

House Bill 2597

Sponsored by Representatives MORGAN, MANNIX (Pre-session 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**.

Abolishes Commission on Statewide Law Enforcement Standards of Conduct and Discipline. Transfers duties, functions and powers of commission to Department of Public Safety Standards and Training.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to law enforcement standards; creating new provisions; amending ORS 243.706, 243.809 and
3 243.812; and prescribing an effective date.

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

ABOLISH AND TRANSFER

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8 **SECTION 1.** (1) **The Commission on Statewide Law Enforcement Standards of Conduct**
9 **and Discipline is abolished. On the operative date of this section, the tenure of office of the**
10 **members of the commission and the executive director of the commission ceases.**

11 (2) **All of the duties, functions and powers of the commission are imposed upon, trans-**
12 **ferred to and vested in the Department of Public Safety Standards and Training.**

RECORDS, PROPERTY, EMPLOYEES

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16 **SECTION 2.** (1) **The Commission on Statewide Law Enforcement Standards of Conduct**
17 **and Discipline shall:**

18 (a) **Deliver to the Department of Public Safety Standards and Training all records and**
19 **property within the jurisdiction of the executive director that relate to the duties, functions**
20 **and powers transferred by section 1 of this 2023 Act; and**

21 (b) **Transfer to the department those employees engaged primarily in the exercise of the**
22 **duties, functions and powers transferred by section 1 of this 2023 Act.**

23 (2) **The Director of the Department of Public Safety Standards and Training shall take**
24 **possession of the records and property, and shall take charge of the employees and employ**
25 **them in the exercise of the duties, functions and powers transferred by section 1 of this 2023**
26 **Act, without reduction of compensation but subject to change or termination of employment**
27 **or compensation as provided by law.**

28 (3) **The Governor shall resolve any dispute between the commission and the department**
29 **relating to transfers of records, property and employees under this section, and the**
30 **Governor's decision is final.**

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.

UNEXPENDED REVENUES

SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the Commission on Statewide Law Enforcement Standards of Conduct and Discipline for the biennium beginning July 1, 2023, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this 2023 Act are transferred to and are available for expenditure by the Department of Public Safety Standards and Training for the biennium beginning July 1, 2023, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this 2023 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the commission remain applicable to expenditures by the department under this section.

ACTION, PROCEEDING, PROSECUTION

SECTION 4. The transfer of duties, functions and powers to the Department of Public Safety Standards and Training by section 1 of this 2023 Act does not affect any action, proceeding or prosecution involving or with respect to the duties, functions and powers begun before and pending at the time of the transfer, except that the department is substituted for the Commission on Statewide Law Enforcement Standards of Conduct and Discipline in the action, proceeding or prosecution.

LIABILITY, DUTY, OBLIGATION

SECTION 5. (1) Nothing in sections 1 to 6 of this 2023 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2023 Act. The Department of Public Safety Standards and Training may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Commission on Statewide Law Enforcement Standards of Conduct and Discipline legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this 2023 Act accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2023 Act are transferred to the department. For the purpose of succession to these rights and obligations, the department is a continuation of the commission and not a new authority.

RULES

SECTION 6. Notwithstanding the transfer of duties, functions and powers by section 1 of this 2023 Act, the rules of the Commission on Statewide Law Enforcement Standards of Conduct and Discipline with respect to such duties, functions or powers that are in effect on the operative date of section 1 of this 2023 Act continue in effect until superseded or repealed by rules of the Department of Public Safety Standards and Training. References in the

1 **rules of the commission to the commission or an officer or employee of the commission are**
 2 **considered to be references to the department or an officer or employee of the department.**

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 4 **STATUTORY AMENDMENTS**

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 6 **SECTION 7.** ORS 243.812, as amended by section 1, chapter 40, Oregon Laws 2022, is amended
 7 to read:

8 243.812. (1) The [*Commission on Statewide Law Enforcement Standards of Conduct and Discipline*
 9 *is established for the purpose of adopting*] **Department of Public Safety Standards and Training**
 10 **shall adopt** rules that prescribe uniform:

11 (a) Standards of conduct, including guidelines and procedures, to which law enforcement officers
 12 shall adhere; and

13 (b) Disciplinary standards and procedures, including a range of disciplinary actions that may
 14 include consideration of aggravating or mitigating circumstances, by which a law enforcement
 15 agency, a civilian or community oversight board, agency or review body, and an arbitrator who
 16 serves in an arbitration proceeding described under ORS 243.706 (3) shall make determinations re-
 17 garding alleged misconduct by a law enforcement officer, and shall make recommendations for and
 18 impose disciplinary action in response to such determinations.

