

Comments

LC 49 Law Enforcement Arbitration

The Arbitration section desperately needs a standard of review in order to function in any sort of reasonable way. Our proposed standard is this: ***a reasonable person, given the original evidence in the record, could come to the same conclusion as the municipality, even if the arbitrator disagrees with the findings. The limitation on changing findings shall apply to misconduct found in such cases even when that misconduct is not specifically about the force that was used.*** The reason Arbitration is ineffective at the moment is because there is no clear standard of review. Arbitrators cherry-pick the evidence they like and then absolve the officers of any misconduct the agency may have found.

LC 78 Disclosure of Law Enforcement Discipline Actions

- DPSST shall create a matrix for suspension or revocation of license and submit to the legislature by 1.1.21. The intention here is for the Attorney General to, once their investigation is completed, to submit their report to DPSST and for DPSST to take the appropriate disciplinary measures (suspension or revocation of license).
- DPSST Shall also provide an annual accounting of all investigations and reports to be made freely available to the public.
- If departments do not provide sufficient data and information for the annual reports, their funding may be suspended by the appropriate legislative body.
- The Department of Public Safety Standards and Training shall establish a statewide database of police officer discipline records, **Allegations of Misconduct, proposed discipline by agency or city, and citizen complaints.**
- Add 16(5): Require the department to submit all data to the appropriate national databases, existing or future.

LC 79 Attorney General Independent Investigation Authority for Use of Force

- Add section 5(1)b – “Create a citizen-driven complaint process which will also be investigated.” Our concern is that if only law enforcement agencies can initiate AG investigations, there will be resistance to some serious complaints reaching the AG process. Citizens are also less likely to report misconduct directly to a local entity when there are concerns about retaliation.
- There absolutely needs to be some sort of penalty for not notifying the Attorney General. Revocation of funding?
- 5.(1) We wanted to amend this with three things: Use of force reports (covers when a person is injured and not), discipline and proposed discipline (in case officer leaves before being disciplined), and citizen complaints would all be submitted.
- 5(2)a - If an Officer resign in lieu of discipline, we still need the proposed discipline and citizen complaints to make it to DPSST.

- 5(2)b - Add “State Police” and “Investigators with any sort of prior relationship to the officer involved” to the list of restrictions.
- 5(5) - The Attorney General shall use a Preponderance of Evidence standard of review for determining misconduct.
 - o Additionally, the Attorney General must submit the entirety of the investigation report to DPSST and make it public record after completion of the investigation.
 - o The intention here is that once the Attorney General is finished with their investigation, they submit the entirety of the investigation to DPSST who looks it over and decides whether to discipline the officer. At the same time, the Attorney General’s Office either proceeds with criminal charges or not.
- 5(7) - Deadline for rules adoption shall be 1.1.2021.
- Add Section 5(8) – “The Office of the Attorney General shall provide an annual accounting of all investigations and reports made freely available to the public.”

LC 80 Law Enforcement Duty to Report and Intervene

Replace with Wording from Erious Johnson

Definitions:

Affirmative duty: an obligation to act

Intervene: To come between, whether verbally or physically, so as to prevent or alter a result or course of events.

Excessive Force: That force which is unnecessary or unreasonable under the circumstances.

- 1) All law enforcement officials, as that term is defined in OAR 735-010-0055, have the affirmative duty to take appropriate and immediate action in any situation in which they know or should know that their failure to act may result in:
 - a. The use of excessive force;
 - b. Egregious behavior that shocks the conscience;
 - c. The deprivation of a Constitutional right;
 - d. The violation of an Oregon Statute or Administrative Rule; or
 - e. The violation of a law enforcement policy or procedure.
- 2) All law enforcement officials, as that term is defined in OAR 735-010-0055, have the affirmative duty to take appropriate and immediate action in any situation in which they witness a fellow officer:
 - a. Use excessive force;
 - b. Deprive an individual of a Constitutional right
 - c. Violate an Oregon Statute or Administrative Rule;
 - d. Violate a law enforcement policy or procedure;
 - e. Falsify documents; or

- f. Engage in:
 - i. egregious behavior that shocks the conscience;
 - ii. theft, as that term is defined in ORS 164.015;
 - iii. fraud;
 - iv. inappropriate “sexual contact”, as that term is defined in ORS 163.305(6);
 - v. harassment, as that term is defined in ORS 166.065;
 - vi. inappropriate behavior or the use of inappropriate language.
- 3) Intervention may be verbal or physical that a reasonable person must assume will cause the behavior to cease.
- 4) Failure to intervene when necessary and appropriate may subject the law enforcement official to:
 - a. Disciplinary action, up to and including, termination;
 - b. Forfeiture of their Oregon Department of Public Safety Standards and Training (DPSST) certification; and Liability for civil damages
- Add section consistent with New York SB6601-B

“When a person is under arrest or otherwise in the custody of a police officer, peace officer or other law enforcement representative or entity, such officer, representative or entity shall have a duty to provide attention to the medical and mental health needs of such person, and obtain assistance and treatment of such needs for such person, which are reasonable and provided in good faith under the circumstances. Any person who has not received such reasonable and good faith attention, assistance or treatment and who, as a result, suffers serious physical injury or significant exacerbation of an injury or condition shall have a cause of action against such officer, representative, and/or entity. In any such civil action, the court, in addition to awarding actual damages and costs, may award reasonable attorneys' fees to a successful plaintiff. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.”

LC 81 Limitation on Munitions Used to Control Assemblies/Protests

- Replace with Language from Colorado SB20-217

“In response to a protest or demonstration, a law enforcement agency and any person acting on behalf of the law enforcement agency shall not discharge kinetic impact projectiles and all other non- or less-lethal projectiles in a manner that targets the head, pelvis, or back, discharge kinetic impact projectiles indiscriminately into a crowd, or use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.”

LC 83 Prohibition on Use of Chokeholds

- A peace officer is not justified in any circumstance in using physical force or deadly physical force that impedes the ability of a person to breathe including, but not limited to, restraining a person around the neck, using a choke hold, putting the peace officer's knee on the person's neck or acting in any other manner which interferes with or results in the blocking or compromising of the person's airway **or bloodflow**.
- This should also include language requiring de-escalation, like Section 14.

Use of Deadly Force

- The Use of Deadly Force Statute must be revised and should strongly emphasize de-escalation and the use of all other options beforehand. See the language of Tennessee's Deadly Force Statue for an example.

Use of Lethal Force § 40-7-108. Resisting arrest; law enforcement officer; powers and duties, T. C. A. § 40-7-108 T. C. A. § 40-7-108 § 40-7-108. Resisting arrest; law enforcement officer; powers and duties

(a) A law enforcement officer, after giving notice of the officer's identity as an officer, may use or threaten to use force that is reasonably necessary to accomplish the arrest of an individual suspected of a criminal act who resists or flees from the arrest.

(b) Notwithstanding subsection (a), the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of the officer's identity as an officer and given a warning that deadly force may be used unless resistance or flight ceases, and:

(1) The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; or

(2) The officer has probable cause to believe that the individual to be arrested poses a threat of serious bodily injury, either to the officer or to others unless immediately apprehended.

(c) All law enforcement officers, both state and local, shall be bound by this section and shall receive instruction regarding implementation of this section in law enforcement training programs.