

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

June 9, 1993           Hearing Room 357 3:00 p.m.   Tapes 126 - 128

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

VISITING MEMBER: Rep. Kevin Mannix

STAFF PRESENT:           Holly Robinson, Committee Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED: SB 640 - Relating to death penalty for persons with mental retardation SB 680 - Relating to costs of prosecuting criminal cases SB 833 - Relating to crime

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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 126, SIDE A

CHAIR TIERNAN: Calls meeting to order at 3:08 p.m.

SB 833 - PUBLIC HEARING

Witnesses:           Sen. Ron Cease, District 10 Rep. Kevin Mannix, District 32

009    HOLLY ROBINSON, COMMITTEE COUNSEL: SB 833 creates and defines the crime of stalking. Gives differences between HB 2412 (EXHIBIT A) and SB 833 .

026    SEN. RON CEASE, DISTRICT 10: Testifies in favor of SB 833.

080    REP. KEVIN MANNIX, DISTRICT 32: Testifies in favor of SB 833. Compares the Senate bill to HB 2412. Submits summary of labor activities included in ORS 662. (EXHIBIT B) 198    REP. COURTNEY: Asks Counsel for constitutional view on the intent question.

208    REP. MANNIX: The intent is the impact of the stalking activity on the victim and not the content of the communication.

REP. COURTNEY: Asks about following a person.

REP. MANNIX: Acts will have to be intended.

(Public hearing on SB 833 re-opens on p. 3)

SB 680 - PUBLIC HEARING

Witnesses: Sen. Grattan Kerans, District 20

244 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 680 requires the Oregon Criminal Justice Council to collect information concerning the direct and indirect costs of prosecuting murder and aggravated murder cases.

SEN. GRATTAN KERANS, DISTRICT 20: Testifies in favor of SB 680. Submits -4 amendments. (EXHIBIT C)

306 CHAIR TIERNAN: Can't Criminal Justice Council do this without a bill?

SEN. KERANS: Yes. Would rather make it a statutory requirement and keep it out of politics.

(Public hearing on SB 680 re-opens on p. 5)

SB 640 - PUBLIC HEARING

Witnesses: Sen. Jeannette Hamby, District 25

339 SEN. JEANNETTE HAMBY, DISTRICT 5: Testifies in favor of SB 640.

(Public hearing on SB 640 re-opens on p. 7)

SB 833 - PUBLIC HEARING

Witnesses: Janet Arenz, ACLU of Oregon David Fidanque, ACLU of Oregon Gina Mattioda, Oregon Medical Association Laurie Wimmer, Oregon Commission for Women

420 JANET ARENZ, ACLU OF OREGON: Testifies to SB 833.

435 REP. MANNIX: Describes inaccuracies in the hand-engrossed amendments to SB 833. (EXHIBIT D) Submits amendments. (EXHIBIT E)

443 DAVID FIDANQUE, EXECUTIVE DIRECTOR, ACLU OF OREGON: Testifies to SB 833.

TAPE 127, SIDE B

040 ARENZ: Continues testimony.

053 FIDANQUE: Continues testimony.

060 REP. MANNIX: Rationale is to remind officers that they have an obligation to proceed if there is probable cause.

FIDANQUE: Discusses labor activity language.

REP. MANNIX: States that there is an assumption that any activity sanctioned by state law is an activity with a legitimate purpose.

084 GINA MATTIODA, OREGON MEDICAL ASSOCIATION: Submits and reviews written testimony in favor of SB 833. (EXHIBIT F)

098 LAURIE WIMMER, EXECUTIVE DIRECTOR, OREGON COMMISSION FOR WOMEN: Submits and reviews written testimony in favor of SB 833. (EXHIBIT G)

#### SB 833 - WORK SESSION

113 REP. MANNIX: Refers to proposed amendments, Exhibit E. The first item corrects the definition of stalking to HB 2412 definition.

131 HOLLY ROBINSON, COMMITTEE COUNSEL: Refers to HB 2412. Confirms that p. 2, lines 11-13 of HB 2412 replaces lines 9-11 on p. 2 of SB 833.

160 REP. MANNIX: Restates the change to the definition. The hand-engrossed version of SB 833 is not correct only in that section that contains the definition. Reads correct definition. Discusses second item of the Mannix amendments regarding the standard of proof. Explains the third

item which makes "stalking" consistent on p. 2 of SB 833. Discusses the fourth item regarding lawful picketing on p. 3.

217 MANNIX: Discusses labor dispute language in statute as it relates to

stalking.

CHAIR TIERNAN: Labor dispute language is inserted to state that this is not intended to affect lawful labor picketing.

