

Senate Committee on Judiciary May 3, 1991 - 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 Public Hearing SB 1086 SB 1212 SB 1068 SB 639 SB
1037 SB 510 Work Session SB 882 SB 852 SB 1142

SENATE COMMITTEE ON JUDICIARY

May 3, 1991Hearing Room C 1:00 p.m.Tapes 142 - 145

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

MEMBER EXCUSED: Sen. Peter Brockman Sen. Dick Springer

STAFF PRESENT: Ingrid Swenson, Committee Counsel Bill Taylor,
Committee Counsel Mark Thorburn, Committee Assistant

WITNESSES: Colleen Sealock, Department of Justice
Tony Halbleib, Oregon District Attorney's Association Phillip Yarnell,
Department of Human Resources Robin Smith, Oregon Legal Assistant
Association David O'Guinn, HALT Jim Gulliford, Citizen Bob Oleson,
Oregon State Bar Ross Shepard, Oregon Criminal Defense Lawyer's Assoc.
Charles Williamson, Oregon Trial Lawyer's Assoc. Jeff Vanvalkenburgh,
Department of Justice Tana Reynolds, Department of Corrections Senator
Grattan Kerans Annette Talbot, Counsel, Senate Labor Committee Diane
Rosenbaum, AFL-CIO Robert Moore, Oregon Trial Lawyer's Association Paul
Snyder, Associated Oregon Cities Steve Talfer, Legacy Health Services
William Caster, Adult & Family Services Division Jim Hunter, Motor
Vehicle Division Jim McIntyre, Multnomah County District Attorney

Bob Joondeph, Mental Health Association of Oregon Eva Kotas, Mental
Health & Developmental Disabilities Services Dale Penn, Oregon District
Attorney's Association Dave Fidanque, ACLU of OREGON

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TAPE 142, SIDE A

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

PUBLIC HEARING SB 1086

010 SENATOR LARRY HILL: Reviews SB 1086. -Submits and reviews SB 1086-1 amendments. (EXHIBIT A)

052 COLLEEN SEALOCK, DEPT. OF JUSTICE: Submits and reviews written

testimony. (EXHIBIT B)

185 SEN. BUNN: Besides the tax refund part of this bill do you feel there are any other sections that are worthwhile?

188 SEALOCK: From our position and the review that we have done that answer would be no.

193 SEN. BUNN: Do we have other vehicles where the refund part could be amended into?

197 SEALOCK: We haven't researched that.

200 TONY HALBLEIB, OREGON DISTRICT ATTORNEY ASSOCIATION: Testifies in opposition to SB 1086. -Discusses the enormous costs that this legislation would effect in regard to mailing notices.

244 PHIL YARNELL, DEPT. OF HUMAN RESOURCES: We have the same concerns about this bill as outlined by Colleen Sealock and Tony Halbleib. -Submits written testimony. (EXHIBIT C)

PUBLIC HEARING ON SB 1068

260 CHAIR COHEN: Submits written testimony from National Association of Legal Assistants for the record. (EXHIBIT D)

276 ROBIN SMITH, OREGON LEGAL TECHNICIANS ASSOCIATION: Submits and reviews written testimony. (EXHIBIT E)

332 DAVID O'GUINN, CHAIRPERSON, HALT: Explains the purpose of HALT. -Reviews written testimony. (EXHIBIT F)

TAPE 143, SIDE A

051 JIM GULLIFORD, CITIZEN: People don't know a service like this is available. We function under the fear of prosecution by the authority figure within the state right now. This legislation may take away some of that fear.

075 BOB OLESON, OREGON STATE BAR: We oppose this type of legislation because of all of the checks and balances that exist in the legal community. However, we are more sensitive to the un-met legal need that exists. -Submits and reviews written testimony. (EXHIBIT G)

125 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION: Explains how he personally uses a paralegal in regard to court cases. -Suggests including the criminal aspect be added to the task force agenda.

146 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Testifies in opposition to SB 1068 and submits written testimony. (EXHIBIT H)

WORK SESSION ON SB 882

178 INGRID SWENSON, COMMITTEE COUNSEL: Submits and reviews SB 882-A2 amendments. (EXHIBIT I) Submits informational testimony regarding Zavalas, v. State of Oregon. (EXHIBIT J)

204 JEFF VANVALKENBURGH, DEPT. OF JUSTICE: We would request that an emergency clause be added to SB 882-A2 amendments. -Reviews testimony submitted by committee counsel. (EXHIBIT J)

220 CHAIR COHEN: On page 4, line 27 of SB 882-A4 is where there are some technical changes that need to be made.

225 VANVALKENBURGH: Also on page 3, line 22 of SB 882-A4 amendments you need to change the capital "L" to a small "l". -Judges don't want the courts flooded with minor technical violations.

