - Thomas Tongue - 19 pages G - Testimony on SB 757 - Paul
Lipscomb - 4 pages

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Measures Heard SB 380, WS SB 450, PH & WS SB 808, PH SB 946, PH SB 945, PH

SENATE COMMITTEE ON JUDICIARY

April 15, 1991Hearing Room C 7:00 p.m.Tapes 111 - 112

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

MEMBERS EXCUSED:Sen. Jim Bunn Sen. Dick Springer

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

WITNESSES: Judge Don Ashmanskas, Washington County
Circuit Court Sen. John Brenneman Donna Slepach, Citizen Walter Todd,
Attorney Santiago Ventura Morales Kathryn Ashford, Oregon Criminal
Justice Council Kathleen Bogan, Oregon Criminal Justice Council Judge
Kip Leonard, Lane County Circuit Court Jim Hennings, Metropolitan Public
Defenders Office Terry Gassoway, Clackamas County Corrections Steve
Oldenstadt, Association of Community Corrections Paul Snider,
Association of Oregon Counties

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TAPE 111, SIDE A

001 CHAIR COHEN: Calls hearing to order at 7:13 p.m.

SB 380, PRESCRIBES PROCEDURES FOR SELECTION OF ALTERNATE JURORS IN
CRIMINAL TRIALS, WORK SESSION

002 SWENSON: Reviews intended purpose of bill. -Submits and reviews -2
amendments (Exhibit A).

018 JUDGE DON ASHMANSKAS, WASHINGTON COUNTY CIRCUIT COURT: Responds to
fiscal impact statement (Exhibit B). -I question some of the assumptions
made in this analysis. We don't sequester or reinstruct juries to this
extent.

102 SEN. HAMBY: Moves to adopt the -2 amendments to SB 380.

105 HEARING NO OBJECTIONS, CHAIR COHEN SO ORDERS. SENATORS BUNN AND SPRINGER WERE EXCUSED.

106 SEN. HAMBY: Moves SB 380, as amended, to the floor with a "do pass" recommendation.

110 MOTION CARRIES UNANIMOUSLY, SENATORS BUNN AND SPRINGER EXCUSED.

SB 450, ALLOWS USE OF SIX PERSON JURY IN CIRCUIT COURT CRIMINAL TRIALS IF ONLY MISDEMEANOR CHARGES ARE TRIED, PUBLIC HEARING AND WORK SESSION

125 SWENSON: Reviews intended purpose of bill.

133 SEN. JOHN BRENNEMAN, DISTRICT 2: Testifies in support of SB 450. -Reviews history and intended purpose of bill.

206 CHAIR COHEN: Submits testimony from Chief Justice Peterson (Exhibit C).

220 SEN. SHOEMAKER: Moves SB 450 to the floor with a "do pass" recommendation.

226 MOTION CARRIES UNANIMOUSLY, WITH SENATORS BUNN AND SPRINGER EXCUSED.

SB 808, PROVIDES FOR HEARING MOTION FOR NEW TRIAL WITHIN 20 DAYS AFTER FILING OF MOTION, PUBLIC HEARING

233 SEN. HAMBY: Submits hand-engrossed version of the bill (Exhibit D).

242 DONNA SLEPACK, CITIZEN: Submits and reviews written testimony (Exhibit E).

356 WALTER TODD, ATTORNEY: Testifies in support of SB 808. -The current law has no teeth.

387 CHAIR COHEN: What will happen when all trials start over with motions for new trials?

389 TODD: I don't think it will happen, especially with these amendments. -Continues testimony.

TAPE 112, SIDE A

017 SEN. SHOEMAKER: Have other states had experiences that would be helpful?

020 TODD: I don't know.

036 SEN. HILL: It seems that there is no incentive for the system to correct its wrongs. What could these incentives be?

044 SLEPACK: The prosecutor could be disbarred. I also believe that jury instructions should include eyewitness fallibility in jury instruction.

053 TODD: I don't think that there need to be other incentives. A prosecutor has an ethical duty to do justice.

062 CHAIR COHEN: How does this relate to the statutes of limitations and ultimate repose?

070 TODD: I don't think it will be a problem. Since the defendant is making the motion, those arguments are waived. There are no double jeopardy issues, either.

092 SANTIAGO VENTURA MORALES: Urges committee to support and pass SB 808.

SB 946, REQUIRES CHIEF JUSTICE OF OREGON SUPREME COURT TO DEVELOP UNIFORM JUDGMENT FOR CRIMINAL PROCEEDINGS, PUBLIC HEARING

120 KATHRYN ASHFORD, OREGON CRIMINAL JUSTICE COUNCIL: Reviews history and intended purpose of bill. -First section of bill may need to be narrowed, to reflect only felonies.

