

Proposed language:

**DRAFT
SUMMARY**

Modifies requirements for database of disciplinary and certification actions relating to police officers and reserve officers established by Department of Public Safety Standards and Training.

Requires law enforcement agencies to report to department when agency imposes disciplinary action with economic consequences on police officer or reserve officer.

A BILL FOR AN ACT

Relating to records of discipline of police officers; creating new provisions; and amending section 3, chapter 7, Oregon Laws 2020 (first special session) (Enrolled House Bill 4207).

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 3, chapter 7, Oregon Laws 2020 (first special session) (Enrolled House Bill 4207), is amended to read:

Sec. 3. (1) The Department of Public Safety Standards and Training shall establish a statewide online database that includes but is not limited to [*suspensions and revocations of the certifications of police officers that is accessible by the public*]:

1. **any complaints, allegations or charges relating to public safety employees, regardless of whether the complaint, allegation, or charge resulted in a disciplinary proceeding;**
2. **the existence and status, including the findings, of any disciplinary proceeding, trial or hearing;**
3. the existence and status, including the findings, of any certification action taken by the Department of Public Safety Standards and Training which relates to disciplinary proceedings against a public safety employee;
4. The existence and status of any criminal charges against a public safety employee;
5. The existence and status of any civil proceedings against a public safety employee related to conduct under color of law; or
6. The existence of any judicial finding or prosecutorial determination of a public safety employee's unreliability or lack of credibility; and
7. **Upon completion of an investigation of a complaint, allegation, or charge against a public safety employee, or if a public safety employee resigns or is terminated from employment while the complaint, allegation or charge is pending, all data relating to the investigation shall be included in the database, subject to subsection 8 of Section 3 of this 2021 Act.**

(2) The Department shall publish information on the database when:

- (a) **a complaint, allegation, or charge relating to a public safety employee is filed;**
- (b) **when a law enforcement agency, independent review board, or any other entity tasked with evaluating any a complaint, allegation, or charge of a public safety employee makes a finding in a disciplinary proceeding;**
- (c) **when a criminal charge is filed against a public safety employee;**
- (d) **when a civil proceeding is filed against a public safety employee related to conduct under color of law;**
- (e) **when the department suspends or revokes the certification of a police officer under ORS 181A.630, 181A.640 and 181A.650; or**
- (f) **when a police officer resigns during an investigation, or discipline or termination proceeding; and**

(g) when there is a judicial finding or prosecutorial determination by a local prosecutor or the Department of Justice that a public safety employee is unreliable or lacks credibility.

(3) The information includes but is not limited to:

- (a) The name of the officer;
- (b) The law enforcement unit at which the officer was employed; and
- (c) All findings and description of the facts underlying the **disciplinary proceeding, prosecutorial determination or judicial finding**, suspension [or], revocation or resignation.

(4) (a) The department shall publish the information required under subsection (2) of this section **by posting the information on the department's website for ease of public access** within 10 days after:

- (A) Notification of the existence of criminal charges against a public safety employee;
- (B) Notification of the existence of civil charges against a public safety employee related to conduct under color of law;

(C) Notification by a prosecutor of a judicial finding or a prosecutorial determination that a public safety employee is unreliable or lacks credibility;

(D) The resignation; or

(E) In the case of a suspension or revocation of certification:

[(a)] **(i)** The time for filing an appeal of the department's decision under ORS 181A.650 has passed and no appeal has been filed; or

[(b)] **(ii)** The decision of the department is appealed under ORS 181A.650 and the department's decision has been sustained by the Court of Appeals or the appeal has been dropped.

(b) Notwithstanding any other law, all public safety employee disciplinary records, including all attendant documents, shall be publicly accessible through ORS XXXX (public records).

(5)(a) Within 10 days after receiving a report of a complaint, allegation, or charge against a public safety employee, or a finding in any disciplinary proceeding, or a disciplinary action under section 3 of this 2021 Act, the department shall enter the information contained in the report in the database.

(b) Within 10 days after receiving a report from a prosecutor of a judicial finding or prosecutorial determination that a public safety employee is unreliable or lacks credibility, the Department shall enter the information contained in the report in the database.

(c) If the disciplinary action is subject to arbitration before becoming final, the department shall make the report accessible only to law enforcement agencies until the arbitration process is complete and the disciplinary action becomes final.

(d) Notwithstanding paragraph (c) of this subsection, the department shall make a report available to the public before the arbitration process is complete and the disciplinary action becomes final when the public interest requires disclosure of the report, or when the public safety employee is a witness in a pending court proceeding.

(e) Within 10 days after the department receives notice under section 3 of this 2021 Act that the arbitration process is complete and the disciplinary action is final, the department shall publish the report by prominently posting the information on the department's website for ease of public access.

[(4)] **(6) No later than September 1 of each year, the department shall submit [an annual] a report to an appropriate committee of the Legislative Assembly summarizing and analyzing the data in the database. The report must include, for the previous 12 months:**

(a) The number of reports of disciplinary action received by the department under section 3 of this 2021 Act.

(b) Analysis of the types of misconduct that resulted in disciplinary action.

