

## SENATE COMMITTEE ON JUDICIARY

January 26, 2001  
1:00 P.M.

Hearing Room 343  
Tape 11-13

**MEMBERS PRESENT:**     **Sen. John Minnis, Chair**  
                                  **Sen. Peter Courtney, Vice Chair**  
                                  **Sen. Roger Beyer**  
                                  **Sen. Ginny Burdick**  
                                  **Sen. Verne Duncan**  
                                  **Sen. Steve Harper**  
                                  **Sen. Rick Metsger**

**STAFF PRESENT:**       **Craig Prins, Counsel**  
                                  **Annola DeJong, Administrative Support**

**MEASURE/ISSUES HEARD:**     **Introduction of LC Draft 2727**  
                                  **SB 289 Public Hearing and Work Session**  
                                  **SB 290 Public Hearing**  
                                  **SB 365 Public Hearing**  
                                  **SB 366 Public Hearing**  
                                  **SB 318 Public Hearing**  
                                  **SB 321 Public Hearing**

---

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.

---

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 11, A</b>		
004	Vice Chair Courtney	Calls the meeting to order at 1:01 p.m. and opens a public hearing on SB 289.
<b>SB 289 – PUBLIC HEARING</b>		
013	<b>Dianne Middle</b>	<b>Director, Department of Public Safety Standards and Training (DPSST)</b>  Submits testimony and testifies in support of SB 289 relating to honoring public safety personnel killed in the line of duty at the memorial in Monmouth ( <b>EXHIBIT A</b> ).
034	Vice Chair Courtney	Closes public hearing on SB 289 and opens a work session.
<b>SB 289 – WORK SESSION</b>		
040	<b>Sen. Duncan</b>	<b>MOTION: Moves SB 289 to the floor with a DO PASS recommendation.</b> <b>VOTE: 4-0-3</b> <b>EXCUSED: 3 - Minnis, Metsger, Burdick</b>
042	<b>Vice Chair Courtney</b>	<b>Hearing no objection, declares the motion CARRIED.</b> <b>SEN. DUNCAN will lead discussion on the floor.</b>
043	Vice Chair Courtney	Closes the work session on SB 289 and opens a public hearing on SB 290.

**SB 290 – PUBLIC HEARING**

050	<b>Diane Middle</b>	<b>Director, Department of Public Safety Standards and Training (DPSST)</b> Submits testimony and testifies in support of SB 290 relating to DPSST having discretion to deny certification to certain public safety officers convicted of possession of less than one ounce of marijuana, and requires DPSST to deny or revoke certification of a public safety officer convicted of several additional crimes <b>(EXHIBIT B)</b> .
083	<b>Rick Lewis</b>	<b>Chief of Police, Silverton, OR</b> States that he served on a subcommittee that reviewed the proposed list of criminal disqualifiers. Mentions that the Oregon Association Chief’s of Police and the Oregon Sheriff’s Association were surveyed for input. Recommends a “do pass” on SB 290.
096	Sen. Duncan	Inquires about ORS 167.820 - Concealing birth of infant. Asks for further explanation.
101	Middle	Explains that if a person were convicted of that particular crime they would be disqualified from being a police officer.
108	Sen. Beyer	Notes that the crime of identity theft is not on this list and wonders if that was an oversight, or is it included in another statute.
114	Middle	Acknowledges that it may be an oversight. Comments that the committee looked at the items that had to do with a persons character and “their propensity to falsify or lie.” Says that she will double check on the possible oversight..
123	Sen. Harper	Asks what the current law is on possession of less than one ounce of marijuana.
130	Middle	Responds that “it is a violation.”
133	Sen. Harper	Inquires about the penalties for a violation.
134	Counsel Prins	Explains that a violation is an offense that is punishable by a fine only, not imprisonment.
154	<b>Brian DeLashmutt</b>	<b>Oregon Council of Police Associations (OCPA), and Association of Corrections Employees.</b> Submits testimony and testifies in opposition to SB 290 <b>(EXHIBIT C)</b> .
236	Middle	Mentions that the items included on this list are not in statute because they are not mandatory disqualifiers. Notes that the DPSST is proposing to have them increased to mandatory. Says that the DPSST would like to change the possession of less than one ounce of marijuana to a discretionary disqualifier.
270	<b>Mary Botkin</b>	<b>American Federation of State, County and Municipal Employees.</b> Testifies in opposition to SB 290 and encourages the committee to go “very, very slow in granting this authority.”
392	Chair Minnis	Explains his view concerning standards for professional conduct of persons in public safety. Asserts that Oregon should have the highest level and advises the committee to “pay attention to these issues.” Emphasizes the importance of the message sent to the public “with respect to what our law enforcement, public safety community looks like.”
451	Sen. Metsger	Recommends further review of the proposed additions to better

