# Addendum to Public Comment Report:

# Specific recommendations and proposed language

Note: some of these comments have been lightly edited for length.

**Comment 1: Re: Guiding principles, defining *justification, excessive***

**1) The public interest served by these rules should be clearly stated.**

What is the over-riding guiding principle for the adoption of "rules that provide uniform standards of law enforcement conduct and discipline?" Is it to ensure that officers adhere to their oath to protect the rights guaranteed each citizen by the federal and Oregon constitutions and to impose a uniform system of discipline when offers offend those rights? It would be helpful to have a statement of guiding principle(s) for those who must apply these rules.

**2) OAR 265-005-0001 (10): Defining "justification" for use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267 sets the wrong standard for determining whether an officer's use of physical or deadly force constitutes misconduct that may subject an officer to discipline.**

These statutes appear in the criminal code and set forth the circumstances under which `justification" may constitute an affirmative defense to a charged criminal offense involving a use of physical or deadly physical force. Under our courts' construction of these statutes, `justification for [the use of physical or deadly force] must be assessed in light of the circumstances at the precise moment in which defendant acted." *State v. Burns,* 15 Or App 552, 562 (1973). Using that standard for officer discipline would preclude, or at least place in doubt, consideration of the officer's pre-use-of-force actions that may have precipitated the use of force such as poor tactics, violations of training, poor judgment, impulsiveness or subjective animus. If that is not the intent of the Commission by proposal of this definition, it should so state.

**3) Neither OAR 265-005-001 nor OAR 265-010-0015 define "excessive" or identify the standard to be used when determining whether physical force or deadly force is sufficiently "excessive" to constitute misconduct.**

While one might presume that the *Graham v. Connor,* 490 US 386 (1989) "objective reasonableness standard" is the foundation for separating lawful force from excessive force, what factors are considered in the *Graham* analysis and what weight those factors are given vary from one law enforcement agency to the next. As but one example, the "relative culpability" of the parties— *i.e.,* which party created the dangerous situation and which party is more innocent— *may* be a consideration in determining the reasonableness of the force used. *Espinosa v. City & County of San Francisco,* 598 F.3d 528, 537 (9th Cir. 2010) (citing *Scott,* 550 U.S. at 384). The Commission should define "excessive" and be explicit about the factors every agency must

evaluate when assessing this form of misconduct.

**Comment 2: Defining *Unjustified or Excessive Use of Physical or Deadly Physical Force***

I had a suggestion on the draft rule relating to *Unjustified or Excessive Use of Physical or Deadly Physical Force,* specifically the portion that limits the actionable conduct to events that results in death or serious physical injury or death.

As it relates to deadly physical force, I believe the conduct should not be tied to any level of injury- but simply a review of the act independent of injury or death. I appreciate injury is often referenced in triggering civil and/or criminal action (SB 111),but should not be a basis for police officer discipline standards.

I have reviewed hundreds (if not thousands) of police officer use-of-force incidents, including events where officers have used deadly force and there are no resulting injuries (primarily gunshots that have missed, but also includes weapon malfunction during an attempt to use deadly force and no shot was fired).

With this in mind, I would suggest the below language (new language bolded);

*A disciplining body shall impose upon a law enforcement officer disciplinary action of termination upon a finding that the officer engaged in misconduct constituting* ***unjustified deadly physical force or*** *unjustified or excessive use of physical force by the officer that results in death or serious physical injury.*

This language is not intended to include accidental discharge incidents, but all intentional use of deadly force- regardless of injury. I stipulated much is lost to those of us that have not had the benefit of your discussion and research, so this suggestion is made on my understanding of the respective OAR wording alone.

Good luck to you all and again, thank you for the work of the Commission.

Travis Hampton
Retired Superintendent of Oregon State Police

**Comment 3: Defining *Untruthfulness***

Because of the ambiguity of Untruthfulness and the use of the allegation of Untruthfulness in law enforcement, there needs to be a much more specific and defined term of what Untruthfulness is specifically in the course of official duties.

I would recommend a change to the definition, as termed in this rule making process.

"Untruthfulness" means knowingly or willfully making false statements specific to official work-related matters, falsifying work-related records or official documents, omitting material facts or material information, or answering questions or providing information in a

manner that is incomplete, evasive, deceptive, or misleading when related to official work-related matters.

The definition of Untruthfulness as it now leaves substantial room for allegations of Untruthfulness for items that have no consequence to the employment of a law enforcement officer. It would leave room for big fish tales being alleged as untruthful or providing best guess information to a community member when it is not consequential to official duties.

Taking this to an extreme, as written, a law enforcement member could be alleged to be untruthful in a variety of non-consequential matters during off duty work or in matters of relationships, etc..

As a Police Chief, the more specific this definition is the more guiding it is. With this definition, if someone complained that a law enforcement officer, who was off duty, alleged the officer told them something that was untruthful, I would have to investigate it and if found to be true, then sustain it. This could be something as simple as a "big fish tale"

This definition needs to be much more specific to during the course of employment, for official purposes with consequential outcomes, such as in police reports, testimony written or oral, interviews, and questioning by supervisors, and other official records.

**Comment 4: Logic of mitigating factors, challenges of defining hate group membership**

– Use of unjustified or deadly force that results in death or serious injury

Who could object to this? But does it mean anything? If ANYONE uses unjustified or deadly force that results in death, this is either murder or manslaughter, and if it results in serious injury it is attempted murder or a serious assault (felony). Now if ANYONE, much less a public employee, much less a law enforcement officer commits murder, manslaughter, or felonious assault, not only should they be disqualified for employment but they should be prosecuted for a major crime. Does this proposed standard mean that currently an officer who commits murder, manslaughter, or felonious assault is not automatically fired? Or is this only for the period between the time the action has happened and the time the conviction is secured?

The following offenses are to be punished by termination or mitigated penalty. A mitigated penalty could be anything from suspension without pay, salary reduction, demotion, or a written reprimand in their record.

– Use of unjustified or excessive physical force that results in death or injury.
– Sexual assault.
– Intentionally targeting a member of a protected class

First of all, "unjustified or excessive physical force" - the unjustified aspect would seem to preclude

"mitigating factors" because the force is either justified, in which case it is not a crime, or it is unjustified, in which case it is a crime. Use of force that results in death or serious injury if it is not justified is a serious crime. Mitigating factors, whatever they might be, might be introduced in a sentencing hearing after conviction, but what business do they have in administrative decisions about employing a criminal as a police officer?