(c) Analysis of the types of discipline that were reversed in arbitration.

(d) Analysis of the types of complaints, allegations, or charges that were filed against public safety employees.

SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS 181A.355 to 181A.670.

SECTION 3. (1) As used in this section:

(a) "Disciplinary action" means a corrective or punitive action imposed by a law enforcement agency following an investigation into a public safety employee's alleged misconduct that deprives the officer of pay, rank, accrued time or other pecuniary benefits, or results in an internal departmental reassignment or administrative leave, not including technical infractions.

(b) "Disciplinary records" means any record created in furtherance of a disciplinary proceeding conducted by a law enforcement agency, DPSST, an independent review board, or any other entity tasked with evaluating any a complaint or charge of a public safety employee, excluding technical infractions; including, but not limited to:

(A) the complaints, allegations, and charges against an employee;

(B) the name of the employee complained of or charged;

(C) all records, documents, and files, in whatever form, related to the investigation, adjudication, and disposition of the complaint or charge, subject to subsection 8 of section 3 of this 2021 Act.

(D) the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;

(E) any finding by an agency, independent review board, the Department of Public Safety Standards and Training, or any other entity tasked with evaluating any complaint or charge against a public safety employee, during a disciplinary proceeding; and

(F) the final written opinion or memorandum supporting either the disposition and discipline imposed, or the decision not to impose discipline, including the agency's complete factual findings, its analysis of the conduct and appropriate discipline of the covered employee, and data documenting the basis of the action or lack of action, excluding data that is subject to subsection 8 of section 3 of this 2021 Act.

(c) "Disciplinary proceeding" means the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency, DPSST or independent review board.

(d) "Law enforcement agency" has the meaning given that term in ORS 181A.775.

(e) "Public safety employee" has the meaning given that term in ORS 181A.830

(f) "Technical infraction" means a minor rule violation by a public safety employee, solely related to the enforcement of administrative departmental rules that (a) do not involve interactions with members of the public, (b) are not of public concern, and (c) are not otherwise connected to such person's investigative, enforcement, training, supervision, or reporting responsibilities.

(2) Within 10 days after a law enforcement agency receives a complaint or charge against an officer, the law enforcement agency shall send the complaint or charge to the Department of Public Safety Standards and Training.

(3) Within 72 hours after a law enforcement agency is notified by an employee of the existence of criminal charges against that employee, the law enforcement agency shall notify the DPSST

(4) Within 72 hours after a law enforcement agency is notified by an employee of the existence of civil proceedings against that employee related to conduct under color of law

(5) Within 10 days after a law enforcement agency makes a finding, including a decision to impose disciplinary action on a public safety employee, or makes a decision not to impose disciplinary action, the law enforcement agency shall send a report of the disciplinary action to the Department of Public Safety Standards and Training. The report must include:

(a) The name and rank of the officer;

(b) A detailed explanation of the finding;

(b) A detailed explanation of the consequences resulting from any disciplinary action;

(c) A detailed explanation of the reason for any disciplinary action, or lack of action; and

(d) The current status of the disciplinary action and any related arbitration proceedings.

(6) Within 10 days of a judicial finding of, or a determination by a prosecutor or the Department of Justice that a public safety employee is unreliable or lacks credibility, the prosecutor shall send a report of such a determination to DPSST. The report must include:

(a) the name and rank of the officer;

(b) a detailed explanation of the determination, including complete factual findings and basis for making the determination.

(7) If a disciplinary action is subject to arbitration, the law enforcement agency shall promptly notify the department of the outcome when the arbitration process is complete.

(8) A law enforcement agency shall redact from disciplinary records as defined in Section 3 the following information prior to disclosing to the Department of Public Safety Standards and Training:

(a) items involving the medical history of an officer, not including records obtained during the course of an agency's investigation of such person's misconduct that are relevant to the disposition of such investigation;

(b) the home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of an officer or a family member of such a person, a complainant or any other person named in a disciplinary record, except as otherwise required by law. This paragraph shall not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment;

(c) any social security numbers; or

(d) disclosure of the use of an employee assistance program, mental health service, or substance abuse assistance service by an officer, unless such use is mandated by a disciplinary proceeding that may otherwise be disclosed pursuant to this article.

SECTION 4. (1) The entirety of all active public safety employees' disciplinary files and attendant records, as it relates to any materials covered by section 1 of this Act, shall be included in the database within 1 year of the passage of this law.

(2) All records shall be retained for a minimum of 30 years from the time of entry into the database

(3) No record to which this 2021 Act applies may be destroyed before this law takes effect, or before it is included in the database.

SECTION 5. ORS 181A.830(3) is repealed

SECTION 6. ORS 181.854(3) and (4) is repealed.

SECTION 7. ORS 192.345(12) is amended to read:

(12) A personnel discipline action, or materials or documents supporting that action, except as required by this 2021 Act.

SECTION 8. Section 3 of this 2021 Act does not affect a collective bargaining agreement entered into before the effective date of this 2021 Act, to the extent compliance with the provisions of section 3 of this 2021 Act would conflict with or impair the execution of the terms of the collective bargaining agreement.