245 CHAIR COHEN: This particular amendment does not include the issue of immunity.

253 TANA REYNOLDS, DEPT. OF CORRECTIONS: We have a problem with the interpretation of the statute. It presents a tremendous work load for probation officers throughout the state. -Discusses the general conditions of probation. -This will flood the courts with minor violations that they don't want to deal with.

291 SEN. BUNN: Under the section that your changing, can an arrest or revocation of probation take place without the courts involved?

296 VANVALKENBURGH: No. It is intended to take out the mandatory language of "will" and replace it with "or".

MOTION: SENATOR HAMBY MOVES TO AMEND SB 882-A2 BY ADDING AN EMERGENCY CLAUSE AND ON LINE 22 CHANGE THE CAPITAL "L" TO A SMALL "l".

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES SB 882-A2 AS AMENDED TO SB 882-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES SB 882-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON SB 1037

342 SENATOR GRATTAN KERANS: Submits and reviews written testimony. (EXHIBIT K)

TAPE 142, SIDE B

039 CHAIR COHEN: Who is going to prosecute these?

041 SEN. KERANS: Explains how SB 1037 would work if it were to become law.

055 SEN. BUNN: If a supervisory employee knew there was sand around the area but didn't get it swept up in time, and that was in violation, would the supervisor be subject to be charged under a B felony?

065 SEN. KERANS: That person would be subject to an investigation. The decision would remain in the hands of the DA as it does today.

070 SEN. BUNN: Would we create the opportunity for a conviction under that scenario?

072 SEN. KERANS: That is correct.

077 CHAIR COHEN: What about the word "supervisor" who are you suing?

081 SEN. KERANS: The owner, employer or his agent. The one with the direct responsibility "for".

084 SEN. BUNN: Refers to the example in testimony regarding the temporary worker. Who would be responsible in that situation?

090 SEN. KERANS: Who ever has the responsibility of making the work place safe and free of hazard.

094 CHAIR COHEN: The supervisor will just say "the boss told me not to", or "we didn't have any money for training". What happens then?

097 SEN. KERANS: You just go up the line until you get to the person who is responsible. -Discusses the Occupational Safety and Health Act. (EXHIBIT L)

104 SEN. BUNN: Asks about subsequent injuries or deaths.

110 SEN. KERANS: You need the element of "recklessly" in there.

114 ANNETTE TALBOT, SENATE LABOR COMMITTEE COUNSEL: Submits and reviews written testimony. (EXHIBIT M)

132 SEN. HILL: Are there any similar statutes in other states?

133 SEN. KERANS: The District Attorney's office for Los Angeles County has created a prosecutor for industrial and environmental prosecutions.

145 SEN. BUNN: On the information that you have provided "knowingly" means "with an awareness that the conduct is of the nature so described or that a circumstances so described exists". That doesn't get into any "reckless" activity.

153 TALBOT: That is the existing definition of "knowingly".

154 SEN. BUNN: When we say "knowingly, intentionally or recklessly" are we making those three one standard, or are they one standard with different definitions.

157 TALBOT: They have different definitions but ORS 161.085 says that if you meet the lower of one of those standards you have met the higher.

160 CHAIR COHEN: You only need to do "knowingly".

163 SEN. BUNN: It is more difficult to prove "recklessly" then "knowingly".

167 SEN. KERANS: I would direct the Committee to ORS 161.085 because that is simply a cross reference to the same standard used here.

172 SWENSON: When "knowingly" is used in criminal offenses it means that you know you are causing a particular offense. In this statute it is talking about knowing that you have violated the Occupational Safety Standards. Maybe we could address this issue with the words "knowingly creating a risk", instead of "knowingly

180 SEN. BUNN: I think the way it is written violates any provision of any regulation. It isn't to tough to know you have violated some regulation.

188 SEN. KERANS: You have to have the outcome, you have to cause the death. You're not going to cause the death by virtue of not having the first aid kit completely stocked. You're going to cause the death by virtue of the fact that you knew and disregarded the fact, that significant hazard was exposed that could lead to a death.

201 SEN. BUNN: People have unfortunately gotten to the point where they don't pay attention to warnings. We are talking about someone that didn't sweep up some sand and it caused an accident they may have never had a violation before. I am not comfortable with what we are doing with any violation of any rule.

