

**Enrolled**  
**House Bill 2713**

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Council of Police Associations)

CHAPTER .....

AN ACT

Relating to public safety officers; creating new provisions; and amending ORS 236.350, 236.360, 236.370 and 652.750.

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

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

236.350. As used in ORS 236.350 to 236.370:

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

(2) "Just cause" means a cause reasonably related to the *[employee's]* **public safety officer's** ability to perform required work. The term includes *[any]* **a** willful violation of reasonable work rules, regulations or written policies.

(3) *["Police officer"]* **"Public safety officer"** means:

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

(b) **A corrections officer, a parole and probation officer or a youth correction officer as those terms are defined in ORS 181.610.**

**SECTION 2.** ORS 236.360 is amended to read:

236.360. (1) **Employers of public safety officers shall adopt written procedures to implement the provisions of ORS 236.350 to 236.370.**

(2) **Except as provided in subsection (3) of this section, the following safeguards apply when a public safety officer is under investigation concerning a matter that the officer reasonably believes may lead to economic sanctions or dismissal from employment and is subject to an interview by the officer's employer:**

(a) **Unless the seriousness of an investigation requires otherwise, the interview must be conducted when the public safety officer is on duty or during the officer's normal waking hours. If the interview is conducted when the public safety officer is off duty, the officer must be compensated appropriately.**

(b) **The public safety officer may have a representative of the officer's choosing present at the interview.**

(c) **No more than two interviewers at a time may question the public safety officer.**

(d) The interviewers shall inform the public safety officer of their authority to compel a statement and of the identity of the investigators and all persons present during the interview.

(e) The public safety officer is not required to answer questions until the officer has been informed of the nature of the investigation and of facts reasonably sufficient to inform the officer of the circumstances surrounding the allegations under investigation. This paragraph does not apply to preliminary questions directed at gaining a general overview of events in order to assess whether an inquiry is necessary and to effectively investigate and gather evidence.

(f) The interview may not last an unreasonable amount of time, taking into consideration the gravity and complexity of the matter under investigation.

(g) During the interview, the public safety officer must be allowed to attend to physical needs.

(h)(A) Except as provided in subparagraph (B) of this paragraph, the public safety officer being interviewed may not be threatened with punitive action or subjected to offensive language.

(B) In a compelled interview solely for noncriminal purposes, a public safety officer who refuses to respond to questions or to be interviewed must be informed that refusal may lead to disciplinary action.

(i)(A) The public safety officer may record the interview and must be given a copy of the tape or digital file of the interview and, upon request, a transcript of any recording that has been transcribed by the employer.

(B) The public safety officer must be given a copy of any written statement or report describing the officer's statements.

(C) Materials required to be given to the public safety officer under this paragraph must be given before subsequent interviews in the course of the same investigation.

(j) As soon as it is determined that the public safety officer may be charged with a criminal offense, the officer must be informed of the officer's right to consult with criminal defense counsel with respect to the criminal charge.

(k) In a disciplinary or administrative investigation, the public safety officer's chosen representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the officer to the representative for purposes of the representation.

(3) The safeguards provided in subsection (2) of this section do not apply to:

(a) The questioning of a public safety officer in the normal course of informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or other public safety officer; or

(b) An investigation concerned solely with alleged criminal activities.

*[(1)]* (4) *[No]* Disciplinary action *[shall]* may not be taken against a *[police]* public safety officer without just cause.

*[(2)]* (5) *[A public]* An employer that intends to take disciplinary action against a public safety officer shall:

(a) Notify the *[police]* officer in writing of the charges against the officer and the proposed disciplinary action; and

(b) Provide the *[police]* officer with an opportunity to respond to the charges at an informal hearing which may be recorded, with the person or persons having authority to impose the proposed disciplinary action.

*[(3)]* Public employers of police officers shall prepare and maintain written procedures to implement the provisions of ORS 236.350 to 236.370.]

(6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an employer shall complete its investigation into an allegation of misconduct by a public safety officer and provide notification under subsection (5)(a) of this section no later than six months from the

date of the first interview described in subsection (2) of this section. The employer may extend the investigation to a maximum of 12 months from the date of the first interview, provided that, before the extended period begins, the employer provides written notice explaining the reason for the extension to the officer and the officer's chosen representative and union representative, if any.

(b) The time limit provided in paragraph (a) of this subsection does not apply:

(A) If the investigation involves an officer who is incapacitated or unavailable.

(B) If the investigation involves an allegation of workers' compensation or disability fraud by the officer.

(C) If the officer waives the limit in a signed writing.

(D) If the investigation requires a reasonable extension of time for coordination with one or more other jurisdictions.

(E) If the investigation involves more than one officer and requires a reasonable extension of time.

