



2017 Legislative Session Update:

To: All OACP/OSSA Members

From: Kevin Campbell, Lobbyist
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Date: March 19, 2017

Next Monday begins the 8th week of the 2017 Legislative Session. I know I have communicated in the past about how difficult the legislative environment can be. At the risk of “crying wolf” too often, I can confidently say that the 2017 Legislative Session is the most challenging in my 22-year career. Here are a few reasons in way of explanation:

2017 Session: Most Difficult for Policing in Decades:

There are a number of reasons that the 2017 Legislative Session is particularly challenging for policing interests including the following:

Political Imbalance: History tells us that legislatures that are more evenly divided between Democrats and Republicans tend to pass less controversial legislation and less legislation overall. Members of both parties have to put aside the more extreme parts of their agendas in order to accomplish the basic work involved in balancing budgets and completing their work in a timely manner. Legislatures that are controlled too much by either party lack necessary balance or the need to consider alternative perspectives...the result can be damaging legislation. In 2017, Democrats hold the Governor’s officer, control the House of Representatives with a 35 to 25 seat margin and control the Senate with a 17 to 13 margin.

Reaction to Shift in Federal Government Leadership... Uncertainty and Angst: The election of Donald Trump is having a profound and ongoing impact on the 2017 Legislative Session as progressives try to counterbalance what they see as an attack on their accomplishments over the past 8 years. For many progressive legislators, Oregon, along with California and Washington, represent an embattled outpost where progressive policies must be protected and expanded. This potentially places Oregon on the short list of states that may see reductions of Federal funding for

law enforcement, Medicaid and other programs based on a determination that we are out of step/compliance with the shift in Federal Government approach. As the President and Congress take action, I expect progressive leaders in Oregon to take equal and opposite action.

Under the Extreme Influence of Political Influence and Special Interests: Both parties are influenced heavily by special interest groups that expect access and favorable treatment based on the money and effort they invest to get candidates elected. Let me acknowledge that of the 90 members of the Oregon Legislature, a VAST majority serve with the best interests of Oregon and their constituents as their motive (if not all). After all, their \$24,000 per year salary is embarrassingly inadequate for the sacrifice required for their public service role, so there really isn't any financial motive. So why does a legislator that is thoughtful and well-meaning end up voting for policies that seem antithetical to the best interests of the district they represent? Look no further than special interest politics where a failure to stay in good graces may mean a challenge by a well-funded opponent in the next election. For the party in control, groups like SEIU, OEA and environmental interests have significant influence. Recently, a new broad-based progressive coalition called "Fair Shot for All" is setting significant parts of the agenda for the 2017 Legislative Session. The coalition includes a wide-range of groups including the Urban League of Portland, Planned Parenthood, SEIU, Basic Rights Oregon, AFL CIO, AFSCME, Oregon Education Association, Oregon Latino Health Coalition, etc. The agenda focuses on addressing racial, gender, and economic inequality and those disenfranchised by our political process, economy and society. One of their primary focuses is ending alleged profiling based on race, gender and sexual orientation.

Ongoing Fiscal Challenges: Despite a relatively healthy Oregon Economy, the cost of government continues to grow at a faster rate than the growth of revenue. As a result, the legislature is faced with addressing a \$1.7 billion dollar budget shortfall. Unlike the budget crisis of 2009 where the economy was in severe recession and where a recovery was counted on as part of the solution, the 2017 Legislature has only two options...cuts to programs/services or new revenue. Neither will be easy to accomplish and bills we view as damaging could be adopted over our objection if they become part of a "grand bargain" that allows them to solve their budget challenge. In this environment, OACP and OSSA are working hard to protect and enhance public safety budgets.

Key Legislative Dates/Deadlines:

The legislative leadership in the Oregon House and Senate established the following key deadlines. Here are the dates:

April 18th: Deadline for Chairs to Hold Work Sessions for First Chamber Measures

June 2nd: Deadline for Committees to Hold Work Sessions on Second Chamber Measures

June 23rd: Target Adjournment of Session "Sine die"

July 10th: Constitutional Deadline for Adjournment of Session "Sine Die"

Bill Tracking:

2017 Legislative Session Bill Tracking by the Numbers:

Of the nearly 3000 bills already introduced for the 2017 Legislative Session, the OACP/OSSA Legislative Committee is tracking nearly 500 bills. Our Bill Tracking Report by Subject is 89 pages long and there are a significant number of problematic bills in the mix.

