

## MEMORANDUM

TO: LESC Commissioners  
FROM: Anil Karia, LESC Commissioner  
DATE: June 23, 2024  
RE: Proposed LESC Rule Changes

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Fellow Commissioners:

We've spent recent meetings reviewing proposed LESC rule changes. Like some other Commissioners, I've missed a few due to scheduling conflicts.

Before our May meeting, we received substantial proposed rule changes on short notice. We're now expected to consider—and perhaps vote on—those same rule changes at the July meeting.

I'm concerned both with the content of the proposals and the rushed process. We're moving quickly—via brief virtual meetings—without the diligence needed to ensure these rules are fair and reasonable for the public, law enforcement agencies, and the thousands of officers affected.

To aid our deliberations, I've compiled my concerns in the following document. I've organized it into general considerations and rule-specific comments. My remarks are in blue. I apologize for the length and complexity.

I look forward to a thoughtful discussion in July and beyond.

Anil Karia

## GENERAL CONSIDERATIONS

1. Many, if not most, law enforcement agencies are just now learning about and integrating our existing LESC rules into their agency policies, practices, and collective bargaining agreements. We should consider allowing some time to pass to allow a solid foundation to form and then hit these agencies with revisions. That way, the disciplining bodies understand how the LESC rules and procedures apply now, and future rule revisions become easier to integrate.
2. We're impacting every law enforcement agency in Oregon, so we should be studious about our rule-making. We should research and validate any and all rule changes. {See next points as a favored approach.}

## COMPARABLE RESEARCH NEEDED

3. List other Oregon agencies that have discipline guides or matrices for review.

For example: [INSERT research to be provided by LESC staff]

*Examples:*

Portland Police Bureau: <https://www.portland.gov/police/documents/ppb-corrective-action-guide/download>

*Sidenote: PPB corrective action guide has been reviewed and approved by the US Dept. of Justice.*

Multnomah County has a corrective actions guide.

Tigard PD has "discipline guide" – see p. 54 <https://www.tigard-or.gov/home/showpublisheddocument/202/638320236555470000>

*Also: Need to consider that LESC rules may impact these collectively bargained systems, and we don't want to impair those contracts.*

4. List other major police agencies outside Oregon that have discipline guides or matrices for review.

For example: [INSERT research to be provided by LESC staff]

## SEXUAL MISCONDUCT ISSUES

5. What issue are we trying to solve with the three rule changes related to sexual misconduct? To the degree the concern is off-duty conduct targeted at civilians, we. Should first drill down on the scope of that perceived problem and then identify the best approach.
6. For instance, we should hear from BOLI and receive its “sexual harassment” training and learn more about how it addresses harassment of sexual nature outside the workplace, so that we can then identify the type of misconduct we’re trying to cover and in turn develop a pinpoint rule.
  - For example, it’s unclear to me whether the BOLI rules differentiates between “on-duty” and off-duty” conduct.
    - Would BOLI’s rule cover off-duty harassment between co-workers?
    - Would BOLI’s rule cover off-duty harassment with a member of the public?

## ASSAULT ISSUES

7. First question, what are we trying to fix with this one?”
8. If we go down the path as proposed, the proposed rule changes only address the intent element. However, “assault” statutes in Oregon cover both intent and outcomes (types of harm). The revised rules need to cover that.
9. “Assault” and use of force issues overlap. For instance, both include questions related to justification. A use of force that isn’t justified (i.e., excessive) could also amount to assault. As such, those revised rules need to overlay correctly.

## USE OF FORCE ISSUES

10. As directed by the Legislature, the current rules cover a narrow category of use of force. The proposed rules seek to cover all uses of force. We need to take a thoughtful and intentional approach in developing these rules. For example:
11. First, as Commissioners, we should receive training from DPSST on use of force, both as to legal principles and actual scenario-based training, akin to what basic recruits receive at the basic academy. That way, we can better identify use of force issues and then develop new categories/rules with a solid foundation.
12. Second, we should also first survey force policies from other Oregon law enforcement agencies to see how they categorize levels of force and types of injuries.

