

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

February 24, 1993 Hearing Room 357 3:00 p.m. Tapes 32 - 33

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

MEASURES CONSIDERED: HB 2412 - Relating to stalking HB 2741 - Relating to assault

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

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 32, SIDE A

006 CHAIR TIERNAN: Calls meeting to order at 3:07 p.m.

HB 2741 - PUBLIC HEARING

Witnesses: Roger Morse, Portland Police Bureau Doug Hoffman, Oregon Council of Police Associations

011 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2741 adds the use of mace and similar substances to actions constituting offense of assaulting a public safety officer.

026 ROGER MORSE, DETECTIVE, PORTLAND POLICE BUREAU; PRESIDENT, PORTLAND POLICE ASSOCIATION; VICE PRESIDENT, OREGON COUNCIL OF POLICE ASSOCIATIONS: Submits and reviews testimony in support of HB 2741. (EXHIBIT A)

053 CHAIR TIERNAN: This doesn't include stun guns.

MORSE: No. CHAIR TIERNAN: Does current statute cover stun guns?

MORSE: In order to get a complaint issued and a conviction you must show physical injury to recipient of the assault. Mace is temporarily disabling but isn't injurious. Easy to obtain mace but not many people carry stun guns.

077 REP. TARNO: Have other district attorneys around the state been asked if they would file against a person who used mace on an officer?

DOUG HOFFMAN, STATE PRESIDENT, OREGON COUNCIL OF POLICE ASSOCIATIONS:

Doesn't know. Believes it would be difficult to prosecute under current statute.

091 REP. BROWN: Asks what a deleterious agent refers to. Are there any other substances we should be concerned about?

MORSE: Language is written to include expanded technology of mace-like products.

106 REP. TARNO: How long does pepper mace immobilize an officer on the street?

MORSE: Effects of pepper mace last a minimum of 20 to 30 minutes up to a couple of hours.

117 REP. TARNO: Discusses cap stun. Do most agents carry cap stun now?

MORSE: Pepper mace has base of cayenne pepper and is used the most. Has instant response and doesn't have long term effects that chemical mace has. Less likelihood of permanent injury with pepper mace.

190 CHAIR TIERNAN: What if someone were to mace your police dog?

TARNO: That is not a person.

HB 2741 - WORK SESSION

200 HOLLY ROBINSON, COMMITTEE COUNSEL: Line 12 of the bill states that an offense would be committed if the mace were used against "another person." Use of "the other person" when the referring to the peace officer is inconsistent.

215 CHAIR TIERNAN: Why can't we just say "peace officer?"

REP. TARNO: "The other person" also alludes to corrections officers and fire fighters -- public safety officers.

HOLLY ROBINSON, COMMITTEE COUNSEL: The language on line 6 says "and the other person is ..." so "the other person" refers to the recipient of mace.

221 MOTION: REP. COURTNEY: Moves to AMEND HB 2741 by deleting "another"

and inserting "the other" on page 1, line 12.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

246 REP. BROWN: Line 9 refers to "the other person" while on duty.

Subsection 1 (b) does not limit the circumstances to only while on duty.

265 HOLLY ROBINSON, COMMITTEE COUNSEL: Move the sentence in line 9 to line 7 to read "firefighter, and while such other person is acting in the course of official duty;"

283 MOTION: REP. BROWN: Moves to AMEND HB 2741 by inserting "and while such other person is acting in the course of official duty;" after "firefighter" on line 7.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan
NO: None

287 MOTION: REP. COURTNEY: Moves HB 2741 AS AMENDED to full committee with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO:
None

HB 2412 - WORK SESSION

Witnesses: Fred Avera, Oregon District Attorneys Association (ODAA)
Susan Tripp, ODAA Ross Shepard, Oregon Criminal Defense Lawyers
Association Dave Fidanque, ACLU Janet Arenz, ACLU

298 HOLLY ROBINSON, COMMITTEE COUNSEL: Working off of Rep. Kevin Mannix's -E amendments dated 2/24/93. (EXHIBIT B) Committee needs to finish work on this bill so a fiscal impact statement can be requested.

