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**SENATE COMMITTEE ON CRIME & CORRECTIONS**

**April 9, 1997 Hearing Room B**

**1:00 P.M. Tapes 62 - 63**

**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: Work Session: SB 613, SB 691**

**Public Hearing: SB 971, SB 972**

**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 62, A		
003	Chair Stull	Opens meeting at 1:12 p.m.
<b><u>OPENS PUBLIC HEARING ON SB's 971 &amp; 972</u></b>		
007	<b>Rep. Lonnie Roberts</b>	<p><b>Representing House District 21.</b> Gives overview on bills. SB 971 provides that the court stalking protective order may restrain respondent from contacting petitioner if objectively reasonable that contact would cause alarm. SB 972 modifies definition of "contact" for purposes of a provision relating to stalking to include an objectively reasonable standard.</p> <p>Discusses some background and a particular case in Linn county, Shook v Ackert/Ackert 96-0694. The judge recently held that Oregon statutes were unconstitutional, stating that the statutes were vague and over broad. SB 971 and 972 should fix the constitutional problems addressed by the court.</p> <p>&gt;Encourages passage of the stalking laws.</p> <p>&gt;questions "objectively reasonable"</p>
034	<b>Russ Lipetzky</b>	<p><b>Attorney - Domestic Relations.</b> Testifies in support of SB 972. Introduces Beth Shook, victim in one of the stalking cases in Linn County found unconstitutional. Discusses that the stalking statute is relatively new. Found unconstitutional during interim in some shape or form. This is another attempt to fix the bill so that a stalking statute will be on the books to protect people.</p> <p>&gt;Wants to make the committee aware that there are cases up before the appellate court and the outcome is unsure.</p> <p>&gt;important that there is a stalking bill on the books that is enforceable</p>
072	<b>Beth Shook</b>	<p>Relates story regarding the stalking by her boss.</p> <p>&gt;no support from police</p> <p>&gt;judge didn't know enough about law to make a decision would have to come back</p> <p>&gt;attorney said it was a violation of his civil rights</p> <p>&gt;found unconstitutional - still stalking her</p> <p>&gt;they make you change everything in your life</p>

113	<b>Andy Simrin</b>	<b>Oregon Criminal Defense Lawyers Association.</b> Testifies in support of SB 971 and 972. Gives Committee insight as to his background and expertise in this area. Discusses different versions of the stalking laws and speaks to their levels of success in the courts.
145	Simrin	SB 971: supports - good change to the law but does not do a lot to change substance - continues  >Language goes some distance to ameliorating potential abuse. Gives example.  >doesn't change substance of law very much - fairness aspect just kicks in earlier
231	Simrin	SB 972: States the changes here very important. Explains. Calls attention to the definitions section of the stalking laws and continues his discussion and explanation.  >long list of behavior that can be deemed contact
295	Simrin	Continues: Do not know what the court of appeals will do. Explains.  >nothing precluding you from writing a statute that is more fair than the one that is currently on the books
306	Sen. Trow	Do you have an amendment proposed?
	Simrin	SB 972 is a good amendment to the current definition section of the stalking law.
326	Sen. Tarno	Questions language.
	Chair Stull	Replies.
	Simrin	Mr. Adkinson would have an answer on that for you. Continues.
346	<b>Robert M. Atkinson</b>	<b>Assistant Attorney General, Appellate Division, Oregon Department of Justice.</b> Presents written testimony in opposition to SB 971 and SB 972. <b>[Exhibit C]</b>
400		SB 972: Nothing substantively wrong, just doesn't think it does anything. Continues.
<b>TAPE 63,A</b>		
022	Atkinson	Continues testimony. Continues urging not to pass - doesn't do anything.
030	Chair Stull	When was the first information to the challenges received?
	Atkinson	Not sure what you are trying to fix here. Continues.
	Chair Stull	Refers to Shook case in Linn County.
042	Atkinson	We do have answers to those cases now. Two cases came down on March 5th of this year. Continues.  >State filed a brief on her behalf in the court of appeals. Continues.  >misreading of the stalking statute