- See, for example, Portland Police Bureau. That agency first categorizes the use of force under Policies 910.00 and 1010.00 and then its discipline matrix applies based on those categories.
  - <https://www.portland.gov/policies/police-directives/report-writing-0900/091000-use-force-reporting-review-and-investigation>
  - <https://www.portland.gov/policies/police-directives/weapons-ammunition-equipment-1000/101000-use-force>
  - <https://www.portland.gov/police/documents/ppb-corrective-action-guide/download>
- Portland has a very different system than other Oregon law enforcement agencies. For example, Lake Oswego PD doesn't categorize its force applications that way. See LOPD Policy 300, available at: [https://www.ci.oswego.or.us/sites/default/files/fileattachments/RELEASE\\_20240220\\_T181410\\_Lake%20Oswego%20Police%20Department%20Policy%20Manual.pdf](https://www.ci.oswego.or.us/sites/default/files/fileattachments/RELEASE_20240220_T181410_Lake%20Oswego%20Police%20Department%20Policy%20Manual.pdf)

13. Not to be lost in this mix is that there are different/additional standards for permissible uses of force in correctional institutions that need to be addressed. ORS 161.205(2) covers applications of force in jails to “to maintain order and discipline.” Further, law enforcement tools use in jails are often different than out on patrol (e.g., restraint chairs; shields for pinning). Any rule revisions related to the use of force need to account for these nuances.

- On the corrections topic, see for example, Clackamas County Sheriff's Office, which differentiates between patrol deputy and jail deputy uses of force.

<https://public.powerdms.com/CLACKAMASOR/tree/documents/740334>

14. Third, we should research and understand how other major law enforcement agencies and/or disciplining bodies address use of force misconduct in their rules. For instance, as discussed below, PPB has a very rigorous system that has been reviewed and approved by the US Dept. of Justice.

## **MORAL CHARACTER ISSUES**

15. This rule change appears to flow from the sexual misconduct issues. If so, the change, though minor in appearance carries with it a host of unintended consequences. This is a prime example of the danger of “tinkering” with rules. We try address issue X and end up creating a host of other cascading issues.

## **INTRODUCTION OF “CORRECTIVE ACTION”**

16. We need better understanding of the concept of “corrective action.” And then consider adding

“corrective action” to all rules.

17. Need to discuss nuances between different gradations of suspensions without pay and salary reductions, and need to allow for enhanced and reduced suspensions and salary reductions. See, example, PPB corrective action guide.
18. Need to discuss the use of “education-based alternatives” to instill restorative opportunities for officers. (See the following for Portland example.)

### **EDUCATION-BASED ALTERNATIVES**

The City and its Police Bureau members place a high value on education and continuous performance improvement. Upon imposition of discipline and consistent with the Corrective Action Guide, the City will offer education-based alternatives (EBA) to assist in remediation

related to the policy violations. EBA alternatives will be determined by the final decision maker, who may also receive input from others within the decision -making process. An employee may elect to engage in education-based alternatives as part of corrective action.

Education Based Alternatives are coupled with corrective action (other than termination), and may include:

- Individualized remedial plan related to the policy violation and created with employee that emphasizes education, training, and other creative interventions to promote a positive outcome and avoid employee embitterment;
- Mutual Mediation; and/or
- Re-training.

The City is not precluded from directing employees to engage in education-based courses or other remedial actions, whether or not it is part of an EBA.

Upon successful completion of EBA, an addendum to the corrective action will be attached to the final corrective action letter to identify the specific EBA completed.

In the event a member does not complete EBA in a timely manner, the original corrective action, without the EBA option, will be imposed.

# Discipline Matrix Proposed Updates

## SEXUAL ASSAULT (OAR 265-010-0001)

Definition: ORS 243.317

“Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.”

