

# House Bill 2854

Sponsored by Representative BARKER; Representative SCHAUFLEER, Senator PROZANSKI (at the request of Oregon Council of Police Associations)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

- Permits disciplinary action against public safety officer only for just cause.
- Establishes protections and procedures for investigating, interrogating and disciplining public safety officers.
- Protects political activity by public safety officer.
- Permits public safety officer to serve on district school board.
- Protects public safety officer from search of locker or assigned storage space.
- Provides remedies.

## A BILL FOR AN ACT

1  
2 Relating to public safety officers; creating new provisions; amending ORS 236.350 and 236.370; and  
3 repealing ORS 236.360.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 236.350 is amended to read:

6 236.350. As used in ORS 236.350 to 236.370:

7 [(1) "Police officer" means an officer or member of a law enforcement unit who is employed full-time  
8 as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian  
9 reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery  
10 Commission or the Governor and who is responsible for enforcing the criminal laws of this state or  
11 laws or ordinances relating to airport security.]

12 [(2)] (1) "Disciplinary action" means any action taken against a [*police officer*] **public safety**  
13 **officer** by a public employer for the purpose of punishing the officer, including dismissal, demotion,  
14 suspension without pay, reduction in salary, **reduction in rank**, written reprimand or transfer.

15 [(3)] (2) "Just cause" means [*a cause reasonably related to the employee's ability to perform re-*  
16 *quired work. The term includes any willful violation of reasonable work rules, regulations or written*  
17 *policies.*] **that:**

18 (a) **The employee is on notice of the possible or probable consequences of the employee's**  
19 **conduct;**

20 (b) **The public employer's rules and orders are reasonably related to the employer's**  
21 **business;**

22 (c) **The public employer has conducted a full and fair investigation;**

23 (d) **There is substantial evidence that misconduct occurred;**

24 (e) **The public employer has applied its rules, orders and penalties evenhandedly and**  
25 **without discrimination; and**

26 (f) **The degree of discipline administered is reasonably related to the seriousness of the**  
27 **proven offense and the employee's record of service with the public employer.**

28 (3) **"Public safety officer" means an officer employed full-time by a law enforcement unit**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 as defined in ORS 181.610 in a position required to be certified under ORS 181.652, 181.653 or  
 2 181.665.

3 **SECTION 2.** Sections 3 to 12 of this 2007 Act are added to and made a part of ORS 236.350  
 4 to 236.370.

5 **SECTION 3.** The Legislative Assembly finds that the rights and protections provided to  
 6 public safety officers under ORS 236.350 to 236.370 constitute a matter of statewide concern.  
 7 The Legislative Assembly further finds that effective law enforcement depends upon the  
 8 maintenance of stable relations between public safety officers and their public employers.  
 9 To ensure that stable relations are continued throughout this state and that effective ser-  
 10 vices are provided to all people of this state, it is necessary that ORS 236.350 to 236.370 apply  
 11 to all public safety officers within this state.

12 **SECTION 4.** (1)(a) Except as otherwise provided by law and except when the public safety  
 13 officer is on duty or in uniform, a public safety officer may not be prohibited from engaging  
 14 in political activity.

15 (b) A public safety officer may not be required to engage in or be coerced into engaging  
 16 in political activity.

17 (2) A public safety officer may not be prohibited from seeking election to or serving as  
 18 a member of a district school board.

19 **SECTION 5.** (1) A public employer may subject a public safety officer to disciplinary  
 20 action only for just cause.

21 (2) A public safety officer may not be subjected to or threatened with disciplinary action  
 22 because of the lawful exercise of the rights granted under ORS 236.350 to 236.370 or under  
 23 any existing administrative grievance procedure.

24 (3) Nothing in this section precludes a public employer from ordering a public safety of-  
 25 ficer to cooperate with other agencies involved in criminal investigations, provided the public  
 26 safety officer is accorded immunity from criminal prosecution as required by law. If a public  
 27 safety officer fails to comply with such an order, the public employer may officially charge  
 28 the public safety officer with insubordination.

29 **SECTION 6.** (1) When a public safety officer is under investigation and subjected to in-  
 30 terrogation by the public safety officer's commanding officer or any employee or agent of the  
 31 public employer and the investigation could lead to disciplinary action, the interrogation shall  
 32 be conducted in accordance with this section.