341 REP. TARNO: Asks for the reason for a fiscal impact statement.

CHAIR TIERNAN: Anything over a \$50,000 impact must have a fiscal impact statement. This is a self-imposed rule. We need a final determination about what this bill will do before we vote on it.

359 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2412 creates a crime of stalking and makes it a Class C felony. Gives an overview of HB 2412-E amendments. Discusses additions and changes in reference to definition of "schools." Also includes changes regarding "actual labor picketing."

416 REP. MANNIX: Basic format of the bill has not changed. There are technical changes in definition of "stalking." The process as to the officer's and court's protective order has been redefined in order to make it a separate act. Stalking as a crime will stand on its own. Officer's and court's protective order and violations are separate situations. Civil action can be brought separately without law enforcement.

475 REP. MANNIX: In section 1, harassment and concepts have been removed. "School" has been added. "Contact" has been redefined to not include conduct that occurs during actual labor picketing.

TAPE 33, SIDE A

031 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION:

Suggests putting a limit on the number of feet in reference to visual presence in section 1, subsection 6 (a).

036 REP. MANNIX: Suggests 50 or 100 feet or distance across the street.

040 REP. TARNO: The key is the alarm factor not distance.

047 SHEPARD: There could be circumstances where the stalker has no intention of being within sight of victim. Believes 500 feet would be appropriate.

REP. MANNIX: Intent, knowledge or recklessness is required when coming into the presence of the victim.

056 REP. COURTNEY: Why don't we strike word "physical" in subsection 6 (a)?

REP. MANNIX: Victim may be blind. Someone may be following you and you can't see them but you can hear them. Opposed to setting a number of feet. An additional amendment is to define "repeated" in subsection 9 to mean two or more times.

071 FRED AVERA, POLK CO. DISTRICT ATTORNEY; OREGON DISTRICT ATTORNEYS ASSOCIATION: Concerned about phrase "certified police officer" which may leave out reserve officers and others.

078 REP. TARNO: Substitute "certifiable" for "certified."

082 REP. MANNIX: Suggests "employed" instead of "certified."

092 REP. MANNIX: Discusses the following changes in section 2: added phrase "without legitimate purpose" in subsection 1 (a) which exempts activities with a legitimate purpose. Stalking will be a Class C felony with a crime seriousness of 8 under sentencing guidelines.

Suggests a language change to make it clear that intent, knowledge or recklessness deals with the fact that you are contacting somebody, not

that you intend to alarm or coerce that person. Proposed change to section 2, subsection 1 (a) would insert "engages in repeated and unwanted contact with another person or a member of that person's immediate family or household thereby alarming or coercing the other person;" after "recklessly."

ACLU suggests there be apprehension of impending physical harm of the victim added in subsection 1 (c). Disagrees because becomes too close

to the issue of "credible threat" and departs from the earlier intervention process. Impending physical harm is very difficult to prove.

169 DAVE FIDANQUE, EXECUTIVE DIRECTOR, ACLU OF OREGON: Explains rationale for "impending physical harm" language. Assumes that in most cases the

first choice would be to go for the officer's protective order or the court's protective order. The crime of stalking would be used primarily

in situations when there is real fear of physical danger. In most situations you would go through the civil process first.

182 REP. MANNIX: If we start changing definition of stalking for past conduct and tell the officer that there is a different standard for an

officer's protective order where he can be more proactive, you are having "shifting sands." The idea is to encourage the officer to issue the protective order rather than to arrest.

199 REP. BROWN: Rep. Parks is supportive of changing language to "impending physical harm." The issue of proportionality created in section 2 was

also raised by Rep. Parks and the ACLU. Suggests changing a first conviction for stalking to be a Class A misdemeanor and a second conviction as a Class C felony. A Class A misdemeanor places a victim

in a substantial risk of death or protected impairment of health. The

Class C needs to be a more serious threat.

219 REP. MANNIX: If a first conviction is a Class A misdemeanor, we need to deal with the proportionality argument and the fiscal impact concern.

