



STATEMENT RE: LC 19

(DPSST database of misconduct)

To: Joint Committee On Transparent Policing and Use of Force Reform

From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs

Date: September 2, 2020

Co-Chairs and Members of the Joint Committee:

For the record, my name is Michael Selvaggio, representing the Oregon Coalition of Police and Sheriffs (ORCOPS). With regard to LC 19, which establishes a DPSST database of certain disciplinary information for law enforcement officers, ORCOPS is opposed to the measure as currently drafted. While ORCOPS was pleased to be able to support HB 4207 in the First Special Session of 2020 (establishing a DPSST database of certain disciplinary information for law enforcement officers), this measure appears to repeal a large swath of that measure and replaces it with LC 19.

One significant difference is the inclusion in such a database of a significant amount of subjective material. For more information on our concerns about the subjective nature of these records from jurisdiction to jurisdiction, please see my appended statement on LC 748 from the Second Special Session. In addition (like with LC 748), LC 19 would be made even more subjective with the addition of LC 746 which would add significant subjectivity even within a single law enforcement unit.

LC 19 also includes, as a new feature, the addition of “**Complaints, allegations and charges... regardless of whether the complaint, allegation or charge resulted in a disciplinary proceeding**”

This is an exceptionally, and possibly unprecedented, new step. To our knowledge, no other state certified profession publicly reports all allegations -- however unfounded -- in this manner.

This will almost certainly lead to abuse of this system in manners designed to harass and intimidate officers. In fact, the Committee has had a discussion on this general concern, albeit in another context: On August 10, the Committee (reconstituted for the Second Special Session) deliberated HCR 221 dealing with allegations against Legislators and Legislative officials. At

that time, several members expressed severe concerns about how an unrestrained complaint process could lead to unwarranted damage to an individual's reputation, and urged a thoughtful, deliberative approach in order to ensure that individuals who were accused of misconduct weren't simply prejudged by the public. The Committee even expressed concern about the mental fatigue Legislators may have to deal with by addressing unfounded accusations, and went so far as to acknowledge that additional work may be required to limit or regulate such claims.

With that in mind, ORCOPS is frankly frustrated that there has been so much discussion dedicated to protecting Legislators against unfounded allegations but have nevertheless not incorporated any such protections in LC 19.

This brings up several questions that we suggest the Committee answer prior to moving this legislation (or an amended version) forward:

1. Will public employees be treated to less protections than State Legislators with regard to unfounded allegations?
2. Is it the Committee's intent to facilitate the publicization of unfounded complaints against law enforcement officers? If not, how does LC 19 prevent that?
3. Has the Committee considered the effect on a law enforcement officer's record and/or reputation if they were targeted by a person or group with unfounded complaints based on that officer's race, ethnicity, sexual orientation, or other protected class?
4. Given that District Attorneys have complete authority with regard to maintaining their "Brady List" of officers, is it the Committee's understanding that a District Attorney will be able to add an officer to a Brady List on the basis of such unfounded accusations that appear on the envisioned database?
5. Given that local government stakeholders have expressed their concern to the Committee that arbitration rules sometimes make it difficult for them to fire officers that appear on a Brady List, and that the Committee has prepared legislation to give greater discretion to such stakeholders with regard to termination of employees... Is it the Committee's understanding that this measure could possibly lead to the summary termination of law enforcement officers based on unfounded allegations?

We ask that the Committee consider this broad policy very carefully -- especially given that we are working remotely on a short timeline with minimal time for discussion -- and to thoughtfully examine the possible implications to employment law as well as its interaction with the other measures that it proposes to pass.

ORCOPS asks that this measure is not passed as currently written, and we are willing to participate in a collaborative discussion to help address these concerns.



STATEMENT RE: LC 748 (*Also file under LC 746*) (RECORDS OF DISCIPLINE)

To: Joint Committee On Transparent Policing and Use of Force Reform
From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs
Date: July 29, 2020

Co-Chairs and Members of the Joint Committee:

For the record, my name is Michael Selvaggio, representing the Oregon Coalition of Police and Sheriffs (ORCOPS).

In the previous special session, the Legislature enacted a disclosure process with regard to standardized DPSST decertification records, with ORCOPS' express support. LC 748 aims to add local disciplinary records to that process.

ORCOPS has concerns about including a local process because the results will skew wildly across jurisdictions and officers. There is no universal standard for how strict local chiefs and sheriffs are in imposing such discipline, so **two officers exhibiting the same conduct in different jurisdictions might appear very different on such a database**. The elimination of "just cause" protections envisioned in LC 746 could further exacerbate the discrepancy by paving the way for selective and discretionary enforcement by commanding officers -- meting out frequent discipline for some in their agency while ignoring misconduct perpetrated by others.

As an example, consider the hypothetical case of four officers, two in each of two jurisdictions:

Officer	Jurisdiction	Actual Misconduct	Commander Action	Result in Database
Deputy Adams	County X	3x use of profanity	Harsh (does not like specific officer)	2 economic sanctions
Deputy Baker	County X	4x displaying badge for gain	Does not pursue (friendly with officer)	[No record]
Officer Charles	City Y	3x use of profanity	Harsh (generally)	2 economic sanctions
Officer Davis	City Y	4x displaying badge for gain	Harsh (generally)	4 economic sanctions

(These possible violations and sanctions are based on the existing advisory Discipline Guide used by the City of Portland.)

Regardless of whether LC 746 passes, LC 748 allows for the varied discipline styles of different commanding officers to be reflected in widely varying results on a DPSST database.

Case 1: If, for example, Deputy Baker and Officer Charles were both vying for the same position in another jurisdiction, the database envisioned here would reflect a cleaner record for Deputy Baker (who was under the command of a relatively lax sheriff who looked the other way on some significant misconduct) than for Officer Charles (under the command of a strict Chief who sternly disciplined even minor misconduct).

In the event that LC 746 passes as well, it creates an opportunity for intentional “gaming” of the system. Without a “just cause” standard in place to ensure that discipline is fairly brought to bear, chiefs and sheriffs would be free to engage in selective enforcement -- disciplining or not disciplining officers based on personal discretion rather than existing standards. (Currently, an arbitrator could make the case that a chief or sheriff was unfairly favoring or persecuting a particular officer, but not so under LC 746!)

Case 2: Consider the example of Deputy Adams and Deputy Baker both competing for the same position (... for example, running for Sheriff in a suburban county...). Despite more significant misconduct, Deputy Baker’s public record would appear squeaky-clean thanks to their favorable relationship with their commanding officer, while Deputy Adams’s record is peppered with records of misconduct.

Lastly, the concept’s definitions are so strictly written as to exclude Chiefs and Sheriffs from the accountability envisioned by the measure; Chiefs and Sheriffs typically do not impose discipline on themselves. In order to avoid creating an accountability system that grants a “pass” to those at the top of an organization, ORCOPS suggests exploring a more standardized framework for what should be included in such a database, along with ensuring that there continues to be due process for all through the maintenance of existing just cause disciplinary standards.