

PCCEP Recommendation

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| Title of Recommendation | PCCEP draft recommendation on Arbitration Senate Bill 1567 | | |
| Author(s): (Subcommittee or committee members) | Elliott Young for RES | Date presented | 6/18/20 |
| <p>Summary of Recommendation: This recommendation requests that Portland Mayor Ted Wheeler use his office to lobby the Oregon state legislature to support Senate Arbitration Bill 1567 introduced by Senator Lew Frederick. We further urge the mayor to work with legislators to close loopholes in the bill that would allow police to avoid discipline in serious cases including deadly force incidents where the arbitrator does not agree with the findings.</p> | | | |

Explanation of recommendation:

Egregious cases of police misconduct have resulted in little or no disciplinary action due to a flawed arbitration process. The bill introduced by Senator Lew Frederick (SB 1567) seeks to strengthen the process so that arbitrators cannot issue different disciplinary actions than law enforcement agencies if arbitrator also finds misconduct occurred.

The Bill reads as follows:

“Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if arbitrator makes finding that misconduct occurred consistent with agency’s finding of misconduct, and disciplinary action imposed by agency is consistent with provisions of discipline guide or discipline matrix adopted by agency as result of collective bargaining and incorporated into agency’s disciplinary policies. Specifies that for purposes of collective bargaining involving sworn employees of law enforcement agency, “employment relations” includes development of discipline guide or discipline matrix.”

Recommendations

1. We recommend that Mayor Ted Wheeler use his office to lobby the Oregon state legislature in support of Arbitration Bill 1567.
2. We furthermore urge the Mayor to work with state legislators to close loopholes in the bill that appear to allow police to avoid discipline in serious cases including deadly use

of force incidents where the arbitrator does not agree with the findings.¹ Amendment to the arbitration recommendation. Last line of point 2 in recommendation would read: We further recommend the use of the “reasonable person” standard in cases of police misconduct.

Portland Copwatch published a list of recent cases which they argue would fall into this loophole. They are listed below:

History Shows Arbitration Bill Will Not Keep Fired Officers Fired a fact sheet from Portland Copwatch June 7, 2020

The current bill being proposed to limit the powers of arbitrators in police misconduct cases*-1 could be helpful in specific circumstances, but will not keep officers fired for extreme behavior fired, if history is a guide. Portland Copwatch (PCW) recognizes that many people in the community, including people we have worked with, support this proposed legislation. PCW does not oppose the currently proposed bill. A stronger bill to determine how officers' discipline is judged is needed.

Here is the key problem: The bill specifically says it only applies in cases where the arbitrator agrees misconduct occurred. The reason most firings are overturned in serious cases is because arbitrators do not agree with the findings.

Officer Valadez (2015): Arbitrator Says Sexual Misconduct Wasn't Criminal

The most recent case, which Portland Copwatch believes prompted the City to call for this legislation, involved Officer Alfonso Valadez. He was fired after being accused of showing poor judgment by engaging in sex at a party where alcohol had been consumed, bringing discredit to the Bureau and of having sex with a woman who did not give her consent (a crime).*-2 The arbitrator agreed with the former conclusion, leading to the originally-proposed 40 hours off for that charge, but disagreed with the latter allegation, which was what led to his termination. Thus, only the 40 hour suspension was applied.

Officer Frashour (2010): Training Officers Say Shooting Aaron Campbell in Policy

¹ Portland Copwatch, “History shows Arbitration Bill will not keep fired officers fired,” 7 June 2020, http://www.portlandcopwatch.org/arbitration_facts0620.pdf.

The city fired Officer Ron Frashour for violating training when he shot and killed the unarmed Aaron Campbell in the back in 2010. The Lieutenant from the Training division clearly stated Frashour did not act appropriately. However, Sergeants under his command contradicted his testimony and the arbitrator ruled there was no misconduct, overturning the discipline and ordering Frashour reinstated with back pay.*-3

Lt. Kaer (2006): Arbitrator Says Violations Occurred But Deadly Force Justified

When Lt. Jeffrey Kaer left his assigned post to respond to his sister's call about a man in a car outside her house, it ended with Kaer shooting and killing Dennis Young. Kaer claimed he was in danger of being killed by Young's moving car. The arbitrator agreed Kaer violated some policies (including not waiting for backup to arrive), but said he did not violate the policy against shooting at moving vehicles because the vehicle was not moving at the time of the shooting. Kaer ended up with a suspension of 30 hours without pay.*-4

Officer Humphreys & Sgt. Nice (2003): No Fault in Failing to Bring James Chasse to Hospital

Officer Chris Humphreys and Sgt. Kyle Nice were suspended for 80 hours each because they did not get James Chasse, Jr. to a hospital after they caused serious injuries that led to his death by beating him in 2006 (notably, not for the force they used). The arbitrator overruled the finding and ordered they be given back pay and that they have their records erased.

Officer McCollister (2003): Six Month Suspension Overturned in Kendra James Case

The arbitrator determining Officer Scott McCollister did not violate policy when he killed Kendra James in 2003 explicitly cited a disconnect between the Chief's findings and "the true facts of the situation." The arbitrator claimed that James dictated McCollister's actions and worried if she had driven away and caused an accident the police would have been blamed for that.*-5 McCollister was reinstated with back pay.

Officer Erickson: No Misconduct Shooting Fleeing Black Man in the Back

Officer Douglas Erickson was fired in 1993 after shooting and wounding Gerald Gratton, an African American man, in the back. An arbitrator over-ruled the finding and ordered Erickson reinstated.

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| How does this recommendation redress barriers to racial equity? | Many of the cases of police misconduct have been perpetrated against people of color. This recommendation seeks to bring disciplinary action against such officers and thereby work toward justice for such communities. |
| How does this recommendation improve outcomes for persons with mental illness and or behavioral health? | Many of the cases of police misconduct have been perpetrated against people with mental illness. This recommendation seeks to bring disciplinary action against such officers and thereby work toward justice for such communities. |
| How were marginalized and underrepresented communities, including those who will be affected by this recommendation, engaged to shape, write and otherwise develop this recommendation? | This recommendation emerges from our community listening session at which Senator Lew Frederick presented this bill as an important step toward police accountability. |

Resources

Please list all relevant resources to this recommendation.

Senate Bill 1567,

<https://olis.leg.state.or.us/liz/2020R1/Downloads/MeasureDocument/SB1567/Introduced>

Molly Harburger, “Police accountability, long ignored by Oregon lawmakers, poised to become law as white leaders see black colleagues’ urgency,” Oregonian, 13 June 2020,

<https://www.oregonlive.com/politics/2020/06/police-accountability-long-ignored-by-oregon-lawmakers-poised-to-become-law-as-white-leaders-finally-see-black-colleagues-urgency.html>

Portland Copwatch, “History shows Arbitration Bill will not keep fired officers fired,” 7 June 2020, http://www.portlandcopwatch.org/arbitration_facts0620.pdf

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