237 REP. BROWN: Disagrees with Rep. Mannix because it is likely this situation would be used quite frequently.

239 HOLLY ROBINSON, COMMITTEE COUNSEL: It is important to discuss the committee's intent. Is not sure that it is the committee's intent that the person will always go to a stalking order first. As a victim, the

expectation is probably that criminal charges will be filed. Concerned about what the history of the bill is going to look like. If the expectation of the committee is that the first step of intervention is

or should be the stalking order then the committee should state that for the record and go forward. If in fact, that is not true, that needs to be made equally clear. Expectations should be clarified.

262 REP. MANNIX: We need to be sensitive to idea of allowing an officer in the field a reasonable amount of discretion and controlling it at the same time, and also giving victims some recourse. Need to be sensitive to the officer's workload. Also agrees on pulling back on the sanctions. Make it a Class A misdemeanor for the first time but make it clear that if it is repeated the sanction will be tougher.

298 CHAIR TIERNAN: Calls recess.

300 MOTION: REP. COURTNEY: Moves TO ADOPT REP. MANNIX'S AMENDMENTS TO HB 2412 DATED 2-24-93 to section 1; to delete "certified" after

"person" in subsection 8 and to insert "employed" after "person"; to insert "'Repeated' means two or more times" in subsection 9.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

325 MOTION: REP.BROWN: Moves TO AMEND REP. MANNIX'S AMENDMENTS HB 2412 dated 2-24-93 by inserting "coming within 100 feet" before

"of" in section 1, subsection 6 (a).

335 REP. MANNIX: Disagrees. Should not specify the number of feet because we already require intent, knowledge and recklessness as to visual or physical contact.

REP. COURTNEY: Questions Rep. Mannix's change of opinion on the issue on the number of feet.

REP. MANNIX: As it was talked through, decided I didn't like it.

REP. COURTNEY: You just don't like any number of feet specified?

347 REP. BROWN: Concerned about not having a specification as to the number of feet, A court may question the definition of "physical presence."

REP. TARNO: A judge will question the officer if he measured the number of feet and the officer has to guess it?

REP. BROWN: At least they know.

360 VOTE: 3-1 MOTION FAILS AYE: Brown NO: Courtney, Tarno, Tiernan

367 MOTION: REP. COURTNEY: Moves to ADOPT SECTION 2 OF REP. MANNIX'S AMENDMENTS, as hand engrossed, to HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

398 REP. BROWN: States section 2, subsection 2 should read "The first conviction of stalking is a Class A misdemeanor. The second and subsequent convictions of stalking is a Class C felony and a crime seriousness of 8 under the Oregon Sentencing Guidelines."

411 REP. TARNO: Counsel indicates this is more appropriate language to adopt?

HOLLY ROBINSON, COMMITTEE COUNSEL: There is a potential problem with issue of proportionality in sentencing. Because of similarities between menacing, which is a Class A misdemeanor, and stalking, stalking cannot immediately be made a felony.

430 AVERA: Thinks District Attorneys would support the concept. Should be clear that if you have been convicted of misdemeanor stalking

and then

court order is violated that would qualify as a first conviction of felony.

439 REP. MANNIX: Would be an appropriate conceptual amendment to add a separate section to clarify that the first conviction of stalking or a violation of an officer's or court's protective order be a Class A misdemeanor. Second and subsequent conviction of any one of those would be a Class C felony.

452 REP. COURTNEY: Take out subsections 2 and 3?

REP. MANNIX: Then provide that when it becomes a Class C felony it is a crime seriousness of 8 under the Oregon Sentencing Guidelines and a person crime. But a separate section that makes it clear that it applies in an "intermixed fashion."

461 REP. COURTNEY: Now there is a motion to delete subsections 2 and 3 from section 2?

HOLLY ROBINSON, COMMITTEE COUNSEL: It is modification of section 2.

465 REP. MANNIX: It would be a modification throughout the bill as to that one issue. Counsel can draft it if the committee is satisfied with the concept.