What would be a mitigating factor in a sexual assault be? If it is a sexual assault, it is an assault. If it was a mutual agreed interaction, it is not an assault..

The mitigating factors involved in discriminatory targetting are well known, and mostly come down to the difficulty in 'knowing" what goes on in an officer's head when he decides to engage with a subject. Even if an officer can be proved to have made statements indicating animus towards a group of people, it is hard to "prove" that his action was motivated by this animus. The STOPS program has shown that there is a problem, but what is done about it?

The first thing wrong with this formulation is that it is not already a default setting that commission of a capital crime or a major felony is not already automatically grounds for termination. It should be.

The second thing wrong is the mitigation. Can you imagine a situation where an officer uses unjustified or excessive force that results in death should be penalized by a letter of reprimand? If the force was justified, then it is not a crime. If the force was unjustified it was. There are no circumstances in which a person who has committed murder, manslaughter or felony assault should be a police officer.

The mitigation aspect of this proposal means that this whole thing has the appearance of requiring consequences without actually doing so. The decision making in these cases is done behind closed doors, by the head of the local law enforcement agency. His or her decision is not appealable, arbitrable, or public. I understand the need to protect the privacy of the accused officer. All those accused are not guilty. With a good police chief we can have reasonable hopes that discipline will be used against criminal conduct. But we never know. With a bad chief, and there are those, those who believe a chiefs job is to protect his employees from consequences, has enough room in this set of proposals that they are meaningless....

The refusal of the commission to explore the question of affiliation of officers with hate groups is concerning. It is NOT a simple question. Our country is closer to major civil conflict than at any other time since 1859. As the assault on the Capitol by in some cases off-duty officers, in the process injuring 180 Capitol Policemen and women illustrates, these evil forces reach into the ranks of law enforcement. The problem is made more difficult by the realization that the next overt act by these forces could involve widespread use of guns, with a certainty that among the victims are likely to be more than a few law enforcement personnel.

At the same time, groups with stated goals of overthrowing the government and Constitution by

force and violence: Proud Boys, III% Militia, Boogaloo Boiz, Oath Keepers do not, as far as I know, have membership cards, dues, and rosters. How are those affiliated with them to be identified? Holding extreme views is not a crime, and given the gradations of opinion tend to be blurry and individual, how is it to be determined who is in such a group, who has similar views on some issues, and who just likes blowing off? And who is to decide?

**Comment 5 – Issues with mitigating factors, definition of racial targeting, comparability of sanctions, composition of Commission, arbitrator actions**

Unlike the proposed statewide standards, Portland's guide explicitly lists termination as the presumptive discipline, with little ability for mitigation, for these violations of policy:

–-felony crime conviction or felonious misconduct
–-domestic violence
–-criminal conviction of a crime that is a DPSST certification disqualifying crime
–-untruthfulness
–-public corruption for monetary gain
–-intentional misuse of police authority based on protected class or status
–-out-of-policy use of deadly force or significant policy violation of the confrontation management performance policy during use of deadly force.

The state's guidelines flesh out the ideas of felonious crimes and misconduct by listing sexual assault, assault and assault without justification, stalking (which is a felony upon repeat offense), bias or hate crimes, and sex crimes.
The state also includes the other categories of domestic violence, untruthfulness, and public corruption. However, for each of these rules the state is allowing mitigating factors to take the discipline all the way down to written reprimands for any of these harmful acts. This is not acceptable for these levels of misconduct. Any of the categories not presumed to lead to termination in Portland have a presumptive discipline of 120 hours suspension without pay, aggravated discipline of termination, and mitigated discipline of 80 hours without pay. The state should follow suit, even if demotion and salary reduction are also included as options.

We're very interested to see that Portland's entire list of aggravating and mitigating factors were reproduced in the Commission's draft, along with new added aggravating factors of:

+Prior disciplinary history
+Failed to de-escalate encounter when feasible
+Low probability or limited potential for rehabilitation
+Nature of event allowed for time to reflect
+Victim's vulnerability
+Presence of training or experience

The state is also proposing mitigating factors of:
+Role of officer (subordinate to supervisor)
+Attempts to de-escalate
+Potential for rehabilitation
+Nature of event was unpredictable, volatile or unfolded rapidly
+Extraordinary circumstances or hardships
+Lack of training or experience

Some of these mitigating factors cause us great concern and can be categorized as "nobody said I couldn't." The administrative and criminal actions listed in this report should be

common-sense things that an officer knows is wrong. The fact that an officer is a subordinate does not excuse their committing violations of human rights, a principle established at Nuremberg ("I was just following orders" is not an excuse).

Furthermore, the issue of police officers deliberately targeting people due to a protected class or status-- race, ethnicity, gender identity, sexual orientation, religion or housing status-- needs special attention.

It is very good that officers violating policies about biased policing cannot get off with just a letter of reprimand. However, the use of the word "solely" to describe the reason an officer took certain actions is an unacceptable get-out-of-discipline-free card. The officer can say "I didn't like the car they were driving, and also they were Black" and not be punished. The phrase "solely or primarily" is used elsewhere, including the PPB's Immigration Directive (810.10), to determine violations here and should be used in these rules.

We are not opposed to people who use drugs or alcohol recreationally but do agree that officers who carry weapons, drive vehicles and interact with the public should not consume or be under the influence of mind-altering intoxicants at work. It is interesting that the use of drugs or alcohol while on duty also, like bias in policing, does not allow for a written reprimand in the proposed rules. This reinforces our concern from above that written reprimands should not be used for those other serious violations.
The discipline for impairment, however, does allow for written reprimand, and it's not clear why.

It is also interesting that the Commission is heavily dominated by male or male-presenting members and that the discipline for sexual harassment (rather than assault) is presumptively less than termination. While it is true sometimes men are the subjects of sexual harassment, it seems that the issue is not being taken seriously by the Commission, perhaps because of implicit gender bias. Ironically.

We are particularly concerned that when the PPA contract expires in 2025, Portland will take a step backward, with the exception of the new aggravating factors included in the LESC's policies. As we said last year, we hope that the Commission will take our advice and improve these guidelines for the good of everyone in the state.

