

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room
Tapes - 18

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD: HB 2316 Relating to stalking
 HB 2341 Relating to traffic offenses; and declaring an emergency
 HB 2343 Relating to traffic offenses; and declaring an emergency
 HB 2424 Relating to traffic offenses; and declaring an emergency
 HB 2426 Relating to traffic offenses; and declaring an emergency

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 , A

007 CHAIR TARNO: Convenes meeting at 8:40 A.M.

Witnesses: Rep. John Schoon, District 34
 Rep. Lonnie Roberts, District 21
 Bill Johnson, Oregon State Police
 Steve Johnston, Oregon Department of Transportation
 Judge Frank Gruber, Salem Municipal Court
 Senator Joan Dukes, District 1
 Greg Malkasian, Administrator, Transportation Safety, Public Utility
Commission
 Bob McKeller, Forrest Products

OPENS the PUBLIC HEARING on HB 2341, HB 2343, HB 2424, HB 2426

022 REPRESENTATIVE JOHN SCHOON, DISTRICT 34: Testimony in favor of HB 2424.

066 CHAIR TARNO: Do you believe HB 2424 will take care of our problems?

068 REP. SCHOON: Yes. I would urge you to consider Rep. Meek's bill as the primary vehicle.

074 REPRESENTATIVE LONNIE ROBERTS, DISTRICT 21: Testimony in favor of HB 2343.

094 BILL JOHNSON, OREGON STATE POLICE: Testimony. We are not taking any position on these bills.

109 CHAIR TARNO: Do you think there is a reluctance on the part of law enforcement to issue a citation to someone with the bail levels we are currently

working under?

113 JOHNSON: Under some circumstances I would agree with you.

122 CLOSES the PUBLIC HEARING on HB 2341, HB 2343, HB 2424, HB 2426
OPENS WORK SESSION ON HB 2316

Witnesses: Irv Fletcher, Oregon AFL-CIO
Rep. Kevin Mannix, District 32

134 ROBINSON: Submits and discusses memo [EXHIBIT A].

180 IRV FLETCHER, OREGON AFL-CIO: Testimony in favor HB 2316. Refers to
[EXHIBIT A].

200 CHAIR TARNO: Does the committee have any problems with amending the
language on
line 14, page 4?

214 ROBINSON: The issue that Mr. Fletcher has raised is a legitimate one.
The assembly indicated
they were comfortable with leaving some kind of exclusion for lawful
conduct during a labor
dispute. The committee should pick one and decide which one
they want to go with.

220 CHAIR TARNO: Your asking us to pick either 1, 2 or 3? Referring to
[EXHIBIT A].

222 ROBINSON: No. Discusses amendments and gives committee suggestions.

230 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testimony on HB 2316.
Submits
[EXHIBIT B]. I think that the adaptation of the AFL-CIO version is the
best choice.

241 REP. LEWIS: I thought that putting it in the contact section seemed a
lot cleaner.

254 REP. PROZANSKI: The clean way to do it would be to use the ACLU
language.

265 MOTION: REP. PROZANSKI: To ADOPT the
language as suggested by
staff regarding modification of
AFL-CIO proposed language.

291 REP. MANNIX: I have two recommendations. I would recommend that
"civil suit" be changed to "civil action".

314 CHAIR TARNO: Hearing no objection the amendments are ADOPTED.

321 ROBINSON: Describes amendment number 2, page 4, lines 13 and 14.
[EXHIBIT A].

331 MOTION: REP. GRISHAM: Moves to ADOPT the striking of the
language "may be verbal" on line 14, page 4.

337 CHAIR TARNO: Hearing no objections amendment is
ADOPTED.

340 ROBINSON: Discusses number 3 of proposed amendments [EXHIBIT A].

354 REP. MANNIX: Suggests that the phrase currently to be deleted in lines
19 and 20, be moved up to lines 15 to 17.

375 REP. PROZANSKI: Would that mean either party could appear by
telephone?

380 REP. MANNIX: No. The respondent would have to appear in person.

384 REP. PROZANSKI: Are we going to have an inclusion that the petitioner
may appear either
in person or by telephone and the rest of the language would stay intact?

389 REP. MANNIX: Correct. Reads the line as it would read.

409 ROBINSON: Would you be offended if that said "may appear personally or
by telephonic
appearance"? I think that is what legislative counsel will
change it to.

