

# House Bill 3460

Sponsored by COMMITTEE ON RULES (at the request of Michael Duhrkoop)

## 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**.

Allows district school board or district superintendent of school district to establish law enforcement agency and to commission persons as peace officers. Establishes powers and authority of peace officers.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to law enforcement agencies of schools; amending ORS 133.005, 147.425, 153.005, 238.005,  
3 243.005 and 332.531; and declaring an emergency.

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

5 **SECTION 1.** ORS 332.531 is amended to read:

6 332.531. (1) The district school board **or district superintendent** of any school district may  
7 establish a law enforcement agency and [*employ such personnel*] **commission any persons as peace**  
8 **officers** as may be necessary to [*insure*] **ensure** the safety of school district personnel and students  
9 [*upon and in the vicinity of school district premises and the security of the real and personal property*  
10 *owned, controlled or used by or on behalf of the school district*].

11 (2) Persons [*employed and compensated as*] **who are** members of a law enforcement agency of a  
12 school district[, *when*] **as peace officers must be** appointed and [*duly sworn, are peace officers as*  
13 *defined in ORS 161.015 (4), but only for the purpose of carrying out the duties of their employment.*  
14 *They are not police officers within the meaning of ORS 243.736.*] **take an oath of office specified**  
15 **by the district school board or district superintendent.**

16 (3) **Peace officers commissioned under this section have all the powers and authority**  
17 **given by statute to peace officers of this state, including stop and frisk authority as set forth**  
18 **in ORS 131.605 to 131.625 and probable cause arrest authority and the accompanying immu-**  
19 **nities as set forth in ORS 133.310 and 133.315, when acting in the scope of their employment,**  
20 **as established by the district school board or district superintendent. Peace officers com-**  
21 **missioned under this section do not have authority to carry firearms as police officers and**  
22 **are not considered police officers for purposes of ORS 243.736.**

23 (4) **A peace officer commissioned under this section shall complete training necessary for**  
24 **certification as a public safety officer at an academy operated or authorized by the Depart-**  
25 **ment of Public Safety Standards and Training at the expense of the school district.**

26 [(3)] (5) The district school board **or district superintendent** may:

27 (a) Provide for uniforms, badges[, ] and other identification of members of [*such*] **a law enforce-**  
28 **ment agency of the school district; and**

29 [(b)] *Withdraw or withhold from any person employed as a member of such law enforcement agency*  
30 *any part or all of the powers otherwise conferred by law upon peace officers; and*

**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        [(c)] **(b)** Define the duties of persons [*employed*] **appointed** as members of [*such*] a law enforce-  
 2        ment agency **of a school district** and assign additional duties to [*such*] **the** persons as [*it may*] **the**  
 3        **board or superintendent** deem appropriate.

4        [(4)] **(6)(a)** [*Between meetings of the district school board,*] **For a person who is a member of**  
 5        **a law enforcement agency of a school district and who is appointed by the district school**  
 6        **board,** the district superintendent [*or the deputy of the superintendent shall have power to suspend*  
 7        *any person employed as a member of such law enforcement agency*] **may suspend the person for**  
 8        **willful violation of any rule or regulation of the law enforcement agency or for any reason**  
 9        **provided by ORS 181.290. The suspension is effective** pending review of [*such action*] **the sus-**  
 10        **pension, and the review by the district school board shall occur** as soon as practicable [*by the*  
 11        *district school board*].

12        **(b) For a person who is a member of a law enforcement agency of a school district and**  
 13        **who is appointed by the district superintendent, the district superintendent may suspend the**  
 14        **person for willful violation of any rule or regulation of the law enforcement agency or for**  
 15        **any reason provided by ORS 181.290.**

16        **(7)(a) If a district school board establishes a law enforcement agency as provided by**  
 17        **subsection (1) of this section, the district school board, acting by and through the law**  
 18        **enforcement agency, is a criminal justice agency for purposes of rules adopted pursuant to**  
 19        **ORS 181.730 (3).**

20        **(b) If a district superintendent establishes a law enforcement agency as provided by**  
 21        **subsection (1) of this section, the district superintendent, acting by and through the law**  
 22        **enforcement agency, is a criminal justice agency for purposes of rules adopted pursuant to**  
 23        **ORS 181.730 (3).**

24        **SECTION 2.** ORS 133.005 is amended to read:

25        133.005. As used in ORS 131.655 and 133.005 to 133.381 and 133.410 to 133.450, unless the context  
 26        requires otherwise:

27        (1) “Arrest” means to place a person under actual or constructive restraint or to take a person  
 28        into custody for the purpose of charging that person with an offense. A “stop” as authorized under  
 29        ORS 131.605 to 131.625 is not an arrest.

