



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
Deschutes County Sheriff's Office
On behalf of the Oregon State Sheriffs' Association and
Oregon Association Chiefs of Police
Shane.Nelson@deschutes.org

Date: February 3, 2021

Re: Testimony identifying concerns re HB 2936 – Background Investigations/Task Force

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 2936. We have a number of concerns with this measure as written. In this testimony we would like to outline our concerns as well as suggest alternatives where possible.

DPSST Background Investigations (Section 2): Most if not all of the items outlined in the Section 2 are currently included in the background investigations local law enforcement agencies conduct on all new prospective employees. Current Oregon Administrative Rules (OAR) require background investigations conducted by law enforcement agencies to include at least a review of criminal history and arrests, Department of Motor Vehicle records, drug and alcohol use, education verification, employment history, military history verification, personal and professional references, a personal interview, a check of DPSST records, residential history, work eligibility, and records checks, which may include public records, open sources or social media, and financial information as permitted by law. In addition, law enforcement agencies are required to conduct a pre-employment psychological evaluation for the purpose of identifying mental conditions, racial bias, personality traits or behavior patterns that may adversely impact a person's ability to perform the essential functions of their position as a law enforcement officer. Requiring DPSST to also conduct these investigations would create redundancy in law enforcement backgrounds and would create a significant fiscal impact on DPSST.

Alternative Recommendation: Task DPSST, in consultation with local law enforcement, with creating a uniform background investigation form for use by all agencies in Oregon who are hiring criminal justice employees. The form should include the specific areas identified by the measure including the pre-employment psychological exam, any additional areas required by administrative rule, as

well as standard information. The form would ensure consistency in law enforcement backgrounds throughout the state.

DPSST rules prohibiting certain activities (Section 3): Law enforcement agencies have policies in place that address the issues identified in this section while also in compliance with Article 1, section 8 of the Oregon Constitution. As a part of the policy development process, law enforcement agencies must ensure compliance with the requirements of federal and state law along with case law. It would be difficult for DPSST to create rules prohibiting certain activities and to provide monitoring/enforcement of these rules outside of the academy environment. All of DPPST's regulatory functions are prompted by employer actions for cause.

Reporting evidence of racist behavior (Section 4): We assume the purpose of reporting evidence to the District Attorney is so they can evaluate whether there are Brady implications. If that is the intent, it would be helpful to make the purpose more explicit. In addition, we believe racist behavior should be specifically defined along with clarification regarding whether the provisions apply to both on-duty and off-duty conduct. The language should be crafted to ensure constitutionality in terms of free speech and freedom of association.

Governor's Task Force (Section 5): Most of the items listed in the measure's proposed Governor's Task force plan have employment law implications and are currently subject to individual collective bargaining processes. If the measure moves forward with this task force, we would recommend a specific definition of discriminatory sentiments be added and would limit the task force focus to behaviors that actually violate the rights of protected classes as opposed to having the potential to violate rights which becomes a speculative exercise.

BOLI database/ancillary complaint reporting (Section 6): We believe the public should have avenues to report incidents of law enforcement officer misconduct that are accessible. Law enforcement agencies look for ways to create comfortable reporting options for community members who have concerns or complaints. The Department of Public Safety Standards and Training already has a criminal justice complaint process that allows members of the public to report alleged misconduct by public safety professionals. Complaints can be submitted by completing a complaint form or by calling a dedicated phone number. Upon receipt of a complaint against a law enforcement officer, DPSST reviews the complaint, forwards the complaint and any supporting documentation to the agency that employs the law enforcement officer for investigation, file and maintain the complaint and any supporting documentation as a public record and initiate a professional standards review if criminal conviction or separation from employment results. Creating an additional hotline would result in potential confusion for the public and would require an appropriation of additional resources to BOLI to create and maintain the hotline. In addition, BOLI cannot take any action with regard to DPSST certification if a moral fitness issue is discovered.

Thank you for your consideration