



*Prepared by
Legislative Policy and
Research Office*

Joint Committee on Transparent Policing and Use of Force Reform

December 2020

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Co-Chairs:

Senator James Manning Jr.
Representative Janelle Bynum

Senate District 7
House District 51

Members:

Senator Lew Frederick
Senator Bill Hansell
Senator Dallas Heard
Senator Floyd Prozanski
Senator Kathleen Taylor
Senator Kim Thatcher
Representative Alissa Keny-Guyer
Representative Akasha Lawrence Spence
Representative Rick Lewis
Representative Ron Noble

Senate District 22
Senate District 29
Senate District 1
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Senate District 4
Senate District 21
Senate District 13
House District 46
House District 36
House District 18
House District 24

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Senate Members:

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House Members:

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Rep. Alissa Keny-Guyer
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80th LEGISLATIVE ASSEMBLY
**JOINT INTERIM COMMITTEE ON
TRANSPARENT POLICING AND USE OF FORCE REFORM**

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December 31, 2020

To: Chairs, Vice-Chairs, and Members of the Senate and House Interim Committees on Judiciary

Submitted herewith is the final report of the Co-Chairs of the Joint Committee on Transparent Policing and Use of Force Reform. This committee was created in the First Special Session of 2020 through [House Bill 4201](#). The Joint Committee was established to examine:

- policies that improve transparency in investigations into and complaints regarding the use of force by police officers, increase transparency in police protocols, and processes to build public trust in policing;
- policies that reduce the prevalence of serious physical injury or death caused by the use of force by police officers by analyzing the use of force, the authorization of the use of force under state law and the disparate impact of the use of force on communities of color;
- policies for independent review of the use of deadly force by police officers; and
- any other policies that increase transparency in policing and reform the use of force by police officers.

The Joint Committee was charged with providing recommendations for legislation by December 31, 2020.

Below follows an outline of meetings of the Joint Committee, topics included in each Committee meeting and links to those meetings, a review of the work group efforts, and recommendations for legislation as well as a brief description of each concept resulting from the Committee, its members, and work group process.

Sincerely,



Co-Chair Manning



Co-Chair Bynum

OVERVIEW

The [Joint Committee on Transparent Policing and Use of Force Reform](#) was formed in the wake of the death of George Floyd in Minneapolis, Minnesota on May 25, 2020, as a result of use of force by police officers, and the nationwide protests that followed. The bipartisan Committee was established through [House Bill 4201](#) in the First Special Session of 2020. The Joint Committee is composed of 12 members of the Legislative Assembly: seven Senators and five Representatives. Sen. James Manning Jr. and Rep. Janelle Bynum served as co-chairs and the Committee received staff support from the Legislative Policy and Research Office (LPRO).

PROCESS

Review of Legislative Concepts

Several policing reform concepts drafted for consideration in the First Special Session of 2020 were not enacted. The Joint Committee on Transparent Policing (Committee) was created, in part, to provide the arena for ongoing discussion and development of those concepts. Additional legislative concepts were proposed by individual legislators and stakeholders.

All Committee meetings were conducted while Oregon was under a declared state of emergency due to the public health threat posed by the novel infectious coronavirus (COVID-19). Due to the risk of spread posed by person-to-person contact, the Committee hearings were held entirely remotely consistent with the Oregon Governor's recommendations in [Executive Order No. 20-05](#) and [Executive Order No. 20-07](#).

The Oregon Constitution and the 2020 House Rules, as interpreted by the House of Representatives, prohibits remote voting by a committee. Therefore, the Committee did not take any action nor official position on the concepts contained in this report. It held its last meeting on September 3, 2020 and was repealed on December 31, 2020 and, therefore, the concepts contained in this report will be introduced for consideration by the 2021 Legislative Assembly without further input from the Joint Committee.

