



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: February 28, 2023
TO: Chair Prozanski, Vice-Chair Thatcher and
Members of the Senate Judiciary Committee
FROM: Kimberly McCullough, Legislative Director
Oregon Department of Justice
SUBJECT: SB 808 – Police Conduct Committee

Background:

In 2021, the Oregon Legislative Assembly Passed HB 2930 as part of a package of bills focused on police reform. HB 2930 created the Commission on Statewide Law Enforcement Standards of Conduct and Discipline, whose organic statute is now found at ORS 243.812.

The statute charged the Commission with adopting rules that prescribe uniform standards of conduct and disciplinary standards and procedures, applicable to the Oregon State Police, county sheriffs and city police officers. The Commission was required to do so no later than October 1, 2022. Rules adopted by the Commission must, at a minimum, address standards of conduct and discipline regarding:

- 1) Unjustified or excessive use of physical or deadly force;
- 2) Sexual harassment;
- 3) Sexual assault;
- 4) Assault;
- 5) Conduct that is motivated by or based on a real or perceived factor of an individual's race, ethnicity, national origin, sex, gender identity, sexual orientation, religion or homelessness;
- 6) Moral character; and
- 7) The use of drugs or alcohol while on duty.

ORS 243.812(2) specifies the makeup of the Commission membership and directs the Attorney General and Department of Public Safety Standards and Training (DPSST) Director to jointly appoint the non-legislative members of the Commission.

The current Commission membership is:

- The Director of the Department of Public Safety Standards and Training or a designee from the department.
- The Attorney General or a designee from the Attorney General's office.
- Member of the Senate
- Member of the House of Representatives
- Two members who are Chief Law Enforcement Officers
- Two members who represent labor organizations who represent law enforcement officers.
- Two members who represent historically marginalized groups or community-based organizations that represent communities impacted by policing.
- One member who represents a federally recognized Indian tribe or association of tribes within this state.
- Two members who are representatives of local government to represent the interests of cities and counties.
- One member who represents public defender organizations established under ORS chapter 151 or the Oregon Criminal Defense Lawyers Association.
- One member who represents the interests of prosecutors in this state.

A majority of the 15-member Commission, including non-voting legislative members, constitutes a quorum and majority approval is required for the Commission to take official action. The members of the Commission are required to elect one Commission member from DPSST and one member from the Department of Justice (DOJ) to serve as co-chairs. The co-chairs are responsible for presiding over meetings and executing the duties determined by the Commission to be necessary.

In September of 2021, DPSST and DOJ began recruiting commissioners. Concurrent with these recruitment efforts, they began assembling the infrastructure necessary to operate the Commission.

These agencies created a website, published a description of the Commission's organization and the methods by which the public may obtain or submit information, and established and maintained a list of interested persons and organizations.

In October 2021, staff began researching law enforcement standards of conduct and discipline to provide a contextual framework and options for the Commission to consider. The Commission members were subsequently appointed on February 15, 2022, and began meeting in March. Staff provided their research to the commission, at which point the Commission began in earnest to develop the structure of its proposed rules over the course of three meetings held in May.

During these meetings and the ensuing discussions, the Commission began to arrive at consensus concerning the structure of its proposed rules. Generally, this structure defined the underlying misconduct and created presumptive sanctions that, in some instances, could be increased based on aggravating factors or decreased based on mitigating factors.

With this basic structure and in an effort to meet the October 1 rulemaking deadline established in statute, the Commission began to focus its attention on the priorities established by the Legislative Assembly. That is, the seven categories of misconduct listed in ORS 243.812.

The Commission addressed these seven areas of misconduct and incorporated them into its general framework, with a specific eye toward identifying misconduct that would result in termination. For each of the seven areas of misconduct, the Commission sought to describe the misconduct and identify an applicable presumptive sanction, maximum sanction and minimum sanction for officers who engage in that misconduct.

The process employed by the Commission was intended to calibrate the appropriate sanction by identifying the most severe sanction for each class of misconduct that could be supported by a quorum of the Commission. The Commission repeated this exercise for all seven of the legislative priorities and incorporated those standards of conduct and discipline into its proposed administrative rules.

The Commission voted to authorize staff to file the proposed rules with the Secretary of State at its July 21, 2022, meeting. After filing and with the proper notice, the Commission scheduled four public hearings to receive comment on the proposed rules in Bend, Portland, Pendleton and Medford.

The Rules were ultimately finalized on September 30, 2022. The commission also recently finalized and distributed an informational guideline for the practical application of the rules.

SB 808:

1. Commission Membership

ORS 243.812(2) sets out the requirements for Commission membership. SB 808 adjusts the membership somewhat.

The Department of Justice is not advocating for a specific adjustment of the membership of the commission, but we do want to note that we did hear criticism from the public during the rulemaking process about the balance of the commission, and so we do think this is a conversation worth having.

We would also like to note that 15 members is a large number of commissioners and has made it somewhat difficult to reach a quorum and accomplish voting.

2. Majority Approval

ORS 243.812(9) currently requires the approval of the majority of the commissioners for official action. This requirement includes the two *nonvoting* members in the required total votes for approval.

We are very supportive of the provisions in SB 808 that would amending ORS 243.812(9) to authorize official action on the approval of the majority of *voting* members present.

3. Commission Chairperson

Current law requires that Department of Public Safety Standards and Training (DPSST) and the Department of Justice (DOJ) serve as co-chairpersons of the Commission and jointly appoint the non-legislative members of the commission.

This is an uncommon way to structure a commission, as it can be challenging and time-consuming for two agencies with separate administrations to co-facilitate the functions of a commission.

SB 808 would improve efficiency by changing the leadership of the Commission from co-chairpersons to a single chairperson, and making the Attorney General's designee serve as the chairperson, to preside over meetings and to execute the duties determined by the commission to be necessary.

4. Definition of Law Enforcement Officer

During the commission's work, we discovered that the definition of law enforcement used for this legislation was not particularly inclusive.

The definition is narrower than other definitions of law enforcement found in other contexts, as it was crafted specifically for the profiling legislation that was passed a number of years ago now.

SB 808 would broaden the definition of law enforcement officer (ORS 243.812(15)). This definition would include police officers, parole and probation officers, certified reserve officers, reserve officers and corrections officers as defined in ORS 181A.355. It would not include non-law enforcement personnel who are certified by DPSST (e.g., dispatchers).

5. Other Housekeeping Matters

Finally, the bill deletes the portions of the statute that relate to events that already occurred, including:

- Initial adoption of rules—ORS 243.812(4)
- Initial report to the Legislative Assembly—ORS 243.812(14)

Once again, although we are neutral on the specifics of the commission membership, but we do think it is worthy of a conversation. And we are very supportive of all of the remaining provisions of the bill.

Contact:

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