

HOUSE JUDICIARY SUBCOMMITTEE
ON CRIMINAL LAW

June 07, 2005 Hearing Room 357

8:30 A.M. Tapes 72 - 73

Corrected 10/12/05

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

SB 287 A – Public Hearing and Work Session

SB 57 – Public Hearing and Work Session

SB 61 A – Public Hearing

SB 62 – Public Hearing

SB 63 – Public Hearing and Work Session

SB 258 – Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 72, A

004 Chair Barker Calls the meeting to order at 8:38 a.m. Opens a work session on SB 287 A.

SB 287 A – PUBLIC HEARING

010 Sen. Vicki Walker Senate District 7. Invites staff to introduce the bill.

015 Bill Taylor Counsel. Provides background on SB 287 A, which creates exceptions to prohibition on use of hearsay as evidence.

024 Sen. Walker Addresses evidence law and relates discussion in Senate Judiciary regarding SB 287 A. Testifies in support of the bill.

065 Tim Sylwester Department of Justice. Explains background on SB 287 A and why it is necessary. Testifies in support of the bill.

115 Sylwester Continues testimony on evidence law, and forfeiture by wrongdoing.

157 Sybil Hebb Oregon Law Center. Submits written testimony (**EXHIBIT A**) and testifies in support of SB 287 A.

190 Chair Barker Inquires if SB 287 A would apply to cases of battery.

201 Sylwester Explains that this statute would apply only if the witness is truly unavailable, not only unwilling.

218 Taylor Inquires if a threat by the batterer would apply.

223 Sylwester States that intimidation or harassment would not necessarily be a basis for admission under the definition of “unavailable” in evidence code.

248 Rep. Macpherson Addresses the two rules set out in the bill regarding element of intent, and inquires for background on wrongful conduct.

263	Sylwester	Provides background on intention in wrongful conduct, and offers an example.
296	Rep. Macpherson	Inquires if example given would be considered wrongful conduct.
305	Sylwester	Responds that an intention to obstruct justice by making a crucial witness unavailable at a trial is wrongful conduct, though it may not be criminal conduct.
344	Rep. Macpherson	Comments that wrongfulness of conduct could be the intent to affect the outcome of a course of litigation, not necessarily criminal conduct.
354	Sylwester	Offers an alternative example to clarify.
376	Anne Munsey	Office of Public Defense Services. Submits written testimony (EXHIBIT B) and testifies as neutral on SB 287 A. Addresses wrongful conduct that is not criminal, and a high burden of proof.

TAPE 73, A

048	Munsey	Continues discussing existing evidence code, and the goal of SB 287 A.
056	Chair Barker	States that legislative intent should be clear.
062	Ed Johnston	Lincoln County. Expresses opposition to SB 287 A.
107	Chair Barker	Closes public hearing and opens a work session on SB 287 A.

SB 287 A – WORK SESSION

110	Rep. Olson	MOTION: Moves SB 287A to the full committee with a DO PASS recommendation.
		VOTE: 4-0-0
		AYE: In a roll call vote, all members present vote Aye.
112	Chair Barker	The motion CARRIES.

REP. MACPHERSON will lead discussion in the full committee.

118	Chair Barker	Closes work session on SB 287 A. Opens a work session on SB 57, which authorizes Department of Public Safety Standards and Training to establish fees and guidelines for use of facilities of training academy operated by department and for certain training provided by department.
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SB 57 – PUBLIC HEARING

122	John Minnis	Director, Department of Public Safety Standards and Training (DPSST). Submits written testimony on SB 57 (EXHIBIT C) and testifies in support of SB 57.
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146	Chair Barker	Inquires if SB 57 codifies what DPSST is already doing.
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149	Minnis	Responds affirmatively.
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160	Chair Barker	Closes public hearing and opens a work session on SB 57.
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SB 57 – WORK SESSION

161	Rep. Macpherson	MOTION: Moves SB 57 to the full committee with a DO PASS recommendation.
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VOTE: 4-0-0

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

162	Chair Barker	The motion CARRIES.
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REP. BARKER will lead discussion in the full committee.

