



**OACP & OSSA  
2020 1<sup>ST</sup> SPECIAL  
SESSION REPORT**  
SUBMITTED BY KEVIN CAMPBELL,  
OACP-OSSA LOBBYIST

## **Special Session Overview:**

The Oregon Legislature adjourned “Sine Die” the 1<sup>st</sup> Special Session of 2020 (the 80<sup>th</sup> Legislative Assembly) at 7:08 pm on Friday evening after 3 days of long hearings and late nights. During the Special Session, the Legislature passed 24 bills on a wide range of issues, but focused primarily on COVID-19 relief and police accountability. The Special Session was unique for many reasons; chief among them was that it was 100% virtual for all lobbyists, staff and members of the public. The proceedings were plagued by technology glitches and failures that made the process cumbersome for everyone involved. The Capitol building was closed to the public and only legislators and essential staff was permitted to enter. While in the Capitol, legislators were required to wear masks and observe social distancing and were rarely congregated.

During the brief Special Session, the legislature passed 6 police accountability measures, a measure formalizing a moratorium on enforcement of certain DMV violations during the COVID-19 State of Emergency and a bill to prohibiting courts from issuing driver’s license suspension for failure to pay traffic fines. Here is a review of the key provisions of each measure along with links to the complete text of each measure and to OACP/OSSA testimony when submitted:

### **❖ Police Accountability Reform Measures**

The initial police accountability measures as introduced were very damaging and problematic. We were given the opportunity, with very little notice, to provide specific feedback and recommendations that were recognized as constructive and most of the changes we requested were adopted in the final version of the measures. Two comments on these bills:

- 1.** The rushed nature of the Legislative Session means there will likely be mistakes and unintended consequences that we will need to correct in a future Special Session. At this point, we anticipate that there will be at least two more Special Sessions between now and the end of the year.
- 2.** At the last minute and after we submitted our OACP/OSSA testimony on these 6 measures, late amendments were introduced and adopted that added “preamble” or “whereas” statements to four of the bills. I want to be clear that these statements have no force of law and are not added to the Oregon Revised Statutes but they include some unfortunate characterizations of law enforcement, some identification of specific agencies and law enforcement officers and some statements we find offensive and inaccurate. Thankfully, our support for the 6 measures was based on the policy language in the bills and did not include support for the preamble amendments.

## **SB 1604: ARBITRATION REFORM – DISCIPLINARY MATRIX**

[Click Here](#): Complete Text of SB 1604

[Click Here](#): OACP/OSSA Testimony on SB 1604

**SB 1604 includes the following key provisions:**

- Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if [Section 1(3)]:
  - The arbitrator makes a finding that the misconduct occurred consistent with agency’s finding of misconduct
  - The disciplinary action imposed by the agency is consistent with the provisions of a discipline guide or discipline matrix adopted by agency as result of collective bargaining and incorporated into agency’s disciplinary policies.
- Adds the development of a discipline guide or discipline matrix to the definition of “Employment Relations” for purposes of collective bargaining related to sworn law enforcement officers of a law enforcement agency [Section 2(7)(g) & 3(7)(g)].
  - Defines “discipline guide” as a grid that is designed to provide parameters for the level of discipline to be imposed for an act of misconduct that is categorized by the severity of the misconduct and that take into account the presumptive level of discipline for the misconduct and any aggravating or mitigating factors [Section 1(9)(a)].
  - Defines “discipline matrix” as a grid used to determine the level of discipline to be imposed for an act of misconduct that is categorized by the severity of the misconduct, according to the intersection where the category of misconduct and the level of disciplinary action meet [Section 1(9)(b)].
- Applies to collective bargaining agreements entered into on or after effective date of Act [Section 4].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 5].

