



**To:** **Members of the Senate Judiciary Committee**

**From:** Chief Jim Ferraris, Woodburn Police Department  
Oregon Association Chiefs of Police  
Undersheriff Troy Clausen, Marion County Sheriff's Office  
Oregon State Sheriffs' Association

**Date:** February 6<sup>th</sup>, 2018

**Re:** **Opposition to SB 1531 – Officer Mental Health Meeting Requirement Legislation**

**Chair Prozanski and members of the committee,**

On behalf of the Oregon Association Chiefs of Police and the Oregon State Sheriffs Association, please accept this testimony in opposition to SB 1531. This measure applies broadly to all law enforcement officers including those that may (a) have no need for it, (b) object to it, and (c) not cooperate or disclose sufficiently to benefit from it. Clearly, effective mental health treatment depends on cooperation by the client and trust in the therapist. Although we cannot support the provisions included in SB 1531, the well-being of police officers, deputy sheriffs and troopers are a top priority for Oregon's law enforcement leaders throughout the state. Law enforcement agencies utilize a number of programs, tools and protocols to insure that an officer's well-being is consistently taken into consideration during the course of their careers. Here are a few of the ways that law enforcement is actively working to promote wellness and address mental health issues within the policing profession:

- Most law enforcement agencies within the state utilize a pre-employment psychological evaluation and extensive background process prior to hiring a full time police officer/
- The Oregon Department of Public Safety Standards and Training (DPSST) provides training on the topic of wellness as part of the basic police curriculum.
- Many agencies include officer wellness and peer support training in their Field Training and Evaluation Programs.
- Almost all municipalities and counties have some form of Employee Assistance Programs (EAP) that utilize a mental health professional. Furthermore, most of the current Crisis Intervention Training being taught across the State has some form of wellness or emotional survival training for first responders.
- DPSST, in coordination with Oregon's Chiefs and Sheriffs developed the Stress First Aid for

Law Enforcement training program to reduce the risk for stress reactions in law enforcement personnel. This class has been developed specifically for law enforcement personnel in Oregon by the National Center on Post-Traumatic Stress and is based on the Combat & Operational Stress First Aid (COSFA) class used by the United States Marine Corps and the United States Navy. Already, DPSST has offered five train-the-trainer courses and now offers it as part of the 80-hour Supervision and 80-hour Management training classes offered at the Oregon Public Safety Academy. The training helps supervisors identify what signs to look for in someone who is struggling emotionally and how/where to connect them with the appropriate services. Since the program was implemented, trained supervisors identified three co-workers with suicidal tendencies. All three of these individuals received the proper care and support and are all back at work today.

- Agencies accredited by the Oregon Accreditation Alliance (OAA) or that have Lexipol policies regarding Fitness for Duty have clear guidelines on when and how to evaluate employee behavior.
- In the past 5 to 10 years, both OACP and OSSA have continually sought to bring training to the state on the topic of Emotional Survival and Wellness for public safety. Here are examples from recent statewide law enforcement professional development training conferences:

#### **2018 Executive Leadership Training Seminars (January 16-18, 2018):**

- “Leading to reduce Organizational Stress in Law Enforcement” –Chief Kent Williams (Breachpoint Consulting)
- “Destination Zero: Collaborating to Advance Officer Safety and Wellness” – Larry Cecchettini (National Law Enforcement Officers Memorial Fund’s Destination Zero Program)
- “The Oregon Behavioral Crisis Response Initiative” – Chief Jim Ferraris (Woodburn PD)/Undersheriff Troy Clausen (Marion County Sheriff’s Office)
- “Not Just Surviving; Leading through Loss, Conflict and Crisis” – Captain Bob Day (Portland Police Bureau)

#### **2017 Fall Leadership Conference (September 27<sup>th</sup> – 28<sup>th</sup>, 2017):**

- “Emotional Survival for Law Enforcement” – Chief Robert White (IACP Leadership Development)
- “Leading on Empty – Lessons Learned from Rock Bottom” – Dr. Wayne Cordeiro
- “Officer-Involved Domestic Violence Policy Framework Training” – Sheriff Craig Roberts (Clackamas County Sheriff’s Office)

Here are our concerns with SB 1531:

**SB 1531 increases cost to law enforcement agencies at a time when policing resources are strained.**

SB 1531 would require police agencies to pay for mental health sessions with mental health professionals at least once every two years at a time when policing resources are strained and are expected to get tighter in the future. This is particularly a challenge for smaller departments in

jurisdictions where the number of officers/deputies is not sufficient to address public safety needs. Based on a survey of states, the Oregon State Police ranks 50<sup>th</sup> out of 50 states in officers per 100,000 in population and the lack of officers per thousand in Oregon's cities and counties is similar. Without state funding, this additional financial burden constitutes an unfunded mandate.

While the hourly rate charged by psychologists for meetings varies, the charge is likely to range from a low of \$95 to a high of over \$400 for a psychologist with specialized expertise and board certification in police and public safety psychology. This doesn't include the cost of any travel for the officer or the potential overtime associated with the officer attending the session and the overtime for the officer to cover the shift vacated by the need for the session. SB 1531 requires law enforcement officers to attend a meeting with a mental health professional "at least once every two years" but does not limit the number of sessions that may be provided under the scope of the bill. Thus, it is possible that an officer could seek and be provided with biweekly counseling, with an associated annual cost between \$10,000 and \$40,000 or more.

