

House Bill 2943

Sponsored by Representatives BYNUM, ALONSO LEON (at the request of Oregon Fraternal Order of Police)
(Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that employer may not use evidence that public safety officer has been placed on impeachment list for purpose of other investigations or disciplinary action.

Allows public safety officer to file petition in circuit court seeking removal of officer from impeachment list.

A BILL FOR AN ACT

1
2 Relating to investigations of public safety officers; creating new provisions; and amending ORS
3 236.350 and 236.360.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 236.350 is amended to read:

6 236.350. As used in ORS 236.350 to 236.370:

7 (1) "Disciplinary action" means action taken against a public safety officer by an employer to
8 punish the officer, including dismissal, demotion, suspension without pay, reduction in salary, writ-
9 ten reprimand and transfer.

10 (2) **"Impeachment list" means any list, index, system or other record that is maintained**
11 **by a prosecutor's office and that contains the names of public safety officers whose person-**
12 **nel files may contain evidence of dishonesty or bias.**

13 [(2)] (3) "Just cause" means a cause reasonably related to the public safety officer's ability to
14 perform required work. The term includes a willful violation of reasonable work rules, regulations
15 or written policies. **The term does not mean unproven allegations resulting in placement on**
16 **an impeachment list.**

17 [(3)] (4) "Public safety officer" means:

18 (a) A member of a law enforcement unit who is employed full-time as a peace officer commis-
19 sioned by a city, university that has established a police department under ORS 352.121 or 353.125,
20 port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division
21 of the Department of Justice, the Oregon State Lottery Commission or the Governor and who is
22 responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport
23 security.

24 (b) A corrections officer, a parole and probation officer or a youth correction officer as those
25 terms are defined in ORS 181A.355.

26 **SECTION 2.** ORS 236.360 is amended to read:

27 236.360. (1) Employers of public safety officers shall adopt written procedures to implement the
28 provisions of ORS 236.350 to 236.370.

29 (2) Except as provided in subsection (3) of this section, the following safeguards apply when a
30 public safety officer is under investigation concerning a matter that the officer reasonably believes

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 may lead to economic sanctions or dismissal from employment and is subject to an interview by the
2 officer's employer:

3 (a) Unless the seriousness of an investigation requires otherwise, the interview must be con-
4 ducted when the public safety officer is on duty or during the officer's normal waking hours. If the
5 interview is conducted when the public safety officer is off duty, the officer must be compensated
6 appropriately.

7 (b) The public safety officer may have a representative of the officer's choosing present at the
8 interview.

9 (c) No more than two interviewers at a time may question the public safety officer.

10 (d) The interviewers shall inform the public safety officer of their authority to compel a state-
11 ment and of the identity of the investigators and all persons present during the interview.

12 (e) The public safety officer is not required to answer questions until the officer has been in-
13 formed of the nature of the investigation and of facts reasonably sufficient to inform the officer of
14 the circumstances surrounding the allegations under investigation. This paragraph does not apply
15 to preliminary questions directed at gaining a general overview of events in order to assess whether
16 an inquiry is necessary and to effectively investigate and gather evidence.

17 (f) The interview may not last an unreasonable amount of time, taking into consideration the
18 gravity and complexity of the matter under investigation.

19 (g) During the interview, the public safety officer must be allowed to attend to physical needs.

20 (h)(A) Except as provided in subparagraph (B) of this paragraph, the public safety officer being
21 interviewed may not be threatened with punitive action or subjected to offensive language.

22 (B) In a compelled interview solely for noncriminal purposes, a public safety officer who refuses
23 to respond to questions or to be interviewed must be informed that refusal may lead to disciplinary
24 action.

25 (i)(A) The public safety officer may record the interview and must be given a copy of the tape
26 or digital file of the interview and, upon request, a transcript of any recording that has been tran-
27 scribed by the employer.

28 (B) The public safety officer must be given a copy of any written statement or report describing
29 the officer's statements.

30 (C) Materials required to be given to the public safety officer under this paragraph must be
31 given before subsequent interviews in the course of the same investigation.

