

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 761 (PAW) HB 2372 (PUB) HB 2198 (PUB) HB 2390 (PUB) SB 707 (WRK) SB 1188 (WRK) HB 2392 (PUB) HB 2993 (PUB) HB 3521 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

May 24, 1991Hearing Room C 1:08 p.m.Tapes 185 - 188

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: VICKI NELAND, COUNCIL FOR PROSTITUTION  
ALTERNATIVES RICHARD HARRIS, CENTRAL CITY CONCERN DAVID EISEN, PORTLAND  
ADDICTIONS ACUPUNCTURE CENTER CLARK CAMPBELL, OFFICE OF DRUG AND ALCOHOL  
PROGRAMS KINGSLEY CLICK, STATE COURT ADMINISTRATOR'S OFFICE RON LONGHN,  
TRIAL COURT ADMINISTRATOR FOR THE 21ST JUDICIAL DISTRICT DENNIS DOWD,  
DEPARTMENT OF CORRECTIONS JEFF VAN VALKENBURGH, DEPARTMENT OF JUSTICE  
VERN FAATZ, BOARD OF PAROLE AND POST-PRISON SUPERVISION THE HONORABLE  
TOM MASON, STATE REPRESENTATIVE TIMOTHY JENSEN, OREGON DISTRICT  
ATTORNEYS ASSOCIATION ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS  
ASSOCIATION DON PEPION, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION KEN  
LAYTON, DRUG AND ALCOHOL COUNSELLOR JOHN BRADLEY, MULTNOMAH COUNTY  
DISTRICT ATTORNEY'S OFFICE STEPHEN DONNELL, OREGON PROGRAM CIVIL RIGHTS  
LOBBY KATHLEEN BOGAN, CRIMINAL JUSTICE COUNCIL BRENDA PETERSON,  
DEPARTMENT OF JUSTICE DAVID NEBEL, OREGON LEGAL SERVICES LLOYD SMITH,  
LAW ENFORCEMENT DATA SYSTEM VIETTA HELMLE, OREGON COALITION AGAINST  
DOMESTIC AND SEXUAL VIOLENCE GERRI FITZGERALD, DEPARTMENT OF JUSTICE JIM  
CARLSON, OREGON MEDICAL ASSOCIATION TOM EWING, DEPARTMENT OF JUSTICE

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TAPE 185, SIDE A

003 CHAIR COHEN: Calls meeting to order at 1:08 p.m.

SB 761

005 CHAIR COHEN: Asks Sen. Hamby if she wants to introduce the bill.

018 SEN. HAMBY: We're using SB 761 for a gut and stuff; explains the dash one amendments (Exhibit A). Asks witnesses to testify.

048 VICKI NELAND, COUNCIL FOR PROSTITUTION ALTERNATIVES: We work with alcohol and drug issues. IN the past, have provided money for methadone treatment, which was about \$225 to \$250 a month.

058 CHAIR COHEN: Why does it have to be that expensive?

060 NELAND: That's the fee.

061 CHAIR COHEN: Aside from that?

061 NELAND: O.K. It is very expensive.

062 CHAIR COHEN: You're not the right person to ask; I'm sorry.

062 NELAND: We paid that in the belief that, if we were paying for the methadone, the womEn would no longer be prostituting to pay for the methadone. We also asked that they detox off the methadone. However, we had 100% failure with methadone detox. What contributed to that was they were using other drugs on top of the methadone. Explains effect of using methadone while also using other drugs. Were spending a quarter of our service fund for this. Have a 85% success rate for women who were not on methadone when entering our program.

103 CHAIR COHEN: Say that again.

103 NELAND: We have an 85% success rate for those women that come in drug effected who are expected to detoxify.

- There's no significant difference between a heroin addict and a cocaine addict or in their detoxification.

- Working with some of the Neonatal nurses at Emanuel Hospital and others, we've come up with a policy of no methadone.

127 CHAIR COHEN: Who prescribes methadone for clients?

128 RICHARD HARRIS, CENTRAL CITY CONCERN: Medical doctors.

131 CHAIR COHEN: Is it ordered to prescribe on the basis of some court order? Is it the judges or the parole officers who make that decision?

133 NELAND: I'm not sure, but many of the women in our program that were on

methadone had heard about it and wanted to be on it. You can be court ordered to go into, or at least be considered for, methadone treatment.

- Describes dire straits of women on methadone.

- Methadone is suppose to reduce crime; it hasn't.

- Recovery requires development of internal skills, including accountability and responsibility for thoughts, feelings, and behavior. Methadone undermines this. Describes beliefs of methadone users; methadone adds to the belief.

- The average length of time on methadone for women who come to our program on methadone is ten years. Methadone clinic tells them, when

they come to us, that they are not ready for detox.

180 SEN. HAMBY: Washington State has just stopped the use of methadone, has it not?

182 NELAND: Yes.

182 SEN. HAMBY: The Chair just asked me a question on it and so I . . .  
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184 NELAND: I've still yet to find a rational reason to prescribe another drug for somebody that's already drug dependent. There is nothing significant about these people that they cannot be in recovery and cannot detox.

- We send women to acupuncture, to recovery, to self-help NAAA, and other programs.

