



OREGON ASSOCIATION CHIEFS OF POLICE
EXCELLENCE IN POLICING

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OREGON STATE SHERIFFS' ASSOCIATION
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PO Box 7468 Salem OR 97303

To: Members of the House Judiciary Subcommittee on Equitable Policing

From: Sheriff Tim Svenson, Yamhill County Sheriff's Office
On behalf of the Oregon State Sheriffs' Association
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Chief Ken Rueben, Philomath Police Department
On behalf of the Oregon Association of Chiefs of Police
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Date: February 22, 2021

Re: Testimony re HB 3145 – Misconduct Reporting Requirements and Database

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 3145 which requires law enforcement agencies to report complaints, allegations, charges, disciplinary proceedings, certain judicial findings and prosecutorial determinations, suspensions and revocations of certification, certain resignations and terminations. The measure also requires DPSST to establish and maintain a publicly available database for the data identified in the bill, creates a new crime of recklessly tampering with public records and allows the release of disciplinary records of public safety employees under Oregon's public records law.

As currently written, we have the following concerns regarding HB 3145 as introduced:

Cost and Legal Liability: The cost to public safety agencies to comply with the data reporting requirements in HB 3145 is substantial and will drastically reduce resources that are currently committed to community safety and response to calls for service:

- The requirement to redact specific types of information from disciplinary records before reporting them to DPSST (Section 4(7)(a-d) would require public safety agencies to significantly increase staffing and would expose the agency to liability if a failure to redact occurs and redaction of too much information could result in accusations of tampering with public records. The volume of data an agency is responsible for reporting based on the definition of disciplinary records in the bill is daunting (The records for a single disciplinary investigation can include thousands of pages). Disciplinary records can also include photographs, body camera and dash cam footage and audio recordings that would be difficult and expensive to redact.

- This bill will significantly increase legal counsel costs (labor, employment and general liability – needing to assist agencies in compliance of bill requirements) of small and large agencies. Significant legal resources would be required to review data before submitting to DPSST to protect against legal liability.
- The requirement to report five-year increments of historical information on a date certain by agency size (Section 5(2)(a-c) would be impossible to achieve without eliminating the ability of an agency to accomplish its public safety mission.

Impacts of Publishing Officer Name: We believe that publicly identifying all complaints, allegations, disciplinary proceedings, etc. of a public safety officer by name will:

- Further impair the efforts of police agencies to recruit qualified and diverse applicants for police positions. Law enforcement is inherently dangerous and officers are already taking on significant risk to perform a function that is critical to the safety of our communities.
- Expose public safety officers and their families to risk of targeting and retaliation. Incidents of doxing are already increasing in prevalence and publicly naming officers will further expose them to risk.
- Create a chilling effect on the duty of public safety officers to intervene and for self-reporting in cases where the conduct can be changed through mentoring, corrective action and discipline and where the conduct isn't subject to economic discipline.
- Result in increased grievances and unfair labor practice (ULP) filings by labor unions/associations (re: investigations, sanctions and interpretation of the legislation) resulting in additional increased costs to local and state agencies. The definitions in section 2 are likely to push Unions to fully argue and challenge an LEA's ability to conduct all reviews/investigations, it will force arbitrations in attempt to alter employer results or findings that may include "administrative" findings of dishonesty, misrepresentation, or intemperate behavior by the public safety employee in order to prevent reporting and review by DPSST.

Impact on Department of Public Safety Standards and Training (DPSST): Requirements as written will:

- Drain current human resources at DPSST who are overtaxed and behind in reviewing current reports and findings sent to DPSST under certification reviews already established by statute. The requirements in HB 3145 will require additional staffing at a time when the agency isn't funded to provide the necessary basic training classes and regional training.
- Require significant legal resources from the Oregon Department of Justice to ensure the data published by DPSST doesn't violate state law or constitutional protections for public safety officers, complainants and victims and to address lawsuits filed against DPSST as a result of attempts to comply with the measure.

- Require significant appropriation of funds to establish a database that is capable of accommodating technology and data transfer from a patchwork of local and state public safety agency systems (proprietary programs, different tracking systems by LEA's, different BWC technologies, specialized data licenses to access and view electronic data).

In addition to the concerns listed above, HB 3145 as introduced includes provisions that are in conflict with one another, definitions that are unclear and timelines that neither public safety agencies or DPSST can meet.

Recommended Amendment Language: The following recommended language would replace the current bill with language that would require police agencies to report incidents where economic discipline is issued in response to an officer's conduct. Here's the suggested language:

Within 10 days after an economic sanction as part of discipline imposed on a police officer has become final, the law enforcement unit that imposed the discipline shall send a report to the department. The report must include:

- a. The name and rank of the officer;
- b. The name of the law enforcement unit at which the officer is or was employed;
- c. A description of the facts underlying the discipline imposed, including a copy of any final decision.

Discipline imposed on a police officer that has an economic sanction would be added to the statewide online database that currently includes suspensions and revocations.

Thank you for your consideration.