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It is not clear whether the section on arbitration listed in the posted rules (https://justice.oregon.gov/lesc/documents/LESC_2023-02_Guide_to_the_LESC_Rules.pdf) is entirely relying on existing statutes. We earlier wrote that an LESC rule was responsible for the part that requires arbitrators to return cases to jurisdictions if there are multiple allegations and they disagree that there was misconduct in just one of them, which allows the jurisdiction to set the new level of discipline. As we understand this rule, Portland Copwatch supports it. We appreciate that the arbitration rule limits the ability of an arbitrator to set aside termination in order to promote the community's interests. That said, we hope that the unprovoked, unwarranted and sometimes deadly use of force leads to more instances where the community and law enforcement can agree "this cop should not be on the force any more."

Finally, we want to further discuss the make-up of the Commission itself. SB 808 initially proposed to add more community members to the LESC, which is heavily dominated by people who are either from law enforcement or work for law enforcement in some way. It is true that some of the proposed rules will rankle some officers. It is also true that many times when officers in Portland lie, cheat, steal or engage in sexual misconduct, the Portland Police Association does not help those officers fight to retain their jobs, which shows a level of integrity. That said, we hope the Commission itself will assist the Legislature in revisiting the

make-up of who gets to set these important guidelines for the state. The voices of those affected by police misconduct need to be part of the LESC.

**Follow up note on previous comment:**

In our testimony on September 1, we may have mis-stated the use of the words "solely or primarily" in state law and Portland Police policy with regard to profiling. Unfortunately, the state statute (131.915) and Police Bureau policy (344.05) both use the word "solely" in the way the Commission is using it. However, the Bureau's policy on immigration status (810.10) uses the words "solely or primarily" twice in prohibiting officers from incorrectly using a person's immigration status.

We stand by the meaning of our testimony, which is that the discipline standard for profiling should use both words rather than just "solely."

**Comment 7: Wording of Moral Character, aggravating and mitigating factors, sanction of written reprimand**

***ADOPT: 265-010-0025*** *RULE TITLE: Moral Character RULE SUMMARY: Identifies conduct that* ***demonstrates a lack of moral character*** *and establishes that the presumptive sanction for engaging in that conduct is termination and identifies mitigated sanctions. RULE TEXT: (1) For the purposes of this rule, lack of good moral character includes 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 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.*

**Comment: language should include affiliation with known white supremacy or hate groups as a demonstration of "a lack of moral character"**

***ADOPT: 265-010-0035*** *RULE TITLE: Aggravating and Mitigating Factors RULE SUMMARY: Identifies a nonexclusive list of aggravating and mitigating factors that a disciplining body may consider. RULE TEXT: (1) Aggravating Factors: (a) Prior disciplinary history. (b) Delay in reporting. (c) Intentional conduct.* ***(d) Significant impact upon the agency's mission, reputation, or relationship with the community.***

**Comment: The rule as it stands is insufficient to protect the interests and safety of the community.**

**Officers who are affiliated with known white supremacist or hate groups exercise a "(d) significant impact upon the agency's mission, reputation, or relationship with the community," and such affiliations should be sanctioned explicitly for the safety of the community.**

***ADOPT: 265-010-0001*** *RULE TITLE: Sexual Assault RULE SUMMARY: Establishes that the presumption sanction for engaging in conduct constituting sexual assault is termination and identifies mitigated sanctions. RULE TEXT: A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the officer engaged in misconduct constituting an act of sexual assault: (1) The presumptive sanction shall be termination. (2) The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.*

**Comment: Further, "a written reprimand" is an insufficient sanction for sexual assault, even a mitigated sanction. The option should be struck.**

**Comment 8 : Defining *excessive, justified;* need for procedural and investigative requirements, Commission membership**

Based on my experiences around this event (the death of her loved one at the hands of police), I offer the following seven recommendations to the Commission.

1) Explicitly define "excessive" use of force. Is violating Taser manufacturer recommendations multiple times "excessive?" Is punching a passively restrained subject multiple times in the face "excessive?"
2) Explicitly define "justified" use of force and "justified" use of deadly force. There is a difference between "justified" and "legal."
3) Explicitly define the *process* leading up to the imposition of discipline, including the investigation, the decision, and the use of mitigating factors. For example, how is the investigation conducted? Who conducts it? How does the public know the investigation is unbiased and fair?
4) Explicitly define how mitigating factors might be used to reduce a disciplinary consequence, and who decides.
5) Recommend to the Legislature that they replace Senate Bill 111, which defines how use of deadly force incidents are investigated, with a *credible* independent state level office similar to what Washington State has recently implemented (https:11www.opb.org/article/2022/05/18/rogoff-to-lead-new-washington- office-investigating-police-deadly-force/ )
6) Recommend to the Legislature that they add at least one family member to this Commission who has direct lived experience with the impact of police misconduct and/or violence.
7) Require, in addition to the stated discipline consequences, especially mitigated ones, that an officer who is determined to have violated any of the standards of

conduct *apologize* to anyone harmed by their actions.

So if these proposed standards had been in effect at the time of my child's death, would they have made any difference? Would there have been any accountability? Any discipline? I doubt it because the draft standards are completely silent on all of the *process* steps that must occur in an unbiased manner before there can be any consideration of discipline.

- First, the accusation of misconduct of an officer, whatever it is, must be *investigated* in an independent and impartial manner. If what truly happened isn't appropriately investigated and reported, how can there be a consideration of potential discipline?
- Second, someone (who?) must decide if the investigation has shown enough evidence to conclude that misconduct occurred.
- Finally, someone (who?) must determine if any one of SIXTEEN mitigating factors proposed in the draft standards were present and apply. All three steps need to be done in a fair, independent and consistent manner prior to any disciplinary action, and the draft standards are completely silent on this process.

**Comment 9: Re Racial profiling, demonstrated racism, problems with mitigation standards, transparency in complaint records**

Although the statute mandated the Commission to promulgate rules that address *"[c]onduct* that is motivated by or based on a real or perceived factor of an individual's race, ethnicity, national origin, sex, gender identity, sexual orientation, religion or homelessness," the proposed rules address ***only racial profiling*** (targeting people for criminal enforcement). Specifically, there are no provisions for disciplining officers who have *demonstrated* racist or other discriminatory behavior — such as posting racist comments on social media, or being part of the Ku Klux Klan, 3 percenters, Oath Keepers, Proud Boys, or similar radical right-wing groups.

