

HOUSE JUDICIARY  
SUBCOMMITTEE ON CRIME AND  
CORRECTIONS

Hearing Room  
Tapes 5 - 8

MEMBERS PRESENT:

Rep. Veral Tarno, Chair  
Rep. Floyd Prozanski, Vice-Chair  
Rep. Peter Courtney  
Rep. Jerry Grisham  
Rep. Leslie Lewis  
Rep. Kate Brown  
Rep. Chuck Carpenter  
Rep. Lisa Naito

STAFF PRESENT:

Holly Robinson, Committee Counsel  
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:            HB 2316

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 5, A

005        CHAIR TARNO:        Calls meeting to order at 9:04 am.

008        ROBINSON:        Gives brief overview of the intent of the bill last session.

Refers to [EXHIBIT C].

OPENS the PUBLIC HEARING on HB 2136

Witnesses:    Rep. Kevin Mannix, District 32

Debra Downey  
Debbra Janes  
Donna Langsather  
Lori Burch  
Bob Atkinson, Assistant Attorney General, Department of Justice  
Judge Greg West, Marion County Circuit Court Judge  
Susan Trump, Deputy District Attorney

Continued witness list:

Russ Lipetsky, Attorney, Oregon State Bar Association  
Irv Fletcher, Oregon AFL-CIO  
Jim Arnason, Oregon Criminal Defense Lawyers Association  
Andy Simrin, Attorney, Oregon Criminal Defense Association  
Cynthia Helmke, Oregon Coalition Against Domestic & Sexual Violence  
David Fidanque, Executive Director of the American Civil Liberties Union

of

Oregon  
Bill Morgan, Attorney at Law

042 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testimony in favor of HB  
2316. Submits [EXHIBIT A].

090 DEBRA DOWNEY: Testimony in favor of HB 2316.

143 REP. GRISHAM: In the last four and one half years, have you had  
continued contact?

144 DOWNEY: No. He has stayed away from me.

155 DEBBRA JANES: Testimony in favor of HB 2316. Submits [EXHIBIT B].

200 CHAIR TARNO: Has there been any kind of corrective action against this  
individual at all ?

205 JANES: He is currently being held in the Justice Center.

209 REP. MANNIX: You heard from someone who used the civil process and went  
to great  
extents and expense before we had a stalking law.

216 DONNA LANGSATHER: Testimony in favor of HB 2316.

284 LANGSATHER: Discusses violations of stalking order.

326 CHAIR TARNO: Are those violations after the order had been issued by  
the officer?

330 LANGSATHER: They were after the judge had signed the protective order.

334 REP. MANNIX: We have tried to encourage better police training.  
There should have been  
police advocacy from the outset.

356 LORI BURCH: Testimony in support of HB 2316.

425 BURCH: Continued testimony.

TAPE 6, A

030 REP. MANNIX: Explains what HB 2316 does.

068 BOB ATKINSON, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE,  
APPELLATE DIVISION: Testimony in favor of HB 2316. Discusses statutes  
[EXHIBIT C].

143 ATKINSON: Continued testimony. Refers to [EXHIBIT C]. If the Court  
of Appeals disagrees  
with us, we will be suggesting to the court that it modify it's procedures.

170 REP. COURTNEY: Who are the parties to the appeals?

175 ATKINSON: There are a number of different appeals in different  
context. Explains.

197 REP. COURTNEY: What would happen if there had been no rulings that  
this was unconstitutional, would you still be here?

200 ATKINSON: Yes. I think the bill can be improved.

213 REP. COURTNEY: I was on the subcommittee that produced this bill last

session, and

I thought we had got the job done. We've obviously blown it.

230 ATKINSON: At the conference committee, there were a number of certified smart people present.

242 REP. BROWN: Asks about section 7 of ORS 163.730. I'm concerned there is a problem.

250 ATKINSON: That's a policy choice.

256 REP. BROWN: You expressed concern that a perpetrator may need an attorney at the stage of the court issuing a stalking protective order.

260 ATKINSON: That is a claim that has been raised by a number of people who are now subject to stalking protective orders.

262 REP. BROWN: Refers to family abuse prevention act.

266 ATKINSON: Explains the difference between the stalking protective order and the family abuse prevention act pertaining to court appointed counsel.

284 REP. PROZANSKI: I'm concerned we do it right this time. I assume that you have been involved in drafting this bill?

288 ATKINSON: Yes.

289 REP. PROZANSKI: Have you been assigned cases coming up for potential appeal on this subject?

293 ATKINSON: That is correct.

326 REP. PROZANSKI: That is contained in HB 2316. To the best of your knowledge would that rectify the problems you have seen first hand?