163	Chair Barker	Closes work session on SB 57. Opens a public hearing on SB 61 A, which modifies provisions relating to private security providers.
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SB 61 A – PUBLIC HEARING

165	John Minnis	Director, Department of Public Safety Standards and Training (DPSST). Submits written testimony (EXHIBIT D) and testifies in support of SB 61 A.
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172	Harold Burke-Sivers	Board on Public Safety Standards and Training. Testifies in support of SB 61 A.
206	Chair Barker	Inquires about process of training and evaluation.
212	Burke-Sivers	Explains that an in-house program for certification may be accredited if it meets statutory requirements.
221	Rep. Thatcher	Inquires about someone observing unlawful activity.
228	Burke-Sivers	States that the primary responsibility of the person must be providing security services.
248	Minnis	Adds that it must be employment related.
251	Rep. Thatcher	Inquires when a person must be certified and when they need not be.
255	Minnis	Explains situations where a person would need to be certified.
272	Burke-Sivers	States that if someone is doing a favor to provide security, they would not need to be certified.
280	Rep. Thatcher	Inquires about the purpose to certify all security officers.
292	Minnis	Provides background on the need to have security officers certified.
350	Bill Taylor	Counsel. Provides definition of primary responsibility.
394	Rep. Thatcher	States that her business has security monitoring, and she has hired a company to observe the monitor. Inquires if they would have to be certified.
406	Minnis	Inquires how long the period of time is that they monitor the screens.
408	Rep. Thatcher	Responds weeks at a time.
409	Minnis	Replies that they may need to be certified and explains how the issue is enforced.

TAPE 72, B

004	Brian Henson	DPSST. States that many private security companies already have certified security officers.
011	Rep. Macpherson	Comments on the significant expansion of the current scope of requirements for certification.
032	Minnis	Admits possibility that the statute could be interpreted very broadly. Addresses issue, and is unsure how to narrow the language.
067	Taylor	Comments on issue of crafting a bill where the exception is not broader than the provision. Describes application of statute.
088	Burke-Sivers	Explains the exception for crowd control individuals.
115	Minnis	Offers an example.
119	Chair Barker	Inquires about hiring someone to guard logging equipment.
125	Minnis	Responds that the person should be certified.
132	Rep. Thatcher	Inquires about a flagger.
136	Burke-Sivers	Reiterates that the statute will apply to those whose primary function is providing security services.
144	Chair Barker	States intent to hold off on the work session.
149	Minnis	Comments on the necessity of training those who provide private security services.
177	Burke-Sivers	States that this language has been in statute since 1995, and relates that the intent of SB 61 A is to consolidate language.
193	Julie Brandis	Associated Oregon Industries. Testifies in support of SB 61 A, as it allows retailers to self-regulate.

219	Chair Barker	States that the bill is nearly ready.
224	Ed Johnston	Lincoln County. Testifies in opposition to SB 61 A.
239	Chair Barker	Closes public hearing on SB 61 A. Opens a public hearing on SB 62, which authorizes Department of Public Safety Standards and Training to provides grants to private entities for certain purposes.

SB 62 – PUBLIC HEARING

242	John Minnis	Director, Department of Public Safety Standards and Training (DPSST). Submits written testimony (EXHIBIT E) and testifies in support of SB 62. Introduces -1 amendments (EXHIBIT F).
357	Chair Barker	Inquires whether the ability to use an National Crime Information Center (NCIC) check would save some money.
364	Minnis	States that the NCIC check would help substantially by allowing DPSST to receive information from other states and pursue an investigation.
370	Chair Barker	Comments on the need to think ahead. Inquires what would prevent someone from allowing nepotism, or similar with friends.
383	Minnis	Responds that Oregon does not have a nepotism prevention law, but believes that if incidences were found out it would be looked upon unfavorably. Addresses desire of public safety to expect a higher level of professionalism and ethical behavior.