REP. MANNIX: Same correction needs to be made on p. 1 of the Senate bill in the definition of "contact" on lines 24 and 25.

236 REP. COURTNEY: The definition is what may send the bill to a conference committee.

REP. MANNIX: Intention is not to send it to a conference committee. Doesn't want to lose a good bill.

262 CHAIR TIERNAN: Doesn't want to create an overly broad area that would give someone license to do something inappropriate.

REP. COURTNEY: Wants to minimize possible disagreements.

REP. MANNIX: There will be two disagreements: 1) whether there will be

a requirement of intent to alarm or coerce and, 2) if there will be a broad labor dispute exemption. On p. 1 of the hand-engrossed bill, lines 24 and 25 should read "conduct that occurs during actual labor picketing." Discusses the use of "lawful picketing" on p. 3, lines 32 and 33.

310 CHAIR TIERNAN: "Lawful picketing" is broader and would encompass non-labor situations.

314 REP. MANNIX: Language on lines 43 and 44 of p. 3 is to remind officers of their obligation to issue the protective order.

REP. TARNO: It is implied that officers have that responsibility. Would like to leave language as it was.

REP. MANNIX: Has no problem with that. Officers should know their obligations.

357 REP. MANNIX: SB 833 has two definitions of stalking. Delete lines 22-29 on p. 4 of SB 833. At the end of line 21 insert "the respondent

has engaged in stalking." Reviews item 7 of the Mannix amendments.

399 REP. BROWN: Agrees with Rep. Tarno's suggested amendment.

408 HOLLY ROBINSON, COMMITTEE COUNSEL: Reviews the changes made in the bill.

463 MOTION: REP. BROWN: Moves to ADOPT REP. MANNIX'S AMENDMENTS TO SB 833 dated June 8, 1993. VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

481 MOTION: REP. BROWN: Moves SB 833 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

TAPE 126, SIDE B

SB 680 - PUBLIC HEARING

Witnesses: Mike Hall, Oregon Coalition to Abolish the Death Penalty  
Marc Thomas, Amnesty International David Factor, Criminal Justice  
Council David Fidanque, ACLU of Oregon

043 MIKE HALL, CHAIR, OREGON COALITION TO ABOLISH THE DEATH PENALTY: Submits and reviews written testimony in favor of SB 680. (EXHIBIT H)

065 CHAIR TIERNAN: Asks Mr. Hall if he objects to the death penalty because of the cost or for philosophical reasons.

HALL: Objects because of philosophical reasons but the bill isn't pro

or con on the death penalty. The state needs to know how much it costs.

074 CHAIR TIERNAN: Asks if there are other states who have done studies.

HALL: Names other states. All studies indicate that it is very expensive.

CHAIR TIERNAN: We could be wasting our money if there are states similar to Oregon who have done studies that we could borrow from.

HALL: Oregonians would believe figures from an Oregon study before figures from another state.

089 MARC THOMAS, AREA COORDINATOR, AMNESTY INTERNATIONAL: Testifies in favor of SB 680.

112 CHAIR TIERNAN: Asks how many states have done this study.

HALL: Reviews case studies in other states.

CHAIR TIERNAN: Asks for an average cost per state.

HALL: Explains costs in other states.

138 DAVID FACTOR, CRIMINAL JUSTICE COUNCIL: Testifies to SB 680.

180 DAVID FIDANQUE, EXECUTIVE DIRECTOR, ACLU OF OREGON: Testifies in favor of SB 680.

194 REP. COURTNEY: Asks Mr. Fidanque if he wants the study done for death row as well as for those sentenced to life without parole.

FIDANQUE: Language in the bill directs a comparative analysis of all murder prosecutions.

211 REP. COURTNEY: Asks where the operative language is.

HOLLY ROBINSON, COMMITTEE COUNSEL: It's not that clear.

FIDANQUE: Where the defendant is charged with aggravated murder, that case would be included in the study.

REP. COURTNEY: Where is the operative language?

FIDANQUE: Section 1, lines 5-7 of SB 680.

229 FACTOR: A conviction for aggravated murder carries three sentencing options including the death penalty.

REP. COURTNEY: Is not sure that the language is as broad as what you are assuming. May need additional language to cover your intent.

FACTOR: Has no problem with more clear language.

254 CHAIR TIERNAN: Asks about initiative process regarding capital punishment.

FIDANQUE: Article 1, Section 40 was added in 1984.

269 HOLLY ROBINSON, COMMITTEE COUNSEL: Also added other categories of aggravated murder and added sentencing options.

REP. BROWN: Death penalty has not been used in Oregon since 1964?

FIDANQUE: There are defendants on death row, but it has not been implemented. The cases are still on appeal.

283 REP. TARNO: Asks if there are any cases facing execution in the near

future.