- The reason women use is because almost 100% of those in our program are survivors of chronic childhood sex abuse; methadone does not stop that cycle of abuse, but is just another cry for help.

217 CHAIR COHEN: Thank you.

218 HARRIS: Introduces David Eisen. Willing to demonstrate use of acupuncture to the committee.

237 CHAIR COHEN: No; we have about five minutes with this bill.

239 DAVID EISEN, PORTLAND ADDICTIONS ACUPUNCTURE CENTER: People are awake, so I think it might be really helpful . . . .

240 HARRIS: Have had profound experiences with acupuncture as a treatment for the withdrawal of various kinds of drugs. Before acupuncture, only 20% of the people who came in would stay to completion. After we started using acupuncture, 80% of them stay through completion. Describes effects of acupuncture upon addicts. The one drug that we don't withdraw in our detox center is methadone; unable to do it because the withdrawal is so severe and takes so long. Supports alternatives to methadone.

277 EISEN: Acupuncture is not a magic bullet for chemical dependency, but from a cost efficiency model and from a clinical effectiveness model, have yet to meet its match. Have used acupuncture for both detoxification and as a relapse prevention tool.

- Methadone does reduce crime, but to what extent and for how long is questionable.

- Cites success figures for acupuncture.

- We don't detox people off methadone in-patient, but do detox them off methadone out-patient.

- Methadone is up to twelve times as addictive as heroin. Nobody that I know of detox off methadone without either restarting to shoot against or switching to another drug to deal with the pain of methadone withdrawal.

- Compares advantages of acupuncture with methadone treatment.

313 CHAIR COHEN: Relates personal experience with people in methadone

treatment. Thought we had discarded methadone; its use is terrible and insidious.

380 SEN. SPRINGER: I assume that the programs are sanctioned by public agencies, the county, or . . . .

383 CHAIR COHEN: Who sends them there?

383 SEN. SPRINGER: I don't know if the state A & D office has any regulatory authority here. We've got at least one representative from that office; maybe they'll be able to tell us if the evidence here is as the Chair suggests.

388 SEN. HAMBY: ORS 430.560 simply recognizes the synthetic opiates and the supply availability. We spend millions alone in Portland and, when you think about the cost differential as the witnesses just identified, hopefully that savings will be significant. We will have someone from the state come forward and demand that we deprioritize and allow those currently on meth to continue on meth. I know the Chair would like to eradicate it altogether.

404 EISEN: I've also brought some research and assume evaluations of acupuncture programs around the country that you may want to look at.

407 CHAIR COHEN: Thank you; we'd like that.

408 EISEN: Applauds the counsel and the committee for taking up this issue.

409 HARRIS: For a long time, it was believed that there isn't much alternative for opiate addicted people than methadone basic counseling treatment. Getting people clean and sober simply by going cold turkey has never been very popular and methadone was perceived to be the treatment of choice by some people. There is a substantial optional alternative now; summarizes benefits of acupuncture.

422 CHAIR COHEN: Thanks witness.

422 SEN. HAMBY: Thanks the witnesses.

425 CHAIR COHEN: Invites Mr. Kershner and others to testify.

430 CLARK CAMPBELL, OFFICE OF DRUG AND ALCOHOL PROGRAMS: I'm here for Jeff Kershner. Obviously, you are waiting for me to say something that will right this wrong.

435 CHAIR COHEN: No; just tell us what you think about the dash one amendments.

436 CAMPBELL: It's well intended. Methadone is not the answer for everyone, but there are people who do reduce their crime and there are people who function very well over long periods of time on methadone. Methadone is not the treatment of choice for many, but for some, it has been the thing that sustained them.

452 CHAIR COHEN: That's probably true.

453 CAMPBELL: Describes the type of people who use methadone.

- Likes people having a choice; the amendments sound like you have to go to detox and fail detox before you can go acupuncture.

TAPE 186, SIDE A

026 CAMPBELL: Continues testimony.

- If there is a way to alter the amendments so that the program has the choice of any one or combination of those things, rather than having to move the client sequentially, we think it would be a little bit more workable at the service level.

048 SEN. HAMBY: Asks the earlier witnesses about the special category for the treatment of pregnant women.

053 EISEN: When pregnant women are put on methadone, the fetus will go through less uterine seizures during labor and delivery. However, acupuncture is an alternative to methadone in pregnancy. There is no long term data on the effect of methadone in utero, with how it affects babies for behavior or developmental problems, or future drug addiction. We need to look at how methadone will affect children that are born addicted. No saying to pregnant women that methadone is the only thing they can do.

069 SEN. HAMBY: "And for the record, Madam Chair, I call the Committee's attention to line 14 where it says 'the synthetic may be made available to a pregnant woman with her informed consent' and for the record I'd like informed consent to know that the woman is, in fact, told of the long term consequence of going on meth, and the ten to twelve times addiction of meth versus the availability of going through detox in acupuncture. That was the rationale for the lines 13 through 16."

078 CHAIR COHEN: Sen. Bunn has asked for us to defer a work session for 20 minutes or so until he gets back. I want to make sure that we can't do detoxification in conjunction with acupuncture.