215 SEN. KERANS: It is an awfully big door if a District Attorney wishes to cross over the threshold and carry forward a prosecution for a violation that might have been associated with a death. The kinds of cases we are looking at are not the ones where the first aid kit wasn't there or the fire drill routes weren't posted in the correct places. These cases are where a person does know there is a serious industrial hazard. If you want to further restrict that by using different words that is fine but the intent is clear.

241 SEN. BUNN: So basically your saying that a District Attorney can determine whether or not a person knew what they were doing. I am not comfortable with a situation where we say it is a felony and then the District Attorney decides whether or not to pursue it.

250 SEN. KERANS: I can't give the Senator comfort because I am talking about the person who is stupid. We are talking about people who have an affirmative duty under the law and know the duty. If they act stupidly and neglect to fulfill that duty they may find themselves within a class causing the kinds of deaths we are talking about here and objecting themselves to all the sanctions under this bill.

263 CHAIR COHEN: So your not interested in the small violations that are covered by ticketing.

269 SEN. KERANS: That is correct and that is very different from the kind of gross sorts of things we are talking about here. If there are words that can be used to make you more comfortable then we would be happy to work on that.

283 DIANE ROSENBAUM, AFL-CIO OF OREGON: Submits and reviews written testimony. (EXHIBIT N)

345 ROBERT MOORE, OREGON TRIAL LAWYERS ASSOCIATION & OREGON WORKER'S COMPENSATION ATTORNEYS: Nationally there has been an increased awareness in regard to this issue. Safety is a management decision and some just decide not to manage that operation. Submits testimony of Ernest C. Gilman. (EXHIBIT O)

400 SEN. HILL: Did the District Attorney's talk to you about the language and how they felt about it?

408 MOORE: They said they liked the bill but didn't have a chance to review it in depth.

420 SEN. HILL: I am concerned about the prosecuting and whether the language is sufficient.

431 SEN. BUNN: I think it would also be interesting to get some feedback from a defense attorney.

WORK SESSION ON SB 1142

449 SWENSON: Submits and reviews SB 1142 hand-engrossed bill.(EXHIBIT P)
-Submits and reviews SB 1142-2 amendments. (EXHIBIT Q)

465 PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES: Refers to hand-out.
(EXHIBIT R) -Discusses ORS 30.795 which deals with individuals who
receive emergency medical attention while in the custody of a law
enforcement officer.

TAPE 143, SIDE B

041 SNYDER: This statute has been the basis for potential liability on
the part of law enforcement agencies. We tried to create a solution with
SB 1142. -Refers to SB 1142 hand-engrossed bill.(EXHIBIT P)

091 SEN. BUNN: Asks about a case in Marion County and the amount of
money involved with the medical bills.

095 SNYDER: I'm not sure. There is an emergency clause in the bill that
would deal with the imposition of the fee and a delayed effective date
for the liability of the fund. The bill allows payment for only the
actual costs to the medical provider.

105 SEN. BUNN: So if Salem Hospital bills Marion County Sheriff's office
they have to list their expenses?

111 SNYDER: It incorporates by reference the fee schedule for the
worker's compensation payments which in turn are based upon actual costs
to the providers. It is a schedule developed by administrative rule.

117 SEN. BUNN: So we have a fee schedule that applies statewide in
regard to this issue.

120 SNYDER: Continues reviewing SB 1142 hand-engrossed bill.(EXHIBIT P)

196 CHAIR COHEN: So we're not talking about tapping into the fund if you
have a legitimate responsibility and it happens in the cell in Marion
County jail.

203 SEN. BUNN: What if an injury occurs but you are not aware of the
extent of the injury and you book the person? Are they stuck with that
one?

209 SNYDER: No that is not true. The injury needs to fit within the
definition outlined in the bill.

215 SEN. BUNN: It says "an injury caused by a law enforcement officer".
Are we making this too broad? Does it specify "in the line of duty", and
does it specify "acting lawfully"?

223 SNYDER: We tried to craft that language in section 7 of SB 1142
hand-engrossed.(EXHIBIT P) -What we are trying to avoid is the custody
issue. -Continues with review of SB 1142 hand-engrossed bill.(EXHIBIT P)

303 CHAIR COHEN: Where would you put the Motor Vehicle Accident Fund?

306 SNYDER: The first part would be on line 32, page 3 of SB 1142
hand-engrossed bill. -What we want is the agency that administers that
fund. -The intent is to take the liability away from the law enforcement
agency. -Gives a scenario of an incident that would not be covered by

this bill.

339 SEN. HILL: When an individual is released from custody is there any responsibility?

343 SNYDER: The purpose is to identify when the injury occurred. If the injury occurs after the law enforcement agency becomes involved and before the person is either booked or released the fund will pay for it.