In leaving out this important indicator of problematic policing, the proposed rules lag behind the current trend. For example, the US military recently put in place a useful precedent for this sort of policy, threading the needle regarding first amendment protections

In general, the opportunity in the proposed rules for "mitigation" for some types of behaviors is problematic, as it leaves open to the discretion of the supervisor/department how to interpret that word. The proposed state rules include a wide variety of vague mitigating factors, such as "Role of officer (subordinate to supervisor)"; "Attempts to de-escalate"; "Potential for rehabilitation"; "Nature of event was unpredictable, volatile or unfolded rapidly"; "Extraordinary circumstances or hardships"; and "Lack of training or experience." The exceptions swallow the rule and leave far too much discretion for the blue wall of silence to continue unabated.

It is especially troubling that, absent an actual criminal conviction, the consequences for the behaviors listed above (other than racial profiling) can be "mitigated" all the way down

to a reprimand. In contrast, the minimum discipline under Portland Police Bureau's guidelines (for lesser offenses) is 80 hours without pay, and for greater offenses 120 hours without pay.

In addition, the proposed rules should include provisions to ensure that complaints against the police are available for public review. This is critical given the apparent inconsistent discipline process…. The Chicago Police Department makes public all officer complaints, regardless of whether an internal investigation or discipline occurs (see https://www.chicagocopa.org/data-cases/case-portal/ and https://invisible.institute/police-data/ ).

**Comment 10: Logical weaknesses in application of mitigating factors**

First, the presence of mitigating factors for every potential infraction, which diminish the consequences to potentially only a written reprimand for nearly every type of misconduct. As a quick example, let's consider sexual assault. Looking at the mitigating factors for sexual assault, this type of misconduct can be mitigated to only a written reprimand if an officer were to potentially: a) self-report the violation or b) accept responsibility for the violation, and if they c) had no repeated or other sustained misconduct and d) had a positive employment history. This is incredibly troubling on multiple levels.

First, sexual assault should result in significantly more than a written reprimand even if the officer admits fault. Law enforcement officers have power over the general public — when a power differential exists, you must be held to a higher standard.

Next, due to many union contracts, disciplinary records are not maintained past 2 years, so how would an organization or agency know whether or not an officer had a truly positive employment history? As just one example, here is the text from the Lane County Sheriff's Office union contract that is being adopted this week: "Article 16: Personnel Records; 16.3 Inclusion of reprimands: Documented oral reprimands shall not be placed in the official personnel file and shall be considered only when evaluating the performance of an employee or to indicate the progressiveness of discipline. Written reprimands may be placed in the official personnel file but, with the exception of those which address violations of applicable policies regarding sexual harassment, such documents shall not be considered in determining the degree of future discipline if the employee has not received any disciplinary action for a period of twenty-four (24) months from the date the letter of reprimand was issued and subsequently placed in the personnel record."

Second, the requirement that lethal force would first need to be found "unjustified" before these standards would apply would lead to no change. Currently, deadly force investigations are incredibly biased toward the officers involved based on the rules established by SB-111 in 2007. Until these investigations are improved and the clear conflicts of interest are resolved, every use of deadly force will to be ruled "justified," exactly as every case in Lane County has been since at least 2008. For example, the proposed standards would have had no impact on the officers involved in the incident that resulted in the largest settlement for use of force in the state of Oregon, which happened to occur in the city in which I live, Springfield. Any proposed state standards would only be a true win for accountability if they would have held those Springfield officers accountable.

**Comment 11: Specify when investigation and mitigation happen**

Develop clearer process: “It's not clear enough who determines which mitigation measures would apply and who decides who to investigate.”

**Comment 12: Transparency around complaint records, sanctions for discriminatory behavior, penalties too weak.**

For me the proposed rules do not sufficiently address three areas:
(1) the proposed rules should include provisions to ensure that complaints against the police are available for public review;
(2) except for racial profiling, there are no provisions for disciplining officers who have demonstrated racist or other discriminatory behavior;
(3) penalties proposed for systematic civil rights violations and other discriminatory misconduct by a law enforcement officer are unreasonably weak.

**Comment 13: Some mitigating circumstances are loopholes:**

**Under** the proposed rules, the Commission can issue nothing more than a written reprimand if it finds any of these — or other — mitigating circumstances:

"(n) Extraordinary circumstances or hardships that may be relevant.
(o) The lack of training or experience that is germane to the incident.
(p) Other relevant factors are present that justify imposing a mitigated sanction."

These three especially are so ill-defined that it's hard to imagine how they could provide guidance for anything but an exit ramp from disciplining a police officer.

**Police committing racist, discriminatory crimes can stay on the force:**

Another loophole is in the section on "Crimes Motivated by or Based on a Real or Perceived Factor of an Individual's Race, Ethnicity, National Origin, Sex, Gender Identity, Sexual Orientation, Religion, or Homelessness (OAR 265-010-0020). The least disciplinary action is demotion. However, here's the loophole:

(2) It is not misconduct under this rule if the law enforcement officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.

Why would it be all right to commit a racist or otherwise discriminatory action when acting on a tip? At this point the proposed rules start to sound like a rewrite of qualified immunity and not a strategy for using accountability to reform our police departments.

**Comment 14: Mitigation too broad**

The rules allow such a large list of "mitigating factors" that all of the standards become unenforceable.

**Comment 15: Follow Colorado’s lead for accountability**

The major flaw in Oregon's current system is the shielding of police as it allows evasion of responsibility for actions via qualified immunity.

Colorado passed Measure 217, Law Enforcement Integrity and Accountability Act, and leads the nation in holding police accountable, by ending qualified immunity at the state level and instilling other criteria. The path is set for Oregon to easily follow.

Colorado Representative Leslie Herod, Colorado House District 8, testified July 9, 2020 before a Joint Oregon Legislature work session on Transparent Policing and Use of Force Reform. Representative Herod relates that the Colorado measure passed overwhelmingly in the State legislature with strong bi-partisan support. It contains sweeping comprehensive and important reforms formulated with input and leadership from sheriffs and chiefs across Colorado. Please listen to her testimony and consider implementing measures akin to Colorado Measure 217. Thank you.

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**Comment 16: Membership composition, problems with mitigation as worded**

It appears that many of you are closely affiliated with law enforcement.

It appears that individuals who have direct experience of police violence or family members of those who have experienced police violence have been omitted from your discussions. It also appears you are missing social workers and therapists—which is a grievous oversight, because these professionals regularly employ de-escalation practices. They also understand the massive mental and physical health impacts of trauma associated with police violence. Why are they not at the table? Lastly, it seems you are missing any plaintiff s attorneys that would represent a person who has been harmed by police violence.

If possible, it seems the committee needs to be reconfigured to consider these important perspectives and reflect them in the rules.

