

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 383, WS SB 403, WS SB 945, PH & WS SB 261, PH & WS SB 946, WS SB 1013, PH SB 571, PH

SENATE COMMITTEE ON JUDICIARY

April 22, 1991Hearing Room C 1:00 p.m.Tapes 119 - 121

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: Michael Campbell, Real Estate Section,  
Oregon State Bar William Linden, State Court Administrator Jim Markee,  
Oregon Collectors Association Emily Cedarly, Family Housing Council  
Kathleen Bogan, Oregon Criminal Justice Council Elyse Clawson,  
Department of Corrections Paul Donheffner, Marine Board David Factor,  
Oregon Criminal Justice Council Ross Shepard, Oregon Criminal Defense  
Lawyers Association Dale Penn, Oregon District Attorneys Association  
Sen. Jim Hill Alan Harper, Legislative Assistant to Sen. Jim Hill Paul  
Fortino, Oregon Association of Defense Counsel Charlie Williamson,  
Oregon Trial Lawyers Association Gertrude Allen, Oregon Bankers  
Association David Jack, Debtor-Creditor Section, Oregon State Bar

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TAPE 119, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:13 p.m.

SB 383, ALLOWS CITY OR COUNTY TO APPROVE DIVISION OF CERTAIN PURPORTED LOTS OR PARCELS UNDER CERTAIN CONDITIONS, WORK SESSION

003 TAYLOR: Submits -1 and hand-engrossed version of bill (Exhibits A & B). -Reviews intended purpose of bill.

042 MICHAEL CAMPBELL, REAL ESTATE SECTION, OREGON STATE BAR: Reviews intended purpose of bill.

081 SEN. HILL: What can be done to deter this situation?

085 CAMPBELL: It is illegal to subdivide lots without prior approval.

094 SEN. HILL: How can you illegally subdivide a lot?

097 CAMPBELL: The owner had sold the subdivided lots, without getting approval. When subsequent applications for building permits were not approved, it was found that the lots were illegal.

108 SEN. HILL: Isn't it up to the purchaser to check for legality?

112 CAMPBELL: Yes, but not everyone does it.

143 SEN. SHOEMAKER: This is prospective as well as retrospective.

144 CAMPBELL: Yes.

189 SEN. BROCKMAN: Moves to table SB 383.

195 MOTION PASSES UNANIMOUSLY, WITH SEN. BUNN EXCUSED.

SB 403, SPECIFIES THAT FILING FEE FOR SMALL CLAIMS ACTION IN DISTRICT COURT

APPLIES TO EACH VERIFIED CLAIM FILED, WORK SESSION

207 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: Submits -2 amendments (Exhibit C). Reviews intended purpose of bill and of proposed amendments.

238 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Submits and summarizes -4 amendments (Exhibit D). -The -4 amendments fix our problem with the original bill. -We also requested -3 amendments (Exhibit E), but these are no longer needed.

292 EMILY CEDARLY, FAMILY HOUSING COUNCIL: We also support the -4 amendments.

308 SEN. HAMBY: Is there any move to change line 16 to \$10,000?

314 MARKEE: My clients would like it.

317 SEN. HAMBY: What about a national movement?

319 LINDEN: Yes. The limit is getting higher. -I feel that \$2500 is high enough, but the Judicial Department takes no position.

333 SEN. HAMBY: What about \$5000?

336 LINDEN: I would want to see how many cases would be affected.

347 SEN. HAMBY: I would also like to see if other states have a \$2,500 limit.

354 SEN. SHOEMAKER: The -4 amendments appear to leave collection agencies with the freedom to arrange timing of collection actions.

370 MARKEE: I don't think a collection agency would hold up an assignment on purpose. This wouldn't change the intent with respect to claims assigned.

391 LINDEN: If we find problems in the interim, we will let you know.

410 CHAIR COHEN: Moves to adopt the -2 and -4 amendments to SB 403.

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

421 CHAIR COHEN: Moves SB 403, as amended, to the floor with a "do pass" recommendation.

428 MOTION CARRIES UNANIMOUSLY, WITH SEN. BUNN EXCUSED.

TAPE 120, SIDE A

SB 946, RELATING TO DEVELOPMENT OF UNIFORM JUDGMENT FOR CRIMINAL PROCEEDINGS, PUBLIC HEARING & WORK SESSION

007 SWENSON: Submits -1 amendments and hand-engrossed version of SB 946 (Exhibits F & G).

015 KATHLEEN BOGAN, OREGON CRIMINAL JUSTICE COUNCIL: Reviews history and intended purpose of bill.

058 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: Testifies in support of bill.