471 REP. BROWN: Withdraws previous motion to amend.

MOTION: REP. BROWN: Moves TO CONCEPTUALLY AMEND HB 2412 which would provide that first conviction of stalking and violation of

the officer's and court's protective order are Class A misdemeanors, and that the second and subsequent conviction of any of those three would be a Class C felony with a crime seriousness of 8 under the Oregon Sentencing Guidelines and a person crime.

498 AVERA: The misdemeanors would be person misdemeanors and the felonies would be person felonies.

TAPE 32, SIDE B

035 VOTE: Hearing no objections the amendment is ADOPTED. All members

are present.

043 REP. BROWN: Need to consider changing "personal safety" to "impending physical harm" in section 2, subsection 1 (c).

047 REP. MANNIX: Disagrees for reasons stated previously.

MOTION: REP. BROWN: Moves TO AMEND REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 by deleting "the personal physical safety" after "regarding" in section 2, subsection 1(c) and inserting "impending physical harm."

054 REP. BROWN: In section 2 it may make sense to have a stricter standard regarding the actual crime of stalking versus the officer's protective

order.

063 SUSAN TRIPP, OREGON DISTRICT ATTORNEYS ASSOCIATION: Had concerns regarding "impending physical harm." Language too close to "eminent threat" language. When discussing physical injury, some crimes would not fit into that category.

077 FIDANQUE: Tried to use broader language than in menacing statute but

that would still require an impending sense of physical harm to the victim.

083 REP. MANNIX: The language does not address issue of obsessive activity. It would weaken our whole approach.

090 VOTE: 4-0 MOTION FAILS AYE: None NO: Brown, Courtney, Tarno, Tiernan

MOTION: REP. COURTNEY: Moves to ADOPT SECTION 3 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

103 REP. MANNIX: In section 3, subsection 1, should delete "finds" and insert "has probable cause to believe" after "officer." Makes it clear what the standard is which is probable cause. Add a phrase at the end

of section 3 to read "and it is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact."

132 MOTION: REP. COURTNEY: Moves TO AMEND SECTION 3 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 by deleting "finds" and inserting "has probable cause to believe" after "officer" in section 3, subsection 1; and to add "and it is objectively

reasonable for a person in the victim's situation to have been alarmed or coerced by the contact" at the end of section 3.

VOTE: Hearing no objections the amendment is ADOPTED. All members are present.

134 REP. MANNIX: Under language for officer's protective order it has been suggested to have a listing for the petitioner and the respondent at the top only so it does not have to be written repeatedly

throughout the body of the order. Telling the person what he is being restrained from ought to parallel the substantive language which is "intentionally, knowingly, or recklessly having any contact with the petitioner."

154 MOTION: REP. COURTNEY: Moves to AMEND SECTION 3 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 by listing the petitioner and the respondent at the top of the officer's protective order only; and insert "knowingly, or recklessly" after "intentionally" in regards to the respondents contact with the petitioner.

VOTE: Hearing no objections the amendment is ADOPTED. All members are present.

159 MOTION: REP. COURTNEY: Moves to ADOPT SECTION 4 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendment is ADOPTED. All members are present.

165 MOTION: REP. BROWN: Moves to AMEND REP. MANNIX'S AMENDMENTS TO HB 241 2 dated 2-24-93 by deleting "the seven day period" and inserting "three judicial days" after "within" in section 4, subsection 2.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

168 REP. BROWN: Rep. Parks is in favor of three judicial days which also

alleviated some of the defense attorneys due process concerns about shortening the period. Concerned about what this will do to the court system.

184 AVERA: Unclear about what that hearing is. If it is a show cause hearing then the court can probably do that in three days. If you are

going to have a contested hearing within three judicial days the court might have a problem with that.

193 REP. BROWN: Intent is to run along same lines as the Family Abuse prevention Act so a court order can be obtained immediately. If the respondent has concerns, he can challenge within 30 day period.