I was also surprised to see that there weren't any Q &A sessions for the public to engage with you all to better understand the draft rules and some of its implications which may have given the commission important insight to consider.

For example, in Springfield, discipline records are not held for longer than 2 years, and I just read that the Lane County Sheriffs Office doesn't document verbal discipline reprimands. Therefore, how will the mitigating factor for "positive employment history" be accurately evaluated?

If the purpose of these rules is to introduce standards, the mitigating factors need to be revised to eliminate opportunity for interpretation which may allow some to avoid accountability. As I'm sure you are all well aware, the mitigating factor allowing for the consideration of "other relevant factors that are present that justify imposing a mitigated

sanction" is akin to a get out of jail free card.

Why are the individuals who are enforcing laws above the laws themselves?

Another question I have is how will these rules apply when an officer, like ex-Eugene Police Department officer Christopher Drumm (who stalked and raped a community member), resigns prior to the completion of the investigation into charges of sexual assault? I would like to know if the commission has the authority to revoke DPSST certifications for these such officers. If so, it seems this needs to be part of the new standards.

On a broader level: are the new/proposed standards reasonable enough that reasonable people would agree with them? I don't think so. For instance, I do not believe that reasonable people would find it appropriate for law enforcement to keep their jobs after committing sexual assault, unjustified or excessive use of physical force, or targeting based on protected class, which are all offenses that are actually against the law.

Did you know that sexual assault generates the most citizen complaints about law enforcement after excessive use of force? I was horrified to learn that children are the victims of 40% of sexual assault cases committed by law enforcement. A reasonable person would expect a LEO to be terminated for committing sexual assault, excessive force, and targeting based on protected class. Moreover, in Springfield, the PD has multiple law suits against them for civil rights violations stemming from race which of course is a protected class.

Lastly, it is very telling that the commission didn't consider penalties for LEOs that are associated with hate groups (see Ruth Whitfield's murder in 2022, which I mentioned earlier; her killer was an officer affiliated with a hate group.). The FBI has warned of this phenomenon ,and you have the opportunity to do something about it—but so far have done nothing. Again, this decision doesn't meet the reasonable person standard.

If the commission is to live up to their charge to increase public safety and create a culture of accountability for law enforcement, you must strengthen the draft rules. I went to college in the times of zero tolerance policies now enforced in most high schools-- and it's not lost on me that high schoolers are held to higher conduct and discipline standards than Oregon law enforcement. This must change.

**Comment 17: Mitigation wording negates standards, address hate groups, consider victim perspective**

I was an attorney for about 40 years, a law professor, and an administrative law judge. I taught criminal procedure and legislative and administrative processes, inter alia, which I tell you to give some background for my comments.

I am disappointed in these proposed standards. I have several concerns. For one thing, the

mitigation factors look to me as if they could easily negate much of the effect of the standards. It is not at all clear how to apply them. One or more of the mitigating factors is likely to be present in just about any case. For example, if an officer commits sexual assault, perhaps with the defense that it was consensual although the victim was (maybe just a little) underage, or the victim was sexually experienced, or it was just a little sexual assault not really full-on rape, should the result be less than discharge, or at least a significantly long suspension without pay and demotion, retraining, and extra supervision? If mitigating factors such as: limited or no property damage, the officer is remorseful and promises never to do it again, it didn't happen very many times, and basically he's a good egg are present, should the punishment be mitigated down to a harsh talking-to, participating in sexual harassment training on paid time, and a written reprimand? I hope not.

Will the standards be, in effect, presumptively applied downward? That would be in line with the trends in police self-discipline that I have seen over the years. Much more clarity is required here. The mitigation down to a written reprimand should rarely be applied, if indeed it is ever appropriate. Once the misconduct has been established (and that is generally hard enough), there should be some discipline with teeth. A reprimand that is wiped off someone's personnel record in a matter of months is not discipline with teeth.

Addressing how many factors, and in what combination, to look for in mitigation or in aggravation, in what circumstances, is difficult but entirely possible. If we stick with the Anglo-case law system here, with vague rules to be developed case by case in adjudications, we will be little better off than we are now. Multiple jurisdictions will develop their own sets of case law and precedents, with predictably unsatisfactory results.

I am also concerned that the commission decided not to address membership in hate groups and groups dedicated to overthrowing the government. I recognize that is tricky ground in regard to freedom of association. Such a rule could be misused (as could many of the rules proposed and other laws which have been enacted). I am aware that our country has a questionable history of policing members of disfavored group (the Red Hunts of the early to mid 20th century for example). We want to be careful. But it is entirely possible to require that public safety officers not join and support groups which specify that the purpose of the group is to harm and diminish specific racial or religious communities; i.e., white supremacist, anti-Semitic, anti-Muslim, anti-LGBQ groups, and so on. We should be able to trust our public safety officers to treat all people equally and equitably, which is directly contradicted by allegiance to a hate group. Allegiance to a group which wants to overthrow our form of government also should not be encouraged. The officers are sworn to uphold the government. There are sufficient examples now of rules like I am proposing, so drafting such a rule is quite possible.

I do not want to wear out my welcome, or have you flip to the next comment, so I will stop with the general observation that we need rules that consider the victim at least as much as the perpetrator. I believe these rules are seriously tilted toward the officer.

**Comment 18: Mitigation overbroad, require independent investigation**

I am a resident of Eugene where I pastor a local congregation. I am also the spouse of a police officer who retired after serving 25 years.

My request is that you consider requiring that the "Disciplining Body" cannot be a law enforcement agency or any body that includes law enforcement personnel.

Given our nation's history of police violence, lack of transparency, and a police culture of silence and self-protection, it is not possible for the police to police themselves.
If we want to move toward a culture of accountability, these proposed rules must include enforcement by a civilian or community oversight board.

The list of mitigating factors is so broad they offer minimal protections for citizens (especially ones at most risk-- those with mental & physical disability, black, brown, and transgender people).
Leaving these decisions to "a law enforcement agency" as described in the Definitions, will not lead to any significant changes.

As these rules stand today, they do not move boldly enough in the direction of changing from a culture of power to one of accountability. Others have made specific requests that I support about tightening up these mitigating factors and adding rules about behaviors involving white supremacy groups.

**Comment 19: Mitigation too broad, problem wording**

The mitigating factors are hopelessly broad, and many of them should be removed:

* "Positive employment history" and "No repeated or other sustained misconduct" means very little when under the current paradigm much police misconduct doesn't even get as much as a reprimand.

* "Potential for rehabilitation" is true of just about anyone and should not be an excuse to evade consequences.