Current language:

MISCONDUCT	MITIGATED I	PRESUMPTIVE	AGGRAVATED
An act of sexual assault	<ul style="list-style-type: none"> <li>Demotion</li> <li>Salary Reduction</li> <li>Suspension Without Pay</li> <li>Written Reprimand</li> </ul>	Termination	N/A

Proposed language:

MISCONDUCT	MITIGATED	MANDATED	AGGRAVATED
An act of sexual assault constituting a sex crime *	N/A	Termination	N/A

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
<p>An act of sexual assault that does not constitute a sex crime</p> <p><i>19. Query: Does this overlap with “sexual harassment” for on-duty or workplace related issues?</i></p> <p><i>20. Query: Does this cover sexual harassment issues that are outside the workplace?</i></p>	<ul style="list-style-type: none"> <li>Written Reprimand</li> <li>Corrective Action</li> </ul>	<ul style="list-style-type: none"> <li><del>Demotion</del></li> <li>Salary Reduction</li> <li>Suspension Without Pay</li> </ul>	<p>Termination</p> <p>Demotion</p> <p>Enhanced Salary Reduction</p> <p>Enhanced Suspension Without Pay</p>

\*See also Moral Character.

21. INSERT reference: “Sex crime” has the meaning given that term in ORS 163A.005.  
OAR 265-005-0001.

## SEXUAL HARASSMENT (OAR 265-010-005)

### Definition: BOLI OAR 839-005-0030 Sexual Harassment in Employment

(1) Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:

- (a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:
  - (A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
  - (B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.
- (b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

### Current language:

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Sexual harassment	Written Reprimand	<ul style="list-style-type: none"><li>• Demotion</li><li>• Salary Reduction</li><li>• Suspension Without Pay</li></ul>	Termination

### Proposed language:

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
<del>Sexual harassment *</del>	<del>Written Reprimand</del>	<del><ul style="list-style-type: none"><li>• Demotion</li><li>• Salary Reduction</li><li>• Suspension Without Pay</li></ul></del>	<del>Termination</del>

\*See also Moral Character. Currently the definition of sexual harassment only applies to conduct within the workplace context. Sexual harassment outside of the workplace context, i.e. toward members of the public, should be addressed through Moral Character.

22. Needs more work.

23. See earlier comment about BOLI training.

24. Query: my understanding of BOLI's rule is that it applies "off duty."

25. If the definition of "sexual harassment" only includes workplace settings, then can't have "sexual harassment" that occurs outside workplace.

26. If want to cover "off-duty acts of harassment of a sexual nature," we need to identify the misconduct we're trying to capture, and then develop a specific rule surrounding



that misconduct.

27. Generally lumping the concern about off-duty acts of harassment of a sexual nature together with “moral character” by deleting “financial gain” from the current “misuse of authority” definition creates unintended consequences.
28. Query: isn’t this concern already covered by: “An act of sexual assault that does not constitute a sex crime” as set forth in prior section?

## ASSAULT (OAR 265-010-0010)

Definitions: ORS 163.115 6(a)

“Assault” means the intentional, knowing or reckless causation of physical injury to another person. “Assault” does not include the causation of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

### Current language:

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
An act of intentional assault without justification	<ul style="list-style-type: none"><li>• Demotion</li><li>• Salary Reduction</li><li>• Suspension Without Pay</li><li>• Written Reprimand</li></ul>	Termination	N/A

### Proposed language:

29. Query: What conduct are we trying to capture with the revision? This appears to be a solution in search of a problem.

30. Query: If we’re patterning this off Oregon assault statutes, we should better reflect our matrix to those statutes, if it’s even necessary in the first place? For instance, those assault statutes (see next page) cover intent, weapons used, and outcomes. Our proposed rule changes don’t.

31. Note: “assault” issues may overlap with on-duty use of force issues. For instance, both include questions related to justification. A use of force that isn’t justified (i.e., excessive) could also amount to assault. Need to overlay proposed rule revisions to ensure there are no conflicts between the rules.

MISCONDUCT	MITIGATED	MANDATORY	AGGRAVATED
An act of intentional or knowing assault without justification	N/A	Termination	N/A

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
An act of reckless assault without justification	<ul style="list-style-type: none"><li>• Demotion</li><li>• Salary Reduction</li><li>• Suspension Without Pay</li><li>• Written Reprimand</li></ul>	Termination	N/A

### 32. Proposed matrix categories are internally inconsistent.

“An act of reckless {assault} ...”

*Means*

“An act of reckless {intentional, knowing or reckless causation of physical injury to another person.} ...

