



TO: Senate President Peter Courtney; House Speaker Tina Kotek; Senate Republican Leader Fred Girod; House Republican Leader Christine Drazan; & Members of the Joint Interim Committee on the First Special Session of 2020
FROM: Disability Rights Oregon
DATE: June 22, 2020
RE: Police Accountability Legislative Concepts 49, 78, 79, 80, 81, and 83

Chair and Members of the Committee:

Thank you for your efforts to increase police accountability. I write in support of Legislative Concepts 49, 78, 79, 80, 81, and 83.

Disability Rights Oregon stands with the Black, Indigenous, and other people of color (BIPOC) in opposing police violence and discrimination in law enforcement. The over-policing of BIPOC communities and the frequent, unjustified use of violence in that policing has long been obvious to anyone who cared to look at the racial makeup of our prison population or countless studies attesting to the wide racial disparities in different outcomes of interactions with police. Recent incidents in Oregon, including both the ongoing unreasonable uses of force against Black people in Portland and the broad conspiracy across law enforcement agencies to persecute an innocent tow truck driver based on his race, demonstrate the ubiquity and persistence of the problem.

Disability Rights Oregon also stands for the disability community in opposing police violence. People with disabilities, especially BIPOC people with disabilities, are frequent victims of the misuse of police violence. Between 25 and 40 percent of people killed by police have a disability.¹

Too many calls to the police that request a welfare check on a person experiencing a mental illness result in the death of the person the police were supposed to help. Too many people with mental illnesses, traumatic brain injuries, or developmental disabilities are arrested on petty offenses such as disorderly conduct when their real crime is having a disability in public. Too many times the power of law enforcement is used instead of the power to meet people's needs for care and treatment, such as when "unwanted" patients at hospitals are arrested for trespass.² Disability Rights Oregon opposes the maltreatment of people with disabilities at the hands of police officers.

¹ s.e. smith, *Disability Is a Hidden Side of the Police Violence Epidemic*, Vox, Oct. 4, 2016, at <https://www.vox.com/2016/10/4/13161396/disability-police-officer-shooting>.

² Disability Rights Oregon, *The "Unwanted": Looking for Help, Landing in Jail* (2019) at <https://droregon.org/wp-content/uploads/Report-The-Unwanted-Looking-for-Help-Landing-in-Jail-2019-June18.pdf>.

The proposed laws are not at odds with public safety or deterring violent crime. The single element most likely to ensure public safety is public trust in the police department. Consider that robberies, murders, and other serious crimes have usually been completed when police officers are called to respond. In most of these instances, they need ordinary citizens to testify about what they saw in order to identify the perpetrators and refer the information to prosecutors. Witnesses are reluctant to come forward from communities where trust in the police is low. A well-operated, publicly-respected police department can solve more cases than one known for indiscriminate harassment and abuse of citizens.

ABOUT DISABILITY RIGHTS OREGON

Disability Rights Oregon is a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. Disability Rights Oregon serves as a watchdog over state agencies and institutions as we work to transform systems, policies, and practices to give more people the opportunity to reach their full potential. For more than 40 years, the organization has served as Oregon's federally authorized and mandated Protection & Advocacy System. Disability Rights Oregon is committed to ensuring the civil rights of all people are protected and enforced, including in the criminal justice system.

DETERRENCE AND ENFORCEMENT OF PROCESS IN POLICE ACCOUNTABILITY (L.C. 49, 78, 79, 80)

One common element in the harms done to people with disabilities and BIPOC people is police misconduct. Police officers, similar to doctors, lawyers, or other trained professionals, should be held to a high standard and should be publicly accountable for their actions as public employees. Nothing about fairness and due process prohibits robust enforcement of standards to ensure the accountability of a person entrusted with a gun and the power to arrest.

Police departments are unable to enforce standards on their officers when arbitrators set aside their disciplinary actions. The same thing happens when police departments tolerate or lightly punish behavior that should be appreciated as a warning about a particular officer. This process often makes it difficult to improve previously lax enforcement of standards. DRO supports Legislative Concept 49 as an effective and reasonable way to address this long-standing problem.