## **HB 4201-A: Joint Committee on Transparent Policing and Use of Force Reform**

[Click Here](#): For Complete Text of HB 4201-A

[Click Here](#): For OACP/OSSA Testimony on HB 4201-A

**HB 4201-A includes the following key provisions:**

- Establishes the “Joint Committee on Transparent Policing and Use of Force Reform” [Section1(1)]

- Tasks the Speaker of the House and the President of the Senate with appointing the co-chairs and members of the committee [Section 1(2&3)].
- Authorizes the committee to meet, act, and conduct business during a Legislative Session or during the interim between sessions, identifies committee member per diem and expense reimbursement allowances, authority to adopt committee rules and quorum and voting requirements [Section 1(5-9)].
- Requires the Legislative Policy and Research Office Director to provide support of the functions of the committee [Section 1(10)].
- Specifies the committee objectives relating to transparent policing and use of force reform to include [Section 2(1-5)]:
  - Examining policies that improve transparency in investigations into and complaints regarding the use of force by police officers, and increase transparency in police protocols and processes to build public trust in policing;
  - Examining policies that reduce the prevalence of serious physical injury or death caused by the use of force by police officers by analyzing the use of force, the authorization of the use of force under state law and the disparate impact of the use of force on communities of color;
  - Determining the most appropriate policy for independent review of the use of deadly force by police officers, including an analysis of procedures and policies used in other states;
  - Examining any other policies that increase transparency in policing and reform the use of force by police officers; and
  - Making recommendations for legislation to the committees of the Legislative Assembly related to the judiciary on or before December 31, 2020.
- Sunsets or ends the work of the committee on December 31<sup>st</sup>, 2020 [Section 3].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 4].

## **HB 4203-A: POLICE CHOKEHOLD BAN**

[Click Here](#): For Complete Text of HB 4203-A

[Click Here](#): For OACP/OSSA Testimony on HB 4203-A

### **HB 4203-A includes the following key provisions:**

- Provides that it is not justified or reasonable in any circumstance for a police officer to knowingly use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person unless the

circumstance is one in which the peace officer may use deadly physical force as provided in ORS 161.239 [Section 2(1&2)].

- Directs the Board on Public Safety Standards and Training (BPSST) to adopt rules prohibiting the training of police officers and reserve officers in the use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person, except as a defensive maneuver [Section 5].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 6].

## **4205-A: DUTY TO INTERVENE & REPORT**

[Click Here](#): For Complete Text of HB 4205-A

[Click Here](#): For OACP/OSSA Testimony on HB 4205-A

**HB 4205-A includes the following key provisions:**

- Requires a police officer or reserve officer to intervene to prevent or stop another police officer or reserve officer engaged in any act the intervening officer knows or reasonably should know is misconduct, unless the intervening officer cannot intervene safely [Section 2(2)].
- Requires a police officer or reserve officer who witnesses another police officer or reserve officer engaging in misconduct to report the misconduct to a supervisor as soon as practicable, but no later than 72 hours after witnessing the misconduct [Section 2(3)].
- Defines misconduct for purposes of the requirement to intervene and report as [Section 2(1)(a-e)];
  - Unjustified or excessive force that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement unit employing the offending officer;
  - Sexual harassment or sexual misconduct;
  - Discrimination against a person based on race, color, religion, sex, sexual orientation, national origin, disability or age;
  - A crime; or
  - A violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410.
- Specifies that failure to intervene or report in keeping with the measure is [Section 2(4):
  - Grounds for disciplinary action against a police officer or reserve officer by the law enforcement unit employing the officer or;
  - Action by the Department of Public Safety Standards and Training to suspend or revoke the officer’s certification as provided in ORS 181A.630, 181A.640 and 181A.650.

- Prohibits an employer from retaliating against an officer for intervening or reporting in keeping with the requirements of the measure and provides that a violation by an employer is an unlawful employment practice as provided in ORS 659A.199 [Section 2(5)].
- Requires DPSST to provide an annual report on rules adopted by DPSST for implementation of the measure to an appropriate committee of the Legislative Assembly [Section 2(6)].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 3].

## **HB 4207-A: OFFICER SUSPENSION & REVOCATION DATABASE - PERSONNEL FILE REQUIREMENTS**

[Click Here](#): For Complete Text of HB 4207-A

[Click Here](#): For OACP/OSSA Testimony on HB 4207-A

### **HB 4207-A includes the following key provisions:**

#### DPSST Suspension and Revocation Database:

- Requires the Department of Public Safety Standards and Training (DPSST) to establish a statewide online database of suspensions and revocations of the certifications of police officers that is accessible by the public. The measure includes the following additional provisions [Section 3(1)]:
- Requires that the information published in the suspensions and revocations database include at a minimum [Section 3(2)(a-c)]:
  - The name of the officer;
  - The law enforcement unit at which the officer was employed; and
  - A description of the facts underlying the suspension or revocation.
- Requires DPSST to publish the required information for a suspension or revocation of a certification within 10 days after [Section 3(3)(a-b)]:
  - The time for filing an appeal of the department’s decision under ORS 181A.650 has passed and no appeal has been filed; or
  - 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.
- Requires DPSST to submit an annual report to an appropriate committee of the Legislative Assembly summarizing and analyzing the data in the database [Section 3(4)].

