

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 3, 1997 Hearing Room 357

3:15 PM Tapes 37 - 38

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Work Session - HB 2523, HB 2632, and SB 257

Public Hearing and Work Session - HB 2229 and HB 2194

Public Hearing - HB 2707, HB 2712, HB 2430

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 37, A		
003	Chair Minnis	Opens subcommittee at 3:20 PM

<u>SB 257A - WORK SESSION</u>		
005	Chair Minnis	Opens work session on SB 257A
007	Russ Lipetzky	Chair, Family and Juvenile Law Section, Oregon State Bar >The bill closes a loophole in the stalking law.
015	Rep. Courtney	MOTION: Moves SB 257A to the full committee with a DO PASS recommendation.
016	Rep. Wells	Is it saying that even though you haven't been served with this, you still have to obey it?
021	Rep. Prozanski	It provides that actual notice can be through a friend and not just a written paper.
026	Chair Minnis	As a detective, I could ask them if they had knowledge the order was out, and if they said yes, that would serve [as notice].
029	Rep. Wells	I question the validity of that. How can it be proved?
031	Chair Minnis	Whatever they say, it can be written down in our little notebooks.
035	Rep. Shetterly	Are the stalking orders uniform? Is there a difference between notice and knowledge?
042	Lipetzky	The bill is amended from its original Senate version to address the issue of knowledge. >refers to testimony during public hearing >put forth to get around problem of stalker having to appear in court >bill doesn't loosen up the requirement of knowledge
068	Rep. Bowman	What is the burden of proof to say they have knowledge?
073	Chair Minnis	A lot of people think they can outsmart the police even when we advise them of their rights.
079	Ingrid Swensen	Oregon Criminal Defense Lawyers Association >Senate committee requested switch of notice to knowledge. >difficult to prove some particulars
096	Chair Minnis	Doesn't future defendant have some duty to find out?

099	Swensen	Under criminal law, I don't believe so.
102	Chair Minnis	Ignorance is no excuse under criminal law either.
104	Rep. Prozanski	It is still up to the courts to determine whether or not they had knowledge. >Burden of proof would be beyond a reasonable doubt.
110	Vice Chair Bowman	Were there people who were not being prosecuted for violating the stalking order?
114	Lipetzky	A possible situation was identified upon putting together criminal jury instructions related to stalking statute.
123	Chair Minnis	For the record, is it mere knowledge, or knowledge of contents of the order?
126	Lipetzky	I don't know the answer to your question.
128	Chair Minnis	I'm saying this for the record, because I want it defined to give direction to the court.
129	Swensen	We certainly did not sponsor this measure. >indicated term knowledge was preferred because it means you know all of the necessary particulars
136	Chair Minnis	The term stalking has a general knowledge and if there is a notice prohibiting you from stalking, isn't there a common knowledge as to what that means?
153	Lipetzky	This statute encompassed here is one issued by the court. >issued as a citation by police officer followed by a hearing in which order could be issued
162	Chair Minnis	What if this fellow doesn't show up?
163	Prozanski	I addressed this last time regarding the order versus a citation.
170	Chair Minnis	But now we are talking about notice and how much knowledge this person has. >Is there a citation date? >act of court not negated by the fact you didn't bother to show up
177	Rep. Prozanski	This bill does address failure to appear.
185	Rep. Shetterly	I don't know that an order by default does not constitute knowledge. >ORS 163.738, subsection 2b = court shall specify conduct from which the respondent is to refrain which may include all contact listed in ORS 163.730