412 REP. MANNIX: That's fine.

414 MOTION: REP. PROZANSKI: Moves to ADOPT amendments.

420 VOTE: CHAIR TARNO: Hearing no objections
the amendments are

ADOPTED.

424 REP. BROWN: I have some issues that have not been addressed.

426 CHAIR TARNO: Why don't we walk through this memo [EXHIBIT A] and then
we will address those issues.

430 ROBINSON: Discusses number 4 of proposed amendments [EXHIBIT A].

TAPE 16, A

025 ROBINSON: Continues discussion of amendments.

035 REP. MANNIX: Perhaps the ACLU would rather have us authorize the
officer to arrest the stalker.

058 REP. BROWN: My concern is crafting something that both the police and
the courts will
enforce.

060 CHAIR TARNO: Could that be lack of education by law enforcement
regarding stalking orders
or the bill?

069 REP. BROWN: I think the police officers are making a determination
that the statute is
unconstitutional.

074 REP. PROZANSKI: We need to make sure we are getting proper enforcement
and action.

110 REP. MANNIX: This is not a problem with the current law in terms of
the legalities or the
constitution of the law. There may be some officers who are confused about
how to implement
the law.

136 CHAIR TARNO: The person has already had one court appearance, this is
after?

140 REP. MANNIX: No, this is the officer on the scene investigating and
determining at some point
that the officer should issue a protective order.

144 ROBINSON: If the respondent fails to appear the court can extend the
police officer's
order at that point.

147 REP. MANNIX: We want to give the court clear authority to extend the
order.

152 REP. PROZANSKI: What we need to do is keep the branches of power
separated. Your
asking that we put law enforcement in the position of judiciary, I oppose
that.

165 MOTION: REP. PROZANSKI: Moves to ADOPT
the language that
has been suggested in section 7 of [EXHIBIT
A] on HB 2316.

174 VOTE: In a roll call vote REPS. COURTNEY,

LEWIS and PROZANSKI vote
AYE. REPS. GRISHAM and TARNO vote

NAY.

184 CHAIR TARNO: The motion CARRIES.

186 ROBINSON: Discusses section 5 of [EXHIBIT A].

202 REP. MANNIX: I have a set of amendments that cover one of those objections. [EXHIBIT B].

216 REP. BROWN: I can't support section 8 at all. I am very concerned it will be used against women who seek the court's protection.

226 REP. MANNIX: This is not a criminal case at this point, it's a civil proceeding. Discusses bad faith provision.

250 REP. BROWN: Is there a similar provision on the family abuse prevention act?

252 ROBINSON: No.

257 REP. GRISHAM: Would you propose as an alternative to ask the petitioner to post a \$400 bond?

260 REP. BROWN: No. I would be concerned that would cut some people out in terms of financial access.

268 CHAIR TARNO: How would we deal with this when you have someone who is making accusations in bad faith?

270 REP. BROWN: I assume that would mean they lied on an affidavit and the district attorney would prosecute for perjury.

274 REP. PROZANSKI: It would be different with each county. We need to make sure spouses who need this type of protection can get in.

308 REP. COURTNEY: Have you seen Rep. Mannix amendment language before?

308 REP. BROWN: No, I do not have copies of those.

310 REP. COURTNEY: The deletion of the language on 4 and 5 of [EXHIBIT B], does that help with your concerns regarding section 8?

313 REP. BROWN: It does help with my concerns.

324 REP. COURTNEY: Isn't the concept of bad faith dealt with almost everyday in a court of law?

340 ROBINSON: One of the issues in SB 385 really has to do with this same issue.

368 REP. COURTNEY: How is that discussion in terms of what is or is not bad faith relate to this?

373 REP. BROWN: In SB 385 there is discussion about equalizing the playing field and how people are bringing frivolous lawsuits in bad faith and to discourage them we charge them costs if they lose.

400 REP. MANNIX: What's going on in the Senate is different, it has to do with general civil cases that have been around for a long time.

445 REP. LEWIS: I think it is important to have this provision

TAPE 15, B

035 MOTION: CHAIR TARNO: Moves to ADOPT amendment [EXHIBIT B], page 5, lines 4 and 5.

041 REP. COURTNEY: If you remove bad faith and left in the language that Rep. Mannix takes out, which makes for better laws and public policy in terms of wanting to make sure the individual that feels their being stalked can feel free to pursue it? Which phrase does a better job?

