

# OREGON FRATERNAL ORDER OF POLICE



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Oregon State Senate  
Oregon State House of Representatives  
900 Court Street NE  
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To the Honorable Members of the Oregon Legislature:

Please accept this supplemental written testimony to the written testimony offered on June 22, 2020 and to supplement my oral testimony earlier today. I understand the time constraints involved in this special session and I appreciated the opportunity to briefly speak with you today.

The Oregon FOP would like to offer this written testimony on the following five topics:

1. Senate Bill 1604 has been drafted in response to two instances in the Portland Police Bureau in which an arbitrator reduced discipline after sustaining the occurrence of the conduct in question. Such sweeping statewide legislation is an inappropriate vehicle to address the narrow predicate concerns. Most significantly, this bill does nothing to address the problem of police chiefs and sheriffs outside the Portland area who are using discipline inappropriately. For the affected officers, arbitration is their only way to vindicate themselves and to defend their careers.

One of our members has asked me to share his story with you as an example. Former Deputy Eric Konzelman had supported one of his sergeants who had considered running against Sheriff Jackson in the 2018 election. This potential challenge, and Eric's participation, was leaked to the Sheriff. Eric was subsequently subjected to a disciplinary investigation entirely related to his actions taken in furtherance of electoral politics. When that was unsuccessful the Sheriff's Office investigated Eric regarding an arrest for which it was determined probable cause existed. The County then terminated Eric for allegedly false statements in his affidavit of probable cause.

It was only at his grievance arbitration approximately a year later that he was vindicated by an arbitral award that found no evidence of dishonesty. The arbitrator noted the County did not have just cause to terminate Eric and ordered him to be reinstated. Despite being awarded his job back, the damage had already been done.

In the intervening time the Sheriff made it clear to everyone that he considered Eric to be dishonest, and despite the independent factfinding of the arbitrator it became impossible for him to return to his career. He had served honorably for a decade and had no prior instances of discipline in his personnel file. Eric was a good, honest and ethical officer and he was forced out of law enforcement despite the protections bargained for, including binding arbitration. Eric's story is all too common in this state, unlike the two isolated incidents in Portland Police Bureau.

SB 1604 will not result in better policing in the state of Oregon. If the legislature wants to pass arbitration reform, Oregon FOP urges the legislature to establish a workgroup to look at holistic reforms and would gladly participate in that process. Other organizations have offered amendments which would alleviate many of Oregon FOP's concerns with this bill. However, in its present form Oregon FOP cannot support it.

2. Oregon FOP is supportive of the intent behind House Bill 4205-4, as amended, with one significant reservation. Section 2 (1) (e) includes in the definition of misconduct "[a] violation of the minimum standards for physical, emotions, intellectual and moral fitness for public safety personnel established under ORS 181A.410." This inclusion creates a mandatory obligation to intervene and/or to report such violations which are codified in the Oregon Administrative Rules governing DPSST. The bill, as written, requires officers to make a legal determination as to whether conduct they witness falls under those regulations or not.

DPSST is the state agency charged with enforcement of the minimum standards. DPSST staff collect compile and analyze reports, evidence, and investigations from law enforcement agencies. Staff then presents cases to the Police Policy Committee to review. The PPC considers the staff's files, deliberates, and makes a recommendation to the DPSST Board either to revoke or deny, or to take no action. This deliberative process can take months to work its way through their system before the Board decides whether the conduct was a violation of the minimum standards. After the Board's initial determination, the affected officer has a right to a review before an Administrative Law Judge and ultimately has appeal rights to the Court of Appeals. Not infrequently an ALJ, or the Court of Appeals, will determine DPSST made the wrong legal determination and reverse their revocation or denial.

HB 4205 would require an officer to make the same decision, but instead of having recourse to an investigative file, or a staff review, that officer has no more than 72 hours. It is manifestly unfair to put police officers in this role, especially given the oversight authority already vested in DPSST. With the removal of subsection (e) Oregon FOP would wholeheartedly support this legislation.

3. Oregon FOP would like to support House Bill 4208-2, as amended, which bans the use of tear gas. Oregon FOP support is contingent on whether the legislature intends this ban to include the use of oleoresin capsicum inside of jails and other correctional institutions. My understanding of the language is that HB 4208-2 would not ban the use of oleoresin capsicum by a corrections officer. The legislature should recognize oleoresin capsicum is often the only tool available to corrections officers to maintain order within the institution. If the legislative intent is made clear, or the bill is amended to expressly exclude corrections institutions then Oregon FOP would wholeheartedly support this legislation.
4. Oregon FOP supports House Bill 4203, the chokehold ban, as amended to include exceptions where deadly force is allowed by law. The amendments address the primary concern of Oregon FOP members in situations where a subject is using or is about to use deadly force on the officer or a third person. In all other situations it is unreasonable and unwarranted to employ a chokehold.
5. Oregon FOP supports House Bill 4201 as amended and would welcome the legislature's inclusion of Oregon FOP as a stakeholder in any workgroup to enact important and needed policy and legislative changes.

The Oregon FOP is committed to helping the legislature improve policing in Oregon. We are truly representative of all of Oregon. This issue is too important to make mistakes, too important to rush into, and too important not to have all the stakeholders working together.

Thank you for your consideration.

Sincerely,



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