### 33. We need to review the criminal structures of Assault I, II, III, IV and determine whether the outcome/type of harm suffered is a better approach. This can get complicated (see next page):

This chart summarizes the key distinctions among Oregon’s four degrees of assault, including intent, level of injury, use of a weapon, victim status, and criminal classification. NOTE: This was generated using AI and has not yet been cross-referenced against the statutes.

Degree of Assault	Statute	Mental State	Injury Type	Weapon Use	Special Victim or Circumstance	Criminal Classification
1st Degree	ORS 163.185	Intentionally	Serious physical injury	Yes (deadly weapon)	Extreme indifference Child under 6 During felony	Class A felony
2nd Degree	ORS 163.175	Intentionally or knowingly	Serious physical injury	Yes (deadly weapon)	During commission of a felony	Class B felony
3rd Degree	ORS 163.165	Recklessly, knowingly, or intentionally	Physical or serious physical injury	Sometimes (with criminal negligence)	Public officials (e.g., police, transit workers) Multiple assailants Vulnerable victims	Class C or B felony
4th Degree	ORS 163.160	Intentionally, knowingly, recklessly or criminal negligence (if weapon used)	Physical injury	Sometimes (for felony enhancement)	Repeat domestic assault Assault in child’s presence	Class A misdemeanor or Class C felony (if enhanced)

34. Query: Is any of this even necessary? The existing “moral character” rule covers crimes, and all of this is criminal conduct. So the existing rules appear to cover it already.

## UNJUSTIFIED OR EXCESSIVE USE OF DEADLY FORCE (OAR 265-010-0015)

### Definitions: ORS 161-015(3)

“Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

### Current language:

UNJUSTIFIED OR EXCESSIVE USE OF DEADLY FORCE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY (OAR 265-010-0015):

MISCONDUCT	MITIGATED	MANDATED	AGGRAVATED
Unjustified or excessive use of deadly physical force by the officer that results in death or serious physical injury	N/A	Termination	N/A

### Proposed language:

MISCONDUCT	MITIGATED	MANDATED	AGGRAVATED
Unjustified or excessive use of deadly physical force by the officer <i>that results in other than death or serious physical injury.</i>	<ul style="list-style-type: none"><li>• <i>N/A Demotion</i></li><li>• <i>Salary Reduction</i></li><li>• <i>Suspension Without Pay</i></li><li>• <i>Written Reprimand</i></li></ul>	Termination	N/A

35. Query: What fact pattern are we trying to address with this proposed rule change? If I point my gun at someone, intentionally pull the trigger, and miss, but my use of deadly force was unjustified or excessive, that is still a crime covered by other existing rules. So what are we trying to fix or address?

36. As a rule structure issue, the type of force used along with the level of harm from the use of force needs to be considered.

37. At our May meeting, we discussed “unintentional” uses of deadly force. For example, an accidental or negligent discharge at the range. This proposed rule revision doesn’t add that consideration. In law enforcement, there are instances of ADs/NDs at the range as new officers learn to handle firearms. Those are addressed as training issues. This rule would have all those officers fired.

Thus, we need to address the “unintentional” issues. For example, “Unjustified or excessive use of deadly physical force excludes unintentional discharges of a firearm or unintentional applications of force tools that are readily capable of causing death or serious physical injury.”

## UNJUSTIFIED OR EXCESSIVE USE OF PHYSICAL FORCE (OAR 265-010-0015)

Definitions: ORS 161-015(3)

**Unjustified/excessive:** Conduct that falls outside the range of acceptable use of force as defined in **161.233**: (1) A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

(a) That the person poses an imminent threat of physical injury to the peace officer or to a third person; or

(b) That the use of physical force is necessary to:

(A) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime; or

(B) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a crime.

(2) A peace officer may use physical force upon another person under this section only to the degree that the peace officer reasonably believes necessary to prevent physical injury under subsection (1)(a) of this section or to carry out a purpose described in subsection (1)(b) of this section.