084 SEN. HAMBY: Yes, we do.

085 CHAIR COHEN: But I'm not sure that A and B does that and I need . . .

086 SEN. HAMBY: I think we need to run them together.

086 CHAIR COHEN: There needs to be a combination of detoxification acupuncture with counseling and then they become priorities over the offering of synthetic opiates.

090 SEN. HAMBY: Suggests amendment.

093 CHAIR COHEN: We'll have Mr. Taylor visit Legislative Council. Anything else that the committee would like Bill to discuss with Legislative Council? It's clear from my standpoint that descending order of priority would mean that you had to do detoxification before you did . . . couldn't do it in conjunction with, and I think we need to make clear that there are some options with that.

101 SEN. SHOEMAKER: Just looking quickly at the amendments from the Office of Alcohol and Drug Abuse (Exhibit B), we could . . .

104 CHAIR COHEN: I'm not interested in deleting the descending order of priority because it doesn't get you anything.

105 SEN. SHOEMAKER: Well, then giving priority to detoxification and

acupuncture over . . . .

107 CHAIR COHEN: Not if you approve these other amendments.

107 SEN. SHOEMAKER: But working with them, as a way of getting us there . . . .

107 CHAIR COHEN: I see what you mean; O.K.

109 SEN. HAMBY: I don't mind the last statement on the proposed conceptual amendment; explains why.

114 BILL TAYLOR, COMMITTEE COUNSEL: So the desire here would be for an amendment that would have detoxification with acupuncture and counseling, who when you had detoxification, it would be done with acupuncture?

118 CHAIR COHEN: Not necessarily. There are times you don't want to tie detox only with acupuncture; explains why. What we're talking about is giving a priority to detoxification along with acupuncture and culturing and to say that the last option, if everything else fail, could be the supplying of synthetic opiates.

129 TAYLOR: So it would be detoxification, detoxification and acupuncture?

131 CHAIR COHEN: No. We're not into getting so specify. I think you may have to redo this and say the least priority is . . . . nothing else works.

136 SEN. SHOEMAKER: But with a pregnant woman . . . .

137 CHAIR COHEN: You could leave that piece in.

139 SEN. HILL: Sorry for being late. Does acupuncture help with detoxification?

141 CHAIR COHEN: They are often in conjunction, but not necessarily.

142 SEN. HILL: But I thought that Bill was saying was detoxification, but if it's available, to have them do detoxification and acupuncture together.

151 CHAIR COHEN: You'll end up with a series of non-ranking priorities and then you will have the least desire option. If it means a second tier to include acupuncture with detox, there may be times when you want to do acupuncture alone.

160 TAYLOR: What I'm not getting here is that detoxification and acupuncture with counseling would be up here, that would be like a choice that would be made, and then the last alternative would be methadone.

164 CHAIR COHEN: And you may end up with a different structure. Asks Sen. Hamby if she's given Mr. Taylor the conceptual prelude to what we got from the Office of Alcohol and Drug. O.K.; thank you.

HB 2372

170 CHAIR COHEN: Move on to HB 2372.

170 KINGSLEY CLICK, STATE COURT ADMINISTRATOR'S OFFICE: Introduces Ron

Longhn.

186 RON LONGHN, TRIAL COURT ADMINISTRATOR FOR THE 21ST JUDICIAL DISTRICT: Supports the bill; explains what it does. Explains why Linn and Benton counties should have their own judicial districts. The bill should not require further funding; explains why.

235 SEN. SPRINGER: Judge Gardner's letter (Part of Exhibit C) suggests that we get the input from local bar associations and other interested groups; are they going to appear today?

239 CHAIR COHEN: No one on the list.

- Anyone who'd like to speak to the bill?

244 SEN. SPRINGER: Not ready to move until he hears from the bar association of the two counties.

246 CHAIR COHEN: Bill Taylor may have checked it out, but I'm not aware of that.

247 SEN. SHOEMAKER: Why do all five judges hear cases in both counties while three are officed in Corvallis and two are in Albany?

258 LONGHN: They've done this all along; explains why. Would expect this continue even if they were separate judicial districts.

272 SEN. SHOEMAKER: Then why is it necessary to split them?

280 LONGHN: We do have a de facto presiding judge in Benton County whose administering over there right now.

293 SEN. HILL: And you would do your duties as a trial court administrator in both counties?

294 LONGHN: Yes.

295 SEN. HILL: Any conflicts there?

296 LONGHN: No.

297 SEN. HILL: No fiscal impact?

298 CLICK: There is no fiscal impact; explains why.

- Points out similar actions taken by legislature in the past.

- As to bar, this was discussed with the Benton and Linn county bars and they've never opposed this.

- Splitting would increase local responsiveness.

323 SEN. SPRINGER: Would still feel better if we had something from the local bar association.

- Is this going to effect how the judges are elected?

331 LONGHN: The district court judges will not be affected, but circuit court judges would be affected and they understand this.

338 SEN. SPRINGER: Still waters run deep.

340 SEN. HAMBY: Apologizes for missing opening testimony. What's the rationale for separate districts based on a difference on legal culture?

353 LONGHN: Ordinarily, presiding judges establishes a position of leadership in a judicial district. Sometimes, that leadership bears the qualities of the county and the individual's judicial philosophy.

