

## HB 2930 -1, -2, -11, -12 STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Meeting Dates:** 2/22, 3/17, 3/22, 3/31, 4/1, 4/6

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#### 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 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 standard of review 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:

-1 Creates a random arbitrator selection process within the Employment Relations Board. Requires the selected arbitrator hold a hearing within 90 days from the date of appointment to the proceeding, and allows the arbitrator to set over the hearing for up to 60 days, for good cause.

-2 Requires law enforcement agency to prove by a preponderance of the evidence that the alleged misconduct occurred. Requires the officer to to prove by a preponderance of the evidence that the discipline imposed by the agency is not proper. States that standards of proof are not subject to collective bargaining.

-11 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. Requires the employer to show (by a preponderance of the evidence): the officer engaged in misconduct and the discipline met the statutory just cause standard. In addition, requires the discipline not be

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arbitrary or capricious. When the discipline is termination, the arbitrator may not overturn if overturning or reducing the discipline would be inconsistent with the public interest. (Defines public interest as maintaining community trust, enforcing a higher standard of conduct for law enforcement officers and ensuring an accountable, fair and just disciplinary process.) Creates more specificity in membership, modifies membership and increases it from 11-15 members. Modifies the recipient of the report to the Committee on the Judiciary. Applies to collective bargaining agreements entered into after the effective date. Clarifies the terms in the measure are not subject to collective bargaining.

-12 Directs the Employment Relations Board (ERB) to randomly select an arbitrator to preside over police discipline cases. Allows each party to object once to the appointed arbitrator. Requires the arbitrator to hold hearing within 90 days of being appointed, with an additional 60-day extension allowed for good cause. Requires the ERB to create an arbitrator fee schedule, by rule, and requires review every three years to make sure the fee schedule stays reasonable. Fees must be split equally by the parties. Requires continuing education for arbitrators who preside over police misconduct proceedings. Training is required every two years to include: two hours of implicit bias training/ cultural competency and two hours of training on labor/ employment law and grievance procedures. Retains the reasonable person standard for the arbitrator determining whether an officer engaged in misconduct.

### **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.