

House Bill 2713

Sponsored by COMMITTEE ON JUDICIARY (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**.

Applies disciplinary action provisions to all public safety officers.
Provides safeguards for public safety officers under investigation.
Provides procedures for placement of adverse comment in public safety officer's personnel records.

A BILL FOR AN ACT

1
2 Relating to public safety officers; creating new provisions; and amending ORS 236.350, 236.360,
3 236.370 and 652.750.

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

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

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

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

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

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

22 236.360. (1) **Employers of public safety officers shall adopt written procedures to imple-**
23 **ment the provisions of ORS 236.350 to 236.370.**

24 (2) **Except as provided in subsection (3) of this section, the following safeguards apply**
25 **when a public safety officer is under investigation and is subject to an interview by the offi-**
26 **cer's employer:**

27 (a) **Unless the seriousness of an investigation requires otherwise, the interview must be**
28 **conducted when the public safety officer is on duty or during the officer's normal waking**
29 **hours. If the interview is conducted when the public safety officer is off duty, the officer**
30 **must be compensated at the officer's normal or overtime rate of pay, as applicable.**

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

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

4 **(d) The interviewers shall inform the public safety officer of their authority to compel a**
 5 **statement and of the identity of the investigators and all persons present during the inter-**
 6 **view.**

7 **(e) The public safety officer is not required to answer questions until the officer has been**
 8 **informed of the nature of the investigation and of facts reasonably sufficient to inform the**
 9 **officer of the circumstances surrounding the allegations under investigation.**

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

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

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

17 **(B) A public safety officer who refuses to respond to questions or to be interviewed must**
 18 **be informed that refusal may lead to disciplinary action.**

19 **(i) A promise of reward may not be made to induce the public safety officer to answer a**
 20 **question.**

21 **(j)(A) The public safety officer may record the interview and upon request must be given**
 22 **a transcript of any recording made by the employer.**

23 **(B) The public safety officer must be given copies of notes made by interviewers during**
 24 **the interview.**

25 **(C) Transcripts and notes must be given to the public safety officer before subsequent**
 26 **interviews in the course of the same investigation.**

27 **(k) If it is decided before or during the interview that the public safety officer may be**
 28 **charged with a criminal offense, the officer must be informed immediately of the officer’s**
 29 **constitutional rights with respect to the criminal charge.**

30 **(L) The public safety officer’s chosen representative may not be required to disclose, or**
 31 **be subjected to disciplinary action for refusing to disclose, information received from the**
 32 **officer for noncriminal matters.**

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

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

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

38 **(4) A statement made by a public safety officer is not admissible in any subsequent civil**
 39 **proceeding except:**

40 **(a) When the employer is seeking a civil sanction against the officer or in a proceeding**
 41 **to enforce the employer’s disciplinary action;**

42 **(b) In an administrative or other proceeding brought by the public safety officer or the**
 43 **officer’s chosen representative to contest the disciplinary action; or**

44 **(c) When used to impeach the testimony of the public safety officer in any proceeding.**

45 **[(1)] (5) [No] Disciplinary action [shall] may not be taken against a [police] public safety officer**

1 without just cause.

2 [(2)] (6) [A public] **An** employer that intends to take disciplinary action **against a public safety**
 3 **officer** shall:

4 (a) Notify the [police] officer in writing of the charges against the officer and the proposed dis-
 5 ciplinary action; and

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

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

11 (7)(a) **Except as provided in paragraphs (b) and (c) of this subsection, an employer shall**
 12 **complete its investigation into an allegation of misconduct by a public safety officer and**
 13 **provide notification under subsection (6)(a) of this section no later than six months from the**
 14 **day the alleged misconduct was discovered by or made known to a person authorized to ini-**
 15 **tiate the investigation.**

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

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

18 (B) **If the investigation involves an allegation of workers' compensation fraud by the of-**
 19 **ficer.**

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

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

23 (E) **If the investigation involves more than one officer and requires a reasonable exten-**
 24 **sion of time.**

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

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

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

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

34 (8) **An investigation may be reopened if:**

35 (a) **Significant new evidence is discovered that is likely to affect the outcome of the in-**
 36 **vestigation; and**

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

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

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

41 236.370. ORS 236.350 to 236.370 do not apply to disciplinary action taken against [police] **public**
 42 **safety** officers who are:

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

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

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

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

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

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

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

9 652.750. (1) As used in this section:

10 (a) “Employer” has the meaning given that term in ORS 656.005.

11 (b) “Personnel records” does not include records of an individual relating to the conviction, ar-
 12 rest or investigation of conduct constituting a violation of the criminal laws of this state or another
 13 state or the United States, confidential reports from previous employers or records maintained in
 14 compliance with ORS 351.065.

15 (c) **“Public safety officer” has the meaning given that term in ORS 236.350.**

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

23 (3) Upon termination of employment, the employer shall keep the terminated employee’s per-
 24 sonnel records for not less than 60 days. [*The terminated employee may request a certified copy of the*
 25 *records*] Within the 60-day period [*or at any time thereafter*], **the employer shall provide the em-**
 26 **ployee with a certified copy of the records within 45 days of receiving the employee’s request.**
 27 **After the 60-day period, the employer shall provide the certified copy within 45 days of re-**
 28 **ceiving the employee’s request** if the employer has the records at the time of the request. [*Within*
 29 *45 days after receipt of the request, the employer shall furnish a certified copy of the records.*]

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

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

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

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

43 (c) **A public safety officer may write a response within 30 days of being presented with**
 44 **a document containing an adverse comment. If a public safety officer writes a response to**
 45 **a document containing an adverse comment, the response must be attached to the original**

1 document and placed in the officer's personnel records.

2 (7)(a) Upon request, a public safety officer may inspect the officer's own personnel re-
3 cords during normal business hours and without loss of compensation.

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

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