30        (2) “Federal officer” means a special agent or law enforcement officer employed by a federal  
 31        agency and who is empowered to effect an arrest with or without a warrant for violations of the  
 32        United States Code and who is authorized to carry firearms in the performance of duty.

33        (3) “Peace officer” means:

34        **(a)** A member of the Oregon State Police [*or*];

35        **(b)** A sheriff, constable, marshal[,] **or** municipal police officer[.];

36        **(c)** **An** investigator of a district attorney’s office if the investigator is or has been certified as  
 37        a peace officer in this or any other state[, *or*];

38        **(d)** An investigator of the Criminal Justice Division of the Department of Justice of the State  
 39        of Oregon[.]; **or**

40        **(e) A person commissioned under ORS 332.531.**

41        **SECTION 3.** ORS 147.425 is amended to read:

42        147.425. (1) As used in this section:

43        (a) “Health care provider” has the meaning given that term in ORS 192.519.

44        (b) “Law enforcement agency” means:

45        (A) A city or municipal police department.

1 (B) A county sheriff's office.

2 (C) The Oregon State Police.

3 (D) A district attorney.

4 **(E) A law enforcement agency established by a district school board or district super-**  
5 **intendent under ORS 332.531.**

6 [(E)] (F) A special campus security officer commissioned under ORS 352.385 or 353.050.

7 (c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are  
8 defined in the rules of the Oregon Criminal Justice Commission.

9 (d) "Personal representative" means a person selected under subsection (2) of this section to  
10 accompany the victim of a crime to certain phases of an investigation and prosecution.

11 (e) "Protective service worker" means an employee or contractor of a local or state agency  
12 whose role it is to protect children or vulnerable adults from abuse or neglect.

13 (2) A victim of a person crime, who is at least 15 years of age at the time the crime is com-  
14 mitted, may select a person who is at least 18 years of age as the victim's personal representative  
15 for purposes of this section. The victim may not select a person who is a suspect in, or a party or  
16 witness to, the crime as a personal representative.

17 (3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy  
18 center recognized by the Department of Justice, a personal representative may accompany the vic-  
19 tim to those phases of the investigation, including medical examinations, and prosecution of the  
20 crime at which the victim is entitled or required to be present.

21 (4) A health care provider, law enforcement agency, protective service worker or court may not  
22 prohibit a personal representative from accompanying a victim as authorized by subsection (3) of  
23 this section unless the health care provider, law enforcement agency, protective service worker or  
24 court believes that the personal representative would compromise the process.

25 (5) A health care provider, law enforcement agency, protective service worker or court is im-  
26 mune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect  
27 to a decision under subsection (4) of this section to prohibit a personal representative from accom-  
28 panying a victim.

29 (6) The fact that a personal representative was allowed or was not allowed to accompany a  
30 victim may not be used as a basis for excluding otherwise admissible evidence.

31 (7) The fact that a victim has or has not selected a personal representative under this section  
32 may not be used as evidence in the criminal case.

33 **SECTION 4.** ORS 153.005 is amended to read:

34 153.005. As used in this chapter:

35 (1) "Enforcement officer" means:

36 (a) A member of the Oregon State Police.

37 (b) A sheriff or deputy sheriff.

38 (c) A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

39 (d) An investigator of a district attorney's office if the investigator is or has been certified as  
40 a peace officer in this or any other state.

41 (e) An investigator of the Criminal Justice Division of the Department of Justice of the State  
42 of Oregon.

43 **(f) A peace officer commissioned under ORS 332.531.**

44 [(f)] (g) Any other person specifically authorized by law to issue citations for the commission  
45 of violations.

1 (2) "Traffic offense" has the meaning given that term in ORS 801.555.

2 (3) "Violation" means an offense described in ORS 153.008.

3 (4) "Violation proceeding" means a judicial proceeding initiated by issuance of a citation that  
4 charges a person with commission of a violation.

5 **SECTION 5.** ORS 238.005 is amended to read:

6 238.005. For purposes of this chapter:

7 (1) "Annuity" means payments for life derived from contributions made by a member as provided  
8 in this chapter.

9 (2) "Board" means the Public Employees Retirement Board.

10 (3) "Calendar year" means 12 calendar months commencing on January 1 and ending on De-  
11 cember 31 following.

12 (4) "Continuous service" means service not interrupted for more than five years, except that  
13 such continuous service shall be computed without regard to interruptions in the case of:

14 (a) An employee who had returned to the service of the employer as of January 1, 1945, and  
15 who remained in that employment until having established membership in the Public Employees  
16 Retirement System.