372 SEN. HILL: I am concerned about letting someone out because they are ill and the agency doesn't want the expense.

374 SNYDER: What we meant to do was to close off the people who are in the custody of the correctional facility. We just want to be as specific as we can. -Continues reviewing SB 1142 hand-engrossed bill. (EXHIBIT P)

426 STEVE TELFER, LEGACY HEALTH SYSTEMS: The Department of Human Resources has requested one additional amendment. On page 2 after line 20C insert subsection 3 which would read "the Department of Human Resources shall have authority to promulgate rules to implement administration of the law enforcement medical liability account, which may include but not be limited to establishment of reasonable deadlines for submission of claims".

464 CHAIR COHEN: Lets get all of these amendments in writing to committee counsel to be drafted for Legislative Counsel. I think we should add an amendment that does not create the liability for the Department of Human Resources unless there is money in the fund. I don't want to create a General Fund of Liability unless there is money. Someone else would be stuck with the bill if the Department of Human Resources does not have any money. I guess that would put you back to where you are now.

482 SNYDER: I think we could live with that if the intent would be to pay pursuant to these fee schedules as long as money was there rather than a situation where they try to reduce fees to balance a budget.

TAPE 144, SIDE A

044 WILLIAM CASTER, ADULT AND FAMILY SERVICES DIVISION: We really can't use NBAF personnel to operate the fund because that is dedicated funds. We haven't had an opportunity to do a fiscal impact on this bill.

050 CHAIR COHEN: That will be dealt with in Ways & Means. Do you agree with the ongoing liability amendment that Mr. Telfer suggested?

057 CASTER: Yes we do.

MOTION: SENATOR HILL MOVES TO CONCEPTUALLY ADOPT PROPOSED AMENDMENTS TO SB 1142 WHICH ARE REFLECTED IN DOCUMENT DATED 5/3/91 WITH INGRID SWENSON'S NAME AT TOP. (EXHIBIT S)

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES SB 1142 AS AMENDED TO WAYS & MEANS WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS HAMBY, BUNN, HILL AND COHEN VOTING AYE AND SENATORS SPRINGER AND BROCKMAN EXCUSED.

PUBLIC HEARING ON SB 1212

086 JIM HUNTER, MOTOR VEHICLES DIVISION: This bill is part of the Governor's

recommended budget. -Submits and reviews written testimony. (EXHIBIT T)

PUBLIC HEARING ON SB 639

128 JIM MCINTYRE, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE: There is a gray area between misdemeanor assault and felony assault that this bill would address. We urge the committee to bring this bill back on a work session. Our position is that the degree of force required for snapping any bone should be a felony, where there is no weapon involved.

147 CHAIR COHEN: Some people actually step backwards and break a bone.

150 MCINTYRE: That would not be a result of intentional conduct on the part of the defendant which is what we are focusing on.

152 CHAIR COHEN: What if you slapped me and a splintered a bone?

154 MCINTYRE: I think that should be a felony.

155 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION: I don't think it should be.

159 CHAIR COHEN: I think we need to come up with something.

162 SHEPARD: One answer may be to redefine protracted physical impartment.

168 CHAIR COHEN: In the process of a minimal struggle someone could step in a ditch and break a bone and I don't think that should be a felony.

PUBLIC HEARING ON SB 510

194 BOB JOONDEPH, MENTAL HEALTH ASSOCIATION OF OREGON: Submits and reviews written testimony. (EXHIBIT U) -Submits SB 510-A5 amendments. (EXHIBIT V)

196 EVA KOTAS, MENTAL HEALTH AND DEVELOPMENTAL DISABILITY SERVICES DIVISION: Supports SB 510.

207 CHAIR COHEN: How much do you spend on investigation now?

206 KOTAS: It is part of a case managers function and is part of the rules that we prescribe for what they do.

213 CHAIR COHEN: Are we talking about individual reporting?

216 KOTAS: We are talking about the individuals who work in the programs doing the reporting. -Cites case of sexual abuse.

300 JOONDEPH: Reviews SB 510-A5 amendments. (EXHIBIT V)

316 CHAIR COHEN: Are you talking about primarily the nursing home reporting statute?

320 JOONDEPH: It is patterned after the senior abuse statute.

323 CHAIR COHEN: I worked on that and it was originally designed to have any person be able to report. The reporters are different people than

the people that deal with the senior abuse reporting. I will be looking carefully at what the intent is here. If you're really meaning to be talking about foster care homes and facilities or extend this to someone that lives in their parents house? Is that a different matter. You can't mix all of those issues in terms of duties and how they are to be investigated and followed up.

