

Enrolled
House Bill 4207

Sponsored by Representatives KOTEK, ALONSO LEON, BYNUM, LAWRENCE SPENCE, MEEK, SALINAS, SANCHEZ, Senators FREDERICK, MANNING JR, PROZANSKI; Representatives CLEM, DEXTER, FAHEY, HELT, HERNANDEZ, HOLVEY, KENY-GUYER, LEWIS, MARSH, MITCHELL, NATHANSON, NERON, NOBLE, NOSSE, PILUSO, POWER, PRUSAK, REARDON, SOLLMAN, WILDE, WILLIAMS, Senators FAGAN, HASS, MONNES ANDERSON, WAGNER (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to records of discipline of police officers; creating new provisions; amending ORS 181A.640 and 181A.830; and declaring an emergency.

Whereas Black Lives Matter; and

Whereas the lives of Kendra James, Jason Washington, Andre Gladen, Patrick Kimmons, Chase Arnae Peeples, Terrell Kyreem Johnson, Quanice Derrick Hayes, Denorris Laron McClendon, Darris Eugene Johnson matter; and

Whereas we count on the police to protect and serve; and

Whereas accountability is a vital element of American policing; and

Whereas in Oregon, a police officer's disciplinary history is mostly unavailable through public records requests; and

Whereas police discipline records are purposefully obfuscated from the public; and

Whereas there is growing public concern about police accountability and transparency; and

Whereas the public deserves to know the record of the officers who hold the greatest power and authority in our communities; and

Whereas we cannot legislate away racism but we can legislate bringing it to light; and

Whereas there is a pattern of abuse of citizens' rights; and

Whereas across the country, there are instances of police misconduct followed by firing and rehiring in another jurisdiction; and

Whereas in Oregon, there is evidence of jurisdiction transfers in response to misconduct; and

Whereas Officer Jason Sery of the Portland Police Bureau shot and killed James Jahar Perez during a routine traffic stop over a missed turn signal; and

Whereas Officer Sery resigned from the Portland Police Bureau and now works to train officers with the Beaverton Police Department; and

Whereas abuses like this cause irreparable loss of public trust and confidence in the ability of law enforcement to be fair and unbiased; and

Whereas in addition to costing citizens their sense of safety and sometimes their lives, police misconduct has a large economic impact; and

Whereas cities across the country spend millions of dollars each year settling police misconduct lawsuits; and

Whereas nationally, false arrests, civil rights violations and excessive force cost taxpayers over \$300 million in 2019; and

Whereas the taxpayers are going to bear the brunt for the cost of police brutality; and

Whereas without a database to track instances of police misconduct, it is difficult to know how many officers with charges of misconduct on their records leave one department and go to another; now, therefore,

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

SECTION 1. Sections 2 to 4 of this 2020 special session Act are added to and made a part of ORS 181A.355 to 181A.670.

SECTION 2. The Legislative Assembly finds that:

(1) It is in the public interest to have trust and transparency in the hiring of law enforcement officers.

(2) It is in the public interest to ensure that information relating to allegations of misconduct are not shielded in the employment process, while ensuring due process and a fair chance for police officers accused of misconduct in order to promote the hiring of individuals who represent the highest values of policing.

SECTION 3. (1) The Department of Public Safety Standards and Training shall establish a statewide online database of suspensions and revocations of the certifications of police officers that is accessible by the public.

(2) The department shall publish information on the database when the department suspends or revokes the certification of a police officer under ORS 181A.630, 181A.640 and 181A.650, including but not limited to:

- (a) The name of the officer;
- (b) The law enforcement unit at which the officer was employed; and
- (c) A description of the facts underlying the suspension or revocation.

(3) The department shall publish the information required under subsection (2) of this section within 10 days after:

(a) The time for filing an appeal of the department's decision under ORS 181A.650 has passed and no appeal has been filed; or

(b) The decision of the department is appealed under ORS 181A.650 and the department's decision has been sustained by the Court of Appeals or the appeal has been dropped.

(4) The department shall submit an annual report to an appropriate committee of the Legislative Assembly summarizing and analyzing the data in the database.

SECTION 4. (1) As used in this section:

(a) "Law enforcement agency" has the meaning given that term in ORS 181A.775.

(b) "Personnel records" means the entire personnel file of a police officer or reserve officer, including but not limited to records of complaints and disciplinary action against the officer.

(2) Before extending an offer of employment to an applicant for a police officer or reserve officer position, a law enforcement agency shall request and review the applicant's personnel records from all law enforcement agencies in any jurisdiction at which the applicant was formerly employed.

(3) A law enforcement agency shall provide the personnel records of a police officer or reserve officer who was employed by the law enforcement agency at any time to another law enforcement agency that requests the records for review under subsection (2) of this section.

(4) A law enforcement agency shall retain the personnel records of a police officer or reserve officer employed by the agency for at least 10 years after the officer leaves employment with the agency.

(5)(a) A law enforcement agency that complies with subsection (2) of this section is immune from civil liability for any harm arising from relying on personnel records received under subsection (2) of this section.

(b) A law enforcement agency that complies with subsection (3) of this section is immune from civil liability for any harm arising from providing personnel records under subsection (3) of this section.

(c) This subsection does not limit the liability of a law enforcement agency that fails to request, provide or retain records as required by subsections (2) to (4) of this section.

(d) This subsection does not limit the liability of a law enforcement agency for negligent hiring.

SECTION 5. ORS 181A.830 is amended to read:

181A.830. (1) As used in this section:

(a) "Public body" has the meaning given that term in ORS 192.311.