* "Limited impact upon the agency's mission, reputation, or relationship with the community" absolutely does not belong on a list of mitigating factors as it does not serve or protect the public in any way, and suggests that adequate consequences only happen when the misdeed is too well known to get away with. Such a low standard is what is (unfortunately) expected of a corporation that exists to profit their shareholders at all costs, not an organization that has the role of

serving and protecting the public.

* "The lack of training or experience that is germain to the incident" is not a mitigation. When this happens, it is an indictment of the training provided, which should at an absolute minimum train officers not to cause harm except when absolutely necessary.

**Comment 20: Re Excessive and unjustified use of force definitions, address compliance**

With House Bill 2930, the Commission was given an excellent opportunity to create robust standards to ensure public safety, signal best practices, and hold police accountable for their conduct on and off the job. Instead of seizing the chance to establish a model for police behavior, it seems the goal was to do the bare minimum in order to give the appearance that reform was attempted. While we understand the Commission sought to find balance between different interests, the choices made weigh too much in favor of protecting police from consequences for any misdeeds. Instead of focusing on measures to protect public safety, the primary concern seemed to be to do as little as possible to potentially upset law enforcement officials. Though there are numerous areas where the proposed standards fall short, the most egregious deficiency is in the section concerning excessive force by police.

The proposed standards offered by the committee are both too limited in their scope and too vague in its potential enforcement. The rules only address cases where force by the officer "results in death or serious physical injury." This shows the Commission has misplaced its focus—the emphasis should be on the actions and intent of the officer and not to the extent of injury suffered by the victim. The goal should be to discourage officers from engaging in excessive force in the first place and addressing the thought processes that led to the decision to deviate from normal practices in choosing physical force against a civilian. As it stands, this rule allows for officers to engage in repeated incidents without repercussion if the result is an injury that falls short of this permissive standard. We have seen this exact result occur, with numerous officers subject to multiple complaints of excessive force.

In addition, the specification of "serious physical injury" is too lenient a standard in determining excessive force. ORS 161.015(8) defines it as when "a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ" occurs, which leaves a whole range of gruesome injuries that a police officer could inflict and still not be subject to sanctions. In a recent case, the Multnomah County District Attorney refused to press charges against an officer who singled out with no cause an individual from a group of retreating protestors, tackled him to the ground, and proceeded to punch the person in the head multiple times, resulting in brain damage and extensive injuries.' Without further clarification or better yet, a stricter standard, we will only see more results like this in the future.

The proposed standards are also hamstrung by the lack of definitions for what constitutes "unjustified" force. This should be defined as force in excess of achieving public safety. There have been countless incidents where officers have used force beyond what is necessary to subdue or

restrain a suspect and instead venture into the realm of inflicting punishment on civilians. We understand the risks officers take on a daily basis, but they need to be trained in ways in which their goals can be achieved with less force. This standard places the burden of proof on law enforcement, instead of the current choice which puts greater risk on the public. Otherwise, without any clear boundaries or examples, there is little reason to believe that there will be an impartial assessment by the police on whether the use of force was justified. We have seen countless examples of convoluted explanations from law enforcement which clears the officer of wrongdoing, finding that the use of force of justified no matter what the conduct was. If the rules are adopted without changes addressing this deficiency, we will continue to see more examples of this.

Of course, we only get to this point when there is an investigation into wrongdoing; we have seen numerous documented instances of a failure to report or follow up on complaints of excessive force. We have evidence of officers simply not reporting their use of force,' and we have the embarrassing example of one Portland officer who was put in charge of investigating these instances himself being the subject of multiple claims of excessive force.[3] The Commission must look into rules establishing guidelines for investigation and ensuring oversight to make sure they are followed. We need to make sure there is both an external component not subject to pressure from law enforcement as well as other mechanisms to ensure investigations are impartial.

**Comment 21: Re *just cause* definition change for CBAs**

This request is for clarification in one part of one standard to avoid possible unnecessary conflict.

I request the addition of a phrase to clarify the prohibition of a "just cause" definition in collective bargaining agreements. As currently drafted, OAR 265-005-0010 appears overly broad in the restriction to prohibit a definition of "just cause" in law enforcement labor agreements. Many labor agreements at law enforcement agencies include job classifications in addition to Law Enforcement Officers, such as parking enforcement, dispatchers, animal control, records, evidence, community service employees and other support staff.

The legislature was very specific in who would be covered by the Commission's standards and that is specific to "law enforcement officers" as defined in ORS 131.930 and that does not include other law enforcement employees. The language should be clarified that the "just cause" requirement is specific to the employees covered by this legislation and only include the defined Law Enforcement Officers, not other employee classifications covered by labor agreements such as the examples listed above. Without this suggested change, unnecessary conflict could occur in labor negotiations or in interpretations of labor agreements. Please consider adding the phrase **"for law enforcement officers"** as shown below in bold type.

ADOPT: 265-005-0010 RULE SUMMARY: Adopts statutory burden of proof for

disciplining bodies to prove misconduct. CHANGES TO RULE: 265-005-0010 Burden of Proof (1) For any collective bargaining agreement entered into or renewed on or after July 1, 2021, for all disciplinary actions imposed upon a law enforcement officer, a disciplining body has the burden to prove by a preponderance of evidence that the officer engaged in misconduct and that any disciplinary action taken against the officer was with just cause as defined by ORS 236.350. ¶ (2) No collective bargaining agreement entered into or renewed on or afterJuly 1, 2021, may include a standard of just cause **for law enforcement officers** other than the standard as defined in ORS 236.350.
Statutory/Other Authority: ORS 243.812 Statutes/Other Implemented: ORS 243.812

**Comment 22: Mandatory termination for more offenses, proportionality of sanctions, DOD Extremist policy language, redline edits of standards**

We urge the Commission to revise the standards so that termination is the presumptive and only sanction for:

- Sexual assault;
- Assault;
- Unjustified or excessive use of physical or deadly force; and
- Conduct motivated by or based on a real or perceived factor of an individual's race, ethnicity, national origin, color, sex, gender identity, sexual orientation, age, religion, physical or mental disability, or homelessness.

A sanction less than termination is not appropriate for these types of misconduct and violence — especially if the purpose of the standards is to create real accountability and prevent future instances of similar serious harm by police officers.