17 (b) An employee who was in the armed services on January 1, 1945, and returned to the service  
18 of the employer within one year of the date of being otherwise than dishonorably discharged and  
19 remained in that employment until having established membership in the Public Employees Retire-  
20 ment System.

21 (5) "Creditable service" means any period of time during which an active member is being paid  
22 a salary by a participating public employer and for which benefits under this chapter are funded by  
23 employer contributions and earnings on the fund. For purposes of computing years of "creditable  
24 service," full months and major fractions of a month shall be considered to be one-twelfth of a year  
25 and shall be added to all full years. "Creditable service" includes all retirement credit received by  
26 a member.

27 (6) "Earliest service retirement age" means the age attained by a member when the member  
28 could first make application for retirement under the provisions of ORS 238.280.

29 (7) "Employee" includes, in addition to employees, public officers, but does not include:

30 (a) Persons engaged as independent contractors.

31 (b) Seasonal, emergency or casual workers whose periods of employment with any public em-  
32 ployer or public employers do not total 600 hours in any calendar year.

33 (c) Persons, other than workers in the Oregon Industries for the Blind under ORS 346.190, pro-  
34 vided sheltered employment or made-work by a public employer in an employment or industries  
35 program maintained for the benefit of such persons.

36 (d) Persons employed and paid from federal funds received under the Emergency Job and Un-  
37 employment Assistance Act of 1974 (Public Law 93-567) or any other federal program intended pri-  
38 marily to alleviate unemployment. However, any such person shall be considered an "employee" if  
39 not otherwise excluded by paragraphs (a) to (c) of this subsection and the public employer elects to  
40 have the person so considered by an irrevocable written notice to the board.

41 (e) Persons who are employees of a railroad, as defined in ORS 824.020, and who, as such em-  
42 ployees, are included in a retirement plan under federal railroad retirement statutes. This paragraph  
43 shall be deemed to have been in effect since the inception of the system.

44 (8) "Final average salary" means whichever of the following is greater:

45 (a) The average salary per calendar year paid by one or more participating public employers to

1 an employee who is an active member of the system in three of the calendar years of membership  
 2 before the effective date of retirement of the employee, in which three years the employee was paid  
 3 the highest salary. The three calendar years in which the employee was paid the largest total salary  
 4 may include calendar years in which the employee was employed for less than a full calendar year.  
 5 If the number of calendar years of active membership before the effective date of retirement of the  
 6 employee is three or fewer, the final average salary for the employee is the average salary per cal-  
 7 endar year paid by one or more participating public employers to the employee in all of those years,  
 8 without regard to whether the employee was employed for the full calendar year.

9 (b) One-third of the total salary paid by a participating public employer to an employee who is  
 10 an active member of the system in the last 36 calendar months of active membership before the ef-  
 11 fective date of retirement of the employee.

12 (9) "Firefighter" does not include a volunteer firefighter, but does include:

13 (a) The State Fire Marshal, the chief deputy fire marshal and deputy state fire marshals; and

14 (b) An employee of the State Forestry Department who is certified by the State Forester as a  
 15 professional wildland firefighter and whose primary duties include the abatement of uncontrolled  
 16 fires as described in ORS 477.064.

17 (10) "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 fol-  
 18 lowing.

19 (11) "Fund" means the Public Employees Retirement Fund.

20 (12)(a) "Member" means a person who has established membership in the system and whose  
 21 membership has not been terminated as described in ORS 238.095. "Member" includes active, inac-  
 22 tive and retired members.

23 (b) "Active member" means a member who is presently employed by a participating public em-  
 24 ployer in a qualifying position and who has completed the six-month period of service required by  
 25 ORS 238.015.

26 (c) "Inactive member" means a member who is not employed in a qualifying position, whose  
 27 membership has not been terminated in the manner described by ORS 238.095, and who is not retired  
 28 for service or disability.

29 (d) "Retired member" means a member who is retired for service or disability.

30 (13)(a) "Member account" means the regular account and the variable account.

31 (b) "Regular account" means the account established for each active and inactive member under  
 32 ORS 238.250.

33 (c) "Variable account" means the account established for a member who participates in the  
 34 Variable Annuity Account under ORS 238.260.

35 (14) "Normal retirement age" means:

36 (a) For a person who establishes membership in the system before January 1, 1996, as described  
 37 in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or firefighter  
 38 or 58 years of age if the employee retires at that age as other than a police officer or firefighter.

39 (b) For a person who establishes membership in the system on or after January 1, 1996, as de-  
 40 scribed in ORS 238.430, 55 years of age if the employee retires at that age as a police officer or  
 41 firefighter or 60 years of age if the employee retires at that age as other than a police officer or  
 42 firefighter.

