

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

January 28, 1999 Hearing Room 357

8:30 a.m. Tapes 15-17

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

Possible Measure Introduction

HB 2325 Public Hearing and Possible Work Session

HB 2330 Public Hearing and Possible Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 15, A		
004	Chair Mannix	Calls meeting to order at 8:32 am.
<u>PUBLIC HEARING on HB 2325</u>		

050	Counsel Horton	HB 2325 conforms provisions relating to enforcement of foreign restraining orders to requirements of federal Violence Against Women Act. This bill would bring Oregon law into accordance with the federal standards.
069	Chair Mannix	Discusses a bill which he sponsored allowing a 30-day recognition of foreign restraining orders for persons fleeing into the state.
070	David Nebel	Attorney for Oregon Law Center, Oregon Coalition against Domestic and Sexual Violence Discusses HB 2325 and that it is a recognition of restraining orders. It would also be required in Tribal courts. Under current law a restraining order is enforceable if filed within thirty days after the person comes into the state. This bill indicates that a restraining order is enforceable in Oregon until it expires by its own terms. Discusses exceptions to the rule to HB 2326. Discusses an Oregon restraining order (EXHIBIT A). Mentions that the Sheriffs were worried about enforcing these orders. States the intent is to have the Sheriffs practice continue as it is now, and says a fairly simple amendment could be made to deal with that issue.
136	Chair Mannix	Asks how the amendment should work.
137	Nebel	Explains the source of their problem may be in Section 2, subsection 4, line 9, in the context of requiring peace officers to make arrests when they have probable cause to believe a foreign restraining order has been violated. Discusses possible amendment language.
152	Chair Mannix	Asks if their concern is having to get into collateral issues at the time that they're presented with this foreign restraining order.
154	Nebel	Yes. The intent is to ascertain if the law has been followed so they can enforce the restraining order.
160	Chair Mannix	Then they can enforce on its face and don't have to worry about cross-examining the presenter as to whether or not these defenses might be established.
162	Nebel	Continues discussing HB 2325 section by section. This bill would provide clarity for law enforcement officers who are trying to ascertain what law applies in Oregon. Would also provide more clarity for domestic violence victims about what kinds of protection they have under restraining orders issued in other states. If the issue is clarified between states, it will also help clarify issues between counties.
224	Allison Martin	Multnomah County District Attorney's Office Discusses some current problems with the law that she encounters daily while prosecuting cases.
250	Chair Mannix	Asks if that is a separate statutory provision.

251	Martin	States that it is an issue of debate because different counties interpret the law differently.
257	Chair Mannix	Discusses that the relating clause regarding foreign restraining orders might be problematic.
269	Martin	States that changing the relating clause would help resolve the problem with foreign enforcement as well as the disagreement between counties. The second issue, after venue, is Section 1, lines 23-29 discussing the due process issue. Gives example of one piece of case law with a New York court enforcing a restraining order that had been issued out of New Jersey.
301	Chair Mannix	Asks if the case law from New York was interpreting a New York statute.
302	Martin	No. That is New York interpreting the federal statute (Section 2265).
311	Chair Mannix	Does the federal legislation implicitly suggest or explicitly require that we further define this to require the state to prove that issue beyond a reasonable doubt as opposed to requiring a defendant to come forward with affirmative evidence as a defense.
320	Martin	Explains that Section 2265 requires states to give full faith and credit to foreign restraining orders and then it defines the protective order. Discusses how Oregon handles foreign restraining orders.
338	Chair Mannix	We shouldn't have a problem with full faith and credit if we set up a structure to give full faith and credit and are more aggressive in protecting the person protected by the restraining order.
352	Martin	I agree, but I wonder if by placing the burden on the defendant, are we being more aggressive in terms of constitutional protections? Discusses the potential problem with enforcing another state's restraining order is that Oregon is in essence, enforcing another state's law.
391	Chair Mannix	Asks if a separate enactment should be made for Oregon to adopt the foreign restraining order treating it though it was an Oregon restraining order for purposes of sanctions.
395	Martin	That would certainly make it easier. We wouldn't have to learn the laws for 50 other states.
399	Chair Mannix	States that this solution was arrived at in earlier legislation, but seems to have gotten dropped in this bill. Discusses filing of a foreign judgement, but still sees a problem if Oregon sanctions aren't applied.
415	Martin	States Oregon is very unique in its treatment of restraining order violations and give examples.