As well, setting termination as the presumptive and only sanction for the aforesaid types of misconduct and violence is consistent with the standards set out by the Commission in 265-010-0025, the Moral Character section. In this section, termination is the presumptive and only sanction for an array of misconduct including domestic violence, stalking, untruthfulness, and misuse of authority for financial gain. If an officer can receive a letter of reprimand or demotion for sexual assault but must be terminated for untruthfulness, then the proposed standards create neither consistent uniformity nor reasonable proportionality between the seriousness of the misconduct and the consequence.

**Termination must be the presumptive and only sanction for officers who actively participate in supremacist, extremist, or criminal gang doctrine, ideology, or causes**

Many members of the public who provided testimony urged the Commission to address officers who engage in supremacist, extremist, or criminal gang type activity. We strongly urge the Commission to

do so as well.

The Commission needs to make termination the presumptive and only sanction for an officer's active advocacy or active participation in supremacist, extremist, or criminal gang doctrine, ideology, or causes, including those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights.

In this area, we encourage the Commission to review the Department of Defense's "Report on Countering Extremist Activity Within the Department of Defense" as a resource on how to set disciplinary standards and related definitions that appropriately address this type of extremely harmful conduct while respecting First Amendment and other civil liberties values.'

Based on the Department of Defense's report, with some changes made for more consistency with federal and Oregon constitutional and legal requirements, we recommend defining "extremist" and "active participation" as follows:

> **Extremist Activities.** The term "extremist" as related to advocacy or active participation in "extremist" doctrine, ideology, causes, or activities means:
>
> a. Advocating or engaging in unlawful force, unlawful violence, or other illegal means to deprive individuals of their rights under the United States or Oregon Constitution or the laws of the United States, Oregon, or any political subdivision thereof.
>
> b. Advocating or engaging in unlawful force or violence to achieve goals that are political, religious, discriminatory, or ideological in nature.
>
> c. Advocating, engaging in, or supporting the overthrow of the government of the United States, Oregon, or any political subdivision thereof, by force or violence; or seeking to alter the form of these governments by unconstitutional or other unlawful means (e.g., sedition).
>
> d. Advocating or encouraging other law enforcement officers or personnel to violate the laws of the United States, Oregon, or any political subdivision thereof, for the purpose of disrupting law enforcement activities (e.g., subversion), or personally undertaking the same.
>
> e. Advocating widespread unlawful discrimination based on race, ethnicity, national origin, color, sex, gender identity, sexual orientation, age, religion, physical or mental disability, homelessness, or any other status protected

from discrimination under United States or Oregon law.

**Active Participation.** "Active participation" means the following, except where such activity is within the scope of an official duty (e.g., intelligence or law enforcement operations), whether on or off government or law enforcement buildings and grounds and whether during or after on-duty work time as a law enforcement officer:

a. Advocating or engaging in the use or threat of unlawful force or violence in support of extremist activities.

b. Advocating for or providing material support or resources to individuals or organizations that promote or threaten the unlawful use of force or violence in support of extremist activities, with the intent to support such promotion or threats.

c. Knowingly communicating information that compromises the operational security of any law enforcement organization or mission, in support of extremist activities.

d. Recruiting or training others to engage in extremist activities.

e. Fundraising for, or making personal contributions through donations of any kind (including but not limited to the solicitation, collection, or payment of fees or dues) to, a group or organization that engages in extremist activities, with the intent to support those activities.

f. Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities, with knowledge of those activities.

g. Actively demonstrating or rallying to incite extremist activities (but not merely observing such demonstrations or rallies as a spectator).

h. Attending a meeting or activity with the knowledge that the meeting or activity involves extremist activities, with the intent to support those activities:

i. When a reasonable person would determine the meeting or activity is likely to result in violence; or

ii. In violation of off-limits sanctions, other lawful orders, or laws.

i. Distributing literature or other promotional materials that is likely to incite extremist activities.

j. Knowingly receiving material support or resources from a person or organization that incites or participates in extremist activities with the intent to use the material support or resources in support of extremist activities.

k. When using a government or law enforcement communications system and, with the intent to support extremist activities, knowingly accessing internet web sites or other materials that are likely to incite extremist activities.

l. Knowingly displaying paraphernalia, words, or symbols in support of extremist activities or in support of groups or organizations that engage in extremist activities, such as flags, clothing, tattoos, and bumper stickers.

m. Engaging in electronic and cyber activities that are likely to incite extremist activities, or support groups that engage in extremist activities — including posting, liking, sharing, re-tweeting, or otherwise distributing content — when such action is taken with the intent to promote or otherwise endorse extremist activities. Law enforcement personnel are responsible for the content they publish on all personal and public Internet domains, including social media sites, blogs, websites, and applications.

n. Knowingly taking any other action in support of, or engaging in, extremist activities, when such conduct is prejudicial to good order and discipline or is discrediting to law enforcement.

**4) Necessary changes to the proposed standards for targeting related to a real or perceived protected characteristic**

In section 265-010-0020, we recommend that the section be revised to read:

> A disciplining body shall impose upon a law enforcement officer disciplinary action of termination upon a finding that the officer engaged in misconduct in violation of statutory or constitutional law by intentionally targeting an individual for a suspected violation of law based on the individual's real or perceived race, ethnicity, national origin, color, sex, gender identity, sexual orientation, age, religion, physical or mental disability, or homelessness:

For consistency with protected statuses under Oregon and federal law, the following protected statuses were added as characteristics that cannot be intentionally targeted without disciplinary consequence: color, age, and physical or mental disability.

Also, "based solely on the individual's real or perceived ..." was changed to "based on the individual's real or perceived ..." to capture situations where there may be multiple potential reasons for targeting an individual, which include their real or perceived

protected characteristic(s).

**5) Necessary changes to the proposed standards for sexual harassment and use of drugs or alcohol while on duty**
For sexual harassment and the use of drugs or alcohol while on duty, the presumptive sanction should be termination and the mitigated sanction should be demotion, suspension without pay, or salary reduction. These are serious types of misconduct for an officer whose duty is to enforce the law and garner public trust, and there should not be an option to only issue a letter of reprimand….

We've attached to this email:

1. **Testimony of ACLU of Oregon and Oregon Justice Resource Center** about the Commission's proposed statewide law enforcement standards of conduct & discipline

2. **PDF redline** of revised standards proposed by ACLU of Oregon and OJRC

3. **Word redline** of revised standards proposed by ACLU of Oregon and OJRC

**Comment 23: Need explicit standards around detainees, arrestees, treatment of people with disabilities**

The Commission should create explicit standards around the treatment of detainees, arrestees, and members of the public that have disabilities. Too many police officers do not believe they have to accommodate people with disabilities at all, or do not know how and when they should do so. The legislature made an explicit requirement that the Commission revisit these standards and the Commission's response has not been adequately specific.