		>not to cut off all communication
068	Sen. Gordly	Case of Ms. Shook: Judge apparently misread the statute. What are her options?
	Atkinson	Appeal. Continues. >neither of these bills address the specific problem
087	Sen. Gordly	She is still being victimized. What protection does she have?
	Atkinson	District attorney can bring criminal prosecution.
	Sen. Gordly	Can your office assist?
	Atkinson	If the district attorney in that county asked our office for advice or assistance. Continues.
	Sen. Gordly	Continues for clarification. Would you have to wait to be asked?
	Atkinson	We could intervene in her situation. Explains that limits exist.
106	Sen. Gordly	Uncomfortable with the fact that while we are looking at a fix, we have a person who is a victim right now. How do we get her the assistance right now?
	Atkinson	Happy to do that. Continues.
122	Sen. Tarno	How do our court judges find out about wrong decisions?
	Atkinson	Receive advance sheets from the courts where all opinions are published. Continues.
	Sen. Tarno	Continues for clarification. Can we give our judges prior notice other than the advance sheets?
	Atkinson	Happy to talk to the Chief Justice about that. Continues.
153	Chair Stull	Aware of any other cases out hanging based on the misunderstanding regarding the Shook case?
	Atkinson	Only case out there. Continues. Other cases pending.
170	Sen. Gordly	Questions for clarification. What training have judges around the state received regarding this particular law and its implementation?
	Atkinson	Not aware of any training. Explains.
184	Sen. Gordly	Continues on subject of training for clarification
	Chair Stull	Comments on subject of gathering information.
191	Sen. Qutub	Comments on the subject of the judge not knowing the law well enough. >appalling to me that he is on the bench deciding cases
	Adkinson	Replies: Comments that when the state first enacted domestic dispute legislation and the fact that it took years before law enforcement and judges learned to deal with the statute and to take the issue seriously.

		>Any new law in the area of freedom of expression is difficult. Continues.
219	Sen. Qutub	Ms. Shook does not have freedom of her movement. Continues.
	Adkinson	I don't disagree at all. Continues.
236	Sen. Gordly	Comments. Agrees freedom of expression is one of the issues at play here. Another issue not addressed is the treatment of women. Continues. >questions training in gender issues
	Adkinson	Majority of victims are women. Majority of stalkers are men. Continues.
263	Sen. Gordly	Don't want our victims to have to wait. Solutions right now.
270	Chair Stull	Comments on Mr. Adkinson's offer of assistance to Ms. Shook. >Comments that if Mr. Adkinson encounters some solutions, she would be willing to work with him
	Adkinson	Responds.
299	Sen. Trow	Questions for clarification
	Adkinson	Replies
329	Sen. Trow	Continues questioning witness for clarification
	Adkinson	Replies
350	Sen. Tarno	Does the Court of Appeals consider similar laws from other states?
	Adkinson	They might look at it. Explains.
369	<b>Tom Hart</b>	<b>Marion County District Attorney Office, on behalf of Oregon District Attorney's Association.</b> Testifies in support of SB 971 & 972. Speaks of his distress in the Shook case and the concerns of the Association in this area. Offers to help with particular issues with respect to the Shook case.
		>Subject of training: Suggests contacting the State Court Administrator's Office to see what they have done and what they intend to do at their state judicial conferences. In addition, if they have anything on this subject scheduled on their continuing legal education issues and who is attending.  >Issue of notification: Slip opinions are generally forwarded to our office from the Department of Justice; at the court level, the State Court Administrators Office generally sends the slip opinions to the judge who is taken up on appeal. Continues.
<b>Tape 62, B</b>		
043	Hart	Would not use language "objectively reasonable" - redundant. Continues.
060	Vice Chair Hamby	Don't want to do any further damage.