Public Hearings

Between July 2020 and September 2020, the Committee held 12, two-hour, public hearings that included approximately 12 hours of open public testimony. Public testimony was also arranged and received by remote participation on the following dates:

[July 17, 2020](#)

[July 29, 2020](#)

[July 30, 2020](#)

[July 31, 2020](#)

[August 5, 2020](#)

[August 6, 2020](#)

[September 3, 2020](#)

Informational Hearings

The Committee also held approximately 12 hours of informational hearings with invited testimony from subject matter experts, local organizations, and community members. The dates of those hearings and the subjects discussed are included below:

July 8, 2020

- Policing and Public Health Outcomes
- Distinguishing Constitutional Freedoms from Violence
 - Progression of Protected Rights in Speech and Action
 - Balancing First Amendment Rights with Law Enforcement Officer Duties and Obligations
 - Anatomy of a Protest
- Officer-Involved Deadly Use of Force Cases in the Courtroom
 - Understanding the Reasonableness Standard in Deadly Use of Force
 - Use of Expert Testimony
 - Jury Instructions

July 9, 2020

- Models for Modern Policing
 - Best Practices for Recruiting, Hiring, and Maintaining Wellness of Officers
 - Community Policing Models
 - Law Enforcement Partnerships with Mental Health Teams
- Economics of Policing
 - Qualified Immunity and Suits Against Law Enforcement Agencies
- Examining Law Enforcement Training in Oregon
 - Department of Public Safety Standards and Training (DPSST) Scope of Authority
- Whistleblower Protections Under State and Federal Law

July 10, 2020

- The Impact of Militarized Policing on the Public
 - Crowd Control Techniques
 - Uniforms and Gear
 - Weapons and Munitions
- Examining the Use of Force Continuum
 - Tools and Techniques of the Use of Force Continuum

July 15, 2020

- Policing on Tribal Lands
- Behind the Badge (perspectives from law enforcement)
- Economics of Policing Part 2: Risk Management
- Use of Force Standards

July 16, 2020

- Statistical Transparency of Policing (STOP) Data Update
- Balancing First Amendment Rights with Law Enforcement Officer Duties and Obligations

July 17, 2020

- Understanding the Impact of Systemic Racism on Policing

August 6, 2020

- Alternatives to Police Response for those in Mental Health Crisis

ENACTED LEGISLATION

First Special Session

The 2020 interim brought two special sessions. The first, held June 24th – 26th, resulted in one Senate measure relating to policing reform and five House measures relating to policing reform, including HB 4201, creating this Joint Committee. As these initial measures were the foundation of many of the subsequent concepts and work groups, a brief description of each follows:

- [Enrolled Senate Bill 1604](#) modifies the process of arbitration for discipline of law enforcement officers. The measure required an arbitrator who makes a finding of misconduct consistent with the law enforcement agency's finding of misconduct to impose the same disciplinary action that was imposed by the agency, so long as the discipline was done pursuant to a discipline guide or matrix that was adopted by the agency as a result of collective bargaining. The measure took effect on July 7, 2020.
- [Enrolled House Bill 4201](#) established the Joint Committee on Transparent Policing and Use of Force Reform to meet specific objectives relating to transparent policing and use of force reform. It took effect on June 30, 2020.
- [Enrolled House Bill 4203](#) prohibits a peace officer from using force “that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person” unless the circumstance would justify the use of deadly physical force under the law. The measure took effect on June 30, 2020 and was later modified by House Bill 4301 in the Second Special Session.
- [Enrolled House Bill 4205](#) required law enforcement officers to intervene when they know, or reasonably should have known, that another officer is engaged in misconduct. Misconduct includes unreasonable or unjustified use of force, or force used in violation of an agency's policies; sexual harassment or sexual misconduct; discrimination against a person based on protected class; committing a crime; or violation of the minimum standards for fitness for public safety personnel. Officers also have a duty to report the misconduct and are protected from retaliation for doing so. The measure took effect on June 30, 2020.

- [Enrolled House Bill 4207](#) proclaimed that trust and transparency in the hiring of law enforcement officers is in the public interest. To that end, the measure required DPSST to publish information on the reasons for suspension or revocation of an officer's certification in a publicly accessible online database. The measure also required a law enforcement agency to request the personnel file of any officer it may hire before extending an offer of employment. Agencies are provided liability protection for both requesting and fulfilling the request. The measure took effect on June 30, 2020.
- [Enrolled House Bill 4208](#) defined tear gas and prohibits use of tear gas by a law enforcement agency for crowd control except during riots. The measure took effect on June 30, 2020.