32 (j) As soon as it is determined that the public safety officer may be charged with a criminal
33 offense, the officer must be informed of the officer's right to consult with criminal defense counsel
34 with respect to the criminal charge.

35 (k) In a disciplinary or administrative investigation, the public safety officer's chosen represen-
36 tative may not be required to disclose, or be subject to disciplinary action for refusing to disclose,
37 statements made by the officer to the representative for purposes of the representation.

38 **(L) An employer may not use evidence that a public safety officer has been placed on an**
39 **impeachment list for the purpose of other investigations or disciplinary action.**

40 (3) The safeguards provided in subsection (2) of this section do not apply to:

41 (a) The questioning of a public safety officer in the normal course of informal verbal
42 admonishment by, or other routine or unplanned contact with, a supervisor or other public safety
43 officer; or

44 (b) An investigation concerned solely with alleged criminal activities.

45 (4) Disciplinary action may not be taken against a public safety officer without just cause.

1 (5) An employer that intends to take disciplinary action against a public safety officer shall:

2 (a) Notify the officer in writing of the charges against the officer and the proposed disciplinary
3 action; and

4 (b) Provide the officer with an opportunity to respond to the charges at an informal hearing
5 which may be recorded, with the person or persons having authority to impose the proposed disci-
6 plinary action.

7 (6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an employer shall complete
8 its investigation into an allegation of misconduct by a public safety officer and provide notification
9 under subsection (5)(a) of this section no later than six months from the date of the first interview
10 described in subsection (2) of this section. The employer may extend the investigation to a maximum
11 of 12 months from the date of the first interview, provided that, before the extended period begins,
12 the employer provides written notice explaining the reason for the extension to the officer and the
13 officer's chosen representative and union representative, if any.

14 (b) The time limit provided in paragraph (a) of this subsection does not apply:

15 (A) If the investigation involves an officer who is incapacitated or unavailable.

16 (B) If the investigation involves an allegation of workers' compensation or disability fraud by
17 the officer.

18 (C) If the officer waives the limit in a signed writing.

19 (D) If the investigation requires a reasonable extension of time for coordination with one or
20 more other jurisdictions.

21 (E) If the investigation involves more than one officer and requires a reasonable extension of
22 time.

23 (c) For the purposes of the time limit provided in paragraph (a) of this subsection:

24 (A) If the alleged misconduct is also the subject of a criminal investigation or criminal prose-
25 cution, time does not run for the period during which the criminal investigation or criminal prose-
26 cution is pending.

27 (B) If the investigation involves a matter in civil litigation in which the officer is a named de-
28 fendant or the officer's actions are alleged to be a basis for liability, time does not run for the period
29 during which the civil action is pending.

30 (C) If the investigation is the result of a complaint by a person charged with a crime, time does
31 not run for the period during which the criminal matter is pending.

32 (7) An investigation may be reopened if:

33 (a) Significant new evidence is discovered that is likely to affect the outcome of the investi-
34 gation; and

35 (b)(A) The evidence resulted from the public safety officer's predisciplinary response; or

36 (B) The evidence could not have been discovered by the employer without resorting to extraor-
37 dinary measures.

38 **SECTION 3. (1) "Impeachment list" and "public safety officer" have the meanings given**
39 **those terms in ORS 236.350.**

40 **(2) A public safety officer who is placed on an impeachment list by a prosecutor's office**
41 **may file a petition in the circuit court for the county of the prosecutor's office to remove**
42 **the officer's name from the impeachment list.**

43 **(3) The court shall hold a hearing and accept all of the available evidence to determine**
44 **whether the officer has engaged in dishonesty or bias.**

45 **(4) If the state does not prove by clear and convincing evidence that the officer has en-**

1 gaged in dishonesty or bias, the court shall order the prosecutor's office to remove the
2 officer's name from the impeachment list.

3 (5) A public safety officer who has been placed on an impeachment list because of con-
4 duct that resulted in conviction of a felony or a crime involving moral turpitude may not file
5 a petition under this section.

6 SECTION 4. The amendments to ORS 236.350 and 236.360 by sections 1 and 2 of this 2021
7 Act apply to collective bargaining agreements entered into or renewed after the effective
8 date of this 2021 Act.

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