19 [(2) *The commission consists of 15 members as follows:*]

20 [(a) *The Director of the Department of Public Safety Standards and Training or a designee from*
 21 *the department.*]

22 [(b) *The Attorney General or a designee from the Attorney General's office.*]

23 [(c) *The President of the Senate shall appoint one nonvoting member, acting in an advisory ca-*
 24 *capacity only, from among members of the Senate.*]

25 [(d) *The Speaker of the House of Representatives shall appoint one nonvoting member, acting in*
 26 *an advisory capacity only, from among members of the House of Representatives.*]

27 [(e) *The Director of the Department of Public Safety Standards and Training and the Attorney*
 28 *General shall jointly appoint 11 members of the commission consistent with the following:*]

29 [(A) *Two members who are chief law enforcement officers.*]

30 [(B) *Two members who represent labor organizations who represent law enforcement officers.*]

31 [(C) *Two members who represent historically marginalized groups or community-based organiza-*
 32 *tions that represent communities impacted by policing.*]

33 [(D) *One member who represents a federally recognized Indian tribe or association of tribes within*
 34 *this state.*]

35 [(E) *Two members who are representatives of local government to represent the interests of cities*
 36 *and counties.*]

37 [(F) *One member who represents public defender organizations established under ORS chapter 151*
 38 *or the Oregon Criminal Defense Lawyers Association.*]

39 [(G) *One member who represents the interests of prosecutors in this state.*]

40 [(3)] (2) At a minimum, the uniform standards described under subsection (1) of this section must
 41 address standards of conduct and discipline regarding:

42 (a) Unjustified or excessive use of physical or deadly force;

43 (b) Sexual harassment;

44 (c) Sexual assault;

45 (d) Assault;

1 (e) Conduct that is motivated by or based on a real or perceived factor of an individual's race,
 2 ethnicity, national origin, sex, gender identity, sexual orientation, religion or homelessness;

3 (f) Moral character; and

4 (g) The use of drugs or alcohol while on duty.

5 [(4) *On or before October 1, 2022, the commission shall adopt and publish rules pursuant to ORS*
 6 *chapter 183 to establish the uniform standards described under subsection (1) of this section.*]

7 [(5)] (3) The [commission] **department** shall review the standards described under subsection (1)
 8 of this section at least once every two years.

9 [(6) *The meetings of the commission shall be open to the public in accordance with state law. Re-*
 10 *ords of the commission shall be open and available to the public in accordance with state law.*]

11 [(7)] (4) The [commission] **department** shall establish and implement an open hearing process
 12 for public input and deliberation before the [commission] **department** adopts rules that establish the
 13 standards described under subsection (1) of this section, including:

14 (a) Public notice;

15 (b) Public outreach to solicit broad public participation; and

16 (c) Public hearings to receive public comment.

17 [(8) *A majority of the members of the commission constitutes a quorum for the transaction of*
 18 *business.*]

19 [(9) *Official action by the commission requires the approval of a majority of the commission.*]

20 [(10) *The term of a member appointed under subsection (2)(e) of this section shall be two years. If*
 21 *there is a vacancy on the commission for any reason, the Director of the Department of Public Safety*
 22 *Standards and Training and the Attorney General shall appoint a person to the unexpired term.*]

23 [(11) *The members of the commission shall elect one person from the Department of Public Safety*
 24 *Standards and Training and one person from the Department of Justice from among the members of*
 25 *the commission to serve as cochairpersons of the commission who shall preside over meetings and ex-*
 26 *ecute the duties determined by the commission to be necessary.*]