330 ATKINSON: It rectifies the two problems that have caused the most difficulty for the trial courts and raised the issues that I find most troubling.

352 REP. PROZANSKI: Refers to the language in HB 2316.

369 REP. NAITO: In looking at this proposed change, I see a two part test. There needs to be an objective basis for a reasonable person to be alarmed.

380 ATKINSON: If you look at ORS 163.732, subsection 1, the person commits the crime of stalking if the person knowingly alarms or coerces another person.

386 REP. NAITO: Discusses the difference between "knowingly" and "intent".

393 ATKINSON: I did not mean to limit it in that fashion. It is knowingly or intentionally cause the alarm.

396 REP. MANNIX: The crime of stalking, absent any protective order, does require the element of knowledge.

415 REP. BROWN: I see that concerning section 8 of HB 2316, we would add a bad faith provision.

423 REP. MANNIX: We are referring to page 5 of HB 2316, lines 3 through 7.  
Explains bad  
faith provision.

TAPE 5, B

035 REP. MANNIX: Continued testimony.

047 JUDGE GREG WEST, MARION COUNTY CIRCUIT COURT: Testimony in favor  
of  
HB 2316.

092 REP. COURTNEY: Should we wait to see what the Court of Appeals does?  
Trial judges have  
found this unconstitutional. Should we run this all the way through the  
Supreme Court to find  
out whether or not it is unconstitutional?

101 WEST: I'm not going to address that.

102 REP. COURTNEY: Would we be here today if no one had challenged it?

110 WEST: I can't give you a legal answer. You will have to rely on those  
people who are  
giving you advise when you attempt to draft this legislation.

122 REP. MANNIX : Responds to Rep. Courtney's questions.

136 SUSAN TRUMP, DEPUTY DISTRICT ATTORNEY, OREGON DISTRICT ATTORNEY'S  
ASSOCIATION: Testimony in favor of HB 2316.

154 RUSS LIPETSKY, ATTORNEY, OREGON STATE BAR ASSOCIATION: Testimony in  
favor of HB 2316. Submits proposed amendments [EXHIBIT D].

216 LIPETSKY: Continued testimony. Refers to SB 78.

236 CHAIR TARNO: By entering the information into the Law Enforcement Data  
System (LEDS) there will be a fiscal impact. What kind of costs are we  
talking about?

240 LIPETSKY: With regard to the civil stalking side very few.

251 REP. PROZANSKI: Are we going to limit a petitioner to appearing in  
person or can they  
do it by telephonic means?

260 LIPETSKY: I don't have the answer to that. I do not know why that  
provision was deleted  
or if there was an intent by the person drafting this bill to preclude  
telephone testimony.

263 REP. PROZANSKI: For the record, that is on page 4 of HB 2316, lines 19  
and 20.

272 REP. MANNIX: Judge West pointed out to me, that, what if someone is  
given notice of the court proceeding and they do not show up? You can  
enter that order even if they do not show up?

279 WEST: I think he's talking about the petitioner appearing by

telephone.

282 REP. MANNIX: All right. We need to take a look at that.

286 REP. PROZANSKI: Discusses telephonic appearance.

291 REP. MANNIX: Discusses the statutes. We start off with the officer's stalking protective order being valid for three judicial days.

355 WEST: I am reading from page 4 of the proposed bill and it says in paragraph 3 (b), it shows the language being deleted about personal or telephonic appearance by the petitioner. Is that your concern?

362 REP. PROZANSKI: Yes. My concern is making sure we have full access.

376 REP. MANNIX: The petitioner will get notice of the hearing because we have added the bold face language on 13 and 14. The idea was not to require the petitioner to show up. There can be another line added that makes it clear that the court may arrange for telephonic appearance by the petitioner at the discretion of the court.

387 WEST: I have arranged telephonic appearances as a practical matter. Suggests verbal amendment on HB 3216 on page 4 paragraph 2 (a) and (b). Would you please make it "in writing". That would be my preference.

402 REP. MANNIX: Are you saying lines 36 and 37?

405 WEST: No, lines 13 and 14 of page 4.

410 REP. MANNIX: Submits [EXHIBIT A].

420 IRV FLETCHER, OREGON AFL-CIO: Testimony in favor of HB 2316. Discusses proposed deletion of line 7 under section 1.

470 REP. NAITO: Have you looked at the proposed language and the objective standard?

TAPE 6, B

030 FLETCHER: We clearly would like to have something set out. Our attorneys drafted it last time. What I will do is take it back to them again and come back to you to see if we can craft something new.