		>Variations may occur to what is or is not prohibited.
204	Rep. Bowman	Issue of "conduct engaged in prohibited by orders" says knowledge is gained once you know that it is wrong for you to do that.
210	Chair Minnis	One option would be to require custody of the individual.
211	Rep. Prozanski	It's already in there. Court can issue court stalking protective order. The safeguards are in there.
223	Chair Minnis	The warrant is for failure to appear which is a separate crime.
226	Rep. Prozanski	As a prosecutor, I'm willing to take this to a judge to decide actual notice.
233	Lipetzky	Bill does not create imputing knowledge to anyone. >defines knowledge which is a fact question
		>My understanding was to encompass the situation where person was present in court but not actually receiving a copy of the order resulting from the hearing.
251	Chair Minnis	It seems like it would work if we constrain it to that technical issue.
254	Rep. Prozanski	If we're talking about narrowing this to where an individual is actually in court and takes flight before order is issued, then that seems pretty narrow as per its application. >Jury should decide whether there is actual knowledge as required by Oregon law.
265	Lipetzky	The intent was to close a loophole and not to narrow or enlarge its application.
270	Chair Minnis	I kind of like Rep. Prozanski's idea, but I want to make sure that we're creating something technically sound.
275	Swensen	Comments on general understanding of what is stalking
284	Chair Minnis	That may be true, but they're thinking of stalking as something that is innately dangerous. >refers to the OJ Simpson case >stalking common in the minds of judges
301	Rep. Shetterly	Contact defined in the stalking statute includes but is not limited to (a) - (k) in the statute.
317	Lipetzky	I don't think this bill affects your concern. >doesn't address standards for issuing order
	Rep.	In line 6 of bill, a conceptual amendment would be that "a person has been served with or has knowledge of the court's stalking protective

328	Shetterly	order and the conduct prohibited therein." >make it clear person has knowledge
346	Chair Minnis	Since the maker of the motion has moved on to another committee, I'd like to get a sense of an informal understanding from the committee.
350	Rep. Prozanski	I like what I see here as A-engrossed. >knowledge defined by law >Are we going to measure how much of the contents they know? >question is whether to expand knowledge
366	Rep. Sunseri	It could be different with each case, and I would leave it with the courts, so I would leave it as is.
370	Rep. Wells	As is.
371	Rep. Bowman	I will follow Rep. Prozanski's interpretation.
376	Rep. Shetterly	No.
378	Chair Minnis	I just want to make sure we know what were talking about here for the record.
380	Rep. Prozanski	Asks Ingrid if she is comfortable with the language that has been amended into the bill
386	Swensen	Responds that we recommended the change because actual notice did not imply subjective knowledge
400	Rep. Prozanski	With that in place, both state and defendant would be able to test as to whether or not state can bring the evidence to prove knowledge.
412	Swensen	The court would have to answer to the level of knowledge.
418	Rep. Shetterly	My sense is that if we have the opportunity to insert language to clear up any ambiguity, now would be the time to do it.
431	Chair Minnis	Is knowledge currently defined anywhere?
TAPE 38, A		
012	Rep. Shetterly	Comments that ORS 161.085, subsection 8 has the definition
018	Chair Minnis	I like that, nice and vague.
019	Rep. Shetterly	The circumstances described could be the existence of an order.

025	Rep. Bowman	I'm beginning to agree with Rep. Shetterly. >How does somebody know that they're engaging in conduct that is prohibited if they have not been served with the order?
036	Rep. Shetterly	I think being in court would be satisfactory.
038	Rep. Bowman	This bill doesn't say in court, only that they have to have some knowledge.
040	Chair Minnis	I kind of like the law enforcement community being able to build their cases based on their investigation that somebody had knowledge.
043	Rep. Prozanski	Would it be possible to delay our decision to another day so as to do a little bit more research?
045	Chair Minnis	We can do that but we need to get Rep. Courtney up here because we have a motion before the committee.
049	Rep. Courtney	Withdraws motion
050	Chair Minnis	Rep. Courtney withdraws his motion. >Withdrawal is so ordered. >sends Rep. Prozanski and Rep. Shetterly and sponsor to caucus room to work on an amendment
		>Closes work session on SB 257A
<u>HB 2229 - PUBLIC HEARING</u>		
067	Chair Minnis	Opens public hearing on HB 2229
076	Michael Marcus	Judge, Multnomah County
078	Rep. Sunseri	How much does the court do in determining knowledge?
080	Marcus	The court informs the jury that knowing indicates an awareness of a particular circumstance. >Awareness is different than "on notice." >Stalking, itself, has to be intentional. >Violating the order could be reckless.
089	Rep. Sunseri	I'm trying to establish that the court makes no determination as to