054 REP. MANNIX: We put both phrases in originally because you're covering two scenarios.

066 REP. BROWN: SB 385, section 22, allows for an award of attorneys fees in a civil action brought under the stalking law if the party prevails.

070 CHAIR TARNO: Is there any reason why both bills cannot be passed?

073 REP. BROWN: They are not mutually exclusive, they are two different things.

VOTE: In a roll call vote, all members present vote AYE.

CHAIR TARNO: The motion CARRIES.

086 REP. MANNIX: Refers to Lipetsky amendments [EXHIBIT D] from the January 24, 1995 public hearing HB 2316. Those have been incorporated into my sheet [EXHIBIT B]. Explains amendments.

136 CHAIR TARNO: Is the committee comfortable with these amendments made by Rep Mannix? Hearing no objections, so ordered.

143 REP. MANNIX: The Attorney General's office contacted me on the right to petition. Discusses further amendments.

157 REP. PROZANSKI: Asks Rep. Mannix to further discuss proposed amendment.

163 REP. MANNIX: There are laws against filing false reports and providing false information to most government entities.

171 CHAIR TARNO: Are there any objections to deleting the word "or government" on line 19 of the first page? Hearing no objections, the motion is adopted.

179 ROBINSON: Refers to Andy Simron's letter [EXHIBIT C].

203 REP. MANNIX: Asks Robert Atkinson to speak.

210 ROBERT ATKINSON, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE: Testimony on HB 2316. Discusses [EXHIBIT C]. I would ask you to delete the

word "unlawful" from the proposed amendment.

233 REP. PROZANSKI: Do you believe on the first recommendation that instead of substituting "intentionally" for "knowingly" we should insert "intentionally" where it would be "the person knowingly or intentionally"?

241 ATKINSON: Counsel suggests that her examination of the cases interpreting the stalking laws in other states have all concluded that the conduct must be intentional to be constitutional.

258 REP. MANNIX: I would oppose going to "intentionally". Ninety percent, maybe eighty or seventy-five percent of stalking conduct is obsession.

276 REP. BROWN: I would agree with Rep. Mannix. Makes suggestion of using "knowingly or should have known".

285 REP. MANNIX: The jury may infer upon the set of facts that the person "knew", and if they should have "known" the jury will infer that they "knew".

291 REP. PROZANSKI: I don't want to open up another can of worms by inserting language such as "should have known" at this stage. I'm concerned that may open up a constitutional challenge.

306 REP. COURTNEY: Discusses section 8. Bad faith is more deliberate. How do the words "knowingly or intentionally" fit in?

334 REP. MANNIX: The bad faith discussion has to do with the victim who goes to court, not with the perpetrator.

366 REP. PROZANSKI: Counsel and I have been looking at some language that came out of the National Institute of Justice, for a model for anti-stalking.

373 ROBINSON: In their model code they talk about "has knowledge or should have known".

380 REP. BROWN: Does "intentional" refer then to repeated and unwanted contact?

390 ROBINSON: They use the phrase "purposely engages". I'm not sure how to translate that into the Oregon Criminal Code.

401 REP. MANNIX: I would recommend that the committee pass on this recommendation.

406 CHAIR TARNO: Do we accept the language as it is? Hearing no objections, the committee accepts the language as it is.

416 ROBINSON: We will have the amendments to date put into one set of LC amendments which will be presented to the committee for their final review and distribution.

426 REP. GRISHAM: There is nothing in this that states we are declaring an emergency.

437 REP. MANNIX: I think the emergency clause suggestion is an excellent idea.

444 CHAIR TARNO: Hearing no objections, the committee adopts recommendation.

448 REP. MANNIX: What is your procedure this year? Will you be waiting for the LC formal amendments to adopt or do you just send it on to full committee?

451 CHAIR TARNO: We will bring it back to the subcommittee. I have had a special request to allow John Tapp to testify. I will allow him three minutes.