Second Special Session

The Second Special Session of 2020 was held August 10th. One measure was proposed by the Committee and enacted.

- [Enrolled House Bill 4301](#) modified the provisions of HB 4203 of the First Special Session by prohibiting the use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of that other person, commonly known as a “chokehold.” It further modifies Oregon’s use of force statutes to more closely align with the requirements articulated by the U.S. Supreme Court in [Tennessee v. Garner](#) by limiting the use of deadly force to situations where it is “necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.” The measure also adds a requirement that a peace officer consider alternatives to deadly physical force if a reasonable opportunity to do so exists. The measure was signed into law on September 1, 2020.

ONGOING WORK GROUPS

Over the course of the public hearings, several concerns raised through public and invited testimony highlighted a need for further review and discussion of certain legislative concepts. The following work groups were formed consisting of interested stakeholders and Committee members to continue development of possible legislation. Work group efforts and proposals continuing into the 2021 Legislative Session will be facilitated by the Senate and House Judiciary Committees.

Riot and Unlawful Assembly Reform Work Group

Following reports on the use of chemical incapacitants, kinetic impact projectiles and sound devices by law enforcement in response to ongoing protest in Oregon and around the nation, the Legislative Assembly, during the 2020 1st Special Session, enacted [HB 4208](#). Subsequently, the Committee heard several hours of testimony on the topic of appropriate limitations on these types of force and considered [LC 742/LC 17](#) to further limit their use as a means of crowd control. Co-Chaired by Senator

Manning and Representative Bynum, this work group has been considering legislative concepts relating to crowd control and the broader topic of law enforcement intervention during public demonstrations and protests. More information on this work group and its membership is available on the Committee's [website](#).

Anti-Doxing Work Group

During testimony from law enforcement to the Joint Committee, concerns were raised about the release of personal information online that could lead to harassment. This practice is known as “doxing.” In response, Co-Chair Bynum convened a workgroup to discuss these concerns as well as those related to the release of police booking photos prior to a conviction. More information on this work group and its membership is available on the Committee's [website](#).

Work Group on Exculpatory Evidence and “Brady” Reform

Convened by Senator Prozanski, the work group is reviewing legislative proposals to reform the process by which exculpatory evidence, including “Brady” evidence pertaining to an investigating officer, and discoverable materials, are identified and provided to defendants and their attorneys during the criminal process. More information on this work group and its membership is available on the Committee's [website](#).

Law Enforcement Uniforms and Identification Work Group

The Joint Committee heard public testimony on LC 743 in several meetings. A modified version, LC 18, was then drafted for the 2020 Second Special Session but ultimately was not introduced. In November, Co-Chair Manning convened a work group with the goal of introducing a modified version of [LC 743/LC 18](#) during the 2021 regular session. The work group is still ongoing and is comprised of legislators, law enforcement representatives, and various organizations and community groups. More information on this work group can be found on the Committee's [website](#).

Work Group to Reform Statewide Standards for Discipline - Pending

PROPOSED LEGISLATION

The Joint Committee members requested and published a wide variety of legislative concepts based on the informational meetings, public hearings, and discussions of the members. The concepts and various drafts that were made available for committee and public review and/or testimony have been identified below with links where available. Any concepts that were not enacted through Special Session efforts will be handed off to the Senate and House Judiciary Committees for continued consideration and development as directed by the Co-Chairs.

LC 742/LC 17: Relating to the use of tools by law enforcement agencies

This concept prohibits the use of chemical weapons, kinetic projectiles, and sound devices for purposes of crowd control unless the use of the specific physical force would otherwise be justified under the law.

