



Testimony on Police Accountability Legislative Concepts
Kelly Simon, Interim Legal Director of ACLU of Oregon
Joint Interim Committee on the First Special Session of 2020
June 25, 2020

Chair Courtney, Kotek, and Members of the Committee,

The American Civil Liberties Union of Oregon¹ 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.

Deep-seated systemic racism and inequities that disadvantaged Black, Indigenous and people of color (BIPOC) are still woven into the fabric of our institutions today— from education, housing, and health care to our criminal legal system. Systemic racism permeates the starkly segregated world of housing. In our public schools, students of color are too often confined to racially isolated, underfunded, and inferior programs. The Covid-19 pandemic is exposing the many ways health care - or the lack of it - leaves many people, in particular more Black people, extremely vulnerable to severe symptoms and death.

Our criminal justice system disproportionately targets and subjects people of color to police brutality, disproportionately incarcerates and imposes life-ruining collateral consequences on people of color, and punishes people for being poor, a disproportionate number of who are people of color.

Deep transformation of these institutions is desperately needed.

While we appreciate the willingness of Governor Brown and the legislature to call for a special session to address police accountability, we recognize that the policies up for discussion during the special session only begin to scratch the surface of the deep community-driven work that is needed to dismantle the systems, like policing, that have descended from slavery, colonization and other oppressive foundations of this country, and to reimagine what safety looks like across our state.

The white leaders at the ACLU of Oregon and the white members of this legislature have a lot to learn about how we have failed to yield power to those most impacted by our racist histories. Join me in hearing the calls of Black leaders in Oregon and take the following immediate actions during this special session:

1. **Contribute State funding to a community-led reimagining safety and resiliency effort:** Provide \$2.5 million in funding to support efforts to reimagine safety in Oregon communities. The policies that are being discussed for the special session are a starting place and do not address the structural racism that Black, Brown, and Indigenous communities face when

¹ 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.

interacting with the police and carceral systems. These communities have identified a need for the time and resources to produce a community-driven long-term plan and subsequent policy, practice, and resource proposals for decision-makers to engage with. Share this power.

2. **Pass policies identified by Black-led organizations as urgent:** The legislature should immediately begin work with Black-led organizations to craft concepts addressing qualified immunity, use of force standards, and altering the investigative function and makeup of the Department of Public Safety Standards and Training (DPSST) during this special session.

For the policies currently under consideration by this committee, with the exception of SB 1604, the ACLU of Oregon will support the proposed policies with the necessary amendments laid out below.

SB 1604: Discipline Guidelines and Arbitration Decisions

In an effort to uphold agreed-upon discipline standards, the concept would prohibit an arbitrator from lessening a disciplinary action against a police officer if the arbitrator and the law enforcement agency determine that the officer has committed misconduct and was disciplined in a manner consistent with a disciplinary matrix adopted via collective bargaining.

While the ACLU of Oregon is in support of the general concept of this bill, we have concerns that with the current language law enforcement agencies and police union bargaining teams will be incentivized to reduce discipline matrix outcomes in order to anchor arbitrators. It also continues to keep the public out of the conversation about appropriate officer accountability. We respectfully request for the bill to be amended to add a statewide floor on discipline and ensure discipline matrices are not subject to collective bargaining.

HB 4207: Transparency of Police Discipline Records

Similar to the public transparency that educators are subject to through the Teacher Standards and Practices Commission disclosure process and public database, the concept would require the same for police officers (e.g., disclosure of officer name, bureau of employment, etc.), through the Oregon Department of Public Safety Standards and Training (DPSST) complaint review and integrity processes.

The ACLU of Oregon will be supportive of the HB 4207 with the adjustment listed below:

- Clarity is needed to ensure that an investigation will take place whether or not a police officer resigns in the face of an investigation. If this is not addressed, police officers will be able to resign to avoid an investigation and being entered into the database, only to be rehired by another agency.

HB 4201: Independent Investigation of Use of Force

This concept would authorize Oregon's Attorney General to investigate and prosecute, if a criminal act is determined, any use of force by a police officer that results in death or serious physical injury. Investigations that do not result in a criminal prosecution would be released to the public.

The ACLU of Oregon will be supportive of the HB 4201 with the adjustments listed below:

- It is critical that the scope of the bill continues to cover both physical injury and death. A clear definition of "physical injury" should be included in the bill and not left to rulemaking. For instance, the LC could refer to ORS 161.015(8) for the definition of "serious physical injury" which states, "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."
- The bill should be amended to ensure clarity that the Attorney General will be given the discretion to prosecute misconduct cases through their office *or* to assign that responsibility to another entity in cases where there may be conflict.
- Clarity is needed to allow the Attorney General to also seek relief on behalf of the public in instances where constitutional violations are identified.

HB 4205: Duty to Report and Intervene

To ensure the highest level of professional conduct by police officers, the concept would require all police officers to intervene to prevent or stop any fellow officer from conducting any act that is unethical or that violates law or policy (e.g., excessive force, theft, fraud, inappropriate language, sexual misconduct, harassment, falsifying documents, inappropriate behavior, etc.). Intervention may be verbal and/or physical, and failure to intervene would be subject to disciplinary action. **This bill focuses on the duty to intervene but fails to include the duty to report or provide stricter standards for the use of force.**

The ACLU of Oregon will be supportive of the HB 4205 with the adjustment listed below:

- The LC should be amended to ensure police officers are also notifying their superiors when:
 - A police officer breaks criminal law
 - A police officer breaches law enforcement code of ethics
 - A police officer uses excessive force.
 - A police officer targets any person based on their real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability.
- In addition to adding a reporting requirement, the bill needs an accompanying concept that provides stricter standards for use of force.

HB 4208: Protecting Freedom of Speech and Assembly from Excessive Force

The concept would prohibit the use of weapons of war: tear gas and sound cannons. The use of flashbang grenades, other less-lethal projectiles or disbursement tools would need to be documented and information about usage must be made available to the public no later than 72 hours after use.

The ACLU of Oregon will be supportive of the HB 4208 with the adjustments listed below:

- The ACLU of Oregon strongly urges this committee to expand the scope of this bill to all indiscriminate weapons and provide enough flexibility to capture weapons that we know of today, like tear gas and flash bangs, and future indiscriminate weapons that we do not know of yet.
- This concept should also include restrictions on the use of crowd control weapons when crowds are largely peaceful. For example, police currently have too much discretion when deeming a gathering an “unlawful assembly” and then using weapons to disperse those gathered. Unlawful assembly declarations, curfew violations, or crowds engaged in passive resistance (e.g. refusing to disperse) should never justify use of crowd control weapons.

HB 4203: Banning Chokeholds and Other Forms of Force That Restricts Breathing

This bill, which prohibits officers from using force that blocks a person’s airway, should be passed. Chokeholds should be banned. Restricting someone’s airway can cause serious injury and death. Law enforcement has alternatives available that are less dangerous. We strongly urge lawmakers to swiftly pass this bill.

Our current system – the web of institutions, contracts, laws, relationships, directives, and policies – works to shield law enforcement from accountability when they harm members of the public, particularly in BIPOC communities. This is by design. We must come together with a commitment to fundamentally redesign and realign our communities. This is long-term work. Thank you for taking important first steps and for working to face this challenge head on. We look forward to working and learning with BIPOC communities and government leaders in the months and years to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'K.S.', with a long horizontal flourish extending to the right.

Kelly Simon
Interim Legal Director