

June 22, 2020

To:

Governor Kate Brown

Joint Committee on the Special Session

Co-Chairs Senator Courtney and Representative Kotek

Co-Vice Chairs Senator Girod and Representative Drazen

Oregon's Black, Indigenous, and People of Color communities are calling for immediate shifts in policing policy. While we demand swift and bold action, we are also asking that the legislature oversees a process that meaningfully engages the constituents demanding justice.

With a week's notice for this year's special session, it is impossible for community partners to fully weigh in. Undoing hundreds of years of structural and systemic violence will take time and require bold commitment and courage to reimagine public safety. This should ground how we make public policy. The legislature needs to be thoughtful in its approach, engaging with Black communities and policy experts, to ensure we are able to untangle the complex work of shifting away from a harmful and violent policing model and towards a restorative justice community health model. Without this approach, we set ourselves up for unintended consequences that do not result in healthier communities, and in fact, may result in further harm to our communities.

As requested earlier this week, we continue to call for the establishment of a community-led effort to reimagine safety and resilience. This should include grounding and resourcing the effort in Black-led and Black-serving organizations and advocates, including leaders from transgender and houseless communities.

Many of the proposed bills represent police reform that falls short of honoring communities' call to eliminate Oregon's overreliance on police. Our communities are instead calling for alternatives that are not represented here, such as non-law enforcement first-response, restorative justice models, and investments in mental health and housing supports.

In an effort to highlight the need for more, in-depth conversation with community partners, we share some initial concerns we have with upcoming legislative concepts being proposed in the short session, specifically LC 49, 78, 79, 80, 81, and 83.

LC 49 – Law Enforcement Arbitration. This bill limits the ability of an arbitrator to overturn discipline imposed upon an officer for misconduct, and gives the power to

determine what discipline is appropriate to the collective bargaining process. This will reduce or eliminate a police department's ability to discipline an officer who wrongfully harmed a member of our community. Police unions should not be able to interfere with a police department's ability to curtail conduct that threatens the lives and safety of community members. Allowing discipline for excessive use of force to be an issue that unions can negotiate away through collective bargaining is extremely problematic and strongly limits our ability to hold officers accountable. Police unions, by design, represent police officers, and are not incentivized to prioritize community safety.

LC 78 - Transparency of Police Discipline Records: This bill, which creates a database of police discipline records, is insufficient to keep the public properly informed about officer misconduct. More specifically, this only requires DPSST to create a database of discipline imposed by DPSST that results in suspension or revocation of an officer's certification, instead of requiring the database to also include discipline imposed at the local level by the police or sheriff's department.

Additional points that should be considered:

- House the database outside of DPSST and/or restructuring DPSST to involve other criminal justice stakeholders and community members.
- This database should include non-DPSST discipline records as well as a historical database. Currently, this database will not include historical data, which is not where we want to start. What about officers who already have long histories of misconduct? This kind of database needs to be accessible and transparent to fulfill its intended purpose.
- Databases should ensure that an investigation takes place whether or not a police officer resigns in the face of an investigation. Otherwise, police officers will be able to resign to avoid being entered into the database.

LC 79 - Attorney General Independent Investigation Authority for Use of Force Law Enforcement Arbitration This bill, which limits the ability of an arbitrator to overturn discipline imposed upon an officer for misconduct, needs to be strengthened. This is crucial, because whether justice will be achieved through this approach is far too dependent on the political leanings of the Attorney General, and other enforcement agencies.

Points requiring additional discussion:

- The community needs assurances that fair prosecution will happen through the Attorney General's office. Whether this be through a special prosecutor independent from law enforcement, or another office, alternative entities must be available to ensure police misconduct cases are equitably prosecuted.

- We need a clearer “Physical Injury” definition written out in statute, rather than through rulemaking by the Department of Justice. For example, this concept could adopt ORS 161.015(8) for the definition of “serious physical injury” which states “Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.” Or another definition may be appropriate. Either way, a discussion is warranted.
- Consideration should be given to whether to remove the requirement that an officer be “performing official duties”. We need fair prosecution of a police officer, whether they are on or off-duty.
- Ensure this legislation refers to **all** law enforcement agents, including sheriff deputies and other law enforcement agents.

LC 80 – Law enforcement duty to report and intervene This legislation requires police officers to intervene when another police officer is engaging in an act that is unethical or that violates law, rules or policy. Unfortunately, this policy attempts to provide a solution without addressing the core problem.

The legislature must also develop policy to address additional the following underlying problems: 1) When misconduct occurs, proper discipline does not always happen; 2) because of current police cultures, when officers report other officers for misconduct, that officer risks retaliation; and 3) this state needs policy that adopts stricter standards around when use of force is appropriate or prohibited.

LC 81 – Limitation on Munitions Used to Control Assemblies: This bill, which prohibits law enforcement agencies from using tear gas or from using long-range acoustic devices or sound cannons, requires some additional work. The concept should include clear definitions for “tear gas” and “long-range acoustic devices.” This concept should also include further restrictions on the use of crowd control measures. For example, if the police deemed a gathering an “unlawful assembly,” or if there is a group of people “breaking curfew,” these facts alone should not justify the use of crowd control devices, especially when the vast majority of a crowd is peacefully protesting. This bill is, however, absolutely necessary and should be passed swiftly with some additional language and parameters.

LC 83 – Prohibition on use of Chokeholds: This bill, which prohibits officers from using force that blocks a person’s airway, should be passed. Chokeholds should be banned. Restricting someone’s airway is a criminal act and can cause serious injury and death. Law enforcement has alternatives available that are less dangerous.

We welcome further discussion on these legislative concepts, but remind you that a commitment to reimagine community safety and resilience takes time. Further, these legislative concepts do nothing to shrink the size and functions of policing in Oregon. They ignore the larger opportunities we have in front of us to shift away from an overreliance on police and toward an investment in the health and well-being of our communities.

Thank you,

Unite Oregon, PAALF, Urban League, Rose City Justice and more!

