

HB 2930 -15 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Amie Fender-Sosa, Counsel

Meeting Dates: 2/22, 3/17, 3/22, 3/31, 4/6

WHAT THE MEASURE DOES:

Removes discipline matrix or discipline guide as a mandatory subject of collective bargaining for law enforcement.

Establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline (commission) for the purpose of adopting statewide uniform rules through a public process regarding standards of conduct and disciplinary standards. Requires that membership be a broad representation of the individuals and organizations that will be impacted by the rules adopted by the commission.

Requires the commission to establish an open hearing process for public input and deliberation before the commission adopts the rules that will set the conduct and disciplinary standards. The open hearing process must include public notice, public outreach and public hearings.

Requires the Employment Relations Board (ERB) to appoint an arbitrator from a list of qualified, indifferent, unbiased arbitrators. Allows each party an opportunity to object to the ERB's appointed arbitrator.

Requires an arbitrator in an arbitration for alleged police misconduct to not make a determination different from the agency's determination if evidence exists that would permit a reasonable person to conclude the officer engaged in misconduct. Requires law enforcement agencies and arbitrators presiding over alleged misconduct cases to make discipline determinations that adhere to the rules adopted by the commission.

Applies to collective bargaining agreements entered into or renewed on or after July 1, 2021. Directs commission to submit a report to the Joint Committee on Transparent Policing and Use of Force Reform by July 1, 2021, and annually thereafter. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Police accountability
- Difficulty in disciplining officers for misconduct
- No clear standards in arbitration proceedings
- Underlying police department policies
- Lack of specific examples of problem arbitrations
- Number of cases that proceed to arbitration
- Concerns with eliminating arbitration as an option for police grievances
- SB 1604 (2020 Special Session) is untested

EFFECT OF AMENDMENT:

-15

Standard of review

Requires that the standard arbitrators apply in police discipline cases be just cause, as defined in ORS 236.350. ("Just cause" means a cause reasonably related to the public safety officer's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies.) Eliminates the reasonable person test.

Standard of evidence

Sets the standard of evidence at preponderance of the evidence, requires the employer to show: (1) the officer engaged in misconduct, and (2) the discipline met the statutory just cause standard.

In determining the reasonableness of the disciplinary action imposed by an agency, requires the arbitrator to uphold the discipline unless it is arbitrary and capricious.

Public interest standard for termination cases

When the discipline is termination, the arbitrator may not overturn if overturning or reducing the discipline would be inconsistent with the public interest. (“Public interest” is defined as maintaining community trust, enforcing a higher standard of conduct for law enforcement officers and ensuring an accountable, fair and just disciplinary process.)

Commission membership

Expands the membership from 11 to 15 members. Modifies the make up of the commission. Allows for designees.

Reports and effective date

Applies to collective bargaining agreements entered into after the effective date of the act. States the terms in the measure are not subject to collective bargaining. Requires the commission to adopt and publish rules establishing the uniform standards by October 1, 2022. Requires a preliminary report to be submitted to the House Committee on Judiciary by September 1, 2022 and every year thereafter.

BACKGROUND:

Many state and local government employees, including employees of states, counties, cities, and school districts, are subject to the Public Employee Collective Bargaining Act (PECBA). Law enforcement officers are covered under PECBA. A public employer and a collective bargaining unit may reach a written agreement on grievance procedures. As a condition of enforceability, an arbitration award that orders the reinstatement of a public employee or otherwise relieves the employee of responsibility for misconduct must comply with clearly defined public policy in statute or judicial decisions. Resolution of disputes over conditions and terms of a contract may be resolved through binding arbitration.

House Bill 2930 removes the discipline matrix or discipline guide as a mandatory subject of collective bargaining for law enforcement, establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline, and requires an arbitrator to apply a reasonable person standard.