480	Vice Chair Courtney	understand “why they should be added to this list.”
502	Sen. Minnis	Closes the public hearing on SB 290. <b>MOTION: Moves to SUSPEND the rules for the purpose of allowing Sen. Burdick, Sen. Metsger and Sen. Minnis to vote on SB 289.</b>
513	Vice Chair Courtney	<b>VOTE: 7-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
513		<b>Sen. Burdick, Sen. Metsger and Sen. Minnis all vote Aye.</b>
TAPE 12, A		
053	Chair Minnis	Opens a public hearing on SB 365.
<b>SB 365 – PUBLIC HEARING</b>		
057	Diane Middle	<b>Director, Department of Public Safety Standards and Training (DPSST)</b> Submits testimony and testifies in support of SB 365 relating to authorizing DPSST to take title to real property. States that all SB 365 does is provide DPSST with the authority to purchase property in the event that property is located. Mentions that there is no funding included in SB 365 ( <b>EXHIBIT D</b> ).
094	Sen. Beyer	Suggests examining how all state agencies acquire property-if the procedures are the same. Recommends making a “standard process for all agencies.”
109	Vice Chair Courtney	Notes that DPSST leases the on-campus facilities from Western Oregon University. Wonders why the Department of Administrative Services is not in charge of purchasing the property for DPSST.
135	<b>Bill Foster</b>	<b>Department of Administrative Services Facilities Division (DAS)</b> Explains that DAS and DPSST would work jointly on the acquisition of property, but the management of the facility would be the responsibility of DPSST.
149	Sen. Beyer	Asks if DAS has ever considered a “standard process” for state agencies.
156	Foster	Responds that in the statutes there are various state agencies that can own property and some that cannot. Mentions that “particular issues” have been addressed through the statute process, yet making the process “more uniform” is a question that DAS has not “given a whole lot of thought” to.
176	Vice Chair Courtney	Asks who else could own the property.
180	Foster	Comments that without checking the statutes, DAS really cannot answer that.
187	Chair Minnis	Inquires why all property owned by state agencies is not titled by the State of Oregon.
189	Foster	Answers that essentially they are.
192	<b>Bill Nickelberry</b>	<b>Real Property Services Manager, Department of Administrative Services</b> Agrees with Mr. Foster’s response. Points out that it could be problematic if everything was titled ‘State of Oregon’ in county records.
201	Chair Minnis	Asks if DAS would know who owns the property.
202	Nickelberry	Relates that DAS might know what state agencies own property in a particular county. Contends that there could be a “little