(c) For the purposes of the time limit provided in paragraph (a) of this subsection:

(A) If the alleged misconduct is also the subject of a criminal investigation or criminal prosecution, time does not run for the period during which the criminal investigation or criminal prosecution is pending.

(B) If the investigation involves a matter in civil litigation in which the officer is a named defendant or the officer's actions are alleged to be a basis for liability, time does not run for the period during which the civil action is pending.

(C) If the investigation is the result of a complaint by a person charged with a crime, time does not run for the period during which the criminal matter is pending.

(7) An investigation may be reopened if:

(a) Significant new evidence is discovered that is likely to affect the outcome of the investigation; and

(b)(A) The evidence resulted from the public safety officer's predisciplinary response; or

(B) The evidence could not have been discovered by the employer without resorting to extraordinary measures.

**SECTION 3.** ORS 236.370 is amended to read:

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

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

(2) Under a collective bargaining agreement requiring just cause for disciplinary action;

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

(4) Under a county or municipal civil service system which provides [police] public safety officers with disciplinary action protections at least equivalent to those provided under ORS 236.350 and 236.360;

(5) The chief executive officers of law enforcement units, as defined in ORS 181.610; or

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

**(7) Represented in a collective bargaining unit if the collective bargaining agreement provides for procedures and safeguards of the sort provided for in ORS 236.350 to 236.370.**

**SECTION 4.** ORS 652.750 is amended to read:

652.750. (1) As used in this section:

(a) "Employer" has the meaning given that term in ORS 656.005.

(b) "Personnel records" does not include records of an individual relating to the conviction, arrest or investigation of conduct constituting a violation of the criminal laws of this state or another state or the United States, confidential reports from previous employers or records maintained in compliance with ORS 351.065.

(c) "Public safety officer" has the meaning given that term in ORS 236.350.

(2) **Except as provided in subsection (7) of this section**, within 45 days after receipt of *[the]* **an employee's** request *[of an employee]*, *[the]* **an employer** shall provide reasonable opportunity for the employee to inspect, at the place of employment or place of work assignment, the personnel records of the employee that are used or have been used to determine the employee's qualification for employment, promotion, additional compensation or employment termination or other disciplinary action. Within 45 days after receipt of the **employee's** request *[of the employee]*, the employer shall furnish a certified copy of the records.

(3) Upon termination of employment, the employer shall keep the terminated employee's personnel records for not less than 60 days. *[The terminated employee may request a certified copy of the records]* Within the 60-day period *[or at any time thereafter]*, **the employer shall provide the employee with a certified copy of the records within 45 days of receiving the employee's request. After the 60-day period, the employer shall provide the certified copy within 45 days of receiving the employee's request** if the employer has the records at the time of the request. *[Within 45 days after receipt of the request, the employer shall furnish a certified copy of the records.]*

(4) Notwithstanding the time periods described in subsections (2) and (3) of this section, if the employee's personnel records are not readily available, the employer and the employee may agree to extend the time within which the employer must provide the employee reasonable opportunity to inspect the records or furnish the employee a certified copy of the records.

(5) *[An employer may charge an employee]* For the services referred to in subsections (2) and (3) of this section only, **an employer may charge an employee no more than** an amount *[that is]* reasonably calculated to recover the actual cost of providing the services.

**(6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an employer may not place an adverse comment in the personnel records of a public safety officer unless the officer has first read and signed the document containing the adverse comment.**

**(b) If a public safety officer refuses to sign a document containing an adverse comment, the employer may place the document in the officer's personnel records with a notation that the document was presented to the officer and the officer refused to sign it.**

**(c) If a public safety officer is not available to read and sign the document containing an adverse comment at the work location where the personnel files are maintained, the employer may place the document in the officer's personnel records and mail a copy of the document to the officer by regular mail or interoffice mail.**

**(d) A public safety officer may write a response within 30 days of being presented with a document containing an adverse comment. If a public safety officer writes a response to a document containing an adverse comment, the response must be attached to the original document and placed in the officer's personnel records.**

**(7)(a) Upon request, a public safety officer may inspect the officer's own personnel records at a reasonable time at the location where the records are kept by the employer.**

**(b) If, after inspection, a public safety officer believes that any portion of the material is mistakenly or unlawfully placed in the officer's personnel records, the officer may request in writing that the mistaken or unlawful material be corrected or deleted. The request must describe the corrections or deletions requested and the reasons supporting the request and provide any documentation that supports the request. The employer shall respond within 30 days from the date the request is received. If the employer does not correct or delete the material, the employer shall place the request and the employer's response to the request in the officer's personnel records.**

**SECTION 5.** The amendments to ORS 236.350, 236.360 and 236.370 by sections 1, 2 and 3 of this 2009 Act apply to investigations begun on or after the effective date of this 2009 Act.

**Passed by House April 29, 2009**

**Repassed by House June 17, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 16, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

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Governor

**Filed in Office of Secretary of State:**

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Secretary of State