



# The Oregon Coalition of Police and Sheriffs

*Representing line officers and sheriffs' deputies*

## ADOPT **A4** AMENDMENTS

- ✓ **Codify Senate floor statements in the text of the bill**
- ✓ **Reduce potentially costly ambiguities**
- ✓ **Avoid unchecked and unchallengeable bias**

BACKGROUND

CLARIFICATION 1

CLARIFICATION 2



# ADOPT **A4** AMENDMENTS



CITY OF  
**PORTLAND, OREGON**

Ted Wheeler, Mayor  
Amanda Fritz, Commissioner  
Nick Fish, Commissioner  
Jo Ann Hardesty, Commissioner  
Chloe Eudaly, Commissioner

March 11, 2019

Senator Floyd Prozanski  
Senate Committee on Judiciary  
900 Court Street NE, Salem, OR 97301

**"... deserve a a discipline system that is fair, predictable, and consistent. That is not the case with our current labor arbitration system – outcomes are unpredictable..."**

SB 383-2...  
overturning the discipline...  
agrees the misconduct occurred and the discipline imposed...  
guide or matrix adopted by the agency.  
This is an important first step in improving police accountability. Thank you for taking up this important issue. We urge your support of SB 383-2.

Sincerely,

Ted Wheeler

Amanda Fritz  
Commissioner

Nick Fish  
Commissioner

BACKGROUND

CLARIFICATION 1

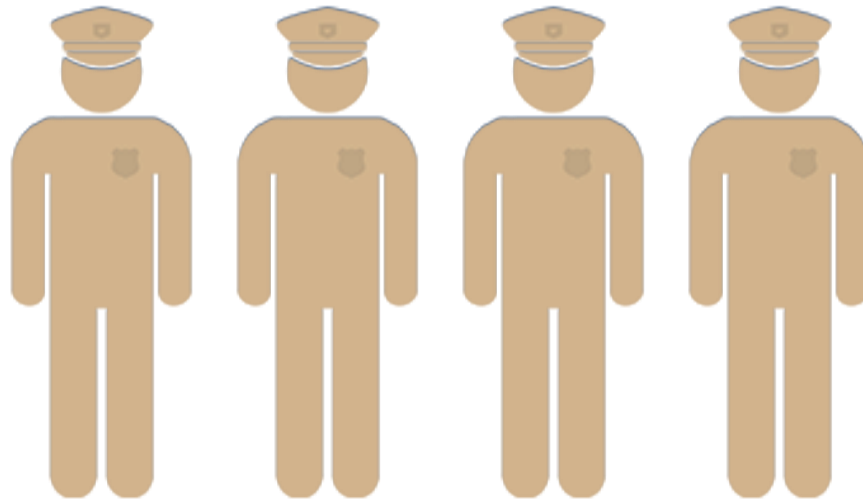
CLARIFICATION 2



# ADOPT **A4** AMENDMENTS



**Decision Upheld**



**Level of Discipline Adjusted**



**Decision Reversed**

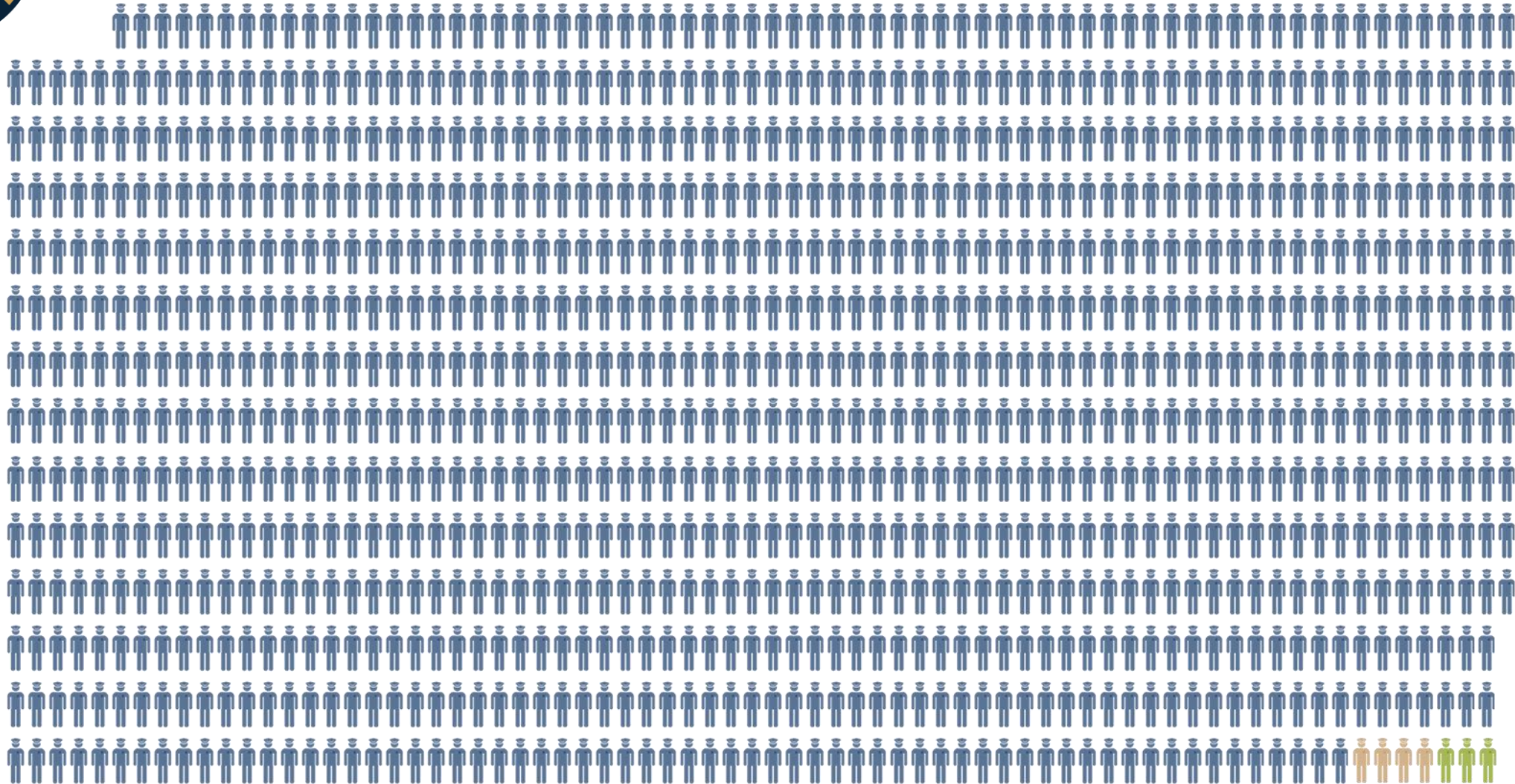
**BACKGROUND**

CLARIFICATION 1

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# ADOPT **A4** AMENDMENTS



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# ADOPT **A4** AMENDMENTS

"... deserve a a discipline system that is fair, **predictable, and consistent.** That is not the case with our current labor arbitration system – outcomes are unpredictable..."

# 99.4%

BACKGROUND

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## Clarification 1:

**Clarify that the discipline guide or matrix must be collectively-bargained.**



# ADOPT **A4** AMENDMENTS

SEN. THATCHER: ... So if it is not then part of the contract, does this discipline guide still apply in such manner that the arbitrator would not be able to move out of this particular recommendation for discipline, even if there are aggravating or mitigating factors?

SEN. FREDERICK (Carrier): If it's not in the contract the arbitrator can make the decision. **This has got to be part of the contract.**

Senate Floor Discussion on SB 1567-A, February 20, 2020

BACKGROUND

CLARIFICATION 1

CLARIFICATION 2



# ADOPT **A4** AMENDMENTS

23 agreement with the exclusive representative of its employees providing that a labor dispute over  
24 conditions and terms of a contract may be resolved through binding arbitration.