		whether there is knowledge or not.
090	Marcus	The jury has to find it beyond a reasonable doubt.
091	Rep. Sunseri	Is it helpful that the legislature determine that or is some latitude beneficial?
093	Marcus	Comments on how stalker could ask for judgment of acquittal
100	Chair Minnis	Directs comments to the bill
103	Marcus	Responds that the workgroup has worked out some amendments
		>refers to written testimony of Michael Schrunk, submitted for the record, (EXHIBIT B) >-1 amendments reflect changes the workgroup proposes, (EXHIBIT A)
140	Chair Minnis	There should be hand-engrossed amendments in your packets.
142	Marcus	The -1 amendments are consistent with those of the workgroup's.
144	Chair Minnis	>On line 2, pg. 42, the word "system" should be switched to "program"
154	Marcus	Concurs with the technical amendment
160	Chair Minnis	I guess it would help me now to know what it is you think you are doing.
163	Marcus	This is a fundamental step in making our correctional efforts more rational. >should be able to assess the data we collect to determine how well the sentences we give out work to modify their behavior >suspects there is a large group of inmates who are repeaters, but can be dealt with to reduce that
190	Chair Minnis	It sounds like what we're trying to get out of the local school districts for the purposes of funding education.
192	Dave Cook	Director, Oregon Department of Corrections >supports HB 2229 >submits and summarizes written testimony, (EXHIBIT C) >mentions workgroup on HB 2232 >OR Community Corrections Directors Association also supports this measure
239	Karen	Deputy Director, Oregon Youth Authority

	Brazeau	>submits and reads written testimony, (EXHIBIT D)
250	John Tawney	Manager, State Police Criminal Justice Information System Program >reads testimony in support of bill >Marcus' amendments eliminate our concerns regarding the fiscal impact. >Amendments add Oregon Youth Authority, Commission on Children and Family, Fish and Wildlife, and Liquor Commission to the Advisory Board.
272	Rep. Bowman	Why was State Fish and Wildlife and Oregon Liquor Control Commission added?
276	Tawney	They were originally included in the law but were never formally placed on the Advisory Board.
283	Diane Middle	Chair, Oregon Board of Parole and Post-prison Supervision >in support of this bill without fiscal impact >allows us to build the system but does not get us the research
297	Rep. Bowman	How would you feel about adding another category to the Board to include a former resident of one of our state facilities?
302	Middle	Are you talking about the workgroup or to the Board of Parole?
304	Rep. Bowman	I'm talking about to the workgroup.
306	Middle	I don't have an objection to that, but I cannot speak to the entire workgroup.
310	Rep. Bowman	How do you feel about that judge?
312	Marcus	Asks for clarification of the question
316	Rep. Bowman	It's about the Advisory Board.
318	Marcus	I would have to defer to the State Police because it is their Board.
325	Tawney	This is primarily dealing with technology issues. I don't know if the group would have the background to deal with those issues.
332	Rep. Bowman	So you don't think of this group as one that is evaluating the effectiveness of the services being contracted for.
334	Tawney	No, not through the CEGIS program.
338	Cook	Your question has more to do with the evaluation of data and with the effectiveness of the programs. >no concern about adding ex-offender

027		AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Courtney
	Chair Minnis	The motion CARRIES. REP. BOWMAN will lead discussion in full committee.
		Closes work session on HB 2229
<u>HB 2707 - PUBLIC HEARING</u>		
032	Chair Minnis	Opens public hearing on HB 2707
036	Liz Van Leeuwen	State Representative, District 37 >submits newspaper articles, (EXHIBIT E) >need to get more serious about drug problem >Bill would provide the death penalty for someone who dies as a result of a drug that was given to them.
066	Chair Minnis	Clarifies the text of which bill would become part
070	Rep. Van Leeuwen	We're letting murder get by under the name of illegal use of drugs. >need to get tough on the pushers >rating of improving control of drug use is declining
090	Chair Minnis	Asks for examples of cases in which this bill would be used
103	Rep. Van Leeuwen	It's severe but I think we need to do it.
106	Chair Minnis	Asks for clarification of usage of terms "homicide" and "murder"
110	Rep. Shetterly	It appears that homicide and murder are used interchangeably throughout.
111	Chair Minnis	I was under the assumption that when there are two different words, there would be two different meanings.
112	Rep. Van Leeuwen	That's why I was questioning whether it did what I wanted or not.
114	Chair Minnis	If I were the one distributing the drugs, would I be required to have any knowledge or intent that the person would die.