The commission has only addressed hate speech, profiling, and offensive speech, but not addressed a refusal to accommodate a person with a disability, nor application of standards of law that disregard disability related needs. I wrote to the Commission years ago following a high profile case of police officers who initiated a stop, chased, arrested, and prosecuted a woman with a disability for operating her mobility device without a helmet. I never received any meaningful follow up to my inquiry, and I have seen no effort from the Commission to address the serious problems of maltreatment of people with disabilities by law enforcement.

I also frequently see evidence of the arrest and prosecution of people with mental illness who are primarily experiencing the symptoms of their illness without creating any true criminal harm. Those people are frequently arrested by police officers for vague, trivial offenses that mostly reflect their underlying illness. For instance, arresting a person with a mental illness who is walking down the street shouting for disorderly conduct. Officers also will arrest a person for misuse of the emergency system, when that person is clearly experiencing a paranoid episode who calls 911 to report a perceived danger that is plainly the symptom of a mental illness.

The Commission should outline standards for police discipline that outline punitive consequences for: 1) refusing to accommodate someone's disability; 2) arresting someone for disability-related behaviors in the absence of a bona fide law enforcement purpose; and 3) arresting people with disabilities for engaging in behavior (e.g., operating a mobility device) that is protected by disability law.

**Comment 24: Multiple specific suggestions**

Please read the public comments submitted to the LESC and published on September 19, 2022: https://justice.oregon.gov/lesc/documents/NPRM_2022-07-28_Public_Comments_Redacted.pdf

Please watch recordings of the 4 Public Hearings: https://justice.oregon.gov/lesc/nprm-archives.html

Please read the testimony provided on SB 808 in which the only 2 objections to the initial wording of the bill were from ORCOPS and the Sheriffs and Chiefs Associations: https://olis.oregonlegislature.gov/liz/2023R1/Measures/Testimony/SB808

Please recognize that the only organizations or individuals opposed to the very small rebalancing of voices on the LESC that the original wording of SB 808 offered came from the lobbyists who have a seat at the table in each of the Legislature's Judiciary Committees.

Please allow for some dialog with members of the public who are following your work when the LESC re-convenes and begins holding meetings again.

Please allow Commissioner Laura Fine to follow up on her idea of responding to the public comments that the LESC has already received.

Please consider putting a link to the next survey on the LESC website.

Please make more of an effort to publicize your work. The Commission should be doing work that they are proud of, so there is no reason to hide it.

Please consider bringing on partners/non-voting members of the Legislature who are willing and able to attend the vast majority of LESC meetings, as one of the current non-voting legislators on the Commission attended just a handful of meetings.

Do not allow written reprimand for:

- assault
- sexual assault
- sexual harassment
- use of excessive force

- the use of drugs or alcohol while on duty

If the Commission was more balanced and had representation from people who have either been harmed by police misconduct or lost loved ones to police conduct, the conversations would be much different. The conversations would be different with representation from Civil Rights attorneys on the Commission. The conversations would be different with more plain old "members of the public" on the Commission.

Nothing that is being said here hasn't already been presented during LESC public comment hearings or in testimony to the Legislature.

The text of the email introducing this survey stated "In order to prepare this report and meet the statutory deadline, the Commission is inviting you to complete a survey to provide your input. Responses to this survey will be submitted to the Legislature and will be made available on the Commission's website."

Nothing in those two sentences says that either the Commission or the Legislature will even read anything that is provided to them. It simply says that a report will be made available.

Please put stricter standards of conduct and discipline in place for Oregon's law enforcement officers. Allowing written reprimand STATEWIDE for the offenses listed above will only erode trust even more.

**Comment 25: Need definition for "Excessive," LESC membership**

Thank you for considering my two suggestions.

1. The Commission needs to explicitly define the term "Excessive Use of Force." The Commission has identified two areas of misconduct that uses that term, "Unjustified or excessive use of deadly physical force…" and "Unjustified or excessive use of physical force…," but that term is never defined. The other terms used in the standards developed by the Commission (e.g. "assault," "sexual assault," "sexual harassment," "moral character," etc.) are defined under Rule 265-005-0001, but a definition for "excessive" is glaringly absent.

___This point has already been made during the public comment period in August 2022. A legal expert in police use-of-force cases summarizes this in the last sentence of his written comment to the Commission (https://justice.oregon.gov/lesc/documents/NPRM_2022-07-28_Public_Comments_Redacted.pdf#page=14 ), "The Commission should define 'excessive' and be explicit about the factors every agency must evaluate when assessing this form of misconduct." However, the Commission has never formally responded to the comments received (written or by Zoom) in the August 2022 public comment period so it is unclear if this particular comment, or any others given during that public comment period, were ever considered.

Without a definition, there doesn't seem to be any use of force that is considered "excessive." For example, in March 2019, my loved one had stopped their car, was unarmed, seat-belted, and on the phone with 911 asking for help. The initiating patrol officer broke out my loved one's car window without warning and immediately grabbed them by the hair and punched them 8-12 times in the face with enough force for the officer to break his hand. Three additional officers also punched my loved one multiple times in the face, and then, after ripping off their sweatshirt, two officers Tased my loved one simultaneously for over 20

seconds, including one probe in the groin (this use of a Taser violates at least three manufacturer's recommendations but apparently is still not "excessive"). This sequence of unremitting violence happened in less than 60 seconds and without any attempt at de-escalation and without any opportunity given for my seat-belted loved one to comply. But this level of unnecessary violence was not considered to be "excessive," even though it ultimately led directly to my loved one's death less than 15 seconds later. My question to the Commission is: If this level of force is not excessive, then what is? (See the Critical Incident Review by OIR Group, the Dec. 11, 2020 Washington Post podcast, and the Kenny v. Springfield lawsuit for details.) "Excessive use of force" should be defined in the standards if the Commission intends to consider it a form of misconduct.

2. The Commission should make every effort to include the voice(s) of families who have been directly impacted by police misconduct and violence, especially because the legislature declined to modify the membership of the Commission during the 2023 session (the original version of SB-808 offered this opportunity). Otherwise the appearance is that the Commission represents a predominantly pro-law enforcement viewpoint, more forgiving of police misconduct, without the balance of the viewpoint of people who have been directly impacted by police violence.