366 SEN. HAMBY: Would a reassignment of judges assist more so?

370 LONGHN: I don't think so.

373 SEN. HILL: Thanks witness.

HB 2198

375 SEN. HILL: I'll now move to HB 2198.

388 DENNIS DOWD, DEPARTMENT OF CORRECTIONS: Supports the bill. Submits, and paraphrases the first paragraph of, Exhibit C.

412 JEFF VAN VALKENBURGH, DEPARTMENT OF JUSTICE: Explains legal effects of the bill.

436 SEN. SPRINGER: How many inmates are functionally illiterate?

438 DOWD: About 30% read at below the eighth grade level.

446 SEN. SPRINGER: What percentage of your inmates use a language other than English as their native language?

450 DOWD: Don't know exactly; estimates one in 400.

460 SEN. BROCKMAN: One out of 400?

462 DOWD: Who requires some assistance because they can't understand English.

- That's an extremely subjective estimate.

467 SEN. HILL: Any equal protection problems?

470 VAN VALKENBURGH: As far as I know, there is no constitutional problems of any kind in amending the statute; explains.

481 SEN. HILL: And what is the problem again?

TAPE 187, SIDE A

025 DOWD: It is both expense and time; explains.

032 VERN FAATZ, BOARD OF PAROLE AND POST-PRISON SUPERVISION: Supports the bill; explains why.

044 VAN VALKENBURGH: The Department of Justice supports the bill.

045 SEN. SPRINGER: Is there any therapeutic purpose for a face-to-face hearing?

055 DOWD: There are many arguments for providing the input. This bill does not preclude the input; just limits it to written input.

065 SEN. SHOEMAKER: Isn't there some way for the inmates to really be



heard; written testimony may be perceived as not giving them a hearing. Seems an appropriate role for an ombudsman.

- I understand the ombudsman program is being eliminated; is that correct?

077 DOWD: That has been removed from the budget.

079 SEN. SHOEMAKER: So they will no longer have that avenue nor the personal hearings?

081 DOWD: They will continue to have the avenue of written testimony. This bill would allow us to establish rules limiting testimony to written testimony, but it does not prohibit a hearing.

- It is our policy to encourage legitimate inmate input.

HB 2390

090 CHAIR COHEN: Introduces witnesses.

HB 2198

094 SEN. HAMBY: Asks if committee could review the dash one amendments (Exhibit D).

095 CHAIR COHEN: We might want to consider the amendments in work session.

098 SEN. HAMBY: I see.

099 CHAIR COHEN: I hear Sen.s Springer and Shoemaker wanting to do that.

- Asks Sen. Hamby to explain the amendments.

102 SEN. HAMBY: Explains the amendments.

110 CHAIR COHEN: Asks Mr. Dowd if he is prepared to comment on the amendments.

111 SEN. HAMBY: The amendments for work session.

113 DOWD: Was not aware of the proposed amendments, but was aware of concerns about inmate mail.

115 CHAIR COHEN: Asks Mr. Dowd to review the amendments and to come back for comment at the work session.

- Asks committee members to review the amendments.

HB 2390

123 CHAIR COHEN: Tom?

124 THE HONORABLE TOM MASON, STATE REPRESENTATIVE: Do you want the other two also?

125 CHAIR COHEN: Whatever is your pleasure.

131 REP. MASON: Describes situation that led to the bill. Description refers to both the Sentencing Guidelines Grid (Exhibit E)

and the appendix to the sentencing guidelines (Exhibit F). Explains the bill.

220 TIMOTHY JENSEN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Introduces self.

223 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Introduces self.

224 CHAIR COHEN: Invites witnesses' testimony.

227 JENSEN: Have not seen Mr. Shepard's amendments.

229 CHAIR COHEN: Trying to figure out whether you need to comment on the amendments.

230 JENSEN: Should Ms. Swenson go through the bill first?

235 SEN. SPRINGER: Is this going to effect how cases are pled now?

237 JENSEN AND SHEPARD: Yes.

237 SEN. SPRINGER: The elements of the offense are going to specifically state what it is that enhances the activity?

239 SHEPARD: Yes.

240 JENSEN: The guts is the bill is that you have to plead and prove.

246 CHAIR COHEN: Asks Ms. Swenson to go through the bill.

248 SHEPARD: The committee should know that Moeller has been accepted for review by the Supreme Court; no matter what, this committee should adopt a bill like this.

250 JENSEN: We concur in that.

252 CHAIR COHEN: So we have a concurrence that we ought to move forward with something that looks like this bill.

- Ingrid?

255 INGRID SWENSON, COMMITTEE COUNSEL: Explains the bill.

314 REP. MASON: That was an oversight on our part and should be considered as a drafting error. Describes intent and what should have been in the original bill.

324 JENSEN: I agree.

325 CHAIR COHEN: Calls for questions.

327 SEN. HAMBY: What's a quantity of heroin for personal use?

334 CHAIR COHEN: A personal use would be under what category?

336 SEN. HAMBY: Five grams of heroin would last you how long?

338 SHEPARD: We have a couple of witnesses that can help you with that.

342 CHAIR COHEN: Need to remember that you can bring a cause of action for possessing any number of variety of things below this. What we're

talking about is enhancing above . . . .