- Provides that the provisions of HB 4207 related to the statewide public database of suspensions and certifications do not apply if compliance with the provisions of the measure would conflict or impair the execution of the terms of a collective bargaining agreement entered into before the effective date of the measure [Section 8].

Law Enforcement Hiring Requirements – Requesting, Reviewing and Providing Personnel Records:

- Requires a police agency, before extending an offer of employment to an applicant for a police officer or reserve officer position, to request and review the applicant’s personnel records from all law enforcement agencies in any jurisdiction at which the applicant was formerly employed [Section 4(2)].
- Requires a law enforcement agency to 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 [Section 4(3)].
- Defines “personnel records” as 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 [Section 4(1)(b)].
- Requires law enforcement agencies to 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 [Section 4(4)].
- Includes the following provisions related to immunity from civil liability including [Section 4(5)(a-d)]:
  - Provides a law enforcement agency with immunity from civil liability for any harm arising from relying on personnel records received as the result of complying with the measure.
  - Provides a law enforcement agency measure with immunity from civil liability for any harm arising from providing personnel records in compliance with the measure.
  - Provides that a law enforcement agency that fails to request, provide or retain records as required by the measure is not protected from civil liability.
  - Provides that a law enforcement agency is not protected from civil liability for negligent hiring.
- Provides that the requirements of a law enforcement agency to request personnel files or to provide personnel files do not apply if compliance with the provisions of the measure would conflict or impair the execution of the terms of a collective bargaining agreement entered into before the effective date of the measure [Section 8].

#### Formalizing Mandatory Certification Requirements:

- HB 4207 makes statutory the current process and grounds for denial, revocation or suspension of certification by DPSST that are currently identified in administrative rule [Section 6(2)(a-f)].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 9] with the exception of the provisions in section 3 of the bill requiring DPSST to develop a database of revoked or suspended certifications – That section is operative January 1, 2021 [Section 7(1&2)].

## **HB 4208-A: RESTRICTIONS ON USE OF TEAR GAS**

[Click Here](#): For Complete Text of HB 4208-A

[Click Here](#): For OACP/OSSA Testimony on HB 4208-A

#### **HB 4208-A includes the following Key Provisions:**

- Prohibits a law enforcement agency from using tear gas for the purposes of crowd control except in circumstances constituting a riot, as described in ORS 166.015 (A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm) [Section 1(2)].
- Requires a law enforcement agency to take the following steps prior to using tear gas in a circumstance constituting a riot [Section 1(3)(a-c)]:
  1. Announce the agency’s intent to use tear gas;
  2. Allow sufficient time for individuals to evacuate the area; and
  3. Announce for a second time, immediately before using the tear gas, the agency’s intent to use tear gas.
- Defines “law enforcement agency” for purposes of the measure as: the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A) - [Section 1(1)(a)].
- Defines “tear gas” for purposes of the measure as: oleoresin capsicum or orthochlorobenzalmalononitrile, or other similar chemicals meant to accomplish the same effect, administered by any shell, cartridge or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of the chemicals [Section 1(1)(b)].
- Effective Date: The bill includes an “emergency clause” which means the provisions of the bill will take effect on the day the Governor signs the bill into law [Section 2(1)].