202 REP. MANNIX: Initially tried to have a show cause hearing. Should be a further opportunity to develop evidence. Comfortable with the concept

if officers in the field understand "three judicial days." Fuller proceeding may be held after.

220 HOLLY ROBINSON, COMMITTEE COUNSEL: Might be helpful to add language that the hearing can be continued if needed. Gives flexibility to deal with docketing issues, evidence preparation, etc.

236 REP. MANNIX: The court can make determination to issue temporary protective order pending further proceedings. Counsel should draft language to clarify that.

242 SHEPARD: Committee could anticipate at the hearing that the petitioner would personally appear to get order issued. Could work language into

subsection 4 "court may order after personal or telephonic appearance by the victim, a court stalking order ..."

251 REP. BROWN: That is how a Family Abuse Prevention Act order can be issued: by phone or person.

257 FIDANQUE: Likes the idea of a prompt hearing following the issuance of an officer's protective order because the officer is making judgement calls on prohibiting possible constitutionally protected behavior. Due process would require prompt judicial review. Alleged stalker needs adequate opportunity to determine his rights and obtain counsel if necessary.

277 AVERA: Concerned about when the officer's protective order expires and the hearing has not been held.

281 REP. MANNIX: Suggests a conceptual amendment to allow the officer's protective order to exist and to stay in effect for three judicial days; that there would be a show cause proceeding at which time the court can issue a temporary stalking protective order with a personal or telephonic appearance by the victim at the show cause proceeding; and that the show cause proceeding can be continued with a temporary order

in place pending further proceeding as necessary to allow the alleged perpetrator and the victim to make further appearances and present evidence to the court; and that show cause proceeding not be continued beyond 30 days.

MOTION: REP. BROWN: Moves to ADOPT THE CONCEPTUAL AMENDMENT TO HB 241 2 as stated above by Rep. Kevin Mannix.

VOTE: Hearing no objections the amendment is ADOPTED. All members are present.

302 FIDANQUE: May need to make changes in officer's protective order to

reflect the time periods as stated in the amendment.

316 REP. MANNIX: The language is incomplete under section 4, subsection 1. It should read "intentionally, knowingly or recklessly" after "from."

MOTION: REP. BROWN: Moves to AMEND REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 by inserting "recklessly" after "knowingly" in section 4, subsection 1.

VOTE: Hearing no objections the amendment is ADOPTED. Rep. Courtney is excused.

334 MOTION: REP. TARNO: Moves to ADOPT SECTION 5 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

340 MOTION: REP. TARNO: Moves to ADOPT SECTION 6 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

343 FIDANQUE: Forgot to add language "and distribute the form" after "develop" in section 6, subsection 2, line 1.

MOTION: REP. BROWN: Moves to AMEND REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 by inserting "and distribute the form." after "develop" in section 6, subsection 2, line 1.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

364 CHAIR TIERNAN: In section 7, subsection 2 should be further explained by adding language similar to section 8, subsection 3. Subsection 2 should read "Violating an officer's stalking protective order is a Class A misdemeanor for the purposes of sentencing. An officer's protective

order shall be a person crime."

REP. MANNIX: Agrees and states that that language will be taken care of when counsel writes the overall sentencing provision for repeated offenses and should be incorporated in that change.

CHAIR TIERNAN: Thinks it should be changed as an official amendment.

384 REP. BROWN: Then it should read that "the first offense of violating an officer's protective order is a Class A misdemeanor. The second and subsequent violation of an officer's protective order is a Class C felony and a crime seriousness of 8 under Oregon Sentencing Guidelines. For purposes of sentencing and calculation of criminal history, violating a officer's stalking protective order shall be a person crime."

MOTION: REP. TARNO: Moves to ADOPT THE AMENDMENT TO SECTION 7, SUBSECTION 2 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 as stated above by Rep. Brown.

VOTE: Hearing no objections the amendment is ADOPTED. Rep. Courtney

is excused.

404 REP. MANNIX: Regarding section 6, subsection 1, there was a suggestion to take out language "take out call for assistance" which implies that a call must be phoned in.

