



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
State of Oregon Disciplinary Guide/Matrix

PURPOSE AND SCOPE: (for example:)

This statewide  guide provides rules and regulations for imposing discipline upon law enforcement officers for all law enforcement agencies in Oregon consistent with applicable law. The guide is designed to provide notice of the standards upon which disciplinary outcomes are based and to establish expectations for all involved. This guide is initiated on *(date/2022)* and may be periodically updated to include additional areas of discipline for sworn law enforcement officers, provide greater transparency regarding the disciplinary process, and to ensure a fair and balanced disciplinary process. Currently, this guide, at a minimum, is intended to address categories of conduct enumerated by ORS 243.812. For matters of misconduct not addressed by this guide, law enforcement agencies may impose levels of disciplinary action consistent with their agency policies and practices, so long as consistent with applicable law and this guide.

As a matter of public interest, this guide it to provide for the following:

-  Accountability
 - Clarity
 - Consistency
 - Correct Behavior
 - Improve Trust with Community
 - Improve Trust for Employees and Employer

-  Correcting or modifying inappropriate behavior and rehabilitating the law enforcement officer
 - Educating personnel and the community regarding agency standards
 - Providing reasonable notice of the standards by which conduct will be judged and the likely consequences of the failure to adhere to standards
 - Resolving disciplinary matters impartially
 - Retraining personnel who exhibit a lack of understanding of expectations of law enforcement officers
 - Addressing the harm, or risk of harm, arising from misconduct and the effects of misconduct
 - Deterring future misconduct
 - Imposing appropriate penalties that are fair, proportional and rational
 - Establishing a culture of accountability and individual responsibility
 - Listening to community concerns about officer misconduct and implementing improvements to address the concerns

PRINCIPLES (for example:)

A. MENTAL STATE:

Officers are responsible for their actions and conduct. Consistent with the principles and categories of conduct of this guide, an officer's mental state may be relevant to their conduct and potential disciplinary action. This guide defines the following mental states:

- Negligent: an officer fails to use reasonable care, which is the degree of care and judgment used by reasonably careful police officers in the management of their own affairs to avoid harming themselves, others, or property. See Uniform Civil Jury Instruction 20.02.
- Reckless: an officer is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable police officer would observe in the situation. See ORS 161.085(9).
- Intentional: an officer acts with a conscious objective to cause the result or to engage in the conduct so described. See ORS 161.085(7).
- Application of any mental state is done using the standard of a reasonable person within their job classification at the time the act or omission occurs.

B. STANDARDS OF CONDUCT:

1. Officers may use physical or deadly force only to the extent authorized by these rules, applicable state and federal laws, and by the policies of the employing law enforcement Agency.

a. Physical Force

A peace officer may use physical force on another person only to the degree that the peace officer reasonably believes necessary, when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

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

(2) 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.

Prior to using physical force on another person, if a peace officer has a reasonable opportunity to do so, the peace officer shall:

(1) **Attempt alternatives** such as verbal de-escalation, waiting, or using other available resources and techniques if reasonable, safe, and feasible; and

(2) Give a verbal warning to the person that physical force may be used and provide the person with a reasonable opportunity to comply.

b. Deadly Force

An officer may use deadly physical force on another person only when it is objectively reasonable, under the totality of circumstances known to the officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

(1) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a violent felony **and the officer reasonably believes that there is an imminent risk of serious physical injury or death to the officer or another if the person is not arrested at that time;**

(2) Defend the peace officer or a third person from the imminent threat of death or serious physical injury; or

(3) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony **and the officer reasonably believes that there is an imminent risk of serious physical injury or death to the officer or another if the person is not immediately apprehended.**

Prior to using deadly physical force on another person, if a peace officer has a reasonable opportunity to do so, the peace officer shall:

(1) **Attempt alternatives** such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe, and feasible, or using a lesser degree of force; and

(2) Give a verbal warning to the person that deadly physical force may be used and provide the person with a reasonable opportunity to comply.

2. Officers shall conduct themselves in a manner that shows respect, courtesy, and professionalism in their dealings with one another and members of the public and shall not engage in conduct that unnecessarily demeans, harasses, or intimidates others.

3. Officers shall perform their duties equitably and shall strive to maintain public trust by

conducting all law enforcement business in an unbiased, fair, and impartial manner and must not, in making decisions or taking law enforcement action, use race, ethnicity, national origin, sex, gender identity, sexual orientation, religion or homelessness to any degree, except that officers may rely on the listed characteristics in a specific suspect description.

4. Officers shall not knowingly join or participate in any organization that advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, or other groups or classes of individuals protected by law.