**SB 1531 fails to limit the definition of "mental health professional" to psychologists who are certified and specially trained to deal with the unique challenges of the law enforcement profession.**

SB 1531 fails to define what constitutes a mental health professional for purposes of the mental health meetings required in the measure. The American Psychological Association recognizes police and public safety psychology as a specialty in professional psychology because of the unique and demanding nature of the profession of law enforcement. According to the American Psychological Association, this specialty is "*concerned with assisting law enforcement and other public safety personnel and agencies in carrying out their missions and societal functions with optimal effectiveness, safety, health, and conformity to laws and ethics. It consists of the application of the science and profession of psychology in four primary domains of practice: assessment, clinical intervention, operational support, and organizational consultation.*" According to the APA, practice in this specialty "*requires, at a minimum, distinctive knowledge of the following: the essential functions of police and public safety personnel and organizations, working conditions unique to their respective positions, common and novel stressors inherent in public safety work, normal and abnormal adaptation to occupational stress and trauma, research pertinent to resilience and recovery in public safety personnel, and the unique aspects of confidentiality and testimonial privilege when providing services to public safety personnel and/or agencies. Specialized knowledge beyond this foundation is needed for practice within each of the four domains.*" (See <http://www.apa.org/ed/graduate/specialize/police.aspx>).

**SB 1531 clearly states that the meeting with a "mental health professional" is not a "mental health evaluation", but the measure fails to provide any clarity about the purpose of these sessions or what they intend to accomplish.**

According to Dr. David Corey, Ph.D., ABPP, a well-respected Oregon Psychologist that is Board Certified by the American Board of Police & Public Safety Psychology:

- The services of a psychologist, like that of all other mental health professionals, are guided by the purpose of the referral. When self-initiated, the purpose is defined by the individual who seeks therapy, consultation, or evaluation. However, when the services are provided "at the request of a third party", psychologists attempt to clarify at the outset of the service the

nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality” (American Psychological Association, 2010; *Ethical Principles for Psychologists and Code of Conduct*, Standard 3.07). The *Ethical Principles for Psychologists and Code of Conduct* (EPPCC) are not aspirational for Oregon psychologists; rather, compliance with these standards is compulsory under Oregon’s psychologist licensing laws.

- Without clarity concerning the role of the psychologist [i.e., What function is the psychologist performing, if not an evaluation? Who is the client? What potential and foreseeable uses may be made of the information gathered and the officer’s disclosures in the course of the meeting? How might information gathered about potential harm to the officer or others limit confidentiality (e.g., under *State v. Miller* )]?

**SB 1531 likely violates requirements of the ADA because there must be a reasonable and objective basis to believe that the employee is unable to perform essential job functions and presents a risk to self or public.**

Again, according to Dr. David Corey, Ph.D., ABPP:

Psychologists are ethically precluded from doing what the bill proposes unless satisfied that valid prerequisite justifications exist:

- Unless the ADA’s business necessity standard is met, it would be unethical for a psychologist to provide the mandated services (cf. Corey, 2011; “Principles of fitness-for duty evaluations for police psychologists.” In J. Kitaeff (Ed.), *Handbook of police psychology*, pp. 263-293. New York: Routledge Psychology Press).
- Beyond this ethical conflict, a psychologist providing services under this bill has no defined purpose or scope of service other than to “meet” with the officer. All competent clinical services include an evaluation of the client’s current functioning, diagnosis, and goals of treatment, but this proposed legislation stipulates that the service “is not a mental health evaluation,” thereby undermining the therapist’s ability to perform competent clinical work.
- It is a fundamental tenet of mental health treatment that clinical efficacy depends on cooperation by the client and trust in the therapist. Absent the foundation of self-directed autonomy, it is difficult to imagine that an uncooperative and resistant police officer—even one that may actually need therapeutic services—will benefit from mandatory counseling.
- Even if this language is intended to distinguish it from the “medical inquiry” or “medical examination” prohibited by the ADA (except when the business necessity standard is met), the language asserts an untrue fact about the mental health “meeting”—while it may prove to be more than a mental health evaluation for individuals who have a clinical need for ongoing counseling, it necessarily involves a mental health evaluation as a minimum professional activity, particularly in the initial session.

**SB 1531 likely conflicts with existing collective bargaining agreements currently in effect in Oregon that will have both budgetary and legal consequences.**

Oregon PECBA requires changes in working conditions (like the requirements in SB 1531) to be bargained. Police employers will face bargaining demands over impacts related to mandatory subjects which might include –

- Privacy concerns, disposition of records and permissible uses
- Access to the record/report; limits of access and conditions that triggers a “need to know” (e.g.: HR Director versus police executives and supervisors)
- Requirements of reliability if any adverse action were to result, and process for employee to challenge a report if disputed.
- Employer treatment of a report as a medical record; whether report can be considered for employment purposes

Thank you for the opportunities to communicate our concerns with SB 1531. On behalf of the Oregon Association Chiefs of Police and Oregon State Sheriffs Association, we are committed to continue aggressive efforts to make sure our officers wellness and safety is a top priority and focus.