33 (2) The interrogation shall be conducted at a reasonable hour, preferably when the public  
 34 safety officer is on duty or during the normal waking hours for the public safety officer,  
 35 unless the seriousness of the investigation requires otherwise. If the interrogation occurs  
 36 during the public safety officer's off-duty time, the public safety officer shall be compensated  
 37 for the off-duty time in accordance with the public employer's regular procedures. If the in-  
 38 terrogation is conducted when the public safety officer is on duty, the public safety officer  
 39 may not be disciplined for any missed work.

40 (3) Before the interrogation, the public employer shall notify the public safety officer of  
 41 the name, rank and command of the officer in charge of the interrogation, the interrogating  
 42 officers and all other persons to be present during the interrogation. All questions directed  
 43 to the public safety officer shall be asked by and through no more than two interrogators  
 44 at one time.

45 (4) The public employer shall inform the public safety officer of the nature of the inves-

1 tigation before any interrogation.

2 (5) The interrogation session may last for only a reasonable period, taking into consid-  
3 eration the gravity and complexity of the issue being investigated. The public employer shall  
4 allow the public safety officer to attend to the officer's personal physical needs.

5 (6) The public employer may not subject the public safety officer to offensive language  
6 or threaten the public safety officer with disciplinary action, except that the public employer  
7 shall inform a public safety officer who refuses to respond to questions or submit to the in-  
8 terrogation that failure to answer questions directly related to the investigation or interro-  
9 gation may result in disciplinary action. The public employer may not promise a reward to  
10 induce the public safety officer to answer any question.

11 (7) A statement made during an interrogation of a public safety officer that is made un-  
12 der duress, coercion or threat of disciplinary action is not admissible in any subsequent civil  
13 proceeding. However:

14 (a) This subsection does not limit the use of statements made by a public safety officer  
15 when the public employer is seeking civil sanctions against any public safety officer, includ-  
16 ing disciplinary action brought against the public safety officer making the statements.

17 (b) This subsection does not render statements made by a public safety officer inadmis-  
18 sible in any civil action, including any administrative action, that is brought by the public  
19 safety officer or the officer's representative and that arises out of a disciplinary action.

20 (c) This subsection does not prevent statements made by a public safety officer from  
21 being used to impeach the testimony of the public safety officer after an in camera review  
22 to determine whether the statements serve to impeach the testimony of the public safety  
23 officer.

24 (d) This subsection does not otherwise render inadmissible statements made by a public  
25 safety officer if the public safety officer is deceased when the statements are offered.

26 (8) A complete interrogation of a public safety officer may be recorded. When a recording  
27 is made, the public safety officer shall have access to the recording if any further pro-  
28 ceedings are contemplated or before any subsequent interrogation. The public safety officer  
29 is entitled to a transcribed copy of any notes made by a stenographer or to any reports or  
30 complaints made by investigators or other persons, except those that are deemed by the  
31 public employer to be confidential. Notes or reports that the public employer deems to be  
32 confidential may not be entered in the public safety officer's personnel file. The public safety  
33 officer may bring the public safety officer's own recording device and record any of the in-  
34 terrogation. The public safety officer's labor organization, if any, may obtain copies of ma-  
35 terials pertaining to the investigation.

36 (9) If before or during an interrogation the public employer determines that the public  
37 safety officer may be charged with a criminal offense, the public employer shall immediately  
38 inform the public safety officer of the officer's constitutional rights.

39 (10) Upon the filing of a formal written statement of charges, or when a public safety  
40 officer reasonably believes that an interrogation may result in disciplinary action against any  
41 public safety officer, the public safety officer has the right, upon request, to be represented  
42 by a person of the officer's choice. The representative may be present at all times during the  
43 interrogation. The representative may not be a person subject to the same investigation. The  
44 representative may not be required to disclose, or be subject to any disciplinary action for  
45 refusing to disclose, any information received from the public safety officer under investi-

1 **gation for noncriminal matters. This subsection does not apply to:**

2 (a) **An interrogation of a public safety officer in the normal course of duty, counseling,**  
 3 **instruction or informal verbal admonishment by, or other routine or unplanned contact with,**  
 4 **a supervisor or any other public safety officer; or**

5 (b) **An investigation concerned solely and directly with alleged criminal activities.**

6 (11) **A public employer may not loan or temporarily reassign a public safety officer to a**  
 7 **location or duty assignment if a public safety officer would not normally be sent to that lo-**  
 8 **cation or be given that duty assignment under similar circumstances.**

9 **SECTION 7. (1) A public employer may not cause a public safety officer who is under**  
 10 **investigation to be subjected to visits by the press or news media without the officer's ex-**  
 11 **press consent.**