- Need to know what the normal drug offense might be in terms of the gridline.

354 SHEPARD: Refers committee to last page of the bill, section four; discusses same.

363 CHAIR COHEN: Calls up the Criminal Justice people.

368 SEN. BUNN: Was it your amendment that changed the level on marijuana from 30 grams to 225 grams?

371 SHEPARD: Yes.

372 SEN. BUNN: Is that increasing the level from about an ounce to about eight ounces?

375 SHEPARD: Yes.

376 SEN. HILL: There was some discussion that the schemer networks raised the number of Hispanics arrested quite dramatically. Is this change going to stop that kind of thing from happening?

384 SHEPARD: I think it will.

385 SEN. HILL: How?

385 SHEPARD: The state would be put to the test of proving each of these specific elements.

397 CHAIR COHEN: Anything below this gets the usual piece; do you need to know what that is on the guidelines or should we just go head on and talk about conforming the enhancement?

408 SWENSON: We do have Appendix Four (Exhibit F). If you disregard page one . . . .

410 CHAIR COHEN: We've been handed that by whom?

411 SWENSON: It should have been provided at the outset of the hearing.

- Discusses second page of the appendix.

420 CHAIR COHEN: So that is the answer to my question.

- So, depending on what your criminal history is, you could get . . . .

433 SHEPARD: They're essentially probation cases.

435 CHAIR COHEN: Let's go ahead with the amendments.

439 SHEPARD: Supports the bill. Discusses amendments (Exhibit G).

465 CHAIR COHEN: You've got your gun.

466 SEN. BUNN: I've got my gun and aluminum foil, but the cash is a problem.

TAPE 188, SIDE A

026 SHEPARD: Continues discussing amendments.

034 SEN. SHOEMAKER: That's line . . . .

035 SHEPARD: Line two; it's not on the copies of the amendments that you have.

- Continues discussing amendments.

060 SEN. HAMBY: If I'm a meth addict, I need at least a minimum of four and a half ounces?

063 SHEPARD: Grams.

063 SEN. HAMBY: You said ounces.

064 SHEPARD: An eighth of an ounce.

065 CHAIR COHEN: Would be a week's supply.

066 SHEPARD: Less than that.

066 CHAIR COHEN: Less than that?

066 SHEPARD: Yes.

067 SEN. HAMBY: Ten grams is less than a week's supply of meth?

067 SHEPARD: For someone whose doing a lot of meth.

068 SEN. HAMBY: What's a normal dose?

069 SHEPARD: I don't know; it depends on how its ingested.

071 SEN. HAMBY: But someone in the audience could answer that?

071 SHEPARD: Yes.

- We're down to the issue of being within a 1000 feet of schools.

- Continues discussing amendments.

093 REP. MASON: Asks Chair Cohen if she has the last language for section three.

095 CHAIR COHEN: Yes; reads the language.

098 REP. MASON: Wants to emphasis that we are in agreement on that.

099 CHAIR COHEN: It's marked yellow; that means go.

102 SEN. BUNN: If you delivery marijuana to someone, you cover two of those almost immediatly, don't you?

105 SHEPARD: Yes.

106 SEN. BUNN: So if delivery takes place for consideration, then as long as the amount of delivery is over the threshold, you've got all three.

109 SHEPARD: Yes; that's a good argument for more than three factors.

112 REP. MASON: In drug law, "delivery" is broad; discusses

"constructive delivery."

126 SEN. BUNN: That extends the point that we have one bag at your house with a certain drug in it; that might meet all three criteria.

130 REP. MASON: That would meet at least two.

130 SEN. BUNN: Why do we have the rapping when it virtually guarantees two and we're looking for separate criteria to be met?

135 REP. MASON: That wasn't our intent; defers to Mr. Jensen.

137 JENSEN: When the officers are executing search warrants, what they often find will be scales and packaging materials such as zip lock bags; don't believe the legislation is contemplating that, when a person makes a delivery, the package itself is going to be counted as one of the factors.

151 SEN. BUNN: I agree with the intent, but my concern is that someone, if one short, might take the packaging as the one to take it over the top.

154 REP. MASON: Might want a specific amendment on page two, line 2; discusses what the amendment would say.

170 SEN. SHOEMAKER: On section three, its not clear where we're going. Mr. Shepard's amendment suggests that all elements need to be pleaded and proved.

176 SHEPARD: Yes.

176 SEN. SHOEMAKER: Yes, the remaining part of that section seems to revert to commercial drug use.

178 SHEPARD: We need to strike some language on line 17.

179 SEN. SHOEMAKER: Reads what line 17 would say after striking the language.

183 SHEPARD: Yes.

184 SEN. SHOEMAKER: The other question has to do with the commercial drug offense; both section one and two don't create a presumption that you have a commercial drug offense, but that it is a commercial drug offense, so there is no opportunity for the defendant to overcome the proof and explain it away?

196 SHEPARD: That's true; that's why I think we need to make sure that the state prove enough factors to make sure we really have a dope dealer.