27 [(12) *The commission may hire an executive director and support staff, and may enter into an*
 28 *interagency or intergovernmental agreement to have another state agency or governmental agency pro-*
 29 *vide support staff.*]

30 [(13) *The commission may adopt rules necessary for the operation of the commission.*]

31 [(14) *A member of the commission who is not a member of the Legislative Assembly is entitled to*
 32 *compensation and expenses as provided in ORS 292.495.*]

33 [(15)(a)] (5) The [commission] **department** shall prepare and submit a report in the manner
 34 provided by ORS 192.245 to the House Committee on Judiciary or an interim committee of the
 35 Legislative Assembly related to the judiciary no later than September 1[, 2022, and September 1 ev-
 36 *ery year thereafter.*]

37 [(b) *The initial report must describe the development and adoption of the uniform standards de-*
 38 *scribed under subsection (1) of this section, including the methodology used to apprise each law*
 39 *enforcement agency in this state and each civilian or community oversight board, agency or review*
 40 *body, of the standards. The commission shall include in reports submitted after September 1, 2022,]*
 41 **of each year. The report must include** information regarding the progress of each law enforce-
 42 ment agency and civilian or community oversight board, agency or review body[, towards imple-
 43 menting and applying the uniform standards and the [commission's] **department's** recommendations
 44 on updates to the standards, as are considered necessary.

45 [(16)] (6) As used in this section:

1 (a) "Assault" has the meaning given that term in ORS 163.115.

2 (b) "Civilian or community oversight board, agency or review body" means a board, an agency
3 or a body:

4 (A) Designated by a municipality or a law enforcement agency in performing duties related to
5 investigating allegations of officer misconduct or reviewing police policies and practices; or

6 (B) Created to oversee disciplinary matters concerning law enforcement officers pursuant to a
7 city charter or ordinance for which a measure that included the question of whether to establish the
8 board, agency or body was referred to and approved by the people of the city at an election held
9 on or after July 1, 2020.

10 (c) "Law enforcement agency" and "law enforcement officer" have the meanings given those
11 terms in ORS 131.930.

12 (d) "Sexual assault" has the meaning given that term in ORS 243.317.

13 **SECTION 8.** ORS 243.706, as amended by section 7, chapter 541, Oregon Laws 2021, is amended
14 to read:

15 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
16 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
17 arbitration or any other dispute resolution process agreed to by the parties. As a condition of
18 enforceability, any arbitration award that orders the reinstatement of a public employee or other-
19 wise relieves the public employee of responsibility for misconduct shall comply with public policy
20 requirements as clearly defined in statutes or judicial decisions including but not limited to policies
21 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or
22 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims
23 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based
24 upon the public employer's alleged previous differential treatment of employees for the same or
25 similar conduct, the arbitration award must conform to the following principles:

26 (a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for
27 similar offenses as a justification or defense to discharge or other discipline.

28 (b) Public managers have a right to change disciplinary policies at any time, notwithstanding
29 prior practices, if such managers give reasonable advance notice to affected employees and the
30 change does not otherwise violate a collective bargaining agreement.

31 (2) In addition to subsection (1) of this section, a public employer may enter into a written
32 agreement with the exclusive representative of its employees providing that a labor dispute over
33 conditions and terms of a contract may be resolved through binding arbitration.

34 (3) Notwithstanding subsection (1) of this section, when an arbitration proceeding involves al-
35 leged misconduct by a sworn law enforcement officer of any law enforcement agency, as those terms
36 are defined in ORS 131.930, and the arbitrator makes a finding that misconduct has occurred con-
37 sistent with the law enforcement agency's finding of misconduct or, if applicable, consistent with a
38 finding of misconduct by a civilian or community oversight board, agency or review body, the arbi-
39 tration award may not order any disciplinary action that differs from the disciplinary action imposed
40 by the law enforcement agency or the civilian or community oversight board, agency or review body,
41 if the disciplinary action imposed by the law enforcement agency, or the civilian or community
42 oversight board, agency or review body was in accordance with the uniform standards adopted by
43 the [*Commission on Statewide Law Enforcement Standards of Conduct and Discipline established*]
44 **Department of Public Safety Standards and Training** under ORS 243.812.