LC 743/LC 18: Relating to police officer uniforms and identification

This concept requires identification of peace officers on their uniforms. The concept specifies that identification can be a first initial and last name, badge number, or information sufficient to identify the officer's employer on the front and back of the uniform. The measure also requires a peace officer to provide their name and badge number to a member of the public upon request, unless the officer is engaged in undercover operations.

LC 744: Relating to police officer misconduct

This concept would have expanded existing reporting requirements for officers witnessing misconduct by other officers. The Committee heard public testimony on LC 744 over the course of several meetings. The LC has not yet been introduced for consideration.

LC 745: Relating to the use of force by police officers

This concept prohibits peace officers and corrections officers from using force that impedes normal breathing or circulation of the blood of another person by the application of pressure to the throat or neck, except in specific circumstances.

LC 746: Relating to arbitration awards

This concept modifies the process for arbitration of law enforcement officer discipline and sets statewide standards for conduct. The concept restricts an arbitrator to deviation from the decision of a law enforcement agency only if evidence exists on the record that would permit a reasonable person to conclude that an officer engaged in misconduct. LC 746 sets a process for appointment of an arbitrator by the Employment Relations Board with opportunity for the parties to object to the appointment. The concept establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline to prescribe uniform statewide standards for conduct and discipline of law enforcement officers.

LC 747 : Relating to arrested persons

This concept requires a person who arrests another to ensure that the arrested person receives a medical assessment at the time of arrest or as soon as practicable after arrest.

LC 748 (7/22 version)/LC 05: Relating to records of discipline of police officers

This concept requires the database of disciplinary actions and certification of law enforcement officers maintained by the Department of Public Safety Standards and Training to include information on officers' resignations in lieu of termination. The concept requires posting of disciplinary actions with economic consequences within 10 days of the disciplinary action becoming final.

LC 751: Relating to statewide law enforcement disciplinary standards

This concept establishes the Task Force on Uniform Statewide Law Enforcement Disciplinary Standards and charges the Task Force with developing uniform statewide standards for determinations and discipline of misconduct. The standards would also apply to arbitration proceedings for disciplinary actions of law enforcement officers and the concept requires the discipline imposed to comply with the statewide standards.

LC 761: Relating to the use of force by peace officers

This concept modifies Oregon use of force statutes to more closely align with the requirements articulated by the U.S. Supreme Court. Deadly force used by a police officer must be limited to situations in which it was necessary to prevent the escape and the officer had probable cause to believe that the suspect posed a significant threat of death or serious bodily harm to the officer or others. The measure also adds a requirement that a peace officer consider alternatives to deadly physical force if a reasonable opportunity to do so exists.

LC 762/LC 19: Relating to public safety employees

This concept establishes a publicly available database of information about misconduct and discipline of public safety employees through the Department of Public Safety Standards and Training.

LC 763/LC 20: Relating to the use of physical force

This concept requires law enforcement agencies to provide information regarding the circumstances and individuals involved when a peace officer or corrections officer uses any type of force or threatens to use physical force against an individual.

LC 769: Relating to standards concerning public employee conduct

This concept modifies the process for arbitration of public employee discipline and sets statewide standards for conduct. The concept restricts an arbitrator to deviation from the decision of a public employer only if evidence exists on the record that would permit a reasonable person to conclude that a public employee engaged in misconduct. LC 769 sets a process for appointment of an arbitrator by the Employment Relations Board with opportunity for the parties to object to the appointment. The concept establishes the Commission on Statewide Public Employee Standards of Conduct and Discipline to prescribe uniform statewide standards for conduct and discipline of public employees.

LC 949: Relating to law enforcement officers

Requires the Department of Public Safety Standards and Training to investigate a person's character before accepting that person for training and certification as a police officer or reserve officer. Directs department to adopt rules prohibiting officers from racist behaviors. Requires law enforcement agency that obtains evidence that law enforcement officer has engaged in racist behavior to provide evidence to district attorney within 14 days. Directs Governor to convene a task force to develop plan for removing peace officers who have discriminatory sentiments that would violate the rights of protected classes. Directs the Bureau of Labor and Industries to establish and maintain a hotline for reports of officer misconduct.