

HOUSE COMMITTEE ON JUDICIARY SUB-COMMITTEE ON CRIME AND CORRECTIONS

February 17, 1993 Hearing Room 357 3:00 p.m. Tapes 26 - 27

MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

VISITING MEMBER: Rep. Kevin Mannix

STAFF PRESENT: Julie Nolta, Committee Clerk Holly Robinson, Committee Counsel Ian Lombard, Page

MEASURES CONSIDERED: HB 2412 - Relating to stalking

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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. [--- Unable To Translate Graphic ---]

TAPE 26, SIDE A

007 CHAIR TIERNAN: Calls meeting to order at 3:15 p.m.

HB 2412 - WORK SESSION

Witnesses: Rep. Kevin Mannix, District 32 Fred Avera, Oregon District Attorneys Association

CHAIR TIERNAN: Will be combining all stalking bills into one piece of legislation in HB 2412. This will include the police officer's ability to issue a protective order and also the civil penalties involved in the crime.

027 REP. KEVIN MANNIX, DISTRICT 32: Gives conceptual overview of amendments and what they do technically. (EXHIBIT A) Section 1 consists of a set of definitions of words used in the bill. Section 2 contains operative language to define crime of stalking. Reads definition of crime of stalking.

060 CHAIR TIERNAN: Asks where amendments refer to the exception of picketing activity.

REP. MANNIX: Under definition of "contact" in Section 1, sub-section 7 of the amendments.

069 CHAIR TIERNAN: How could labor activity/lawful picketing be

construed as some kind of stalking activity?

REP. MANNIX: Couldn't according to the way it is defined. But dealing with the concern that it might. Reads Section 1, item 7.

CHAIR TIERNAN: Discusses adding the word "actual" before "labor picketing."

094 REP. MANNIX: Discusses Section 3 which describes the provision for the officer's stalking protective order. Allows opportunity for immediate

intervention without the necessity of charging the offender with a crime.

107 HOLLY ROBINSON: The other option is that the District Attorney can choose to charge the conduct as a misdemeanor.

112 REP. MANNIX: Describes Section 4 regarding time restrictions for the officer's protective order, service of the order and provisions for court stalking order. Discusses Section 5 regarding procedures for stalking protective order. Section 6 is the provision for the victim to initiate stalking protective order on his own behalf. Section 7 creates crime of violating an officer's stalking protection order. Section 8 provides for the crime of violating a court's stalking protective order.

168 REP. TARNO: If we change language in Section 8 sub-section 2 from "sentence of three years" to "sentence of three years to five years" that would give you your Class C felony.

177 REP. MANNIX: Under Section 8, sub-section 2 insert "Violating a court's stalking protective order is a Class C felony" before "Notwithstanding." Section 9 allows a person to bring a civil action for a court's stalking protective order. Section 10 remains as per original bill. Section 11 is new language removing civil liability from a law enforcement officer for failing or refusing to issue a protective order. Section 12 creates an emergency clause which may be changed to be effective immediately upon passage.

222 REP. TARNO: Refers to Section 10 of HB 2412 which indicates an officer may make an arrest with probable cause. Thinks it might be better to add "exigent circumstances."

233 REP. MANNIX: Constitutionally an officer will have to have probable cause and a warrant or probable cause and exigent circumstances. Believes we should be open to putting this kind of language into the bill.

252 REP. TARNO: Concerned that "exigent circumstances" goes beyond mere probable cause.

258 REP. MANNIX: Describes probable cause versus exigent or emergency cause for arrest.

268 REP. TARNO: Concerned about unidentifiable individuals who may be stalking a victim. Would language regarding "exigent circumstances" add impetus? REP. MANNIX: Would add impetus but not legal authority. Can add "exigent circumstances" language.

290 REP. BROWN: Just thought probable cause was necessary.

REP. TARNO: Gives example of domestic violence cases where victim withdraws charges after an arrest has been made. The officer should have some immunity from liability in regards to an on-site arrest.

317 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY, OREGON DISTRICT ATTORNEYS ASSOCIATION: Explains exigent circumstances and how it relates to probable cause.

341 REP. TARNO: Refers to elements of offense of crime of stalking. Wants officers to have the ability and tools to make an on-site arrest if necessary.

361 AVERA: Describes what gives an officer authority to arrest at the scene of an investigation.

367 REP. MANNIX: Current statute states an officer may arrest without a warrant if there is probable cause that a felony has been committed. There is no requirement for exigent circumstances.

376 REP. BROWN: In Section 2 of HB 2412, the language says an officer could arrest for crime of stalking without prior protective order having been issued. So the officer has a choice to enter a protective order or to

arrest. Or both.

389 REP. MANNIX: It is unnecessary to add to current statute when we already have a general statute saying that an officer may arrest for a felony on probable cause. We have stalking defined as a felony. Should rely on the general statute to show we are consistent with the criminal code.

397 CHAIR TIERNAN: Asks Rep. Mannix for circumstances when an officer would issue a protective order versus making an arrest.

400 REP. MANNIX: The least an officer is required to do is to issue a stalking protective order if there is probable cause. He can arrest for the crime of stalking if he feels it is necessary, but the judgement is being left with the officer.

435 CHAIR TIERNAN: Refers to a stalking case in which a man was living in a tree across from the victim's home. How would the law apply to this situation?

REP. MANNIX: The officer would probably arrest the man after hearing the history of the case.

CHAIR TIERNAN: Refers to the stalking case in which the stalker moved in next door to his victims.

450 REP. MANNIX: After completing the investigation, the officer could arrest if there was probable cause. For a conviction, there must be proof beyond a reasonable doubt that this activity occurred.

REP. BROWN: There are three crimes involved in this bill. If an

officer or court's stalking protective order is violated, the burden to get the order is by preponderance of evidence. The burden in Section 7 or 8 needs to be a criminal burden.

TAPE 27, SIDE A

031 REP. MANNIX: Describes elements of crime of violation of protective order.

047 REP. TARNO: Main concern was the officer's ability to get the offender off the street right away. Why bother with a protective order when there is a probable cause? Thinks there is a combination of civil law and criminal law addressed in this bill.

062 REP. MANNIX: The essence is the officer can make a judgement call between reasonable doubt and probable cause.

076 HOLLY ROBINSON: Questions the process of distributing the form for the stalking protective order after it is produced.

REP. MANNIX: Law enforcement agencies would obtain it from the state police.

080 HOLLY ROBINSON: Need to add additional language -- "and shall develop and distribute form."

REP. MANNIX: Section 3, sub-section 2 and Section 6, sub-section 2 should read "state police shall develop and distribute the form."

101 HOLLY ROBINSON: Discusses differences between Rep. Mannix's amendments and other amendment proposals.

185 REP. MANNIX: Does not intend to use the word "malice" because it is not in current statute.

188 HOLLY ROBINSON: Other bills contain reference to "credible threat." HB 2412 focuses more on reasonable apprehension of the victim, not defendant's ability to carry out threat.

203 REP. MANNIX: Legislation of other states does not deal with obsessive or repetitive conduct. We are looking mainly at apprehension of victim. This moves away from freedom of speech issue -- not looking at content

of speech but at the effect of the speech on the victim.

224 HOLLY ROBINSON: Discusses three elements of stalking present in other stalking bills that are present in HB 2412.

242 REP. BROWN: HB 2412 prevents Rep. Schoon's gift giving bill from becoming too broad. 265 CHAIR TIERNAN: Adjourns meeting at 4:00 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 2412 - Rep. Kevin Mannix - 9 pages B -  
Anti-Stalking Statutes Analysis - 11 pages