



Oregon

Kate Brown, Governor

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DATE: May 11, 2021

TO: Honorable Members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation

FROM: Linsay Hale, Professional Standards/Interim Training Division Director

SUBJECT: DPSST Testimony: HB 2929-A

Summary: HB 2929-A requires a police officer or reserve officer who witnesses another officer engaging in misconduct or a violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety professionals established by the Board on Public Safety Standards and Training report the violation to a supervisor, a person in the reporting person's chain of command, or the Department of Public Safety Standards and Training. The bill requires the report be forwarded to a person who has authority to investigate the allegation as soon as practicable, but not less than 72 hours after receiving the report.

The bill further requires the law enforcement unit that receives a report of misconduct or violation complete an investigation within three months, and requires the law enforcement unit notify the DPSST if allegations of misconduct are sustained. (Law enforcement units are not required to notify the DPSST if there is a founded violation of a Board-established standard.)

Section 2 of the bill requires the DPSST establish a form to receive reports of misconduct or standard violations, and that the DPSST forward reports of misconduct or violations to the employing law enforcement unit for investigation.

Background: The DPSST, in consultation with the Board on Public Safety Standards and Training (BPSST), is responsible for the establishment of minimum physical, emotional, intellectual and moral fitness standards required for certification as a public safety officer in Oregon.

Currently, the Board's minimum physical, emotional and intellectual standards apply at the time of hire only. It is not anticipated that a currently-employed officer would be in violation of these standards with regard to intervening and reporting misconduct.

Additionally, the current administrative rules that govern public safety moral fitness define moral fitness as the mandatory and discretionary grounds for denial or revocation of certification, and establish a process for which officer behavior is reviewed by the Department and the Board, in consultation with its Policy Committees. A certification review occurs any time an officer's conduct results in a plea or finding of guilt to any crime, or an officer is separated from employment. This case-by-case review determines if the behavior that led to the criminal disposition or separation violates the Board's moral fitness standards.

While the authority to determine that a police officer has engaged in behavior that violates these moral fitness standards belongs to the Department and the Board, it is reasonable to expect a police officer or a

reserve officer to intervene and report conduct to their employer upon witnessing conduct that could reasonably fit the definitions of the moral fitness violations found in rule. Aside from criminal conduct which is already in the bill's definition of misconduct, the Board's moral fitness violations include:

- Intentional conduct performed under the color of office to: Obtain false confessions; Make false arrests; Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression; Compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing; Deprive, or attempt to deprive, another person or persons of their legal rights; or Gain advantage for a public or private safety agency or for personal gain.
- Intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth.
- Intentional conduct that includes the use or attempted use of one's position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another.
- Conduct that threatens or harms persons, property or the efficient operations of any agency.

Based on the current administrative rules, a DPSST certification review of an officer who witnesses and fails to intervene would occur only if the witnessing officer's failure to intervene later resulted in criminal charges being filed, or the witnessing officer being separated from employment.

Finally, the DPSST accepts complaints alleging misconduct by any public safety officer or agency in any form. All complaints are reviewed and recorded by DPSST staff, before being forwarded to the agency being complained against, or the agency that employs the officer being complained against for further investigation, remedy and disposition.

Impact of HB 2929-A on DPSST: HB 2929-A would not have any fiscal or operational impact on the DPSST since it aligns with processes already in place.