## ❖ Additional Measures Impacting Law Enforcement

In addition to the 6 police accountability measures, two additional bills were passed that make changes to law enforcement including a bill to prevent courts from suspending driver's licenses for failure to pay fines and a bill to formalize a moratorium on the issuance of certain traffic offenses due to COVID-19 and DMV backlogs. The Driver's License Suspension measure was introduced without advanced warning and moved on the first day of the Special Session. The following is details regarding the two additional measures:

### **HB 4210: DEBT-BASED DRIVER'S LICENSE SUSPENSION ELIMINATION**

[Click Here](#): Complete Text of HB 4210

**HB 4210 includes the following key provisions:**

- Removes authority of courts to impose personal and commercial driving privilege suspensions for failure to pay traffic-related fines or for failure to comply with requirements ordered in lieu of fines [Section 1-10].
- Prohibits new suspensions from being imposed on or after October 1, 2020 [Section 11&12].
- Provides that driving privilege restrictions or driving privilege suspensions imposed before October 1, 2020, shall be governed by law applicable to driving privilege restrictions and driving privilege suspensions in effect at the time of the most recent restriction or suspension [Section 11].
- Authorizes the Department of Transportation to adopt rules or take any actions before October 1, 2020 necessary to enable the department to carry out the provisions of the measure. Rules adopted by the Department of Transportation cannot become operative before October 1, 2020 [Section 12(2)].
- Effective Date: The bill includes an "emergency clause" which means the provisions of the bill other than those identified as taking effect on October 1<sup>st</sup>, 2020 will take effect on the day the Governor signs the bill into law [Section 13].

Background: Under current law (ORS 809.210) Under ORS 809.210, a court can order the suspension of an individual's driving privileges if that individual fails to pay court fines related to a driving offense or fails to meet a requirement ordered in lieu of a fine. The suspension will stay in place for 20 years unless the individual presents a reinstatement notice from the court to Oregon Driver and Motor Vehicle Services (DMV) showing that the individual: has paid the fine in full; is making payments following a court-approved payment plan; is enrolled in a pre-apprentice program; or is a registered apprentice. Individuals who have had their driving privileges suspended for failing to pay traffic-related fines are eligible to apply for a hardship permit. These permits allow suspended individuals to drive for certain specific purposes, such as for work, medical treatment, or to provide other necessary services to themselves or family members.



## **SB 1601-A: MORATORIUM ON CERTAIN TRAFFIC OFFENSES DURING COVID-19**

[Click Here](#): Complete Text of the Dash 2 Amendment to SB 1601 (Adopted)

[Click Here](#): Complete Text of SB 1601-A

SB 1601-A formalizes in statute the current moratorium on issuing citations for certain violations that law enforcement has honored due to the impact of DMV closures and backlogs on the ability of motorists to comply. We successfully removed a violation that was in the original proposal that would have eliminated the authority of police officers to issue a citation for failure to carry a license or to present a license to a police officer under ORS 807.570.

### **HB 1601-A is an omnibus transportation “fix” bill that includes the following key provisions of importance to law enforcement:**

- Prohibits law enforcement officers from issuing traffic offenses based upon a document or credential that expired or a document that was not submitted to DMV between March 1, 2020, and December 31, 2020 for the following offenses [Section 21(2)(a-k)]:
  - Unlawful parking in a space reserved for persons with disabilities under ORS 811.615. This paragraph applies only to individuals who displayed a disabled person parking permit, issued by this state or another jurisdiction, at the time of the offense but the permit expired during the period described in this subsection.
  - Operating a vehicle without driving privileges under ORS 807.010.
  - Failure to register a vehicle under ORS 803.300.
  - Failure to pay the appropriate registration fee under ORS 803.315.
  - Permitting unlawful operation of an unregistered vehicle under ORS 803.320.
  - Purchase and use of an out-of-state registered vehicle by a resident under ORS 803.325.
  - Failure to surrender out-of-state registration under ORS 803.380.
  - Failure to submit a declaration of weight under ORS 803.440.
  - Failure to renew vehicle registration under ORS 803.455.
  - Improper display of validating stickers under ORS 803.560.
  - Failure of a person to hold a trip permit when required under ORS 803.600 (10).
- Defines ‘document or credential’ to include but not limited to documents or credentials issued or accepted by the Department of Transportation such as vehicle registration, registration stickers, driving privileges, declaration of weight, disabled person parking permits, trip permits, driver licenses and driver permits [Section 21(1)].
- Directs the court to dismiss a charge for a citation that is issued in violation of the moratorium [Section 21(3)].
- Nothing in the language of the measure prevents an officer from pulling over someone for the violations listed as part of the moratorium.