Bill Tracking Reports and How to Access and Utilize Them:

Each week, I develop the following two bill tracking reports:

Bill Tracking Report by Subject: This report allows you to identify legislation by subject area arranged alphabetically. If you locate a bill that is of interest/concern, simply click on the bill number (in blue) on the left side of the page to view the actual language of the measure.

Note...a caution regarding positions and prioritization notations on the bills. A significant number of bills are marked as low priority with the designation no position or neutral. This may be confusing on measures we either would clearly oppose or support. They are marked this way because we know they won't be moving. An example is marijuana where there are nearly 40 measures introduced and only 3 or 4 are viable. There are also bills marked "watch" that may have benign content but a large "relating clause" where bad policy language can be added through amendment. I'm keeping a close eye on these bills.

Scheduled Hearings Report: This report lists bills that are posted for a hearing or committee action in the upcoming week (and sometimes beyond).

Legislative Strategy and Approach:

Tell our Positive Oregon Policing Story: Without question, Oregon law enforcement is one of the most effective and collaborative policing cultures in the nation. While not perfect and with insufficient number of personnel to accomplish our mission, law enforcement leaders and our public safety agency leaders are working closely together to insure the best public safety results for Oregonians. In order to provide an opportunity for legislators to experience the positives of Oregon policing, OACP and OSSA create opportunities for legislators to visit the public safety academy where the excellence and collaboration is illustrated. Many legislators have very little background on the work of law enforcement (or a negative one in some cases) so opportunities like the following are critically important. Already this year, legislators participated in:

- On January 25th, legislators were invited to participate in a "use of force" experience at DPSST in the scenario village where they were briefed on use of force policy considerations, experienced MILO and participated in a series of scenarios in the scenario village as police officers.
- On February 22nd, Legislators were invited to an evening event at the academy sponsored by the Task Force on School Safety to hear from Bill Modzeleski, a national expert on threat assessment and the importance of threat assessment teams.

- On February 23rd, the Senate Judiciary Committee spent the morning at the academy for a law enforcement sensitive briefing on surveillance and privacy with a live scenario that illustrated the tools and process we use to conduct investigations.

The purpose of these proactive efforts is to build a stronger connection between legislators and our policing leaders and to educate them regarding our positive and strategic policing culture. More of these experiences are in the planning stages.

Minimize Damage and Negative Impacts to Your Agencies: Our approach and strategy for the 2017 Legislative Session is informed by the factors listed above that describe and explain the challenging legislative environment we face. The strategy is simple but the work to make it happen is overwhelming. In essence, the approach includes the following components:

- When you can't stop bad legislation from passing, engage in good faith negotiations designed to reduce harm. If successful, these negotiations could reduce the impacts of a bad bill from damaging to annoying. Engaging in good faith on issues insures that you have credibility when you really need to fight an issue.
- Choose your battles carefully and use political capital judiciously so you don't end up without goodwill when you really need it. There is a time when core principles require you to fight and where there is no middle ground. However, groups that fight all the time (especially in this political environment) also lose all the time.
- Carefully evaluate the difference between bills that truly cause damage and those that are simply offensive, inconvenient or ridiculous. It is easy to described bills as "the end of the world" during a legislative session without honestly looking at the impact.
- Don't stop to "kick every barking dog". With nearly 400 bills on our tracking list, it would be easy to invest time and energy on issues that are a low priority.

Critical Issue Positions:

The Public Safety System...Preserving a system that works!

The State of Oregon must be a reliable public safety partner with municipal and county law enforcement by funding key state-level public safety programs adequately and consistently. The public safety system in Oregon consists of a series of interdependent pieces that must be adequately resourced for the system to work and for justice to prevail. In this way, the criminal justice system is like a string of Christmas lights that fails to remain lit if one of its bulbs is broken. Municipal and County law enforcement relies on the State of Oregon to provide or fund reliable public safety resources in areas that are critical to the operation of the public safety system. These areas include police officer training, forensic services, county corrections funding, medical examiner services and OSP troopers and multidisciplinary teams that insure that small and rural communities have access to major crimes, drug interdiction and SWAT resources. In many cases, the State is a primary funder or "sole source" provider of the services. From the training of police officers, to the enforcement of criminal law, to the analysis of evidence, to the prosecution of cases (indigent defense, prosecution services, court system resources), to the corrections system (municipal,

county and state), the public safety system requires balance and a reliable state partner. When the state inconsistently funds these “system critical elements” of public safety, damage to the system occurs and local law enforcement is left without alternatives.

