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SENATE COMMITTEE ON CRIME & CORRECTIONS

February 19, 1997 Hearing Room B

1:00 P.M. Tapes 13 - 14

MEMBERS PRESENT:

Sen. Shirley Stull, Chair

Sen. Jeannette Hamby, Vice-Chair

Sen. Avel Gordly

Sen. Eileen Qutub

Sen. Veral Tarno

Sen. Cliff Trow

STAFF PRESENT:

Nikola Jones, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing SB 423

SB 424

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 13, A		
003	Chair Stull	<p>Opens meeting at 1:03 p.m.</p> <p>>calls attention to survey information packet on boot camps (the Oregon Summit program conducted by the National Institute of Corrections) requested at February 14th's meeting</p> <p>>no meeting scheduled for Friday, February 21st.</p>
<u>OPENS PUBLIC HEARING ON SB 423</u>		
012	Sen. Trow	Requests that courtesies be extended to a group of OSU Presidential Scholar students in the audience.
Chair Stull		
017	Floyd Prozanski	<p>Representative, District 40 testifies in support of SB 423 -1 amendment. At his request a bill has also been dropped on the House side (HB 3614). He is here today as an individual who has direct first-hand knowledge with the problem this bill is trying to correct by adding a new offense - Interfering with a peace officer.</p> <p>Discusses a case he prosecuted - City of Eugene vs. Kathy K. Kruk</p> <p>>City prevailed in both municipal and district courts. Upon appeal, the Court of Appeals, was told by the Supreme Court that they needed to relook and revisit the issues.</p> <p>>case was reversed based on the Court coming to the conclusion that the state statute - resisting arrest - was in conflict with the conduct that was being regulated or attempted to be regulated through a city ordinance of interfering with a police officer.</p> <p>>need safeguards in place so officers can perform their duties</p>
046	Chair Stull	Directs Committee's attention to SB 423's SMS in packet for -1 amendments
<p>Continues:</p> <p>>prefers language in LC 3372 - more direct than language found in SB 423</p>		

	Rep. Prozanski	<ul style="list-style-type: none"> >amendment (which is HB 3614) creates a Class A misdemeanor >also has a caveat that this statute would not be applicable in the making of an arrest. >conduct we attempt to regulate does not interfere with an individual's right to oppose a governmental process >limited to an officer in the field who is attempting to perform his duties
089	Chair Stull	Presents a technical question regarding "know, knowing and should have known"
099	Rep. Prozanski	<ul style="list-style-type: none"> >I don't believe so. Continues >burden on officers to identify themselves
127	Chair Stull	<p>Continues for clarification:</p> <ul style="list-style-type: none"> >court's interpretation
	Rep. Prozanski	<p>I would think so. Continues.</p> <ul style="list-style-type: none"> >level of knowing or should have known - would be a precedent >make certain we are giving tools to officers to conduct their lawful business while not infringing on someone's' civil rights
157	Sen. Tarno	<p>References initial language SB 423:</p> <ul style="list-style-type: none"> >possible to dove-tail in with your language >would the word "prevent" alone actually be encompassing enough
	Rep. Prozanski	Questions for clarification
112	Sen. Tarno	<p>Subsection A actually talks about preventing</p> <ul style="list-style-type: none"> >obstructs officer - impairs or hinders broadens the scope
	Rep. Prozanski	<p>Remarks that there are two other statues on books regarding obstruction</p> <ul style="list-style-type: none"> >other tools available >make certain we retain some balance but shouldn't interfere with an officer trying to do his duty. Continues >not to circumvent passive resistance >another tool to be used when officer's are forced to divert their attention to deal with someone out of line and out of place with what