(b) "Public safety employee" means a certified reserve officer, corrections officer, parole and probation officer, police officer or youth correction officer as those terms are defined in ORS 181A.355.

(2) A public body may not disclose a photograph of a public safety employee of the public body without the written consent of the employee. This subsection does not apply to the use by the public body of a photograph of a public safety employee.

(3) A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

(4) Subsection (3) of this section does not apply:

(a) When the public interest requires disclosure of the information.

(b) When the employee consents to disclosure in writing.

(c) When disclosure is necessary for an investigation by the public body, the Department of Public Safety Standards and Training or a citizen review body designated by the public body.

(d) To disclosures required under section 4 of this 2020 special session Act.

[d] (e) When the public body determines that nondisclosure of the information would adversely affect the confidence of the public in the public body.

(5) If an investigation of a public safety employee of a public body results from a complaint, the public body may disclose to the complainant the disposition of the complaint and, to the extent the public body considers necessary to explain the action of the public body on the complaint, a written summary of information obtained in the investigation.

(6) A public body must notify a public safety employee of the public body if the public body receives a request for:

(a) A photograph of the employee.

(b) Information about the employee that is exempt from disclosure under ORS 192.345 or 192.355 (2) or (3).

(c) Information about the employee that is prohibited from disclosure by subsection (3) of this section.

SECTION 6. ORS 181A.640 is amended to read:

181A.640. (1) The Department of Public Safety Standards and Training may deny the application for training, or deny, suspend or revoke the certification, of any public safety officer or instructor, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181A.630, based upon a finding that:

(a) The public safety officer or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board on Public Safety Standards and Training or the department.

(b) The public safety officer or instructor has been convicted of a crime or violation in this state or any other jurisdiction.

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181A.410 (1)(a) to (d).

(d) The public safety officer failed to comply with ORS 181A.790 (3)(b).

(2) The department shall deny the application for training or deny, suspend or revoke the certification of a police officer, after written notice and hearing consistent with the provisions of ORS 181A.630, based upon a finding that:

(a) The officer has a conviction for any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(b) The officer has a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except for offenses involving the use or possession of marijuana;

(c) The officer has a conviction in any jurisdiction for any offense involving domestic violence, as defined in ORS 135.230;

(d) The officer has a conviction in any jurisdiction for any offense involving abuse, as defined in ORS 107.705, of a child who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as, the officer;

(e) The officer is a sex offender as defined in ORS 163A.005; or

(f) The officer has been discharged for cause from employment as a police officer as a result of intentional conduct performed under the color of office to:

(A) Obtain false confessions;

(B) Make false arrests;

(C) Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression;

(D) 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;

(E) Deprive, or attempt to deprive, another person or persons of their legal rights; or

(F) Gain advantage for a public or private safety agency or for personal gain.

[(2)] (3) The department shall deny, suspend or revoke the certification of a fire service professional, after written notice and hearing consistent with the provisions of ORS 181A.630, based upon a finding that the fire service professional has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in ORS 137.700.

[(3)] (4) The department may deny, suspend or revoke the certification of any fire service professional after written notice and hearing consistent with the provisions of ORS 181A.630, based upon a finding:

(a) That the fire service professional falsified any information submitted on the application for certification or on any documents submitted to the board or the department; or

(b) Consistent with ORS 670.280, that the fire service professional is not fit to receive or hold the certification as a result of conviction of a crime in this state, or in any other jurisdiction, other than a crime described in subsection [(2)] (3) of this section.

[(4)] (5) The department shall deny, suspend or revoke the certification of any public safety officer or instructor, except a youth correction officer, after written notice and hearing consistent with the provisions of ORS 181A.630, based upon a finding that the public safety officer or instructor has been discharged for cause from employment as a public safety officer.

[(5)] (6) The department, in consultation with the board, shall adopt rules specifying those crimes and violations for which a conviction requires the denial, suspension or revocation of the certification of a public safety officer or instructor.

[(6)] (7) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a public safety officer or instructor, the department may:

(a) Proceed with any investigation of, or any action or disciplinary proceedings against, the public safety officer or instructor; or

(b) Revise or render void an order suspending or revoking the certification.

[(7)] (8) The department shall deny, suspend or revoke the accreditation of a training or educational program or any course, subject, facility or instruction thereof if the program, course, subject, facility or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181A.410 (1)(g) or 181A.590 (3).

[(8)] (9) When the department completes an investigation relating to a person's qualifications for employment, training or certification under this section, the department shall issue a report.

[(9)] (10) In cases involving a proposed denial of training or certification of a public safety officer or instructor by the department, the department has jurisdiction to proceed with any action against the public safety officer or instructor notwithstanding a subsequent change in the employment status of the officer or instructor, if:

- (a) The department has issued a notice of intent to deny training or certification; and
- (b) The officer or instructor has requested a hearing.

SECTION 7. (1) Section 3 of this 2020 special session Act becomes operative on January 1, 2021.

(2) The Department of Public Safety Standards and Training may take any action before the operative date specified in subsection (1) of this section to enable the department, on and after the operative date specified in subsection (1) of this section, to exercise the duties, functions and powers conferred on the department by section 3 of this 2020 special session Act.

SECTION 8. Sections 3 and 4 of this 2020 special session Act do not affect a collective bargaining agreement entered into before the effective date of this 2020 special session Act, to the extent compliance with the provisions of sections 3 and 4 of this 2020 special session Act would conflict with or impair the execution of the terms of the collective bargaining agreement.

SECTION 9. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by House June 26, 2020

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 26, 2020

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

.....
Bev Clarno, Secretary of State