MOTION: REP. TARNO: Moves to AMEND REP. MANNIX'S AMENDMENTS TO HB 241 2 dated 2-24-93 by deleting "take out call for assistance" in section 6, subsection 1.

423 REP. BROWN: Essentially this could turn police stations into courts.

People could go to the police station and get protective orders and I'm not sure we want to do that.

REP. TARNO: Isn't that covered in subsequent language where it says "to any local enforcement agency?"

REP. BROWN: It does but I don't like it.

438 REP. MANNIX: We require that there be a probable cause and that there be objective reasonableness and subjective reasonableness. Does not make a difference how the officer is contacted. Suggests the word "local" be removed from law enforcement agencies because that could exclude the state police.

454 MOTION: REP. TARNO: AMENDS his motion to delete the language of "local" under section 6, subsection 1 and delete "responding to a call for assistance."

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

467 HOLLY ROBINSON, COMMITTEE COUNSEL: The intent is only to speak to "intentional and knowing?"

REP. MANNIX: Should also include "recklessness."

REP. BROWN: Should also include the objectionably reasonable language.

TAPE 33, SIDE B

020 REP. MANNIX: Should add "recklessly" but just doing the conduct at that point meant you had the order and you committed the conduct that you knew violated the order. At that point you would not have to establish that there had been apprehension.

025 AVERA: Suggests the language after "order," be omitted. Should require harm for the crime of stalking but if the order is violated, nothing more should be required.

032 MOTION: REP. BROWN: Moves to AMEND REP. MANNIX'S AMENDMENTS TO HB 241 2 by inserting a period (.) after "order" on line 2 and deleting the rest of the sentence in section 7, subsection

1(b).

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

039 AVERA: Refers to "sworn statement" in section 6, subsection 1. Does

this mean notarized?

REP. MANNIX: Does not mean notarized. But by signing the complaint form, the petitioner swears the information is true and correct. If he is swearing to false information, that is a crime also.

049 MOTION: REP. TARNO: Moves to ADOPT SECTION 8 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

053 HOLLY ROBINSON, COMMITTEE COUNSEL: Motion on section 8 is that it needs to conform with section 7.

060 MOTION: REP. TARNO: Moves to AMEND SECTION 8 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93 to correspond with section 7 regarding the concerns of counsel.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

067 FIDANQUE: With regard to deletion of language in section 7 and 8 regarding subsequent conduct having created reasonable apprehension, there may also be a proportionality problem. The committee is creating a "super contempt." We are not aware of other court orders which when violated are punishable by anything other than criminal contempt. The maximum sentence would be six months in jail. By deleting that language the committee may have created more of a proportionality problem.

078 REP. MANNIX: In terms of the super contempt, reaction is that it is a unique form of contempt where you have already engaged in a course of conduct that has led to the issuance of a protective order by the officer and the court and you have been told to stop doing it and then you've engaged in that conduct again. This is not only contempt of the court but of the victim also.

080 REP. BROWN: Are your concerns about the proportionality issue relieved by the fact that the first offense is a Class A misdemeanor versus second and subsequent offenses being Class C felonies?

094 FIDANQUE: It might because the maximum jail sentence for a Class A misdemeanor under the sentencing guidelines is also six months in jail. The repeated contact kicks it up. That may take care of the problem.

That may also take it out of the contempt sphere.

104 REP. MANNIX: The repeat conduct will not necessarily rise to the

level of the crime of stalking because we require for the specific crime the

reasonable apprehension of the victim objectively and subjectively. If we take out that element we're getting to the same kind of conduct but, we didn't get to that conduct in the first place except for having reasonable apprehension.

110 AVERA: Wonders whether the general contempt statute in Oregon would be available to enforce this. Would the prosecutor have the option of filing a violation of the court order crime or contempt or could we double count it? If the general contempt statute applies, it can be enforced by private counsel, not in a criminal manner but a victim could seek a civil contempt under a stalker order.