		is occurring
208	Sen. Tarno	Would the word "prevent" be more in tune? Continues.
	Rep. Prozanski	Suggests Committee might want to ask counsel to give some assistance in wording. Continues.
222	Sen. Trow	Your amendment tightens up and takes away a lot of problems I was having in trying to understand what these words meant. Questions frequency of this criminal activity
233	Rep. Prozanski	I can't speak out of my area of knowledge. Continues.
	Sen. Trow	Remarks that bill is creating a new kind of crime. >Questions the impact over the state.
	Rep. Prozanski	Refers to counsel for answer >probably seen more in larger metropolitan areas >large civil unrest
259	Sen. Hamby	Supports proposed amendment. Continues >supports deletion of "other public servant" >appreciates clarification
276	Sen. Gordly	Would a citizen be subject to the penalties if he or she merely asked an officer "What's going on here?"
291	Rep. Prozanski	Replies: >officer's discretion at the particular location >no blanket application
311	Sen. Gordly	Questions training. What would be the instructions given to an officer regarding implementation of this particular law?
	Rep. Prozanski	Shares the concerns that the application be fair and equal across the board. Cannot answer how training would be done on a state-wide basis. Hopes it would become part of the training at the Bureau of Police Standard & Training (BPST) as well as the larger cities in the state. Continues.
355	Sen. Gordly	Discusses how important training is and affirms that she needs more examples on how this training would be applied.
	Rep. Prozanski	>Sen. Gordly has raised an issue that I feel should be on the record: >numerous ways we can address conduct >protests

		<p>>envisioning a uniformed officer out in the field trying to conduct an investigation</p> <p>>interfering with a plain-clothes officer conducting a serious felony investigation where area is taped off and secured for police purposes</p>
TAPE 14, A		
034	Sen. Trow	Questions wording in amendment - "performing the lawful duties of a police officer". Gives examples and asks for clarification.
047	Rep. Prozanski	<p>Would prohibit that type of conduct by an officer. Continues:</p> <p>>acting within their lawful duties same as "under the color of law"</p> <p>>nothing to insulate them from sanctions within the department, etc.</p>
067	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association testifies in opposition to SBA 423. Offers proposed amendments to SBA 423 [Exhibit A] and submits copies of a case (City of Portland v. William James Anderson) [Exhibit B]</p> <p>Discusses concerns regarding the consequences when a law touches upon free speech both administrative and judicial. Refers to [Exhibit B]. Courts found "interfering with a peace officer" too vague because it could interfere with free speech. Explains.</p> <p>Refers to [Exhibit A]. Took Rep. Prozanski's measure, changing it slightly in two ways. Explains:</p> <p>>limited it to a defendant's use or attempted use of physical conduct</p> <p>>use of language "could reasonably be expected to occur"</p>
125	Chair Stull	Questions for clarification.
	Swenson	<p>>juries are pretty good about making those decisions about whether people knew this was an officer</p> <p>>insert a standard of "reasonably should have known" that changes the level of proof that is required</p>
140	Sen. Tarno	What's the difference in physical conduct?
	Swenson	<p>Replies:</p> <p>>conduct is broader than contact</p> <p>>no definition in criminal code</p>
148	Sen. Tarno	Would an implied threat come under definition of physical conduct?
	Swenson	Would probably include just standing there, but has also been deemed to be speech. Continues
		Questions for clarification. Gives an example

159	Sen. Tarno	>How far can we go before we have physical conduct language?
	Swenson	Replies:
	Sen. Tarno	Removes the freedom of speech issue?
113	Chair Stull	Discusses crossing lines between individual conduct vs. speech
193	Sen. Gordly	Did you say all you intended to say about the Anderson Case? [Exhibit B]
	Swenson	>struck down by the court because it didn't touch just conduct, it touched speech >prohibited protected speech - continues
211	Chair Stull	Additional questions of Rep. Prozanski?
215	Rep. Prozanski	Clarifies: >my intent is not to limit speech but to deal with physical conduct >states that Oregon statute 161.085 - criminal liability - defines "act" and "conduct" >continues to clarify language
253	Sen. Trow	Are you comfortable with Swenson's amendments?
	Rep. Prozanski	Very similar. Continues: >would like to have more time to review >do have body of law to draw upon as to the terms "act or conduct" >may want to change a word or two for clarity
217	Larry Campbell	Executive Staff, Oregon Association Chiefs of Police testifies in support of SB 424. Asks that Committee substitute original language with Rep. Prozanski's information as it provides clarity. States that the additional amendments being presented are of some concern and would like time to review. Addresses Sen. Gordley's concerns regarding training and agrees that charges today are much more serious where officers are involved and that training is vital.
342	Eric Carter	Police Officer, City of Albany, working exclusively in patrol testifies in support of SB 423 [Exhibit C] Discusses basic reasons for support: >gives police officers statewide a needed good strong law >main concern is safety >necessary tools to diffuse situations also prevents the situation from