43 (15) "Pension" means annual payments for life derived from contributions by one or more public  
 44 employers.

45 (16) "Police officer" includes:

1 (a) Employees of institutions defined in ORS 421.005 as Department of Corrections institutions  
2 whose duties, as assigned by the Director of the Department of Corrections, include the custody of  
3 persons committed to the custody of or transferred to the Department of Corrections and employees  
4 of the Department of Corrections who were classified as police officers on or before July 27, 1989,  
5 whether or not such classification was authorized by law.

6 (b) Employees of the Department of State Police who are classified as police officers by the  
7 Superintendent of State Police.

8 (c) Employees of the Oregon Liquor Control Commission who are classified as enforcement of-  
9 ficers by the administrator of the commission.

10 (d) Sheriffs and those deputy sheriffs or other employees of a sheriff whose duties, as classified  
11 by the sheriff, are the regular duties of police officers or corrections officers.

12 (e) Police chiefs and police personnel of a city who are classified as police officers by the  
13 council or other governing body of the city.

14 (f) Parole and probation officers employed by the Department of Corrections, parole and pro-  
15 bation officers who are transferred to county employment under ORS 423.549 and adult parole and  
16 probation officers, as defined in ORS 181.610, who are classified as police officers for the purposes  
17 of this chapter by the county governing body. If a county classifies adult parole and probation offi-  
18 cers as police officers for the purposes of this chapter, and the employees so classified are repres-  
19 ented by a labor organization, any proposal by the county to change that classification or to cease  
20 to classify adult parole and probation officers as police officers for the purposes of this chapter is  
21 a mandatory subject of bargaining.

22 (g) Police officers appointed under ORS 276.021 or 276.023.

23 (h) Employees of the Port of Portland who are classified as airport police by the Board of  
24 Commissioners of the Port of Portland.

25 (i) Employees of the State Department of Agriculture who are classified as livestock police of-  
26 ficers by the Director of Agriculture.

27 (j) Employees of the Department of Public Safety Standards and Training who are classified by  
28 the department as other than secretarial or clerical personnel.

29 (k) Investigators of the Criminal Justice Division of the Department of Justice.

30 (L) Corrections officers as defined in ORS 181.610.

31 (m) Employees of the Oregon State Lottery Commission who are classified by the Director of the  
32 Oregon State Lottery as enforcement agents pursuant to ORS 461.110.

33 (n) The Director of the Department of Corrections.

34 (o) An employee who for seven consecutive years has been classified as a police officer as de-  
35 fined by this section, and who is employed or transferred by the Department of Corrections to fill  
36 a position designated by the Director of the Department of Corrections as being eligible for police  
37 officer status.

38 (p) An employee of the Department of Corrections classified as a police officer on or prior to  
39 July 27, 1989, whether or not that classification was authorized by law, as long as the employee  
40 remains in the position held on July 27, 1989. The initial classification of an employee under a sys-  
41 tem implemented pursuant to ORS 240.190 does not affect police officer status.

42 (q) Employees of a school district who are [*appointed and duly sworn*] members of a law  
43 enforcement agency of the **school** district as provided in ORS 332.531 [*or otherwise employed full-*  
44 *time as police officers commissioned by the district*].

45 (r) Employees at youth correction facilities and juvenile detention facilities under ORS 419A.050,

1 419A.052 and 420.005 to 420.915 who are required to hold valid Oregon teaching licenses and who  
 2 have supervisory, control or teaching responsibilities over juveniles committed to the custody of the  
 3 Department of Corrections or the Oregon Youth Authority.

4 (s) Employees at youth correction facilities as defined in ORS 420.005 whose primary job de-  
 5 scription involves the custody, control, treatment, investigation or supervision of juveniles placed  
 6 in such facilities.

7 (t) Employees of the Oregon Youth Authority who are classified as juvenile parole and probation  
 8 officers.

9 (17) "Public employer" means the state, one of its agencies, any city, county, or municipal or  
 10 public corporation, any political subdivision of the state or any instrumentality thereof, or an agency  
 11 created by one or more such governmental organizations to provide governmental services. For  
 12 purposes of this chapter, such agency created by one or more governmental organizations is a gov-  
 13 ernmental instrumentality and a legal entity with power to enter into contracts, hold property and  
 14 sue and be sued.

15 (18) "Prior service credit" means credit provided under ORS 238.442 or under ORS 238.225 (2)  
 16 to (6) (1999 Edition).