Preserve Management Rights in Collective Bargaining

Management rights within the Oregon Collective Bargaining system must be preserved in order to control the cost of services over time and to insure that local law enforcement agencies can be effectively managed. In 1995, Senate Bill 750 was passed for the purpose of restoring some balance to the collective bargaining system in Oregon. At the time, the bill was passed by the Republican House and Senate and was signed by Governor John Kitzhaber. In every session since the passage of 750, labor lawyers and the unions they represent have introduced legislation to erode or completely repeal the balance achieved through the measure. Ironically, despite the passage of SB 750, law enforcement contract salaries and benefits continue to outpace the private sector significantly. In every legislative session over the past twelve years, union groups have introduced legislation to change the definition of “supervisory” in order to force sergeants and other management team members into the union.

Prioritize Police Officer Training, Regional Training and Leadership Training

Basic police officer training, regional training and leadership training are critical to the integrity of policing in Oregon. Here’s why:

All Oregon police departments, City, Tribal, University, County and State, send their new recruits to the Department of Public Safety Standards and Training for their 16 weeks of basic training. As the sole source provider of this essential training, DPSST is crucial to the public safety mission of police agencies throughout the state. While it isn’t particularly “sexy”, adequately funded basic, regional and leadership training is the best way to address some of law enforcements most difficult and controversial public issues (use of force, race-based policing, mentally ill on the street). The work of the Center for Policing Excellence is providing a place for law enforcement leaders to examine policing research and to seek improvements to best practice standards.

Fund Justice Reinvestment and Protect Measure 11 Sentences

Police Chiefs urge the legislature to fulfill their 2013 commitment to fund justice reinvestment as established in HB 3194. Police Chiefs continue to support mandatory minimum sentences for serious crimes approved by voters in 1994 through Ballot Measure 11. In 2013, the OACP joined the Sheriffs and District Attorneys to negotiate legislation (HB 3194) designed to avoid the cost of building a new prison by adjusting some sentencing law and by investing savings on programs designed to reduce recidivism and increase the success of re-entry programs. As a part of the negotiation, legislative leaders committed to fund these programs and to honor a moratorium on legislation impacting sentencing for a period of years. OACP remains committed to protecting our mandatory minimum sentences approved by voters through Ballot Measure 11. OACP is committed to ongoing conversations in order to insure that our sentencing system is effective and just.

Key Legislation Update:

The following is a brief look at some of the emerging 2017 bills that impact law enforcement leaders and agencies. Please note that legislation isn't final until the measure is passed by the House and Senate and the Governor signs the bill. Bills that currently appear to have momentum may not ultimately survive depending on how the legislature resolves the budget shortfall. At this point in session, all bills are alive so I'm sleeping with one eye open until the first bill deadline. This is a very early and cursory look at some of the key issues. If you don't see legislation you are following closely on this list, please know that I'm only listing an initial list. I'm also including a list later in the report of our "Bad Bill List".

HB 2355: Racial Profiling – Reductions of Penalty for PCS:

This bill continues to be in flux as of the time of this report. Despite being heavily negotiated by the Racial Profiling Task Force that was created by HB 2002 during the 2015 Legislative Session, the legislature may abandon the work in favor of an alternative that is beyond what we can support. Sheriff Jason Myers, Chief John Teague and I continue to work hard to secure the best end result in a highly-charged environment. While the racial profiling provisions within the bill were agreed to, the PCS portions in the bill are still being negotiated and the language that currently appears in the bill is placeholder language only. Because the provisions of the bill would involve the need for budget appropriations, any agreement on policy would still need approved funding to move forward.

SB 302 A-Engrossed: Marijuana Legislation

SB 302A moves crimes, penalties, defenses to crimes, and procedural provisions that apply to marijuana offenses from the Uniform Controlled Substances Act to the Control and Regulation of Marijuana Act. The measure adjusts penalties for certain crimes, repeals statutes related to unlawful possession, manufacturing and delivery of marijuana or marijuana products within 1,000 feet of schools, creates criminal penalties for committing arson while manufacturing a cannabinoid extract and changes statutes referencing controlled substances and their applicability to cannabis and cannabis-derived products. Further, the bill clarifies provisions related to formal accountability agreements and youth offenders. Please note: This measure will be effective when the bill is signed by the Governor. Rob Bovett is developing a resource you can use to prepare your officers to be able to enforce the law.

SB 303 A-Engrossed: Marijuana – Minor in Possession (MIP)

SB 303A creates consistent prohibitions, procedures and penalties for a minor possessing, purchasing or acquiring either alcoholic beverages or marijuana items. The measure defines procedures for persons undergoing assessment and treatment related to marijuana use. The bill makes it a Class B violation for any minor to possess either alcoholic beverages or marijuana items. The bill further stipulates that it is a Class A violation for any minor found in possession of either alcoholic beverages or marijuana items while operating a motor vehicle. This measure also takes effect upon passage and signature by the Governor.