### Current language:

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unjustified or excessive use of physical force by the officer that results in death or serious physical injury	<ul style="list-style-type: none"><li>• Demotion</li><li>• Salary Reduction</li><li>• Suspension Without Pay</li><li>• Written Reprimand</li></ul>	Termination	N/A

Proposed language:

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unjustified or excessive use of physical force by the officer that results in death or serious physical injury	<ul style="list-style-type: none"> <li>Demotion</li> <li>Salary Reduction</li> <li>Suspension Without Pay</li> </ul>	Termination	N/A

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unjustified or excessive use of physical force by the officer that results in physical injury	<ul style="list-style-type: none"> <li>Demotion</li> <li>Salary Reduction</li> <li>Suspension Without Pay</li> </ul>	Termination	N/A

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Unjustified or excessive use of physical force by the officer that results in no injury	<ul style="list-style-type: none"> <li>Written reprimand</li> <li>No discipline*</li> </ul>	<ul style="list-style-type: none"> <li>Demotion</li> <li>Salary Reduction</li> <li>Suspension Without Pay</li> </ul>	Termination

\*No discipline "Corrective Action" means non-disciplinary ~~corrective~~ action, as defined in \_.

38. On the issue of force, when it comes to structuring the rules, the type of force used along with the level of harm from the use of force needs to be considered.

39. As Commissioners, we should receive training from DPSST on use of force, both as to legal principles and actual scenario-based training, akin to what basic recruits receive at the basic academy. That way, we can better identify use of force issues and then develop categories with a solid foundation.

- See, for example, Portland Police Bureau. That agency first categorizes the use of force under Police 1010.00 and then its discipline matrix applies based on those categories.
  - <https://www.portland.gov/policies/police-directives/weapons-ammunition-equipment-1000/101000-use-force>
  - <https://www.portland.gov/police/documents/ppb-corrective-action-guide/download>



40. We should also first survey force policies from other Oregon law enforcement agencies to see how they categorize levels of force and types of injuries.

For example, in this regard, here's how Portland Police Bureau categorizes its uses of force.

Portland Police Bureau	
Category of Force	Corrective Action Guide Range
<p>2.2. Category I:</p> <p>2.2.1. Deadly force use, in-custody death, and death resulting from member use of force. Category I force includes, but is not limited to:</p> <p>2.2.1.1. All critical firearm discharges by a member, except as authorized to stop an aggressive animal or end the suffering of a badly injured animal.</p> <p>2.2.1.2. In-custody deaths;</p> <p>2.2.1.3. Death resulting from member use of force;</p> <p>2.2.1.4. Neck holds; and</p> <p>2.2.1.5. All intentional head, neck, and throat strikes with a hard object or when a member strikes the head of a person against a hard object.</p>	<p>Category E</p> <p>“out-of-policy use of deadly force ... during use of deadly force.”</p> <p>Termination</p>
<p>2.3. Category II:</p> <p>2.3.1. All member use of force resulting in serious physical injury, hospitalization, disability, or warranting an elevated review. Category II force includes, but is not limited to:</p> <p>2.3.1.1. Force resulting in serious physical injury, hospitalization, or disability;</p> <p>2.3.1.2. Force resulting in injury deemed to be significant by a member's supervisor;</p> <p>2.3.1.3. More than one simultaneous intentional CEW application on a person at a time;</p> <p>2.3.1.4. Three or more CEW applications to the same person;</p> <p>2.3.1.5. CEW applications or</p>	<p>Category D</p> <p>“out-of-policy use of force that is reasonably likely to cause enduring: pain, physical injury, disability or impairment of any body part, but does not result in death (Category II use of force policy)</p> <p>Presumptive, 120-hour suspension without pay</p> <p>Mitigated, 80-hour suspension without pay</p> <p>Aggravated, Termination</p> <p>Education-based alternatives may be used in lieu of suspension hours for one-half of the suspension.</p>

