

Co-Chairs and Members of the Joint Committee,

My name is Robert Fisette. I am a business owner and resident of Lane County. Thank you for the opportunity to submit testimony to the Joint Committee on Transparent Policing and Use of Force Reform.

Generally, I consider these measures to be appropriate for advancing the cause of reducing the most blatant civil rights violations that we have regularly seen visited upon protesters and people of color in Oregon. Generally, they are only the most basic first step toward achieving the type of relationship that rational people expect to exist between peace officers and citizens in a democratic republic.

Concerning LC-17: The 1997 international Chemical Weapons Convention, to which the US is a signatory, outlaws the use of tear gas in international warfare. Like many of you, I have seen the ubiquitous use of tear gas and other chemical agents on regular display in Portland during the nightly protests. Likewise, we have seen the results of so-called “less-lethal” impact munitions in Portland and elsewhere around the country (<https://www.kgw.com/article/news/local/protests/journalist-shot-in-the-face-by-federal-agents-during-portland-protest/283-ff0b2602-4eb3-45ca-a491-fc0e41764231>). I urge you to support this legislation.

I have some concerns around the draft language from 8/6/20. P.6, Line 9 indicates that law enforcement agencies may not use kinetic impact projectiles “in a manner that targets the head of a person.” P.5 lines 24-25 (part of the old statute, which remains) allows for immunity when performing discretionary acts “whether or not the discretion is abused.” P.6, line 4 includes language holding up immunity for unconstitutional acts “unless such act was done or omitted in bad faith or with malice.”

Law enforcement agencies have the legal authority to use force on citizens they are sworn to protect. With this power must come greater responsibility to use it in a way that causes no harm. The language cited above allows immunity for actions which use cause harm by the use of that power dependent upon some provable intent, bad faith, or malice—in one case, EVEN IF abuse of discretion is provable. If we are to move toward the society we deserve, we must focus on the **result**, not the **intent**. The focus allows for accountability in only the most egregious cases while granting plausible deniability to many severe violations of public trust.

Please consider ways that the legislation and the other measures could be amended to focus on the measurable outcomes of actions that are taken, rather than on the intent of those actions.

I have not had an opportunity to review the details of the language of the other measures prior to this meeting, and many have not been posted at all or sufficiently in advance for the public to read and engage. So, I will add some general comments on the issues that they claim to address:

- It cannot be that the primary method of handling abuse of use of force by law enforcement agencies is through employment contracts. Most abusive actions we have witnessed in Portland over the last months rise to a level that are easily criminal—taking for example the case of protest medic Tyler Cox, who is seen on video being run down, tackled, and punched several times in the head and face by an officer. Tyler has since been arrested and charged with felony assault on a police officer while the officer is...meeting with human resources?
<https://www.opb.org/article/2020/09/03/injured-protest-medic-had-to-wait-for-medical-treatment-after-being-tackled-punched-by-portland-police/>

- Relating to arrestee well-being: I am very supportive of arrestee well-being! It is clear that action needs to be taken to ensure that arrestee well-being is prioritized by law enforcement. Arrestees are human beings deserving of human rights, including the right to not have their well-being infringed. In our criminal justice system, law enforcement officers are not afforded the right to punish civilians. Images out of Portland make clear how often physical force (and frivolous arrest itself) are used as **punishment** for human beings not behaving in a manner that agents approve.
- Relating to patterns of misconduct, once again, it is difficult for me to accept that misconduct by agencies holding the legal power to arrest (where it is criminal to resist arrest), detain (where it is criminal to fight detention), disrupt, control, and kill must be handled via employment contracts. Entire **patterns** of such misconduct are an even more egregious case.
- Relating to Qualified Immunity, it is clear that law enforcement officers must be held to a higher standard **because** of the immense power that they hold to disrupt the lives and control the bodies of citizens. Qualified Immunity is a principle that applies to all public employees, but most public employees are not granted such power to control the bodies of its citizenry. Therefore, there must be a high standard for the thorough knowledge of the civil rights afforded to individuals under their purview and for the honest communication of those rights to those individuals. While in principle Qualified Immunity does not apply to “illegal” actions, in practice it is nearly impossible to eclipse the standard of an action violating “the clearly established statutory or constitutional rights of which a reasonable person would have known” as currently interpreted by the courts. The standard of “a reasonable person” cannot apply here. The standard must, at least, speak to the actions that a fully trained law enforcement agent should be expected to know.

I have directed these comments toward the rights and humanity of arrestees, protesters, citizens, and civilians, and how those rights are treated by law enforcement. This is not intended to exclude the rights and humanity of the law enforcement agents themselves, but rather to focus attention on the “house that is currently on fire,” i.e., the belief that in the current policing environment, it is the rights and humanity of the citizenry which are most severely endangered.

Respectfully,

Robert Fiset