

Senate Bill 435

Sponsored by Senator FREDERICK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits employer of public safety officer from comparing number of citations issued by public safety officer with number of citations issued by another public safety officer for purpose of discipline, investigation or job performance.

A BILL FOR AN ACT

1
2 Relating to disallowing an employer from comparing the number of citations issued by public safety
3 officers; amending ORS 236.360.

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

5 **SECTION 1.** ORS 236.360 is amended to read:

6 236.360. (1) Employers of public safety officers shall adopt written procedures to implement the
7 provisions of ORS 236.350 to 236.370.

8 (2) Except as provided in subsection (3) of this section, the following safeguards apply when a
9 public safety officer is under investigation concerning a matter that the officer reasonably believes
10 may lead to economic sanctions or dismissal from employment and is subject to an interview by the
11 officer's employer:

12 (a) Unless the seriousness of an investigation requires otherwise, the interview must be con-
13 ducted when the public safety officer is on duty or during the officer's normal waking hours. If the
14 interview is conducted when the public safety officer is off duty, the officer must be compensated
15 appropriately.

16 (b) The public safety officer may have a representative of the officer's choosing present at the
17 interview.

18 (c) No more than two interviewers at a time may question the public safety officer.

19 (d) The interviewers shall inform the public safety officer of their authority to compel a state-
20 ment and of the identity of the investigators and all persons present during the interview.

21 (e) The public safety officer is not required to answer questions until the officer has been in-
22 formed of the nature of the investigation and of facts reasonably sufficient to inform the officer of
23 the circumstances surrounding the allegations under investigation. This paragraph does not apply
24 to preliminary questions directed at gaining a general overview of events in order to assess whether
25 an inquiry is necessary and to effectively investigate and gather evidence.

26 (f) The interview may not last an unreasonable amount of time, taking into consideration the
27 gravity and complexity of the matter under investigation.

28 (g) During the interview, the public safety officer must be allowed to attend to physical needs.

29 (h)(A) Except as provided in subparagraph (B) of this paragraph, the public safety officer being
30 interviewed may not be threatened with punitive action or subjected to offensive language.

31 (B) In a compelled interview solely for noncriminal purposes, a public safety officer who refuses

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 to respond to questions or to be interviewed must be informed that refusal may lead to disciplinary
2 action.

3 (i)(A) The public safety officer may record the interview and must be given a copy of the tape
4 or digital file of the interview and, upon request, a transcript of any recording that has been tran-
5 scribed by the employer.

6 (B) The public safety officer must be given a copy of any written statement or report describing
7 the officer's statements.

8 (C) Materials required to be given to the public safety officer under this paragraph must be
9 given before subsequent interviews in the course of the same investigation.

10 (j) As soon as it is determined that the public safety officer may be charged with a criminal
11 offense, the officer must be informed of the officer's right to consult with criminal defense counsel
12 with respect to the criminal charge.

13 (k) In a disciplinary or administrative investigation, the public safety officer's chosen represen-
14 tative may not be required to disclose, or be subject to disciplinary action for refusing to disclose,
15 statements made by the officer to the representative for purposes of the representation.

16 (3) The safeguards provided in subsection (2) of this section do not apply to:

17 (a) The questioning of a public safety officer in the normal course of informal verbal
18 admonishment by, or other routine or unplanned contact with, a supervisor or other public safety
19 officer; or

20 (b) An investigation concerned solely with alleged criminal activities.

21 (4) Disciplinary action may not be taken against a public safety officer without just cause.

22 (5) An employer that intends to take disciplinary action against a public safety officer shall:

23 (a) Notify the officer in writing of the charges against the officer and the proposed disciplinary
24 action; and

25 (b) Provide the officer with an opportunity to respond to the charges at an informal hearing
26 which may be recorded, with the person or persons having authority to impose the proposed disci-
27 plinary action.

28 (6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an employer shall complete
29 its investigation into an allegation of misconduct by a public safety officer and provide notification
30 under subsection (5)(a) of this section no later than six months from the date of the first interview
31 described in subsection (2) of this section. The employer may extend the investigation to a maximum
32 of 12 months from the date of the first interview, provided that, before the extended period begins,
33 the employer provides written notice explaining the reason for the extension to the officer and the
34 officer's chosen representative and union representative, if any.

35 (b) The time limit provided in paragraph (a) of this subsection does not apply:

36 (A) If the investigation involves an officer who is incapacitated or unavailable.

37 (B) If the investigation involves an allegation of workers' compensation or disability fraud by
38 the officer.

39 (C) If the officer waives the limit in a signed writing.

40 (D) If the investigation requires a reasonable extension of time for coordination with one or
41 more other jurisdictions.

42 (E) If the investigation involves more than one officer and requires a reasonable extension of
43 time.

44 (c) For the purposes of the time limit provided in paragraph (a) of this subsection:

45 (A) If the alleged misconduct is also the subject of a criminal investigation or criminal prose-

1 cution, time does not run for the period during which the criminal investigation or criminal prose-
2 cution is pending.

3 (B) If the investigation involves a matter in civil litigation in which the officer is a named de-
4 fendant or the officer's actions are alleged to be a basis for liability, time does not run for the period
5 during which the civil action is pending.

6 (C) If the investigation is the result of a complaint by a person charged with a crime, time does
7 not run for the period during which the criminal matter is pending.

8 (7) An investigation may be reopened if:

9 (a) Significant new evidence is discovered that is likely to affect the outcome of the investi-
10 gation; and

11 (b)(A) The evidence resulted from the public safety officer's predisciplinary response; or

12 (B) The evidence could not have been discovered by the employer without resorting to extraor-
13 dinary measures.

14 **(8) An employer may not compare the number of citations issued by a public safety offi-
15 cer with the number of citations issued by another public safety officer for the purpose of
16 discipline, investigation or job performance.**

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