		parcel” somewhere that just says the State of Oregon’ and DAS would not know who owns it.
209	Chair Minnis	Wonders if there is a “master list” of all property owned by the state.
210	Sen. Duncan	Mentions that the Division of State Lands might have been working on putting this information on the computer.
215	Nickelberry	Clarifies that there is an inventory that shows DAS which state agencies own property, and how much they own in all Oregon counties. Mentions that at least 21 agencies have authority to own land, and some agencies may have “thousands of records of property” which might not be included in the inventory.
233	Vice Chair Courtney	States that there is “powerful language” in SB 365 and quotes line 6, section 2 on page 1.
258	Foster	Suggests that DAS would be open to narrowing the language in SB 365 to put the “focus on the facility in question.”
282	Sen. Beyer	Agrees with Sen. Courtney.
295	Sen. Duncan	Inquires about the Fairview site-who owns, or has title to that property.
300	Nickelberry	Responds that DAS has the title. Explains how property is owned by the state but allocated through different divisions. Asserts that if DPSST takes title to property, they still have to follow the guidelines in ORS 270.
362	Sen. Duncan	Proposes that the committee push for a system to identify the property owner, who has title and who is in authority.
391	Chair Minnis	Says that the co-chairs of Ways and Means, along with leadership, should be included in any discussions about what direction to take on this matter. Articulates the need for an on-going and current inventory of properties and their values. Expresses concern that there is no reference to ORS 270 or DAS in SB 365.
424	Vice Chair Courtney	Verifies that DPSST does not receive general funds, and that might be one of the considerations behind the language in SB 365.
442	Sen. Metsger	Inquires about line 7 and 8 on page 1 and asks for an explanation.
449	Middle	Responds that she is not able to provide an explanation now, but will get one.
466	Sen. Metsger	Mentions that it sounds like DPSST would make their own rules to sell the property once given the authority to buy it.
486	Chair Minnis	States that SB 365 needs some restructuring.
493	Middle	Offers to make amendments that will address the “concerns raised today.”
503	Chair Minnis	Closes the public hearing on SB 365 and opens a public hearing on SB 366.

**TAPE 11, B**

**SB 366 – PUBLIC HEARING**

034 **Diane Middle**

**Director, Department of Public Safety Standards and Training (DPSST)**

Submits testimony and testifies in support of SB 366 relating to expanding the group of people eligible to receive benefits from the Public Safety Memorial Fund to include a public safety officer who has a job-related permanent total disability. Proposes two amendments to SB 366: The first is intended to eliminate double health and dental coverage. The second is

intended to allow public safety officers to designate multiple family members as eligible for a portion of the total benefits **(EXHIBITS E)**.

093 Chair Minnis Asks if the amendments have been drafted by Legislative Counsel.

096 Middle Comments that they have not been through Legislative Counsel and requests that they be added.

098 Lewis Testifies in support of adding the proposed amendments to SB 366.

137 Vice Chair Courtney Inquires about who is included in the definition of public safety officer.

141 Middle Mentions several positions. Points out the memorial fund was created for people “who were killed in the line of duty...not while on duty.” States that telecommunicators and people in private security are excluded.

162 Vice Chair Courtney Clarifies that everyone DPSST trains is included.

166 Middle Agrees with Sen. Courtney, emphasizing the two exceptions.

168 Courtney Asks if park rangers are included.

169 Middle Responds that she would need to refer to the statute to see if they “fit the definition” of police officer by the duties they are doing.

174 Chair Minnis Inquires about where the memorial fund money comes from.

175 Middle Replies “criminal fines and assessment account...it is unitary assessment.”

177 **Brian DeLashmutt** **Oregon Council of Police Associations, Oregon Corrections Employee Association, Oregon Federation of Parole and Probation Officers**

Testifies in support of SB 366.

182 Chair Minnis Asks for an example of circumstances in which the memorial fund would pay a benefit.

188 Lewis Describes a “line of duty death” where a public safety officer is responding to, or otherwise directly involved with an emergency while either on or off duty.

195 Chair Minnis Asks about circumstances where disabilities would not be covered by workers compensation.

201 Lewis Contends that this is a “difficult issue”.

209 DeLashmutt Provides additional response to Chair Minnis’ previous question.

218 Chair Minnis Asks if the fund is set up to accept donations.

219 Middle Replies that it is.

221 Chair Minnis Inquires if contributions have been received.

222 Middle Says they have.

223 Chair Minnis Closes the public hearing on SB 366 and opens a public hearing on SB 318.

**SB 318 – PUBLIC HEARING**

233 **David Hooper**

**Public Affairs Manager, Oregon State Lottery (OSL)**

Submits testimony and testifies in support of SB 318 relating to creating a defense to the crime of possession of gambling records in the 2<sup>nd</sup> degree **(EXHIBIT F)**.