036 CHAIR TARNO: How soon do you think you can get that language back to us?

037 FLETCHER: I will fax it up to them today.

040 JIM ARNASON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Introduces witness Andy Simrin.

045 ANDY SIMRIN, ATTORNEY, OREGON CRIMINAL DEFENSE ASSOCIATION: Testimony against HB 2316.

100 SIMRIN: Discusses amendments and the Court of Appeals.

150 SIMRIN: Discusses language of the current statute.

200 SIMRIN: Discusses his recommendations. There is potentially a major change to the proposed legislation.

214 CHAIR TARNO: Do you have those suggested changes in writing?

217 SIMRIN: No, I don't, but I will be happy to submit them to you.

253 SIMRIN: Discusses his proposed statute amendments.

301 REP. PROZANSKI: Could you just insert the word "intentionally" after the word "knowingly"?

307 SIMRIN: If the word "and" is there, I would say yes. If the word "or" is there I would say no.

Discusses non criminal proceedings that can lead to stalking prosecutions and convictions.

390 SIMRIN: Discusses rights of defendants and legal counsel.

413 SIMRIN: Discusses the officer's issued stalking protective order.

441 CHAIR TARNO: Regarding officers issuing those orders, is it being done in other states?

449 SIMRIN: Not that I am aware of.

TAPE 7, A

030 SIMRIN: Continued testimony. I will be glad to put my recommendations into writing.

060 REP. PROZANSKI: You have made some suggestions regarding the officer's protective order as to finding fault both in the federal and state constitutions. What would be your proposals to rectify and correct those?

061 SIMRIN: I'm not sure it can be rectified from the separation of powers problem. So far as the due process problem, that may be rectifiable.

074 REP. PROZANSKI: How much time would need to lapse before due process would be a concern?

076 SIMRIN: That depends whether or not there were any allegations subsequent to the issuance of the order.

110 REP. COURTNEY: I was hoping that after listening to you I would feel better about coming up with some wording that would make us think this is going to survive a constitutional challenge.

122 SIMRIN: Any law that you enact with regard to criminal conduct will be challenged.

136 CHAIR TARNO: We would also appreciate your suggestions on how to improve.

140 SIMRIN: I will work on that and get it to you as promptly as I can.

142 CYNTHIA HELMKE, OREGON COALITION AGAINST DOMESTIC & SEXUAL VIOLENCE: Testimony in favor of HB 2316. Submits [EXHIBIT E]. Discusses problem in section 8 of the bill, the bad faith clause.

183 CHAIR TARNO: How would you deal with that issue, where you have an alleged complaint and it is not in good faith?

186 HELMKE: I would be happy if that were our main problem. We have so many problems just giving victims access to this law.

200 REP. GRISHAM: The example given in your testimony [EXHIBIT E], were the parties related or strangers to each other?

201 HELMKE: It was a stranger.

203 DAVID FIDANQUE, EXECUTIVE DIRECTOR , AMERICAN CIVIL LIBERTIES UNION OF OREGON (ACLU): Testimony on HB 2316.

250 FIDANQUE: The conference committee deleted what is being suggested be added back into the statute on page 2, lines 8 through 12, because the conference committee believed it was unnecessary.

280 FIDANQUE: With regard to the legitimate purpose language, the vagueness problem associated with this statute is big enough that a number of trial court judges have decided they cannot enforce this statute.

350 FIDANQUE: I want to point out to you the language on page 4 of the bill lines 36 through 37. It would be better to have the court issue its own order at that point, rather than relying on an order that the courts may tell us is unconstitutional to begin with.

385 BILL MORGAN, ATTORNEY: Testimony on HB 2316.

440 MORGAN: Discusses hypothetical situations of stalking.

TAPE 8, A

032 MORGAN: Continued testimony.

060 CHAIR TARNO: In that respect, would you be supportive of maintaining the language on page 5, lines 3 through 7?

062 MORGAN: The bad faith language is not strong enough. We have to have something in there that deals with the victim putting the stalker in the bad position.

071 CHAIR TARNO: With no further testimony the meeting is adjourned at 11:31 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth      Debby Johnson  
Committee Assistant      Committee Coordinator

EXHIBIT SUMMARY:

- A - Testimony on HB 2316 - Rep. Mannix - 1 page
- B - Testimony on HB 2316 - Debbra Janes - 1 page
- C - Statues (Stalking) HB 2316 - Staff - 3 pages
- D - Testimony on HB 2316 and Proposed Amendments - Russ Lipetsky - 2 pages
- E - Testimony on HB 2316 - Cynthia Helmke - 1 page