<p>attempted applications on persons who have an actual or perceived mental illness, or who are in mental health crisis;</p> <p>2.3.1.6. Canine Bites during any Canine Application;</p> <p>2.3.1.7. Force used upon restricted persons (i.e., children under the age of fifteen, pregnant persons, medically fragile);</p> <p>2.3.1.8. Force resulting in a loss of consciousness;</p> <p>2.3.1.9. Any strike, blow, kick, or similar use of force against a handcuffed, otherwise restrained, under control, or in-custody subject, with or without injury; and</p> <p>2.3.1.10. Ramming as a vehicle intervention strategy.</p>	
<p>2.4. Category III:</p> <p>2.4.1. All member use of force resulting in physical injury, complaint of pain or physical injury, less lethal weapon use without serious physical injury, and any other force that requires After-Action review. Category III force includes, but is not limited to:</p> <p>2.4.1.1. Two (2) or fewer CEW applications or attempted applications on persons who do not have an actual or perceived mental illness, or who are not in mental health crisis;</p> <p>2.4.1.2. FSDD use inside a structure or vehicle. FSDD use outdoors, not directed at a person, and where there is no injury or complaint of pain or injury is not a use of force. Outdoor use occurring nearby to a person the member was unaware of may not be considered force, but supervisors shall investigate the incident in the after-action review;</p> <p>2.4.1.3. KIP use to port a window of a vehicle or structure, or to remove another barrier, that results in the round striking a person, debris physically injuring a person, or a complaint of pain or injury. KIP use in this context where the round is not</p>	<p>Category C</p> <p>“out-of-policy use of force that is reasonably likely to cause non-enduring: pain, disorientation, physical injury or the complaint of pain (Category III use of force policy)”</p> <p>Presumptive, 40-hour suspension without pay</p> <p>Mitigated, 20-hour suspension without pay</p> <p>Aggravated, 80-hour suspension without pay</p> <p>Education-based alternatives may be used in lieu of suspension hours for one-half of the suspension.</p>

<p>directed at or does not strike any person, where debris does not physically injure any person, or where there is no complaint of pain or injury, is not a use of force.</p> <p>2.4.1.4. All other less lethal weapon use (This includes less lethal weapon discharges, regardless of contact, and all baton pushes, strikes, and jabs. Use of a baton to guide a person where there is no injury or complaint of pain or injury is not a use of force);</p> <p>2.4.1.5. Physical injury;</p> <p>2.4.1.6. Complaint of pain or physical injury;</p> <p>2.4.1.7. Complaint of improper force, when a Supervisor's BWC review indicates a force event occurred;</p> <p>2.4.1.8. Takedown;</p> <p>2.4.1.9. Strikes with the hands or feet;</p> <p>2.4.1.10. Canine Contact during any Canine Application;</p> <p>2.4.1.11. Pointing of a firearm;</p> <p>2.4.1.12. Boxing-In maneuver as a vehicle intervention strategy, except static box-ins where there is no injury and no complaint of injury; and</p> <p>2.4.1.13. PIT maneuver as a vehicle intervention strategy.</p>	
<p>De Minimis Force: Minimally intrusive application of a restraint, (e.g., handcuffs or a hobble), or the use of an empty hand coercive technique to separate, guide and/or gain control of a subject. De Minimis Force is not readily capable of causing or reasonably likely to cause physical injury or persistent pain.</p>	<p>Category A</p> <p>Range of non-disciplinary action to written reprimand</p>

<https://www.portland.gov/policies/police-directives/report-writing-0900/091000-use-force-reporting-review-and-investigation>

<https://www.portland.gov/policies/police-directives/weapons-ammunition-equipment-1000/101000-use-force>

<https://www.portland.gov/police/documents/ppb-corrective-action-guide/download>

My experience is that other Oregon law enforcement agencies don't use that categorization model, so we'd need to survey other force policies from other Oregon agencies and also survey Chiefs/Sheriffs to see what they use.

Portland has a very different system than other Oregon law enforcement agencies. For example, Lake Oswego PD doesn't categorize its force applications that way. See LOPD Policy 300, available at:

[https://www.ci.oswego.or.us/sites/default/files/fileattachments/RELEASE\\_20240220\\_T181410\\_Lake%20Oswego%20Police%20Department%20Policy%20Manual.pdf](https://www.ci.oswego.or.us/sites/default/files/fileattachments/RELEASE_20240220_T181410_Lake%20Oswego%20Police%20Department%20Policy%20Manual.pdf)

41. Not to be lost in this mix is that there are different/additional standards for permissible uses of force in correctional institutions that need to be addressed. ORS 161.205(2) covers applications of force in jails to “to maintain order and discipline.” Further, law enforcement tools use in jails are often different than out on patrol (e.g., restraint chairs; shields for pinning). Any rule revisions related to the use of force need to account for these nuances.