HB 2597/SB 2: Mobile Communication Device “Fix” Legislation:

These two bills seek to fix the problem created by an Oregon Court of Appeals ruling in *State v. Rabanales-Ramos* that resulted in numerous citations being dismissed in courts around the state. Both of these bills change the terminology from Mobile Communication Device to Mobile Electronic Device in recognition of driving behaviors that can involve a wide range of devices used for a wide range of things including responding to e-mail, playing games like “Angry Birds” and watching You Tube video’s in addition to texting or talking on a phone. The bills take slightly different approaches to penalties and it is unclear at this point which of the two bills will move through the process.

SB 519: Pre-Employment Polygraph Authorization for Law Enforcement Hiring

Subject to a collective bargaining agreement, SB 519 would authorize law enforcement agencies to utilize polygraph as a part of their pre-employment screening process. The bill would strictly prohibit use of polygraph once an officer is employed and requires the polygraph to be conducted in addition to and not in the place of a background investigation. This measure has passed the Senate in each of the last two sessions but it has died in the House because of opposition by the Chair of the House Judiciary Committee.

HB 2175: Sobering Center Expansion Authorization

During the 2016 Legislative Session, three sobering center locations were approved for Southern Oregon. This Session, we are pursuing legislation that would extend the authorization statewide along with the legal liability protection that is essential to the operation of these centers. Several jurisdictions in Oregon are hoping to open sobering centers including Bend/Deschutes County and Salem/Marion County. I expect a hearing to be scheduled on this bill within the next few weeks.

SB 414: School Safety Statewide Threat Assessment Teams:

As a next step following legislation to create a statewide school safety “tip line”, SB 414 would create a plan for creating threat assessment teams in jurisdictions throughout Oregon that include members from education, mental health, law enforcement and others. These threat assessment teams are a proven model that is already operating in areas like Beaverton and Marion County. The threat assessment teams are designed to work “hand in hand” with the statewide tip line to address threats of harm to self (suicide) or to others.

HB 2613: Expansion of Driving Under the Influence of Substances that Impair

HB 2613 expands the offense of driving while under influence of intoxicants to include any drug that adversely affects a person’s physical or mental faculties to a noticeable or perceptible degree. The bill defines “intoxicant” for purposes of Oregon Vehicle Code and permits a conviction for driving while under influence of intoxicants even if accusatory instrument does not plead the fact that the person was under influence of a controlled substance or inhalant. This measure received a hearing in the House Judiciary Committee where we are working on scheduling a work session with the hopes of moving it to the floor for a vote.

HB 2614: Blood Test for Implied Consent and Admissibility of DRE Refusal Information

This bill changes the states implied consent law in two ways. First, it will allow for a blood test to be taken to determine the presence of a controlled substance or inhalant for purposes of the Motorist Implied Consent Law (in line with breath and urine testing). Second, in circumstances where a person refuses or fails to submit to a drug recognition evaluation, the measure provides that evidence of the person's refusal or failure to submit to the drug recognition evaluation is admissible in any criminal or civil action or proceeding arising out of allegations that the person was driving while under the influence of intoxicants. While the legislature is unlikely to authorize the blood portion of the bill, the portion making the DRE refusal admissible is still a possibility. A hearing was held on this measure and we are pursuing a work session once amendment language can be agreed to.

SB 797: Legislation closing the "Charleston Loophole" and the "Boyfriend Loophole"

SB 797 would address the "Boyfriend Loophole" by prohibiting abusive dating partners from having guns and the "Charleston Loophole" by preventing a gun sale from moving forward unless the Oregon State Police can complete a background check that confirms eligibility to purchase. In addition, the bill would require person-to-person private firearm sales to be done through dealers, where background checks are also required. This is one of two firearm bills that will be seriously considered during the 2017 Legislative Session. This measure is currently under review by the OACP/OSSA Legislative Committees.

SB 868: Extreme Risk Restraining Order

This measure, introduced by Senator Brian Boquist (R) and Senator Ginny Burdick (D) would create a process for obtaining an "extreme risk protection order" that prohibits a person from possessing firearms when a court finds that the person presents an imminent risk, or risk in the foreseeable future, of suicide or causing injury to other persons. The bill establishes procedures for a peace officer or family or household member of the person to apply for an order along with procedures for seeking continuance, renewal and termination of an order. Requires a court to order a respondent to surrender firearms, ammunition and a concealed handgun license upon issuance of an order. Requires a law enforcement officer who serves an ERRO order to request the immediate surrender of firearms and to carry out a lawful search and seizure of firearms. This is the second firearm bill that I expect will receive serious consideration this session. This measure is currently under review by the OACP/OSSA Legislative Committees.

