

Arbitration Bill Has Achilles' Heel

The intention of Senate Bill 1567¹ is to restrict an arbitrator's ability to change how officers are disciplined by agencies if they are found to have committed policy violations. However, this bill has a fatal flaw that would almost certainly nullify any positive effects it might have. *SB 1567 only applies when the arbitrator's findings of misconduct are consistent with the agency's findings.* In nearly every case involving grievous misconduct that has gone to arbitration in Portland, the arbitrator has reversed the findings of misconduct. Listed below are five cases you can use to gauge the ineffectiveness of SB 1567. Notice how the agency's initial findings were consistently contradicted by the arbitrator's investigations and the resulting ruling allowed them to walk away with little to no discipline.

Officer Valadez (2015)

Officer Alfonso Valadez was fired after allegedly sexually assaulting a woman at a party where alcohol had been consumed. The Clark County Sheriff's Office did not test the woman's rape kit or analyze her blood or urine, saying "there was no point".² The arbitrator eventually suspended him for 40 hours without pay due to unprofessional conduct, but reversed the firing citing the lack of medical evidence in the case.

Officer Frashour (2010)

The city fired Officer Ron Frashour for violating training when he shot and killed Aaron Campbell. The Lieutenant from the Training division clearly stated Frashour did not act appropriately. However, Sergeants under his command contradicted his testimony and the arbitrator ruled there was no misconduct, overturning the discipline and ordering Frashour reinstated with back pay.³

Lt. Kaer (2006)

When Lt. Jeffrey Kaer responded to his sister's call about a man in a car outside her house, it ended with Kaer shooting and killing Dennis Young. Kaer claimed he was in danger of being killed by Young's moving car. The arbitrator agreed Kaer violated police policy due to his poor decision making, but said he did not violate the policy against shooting at moving vehicles because the vehicle was not moving at the time of the shooting. Kaer ended up with a suspension of 30 days without pay.⁴

Officer Humphreys & Sgt. Nice (2006)

Officer Chris Humphreys and Sgt. Kyle Nice were suspended for 80 hours each because they did not get James Chasse, Jr. to a hospital after fatally beating and tasing him repeatedly on the sidewalk. The arbitrator overruled the finding and ordered they be given back pay and have their records erased.

Officer McCollister (2003)

The arbitrator who determined Officer Scott McCollister did not violate policy when he killed Kendra James in 2003 explicitly cited a disconnect between the Chief's findings and "the true facts of the situation." The arbitrator claimed that if James had driven away and caused an accident, the city would face liability.⁵ McCollister was reinstated with back pay.

One possible solution would be that in cases in which a law enforcement officer used excessive or deadly force, and/or which resulted in a death in custody, the arbitrator's standard of review will be limited. The standard shall be whether 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 finding.

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.

Additionally, ensuring that counties and cities have more rigorous investigative procedures (or even having an outside entity such as the Attorney General step in) would go a long way to reaching reasonable and evidence-based conclusions.

- 1- <https://olis.leg.state.or.us/liz/2020R1/Downloads/MeasureDocument/SB1567/Introduced>
- 2- https://www.oregonlive.com/portland/2018/05/da_orders_city_to_release_arbi.html
- 3- So far as we know Frashour is still on the force assigned to desk duty.
- 4- https://www.portlandcopwatch.org/shootings_analysis_0713.html#fired
- 5- <http://www.portlandcopwatch.org/PPR38/rapback38.html>