203 CHAIR COHEN: I don't think it's that narrow for felonies. -Dale Penn was also concerned about this bill. Please work with him.

236 SEN. SHOEMAKER: Why do you want more time than the first of July, 1991?

239 ASHFORD: That was requested by the courts, not by us.

242 SEN. SHOEMAKER: Is there a good reason for the emergency clause?

247 ASHFORD: The Council thinks that the sooner the reporting system gets cleaned up, the better.

251 CHAIR COHEN: Have the courts given an indication of how long it will take them to do this?

257 KATHLEEN BOGAN, OREGON CRIMINAL JUSTICE COUNCIL: They think November or December of 1991, instead of July. If that is a definite date, then we don't need the emergency clause. If there is a chance of having it done earlier, then the clause is a good idea.

SB 945, APPROVES MISDEMEANOR SENTENCING GUIDELINES DEVELOPED BY STATE SENTENCING GUIDELINES BOARD, PUBLIC HEARING AND WORK SESSION

288 JUDGE KIP LEONARD, LANE COUNTY CIRCUIT COURT: Reviews intended purpose of bill.

TAPE 111, SIDE B

001 LEONARD: Continues testimony.

048 SEN. HILL: Are misdemeanor sentences fairly uniform?

051 LEONARD: This does not address that. It allows flexibility in individual cases.

068 SEN. HILL: Even though the guidelines are supposed to be objective, sentences appear to be biased by racial issues.

075 LEONARD: Your concerns are warranted.

085 JIM HENNINGS, METROPOLITAN PUBLIC DEFENDERS OFFICE: There was not really a way to take that into account.

098 SEN. HILL: Do you mean that the histories are not kept as well as they are in felony cases?

099 HENNINGS: Criminal records are not as important in misdemeanor

sentencing. It has been de-emphasized, compared to felonies. It is only critical in misdemeanors if the district attorney thinks the histories are relevant.

137 LEONARD: Criminal records are not accurate in misdemeanors. County requirements vary, and it is difficult getting them processed.

266 SEN. SHOEMAKER: This might lead to consistency in sentencing. Is there a monitoring system for departures?

287 HENNINGS: Judges say that it is easier to follow the law than not.

314 SEN. SHOEMAKER: Is there a way to inform judges about other judges' sentencing practices?

319 HENNINGS: I don't know.

321 LEONARD: It is not contemplated.

322 CHAIR COHEN: There is a documented need for services, and for checks and balances.

333 LEONARD: The check is in the adversarial process.

374 SEN. HILL: There is an issue of fairness, whether it is a misdemeanor or felony. The disparity is too major to ascribe only to judicial fairness.

412 LEONARD: Disparity is even harder to identify with misdemeanors.

TAPE 112, SIDE B

007 TERRY GASSOWAY, CLACKAMAS COUNTY CORRECTIONS: We currently have about one thousand misdemeanants, and supervise about 5,000 in the tri-county area. -It is hard to keep track of custody/sanction units. This would help.

072 STEVE OLDENSTADT, OREGON ASSOCIATION OF COMMUNITY CORRECTIONS: We support misdemeanor sentencing guidelines. -You should know that misdemeanants consider treatment as punishment. -One concern is that current felony guidelines have a six month cap on confinement. We want that cap carried into misdemeanors. There may not be enough jail space and parole/probation officers for both misdemeanors and felonies.

144 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Testifies in support of SB 945 . -We need to maintain demand for local resources, so that when resources come we know where to allocate them. If we have to make cuts, we need to know where the least harm will be done. -We also need to monitor sentencing practices under guidelines.

184 SEN. HILL: Will misdemeanor guidelines make much difference?

198 SNIDER: They are better than what we have now.

211 CHAIR COHEN: Adjourns hearing at 8:53 p.m.

Submitted by: Reviewed by:

Kate Wrightson Ingrid Swenson Assistant Counsel

EXHIBIT LOG:

A - Amendments to SB 380 - Staff - 2 pages B- Fiscal impact
statement for SB 380 - Don Ashmanskas - 1 page C- Testimony for
SB 450 - Staff - 1 page D - Hand-engrossed version of SB 808 -
Sen. Hamby - 3 pages E - Testimony for SB 808 - Donna Slepach - 3
pages