	Hart	Working in our county and in some other counties. Continues.
072	Simrin	<p>Comments for clarification.</p> <p>&gt;supports changes on lines 8 through 9 only with the omission of line 25.</p> <p>&gt;Comments on the concern regarding inconsistencies in education of trial judges.</p> <p>&gt;if the Oregon Supreme Court does declare the stalking law unconstitutional, there is model stalking legislation available</p>
111	Sen. Trow	Model legislation?
	Simrin	California. Continues.
<b><u>CLOSES PUBLIC HEARING ON SB 971 AND 972</u></b>		
<b><u>OPENS WORK SESSION ON SB 613</u></b>		
137	<b>John Bradley</b>	<p><b>Deputy District Attorney, Multnomah County District Attorney's Office.</b> Reviews SB 613. Modifies provisions relating to jury verdict in criminal cases. Requires that juries deliberate on the charged offense first before considering any lesser included offenses and to consider the lesser offenses in order of seriousness. Requires judges to instruct the jury to continue deliberations on the original charge and modifies provisions relating to peremptory challenges in criminal cases.</p> <p>&gt;speaks of amendments relative to section 3. <b>[Exhibits A &amp; B]</b></p>
	Nikola Jones	Committee Counsel: -1 amendment is the amendment Mr. Bradley offered <b>[Exhibit A]</b> -2 drafted by Legislative Counsel. <b>[Exhibit B]</b>
	Bradley	-2 amendments every bit as confusing as the -1 amendments
	Chair Stull	Your recommendation is that neither the -1 or the -2 be considered.
	Bradley	Yes.
156	Bradley	<p>Explains problem. Really to convey two separate thoughts. Continues.</p> <p>&gt;confusion with juries when deliberating cases with lesser included charges. Suggests changes.</p>
199	Bradley	Continues: Suggests a number 4 and the inclusion of the following language: "a finding of guilty of a lesser included offense on any count is an acquittal of the greater inclusive offense only as to that count."

		Continues to explain.
215	Sen. Hamby	Trying to include your language in the -2 and get a conceptual amendment out.
	Chair Stull	For the record, not in a position to accept conceptual amendments.
<b><u>CLOSES WORK SESSION ON SB 613</u></b>		
<b><u>OPENS WORK SESSION ON SB 691</u></b>		
	<b>John Bradley</b>	<b>Deputy District Attorney, Multnomah County District Attorney's Office.</b>
	<b>Patrick Callahan</b>	<b>Senior Deputy District Attorney, Multnomah County District Attorney's Office</b>
249	Bradley	States that the amendments address concerns discussed at last hearing. [Exhibit D]
259	Sen. Hamby	<b>MOTION: Moves to ADOPT SB 691-1 amendments dated 04/01/97.</b>
		<b>VOTE: 5-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Sen. Gordly</b>
	<b>Chair Stull</b>	<b>The motion CARRIES.</b>
268	Sen. HAMBY:	<b>MOTION: Moves SB 691 be sent to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-1</b>  <b>AYE: 4 - Hamby, Qutub, Trow, Stull</b>  <b>NAY: 1 - Tarno</b>  <b>EXCUSED: 1 - Gordly</b>
	<b>Chair Stull</b>	<b>The motion CARRIES.</b>  <b>CHAIR STULL will lead discussion on the floor.</b>
<b><u>CLOSES WORK</u></b>		

<b><u>SESSION ON SB 691</u></b>		
	Chair Stull	Adjourns meeting at 2:30 p.m.

**Submitted by, Reviewed by,**

**Julie Clemente, Nikola Jones,**

**Administrative Support Counsel**

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**EXHIBIT SUMMARY**

**A - Proposed SB 613-1 Amendments - Staff - 1 pg**

**B - Proposed SB 613-2 Amendments - Staff - 1 pg**

**C - Proposed SB 613-3 Amendments - Staff - 1 pg**

**D - Proposed SB 691-1 Amendments - Staff - 1 pg**

