



OREGON ASSOCIATION CHIEFS OF POLICE
EXCELLENCE IN POLICING

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OREGON STATE SHERIFFS' ASSOCIATION
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To: Members of the House Judiciary Subcommittee on Equitable Policing

From: Sheriff Shane Nelson
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Date: February 1, 2021

Re: Testimony Raising Concerns re HB 2929 – Duty to Intervene and Report Misconduct and Offering Alternative Language

Chair Bynum and members of the committee,

On behalf of the Oregon State Sheriff's Association (OSSA) and the Oregon Association Chiefs of Police (OACP), thank you for the opportunity to provide testimony regarding HB 2929. We want to begin by affirming law enforcement's commitment to creating a culture where officers intervene and report another officer's misconduct. In response to the passage of HB during the 2020 1st Special Session, Oregon police agencies that didn't already have them developed and adopted duty to intervene and report policies and implemented training to ensure the policies were understood and followed. We concur with the need to increase clarity regarding the process officers should follow when fulfilling the obligation to report misconduct and have the following suggested amendment to HB 2929 as currently drafted:

First, we believe all references to the Bureau of Labor and Industries (BOLI) and the Department of Justice (DOJ) should be removed from the bill. BOLI is not set up to investigate police misconduct and cannot take any action with regard to DPSST certification if a moral fitness issue is discovered. Directing BOLI to create a new database and to investigate reports of misconduct will result in a significant fiscal impact at a time when limited resources can be appropriated to other critical public safety needs. We believe that investigations into misconduct should be conducted by the employing agency and sustained findings of misconduct should be reported to DPSST. DPSST as the law enforcement licensure and regulatory agency does act if a violation of the moral fitness standard has occurred.

The following is our recommendation along with specific recommended language below.

- The recommendation clarifies where law enforcement officers should submit reports of misconduct as defined by HB 4205 and requires the officer to intervene when the misconduct involves:
 - Unjustified or excessive force that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement unit employing the offending officer;
 - Sexual harassment or sexual misconduct;
 - Discrimination against a person based on race, color, religion, sex, sexual orientation, national origin, disability or age;
 - A crime
- When the misconduct involves a violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410, our recommendation is to require the law enforcement officer to report but without a requirement to intervene. These standards are complex, are in some cases subjective and in many cases, an officer doesn't have a practical way to intervene. However current statute still requires the officer to intervene or risk decertification. An example of the challenge the duty to intervene presents relates to the fitness standards in 259-008-0010(7)(b)(A)(i) that states that a law enforcement officer's "[m]onocular vision must be at least 20/30 (Snellen) corrected in each eye and not worse than 20/100 (Snellen) uncorrected in either eye." While it may be reasonable to report that a coworker's vision appears to be slipping, how would the officer intervene? For that matter, given the complexity and particularity of the OAR, how would an officer even know to intervene? As such, the requirement to report would make supervisors aware of these concerns without subjecting the law enforcement officer to potential decertification for failing to intervene.
- The following recommendation identifies DPSST as an additional party that law enforcement officers can submit reports of misconduct to and tasks DPSST with creating a form and receiving reports. When DPSST receives a report of misconduct, they forward the complaint to the involved agency for investigation and potential discipline.
- The recommendation requires agencies that receive reports of misconduct to complete an investigation and to report to DPSST when the report of misconduct is sustained.

Here is the recommended amendment to HB 2929:

(2) Without regard to rank or assignment, a police officer or reserve officer shall intervene to prevent or stop another police officer or reserve officer engaged in any act the intervening officer knows or reasonably should know is misconduct **as defined in section 2 (1)(a)-(d), chapter 5, Oregon Laws 2020 (first special session) (Enrolled House Bill 4205)**, unless the intervening officer cannot intervene safely.

(3)(a) A police officer or reserve officer who witnesses another police officer or reserve officer engaging in misconduct as defined in section 2 (1)(a)-(e), chapter 5, Oregon Laws 2020 (first special session) (Enrolled House Bill 4205) shall report the misconduct to a supervisor as soon as practicable, but no later than 72 hours after witnessing the misconduct, to;

- (A) A direct supervisor of the reporting officer;**
- (B) A person in the reporting officer's chain of command, or;**
- (C) The Department of Public Safety Standards and Training.**

(b) If the person to whom a police officer reports misconduct does not have the authority to direct an investigation into the alleged misconduct and impose discipline, the person shall forward the report of misconduct to a person who has the authority to direct an investigation into the misconduct and impose discipline as soon as practicable, but no later than 72 hours after receiving the report.

Note: this language is designed to cover situations where an officer from one agency is reporting misconduct to an officer from another agency.

(c) A law enforcement agency that receives a report of misconduct under this subsection shall complete an investigation of the misconduct within three months after the date of the report. The law enforcement agency shall notify the Department of Public Safety Standards and Training when an investigation results in a finding that sustains the report of misconduct.

SECTION 2. (1)(a) The Department of Public Safety Standards and Training shall establish and maintain a form for reports of misconduct reported to the Department under section 2, chapter 5, Oregon Laws 2020 (first special session) (Enrolled House Bill 4205). **(b)** The form must be available on the Department's website.

(2) When DPSST receives a report of misconduct directly from a law enforcement officer or reserve officer under section 2 (3)(a)(D), chapter 5, Oregon Laws 2020 (first special session) (Enrolled House Bill 4205), DPSST shall forward the report to the law enforcement agency employing the subject of the report to conduct an investigation.

Thank you for your consideration