431	Chair Mannix	What foreign restraining orders are adopted by the State of Oregon as a state restraining order and are enforceable?
436	Martin	States it is the full faith and credit part that creates the choice of law problem, and if it was adopted, the problem should be solved.
Tape 16, Side A		
002	Chair Mannix	States we're not only enforcing foreign restraining orders, but also adopting it as our own, and we're free to do that if it is more aggressive, rather than less aggressive.
005	Counsel Horton	Requests an opportunity to clarify the amendments and the language that have been mentioned.
011	Chair Mannix	Since HB 2325 relates to foreign restraining orders it may have to be addressed in another bill if it applies to Oregon restraining orders. Suggests working with the Oregon Coalition and Counsel Horton to make sure they are in agreement with any proposed amendments.
023	Ingrid Swensen	Oregon Criminal Defense Lawyers Association Testifies on HB 2325 neither in support nor opposition. States people need to be given notice of what they cannot do. To date there has been a lack of a vehicle for providing good notice to a respondent about the entry of a restraining order in Oregon and precisely what it prohibits. States if ORS 24.185 is repealed, there is no place a person can go to find out the terms of the order unless the petitioner voluntarily provides a copy to the Law Enforcement Data System (LEDS). Discusses the ramifications of adopting Mr. Nebelis amendment of limiting the definition on pg. 3 to the language contained in Section 1.
073	Jennifer Allen	Public Defender's Office of Lane County representing Oregon Criminal Defense Lawyer's Association Shares concerns about a restraining order and whether it is in final form. Lack of access to LEDS compounds this problem, but filing a hard copy would solve many of these concerns. States what is currently happening when an order is filed into the LEDS system.
130	Rep. Bowman	How significant is the problem of people misrepresenting what is allowed in restraining orders? What is the percentage of people you find who have been arrested for restraining order violations, when it was later found to be misrepresented?
140	Allen	I can't say, but I do know that there is some abuse that goes on within the system. Gives example of what is happening with restraining orders being used in divorce cases.

150	Chair Mannix	Restates Rep. Bowman's question asking what percentage people have been arrested over the misrepresentation of foreign restraining order.
159	Allen	I don't have documentation at this time.
164	Rep. Bowman	Discusses the instance of someone in a domestic violence situation, and states she would rather have police officials arrest someone inappropriately and then apologize for not restraining a dangerous person.
183	Swensen	States it is better to error on the side of protection from violence. However, we also believe that notice helps to make these orders enforceable, reliable and available.
194	Rep. Bowman	Why should a restraining order be filed in every state?
206	Allen	We are asking that the true copy be filed in a courthouse. We don't want to burden anyone; we just want a physical copy to figure out the terms.
217	Rep. Bowman	When a person moves from one state to another, they have to file a copy of that restraining order with the local sheriff?
220	Allen	They present a true copy to the county sheriff for entrance into the LEDS system.
225	Chair Mannix	If a mother and her children were fleeing from the state of Washington to California, and stopped in Oregon to spend the night, would they have to file a true copy of the order before they drive on to California?
228	Allen	That is what the legislation says in Section 1 (3) (A).
229	Chair Mannix	It sounds like we need to maintain some of the language from ORS 24.185 that allows temporary effect to foreign restraining orders. Is the solution a temporary exemption?
240	Allen	Our position is for protection of everyone. The sooner we can get a hard copy of the restraining order filed, the better.
244	Chair Mannix	Would you like to have a hard copy filed in Oregon, at some reasonable point, to allow defense counsel to understand the terms?
246	Allen	Yes, also to give notification to the individual what he's being restrained of. We're giving him the protection that he can challenge what has been presented as the official restraining order in Oregon. Under the current legislation, he has no idea what has been presented as the true and accurate copy of the restraining order.