075 LINDEN: Submits Judicial Department amendments (Exhibit H). Reviews intended purpose of amendments.

108 CHAIR COHEN: What is the difference between the -1 and the Judicial Department amendments?

114 BOGAN: The -1 amendments call for a paper form to be used until automation is complete. The Judicial Department amendments do not refer to a paper form. -Also, a date for completion appears only in the Judicial Department amendments.

122 LINDEN: We will also provide a sentencing report.

126 CHAIR COHEN: What do you recommend?

150 BOGAN: Pick up subsections 3 & 4, and lines 6 & 8 on page 1, of the Judicial Department amendments and insert that material into the -1 amendments.

160 CHAIR COHEN: Moves to amend the -1 amendments, as described by witness.

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

195 CHAIR COHEN: Moves to adopt the -1 amendments, as amended, to SB 946.

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

205 SEN. HILL: Moves SB 946, as amended, to the floor with a "do pass" recommendation.

212 MOTION PASSES UNANIMOUSLY, WITH SEN. BUNN EXCUSED.

SB 261, REQUIRES ENCAPSULATION OF SUBMERSIBLE POLYSTYRENE DEVICE INSTALLED ON DOCK, BUOY OR FLOAT IN WATERS OF STATE, PUBLIC HEARING AND

WORK SESSION

217 SWENSON: Reviews intended purpose of bill.

288 PAUL DONHEFFNER, MARINE BOARD: Testifies in support of bill.

395 SEN. SPRINGER: Moves SB 261 to the floor with a "do pass" recommendation.

418 MOTION CARRIES UNANIMOUSLY, WITH SENATORS BROCKMAN AND BUNN EXCUSED.

TAPE 119, SIDE B

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

001 DAVID FACTOR, OREGON CRIMINAL JUSTICE COUNCIL: Reviews intended purpose

of bill. Submits -1 and OCJC amendments (Exhibits I & J).

204 SEN. SHOEMAKER: Sections 12 & 15 don't seem to match SB 946. Does there need to be coordination?

215 FACTOR: There does need to be some coordination. Perhaps the Judicial Department will suggest amendments to help that. -Continues to review intended purpose of bill.

404 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: We take no position on this bill.

TAPE 120, SIDE B

046 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Submits and summarizes written testimony (Exhibit K). -We are opposed to this bill. OCJC should deal with felony guidelines before doing anything about misdemeanor guidelines.

SB 1013, RELATING TO PUNITIVE DAMAGE AWARDS IN CERTAIN CIVIL RIGHTS ACTIONS, PUBLIC HEARING

204 SEN. JIM HILL: Reviews intended purpose of bill.

249 ALAN HARPER, LEGISLATIVE ASSISTANT TO SEN. HILL: Submits hand-engrossed

version of bill (Exhibit L).

271 PAUL FORTINO, OREGON ASSOCIATION FOR DEFENSE COUNSEL: Opposes bill. Submits and summarizes written testimony (Exhibit M). -I don't think this bill deals with compensation.

349 SEN. HILL: The money awarded may not always be available.

357 FORTINO: I don't disagree with the concept. There are many things which can help to redress wronged victims. -I thought this bill covered more than racial types of discrimination.

413 TAYLOR: You would be in favor of removing the cap on non-economic damages in all civil rights actions.

418 FORTINO: We take no position.

425 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: We support this bill.

TAPE 121, SIDE A

001 WILLIAMSON: Continues testimony.

SB 571, RELATING TO DISCHARGE OF JUDGMENTS, PUBLIC HEARING

031 GERTRUDE ALLEN, OREGON BANKERS ASSOCIATION: Submits and reviews written

testimony (Exhibit N).

082 DAVID JACK, DEBTOR-CREDITOR SECTION, OREGON STATE BAR: Submits and reviews written testimony (Exhibit O).

095 SEN. HILL: What do you think of the issue of burden of proof?

096 JACK: We take no position.

112 CHAIR COHEN: Adjourns hearing at 3:13 p.m.

Reviewed by: Reviewed by:

Bill Taylor Ingrid Swenson Counsel Counsel

Submitted by:

Kate Wrightson Assistant

EXHIBIT LOG:

A	-	Amendments to SB 383 - Staff - 1 page	B	-	Hand-engrossed
version of SB 383 - Staff - 1 page	C	-	Amendments to SB 403 -		
William Linden - 1 page	D	-	Amendments to SB 403 - Jim Markee - 1		
page	E	-	Amendments to SB 403 - Jim Markee - 1 page		
F	-	Amendments to SB 946 - Staff - 2 pages			
G	-	Hand-engrossed version of SB 946 - Staff - 6 pages			
H	-	Amendments to SB 946 - William Linden - 1 page			
I	-	Amendments to SB 945 - David Factor - 1 page			
J	-	Amendments to SB 945 - David Factor - 1 page			
K	-	Testimony on SB 945 - Dale Penn - 2 pages			
L	-	Hand-engrossed version of SB 1013 - Alan Harper - 19 pages			
M	-	Testimony on SB 1013 - Paul Fortino - 5 pages			
N	-	Testimony on SB 571 - Gertrude Allen - 5 pages			
O	-	Testimony on SB 571 - David Jack - 4 pages			

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Measures Heard SB 32, PH & WS SB 389, PH SB 759, PH SB 1054, PH SB 955, PH SB 59, PH

SENATE COMMITTEE ON JUDICIARY

April 22, 1991 Hearing Room C 7:00 p.m. Tapes 122 - 125

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 Kate Wrightson,  
Committee Assistant

WITNESSES: Sen. John Brenneman Andy Zedwick, Lincoln  
County Commissioner Russ Spencer, Oregon State Sheriffs Association Paul  
Snider, Association of Oregon Counties Denis Dowd, Department of  
Corrections Cindy Becker, State Printing Division Lee Erickson, Oregon  
State Police Gil Bellamy, Oregon Traffic Safety Commission Joshua  
Marquis, Oregon District Attorneys Association Emily Sumner, Governor's  
Advisory Committee on DUII John Tongue, Governor's Advisory Committee on  
DUII Barbara Stoeffler, Mothers Against Drunk Driving Jerry Cooper,  
Governor's Advisory Committee on DUII Ed Patterson, Oregon Association  
of Hospitals Mike McCracken, Oregon Medical Association Philip Dean,  
M.D. Glen Rader, Oregon State Police Gary Young, M.D. Carol Bonnono,  
Multnomah County DUII Advisory Board Nancy Wolfe, Mothers Against Drunk  
Driving Barbara Glidewell, Citizen Ben Bachulis, M.D. Tony de Lorenzo,  
Department of Motor Vehicles Susan King, Oregon Nurses Association Ann  
Brown, American College of Emergency Physicians John Moorehead, M.D.  
Jerris Hedges, M.D. Jan Weisgerber, Emergency Nurses Association of  
Oregon Deborah Willey, Emergency Nurses Association of Oregon Dan  
Barker, Mental Health & Developmental Disabilities Services Division

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TAPE 122, SIDE A

002 CHAIR HILL: Calls hearing to order at 7:05 p.m.

SB 955, PROVIDES THAT PAROLE/POST-PRISON SUPERVISION VIOLATOR MUST BE HELD IN DEPT. OF CORRECTIONS FACILITY PENDING HEARING, PUBLIC HEARING

012 SEN. JOHN BRENNEMAN: Testifies in favor of SB 955. Reviews history and intended purpose of bill.

042 ANDY ZEDWICK, LINCOLN COUNTY COMMISSIONER: Testifies in favor of bill.

084 RUSS SPENCER, OREGON STATE SHERIFFS ASSOCIATION: Testifies in support of bill. Submits and summarizes written testimony (Exhibit A).

129 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Testifies in support of bill.

188 SEN. SHOEMAKER: When a parole violator is returned to prison, is credit given for time spent in county jails?

192 SNIDER: I don't know.

194 SWENSON: It depends if there is also a new offense; if there is, then credit is not given.

221 DENIS DOWD, DEPARTMENT OF CORRECTIONS: Submits and summarizes written testimony (Exhibit B). -This bill would raise the number of inmates by 80.

265 CHAIR COHEN: Who pays for the Morrissey hearings?

267 DOWD: Field Services, Department of Corrections.

270 CHAIR COHEN: It is a budget drain for you.

272 DOWD: Yes. We try to do the hearings within 48 working hours.

278 CHAIR COHEN: If you do them in 48 hours, what is the delay?

284 DOWD: Awaiting a decision, waiting for room in the prison, or a pending appeal.

309 SEN. HILL: What about involving judges?

312 DOWD: That would involve yet another statutory change.

SB 32, TRANSFERS RESPONSIBILITY FOR DISTRIBUTING HANDGUN AND USED FIREARM REGISTERS FROM STATE PRINTER TO STATE POLICE, PUBLIC HEARING