TAPE 16, B

030 JOHN TAPP: Testimony opposing HB 2316. Submits [EXHIBITS D & E].

055 REP. MANNIX: Were you convicted?

057 TAPP: Yes, I was convicted.

CLOSES the WORK SESSION on HB 2316
RE-OPENS the PUBLIC HEARING on HB 2341, HB 2343, HB 2424, HB 2426

079 STEVE JOHNSTON, OREGON DEPARTMENT OF TRANSPORTATION: Testimony on HB 2341, HB 2343, HB 2424 and HB 2426. Submits [EXHIBIT F].

138 JUDGE FRANK GRUBER, SALEM MUNICIPAL COURT: Testimony on HB 2341, HB 2343, HB 2424 and HB 2426. Discussion of court proceedings on traffic matters.

170 JUDGE GRUBER: Discussion of fines, bail amounts and unitary assessments.

238 CHAIR TARNO: The fine of \$48, how much of that would be for unitary assessment?

243 JUDGE GRUBER: About half of it.

300 JUDGE GRUBER: Please allow judges to do the jobs we were elected to do, don't micro-manage the dispositions in the courts.

314 REP. COURTNEY: The issue is we did not give the discretion. You think the \$48 fine should be moved up, you won't tell us how much. If we give you the discretion, the fact of the matter is that's not how it's going to play out.

340 JUDGE GRUBER: I'm not saying give the courts total discretion. The legislature historically in its proper function is to cap what the courts can do.

356 REP. COURTNEY: Would \$519 be justified under any circumstances?

365 JUDGE GRUBER: I imposed it once in a speeding case.

367 REP. COURTNEY: Forty eight dollars is to low for running a stop sign?

373 JUDGE GRUBER: In most cases. The court can impose less.

384 REP. GRISHAM: On page 2 line 13 on HB 2426, am I not seeing this correctly?

394 CHAIR TARNO: I think all versions are a little different.

406 REP. PROZANSKI: It seems that a lot of the problems we are hearing is that many individuals believe what they see on the citation, regarding the bail amount, is the actual fine. Is it your proposal that we roll back the bail amounts?

421 JUDGE GRUBER: It would not be unreasonable to do that.

451 REP. PROZANSKI: I want to find out what your court is doing. Discusses new program in Lane County.

TAPE 17, A

036 JUDGE GRUBER: Discusses violations bureau.

062 REP. GRISHAM: Are we talking about all four of these bills as one?

066 CHAIR TARNO: We are discussing these four bills as one.

068 REP. GRISHAM: I have no intention of moving on the other three bills.

The one I do want to work and perhaps move is HB 2426.

069 REP. COURTNEY: That's the one that does allow for a 20 percent increase. Three of them say roll it back to where it was.

079 SENATOR JOAN DUKES, DISTRICT 1 : Discusses amendment to HB 2426.

113 REP. PROZANSKI: Is your amendment to cover just the hours when construction

work is actually occurring?

114 SEN. DUKES: Yes.

115 REP. COURTNEY: I actually introduced the bill. If this is the vehicle you're using, I want to be able to make that presentation.

128 CHAIR TARNO: Let me suggest that in the course of discussing all four of these bills pertaining to this one issue, that we consider both Senator Dukes and Rep. Courtney's as well.

131 SEN. DUKE: I was aware of Rep. Courtney's bill, and I am happy to work with him on this.

150 MARSHALL COBA, OREGON TRUCKING ASSOCIATIONS, INC. (OTA): Testimony in favor of HB 2341, HB 2343, HB 2424 and HB 2426. Submits [EXHIBIT G].

177 JIM NYLEN, CAMPBELL CRANE COMPANY, PORTLAND: Testimony in support of HB 2341, HB 2343, HB 2424 and HB 2426. Discusses fines.

218 CHAIR TARNO: What would a fine have been three years ago before this new bail schedule was passed? What percentage of an increase have you suffered since this new bill came out?

225 NYLEN: The maximum fine I remember getting on an individual axle overload was in the neighborhood of \$3500. The fines generally ran \$250 to \$350.