254	Rep. Prozanski	Discusses the importance of filing a restraining order. Once a restraining order has been issued in another state, there is the requirement of service on the abuser. Once that copy of service has been returned to the issuing court, the person is on notice. If the person issuing the restraining order leaves the state, it seems appropriate for that restraining order to be presented to the Sheriff for enforcement and entered into the Law Enforcement Data System for the county court records. States a concern when the abuser hasn't been adequately served so the restraining order isn't in the system and the restraining order needs to be enforced in another state.
312	Chair Mannix	I would invite Mr. Nebel to address that issue and make sure that while we meet the federal standards, we're also aware of the protection of the defendant.
332	Dale Penn	Marion County District Attorney Testifies in favor of HB 2325. Explains the purpose for HB 2325. Discusses the removal of conditions on victims. Discusses the creation of a national clearinghouse for all restraining orders nationwide. Discusses the problem with mandatory filing.
Tape 15, Side B		
015	Rep. Hansen	How long do these orders last?
017	Penn	Each state will mandate the length of their order. Oregon's are in effect for one year and can be extended for one more year.
021	Rep. Hansen	Is that typical?
022	Penn	That is standard. Some may state 6 months or 18 months.
024	Rep. Bowman	If we are accepting someone else's restraining order, are Oregon's laws stricter or less strict than other states?
032	Penn	States that it's good to clarify that a policy choice is made to enforce the order under Oregon law (contempt with maximum of six months in jail) or we're going to follow the law of the other state.
038	Sean Hoar	Assistant U.S. Attorney's Office in Eugene, Oregon Testifies in support of HB 2325 stating that Oregon's statutory provision already provides that it is to be governed under the laws of the State of Oregon. There are two concerns that need to be addressed: 1) if a hard copy needs to be filed in the state, 2) and liberty concerns. Discusses the issue of liberty concerns making sure there is a reason to believe that someone should be arrested so we don't violate their constitutional rights. Explains in Section 1, (2) (a), the statute provides that a foreign restraining order is enforceable without filing. However, Section 1, (3)(a) provides that true copy of the foreign restraining order may be presented by the sheriff's office.

103	Rep. Prozanski	I know there are disagreements to the policies to be made, but members need to understand that we are being asked to make policy decisions that will have great magnitude for this state and for individuals affected by the legislation.
123	Counsel Horton	Asks if a prosecutor can proceed to case without a certified copy of the restraining order.
137	Penn	We may not be able to proceed to trial without contacting the foreign jurisdiction for a copy, so the best thing is for the victim to have a copy with them that is admissible.
156	Rep. Prozanski	The purpose of the policy from the work group is to get rid of the thirty day rule and include an accountability portion so if a person makes these allegations they will be held accountable for any outright lies of misrepresentations.
162	Penn	Yes, in lieu of not having the piece of paper right there.
165	Rep. Hansen	Asks about providing a pocket card with the electronic information on it of where the victim is residing.
173	Penn	These are practice tips that victims' advocates or shelters could use to help the victim get access to this information when needed. The real issue is do we mandate something in law and what impact that has.
<u>HB 2325 WORK SESSION</u>		
182	Chair Mannix	Mr. Nebel had suggested modifying language in 3 places to read Section 1, page 3, lines 9, 34 and 40.
187	Rep. Prozanski	The change would also go into line 17 and 18, on page 3.
190	Rep. Prozanski	MOTION: Moves to ADOPT conceptual amendments changing Section 1 to Section 1 (1).
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
247	Rep. Hansen	Asks if there was another conceptual amendment to clarify using Oregon

		penalties or the foreign penalties.
250	Chair Mannix	Yes. We could decide to do that in this bill or another bill. Would you like to see that prepared?
258	Rep. Hansen	Yes.
259	Chair Mannix	The bill will be set over for Monday for work session, and we will seek an amendment that clarifies a violation of the restraining order in Oregon is enforceable according to Oregon standards of sanctions.
267	Rep. Prozanski	We should hold people accountable to the standards within Oregon. Suggests counsel talk with Mr. Nebel about the types of orders or judgements coming in from a foreign jurisdiction to make sure we have continuity on a policy.
288	Chair Mannix	We'll have something drafted along those lines.
291	Counsel Horton	Would it be appropriate to say both sanctions and procedures?
294	Chair Mannix	Yes, and due process.
<u>PUBLIC HEARING on HB 2330</u>		
312	Counsel Horton	Gives brief summary of HB 2330 creating a classification of existing crimes of domestic violence.
343	David Nebel	Oregon Coalition against Domestic and Sexual Violence Testifies in support of HB 2330 conforming Oregon law to two federal laws that have been passed preventing domestic violence perpetrators from possessing firearms and ammunition. Discusses the first section of HB 2330, creating the classification of domestic violence, and explains how the classification was arrived at. The federal law states that it is a felony to possess a firearm while subject to a restraining order. The law also states the restraining order must contain a finding that the respondent represents a credible threat to the safety of the victim. Discusses Section 3 amending ORS 107.718 with regards to the credible threat language and the restraining order form that reflects the form is enforceable in every state.
Tape 16, Side B		
007	Nebel	Continues with testimony and the importance of giving the respondent notice. Discusses subsection (6), page 16, providing the petitioner two exemplified copies of the petition order. Explains how Oregon's restraining order statute differs from statutes in other states. Discusses subsection (9), page 17, establishing a procedure under which the respondent would be given notice that the order would become final 30 days after it is served, if the respondent doesn't