361 CINDY BECKER, STATE PRINTING DIVISION: Submits and summarizes written testimony (Exhibit C).

412 LEE ERICKSON, STATE POLICE: Submits and summarizes written testimony (Exhibit D).

TAPE 123, SIDE A

024 SEN. HAMBY: Moves SB 32 to the floor with a "do pass" recommendation.

030 MOTION PASSES UNANIMOUSLY, WITH SENATORS BROCKMAN, BUNN, AND SPRINGER EXCUSED.

SB 1054, PROVIDES THAT ANY AMOUNT OF ALCOHOL IN BLOOD CONSTITUTES BEING UNDER THE INFLUENCE OF ALCOHOL FOR PERSONS UNDER 21, PUBLIC HEARING

040 SEN. SHOEMAKER: Reviews intended purpose of bill. Submits and summarizes written testimony (Exhibit E).

083 GIL BELLAMY, OREGON TRAFFIC SAFETY COMMISSION: Submits and summarizes written testimony (Exhibit F).

179 JOSHUA MARQUIS, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in support of bill. -This has no real impact on district attorneys.

193 SWENSON: This bill only affects licenses, not DUII laws.

196 MARQUIS: Section 1 seems to affect the whole law.

197 SWENSON: It affects implied consent only.

211 EMILY SUMNER, GOVERNOR'S ADVISORY COMMITTEE ON DRIVING UNDER INTOXICATING INFLUENCE: Testifies in favor of bill.

223 JOHN TONGUE, GOVERNOR'S ADVISORY COMMITTEE ON DUII: Testifies in support of bill.

237 BARBARA STOEFFLER, MOTHERS AGAINST DRUNK DRIVING: Submits and summarizes written testimony (Exhibit G).

280 JERRY COOPER, GOVERNOR'S ADVISORY COMMITTEE ON DUII: Testifies in support of bill.

SB 759, PRESCRIBES PROCEDURE TO ALLOW HEALTH CARE PROVIDER TO REPORT INTOXICATED PATIENT WHO IS ABOUT TO DRIVE MOTOR VEHICLE, PUBLIC HEARING

359 MARQUIS: Testifies in support of bill.

379 TONGUE: Testifies in support of bill.

430 SEN. HILL: Is the idea to stop the drunk drivers from driving, or to arrest them?

444 TONGUE: Requiring notification and documentation would put a heavy and unnecessary legal onus on the emergency room staff, and may put them in some jeopardy.

TAPE 122, SIDE A

040 ED PATTERSON, OREGON ASSOCIATION OF HOSPITALS: Testifies in support of bill. -We urge you to support SB 759, in lieu of SB 389.

056 MIKE MCCracken, OREGON MEDICAL ASSOCIATION: Submits and reviews written

testimony (Exhibit H). -Urges support of SB 759, in lieu of SB 389.

132 PHILIP DEAN, M.D., AMERICAN COLLEGE OF EMERGENCY PHYSICIANS: Submits and summarizes written testimony in favor of SB 759 (Exhibit I).

164 SEN. SHOEMAKER: The previous witness testified that it might be a problem for the emergency physician to prevent a patient from leaving the facility. Do you see this as a problem?

170 DEAN: It is wrong not to advise the person.

178 SWENSON: Submits -1 amendments, which were requested by ACEP (Exhibit J).

184 GLEN RADER, OREGON STATE POLICE: We support the concept and idea behind SB 759 . -Proposes amendment to bill on line 11: delete language after "Dept. of State Police." -Such a dispatch is impractical for us, since we dispatch regionally.

213 GARY YOUNG, M.D.: Submits and summarizes written testimony (Exhibit K). Testifies in support of bill.

287 SEN. HILL: When someone is drunk, you can't physically stop them, but you can try to dissuade them?

290 YOUNG: Yes.

SB 389, PRESCRIBES PROCEDURE FOR HEALTH CARE PROVIDER TO REPORT BLOOD ALCOHOL CONTENT OF CERTAIN MOTOR VEHICLE ACCIDENT VICTIMS, PUBLIC HEARING

315 CAROL BONNONO, MULTNOMAH COUNTY DUII ADVISORY BOARD: Submits and reviews written testimony (Exhibit L).

TAPE 123, SIDE B

015 NANCY WOLFE, MOTHERS AGAINST DRUNK DRIVING: Submits and reviews written

testimony (Exhibit M).

054 BARBARA GLIDEWELL, CITIZEN: Submits and reviews written testimony (Exhibit N).

097 MARQUIS: ODAA supports the concept of the bill, but we have some problems with specific language. -Bill seems to require that the person be under arrest (lines 10 & 11 of page 2).