		escalating to the point where force becomes necessary to protect the officer and others
413	Sen. Gordly	Questions for clarity. What are the officer's range of options given the situation just described.
	Carter	Responds. >the City of Albany has a catch all "interference with police" >continues
TAPE 13, B		
025	Carter	>rather talk or remove person out of a situation without use of force >without this type of law there isn't a specific statute that fits unless situation escalates up and becomes physical
	Sen. Gordly	This could be a preventive in the field?
	Carter	Absolutely. Continues
044	Chair Stull	Remarks on the discretionary nature of a police officer's work. Asks when use of language doesn't work, and the officer has the ability to warn of possible arrest, does that help?
	Carter	That is correct. Explains >use language to diffuse the situation >you may be subject to arrest
066	Sen. Tarno	Agrees with Officer Carter's remarks. >putting individual on notice
086	Carter	Correct. Continues: >often not necessary to leave completely, just leave and give officer a safety area
086	Brian Delashmutt	Oregon Council of Police Associations, testifies in support of SB 423. Offers written testimony of Douglas R. Hoffman, President, in support of SB 423. [Exhibit D] Agrees with Officer Carter's comments regarding the safety of line officers in Oregon. Remarks on the "safety zone"(an area of 21 feet), before the officer could react to something like a knife by drawing his weapon in self defense. >prefers amendments presented with stronger penalty of Class C misdemeanor
		American Civil Liberties Union of Oregon testifies in opposition to SB 423 >major concerns about bill as introduced

129	David J. Fidanque	<ul style="list-style-type: none"> >fewer concerns about amendments introduced >regulating this area not only implicates freedom of speech and freedom of assembly but also can implicate freedom of the press. Gives example of an incident with the forest service last year >makes reference to Rodney King incident >likes Rep. Prozanski's amendments - narrows things down - officers acting in a lawful manner >try to make it clearer - vagueness
220	Sen. Gordly	<p>Recalls a situation in Portland settled for \$96,000 two years ago.</p> <ul style="list-style-type: none"> >trying to balance need for officer's safety and still protect for abuses >not persuaded that BPST is capable of delivering the quality of training that officers need now >concerned about where we are headed with this piece of legislation >wants assurances that balance can be reached
260	Fidanque	<p>Not an easy task to strike that balance. Continues</p> <ul style="list-style-type: none"> >are situations where legitimately concerned citizens who don't know about procedure could cause more problems >biggest problem occurs when a tense situation already exists >heavy liability when mistakes are made >urges Committee to come up with clear lines that would help everyone know what they can and cannot do
308	Chair Stull	<p>Comments on Fidanque's remarks.</p> <ul style="list-style-type: none"> >ongoing training for officers when back in agency of jurisdiction
338	Fidanque	Register Guard filed a civil suit which is still pending. Continues
377	Chair Stull	Agrees Fidanque's example was a good one.
	Sen. Trow	Would you be willing to work with Rep. Prozanski on some additional language?
	Fadenki	Certainly.
<p><u>CLOSES</u> <u>PUBLIC</u> <u>HEARING</u> <u>ON SB 423</u></p>		

