



STATEMENT OPPOSING SB 613 **(GRANTING DPSST UNAPPEALABLE SUBJECTIVE POWER OVER ALL DISCIPLINE)**

To: Senate Committee on Judiciary
From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs
Date: March 9, 2021

(TESTIMONY SCRIPT)

Chair Prozanski, members of the Committee...

For the record, my name is Michael Selvaggio from the Oregon Coalition of Police and Sheriffs, we represent line officers and deputies around the State of Oregon.

I come before you to oppose SB 613, which essentially eliminates the concept of arbitration in a manner that is neither warranted nor precedented.

SB 613 sends ANY arbitration result to DPSST, for review under the subjective guidelines of whether a determination "interferes with the administration of justice" or "would be contrary to public policy."

First DPSST already has the ability to review any case they like in accordance with their own standards and process for decertification. But if DPSST is to review decisions made based on a local standard, it will have to become an expert in every variance in every local agency policy.

Second, the fact that it is so subjective is staggeringly concerning, and places an unwarranted amount of faith in an appointed body. A recent study¹ on police discipline by researchers at the University of Indiana found that Black officers were often more than twice as likely as their white counterparts to face disciplinary measures:

"Even when organizations adopt seemingly objective policies for addressing misconduct, it is still possible for certain groups to be disproportionately accused of misconduct"

¹ "The race discipline gap: A cautionary note on archival measures of behavioral misconduct," S. Walter and Erik Gonzalez, et al. *Organizational Behavior and Human Decision Processes*, 2020.

and/or disciplined. ... We identified the presence of a race discipline gap in ... records of behavioral misconduct.”

In the face of this existing bias, the authors go on to recommend policy options that might mitigate such disparities:

“Just as organizational leaders have implemented policies and procedures to mitigate adverse impact in hiring, they may need to implement checks to ensure that there is no adverse impact in the detection and enforcing of organizational misconduct.”

This bill goes in, to put it mildly, a different direction. Whereby this study looked at "seemingly objective" policies, this bill introduces a supreme oversight panel that is not only purely subjective, but completely un-reviewable.

I fear that there is a pervasive idea that the systemic racism and implicit biases that are the source of a lot of the inequity and disparate treatments in our society... are somehow completely absent from anyone we happen to place in an oversight or supervisory role -- so much so in fact that we feel confident eliminating any opportunity to appeal this board's decision.

Lastly, and we have been asking this for literally years now, may we have some specific examples of the types of arbitration problems that this bill and others like it are attempting to address?

A few weeks ago, this Committee was treated to an invitation-only informational session about arbitration. At no point in that presentation did employer groups bring up a single specific example of an arbitration process run amok.

We just heard previous testimony about the City of Portland's re-hiring of Sergeant Lewis, after the City initially fired him for making offensive statements during roll call. Let's be clear about the whole story here. The reason the City opted not to bring the issue to arbitration is because under the terms of the City's own, unilaterally-adopted discipline guide, termination was not an option. Members of the Committee: We spent the better part of the last two years discussing the apparent importance of hewing to a discipline guide, and ensuring that discipline is predictable. Now we are hearing testimony that the City must be free to ignore its own discipline guide at its leisure.

We heard other examples about officers who were found to have not violated policy, and instead of looking at changing that underlying policy, we are examining ways to ensure that officers can be punished regardless of their following that policy.

We also heard about another officer who is part of the City's command staff and not a member of the Portland Police Association.

Again, proponents of these measures clearly have concerns with the City's underlying policies, but instead of focusing on changing those policies, focus on how to punish officers who follow them.

Please re-think this policy. ORCOPS has always been a ready and willing partner when it comes to addressing shortcomings in our accountability systems but this bill is dangerously vague.

Imagine, if you will, a judge ruling not on the underlying question of law of a matter, but on an ambiguous notion of what that judge felt was proper. Or imagine, having to appear before an Ethics Commission that was not charged with enforcing the law, but rather to subjectively determine if the person before them had acted ethically... and having no recourse.

SB 613 invites unrestrained and unchecked bias into this process.

Accountability should NOT be measured simply by how many officers one manages to fire, but rather in the strength and integrity and underlying fairness of the process. Let's work on improving that.

Thank you.