



**Joint Committee on Transparent Policing & Use of Force Reform**

Courtney Helstein on behalf of the ACLU of Oregon

July 31, 2020

Co Chairs Manning and Bynum, and Members of the Committee,

**The American Civil Liberties Union of Oregon**<sup>1</sup> has long fought to preserve and extend constitutionally guaranteed rights to people who have historically been denied their rights on the basis of race. We stand with Black leaders and communities in their call to address and end the violence and killings they endure at the hands of police. We are glad to see these important conversations continue in the legislature and offer our thoughts on new proposed concepts below.

**LC 742**

The ACLU of Oregon supports the underlying goal of this bill. Police response to protests and other mass assemblies should not involve militarized displays or mass violence by the government, and law enforcement should never deploy indiscriminate weapons, such as tear gas and stun grenades, on any mass gathering or assembly. In addition to posing serious risks to people's health and safety, such weapons almost by definition violate our right to due process and will seldom, if ever, constitute the least restrictive means available to regulate unlawful conduct in the context of a protest or mass assembly.

In Oregon, we have seen over a month of nightly protests against Police killing of and brutality against Black people. The public is demanding that government officials and systems act to ensure that Black Lives Matter. Yet state and federal police actions are curtailing dissent with disproportionate violence against protesters in violation of the First Amendment and Article 1 Section 8 of the Oregon Constitution.

While the intent of HB 4208 from the special session was to severely limit the use of tear gas by police, it actually codified in statute a pathway for law enforcement to legally use tear gas on protesters based on the alleged actions of a few. We are pleased to see that LC 742 repeals this law and bans the use of tear gas and bans impact munitions, like rubber bullets, being used indiscriminately against crowds. The bill does continue to allow the use of impact munitions if there is probable cause that someone is committing a felony. This is concerning to us as riot is currently a

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<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 30,000 members and supporters in the State of Oregon, and that number is growing as we speak.

felony and as we have expressed in previous testimony, the bar for police to declare a riot is too low.

### LC 743

Generally, we are supportive of this concept. Part of the contributing factor to the militarization of law enforcement are their uniforms, especially when they are doing crowd management during assemblies and protests.

During protests in Portland, we have seen officers covering their names and replacing them numbers that only hold meaning to their employing agency, and working in uniforms that do not always make it clear which law enforcement agency they are employed with. It is critical to transparency, accountability, and the safety of the public to be able to easily identify the officers the public may come in contact with.

LC 743 would require uniforms to display the officer's last name, badge number or an identifying number assigned by DPSST. While we prefer that an officer always be required to clearly have their name listed, we have no inherent opposition to officers displaying an assigned DPSST number instead. However, the bill does need a few additions to ensure adequate transparency.

- The bill should include a standard that the assigned number is no longer than four numbers. This will ensure that DPSST is not assigning numbers to officers that are so long or overly complicated that the average person would not be able to easily remember that number if they were not in a position to take a photo or write the number down in the moment.
- DPSST must keep an easily searchable public database of these numbers and the officers they are assigned to. This is critical to achieving transparency and ensuring the public can easily identify the officers, and where they are employed, that they are coming into contact with even if officers are using their assigned number instead of their name.

### LC 744

LC 744 strengthens HB 4205 from the recent special session. HB 4205 focused on the duty to intervene but failed to include the duty to report or setup standards for investigating those reports. LC 744 helps bridge this gap and the ACLU of Oregon generally supports this concept. We appreciate the clear direction in the bill about how an officer can make a report and the reasonable timelines in the concept for making a report and investigating reports of misconduct.

Additionally, the concept requires people who have authority to investigate reports to transfer the reports and results of the investigations to the Bureau of Labor and Industries. In cases where the alleged misconduct is towards a civilian, the reports must also be sent to the Department of Justice. While we appreciate the extra level of transparency that having reports sent to outside agencies, the

concept is unclear on what BOLI and DOJ are supposed to do with those reports and completed investigations. We recommend making that clear in the concept.

### LC 745

LC 745 further prohibits the use of chokeholds or other maneuvers that limit a person's breathing or circulation by adding corrections officers and disallowing these types of maneuvers even when an officer is justified in using lethal force. However, the ACLU of Oregon still believes a substantial loophole in the language of the bill exists.

Section 2(1): A peace officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person, *[unless the circumstance is one in which the peace officer may use deadly physical force as provided in ORS 161.23]*.

The word “knowingly” should be removed from the bill. This creates a standard that can be near impossible to prove in many circumstances, rendering the bill ineffective in fully banning this dangerous and often lethal maneuver.

### LC 746

During the June special session, the ACLU of Oregon shared our agreement with the general concepts outlined in SB 1604. However, we could not fully support the bill as it affirmatively allowed for officer misconduct to be disciplined based on a matrix that is subject to collective bargaining and negotiation. This continues to keep the public out of the conversation about appropriate officer accountability. Furthermore, making the appropriate discipline for excessive use of force an issue that police unions can negotiate is extremely problematic, and could give police unions the ability to seriously reduce or eliminate a police department's ability to discipline an officer who wrongfully harmed a member of our community.

We respectfully requested that SB 1604 be amended to include a statewide floor on discipline and ensure discipline matrices are not subject to collective bargaining. The ACLU of Oregon is glad to see our requests reflected in LC 746.

LC 746 will no longer make discipline matrices subject to collective bargaining agreements beginning in July of 202 and requires a thorough process to create a statewide discipline matrix moving forward via a commission. Notably, we strongly support the requirement for public outreach and input by the commission as well the requirement for continued review and adaptation of the discipline standards as needed.