120	Rep. Van Leeuwen	Would you have had to have known that the amount you gave them is lethal?
121	Chair Minnis	Am I responsible for their inability to cut the corner of heroin?
122	Rep. Van Leeuwen	I think you are. If you were selling it I don't think that would be your biggest concern, however.
126	Chair Minnis	Closes public hearing on HB 2707
<u>HB 2712 - PUBLIC HEARING</u>		
127	Chair Minnis	Opens public hearing on HB 2712
130	Liz Van Leeuwen	State Representative, District 37 >removes fact that in line 10 felon has choice of how they appear in court >makes it more cost-effective
173	Rep. Shetterly	This is for a felony as seen in Section 1.
178	Rep. Van Leeuwen	That was my intent.
180	Chair Minnis	Have you had any feedback from any counties?
181	Rep. Van Leeuwen	No.
196	Jim Arneson	Oregon Criminal Defense Lawyers Association >opposed to the bill >3 points: 1) philosophical objection, 2) practical problems of doing this, and 3) Constitutional problem >The savings are not real.
257	Chair Minnis	Where is the constitutional guarantee to be heard?
259	Jim Arneson	Responds that it is in Article 1, Section 11 of the Constitution >reads provision
266	Chair Minnis	Is there a similar provision in the federal constitution?

268	Arneson	I don't know that there is one.
274	Rep. Wells	I am struggling with the language which says he has a "right to be physically present." >asks for explanation of how language deletes "elect to appear."
284	Arneson	Current law allows an inmate to waive their right to be physically present and to elect to appear by television >measure would force them to appear by television >changes definition of physically present
300	Chair Minnis	My interpretation is that it takes the election out and leaves it up to the judge.
303	Arneson	That is my understanding also.
305	Rep. Wells	He still will have to appear physically or by television, but he won't have that choice.
309	Chair Minnis	Explains that court could put it in place its own policy in regards to this physical presence
316	Rep. Wells	It is taking the choice out of their hands.
319	Chair Minnis	Language in subsection 3 still allows for consultation with the defense counsel.
324	Arneson	The right to consult needs to be before, as well as during, the sentencing. >does not allow lawyers the ability to meet with their client
348	Chair Minnis	Closes public hearing on HB 2712
<u>HB 2707 - PUBLIC HEARING</u>		
350	Chair Minnis	Opens public hearing on HB 2707
358	Ingrid Swensen	Oregon Criminal Defense Lawyers Association >submits article by Oregon attorney Mark Kramer, (EXHIBIT F) >refers to page 6 of article
404	Chair Minnis	Are we going to try the death penalty here or the merits of the bill?

405	Swensen	Expresses concern about efforts to broaden bill and so it is appropriate to show the concerns people have about the death penalty
413	Chair Minnis	And we could probably spend generations doing that.
415	Swensen	HB 2707 would greatly expand application of the death penalty in Oregon. >currently different categories of conduct and victims within the aggravated murder statute
<u>TAPE 38, B</u>		
015	Swensen	>People convicted of murder with more than one ounce of marijuana would come under this death penalty provision. >If Rep. Van Leeuwen is concerned with those individuals administering an amount of drugs that proves to be lethal, this would be covered as an aggravated murder under the current act.
053	Chair Minnis	Clarifies that Representative said there would not necessarily have to be intent
056	Swensen	This bill does not address her problem because murder does require an intent to kill.
060	Chair Minnis	Is there a difference between homicide and murder?
061	Swensen	Attempts to clarify the definitions as pertains to the proposed measure
071	Rep. Prozanski	Criminal homicide includes murder and criminal negligence and is more broad.
075	Chair Minnis	Rep. Van Leeuwen is mistaken in how the bill is drafted as to who she wants executed.
081	Darin Tweedt	Oregon District Attorneys Association, Deputy District Attorney, Marion County >in support of 2707 >a tool to be used to reduce the toll associated with the violation of these particular provisions
088	Rep. Prozanski	Who gave you that position?
092	Tweedt	Mr. Penn directed me to come down here and talk on behalf of the Oregon District Attorneys Association
094	Rep.	Did he tell you to tell us what you have just told us?