		request a hearing. Discusses the final section of the bill stating that restraining orders are enforceable in tribal lands as well as all counties in Oregon.
085	Counsel Horton	Would criminal mischief fall under the same definition on pg.1, line 7 and 8, of using physical force or the threatened use of a deadly weapon?
090	Nebel	That's correct. States the list of relationships listed on page 1, (1)(b) is taken from the federal statute that sets forth gun dispossession provisions of the federal law for people convicted of misdemeanor crimes of domestic violence.
101	Chair Mannix	Asks if the work group considered using the listing from ORS 166.470 which limits the sale of firearms to individuals convicted of misdemeanors involving violence and then add the domestic component to make it more specific?
110	Nebel	I do not recall that statute arising in the work group.
115	Sean Hoar	Assistant U.S. Attorney with the U.S. Attorney's office in Eugene, Oregon Testifies in support of HB 2330 explaining his role as liaison in Oregon for implementation of the Violence Against Women Act. Oregon law was compared to the federal law to see what challenges there might be legally to implement. Tells how a work group was formed to look at Oregon law. The Violence Against Women Act involves 9 federal statutes that create criminal offenses, but we had a concern with only two. One is with the implementation of 922 (g)(8), when someone is subject to a restraining order and is found in possession of a firearm. The other, 922 (g)(9), is regarding someone who is found to be in possession of a firearm after being convicted of a misdemeanor crime of domestic violence.
189	Rep. Bowman	Do the requested changes in the law apply to same sex couples and have you been able to prosecute same sex couples for domestic violence as the current law reads?
193	Hoar	There is some discussion in Congress with regard to interpretation of that, but that issue has not arisen in the district of Oregon.
198	Rep. Simmons	What would be the judge's latitude relevant to the gun dispossession provisions?
201	Hoar	Reads Section 1, (4) regarding dispossession of a firearm and states his interpretation.
220	Rep. Simmons	Asks for clarification whether a person convicted of a misdemeanor crime of domestic violence, and has served his sentence, could own a firearm at any time in the future.
226	Hoar	Under federal law he can't.

227	Rep. Simmons	Ever?
227	Hoar	Correct.
229	Chair Mannix	Felons in Oregon are prevented from possessing a firearm. States that misdemeanants are restricted in certain ways. Discusses the 1989 firearms law revisions with regards to misdemeanants. With regard to use or attempted use of physical force, the law assumes it would be a statutory element rather than a factual element. Asks if there are other violent misdemeanor crimes that might be listed in the bill.
261	Hoar	There are certain protections under the federal law to make sure that all the constitutional protections are set forth with regard to a person being represented by an attorney, and to the extent the case is subsequently expunged, that wouldn't be applicable. States that Section 1 (2) allows for the addition of the word "domestic" to an assault type of case.
285	Chair Mannix	This committee has an extreme sensitivity to domestic violence as well as a substantial sensitivity to Oregon firearms possession rights.
300	Rep. Gianella	If Oregon was to follow federal regulations that a convicted felon could not possess a firearm, would that mean a man in Oregon, that had served his time, could never go hunting or have a rifle?
312	Hoar	I don't have that information in front of me, but it is not an absolute "no".
321	Rep. Simmons	States he is very sensitive to the crimes of domestic violence, but at the same time, he comes from a district with a very strong hunting culture.
344	Hoar	I will provide the committee with a very specific answer to that question within a matter of days or before the work session.
348	Chair Mannix	We would appreciate that.
371	Dale Penn	Oregon District Attorney Association Testifies in support of HB 2330. Explains the intent of the work group is not to change Oregon law, but to change Oregon Law so it fits with federal law. The federal law alleges relationship between people as part of a crime; where Oregon law did not bring up the issue of relationship (except in some child abuse cases).
Tape 17, Side A		
004	Penn	Under Oregon law we do have the capability to expunge or seal conviction orders. If this is a one-time conviction, three years after the successful completion of the sentence, the person can petition the court to seal those records. If the records are sealed, a person can say they have never been