FIDANQUE: Not directly involved in any of the cases.

SB 640 - PUBLIC HEARING

Witnesses: Dale Penn, Oregon District Attorneys Association Fred Avera, Polk Co. District Attorney Janna Starr, the ARC of Oregon James Toews, Mental Health and Developmental Disabilities Services Div. Henry Bersani, Oregon Health Sciences University Bob Joondeph, Oregon Advocacy Center Marc Thomas, Amnesty International Myron Hall, Oregon Coalition to Abolish the Death Penalty David Fidanque, ACLU of Oregon

326 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Submits and reviews written testimony in favor of SB 640. (EXHIBIT I)

431 CHAIR TIERNAN: If the person is mentally retarded, that is currently a defense?

PENN: The defense is mental disease or defect. Describes how the defense is used.

449 CHAIR TIERNAN: What if they are retarded now and were not at the time of the crime?

PENN: Discusses definition of mental retardation in the bill.

TAPE 127, SIDE B

041 CHAIR TIERNAN: Is the determination that the mentally retarded person knew right from wrong in the bill?

PENN: Yes. Discusses conviction and sentencing options.

072 CHAIR TIERNAN: The defense is not available unless it meets the criteria of the bill?

PENN: This does not change the defense but the process is not available.

077 REP. BROWN: Can a mentally retarded person aid and assist? Are these tried on a case by case basis?

PENN: Yes. Bill does nothing about aid and assist examinations or the defense of mental disease or defect. Describes the aid and assist examination.

108 REP. TARNO: Asks about the origin of the language of SB 640.

PENN: Appears that it is generally accepted that the cut off is an IQ of 70.

127 FRED AVERA, POLK CO. DISTRICT ATTORNEY: Testifies in favor of SB 640 .

150 REP. TIERNAN: There are protections in the law now. This bill will clean it up procedurally.

AVERA: Explains when the bill would take effect. It will be a rare case if it comes up, but should not ignore it.

168 JANNA STARR, THE ARC OF OREGON: Testifies and submits written testimony in support of SB 640. (EXHIBIT J)

201 JAMES TOEWS, MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES DIVISION: Testifies in support of SB 640.

238 HENRY BERSANI, OREGON HEALTH SCIENCES UNIVERSITY: Testifies and submits written testimony in support of SB 640. (EXHIBIT K)

314 BOB JOONDEPH, OREGON ADVOCACY CENTER: Submits and reviews written testimony in favor of SB 640. (EXHIBIT L)

370 MARC THOMAS, AREA COORDINATOR, AMNESTY INTERNATIONAL: Submits and reviews written testimony in favor of SB 640. (EXHIBIT M)

436 MYRON HALL, OREGON COALITION TO ABOLISH THE DEATH PENALTY: Submits and reviews written testimony in favor of SB 640. (EXHIBIT N)

440 DAVID FIDANQUE, EXECUTIVE DIRECTOR, ACLU OF OREGON: Testifies in support of SB 640.

445 REP. BROWN: Are any of the people on death row in Oregon mentally retarded?

REP. TARNO: They are not.

FIDANQUE: None currently on death row or in process that fit that definition.

HALL: Oregon Catholic Conference supports the bill.

473 PENN: Testifies in favor of SB 640.

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037 HOLLY ROBINSON, COMMITTEE COUNSEL: Why couldn't you require a new subsection that would say that the judge's finding has to be the sentence rather than making it a criteria?

PENN: As long it is a part of the legal test, that was our concern.

050 CHAIR TIERNAN: Adjourns meeting at 5:05 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - HB 2412 - Committee Counsel - 8 pages B - Statutes relevant to SB 833 - Rep. Kevin Mannix - 3 pages C - Proposed amendments to SB 680 - Sen. Grattan Kerans - 1 page D - Hand-engrossed SB 833 - Rep. Kevin Mannix - 8 pages E - Proposed amendments to SB 833 - Rep. Kevin Mannix - 1 page F - Testimony on SB 833 - Oregon Medical Assoc. - 1 page G - Testimony on SB 833 - Oregon Commission for Women - 1 page H - Testimony on SB 680 - Oregon Coalition to Abolish the Death Penalty - 25 pages I - Testimony on SB 640 - Dale Penn, Marion Co. District Attorney - 1 page J - Testimony on SB 640 - Arc of Oregon - 15 pages K - Testimony on SB 640 - American Association on Mental Retardation - 2 pages L - Testimony on SB 640 - Oregon Advocacy Center - 1 page M - Testimony on SB 640 - Amnesty International - 1 page N - Testimony on SB 640 - Oregon Coalition to Abolish the Death Penalty - 2 pages