12 (2) **A public employer may not give a public safety officer's home address or photograph**  
 13 **to the press or news media without the officer's express consent.**

14 **SECTION 8. (1) A public employer may not enter into the personnel file of a public safety**  
 15 **officer, or into any other file used for any personnel purposes by the public employer, any**  
 16 **comment adverse to the public safety officer's interest without the public safety officer first**  
 17 **having read and signed the document containing the adverse comment, indicating that the**  
 18 **public safety officer is aware of the comment. However, the public employer may enter the**  
 19 **comment into the file if, after reading the document, the public safety officer refuses to sign**  
 20 **the document. When a public safety officer refuses to sign a document containing an ad-**  
 21 **verse comment, the public employer shall note that fact on the document, with the signature**  
 22 **or initials of the person making the notation.**

23 (2) **A public safety officer may file a written response to any adverse comment entered**  
 24 **in the public safety officer's personnel file within 30 days after the entry. The written re-**  
 25 **sponse shall be attached to and accompany the adverse comment.**

26 **SECTION 9. A public safety officer may not be required or requested, for purposes of job**  
 27 **assignment or other personnel action, to disclose any information about the public safety**  
 28 **officer's property, income, assets, source of income, debts or personal or domestic expen-**  
 29 **ditures, including those of any member of the officer's family or household, unless the in-**  
 30 **formation:**

31 (1) **Is obtained or required under state law or through legal procedure;**

32 (2) **Tends to indicate a conflict of interest with respect to the performance of the public**  
 33 **safety officer's official duties; or**

34 (3) **Is necessary for the public employer to ascertain the desirability of assigning the**  
 35 **public safety officer to a specialized unit in which there is a strong possibility that bribes or**  
 36 **other improper inducements may be offered.**

37 **SECTION 10. (1) A public employer may not search a public safety officer's locker or**  
 38 **other assigned storage space except:**

39 (a) **In the officer's presence;**

40 (b) **With the officer's consent;**

41 (c) **When a search warrant has been obtained; or**

42 (d) **When the officer has been notified in advance that a search will be conducted.**

43 (2) **This section applies only to lockers or other storage spaces that are owned or leased**  
 44 **by the public employer.**

45 **SECTION 11. (1) It is unlawful for a public employer to deny or refuse to a public safety**

1 **officer the rights and protections provided by ORS 236.350 to 236.370.**

2 (2) **The circuit court has initial jurisdiction over any proceeding brought by a public**  
3 **safety officer against a public employer for an alleged violation of this section.**

4 (3) **When the court finds that a public employer has violated this section, the court shall**  
5 **award appropriate injunctive or other extraordinary relief to remedy the violation and pre-**  
6 **vent future violations of a like or similar nature, including but not limited to granting a**  
7 **temporary restraining order or a preliminary or permanent injunction prohibiting the public**  
8 **employer from taking any disciplinary action against the public safety officer.**

9 **SECTION 12. A public employer that has adopted, through action of its governing body**  
10 **or official designee, any procedure that at a minimum provides to public safety officers the**  
11 **same rights or protections as are provided under ORS 236.350 to 236.370 is not subject to ORS**  
12 **236.350 to 236.370 with regard to the procedure.**

13 **SECTION 13. ORS 236.370 is amended to read:**

14 236.370. ORS 236.350 to 236.370 do not apply to disciplinary action taken against [*police*] **public**  
15 **safety officers who are:**

16 (1) **In an initial probationary period of employment that does not exceed 12 months or in a**  
17 **probationary period under a collective bargaining agreement [*which*] **that** is in excess of 12 months;**  
18 **or**

19 [*(2) Under a collective bargaining agreement requiring just cause for disciplinary action;*]

20 [*(3) Under a county civil service system adopted pursuant to ORS 241.002 to 241.009;*]

21 [*(4) Under a county or municipal civil service system which provides police officers with discipli-*  
22 *nary action protections at least equivalent to those provided under ORS 236.350 and 236.360;*]

23 [*(5) (2) The chief executive officers of law enforcement units, as defined in ORS 181.610[; or]*]

24 [*(6) Supervisory employees, as defined under ORS 243.650, where a collective bargaining agreement*  
25 *is in effect with their public employer].*

26 **SECTION 14. ORS 236.360 is repealed.**

27 **SECTION 15. Sections 3 to 12 of this 2007 Act and the amendments to ORS 236.350 and**  
28 **236.370 by sections 1 and 13 of this 2007 Act do not apply to a collective bargaining agreement**  
29 **entered into before the effective date of this 2007 Act.**

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