199 SEN. SHOEMAKER: And you think four does that?

200 SHEPARD: Yes.

201 SEN. SHOEMAKER: I'm real uncomfortable with categorical crimes; some circumstances might be explained away.

204 REP. MASON: Coming from that, prior to Moeller, there was nothing to defend on.

208 SEN. SHOEMAKER: I understand and I applaud your efforts.

209 REP. MASON: Names a number of categories; these are remnants of the old schemer network factors A through H.

213 CHAIR COHEN: The Parole Board Matrix.

214 REP. MASON: Yes.

214 CHAIR COHEN: So it's not as if they haven't been used along the way.

215 REP. MASON: That's true; although Mr. Shepard and Mr. Jensen might want to take some position on it, feel free to look at them. Cites example. Am not that uncomfortable with shifting the burden; explains why. Gives antidotes. Thinks \$200 is a little low.

248 CHAIR COHEN: Rep. Mason comes from a rich district.

251 SHEPARD: If you want to hear about the amounts, have two witnesses; introduces both.

254 CHAIR COHEN: Invites witnesses to testify.

- Asks Mr. Jensen if he wants to say anything first.

261 JENSEN: I'll come back during the work session.

263 CHAIR COHEN: Invites witnesses to testify.

268 DON PEPION, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Discusses why the phrase "detectable amount" is meaningless due to the present tools of crime detection and how that affects the bill. Discusses what amounts would constitute a person's daily usage of various drugs and what would constitute personal stashes.

346 SEN. HAMBY: How do we define cut and stepped on in the statutes?

347 PEPION: That means that somebody is taking it adulterated.

348 SEN. HAMBY: I know what it means; it just defining it in the statutes.

352 KEN LAYTON, DRUG AND ALCOHOL COUNSELLOR: Supports Mr. Shepard's amendments; explains why. The nuances need to be tied down or the District Attorneys will use them to make dealers of people who are not dealers.

452 CHAIR COHEN: Do you think the drugs listed are the most frequently used? Is that an appropriate list of drugs?

463 PEPION: Yes it is.

- Warns that if larger amounts of drugs result in a steeper law, then people will use stronger amounts and that could have deadly results.

TAPE 187, SIDE B

027 SEN. HAMBY: We're making policy that's going to drive the drug traffic in a certain direction.

- How long would five grams of heroin or eight to ten grams of cocaine for personal use last?

031 LAYTON: It depends on where the person is at on the addictive cycle; explains.

039 SEN. HAMBY: Five grams of uncut would not last you . . . .

039 LAYTON: Uncut heroin would last me a long time; I'm talking about street level variety.

041 SEN. HAMBY: So we drive policy by identifying street level drugs.

042 LAYTON: The nuances are very broad.

043 SEN. HILL: What is psilocybin?

045 LAYTON: Hallucinogenics.

045 PEPION: There is a whole variety of mushrooms growing out there; explains. Most psilocybin and psilocin are grown here.

052 SEN. HILL: Is it a big problem?

053 PEPION: Not as much as it use to be; describes variety of effects from the different mushrooms.

058 CHAIR COHEN: Your use of the word "therapeutic" is profound.

060 PEPION: For the user it is.

061 CHAIR COHEN: We need to be aware of it. We categorize people by what they're all about and we forget that there is a side of it that is important for us to recognize.

064 LAYTON: The mushrooms are not really a big thing in the fall; explains why.

068 CHAIR COHEN: What do you think about going on a dose of methadone?

071 LAYTON: Its nonsense to put an opiate addict on opiates and call it a cure.

085 PEPION: It's like trick or treat with junkies; explains statement.

098 CHAIR COHEN: Thanks witnesses.

- Invites John Bradley to testify.

102 JOHN BRADLEY, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE: Submits Exhibit H. Believes the amendments will all be worked out in a conference committee.

110 CHAIR COHEN: It wouldn't have to be worked out in a conference committee.

111 BRADLEY: If you amend it, it does, doesn't it?

111 CHAIR COHEN: No.

114 BRADLEY: Understand the amounts on page one of the amendments are based upon \$500 street value.

117 CHAIR COHEN: The levels, is that what they're talking about?

118 BRADLEY: Yes; that's on page one.

118 CHAIR COHEN: O.K.

119 BRADLEY: That's what I've heard.

- If you are going to make changes on page two, recommend that you find figures that are less than what Mr. Shepard has put into there. Cites example.

133 CHAIR COHEN: Invites all the witnesses to come back for a work session.

- Can we say that, if we make the changes that Mr. Shepard offered, that we have to look at page one to make corresponding changes?

139 BRADLEY: What I'm saying is that you ought to put the values on page two somewhere between the values on page one and page three.

141 CHAIR COHEN: And we will get into that discussion. Invites written testimony and thanks witness.

146 SEN. HAMBY: Concerned that we're going to push drugs into an extract quality. I'm sure that you've considered street values as well as grams.

152 CHAIR COHEN: At one point, the Criminal Justice Council debated street value and tried to put numbers on value. That was hard to do too.

155 SHEPARD: The Oregon State Police will testify that they will have a difficult time with quantitative analysis; it can be done, but they don't have the time and money.

159 SEN. SHOEMAKER: What have other states done in trying to draw this line?

160 BRADLEY: I'm not aware of any other . . . possibly there are, but the weights of what is sold or possessed are the schemes of most other states and the federal government. Feels that's a good approach; explains why.