Bad Bills List:

The following is a list of damaging legislation that is in play during the 2017 Legislative Session. Please note that some of the bills listed above may end up on the list below but additional work is required to analyze the impacts and the politics involved. The following list only includes bills that are potentially viable and not the vast number of troubling bills that are on the bill tracking report that I don't believe are a real risk at this point (Examples include a number of the firearm bills and marijuana bills). My goal is to kill as many of the following bills as quickly as possible and to avoid as many hearings on these bills as possible. Unfortunately, it is a difficult environment and many of these bills will end up getting a hearing even if they don't eventually move forward:

HB 2104: Requires the employer of security personnel in a corrections institution to pay an employee three times the regular rate of employee's pay if the employer requires an employee to work in excess of 40 hours in any one week.

HB 2128: Deletes the requirement that pseudoephedrine be classified as a Schedule III substance

HB 2215: Establishes the Oregon Right to Rest Act

HB 2238: Reduces the crime classification of unlawful possession of a controlled substance in Schedule I. Punishes by a maximum of one year's imprisonment, \$6,250 fine, or both, except in specified circumstances.

HB 2455: Requires public bodies to establish public records retention schedules that require minimum three-year retention of public records.

HB 2712: Requires law enforcement agencies to adopt policies on responding to officer-involved domestic violence incidents and proscribes specific policy requirements.

HB 2713: Provides that evidence obtained during or as a result of a defendant's unlawful detention by a peace officer is inadmissible in a criminal proceeding against a defendant.

HB 2718: Requires youth to consult with legal counsel in person, by telephone or by video conference prior to custodial interview with a peace officer, and before waiver of constitutional rights.

HB 3018: Eliminates the Sunset on the Law Enforcement Profiling Work Group.

HB 3217: Requires labor negotiation with public body to take place in an open meeting.

HB 3242: Requires peace officer to electronically record interview with youth when investigating crime, or allegation that youth committed act that if committed by adult would constitute crime.

HB 3243: Prohibits law enforcement agencies from receiving certain equipment from a military surplus equipment program operated by the federal government.

HB 3244: Prohibits peace officer from using deceit, trickery or artifice during interview of youth concerning act that, if committed by adult, would constitute crime.

HB 3287: Allows persons convicted of unlawful delivery of controlled substance constituting Class A felony to file motion for order setting aside conviction, unless delivery occurred within 1,000 feet of school or was to minor.

HB 3365: Prohibits an official action relating to employment or certification of a police officer solely because a police officer is on an impeachment list or because of an unproven allegation that a police officer committed an act of omission of a kind for which the name of the police officer may be placed on an impeachment list.

HB 3368: Prohibits law enforcement agency from having or establishing arrest or citation quota policy.

SB 352: Requires police officers to inform a person stopped for a traffic violation or upon suspicion of criminal activity that the person has a right to refuse a request to search.

SB 346: Requires the Attorney General to appoint an attorney from outside a county in which a peace officer uses deadly physical force to lead an investigation into the use of deadly physical force.

SB 347: Expands the definition of “involved officer” to include an officer involved in an incident in which use of deadly physical force caused serious physical injury.

SB 348: Requires a police officer involved in an incident that resulted in the death or serious physical injury of a person to attend at least six sessions with a mental health professional.

SB 355: Requires a law enforcement agency to notify the Attorney General prior to beginning an investigation where a police officer uses deadly physical force.

SB 361: Changes the standard in some circumstances for use of deadly physical force to belief by a reasonable person in the officer’s or person’s circumstances that other person is undertaking a particular conduct.

SB 553: Removes the Department of State Police as the designated state point of contact for purposes of the National Instant Criminal Background Check System.

SB 642: Prohibits an employer of a public safety officer from comparing the number of citations issued by a public safety officer with the number of citations issued by another public safety officer for purpose of discipline, investigation or job performance.

SB 648: Requires that labor negotiations be conducted in open meetings subject to notification requirements.

SB 750: Requires the Department of Corrections to adopt rules that prohibit correctional facilities, and requires cities and counties to adopt ordinances that prohibit local correctional facilities, from having a contract with a provider of telephone services under which a department, city ,county or facility receives payments for telephone services provided to inmates in a facility.

SB 846: Prohibits use of physical restraints in juvenile court proceedings on youth, youth offender or young person with exceptions.



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