303 Chair Minnis Wonders why the OSL is creating a defense vs. making the existing statute “not apply.”

309 Hooper Replies that, on the advice of the Department of Justice and the Oregon State Police, amending the sections dealing with possession of gambling records might encourage people to resell out-of-state tickets.

316	Chair Minnis	Notes that someone who goes to another state and purchases tickets and then resells them “that would not be solely in the defendant’s capacity as a player.”
324	Hooper	Explains that SB 318 clearly provides for that defense.
331	Sen. Harper	Asks who informed OSL that this was a problem.
332	Hooper	Responds it was the Department of Justice. Explains how under the current statute it is not just OSL employees and their families who are affected, it applies to every citizen of Oregon.
357	Sen. Harper	Inquires if anyone has ever been prosecuted for possessing an out of state lottery ticket.
359	Hooper	States that to the best of his knowledge no one has.
366	Sen. Beyer	Raises the question about an in-laws ability to play the lottery.
374	Hooper	Reports that, for example, a brother-in-law of an employee’s sister “would not, by law” be prohibited from playing.
394	Chair Minnis	States that he believes the DOJ is wrong, and the committee should simply state that it does not apply under “certain circumstances.”
401	Hooper	Mentions that the Oregon State Police and DOJ advised making it a defense.
413	Chair Minnis	Suggests a representative from the DOJ should present the “compelling reasons” why the committee should not follow his proposal.
418	Hooper	Offers to make the arrangements.
452	Chair Minnis	Closes the public hearing on SB 318 and opens a public hearing on SB 321.

**SB 321 – PUBLIC HEARING**  
**TAPE 12, B**

035	<b>Troy Costales</b>	<b>Manager, Transportation and Safety Division, Oregon Department of Transportation (ODOT)</b> Submits testimony and testifies in support of SB 321 which would increase punishment for recklessly endangering another person if the offense involves operation of a motor vehicle while under the influence of intoxicants and the victim is under 16 years of age and passenger in the vehicle ( <b>EXHIBIT G</b> ).
064	<b>Gretchen McKenzie</b>	<b>Legislative Analyst, Governor’s Advisory Committee on Driving Under the Influence of Intoxicants</b> Submits testimony and testifies in support of SB 321( <b>EXHIBIT H</b> ).
077		Presentation of ODOT video ( <b>EXHIBIT I</b> ).
086	<b>Vinita Howard</b>	<b>Member, Governor’s Advisory Committee on DUII</b> Submits testimony and testifies in support of SB 321 ( <b>EXHIBIT J &amp; K</b> ).
123	Sen. Burdick	Notes that .08 is the level at which someone is considered legally drunk under current statute. Inquires if that level would still be recognized under SB 321.
129	Howard	Responds “.08 or more.”
133	Sen. Beyer	Clarifies if someone were at .08, that would be enough to convict under SB 321.
135	Howard	Responds that Sen. Burdick is correct.
136	Sen. Harper	Asks what the current law is regarding this issue.
137	Counsel Prins	Explains that reckless endangerment is a Class A misdemeanor, and would apply in the same situation as SB 321. Points out that in SB 321 the State would have to prove a reckless state of mind

and that the driver was DUII.

179 Sen. Burdick Wonders if, under current law, refusal to blow is considered “a presumption that they are intoxicated.”

184 Counsel Prins Answers that refusal to blow “is not a presumption” of intoxication. Mentions that a prosecutor is allowed to introduce the refusal as evidence.

198 Sen. Burdick Clarifies her understanding of what SB 321 would accomplish.  
201 Chair Minnis Disagrees with Sen. Burdick’s perception, and describes his own comprehension of SB 321.

209 Counsel Prins Explains the change to the law that would be affected is “proving the elements of driving under the influence.”

235 Chair Minnis Points out that someone could be convicted for reckless endangerment but not DUII.

247 Counsel Prins Confirms this could certainly happen.  
269 Sen. Burdick Comments that there could be “unintended consequences” if a person is charged with reckless endangerment and not DUII.

277 Counsel Prins States it is unlikely that a prosecutor would omit a DUII charge, however the charges on an indictment are at their discretion.