121 REP. MANNIX: "We did not intend to layer on those sanctions. This is meant to be a specific sanction scheme. The one civil remedy that will be included is what is specified in the statute. We are not trying to

layer into civil contempt provisions. To the extent that one can make out a case for civil contempt, we are also not trying to make this exclusive. To the extent that you can make out a case for civil contempt and meet the standards for civil contempt or criminal contempt that is fine. But we weren't trying to intertwine this with those types of situations. We aren't trying to add or subtract from those standards. We are trying to set up something that can stand up on its own. It may overlap a little bit."

132 HOLLY ROBINSON, COMMITTEE COUNSEL: Asks Fred Avera if we need a sentence that says this does not preclude any other remedies being used.

AVERA: Do need language to make it clear, whatever the committee's intent is.

143 MOTION: REP. BROWN: Moves to conceptually AMEND HB 2412 that legal counsel find language to the fact that this is not the complainant or victim's sole remedy; that the victim has the other civil and criminal contempt remedies available.

VOTE: Hearing no objections the amendment is ADOPTED. Rep. Courtney is excused.

MOTION: REP. TARNO: Moves to ADOPT SECTION 9 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

156 REP. MANNIX: Believes language in section 9 makes it clear that we are talking about the individual. An individual may want to go to court despite what the officer is doing on the scene and s/he should be

able

to initiate a civil proceeding on his/her own. This is why section 9, subsection 1 discusses a "separate civil action."

170 FIDANQUE: Oregon Supreme Court has said that punitive damages cannot be imposed for expression or communication. The victim can recover actual damages and their cost.

REP. MANNIX: HB 2412 makes it clear that the court has to apply the standard set forth for the crime of stalking. The crime of stalking focuses on the effect of the communication not the content of communication. And the Supreme Court recognizes the distinction.

182 CHAIR TIERNAN: In section 9, subsection 3 will the 24 hour period conform to the three day period set earlier?

REP. MANNIX: Recommends that it conform to the three day period.

AVERA: Does the three days refer to when the petition is filed or when the respondent is served? What was the intent?

189 REP. MANNIX: Within three days from when the respondent is served.

190 REP. BROWN: Disagrees.

HOLLY ROBINSON, COMMITTEE COUNSEL: Three judicial days plus 24 hours.

195 TRIPP: The court's stalking order should be issued with the same authority as an officer's protective order. In that case it would die in three days. Suggests that the committee delete language and make a court's protective order good until court says it is good.

201 REP. MANNIX: Determining whether a temporary court's stalking protective order should be issued, period?

TRIPP: Period.

REP. MANNIX: Because you've had an initial judicial proceeding. Couldn't we agree that there should be conformance with the three judicial days and the 30 day time limitation and make it in the form of a conceptual amendment?

212 MOTION: REP. BROWN: Moves to conceptually AMEND HB 2412 that section 9, subsection 3 shall conform conceptually to the process set forth in earlier section 4 regarding obtaining a court's stalking protective order.

217 REP. MANNIX: Intent of the motion is to allow someone who is bringing a civil proceeding to get a temporary court's protective order that it may become permanent through further proceedings. The idea is that you can eliminate going through law enforcement if you wish.

VOTE: Hearing no objections the amendment is ADOPTED. Rep. Courtney is excused.

229 CHAIR TIERNAN: Asks Mr. Avera if the amendment takes into consideration his concerns.

AVERA: Believes it is the intent that violation of an order entered under section 9 would be equally prosecutable under the earlier sections as provided.

234 REP. MANNIX: With the conformance, it should have that provision.

241 MOTION: REP. TARNO: Moves to ADOPT SECTIONS 10, 11 AND 12 OF REP. MANNIX'S AMENDMENTS TO HB 2412 dated 2-24-93.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Courtney is excused.

CHAIR TIERNAN: Cannot move the bill but counsel will redraft amendments as adopted, come back to committee with a fiscal to pass it to full committee.

258 CHAIR TIERNAN: Adjourns meeting at 4:50 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on HB 2741 - Portland Police Association - 2 pages B - Amendments to HB 2412 - Rep. Kevin Mannix - 9 pages