	Prozanski	
096	Tweedt	That is my understanding of the position.
098	Chair Minnis	Have you looked at the construction of the measure?
100	Tweedt	Actual construction does have some problems with it, but we do stand under the proposition that violation of substance control laws in Oregon are very serious.
106	Rep. Bowman	Do you believe that if someone has a controlled substance they should be put to death?
108	Tweedt	No.
117	Floyd Prozanski	<p>State Representative, District 40</p> <p>>speaking on behalf of Fred Avera of ODAA</p> <p>>asked to relay that the association is taking no position on HB 2707</p> <p>>concerns raised in regards to United States Supreme Court's interpretation of aggravated murder</p> <p>>concern that language is broad and doesn't allow future narrowing as required by the U.S. Supreme Court</p>
141	Lane Shetterly	<p>State Representative, District 34</p> <p>>also spoke with Mr. Avera on same issue</p> <p>>ODAA officially taking no position</p>
155	Chair Minnis	Closes public hearing on HB 2707
<u>SB 257A - WORK SESSION</u>		
157	Chair Minnis	Opens work session on SB 257A
158	Rep. Prozanski	<p>The concerns raised by the supporters of the bill are not necessary.</p> <p>>appears definition of stalking provides as to notice</p>
169	Chair Minnis	So you're saying that it was unnecessary to begin with?
170	Rep. Shetterly	It appears that may be the case.
173	Chair Minnis	Closes work session on SB 257A

<u>HB 2430 - PUBLIC HEARING</u>		
178	Chair Minnis	Opens public hearing on HB 2430
182	Floyd Prozanski	<p>State Representative, District 40</p> <p>>speaking on behalf of Fred Avera, Oregon District Attorneys Association (ODAA)</p> <p>>ODAA in support of HB 2430</p> <p>>The length of time change gives parties opportunity to discuss matter in hopes of achieving resolution before Grand Jury or preliminary hearings which would result in cost saving.</p> <p>>believes OCDLA not in opposition</p> <p>>reason for change: not denying liberty and allows additional time to maybe resolve case before jury hearing</p>
218	Rep. Bowman	Asks for explanation of "an information" as it relates to the measure
221	Rep. Prozanski	<p>Information is the first document brought before the court on a charge of a felony.</p> <p>>It alleges the facts but has not been before a Grand Jury for review.</p>
233	Rep. Bowman	Would this measure give more opportunity to prosecutors to charge someone than as is currently written?
239	Rep. Prozanski	<p>On the information they have been arraigned on, they would have 5 days.</p> <p>>dealing with defendants who are not in custody</p>
255	Darin Tweedt	<p>Oregon District Attorneys Association, Deputy District Attorney, Marion County</p> <p>>in support of HB 2430</p> <p>>allows for time of indictment to be increased for person who is out of custody</p> <p>>better investigations will be done before the indictment with 30 days</p>

284	David Fadenque	Executive Director, ACLU of Oregon >no position on bill, but has concern of definition of "in custody" to include juveniles who have been released to shelter care
304	Chair Minnis	Closes public hearing on HB 2430
312	Chair Minnis	Declares subcommittee adjourned

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2229, Proposed Amendments (-1), Staff, 2 pp.

B - HB 2229, Written testimony, Michael D. Schrunk (submitted by Michael Marcus), 1 p.

C - HB 2229, Written testimony, David Cook, 2 pp.

E - HB 2707, Newspaper articles, Rep. Liz Van Leeuwen, 2 pp.

F - HB 2707, "Oregon's Experience with the Death Penalty," Ingrid Swensen, 10 pp.