291 Sen. Burdick Asks why the sponsors of SB 321 went with the reckless endangerment statute vs. a sentence enhancer to the DUII statute.

303 Howard Reports that a driver convicted of reckless endangerment is reported to the Department of Motor Vehicles and the conviction does go on their record.

325 Sen. Metsger Asks to verify his understanding of circumstances in which a reckless endangerment charge would apply.

337 Counsel Prins Describes a primary difference between the charge of DUII and the charge of reckless endangerment.

356 Sen. Metsger Wonders if a Class C felony is a mandatory charge when these circumstances are present.

364 Counsel Prins Responds there is a statute that provides for a lesser charge.  
375 Sen. Metsger Remarks that the penalty may not be appropriate for a first-time offender vs. someone with a record.

414 Chair Minnis Inquires if simply driving under the influence is conduct that creates substantial risk. Suggests that there should be an “articulation of conduct,” i.g. crash their car.

454 Howard Points out that erratic driving does not always mean the person is DUII.

**TAPE 13, A**

011 Chair Minnis Agrees with Ms. Howard. Asks if this would be enough to establish a case of reckless endangerment that is a Class C felony.

036 Howard Replies passage of SB 321 would “send a message” that it is not acceptable to put a child at risk in a vehicle if the driver has been drinking.

043 Chair Minnis States his understanding of the potential penalty for SB 321.  
049 Howard Agrees.  
048 Sen. Burdick Asks to verify what criteria the advisory committee had in mind for proving reckless endangerment.

061 Costales Replies the committee wants to correct the situation of minors riding with intoxicated drivers.

071 Sen. Burdick Clarifies that she is referring to “the burden of proof” associated with establishing a case for reckless endangerment.

075 Costales Answers that the committee realized this and chose to go with “what you see before you.”

077	Sen. Metsger	Suggests again that an exception might be made for first-time offenders, i.e. minors. Expresses concern about charging a youth with a Class C felony.
099	Chair Minnis	Closes the public hearing on SB 321.
104	Counsel Prins	Introduces LC Draft 2727, relating to courts ( <b>EXHIBIT L</b> ).
109	Sen. Courtney	<b>MOTION: Moves LC 2727 BE INTRODUCED as a committee bill.</b>
		<b>VOTE: 6-0-1</b>
		<b>EXCUSED: 1 - Sen. Metsger</b>
110	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
112	Minnis	Adjourns the meeting at 2:55 p.m.

Submitted By,

Reviewed By,

Annola DeJong,  
Administrative Support

Craig Prins,  
Counsel

### **EXHIBIT SUMMARY**

**A – SB 289, written testimony submitted by Dianne Middle, Department of Public Safety Standards and Training, dated 1/26/01, 1 p.**

**B – SB 290, written testimony submitted by Dianne Middle, Department of Public Safety Standards and Training, dated 1/26/01, 2 pp.**

**C – SB 290, written testimony of Gary Harkins, AOCE, submitted by Brian DeLashmutt, dated 1/26/01, 2 pp.**

**D – SB 365, written testimony submitted by Dianne Middle, Department of Public Safety Standards and Training, dated 1/26/01, 1 p.**

**E – SB 366, written testimony submitted by Dianne Middle, Department of Public Safety Standards and Training, dated 1/26/01, 2 pp.**

**F – SB 318, written testimony submitted by David Hooper, Oregon State Lottery, dated 1/26/01, 1 p.**

**G – SB 321, written testimony submitted by Troy Costales, Oregon Department of Transportation, dated 1/26/01, 1 p.**

**H – SB 321, written testimony submitted by Gretchen McKenzie, Governor’s Advisory Committee on DUII, dated 1/26/01, 1 p.**

**I – SB 321, video submitted by Troy Costales, Oregon Department of Transportation.**

**J – SB 321, written testimony submitted by Vinita Howard, Governor’s Advisory Committee on DUII, dated 1/26/01, 1 p.**

**K – SB 321, articles relating to drunk driving submitted by Vinita Howard, Governor’s Advisory Committee on DUII, 10 pp.**

**L – LC Draft 2727, submitted by staff, dated 1/22/01, 1 p.**