TAPE 73, B

020	Chair Barker	Hopes there are administrative rules to address the issue.
025	Minnis	States that paying a family member or friend to be a speaker in DPSST trainings would be unacceptable.
031	Bob Wolfe	Polk County Sheriff, Vice-Chair, Board of Public Safety Standards and Training. Testifies in support of SB 62 with the -1 amendments.
040	Bill Taylor	

Counsel. Describes the -1 amendment to SB 62. Relates that there is a conflict amendment being drafted.

049	Rep. Macpherson	Inquires about the definition of a fire service professional.
058	Eriks Gabliks	Deputy Director, DPSST. Defines fire service professional.
070	Rep. Macpherson	Inquires about individuals doing controlled burning in a private setting.
075	Gabliks	Addresses private fire departments and private individuals who do controlled burning. States that municipal type fire services are included.
083	Minnis	Adds that fire service certification is voluntary, and is not mandated under Oregon Law. Once certified they would come under the law.
086	Rep. Thatcher	Inquires about the -1 amendments and automatic suspension of certification for a Measure 11 offense.
095	Minnis	Responds affirmatively. States that policy committee suggests a higher level of professionalism, which includes suspending certification of someone who has served a Measure 11 sentence.
102	Rep. Thatcher	Expresses concerns for those who are convicted and cannot work.
112	Minnis	Confirms that one could not be certified if they had committed a Measure 11 offense.
117	Chair Barker	Closes public hearing on SB 62. Opens public hearing on SB 63, which authorizes Department of Public Safety Standards and Training to deny application for training as public safety officer.

SB 63 – PUBLIC HEARING

120	John Minnis	Director, Department of Public Safety Standards and Training (DPSST). Submits written testimony (EXHIBIT G) and testifies in support of SB 63.
151	Marilyn Lorance	DPSST. Explains procedure for re-application for certification.

179	Rep. Thatcher	Inquires about exceptions through administrative rule.
181	Lorance	States that some offenses require mandatory revocation, but there are other categories for which revocation is discretionary.
189	Minnis	Provides some history of activities that should preclude certification. Confirms that administrative rule can provide exceptions.
203	Chair Barker	Closes public hearing and opens a work session on SB 63.

SB 63 – WORK SESSION

205	Rep. Thatcher	MOTION: Moves SB 63 to the full committee with a DO PASS recommendation.
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VOTE: 4-0-0

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

209	Chair Barker	The motion CARRIES. REP. OLSON will lead discussion in the full committee.
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210	Chair Barker	Closes work session SB 63. Opens a public hearing on SB 258, which provides that person in criminal action involving only violations is not entitled to appointed counsel at state expense or to have transcript provided at state expense.
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SB 258 – PUBLIC HEARING

220	Peter Gartlan	Chief Defender. Submits written testimony (EXHIBIT H) and testifies in support of SB 258.
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240	Ed Johnston	Lincoln County. Testifies in opposition to SB 258.
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258	Chair Barker	Clarifies that a violation offers no possibility of jail time. Closes public hearing and opens a work session on SB 258.
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SB 258 – WORK SESSION

267	Rep. Olson	MOTION: Moves SB 258 to the full committee with a DO PASS recommendation.
		VOTE: 4-0-0
		AYE: In a roll call vote, all members present vote Aye.
269	Chair Barker	The motion CARRIES.
		REP. OLSON will lead discussion in the full committee.
271	Chair Barker	Closes work session on SB 258. Adjourns the meeting at 10:20 a.m.

EXHIBIT SUMMARY

- A. SB 287 A, written testimony, Sybil Hebb, 1 p
- B. SB 287 A, written testimony, Anne Munsey, 1 p
- C. SB 57, written testimony, John Minnis, 1 p
- D. SB 61 A, written testimony, John Minnis, 2 pp
- E. SB 62, written testimony, John Minnis, 1 p
- F. SB 62, -1 amendments, John Minnis, 7 pp
- G. SB 63 A, written testimony, John Minnis, 2 pp
- H. SB 258, written testimony, Peter Gartlan, 1 p