		convicted of a crime and under federal law an expunged conviction will not count as part of a federal prosecution.
017	Chair Mannix	Some of us who have sensitivity to the firearms issue don't like the expungement laws.
019	Penn	The intent was never to change Oregon law other than to make it consistent with federal law under the Violence Against Women Act so that federal prosecutors could prosecute those federal crimes in the district of Oregon.
025	Chair Mannix	The problem that arises is the additional sanction of the prohibition on possession of a firearm of firearm ammunition. Since the firearms reform act of 1989, I discovered there are a lot of people who think differently.
038	Penn	There was no intent to change the enforcement or the prohibitions under Oregon law with this bill. Discusses the federal statutes regarding possessing a firearm after a conviction, and how the U.S. Attorney feels about this issue. The intent is to make Oregon's law comply with federal law without expanding any of the Oregon statutes right now.
059	Rep. Bowman	Did the work group discuss same sex couples being held to the same standards as married couples, and if you did, why did you elect not to include a partner as part of the description in Section 1?
068	Penn	I'm sure it was talked about, but I don't recall the discussions.
070	Chair Mannix	There is not a specific reference to sexual orientation, but there is a reference to relationships, and in this case, a person similarly situated to a spouse is the term that encompasses a variety of relationships.
078	Penn	We are not changing a punishment. It doesn't make any difference to me whether you are married or it is a same-sex relationship ñ assault 4 is assault 4 and not punished any differently. We can't change how Congress or the federal courts will interpret this.
085	Chair Mannix	Speaks to the emotional component of personal relationships, and domestic violence being domestic violence no matter what the relationship.
096	Rep. Bowman	I wanted to make sure it was being prosecuted in the exact same manner as married couples.
103	Rep. Gianella	You said there was no intent to change Oregon law concerning the firearm portion, correct?
105	Penn	Yes.

105	Rep. Gianella	But in actuality, it does, doesn't it?
106	Chair Mannix	On the sanction side it does.
108	Penn	The federal courts have not given an ironclad, Supreme Court opinion on what these prior convictions are and if they'd have a separate title like we're proposing. This legislation is designed to give notice that federal law prohibits someone from having a gun if this is in place.
120	Chair Mannix	Section 1 (4) states there will be an additional sanction anytime there is this domestic relationship, and there was use or attempted use of physical force of threatened use of a deadly weapon. Suggests the legislation could be more precise about defining what kind of crimes we are talking about and discusses previous cases.
146	Penn	It was my understanding that federal law clearly prohibits firearms and the idea was to give notice of such.
153	Chair Mannix	You could change the language and include in the sentence notice to the defendant that under federal law the defendant is prohibited from possessing firearms.
158	Rep. Simmons	How old is the federal law that we are trying to comply with?
160	Penn	This is the implementation of the Violence Against Women Act from 1996.
167	Rep. Prozanski	The way our statutes are currently written, the work group was not able to tell whether or not the conviction for assault 4, that involved a domestic type of relationship, fell within the confines of the federal law for prosecution under the federal law.
194	Chair Mannix	Not only would you have a federal prosecution of the person does possess a firearm, you may well have a new contempt of prosecution under Oregon law because the person possessed a firearm. States it is important to give that notice to a person who is dispossessed of a firearm.
203	Rep. Hansen	When we talk about the Violence Against Women Act, it should be made clear that this law could apply to violence against men if it was a domestic abuse situation. This seems gender neutral.
213	Chair Mannix	We did have a written submission from a group (the Oregon Men's Association) that pointed out that it does go the other way too.
220	Penn	Discusses the differences between a misdemeanor and a felony. Felonies are typically more extreme crimes and you can be sent to prison, and in some cases, executed. Felonies could receive only county jail time.

238	Rep. Gianella	Is a threat considered a misdemeanor?
245	Penn	Refers to line 7, and that the use of physical force by beating, kicking, or causing physical injury to someone with your hands or feet, would be considered a misdemeanor crime. If you used a gun or a knife, it could be a felony assault. The attempted use of force is attempting to hurt someone with your fists or feet, or throwing them against the wall. The threatened use of a deadly weapon is typically a crime of menacing.
270	Chair Mannix	Adjourns meeting at 10:40 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

-
-
-

EXHIBIT SUMMARY

A ñ HB 2325, written testimony of David Nebel, Oregon Law Center, dated 1/28/99, 2 pgs.

B ñ Written statement from Oregon Menís Association, 2 pgs.