356 JOONDEPH: Right now as the bill is written if a person is receiving services from the mental health program and developmentally disabled or chronically mentally ill and were living in a parents home there would be a reporting obligation.

361 CHAIR COHEN: From whom?

362 JOONDEPH: From a list a person's called public officials listed in the bill.

371 CHAIR COHEN: That in my mind is one of the problem areas we need to sort out. If you assume they are wards of the state that is a different matter.

382 KOTAS: Sometimes we do provide services and dollars for people who are living at home. For the most part they are living in other kinds of care centers.

389 CHAIR COHEN: I think we need to split them out somehow. The obligations on reporters are different and so are the obligations to investigate.

398 JOONDEPH: The people who aren't in one of the facilities are people who would have to be receiving services from a community agency and by definition would be in regular contact with them and if they did notice an unexplained problem they would look into it. If that is too broad we can work on something.

415 CHAIR COHEN: I just want to get these concerns out. You need to distinguish the difference.

431 KOTAS: It is limited to adults who are 18 years of age and receive services from a community program facility.

435 TAYLOR: This bill does have a large group of people who are required to report which goes beyond just people working for the department or division.

440 CHAIR COHEN: As long we have some degree of reporting.

449 JOONDEPH: The other three statutes including the one dealing with nursing homes are almost identical. -Refers to written testimony. (EXHIBIT U)

TAPE 145, SIDE A

036 CHAIR COHEN: You defer to the law enforcement agency if there is one in terms of investigating.

040 KOTAS: We usually do work with them.

046 DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION: In defining a law enforcement agency a District Attorney is included as one of the law enforcement agencies. In section 4 of SB 510 it states that the designee shall notify the law enforcement agency having jurisdiction. If someone

calls me today wanting to report a crime I must refer them to a police agency. I don't have the ability to investigate that crime and that is what is involved. It is adding a step if they need to call a District Attorney. It may be that the police would have to do a search so a warrant may be needed, but it would be misleading to say you need to report this to a District Attorney. I would request that be more specific. I don't know if the word "shall" is involved there. If so, maybe that has worked in other statutes and maybe it is okay here. Anytime "shall" is there it doesn't give you any discretion at all. In section 5 of SB 510 it says "the law enforcement agency or the division designee shall cause the investigation to commence and then take steps necessary to prevent further abuse of the adult". That is a difficult situation for police.

110 JOONDEPH: That is a good point and we will try to address that.

113 CHAIR COHEN: That was something I was concerned about when I first looked at this but that has been deleted.

WORK SESSION ON SB 852

137 DAVE FIDANQUE, ACLU OF OREGON: Submits written testimony. (EXHIBIT W) -We support SB 852 which incorporates two measures that did not move out of the house, that had been recommended by the Oversight Committee.

163 CHAIR COHEN: Adjourns hearing at 3:55 p.m.

Submitted by, Reviewed by,

Shannon Gossack Ingrid Swenson Assistant Counsel

EXHIBIT LOG: A - Staff, SB 1086-1 amendments, 24 pgs. B - Colleen Sealock, SB 1086 testimony, 2 pgs. C - Phillip Yarnell, SB 1086 testimony, 3 pgs. D - Staff, Testimony of Christy Matson SB 1086, 9 pgs. E - Robin Smith, SB 1086 testimony, 5 pgs. F - David O'Guinn, SB 1068 testimony, 6 pgs. G - Bob Oleson, SB 1068 testimony, 2 pgs. H - Charles Williamson, SB 1068 testimony, 1 pg. I - Staff, SB 882-A2 amendments, 5 pgs. J - Staff, SB 882, 18 pgs. K - Senator Kerans, SB 1037 testimony, 6 pgs. L - Senator Kerans, SB 1037 hand-out, 28 pgs. M - Annette Talbot, SB 1037 informational, 7 pgs. N - Diane Rosenbaum, SB 1037 testimony, 1 pg. O - Robert Moore, SB 1037 testimony, 4 pgs. P - Staff, SB 1142 hand-engrossed, 6 pgs. Q - Staff, SB 1142-2 amendments, 3 pgs. R - Paul Snyder, SB 1142 informational, 5 pgs. S - Staff, SB 1142 conceptual amendments, 4 pgs. T - Jim Hunter, SB 1142 testimony, 4 pgs. U - Bob Joondeph, SB 510 testimony, 12 pgs. V - Bob Joondeph, SB 510-A5 amendments, 1 pg. W - Dave Fidanque, SB 510 testimony, 3 pgs.