25 **(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding in-**  
26 **volves alleged misconduct by a sworn public employee of any law enforcement agency and**  
1 **the arbitrator makes a finding that misconduct has occurred consistent with the law**  
2 **enforcement agency's finding of misconduct, the arbitration award may not order any disci-**  
3 **plinary action that differs from the disciplinary action imposed by the agency, if the disci-**  
4 **plinary action imposed by the agency is consistent with the provisions of a discipline guide**  
5 **or discipline matrix adopted by the agency as a result of collective bargaining and incorpo-**  
6 **rated into the agency's disciplinary policies.**

7 [(3)] (4) In an arbitration proceeding under this section, the arbitrators, or a majority of the  
8 arbitrators, may:

9 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

10 (A) Compel the attendance of a witness properly served by either party and





# ADOPT **A4** AMENDMENTS

City of Portland position  
per testimony from labor arbitration hearing  
January 27-28, 2020

The existing Discipline Guide is considered **“collectively bargained”** and **“incorporated into the City’s policies”** for purposes of arbitration.

Refer to category descri

Exa

CATEGORY A: Conduct th

operations or professiona

Failure to provide nar

Use of profanity

Failure to write a rep

Failure to appear in court

Minor deviation from policy resulting in vehicle

Rude or dismissive behavior/language

CATEGORY B: Conduct that has or may have a negati

professional image of PPB; or that negatively impact

officers, agencies or the public.

Deviation from policy resulting in vehicle crash

Failure to warn (prior to use of force)

Improper control hold

Minor deviation from vehicle pursuit policy

Failure to write an ORS mandated report

Minor deviation from confrontation manager

Minor deviation from search and seizure poli

Deviation from policy resulting in N/D of Less

CATEGORY C: Conduct that involves a risk to safet

pronounced negative impact on the operations of

department, or on relationships with other officer

Significant deviation from policy resulting in

Disclosure of confidential information

Significant deviation from policy resulting in

Failure to adhere to ORS mandated arrest

Minor deviation from use of physical force

Deviation from policy resulting in N/D of F/A

Deviation from vehicle pursuit policy

Deviation from confrontation management performance policy

Deviation from search and seizure policy

Offensive or discriminatory language (Example: Epithets)

CATEGORY D: Conduct substantially contrary to the values of the PPB or that

substantially interferes with its mission, operations or professional image, or

that involves a serious risk to officer or public safety, or intentionally violates

bureau policy.

Disparate treatment

Deviation from use of physical force policy

Deviation from vehicle pursuit policy

|                             |                 |                         |                         |
|-----------------------------|-----------------|-------------------------|-------------------------|
| 3rd violation<br>in 3 Years | SWOP            | SWOP                    | SWOP                    |
| 1st violation<br>in 5 Years | One Day<br>SWOP | Two Day<br>SWOP         | One<br>Workweek<br>SWOP |
| 2nd violation<br>in 5 Years | Two Day<br>SWOP | One<br>Workweek<br>SWOP | Two<br>Workweek<br>SWOP |
|                             | One             | Two                     | Three<br>Workweek       |

BACKGROUND

CLARIFICATION 1

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# ADOPT **A4** AMENDMENTS



*“... discipline guide or discipline matrix adopted by the agency as a result of collective bargaining and incorporated into the agency’s disciplinary policies.”*



**“... the discipline guide or discipline matrix that is included in the terms of the collective bargaining agreement.”**



## Clarification 2:

**Ensure that mitigating and aggravating factors may be applied within the bounds of the guide or matrix.**



# ADOPT **A4** AMENDMENTS

SEN. WAGNER: ... What in this bill is there to ensure that even within the bounds of that discipline guide, that discipline is handed out even-handedly and that officers who attempt to blow the whistle are protected?

SEN. FREDERICK (Carrier): This bill would prevent cases of preferential treatment... all police departments that adopt a matrix or guide... would **ensure that the discipline of officers is consistent and preferential treatment would no longer come into play,** as Chiefs would be bound to treat all officers with a degree of equity as previously agreed to in the discipline matrix or guide.

