



# Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

## Public Affairs Committee

Gerry Gaydos, Chair, *Eugene*  
Mark Comstock, Vice-Chair, *Salem*  
Jonathan Hill, *Roseburg*  
Phyllis Edmundson, *Portland*  
Linda Eyerman, *Portland*  
Richard Yugler, *Portland*

## How to Give Testimony

- Prepare written materials; bring 25 copies.
- When called, first introduce yourself.
- Don't read your testimony.
- Identify what you support or oppose in what others have said.
- Be polite.
- Be concise.
- Committee members can ask questions with the Chair's permission. If a representative asks you a question, begin your answer with: "Chair Smith, Representative Jones, the answer to your question is..."
- Legislators are intelligent. Don't talk down to them.

January 31, 2005

## Civil Forfeiture

During the first few weeks of the 2005 legislative session, Craig Prins, Director of the Oregon Criminal Justice Commission, presented to the House and Senate an overview and current status of asset forfeiture in Oregon.

Forfeiture of property used in the commission of a crime has been an issue in Oregon for a number of years. During the late 1990s, some law enforcement agencies were funding a substantial part of their drug enforcement efforts through the proceeds of civil forfeitures, which reached \$3.6 million in 2000. But in that same year, voters overwhelmingly passed Measure 3, which was designed to curb the perceived overuse of forfeiture. Proceeds from forfeitures plummeted and narcotics task force personnel were reduced by 78 percent.

The legislature will almost certainly be dealing with forfeiture again in 2005. A case has been argued before the Oregon Supreme Court that could invalidate Measure 3 on the ground that it violates a constitutional requirement for separate votes on separate constitutional amendments. A decision is expected this spring. In addition, two bills enacted in 2001 in reaction to the passage of Measure 3 are due to sunset this year.

If the Supreme Court invalidates Measure 3, the legislature is likely to take a middle approach to forfeiture: maintaining some protections for citizens while making the process work better for law enforcement agencies. Rep. Wayne Krieger (R Brookings), Chair of the House Judiciary Committee, has expressed interest in the early formation of a work group of interested parties to draft legislation that addresses issues including:

- Whether a conviction of the owner should be required as a prerequisite of forfeiture. This was a cornerstone of Measure 3.
- Whether only the property used to commit the crime is subject to forfeiture, or whether forfeiture should extend to proceeds of prior similar conduct.

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- How should the proceeds be used? Another cornerstone of Measure 3 was that law enforcement should not “profit” from enforcement activity, since that adds an incentive for abuse.
- Who should bear the burden of proof? This issue would be resolved if a conviction is required.
- What standard of proof should be required in civil forfeiture? Should a preponderance of the evidence be sufficient?

If the Supreme Court upholds Measure 3, it is likely that the work group will be considering a range of possible changes to the statutes that will be sunsetting this year. In any event, Rep. Krieger has indicated that the legislature should respect the intent the voters expressed in the passage of Measure 3.

## Public Defense Services Commission Funding

At its meeting the week before the start of the 2005 session, the Emergency Board (E-Board) dealt with a shortfall in indigent defense funding yet again. The E-Board is the legislative committee that meets when the legislature is not in session to deal with relatively small budget problems that arise in the interim.

The Public Defense Services Commission (PDSC) presented a report on funding for most trial and some appellate level representation of indigent criminal defendants at the April and June E-Board meetings. At its June meeting, the E-Board allocated a total of \$7 million to fund representation in cases deferred into the 2003-2005 biennium because of budget cuts in 2001-2003. The PDSC also reported that the failure of Ballot Measure 30 in February 2004 triggered cuts of \$9.9 million effective May 1, 2004. The E-Board directed PDSC to return to the January 2005 meeting to report on its caseload and to seek up to \$7 million to address this remaining gap.

The consequences for failure to fill this gap would have been dire: the PDSC would have run out of money in May 2005, and would not have had additional funds until July 1. The result would have been a meltdown of the criminal justice system: no crimes could have been prosecuted during that period.

In light of this potential disaster, at its January 2005 meeting the E-Board allocated \$7 million to the PDSC to restore the remaining shortfall. The PDSC estimates that because of its cost-containment efforts this amount will be sufficient to fund all caseload through the remainder of the biennium.

Now that funding for this biennium is resolved, the focus shifts to the adequacy of indigent defense funding for 2005-2007. As reported in the last *Capitol Insider*, the Governor’s budget is built on cuts of roughly 9 percent to many state agencies, including PDSC and the court system.

## 2006 Initiatives

Two initiatives have been filed with the Secretary of State that if successful would impact the judiciary system. Initiative #11 would eliminate the statutory requirement to identify judicial candidates as incumbent on the election ballot. Initiative #24

would amend the Oregon Constitution to require election of Oregon Supreme Court and Court of Appeals judges by regional judicial districts. Gerry Gaydos, Chair of the bar's Public Affairs Committee, has submitted written comments to the Secretary of State on both initiatives.

**Initiative #11**

Draft Ballot Title: Deletes Statutory Requirement That Secretary of State's Designation of Incumbent Judicial Candidates Appear on Ballots

Result of "YES" Vote: "Yes" vote deletes current statutory provisions that require Secretary of State to designate incumbent state judicial candidates and require ballots to identify "incumbent" judicial candidates.

Result of "NO" Vote: "No" vote retains current statutory provisions that require Secretary of State to designate incumbent state judicial candidates and require ballots to identify "incumbent" judicial candidates.

**Initiative #24**

Draft Ballot Title: Amends Constitution: Requires Oregon Supreme Court Judges and Court Of Appeals Judges to Be Elected By District

Result of "YES" Vote: "Yes" vote creates judicial districts based on population and requires Oregon Supreme Court judges and Court of Appeals judges to be elected from those districts.

Result of "NO" Vote: "No" vote retains the current system for electing Oregon Supreme Court judges and Court of Appeals judges by statewide vote with no district residency requirement.

**2005 Judiciary Committee**

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Rep. Greg Macpherson

Rep. Andy Olson

**Bill Information**

To access information about committee hearing schedules, the text of a bill or its status, please visit the Oregon Legislature's website located at [www.leg.state.or.us/index.html](http://www.leg.state.or.us/index.html).