DRO also supports efforts to increase transparency in investigation and publication of police officer misconduct in Legislative Concept 78 and 79. A local district attorney would have difficulty investigating a local police officer neutrally, knowing that discrediting that officer by a formal finding could disrupt many cases being actively prosecuted or even reopening past convictions. We should routinely expect neutrality in our public investigations. A police officer with founded complaints should also not be entitled to bounce from department to department without consequence. In the recent West Linn case, an officer implicated in the conspiracy to persecute Michael Fesser was able to move on to teach officers at the state academy.³ West Linn hired former Chief Timeus despite a

³ Maxine Bernstein, *Officers Placed on Leave, Investigations Ordered in Growing Scandal over Rogue Arrest of Black Portland Man*, The Oregonian, Feb. 12, 2020 (stating a former lieutenant at West Linn was placed on leave from the state police academy for his alleged involvement in the case) at

history of complaints regarding homophobic and racist language and behavior because it conducted no background check.⁴ The proposed legislative concept will increase accountability and public trust in our criminal legal system.

Similarly, DRO supports Legislative Concept 80's efforts to make explicit the obligation of police officers to self-police and step in when they see illegal, unethical, or improper behaviors by other police officers. Too long, the blue wall of silence has protected officer misbehavior and promoted abuse of BIPOC people and people with disabilities. Actively encouraging police officers to hold each other to account actually improves police morale and public safety, as well as deterring misconduct.⁵

RULES SHOULD LIMIT USE OF FORCE AND CONSIDER THE UNIQUE NEEDS OF PEOPLE WITH DISABILITIES

Legislative Concepts 81 and 83 address specific uses of force by law enforcement. Legislative Concept 81 restricts the use of tear gas as well as certain acoustic weapons against the public. Legislative Concept 83 restricts the use of chokeholds and similar restraints that restrict the flow of air to and from the lungs. These practices are harmful to the general public.

The dangers associated with the often casual and frequent use of chokeholds have been well-known since efforts to ban them began over 40 years ago.⁶ Policies that merely restrict the use of those chokeholds to circumstances when police officers feel that their lives are in danger have been completely ineffective since the breadth of circumstances in which a police officer may claim to feel their life in danger can often be troublingly broad. In addition, chokeholds pose special concerns for people with disabilities. An individual with a respiratory or circulatory problem may be more likely to die from a chokehold.

Use of tear gas is an indiscriminate way of attacking a large group of citizens. Recently, we have seen the indiscriminate effect of tear gas nationwide on peaceful protesters and journalists.⁷ DRO notes that tear gas poses special harms to people with disabilities. In addition, because the mere possibility of encountering tear gas or other irritants is such a risk for people with respiratory or other disabilities, they are deterred from attending *any*

<https://www.oregonlive.com/crime/2020/02/clackamas-county-da-announces-full-investigation-into-west-linn-police-handling-of-wrongful-arrest-case-in-portland.html>.

⁴ Maxine Bernstein, *Report Accuses ex-West Linn Police Chief Terry Timeus of Racist, Sexist and Homophobic Remarks, Behavior*, The Oregonian, Feb 20, 2020, at <https://www.oregonlive.com/crime/2020/02/west-linn-releases-100-page-report-on-former-chief-terry-timeus-filled-with-allegations-of-racist-sexist-and-homophobic-remarks-behavior.html>.

⁵ Patrik Johnson, *How New Orleans Police Went from 'Most Corrupt' to Model Force*, Christian Science Monitor, Feb. 26, 2019, at <https://www.csmonitor.com/USA/Justice/2019/0226/How-New-Orleans-police-went-from-most-corrupt-to-model-force>; Tom Jackman, *New Orleans Police Pioneer New Way to Stop Misconduct, Remove 'Blue Wall of Silence'*, Washington Post, Jan. 24, 2019, <https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/>.

⁶ *Los Angeles v. Lyons*, 461 U.S. 95 (1983).

⁷ Pro Publica, *Tear Gas is Way More Dangerous Than the Police Let On*, June 5, 2020, at <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic>.

peaceful protest. People who are deaf or hard of hearing may not understand any warnings given by police prior to the use of tear gas and other irritants. Weapons prohibited in war, including tear gas, should not be used on civilian populations, in part because they will have particularly harmful and indiscriminate effects on people with disabilities.