**OPENS
PUBLIC
HEARING
ON SB 424**

398	Larry Campbell	Executive Staff, Oregon Association Chiefs of Police introduces Ron Goodpaster, Karl Kaufman, John Maniscalco and Steve Winegar who will testify in support of SB 424.
	Steve Winegar	<p>Chief of Police, City of Tualatin presents written testimony [Exhibit E] in support of SB 424.</p> <ul style="list-style-type: none"> >allows police officers to issue a traffic citation based upon the observations of another officer >facing a growing traffic problem at intersections throughout the state >design of intersections does not allow officers to park safely to watch the traffic for violators
TAPE 14, B		
059	Winegar	<p>Refers to testimony submitted by Regina L. Spady [Exhibit F]</p> <ul style="list-style-type: none"> >almost hit by cars 3 times in 2 weeks while walking in cross walks with traffic signals >no where for an officer to safely park his vehicle to watch for traffic violations
074	Winegar	<p>Refers to pictures taken in less than 30 minutes at 2 intersections [Exhibit G] showing various traffic infractions and the fact that there is no place for an officer to park safely to issue needed citations. Feels SB 424 will help address these problems.</p> <ul style="list-style-type: none"> >#1 - vehicles blocking intersection - vehicle attempting turn unable to do so without further blocking traffic >#2 - three cars running a red light >#3 - 40 foot semi blocking intersection long enough eliminating movement for left turn through one cycle >#4 - 2 trucks and a motorhome running red light
094	Sen. Hamby	Agrees there is a huge problem in Tualatin.
098	Ron	Police Chief, City of Tigard, testifies in support of SB 424. Discusses enormous traffic flow problem on several of Tigard's streets and an extremely high accident rate for a city of that size. Feels key to safe traffic flow is engineering education enforcement which they do through the use of reader boards, public education, unmanned police cars and warning citations. In addition engineering design is used

	Goodpaster	<p>incorporating street design, traffic islands, and traffic control devices as well as neighborhood education.</p> <p>>difficult to enforce because of the safety situation</p> <p>>encourages support of SB 424</p>
122	Karl Kaufman	<p>Police Officer, City of Tigard, working in traffic enforcement as a motorcycle officer. Testifies in support of SB 424. Discusses traffic problems from a patrol officer's point of view:</p> <p>>virtually impossible to enforce traffic laws due to inability to cross traffic at most intersections in area</p> <p>>the ability to radio officer across street who can enforce the law would eliminate part of this problem</p> <p>>U-turn problem</p>
146	John Maniscalco	<p>Captain, Bend Police Department, presents written testimony in support of SB 424 [Exhibit H]. Problems with enforcement of violations in intersections is not limited to the metro areas.</p> <p>>write citations for red light violations</p> <p>>motor officers are risking their lives</p> <p>>legislation would allow the chase car enforcement system to continue</p>
159	Sen. Trow	Questions for clarification. How does it work?
167	Winegar	<p>>one officer observes - another officer writes citation</p> <p>>similar to radar car enforcement</p>
174	Chair Stull	<p>Comments and gives example</p> <p>>questions for clarification</p>
187	Winegar	<p>Initial proposal came up because of problems we were having at intersections. Explains.</p> <p>>school bus violations</p> <p>>problem is broader - good reason not to limit to intersections</p>
206	Chair Stull	<p>Comments that reason for intersection focus is the high number of complaints from citizens.</p> <p>>appropriate for you to consider drafting language for an amendment</p>
228	Sen. Trow	Questions lack of time limits in language of bill
		Time is important.

231	Winegar	>too long, there is a problem in identifying the driver >Stop should occur as soon as possible so opportunity for a change of drivers is minimal. Continues to explain point.
	Sen. Trow	Language doesn't say that.
	Winegar	Replies.
256	Sen. Hamby	What happens when I phone in a traffic offense?
	Maniscalco	Statute permits you to sign a citation for something you observed. Refers back to Sen. Trow's question: You would have to be able to identify the driver. Time is a necessary element.
265	Sen. Hamby	What happens to a citizen?
	Maniscalco	Different statute.
<u>CLOSES PUBLIC HEARING ON SB 424</u>		
	Chair Stull	Declares meeting adjourned at 2:45 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

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EXHIBIT SUMMARY

A -Proposed Amendments SB 424 submitted by Oregon Criminal Defense Lawyer's Association - Ingrid Swenson - 1 pg

B - City of Portland v. William James Anderson - Ingrid Swenson - 3 pgs

C - Testimony in Support of SB 423 - Eric Carter - 1 pg

D - Testimony in Support of SB 423 - Douglas Hoffman, President, Oregon Council of Police Associations - presented by Brian Delashmutt - 2 pgs

E - Testimony in Support of SB 424 - Steve Winegar, Chief of Police, City of Tualatin together with the Oregon Association Chiefs of Police - 2 pgs

F - Testimony in Support of SB 424 from Regina L. Spady presented by Steve Winegar - 3 pgs

G - Color Photographs - SB 424 - Steve Winegar - 1 pg

H - Testimony in Support of SB 424 - John Maniscalco, Captain, Ben Police Department - 1 pg