45 (4) In an arbitration proceeding under this section, the arbitrators, or a majority of the

1 arbitrators, may:

2 (a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

3 (A) Compel the attendance of a witness properly served by either party; and

4 (B) Require from either party the production of books, papers and documents the arbitrators find
5 are relevant to the proceeding;

6 (b) Administer oaths or affirmations to witnesses; and

7 (c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

8 (5) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
9 party to the arbitration proceeding.

10 (6) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
11 of the subpoena.

12 (7) If a person fails to comply with a subpoena issued under this section or if a witness refuses
13 to testify on a matter on which the witness may be lawfully questioned, the party who requested the
14 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to
15 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the
16 application of the attorney of record for the party or on the application of the arbitrators, or a
17 majority of the arbitrators, the court may require the person or witness to show cause why the
18 person or witness should not be punished for contempt of court to the same extent and purpose as
19 if the proceedings were pending before the court.

20 (8) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the
21 public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

22 (9) As used in this section, "civilian or community oversight board, agency or review body"
23 means a board, an agency or a body:

24 (a) Designated by a municipality or a law enforcement agency in performing duties related to
25 investigating allegations of officer misconduct or reviewing police policies and practices; or

26 (b) Created to oversee disciplinary matters concerning law enforcement officers pursuant to a
27 city charter or ordinance for which a measure that included the question of whether to establish the
28 board, agency or body was referred to and approved by the people of the city at an election held
29 on or after July 1, 2020.

30 **SECTION 9.** ORS 243.809 is amended to read:

31 243.809. (1) For matters concerning alleged misconduct by a law enforcement officer, the fol-
32 lowing shall make determinations regarding the alleged misconduct and impose disciplinary action
33 in response to such determinations in accordance with the uniform standards adopted by the [*Com-*
34 *mission on Statewide Law Enforcement Standards of Conduct and Discipline*] **Department of Public**
35 **Safety Standards and Training** under ORS 243.812:

36 (a) A law enforcement agency located anywhere in this state.

37 (b) An arbitrator who serves in an arbitration proceeding described under ORS 243.706 (3).

38 (c) A civilian or community oversight board, agency or review body.

39 (2) The requirements described in this section are not subject to collective bargaining.

40 (3) As used in this section:

41 (a) "Civilian or community oversight board, agency or review body" means a board, an agency
42 or a body:

43 (A) Designated by a municipality or a law enforcement agency in performing duties related to
44 investigating allegations of officer misconduct or reviewing police policies and practices; or

45 (B) Created to oversee disciplinary matters concerning law enforcement officers pursuant to a

1 city charter or ordinance for which a measure that included the question of whether to establish the
2 board, agency or body was referred to and approved by the people of the city at an election held
3 on or after July 1, 2020.

4 (b) “Law enforcement agency” and “law enforcement officer” have the meanings given those
5 terms in ORS 131.930.

6
7 **CAPTIONS**

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9 **SECTION 10. The unit captions used in this 2023 Act are provided only for the conven-**
10 **ience of the reader and do not become part of the statutory law of this state or express any**
11 **legislative intent in the enactment of this 2023 Act.**

12
13 **OPERATIVE DATE**

14
15 **SECTION 11. (1) Sections 1 to 6 of this 2023 Act and the amendments to ORS 243.706,**
16 **243.809 and 243.812 by sections 7 to 9 of this 2023 Act become operative on January 1, 2024.**

17 **(2) The Commission on Statewide Law Enforcement Standards of Conduct and Discipline**
18 **and the Department of Public Safety Standards and Training may take any action before the**
19 **operative date specified in subsection (1) of this section that is necessary to enable the**
20 **commission and the department to exercise, on and after the effective date specified in sub-**
21 **section (1) of this section, all of the duties, functions and powers conferred on the commis-**
22 **sion and the department by sections 1 to 6 of this 2023 Act and the amendments to ORS**
23 **243.706, 243.809 and 243.812 by sections 7 to 9 of this 2023 Act.**

24
25 **EFFECTIVE DATE**

26
27 **SECTION 12. This 2023 Act takes effect on the 91st day after the date on which the 2023**
28 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**