237 REP. GRISHAM: Do you have any objections to HB 2426?

238 COBA: We have not taken a position on that particular bill.

245 REP. GRISHAM: Would you have a problem with a minimum of \$10 on all infractions?

250 COBA: I think it's more reasonable than where we're at today.

255 SCOTT HALEY, OCEANWAY TRANSPORT, NORTH BEND: Testimony on HB 2341, HB 2343, HB 2424 and HB 2426.

310 GREG MALKASIAN, ADMINISTRATOR of TRANSPORTATION SAFETY DIVISION, PUBLIC UTILITY COMMISSION (PUC): Testimony on HB 2341, HB 2343, HB 2426. Submits

[EXHIBIT H]. Refers to [EXHIBIT I].

368 BOB McKELLER, OREGON FORREST PRODUCTS TRANSPORTATION ASSOCIATION: Testimony in favor of HB 2341, HB 2343, HB 2424 and HB 2426. Our primary concern is the overload fine.

CLOSES the PUBLIC HEARING on HB 2341, HB 2343, HB 2424 and HB 2426
OPENS WORK SESSION on HB 2341, HB 2343, HB 2424 and HB 2426

434 REP. GRISHAM: I would like to address HB 2426 with some amendments.

438 REP. LEWIS: I don't want to bump them 20 percent, I think we should roll them back. We should give some thought to specific violations that should be increased.

454 REP. GRISHAM: I think we all agree to roll them back, but to what level?

TAPE 18, A

033 REP. GRISHAM: I believe we need to talk about what the purpose of the fines are and will it in fact deter people from passing a school bus?

054 CHAIR TARNO: Is there any objection by the committee to using HB 2426 as vehicle to accomplish our purpose?

057 REP. LEWIS: Yes, it raises everything 20 percent. I think we should roll them back and look

at specific infractions that endanger other people's lives.

068 REP. COURTNEY: Discusses other bills by Rep. Meek, Rep. Roberts and Rep. Schoon. I think you will find everyone here will agree to increase some of the fines.

103 CHAIR TARNO: How much difference is there between Rep. Roberts bill and Rep. Meeks bill?

105 REP. COURTNEY: There is no difference.

107 CHAIR TARNO: There is a feeling that HB 2426, because it adds a 20 percent rate increase, that may be a little high, I tend to agree. Why not roll this back.

109 REP. PROZANSKI: What we are looking for is a mechanism to get things going. Do we start at ground level taking it back to pre 1993?

115 CHAIR TARNO: Do we want to take one bill and look at them individually?

121 REP. GRISHAM: I would suggest taking the bill and working backwards then taking Rep. Roberts or Rep. Meeks and adding to it.

123 MOTION: REP. GRISHAM: Moves HB 2426 as vehicle.

137 CHAIR TARNO: How many of us are willing to support using HB 2426 as a vehicle?

140 REP. LEWIS: What I want to do is set every fine back 20 percent, except for the few that endanger people. If you want to start with HB 2426, I'm going to move to amend everyone of these back down to pre 1993 levels.

147 CHAIR TARNO: There is a consensus to use HB 2426 as a vehicle to work these four bills. How are we going to arrive at the variety of different fines and infractions that we may be asked to do?

158 REP. GRISHAM: Would it be appropriate for each of us to make a list and submit them?

161 REP. PROZANSKI: That would be great. The other thing we should keep in mind is the testimony we heard here today was inclusive of four bills. There was a proposed amendment from the (PUC) regarding being in compliance with federal regulations.

166 CHAIR TARNO: We have to look at using this bill as a vehicle and come back for adjustments. Is that correct? Hearing nothing further from the committee, meeting is adjourned at 11:12 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Memorandum HB 2316 - Staff - 2 pages

B - Amendments HB 2316 - Mannix - 1 page

C - Testimony HB 2316 - Simron - 2 pages

D - Amendments HB 2316 - Tapp - 8 pages

E - Incorporating amendments HB 2316 - Tapp - 14 pages

F - Testimony HB 2341, HB 2343, HB 2424, HB 2426 - Johnston - 2 pages

G - Testimony HB 2341, HB 2343, HB 2424, HB 2426 - Coba - 1 page

H - Testimony HB 2341, HB 2343, HB 2426 - Malkasian - 1 page

I - Proposed amendments HB 2426 - Staff - 1 page

J - Testimony on HB 2316 - Cross - 1 page

K- Testimony on HB 2316 - Moore -7 pages

L - Testimony on HB 2316 - Campbell - 1 page

M - Testimony on HB 2341, HB 2343, HB 2424, HB 2426 - Gearin - 1 page