169 SEN. HILL: How does this correspond with what the federal government does in prosecuting drug cases?

171 CHAIR COHEN: We're talking about the numbers now.

172 SHEPARD: I think the District Attorneys tried to use the federal scheme.

173 SEN. HILL: Is that what this is?

174 BRADLEY: I don't have the federal scheme in front of me.

175 SEN. HILL: Their scheme is successful, isn't it?

177 BRADLEY: The prosecution would think its successful; depends on what you're looking at.

179 SEN. HILL: Do you know?



180 JENSEN: The amounts required under the federal system are significantly higher than are what are enumerated in HB 2390. Would be happy to supply the committee with those figures.

185 CHAIR COHEN: We need to get those and look at them.

- I'm going to hold this in abyss for the moment.

SB 761

191 CHAIR COHEN: We have dash two amendments (Exhibit I) on Sen. Hamby's bill.

200 TAYLOR: I typed them out and ran them by Legislative Counsel's office. Explains what he did in drafting the amendments.

210 CHAIR COHEN: And we didn't put in the prelude . . . . the last sentence that we were going to talk about?

212 SEN. HAMBY: The objective of treatment program.

213 CHAIR COHEN: Right.

213 TAYLOR: I'm sorry; I lost it.

215 CHAIR COHEN: Asks Sen. Hamby if she wants to make a motion to add that.

- Discusses where it would fit in the amendment.

222 SEN. HAMBY: Reads the amendment.

- You want it in sub one?

227 CHAIR COHEN: Reads language regarding objective of treatment program.

231 SEN. HAMBY: And then the mental health . . . . O.K.

231 CHAIR COHEN: Bill?

232 TAYLOR: With legislative counsel's assistance, we can probably put that in a separate subsection in something similar to a preamble.

234 CHAIR COHEN: That's what I'm saying.

237 SEN. HAMBY: Thinks its an excellent preamble.

238 MOTION: Sen. Hill moves to insert the last sentence in Exhibit B as a preamble and to adopt the dash two amendments.

248 CHAIR COHEN: Notes that "treatment programs that involve" should be single.

249 SEN. HAMBY: Single.

249 CHAIR COHEN: So cross out the "s" there.

- Calls for objections.

252 SEN. HAMBY: To the dash one.

252 CHAIR COHEN: To the dash one as we have it before us.

- Are there objections?

254 SEN. BROCKMAN: We don't need the comma after detoxification in the second to the last line?

255 CHAIR COHEN: I think we need to do that too.

- Calls for objections; hearing none, so ordered.

259 MOTION: Sen. Hamby moves the dash one amendments as it is amended.

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

263 MOTION: Sen. Hamby moves SB 761 as amended to the floor with a "do pass" recommendation.

266 VOTE: Motion unanimously passes.

SB 707

274 CHAIR COHEN: Let's take up 707; we have amendments.

277 SEN. HAMBY: We have some amendments (Exhibit J) from the Association for Retarded Citizens of Oregon.

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

286 CHAIR COHEN: Asks Ms. Swenson to explain the amendments.

289 SWENSON: Explains the amendments.

299 CHAIR COHEN: Calls for objections.

300 SWENSON: Adds additional comment about the amendments.

302 CHAIR COHEN: And we were clear in hearings that the definition of mental retardation is delineated and accepted nationally.

- Calls for objections; hearing none, so ordered.

311 MOTION: Sen. Hamby moves SB 707 as amended to the floor with a "do pass" recommendation.

312 SWENSON: Wants to make it clear that while the amendments were done in conjunction with the District Attorneys Association, they do not concur in the bill.

316 CHAIR COHEN: Rephrases what Ms. Swenson said.

328 VOTE: Motion unanimously passes.

SB 1188

333 CHAIR COHEN: SB 1188.

- Comments on the scheduling of remaining senate bills.

344 TAYLOR: There are dash seven amendments (Exhibit K). Explains the amendments and the bill.

382 SEN. HAMBY: Did we speak to the white pages?

383 CHAIR COHEN: Some of the issues that were raised by the telephone company were suggested by Sen. Jolin to be left to when the House hears the bill.

- We have not dealt with the issue of the white pages?

387 TAYLOR: That's correct.

388 CHAIR COHEN: Assumes that is going to be worked out because we don't have time to do that here.

393 MOTION: Sen. Hill moves the dash seven amendments.

394 CHAIR COHEN: Asks Mr. Taylor if there is anything else to add.

398 TAYLOR: No.

398 CHAIR COHEN: Anybody else?

- Calls for objections; hearing none, so ordered.

402 MOTION: Sen. Hill moves SB 1188 to the floor as amended with a "do pass" recommendation.

408 CHAIR COHEN: Thanks Mr. Taylor for his work.

412 VOTE: Motion passes unanimously.

421 CHAIR COHEN: Any other senate bills?

427 SWENSON: No.

HB 2390

430 CHAIR COHEN: HB 2390; invites Stephen Donnell to testify.

436 STEPHEN DONNELL, OREGON PROGRAM CIVIL RIGHTS LOBBY: Have amendment (Exhibit L); explains same.

481 CHAIR COHEN: Thanks witness; we'll look this over.

- Invites Kathleen Bogan to testify.