Senate Floor Discussion on SB 1567-A, February 20, 2020

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# ADOPT **A4** AMENDMENTS

23 agreement with the exclusive representative of its employees providing that a labor dispute over  
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# ADOPT **A4** AMENDMENTS

Portland Police Bureau Discipline Guide

Refer to category description when determining the severity of the violation for directives that fall in multiple categories.

| Categories and Descriptions<br>Examples noted (but not limited to)   |                         | Mitigated | Presumptive | Aggravated   |
|--|-------------------------|-----------|-------------|--------------|
| <b>CATEGORY A: Conduct that has or may have a minimal negative impact on operations or professional image of PPB.</b><br>Failure to provide name, badge, card<br>Use of profanity<br>Failure to write a report | 1st violation in 1 Year |           | CC          | LOR          |
|  | 2nd violation in 1 Year | CC        | LOR         | One Day SWOP |
|  |                         |           | One Day     | Two Day      |

CITY OF PORTLAND  
POLICE BUREAU

| Categories and Descriptions<br>Examples noted (but not limited to)  |                         | Mitigated | Presumptive  | Aggravated   |
|---|-------------------------|-----------|--------------|--------------|
| <b>CATEGORY A: Conduct that has or may have a minimal negative impact on operations or professional image of PPB.</b><br>Failure to provide name, badge, card<br><b>Use of profanity</b><br>Failure to write a report<br>Failure to appear in court<br>Minor deviation from policy resulting in vehicle crash<br>Rude or dismissive behavior/language | 1st violation in 1 Year |           | CC           | LOR          |
|   | 2nd violation in 1 Year | CC        | LOR          | One Day SWOP |
|   | 3rd violation in 1 Year | LOR       | One Day SWOP | Two Day SWOP |

|  |                          |              |              |                   |
|--|--------------------------|--------------|--------------|-------------------|
| Deviation from policy resulting in 1st violation           | 3rd violation in 3 Years | SWOP         | SWOP         | SWOP              |
| Deviation from vehicle pursuit policy                      | 1st violation in 5 Years | One Day SWOP | Two Day SWOP | One Workweek SWOP |
| Deviation from confrontation management performance policy |                          | Two Day      | One Workweek | Two Workweek      |
| Deviation from search and seizure policy                   | 2nd violation            | Two Day      | One Workweek | Two Workweek      |
| Offensive or discriminatory language (Example: Epithets)   |                          |              |              |                   |

**CATEGORY D: Conduct substantially contrary to the values of the PPB or that substantially interferes with its mission, operations or professional image, or that involves a serious risk to officer or public safety, or intentionally violates bureau policy.**

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## The Oregonian

"Some of their own fellow police officers raised the alarm repeatedly over a three-year span starting in 2014 — detailing flagrant and repeated misconduct.

...

In 2014, [Attorney Dan] Thenell represented the three West Linn officers who felt they were **being retaliated against** for blowing the whistle..."

PortlandTribune

Feb. 14, 2020



## ADOPT **A4** AMENDMENTS



*“the arbitration award may not order any disciplinary action that differs from the disciplinary action imposed by the agency.”*



**“the arbitrator may rescind or reduce the law enforcement agency’s disciplinary action only with a written award that is consistent with the provisions of the discipline guide or discipline matrix in the collective bargaining agreement and that is based on mitigating circumstances consistent with just cause.”**





## Clarification 1:

**Clarify that the discipline guide or matrix must be collectively-bargained.**

## Clarification 2:

**Ensure that mitigating and aggravating factors may be applied within the bounds of the guide or matrix.**

# PROPOSED AMENDMENTS TO A-ENGROSSED SENATE BILL 1567

## ADOPT **A4** AMENDMENTS

On page 1 of the printed A-engrossed bill, delete lines 5 through 22.  
On page 2, delete lines 1 through 42 and insert:

**SECTION 1.** ORS 243.706 is amended to read:

“243.706. (1) A public employer may enter into a written agreement with an exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding arbitration or any other dispute resolution process agreed to by the parties. As a condition of enforceability, any arbitration award that orders the reinstatement of a public employee or otherwise relieves the public employee of responsibility for misconduct shall comply with public policy requirements as clearly defined in statutes or judicial decisions including but not limited to policies prohibiting sexual misconduct, unjustified and egregious misconduct, related to

or  
ained.

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- ✓ **Reduce potentially costly ambiguities**
- ✓ **Avoid unchecked and unchallengeable bias**



Prepared for  
**Oregon Coalition of Police and Sheriffs**  
[www.OCOPS.org](http://www.OCOPS.org)

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