



# Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

## Public Affairs Committee

Gerry Gaydos, Chair, *Eugene*  
Mark Comstock, Vice-Chair, *Salem*  
William Carter, *Medford*  
Nena Cook, *Portland*  
Lauren Paulson, *Aloha*  
Linda Eyerman, *Portland*

The Joint Interim Judiciary Committee meeting will be held in conjunction with the Oregon State Bar Annual Meeting.

### Joint Interim Judiciary Committee

Date: Friday, October 15, 2004

Time: 9:00 A.M.

Location: Oregon Convention Center, Meeting Room C125

1. Report on the Governor's Crime Task Force
2. Car Insurance Oregon
3. Indigent Defense – Peter Ozanne
4. Oregon State Bar Legislative Package

September 21, 2004

## September Revenue Forecast

In a report to the House Revenue Committee on August 31, State Economist Tom Potiowsky predicted that state tax collections for the remainder of the current biennium (July 1, 2003 – June 30, 2005) will be slightly higher than predicted three months ago. Specifically, expected general fund revenues are \$28.2 million above previous projections. The general fund for the biennium of \$10.34 billion, plus \$767 million from the lottery, will give the state total resources of about \$11.1 billion.

This is certainly good news: Courts, the justice system in general, and other state-funded services should have enough funds to get through the last eight months of the current budget cycle without further reductions.

The forecast for the 2005 – 2007 biennium, however, is \$138.7 million lower than the previous forecast. Corporate tax collections for the '03 – '05 biennium are projected to be well above previously predicted levels, but this seemingly good news for the budget will result in an automatic corporate tax cut (the "corporate kicker") of approximately \$68.1 million in the '05 – '07 biennium.

While total general fund and lottery revenues in the '05 – '07 biennium will show about a \$1 billion increase over the '03 – '05 biennium, this increase is likely to be as much as \$600 million below the amount needed to continue operating state funded programs at current levels of service.

Bottom line: in the short term, expect state spending to remain at current levels, but hard times and more budget cuts to services are likely for the '05 – '07 biennium.

### PUBLIC AFFAIRS DEPARTMENT



Oregon State Bar  
5200 SW Meadows Road  
Lake Oswego, OR 97035  
Phone: (503) 431-6376  
Fax: (503) 598-6976  
Website: [www.osbar.org](http://www.osbar.org)

## *Blakely v. Washington*

In *Blakely v. Washington*, 542 US \_\_\_ (June 24, 2004), the United States Supreme Court examined the operation of Washington's determinate sentencing system — a system very similar to Oregon's. The court found an upward departure sentence based on findings of a judge to be unconstitutional, because such a sentence violates the Sixth Amendment's right to a jury trial. The court held that a sentence that exceeds the statutory maximum cannot be imposed unless the facts required to support the enhanced sentence are based on either 1) an admission of the defendant, or 2) a finding by the jury based on proof beyond a reasonable doubt.

In testimony before the Joint Interim Judiciary Committee on September 8, Chief Defender Peter Gartlan of the Office of Public Defense Services characterized *Blakely* as the most significant Supreme Court decision handed down during his career. Phil Lemman, director of the Oregon Criminal Justice Commission, said that Oregon courts impose between 500 and 600 upward departure sentences per year, but *Blakely* will not affect all of these, since many are based on defendants' admissions. All the witnesses before the committee agreed that the case raises more questions than it answers.

*Blakely* will affect many different types of sentences, principally those in which upward departures are imposed based on findings of fact. Other potential applications of *Blakely* include dangerous offender sentencing, repeat property offender sentencing, and consecutive sentences for crimes committed in the same episode involving the same victim. The case does not affect downward departures, Measure 11 minimum sentences, or death penalty cases.

Indeterminate sentencing, a system where the only limit on the court's sentencing discretion is a statutory maximum indeterminate term, is unaffected by *Blakely*. It was this system that led states, including Oregon, to impose determinate sentencing guidelines in the first place, since judges' sentencing practices were thought to vary widely.

Whether *Blakely* applies to federal prosecutions is unclear, but the Supreme Court has granted review in several cases during its next term that will resolve that issue.

The Oregon Criminal Justice Commission has established a work group to address the difficult issues that *Blakely* raises. Participants include legislators, judges, the Attorney General and Department of Justice staff, district attorneys, criminal defense attorneys, and executive department staff. The work group is considering both short and long term responses to the decision. Some possible responses include:

- Establish a bifurcated procedure for the jury to first determine guilt and then the sentence.
- Modify the aggravating factors in the sentencing guidelines to make them more appropriate for jury consideration.
- Increase presumptive sentences to the statutory maximum, and allow courts to make downward departures.

All parties interested in the criminal justice system are likely to have legislative proposals to protect or weaken the effects of *Blakely*, and doubtless the Judiciary Committees will be spending substantial time on these issues in 2005.

## Register to Vote

Don't forget to register to vote for this year's election. October 12<sup>th</sup> is the deadline to register. To complete and print a voter registration form online, please visit the Secretary of State's website at [www.sos.state.or.us/elections/votreg/vreg.htm](http://www.sos.state.or.us/elections/votreg/vreg.htm). You will need Adobe® Acrobat Reader to complete the form. You must then mail the printed form or deliver it in person.

## Oregon Law Commission

The Oregon Law Commission is currently working on approximately 25 proposals for introduction in the 2005 session. The proposals include changes to the auto insurance statute, the juvenile code, and the eminent domain statute, as well as clean up of the comprehensive changes made to the judgments statute in 2003.

The Oregon Law Commission was created in 1997 by the Oregon Legislature to assist the legislature in keeping Oregon laws current. Specifically, the commission is to "conduct a continuous and substantive law revision program." This is accomplished by identifying and selecting law reform projects, researching the issues and areas of law, and drafting proposed legislation.

The commission is made up of thirteen commissioners and over seventy volunteers who serve on various work groups. The commissioners include four legislators, the Chief Justice of the Oregon Supreme Court, the Attorney General, a Governor's appointee, the dean or a representative from each Oregon law school, and three representatives from the Oregon State Bar.

The various work groups are working to finalize their legislative proposals for the 2005 legislative session. 2003 – 2005 workgroups are

- Administrative and Judicial Child Support Orders
- Civil Rights Law
- Conflict of Laws – Domicile
- Eminent Domain
- Judgments
- Auto Insurance
- Juvenile Code Revision
- Juvenile Court Records
- Background Checks
- Juvenile Fitness to Proceed Requirement
- Juvenile Code Split Cleanup
- Juvenile Psychiatric Security Review Board
- Putative Fathers
- Guardian Ad Litem
- Spousal Elective Share
- Non-Profit Social Service Delivery
- Welfare Code

For more information on any of the Oregon Law Commission workgroups, please visit the Oregon Law Commission's website located at <http://www.willamette.edu/wucl/oregonlawcommission/>.