TAPE 188, SIDE B

037 KATHLEEN BOGAN, CRIMINAL JUSTICE COUNCIL: Delivers letter (Exhibit M) in support of the concept behind the bill. Explains the bill. This bill doesn't change anything about pleading practice.

- Have plenty of information on other states and how they approach the problem.

060 CHAIR COHEN: Asks witness to be available at work session.

HB 2392

062 CHAIR COHEN: Let's move to HB 2392.

066 BRENDA PETERSON, DEPARTMENT OF JUSTICE: Supports the bill; explains

history and purpose of the bill.

096 CHAIR COHEN: Thanks witness; any questions?

HB 2993

100 CHAIR COHEN: Let's move to HB 2993.

105 DAVID NEBEL, OREGON LEGAL SERVICES: Have written testimony (Exhibits N and O).

110 CHAIR COHEN: I'd appreciate it if you summarize your testimony.

111 NEBEL: Explains the bill; paraphrases Exhibit N.

139 LLOYD SMITH, LAW ENFORCEMENT DATA SYSTEM: Have no problems with the bill. Hopefully, there is no fiscal impact.

144 SWENSON: This would require LEDS to keep crime and other incident statistics as a separate item. I don't see that in the bill; I gather that's the intent, is that correct?

148 NEBEL: The bill adds a separate category to what . . . .

150 CHAIR COHEN: Well, it doesn't . . . .

151 SWENSON: Crimes already have to be reported, is that correct?

152 NEBEL: Yes. This adds the fact that incidents arising out of domestic disturbances would have to be reported.

156 VIETTA HELMLE, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: We're not adding a new class of crime.

156 CHAIR COHEN: We understand that. It's not clear in the bill that they would keep the information separate from their other ordinary collection data.

- Invites Mr. Lloyd Smith to testify.

164 SMITH: If you read 551, line 6, and item "d" together, you have crimes and other incidents arising out of domestic disturbances.

170 CHAIR COHEN: That's not the issue; the issue is where and how you compile them.

172 SMITH: You compile it essentially as part of the same data base. The incident would be defined as having arisen out of a domestic disturbance.

175 CHAIR COHEN: So Mr. Nebel is not correct in saying that you would compile a separate listing then.

179 SMITH: That's true; we would be able to report them out separately, but its not a separate collection system.

181 CHAIR COHEN: It's important to get this on the record.

HB 3521

185 CHAIR COHEN: House Bill 3521.

193 GERRI FITZGERALD, DEPARTMENT OF JUSTICE: Supports the bill.  
Paraphrases Exhibit P.

216 JIM CARLSON, OREGON MEDICAL ASSOCIATION: Has a dash four amendment (Exhibit Q) to the bill; explains the amendment. Have no objection to establishment of a fee schedule, but our amendment would specify that the schedule shall represent the 75th percentile of usual and customary fees. The Department of Justice has said that they have no objection to the amendment.

232 TOM EWING, DEPARTMENT OF JUSTICE: I'm here to answer questions.

234 CHAIR COHEN: Asks Ms. Fitzgerald how she feels about the amendment.

235 FITZGERALD: Has no trouble at all with the amendment.

237 CHAIR COHEN: Thanks witnesses; adjourns meeting at 3:45 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Ingrid Swenson Committee Assistant  
Committee Counsel

EXHIBIT LOG:

A - Amendments to SB 761 - Senator Hamby - 2 pages  
B - Amendments to SB 761 - Clark Campbell - 1 page  
C - Testimony on HB 2198 - Dennis Dowd - 2 pages  
D - Amendments to HB 2198 - Senator Hamby - 2 pages  
E - Sentencing Guidelines Grid (HB 2390) - Representative Mason -  
1 page F- Offense Subcategories for Drug-Related Offenses (HB  
2390) - Representative Mason - 2 pages G- Hand Engrossed Version  
of HB 2390 - Ross Shepard - 3 pages H - Letter re: HB 2390 - John  
Bradley - 1 page I - Amendments to SB 761 - Committee Staff - 2  
pages J - Amendments to SB 707 - Association for Retarded Citizens  
- 2 pages K - Amendments to SB 1188 - Committee Staff - 5 pages  
L - Amendments to HB 2390 - Stephen Donnell - 2 pages  
M - Letter re: HB 2390 and attachments - Kathleen Bogan - 3 pages  
N - Testimony on HB 2993 - David Nebel - 2 pages  
O - Testimony on HB 2993 - Vietta Helmle - 1 page  
P - Testimony on HB 3521 - Gerri Fitzgerald - 1 page  
Q - Amendments to HB 3521 - Jim Carlson - 1 page

EXHIBITS DISTRIBUTED TO COMMITTEE BUT NOT REFERRED TO DURING HEARING

R - Letter re: SB 761 with attachments - Senator Hamby - 7 pages  
S - Testimony on HB 2372 - Bill Linden - 7 pages  
T - Testimony on HB 2198 - Vern Faatz - 2 pages U - Copy of  
ORS 418.805 et. seq. (HB 2390) - Committee Staff - 5 pages  
V - Copy of ORS 133.045 et. seq. (HB 2993) - Committee Staff - 3  
pages