134 SEN. SHOEMAKER: Line 20 of page 3 provides for suspension, if a driver refuses to submit to breath or blood tests, or if the driver flunks the breath test. It does not provide for a flunked blood test; should it?

142 MARQUIS: Yes, to be consistent.

145 SWENSON: That was amended in the Committee on Transportation. They found it unworkable to suspend a license based on blood tests, due to the time lapse while awaiting results. A breathalyzer is an immediate test.

162 BEN BACHULIS, M.D.: Submits and reviews written testimony (Exhibit O).

230 SEN. SHOEMAKER: Ought we to arrest these people in the hospital?

234 BACHULIS: Yes.

266 TONGUE: Testifies in favor of SB 389.

341 TONY DE LORENZO, DEPARTMENT OF MOTOR VEHICLES: Submits and summarizes written testimony (Exhibit P).

375 SUSAN KING, OREGON NURSES ASSOCIATION: Submits and summarizes written testimony (Exhibit Q).

TAPE 124, SIDE A

006 ANN BROWN, AMERICAN COLLEGE OF EMERGENCY PHYSICIANS: Submits and reviews Oregon Medical Association testimony and proposed amendments (Exhibits R & S).

174 SEN. SHOEMAKER: You are saying that every driver has given implied

consent to blood alcohol tests.

182 BROWN: Yes.

202 SEN. SHOEMAKER: Is there an officer on hand?

203 BROWN: In trauma centers, no. In community facilities, almost always.

224 SEN. SHOEMAKER: What about a patient who was not involved in an accident, but who comes into the emergency room for treatment?

232 BROWN: This bill doesn't deal with that. We are not interested in arresting those people, but in getting them home without driving.

270 JOHN MOOREHEAD, M.D.: Bill should not mandate that emergency physicians make these reports, but should encourage them to do so.

299 JERRIS HEDGES, M.D.: Submits and summarizes written testimony (Exhibit T).

354 JAN WEISGERBER, EMERGENCY NURSES ASSOCIATION OF OREGON: Testifies in support of bill.

373 DEBORAH WILLEY, EMERGENCY NURSES ASSOCIATION OF OREGON: Testifies in support of bill.

TAPE 125, SIDE A

SB 59, EXCLUDES FROM DEFINITION OF "MENTAL DISEASE OR DEFECT" IN GUILTY EXCEPT FOR INSANITY DEFENSE AN ABNORMALITY THAT RESULTS FROM ALCOHOL OR DRUG USE, PUBLIC HEARING

012 DAN BARKER, MENTAL HEALTH & DEVELOPMENTAL DISABILITIES SERVICES DIVISION: Submits and summarizes written testimony (Exhibit U).

051 SWENSON: Submits letter from Kathleen Haley (Exhibit V).

057 COOPER: The Oregon Supreme Court has recently ruled that insanity may be ruled an admissible defense in a DUII crime.

081 CHAIR HILL: Adjourns hearing at 9:32 p.m.

Submitted by: Reviewed by:

Kate Wrightson Ingrid Swenson AssistantCounsel

EXHIBIT LOG:

A - Testimony on SB 955 - Russ Spencer - 2 pages  
B - Testimony on SB 955 - Denis Dowd - 1 page C - Testimony  
on SB 32 - Cindy Becker - 1 page D - Testimony on SB 32 - Lee  
Erickson - 3 pages E - Testimony on SB 1054 - Sen. Bob Shoemaker -  
1 page F- Testimony on SB 1054 - Gil Bellamy - 10 pages  
G - Testimony on SB 1054 - Barbara Stoeffler - 2 pages  
H - Testimony on SB 759 - Mike McCracken - 4 pages  
I - Testimony on SB 759 - Philip Dean - 1 page

J - Amendments to SB 759 - Staff - 1 page K - Testimony on  
SB 759 - Gary Young - 1 page L - Testimony on SB 389 - Carol  
Bonnono - 28 pages M - Testimony on SB 389 - Nancy Wolfe - 3 pages  
N - Testimony on SB 389 - Barbara Glidewell - 1 page  
O - Testimony on SB 389 - Ben Bachulis - 1 page  
P - Testimony on SB 389 - Tony de Lorenzo - 1 page  
Q - Testimony on SB 389 - Susan King - 2 pages R - Testimony  
on SB 389 - Ann Brown - 6 pages S - Amendments to SB 389 - Ann  
Brown - 2 pages T - Testimony on SB 389 - Jerris Hedges - 2 pages  
U - Testimony on SB 59 - Dan Barker - 2 pages V - Testimony  
on SB 59 - Staff - 1 page