17 (19) "Qualifying position" means one or more jobs with one or more participating public em-  
 18 ployers in which an employee performs 600 or more hours of service in a calendar year, excluding  
 19 any service in a job for which a participating public employer does not provide benefits under this  
 20 chapter pursuant to an application made under ORS 238.035.

21 (20) "Retirement credit" means a period of time that is treated as creditable service for the  
 22 purposes of this chapter.

23 (21)(a) "Salary" means the remuneration paid an employee in cash out of the funds of a public  
 24 employer in return for services to the employer, plus the monetary value, as determined by the  
 25 Public Employees Retirement Board, of whatever living quarters, board, lodging, fuel, laundry and  
 26 other advantages the employer furnishes the employee in return for services.

27 (b) "Salary" includes but is not limited to:

28 (A) Payments of employee and employer money into a deferred compensation plan, which are  
 29 deemed salary paid in each month of deferral;

30 (B) The amount of participation in a tax-sheltered or deferred annuity, which is deemed salary  
 31 paid in each month of participation;

32 (C) Retroactive payments made to an employee to correct a clerical error or pursuant to an  
 33 award by a court or by order of or a conciliation agreement with an administration agency charged  
 34 with enforcing federal or state law protecting the employee's rights to employment or wages, which  
 35 shall be allocated to and deemed paid in the periods in which the work was done or in which it  
 36 would have been done; and

37 (D) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
 38 652.190.

39 (c) "Salary" or "other advantages" does not include:

40 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
 41 employer;

42 (B) Payments for insurance coverage by an employer on behalf of employee or employee and  
 43 dependents, for which the employee has no cash option;

44 (C) Payments made on account of an employee's death;

45 (D) Any lump sum payment for accumulated unused sick leave;

1 (E) Any accelerated payment of an employment contract for a future period or an advance  
2 against future wages;

3 (F) Any retirement incentive, retirement severance pay, retirement bonus or retirement  
4 gratuitous payment;

5 (G) Payments for periods of leave of absence after the date the employer and employee have  
6 agreed that no future services qualifying pursuant to ORS 238.015 (3) will be performed, except for  
7 sick leave and vacation;

8 (H) Payments for instructional services rendered to institutions of the Department of Higher  
9 Education or the Oregon Health and Science University when such services are in excess of full-  
10 time employment subject to this chapter. A person employed under a contract for less than 12  
11 months is subject to this subparagraph only for the months to which the contract pertains; or

12 (I) Payments made by an employer for insurance coverage provided to a domestic partner of an  
13 employee.

14 (22) "School year" means the period beginning July 1 and ending June 30 next following.

15 (23) "System" means the Public Employees Retirement System.

16 (24) "Vested" means being an active member of the system in each of five calendar years.

17 (25) "Volunteer firefighter" means a firefighter whose position normally requires less than 600  
18 hours of service per year.

19 **SECTION 6.** ORS 243.005 is amended to read:

20 243.005. As used in ORS 243.005 to 243.045:

21 (1) "Firefighter" means persons employed by a city, county or district whose duties involve fire  
22 fighting and includes a volunteer firefighter whose position normally requires less than 600 hours  
23 of service per year.

24 (2)(a) "Police officer" includes:

25 (A) Police chiefs and police officers of a city who are classified as police officers by the council  
26 or other governing body of the city;

27 (B) Sheriffs and those deputy sheriffs whose duties, as classified by the county governing body  
28 are the regular duties of police officers;

29 (C) Employees of districts[,] whose duties, as classified by the governing body of the district,  
30 are the regular duties of police officers;

31 (D) Employees of the Department of State Police who are classified as police officers by the  
32 Superintendent of State Police;

33 (E) Employees of the Criminal Justice Division of the Department of Justice who are classified  
34 by the Attorney General as criminal investigators or criminal financial investigators;

35 (F) Employees of the Oregon State Lottery Commission who are classified by the Director of the  
36 Oregon State Lottery as enforcement agents; [and]

37 (G) Employees of Department of Corrections institutions as defined in ORS 421.005 whose du-  
38 ties, as assigned by the superintendent, include the custody of persons committed to the custody of  
39 or transferred to the Department of Corrections institution; [but] and

40 (H) **Persons commissioned as peace officers by a district school board or district super-  
41 intendent under ORS 332.531.**

42 (b) "Police officer" does not include volunteer or reserve police officers or persons considered  
43 by the respective governing bodies to be civil deputies or clerical personnel.

44 (3) "Public employer" means a city, a county or the state, or one of its agencies or political  
45 subdivisions that employs police officers or firefighters.



1        **SECTION 7. This 2009 Act being necessary for the immediate preservation of the public**  
2        **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
3        **on its passage.**

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