- On the corrections topic, see for example, Clackamas County Sheriff's Office, which differentiates between patrol deputy and jail deputy uses of force.

<https://public.powerdms.com/CLACKAMASOR/tree/documents/740334>

## **ENGAGING IN MISCONDUCT DEMONSTRATING LACK OF GOOD MORAL CHARACTER (OAR 265-010-0025)**

(1) For the purposes of this rule, lack of good moral character means conduct constituting:

- (a) A felony under state or federal law
- (b) Domestic violence
- (c) Stalking
- (d) A drug-related offense, except for offenses involving use or possession of marijuana
- (e) A bias or hate crime under state or federal law
- (f) A sex crime
- (g) Untruthfulness
- (h) Misuse of authority<sup>1</sup> for financial gain.

(2) If a law enforcement officer is convicted of a crime based on conduct identified in subsection (1) of this rule, proof of the conviction is conclusive evidence that the conduct occurred.

(3) A disciplining body shall impose upon a law enforcement officer disciplinary action of termination upon a finding that the officer engaged in misconduct demonstrating a lack of good moral character.

Definitions OAR 265-005-0001

(16) “Misuse of authority for financial gain” occurs when a law enforcement officer’s vote, opinion, judgment, action, decision or exercise of discretion is influenced by the officer’s solicitation or acceptance of a financial benefit for the officer or a third person. This rule does not apply to agency-approved fundraising activities.

**Current language:**

MISCONDUCT*	MITIGATED	MANDATED	AGGRAVATED
Conduct constituting: a felony under state or federal law; domestic violence; stalking; a drug-related offense, except for offenses involving use or possession of marijuana; a bias or hate crime under state or federal law; a sex crime; untruthfulness; or misuse of authority for financial gain.	N/A	Termination	N/A

\* Proof of conviction of a crime based on the listed misconduct is conclusive evidence that the misconduct occurred.

Proposed language:

MISCONDUCT*	MITIGATED	MANDATED	AGGRAVATED
Conduct constituting: a felony under state or federal law; domestic violence; stalking; a drug-related offense, except for offenses involving use or possession of marijuana; a bias or hate crime under state or federal law; a sex crime; untruthfulness; or misuse of authority.	N/A	Termination	N/A

~~\*Proof of conviction of a crime based on the listed misconduct is conclusive evidence that the misconduct occurred.~~

42. Deleting “financial gain” creates any number of unintended consequences and creates a wildly overboard rule. These unintended consequences need to be fleshed out, as there’s only one mandated outcome in these cases – termination.

43. If this rule change is meant to cover harassment of a sexual nature outside the workplace, then we should first ask whether the “sexual assault rule” that now adds this category adequately covers it and, in turn, make clear with that added category to the “sexual assault rule” is meant to cover harassment of a sexual nature outside the workplace.

44. If that does not suffice, then one approach could be the following.

Definitions OAR 265-005-0001

“Misuse of authority for *other than* financial gain” [develop new definition].

MISCONDUCT*	MITIGATED	PRESUMPTIVE	AGGRAVATED
misuse of authority for other than financial gain.	Written Reprimand  Corrective Action	Salary Reduction  Suspension Without Pay	Termination  Demotion  Enhanced Salary Reduction  Enhanced Suspension Without Pay

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New rule language:

Upon a sustained finding of misconduct in which the disciplinary body elects not to impose a disciplinary action, the ~~disciplinary-disciplining~~ body ~~shall~~ may apply a non-disciplinary corrective action which may include but is not limited to informal discussions, coaching, training, mediation, verbal warnings or letters of expectation.

45. Need to flesh out this “corrective action” concept.

4.46. Also, should discuss “education-based alternatives” and how that works in Portland. There’s a huge re-training element that comes into play, as mentioned by other commissioners at the May meeting.