5. Officers shall not engage in criminal conduct whether on or off duty.

6. Officers shall exemplify good moral character by (1) being truthful in all matters, such that they shall not lie, falsify, conceal, purposely distort, diminish, embellish, or fail to fully disclose facts associated with any law enforcement business, (2) intervening to prevent or stop wrongdoing by another officer when it is safe and reasonable to do so, (3) reporting any misconduct of which they become aware as soon as possible, (4) demonstrating respect for the rights of third parties and the law; and (5) by refraining from abusing the authority of their position for financial gain, to obtain or grant privileges or favors, or to avoid the consequences of their misconduct.

7. Officers shall not (1) report for duty or perform any duties while impaired due to the use of alcohol, medication, or controlled substances, whether legal, prescribed to the officer, or illegal, or (2) possess or consume alcohol or controlled substances while on-duty, except in the performance of an official assignment as authorized by the policies of the employing law enforcement agency.

C. **AGGRAVATING AND MITIGATING FACTORS** (for example:)

Aggravating factors are circumstances that increase the severity of the impact of the directive violation.

Mitigating factors are circumstances that do not excuse or justify the conduct but decrease the severity of the impact of the directive violation.

*Aggravating or mitigating factors are applied only **after** the sustained finding(s) for the totality of the conduct found and after any due process meeting. These factors are only used to alter the presumptive level of discipline. ~~Aggravating and mitigating factors do not alter the category of conduct.~~

D. **STEPS TO DETERMINE APPROPRIATE DISCIPLINARY ACTION:** (for example:)

Step 1: Review the type of conduct to determine the appropriate category. Apply the higher

~~category for conduct that violates one or more policies and that falls into more than one category. The highest category is (x).~~

Step 1: Identify presumptive "level" of corrective action associated with the misconduct at issue. For multiple sustained violations, the presumptive discipline initiates with the higher presumptive discipline.

Step 2: Apply mitigating and aggravating factors as relevant to determine if a greater or lesser corrective action than the presumptive level applies. ~~Aggravation and mitigation do not change the category, but change the level of discipline within the same category.~~ Aggravation and Mitigation only allow level of disciplinary action imposed to be change to a value specified in the guide. Aggravation and Mitigation factors are only applied after Step 1 has been concluded.

For discussion: Education Based Alternatives/Remedial measures.

Thought: maybe the guide can acknowledge remedial measures and allow individual agencies to use those with limitations.



ADDITIONAL CONDITIONS/ACKNOWLEDGEMENTS: (for example:)

Should a disciplinary action imposed upon an law enforcement officer be grieved to an arbitration, the arbitrator is bound the terms of the Corrective Action Guide and by ORS 243.706(3) and ORS 243.808 et seq.

The appropriate "Category" for the alleged misconduct is a question of proof, by a preponderance of the evidence, by the employer consistent with ORS 243.808(1)(a) inclusive of a showing by the City of just cause under ORS 236.350. If the Arbitrator determines that City has not proven any policy violation, then the Arbitrator has the authority to rescind the discipline.

If the Arbitrator determines that the City has proven the alleged policy violations, the Arbitrator shall uphold the disciplinary action, unless the Arbitrator finds that the disciplinary action is arbitrary and capricious as required by ORS 234.808(1)(b). For termination cases, the Arbitrator is further subject to ORS 243.808(1)(c).

This Guide is effective: *(discuss statute)*.

F. DISCIPLINARY GUIDE

The disciplinary guide sets forth the presumptive discipline for specific acts of misconduct that violate the standards of conduct identified by these rules. The presumptive discipline is the assumed level of discipline generally deemed appropriate for the first instance of a specific act of misconduct before consideration of aggravating and mitigating factors.

1. Unjustified or Excessive Use of Physical or Deadly Force

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Deadly Physical Force Against Another Resulting in:			
Death/Serious Physical Injury			
Physical Injury			
No Injury			
Physical Force Against Another Resulting in:			
Death/Serious Physical Injury			
Physical Injury			
No Injury			
Application of Method of Force Prohibited by Law			
Unlawful Restraint			

2/3. Sexual Harassment/Sexual Assault

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Sexual Harassment			
Sexual Assault			

4. Conduct 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.

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Profiling			
Membership or participation in Criminal or Hate Organization			

5. Criminal Conduct

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Criminal Conviction for Felony Offense			
Criminal Conviction involving Theft; the use, possession, delivery, or manufacture of a controlled substance, narcotic or dangerous drug*; Violation of Trust or Oath of Office; a Bias or Hate crime; Domestic Violence; Assault; or Sexual Assault			
Engaging in Conduct Proscribed by State or Federal Law that is Classified as a Felony			
Engaging in Conduct Constituting a Criminal Offense that involves Theft, Violation of Trust or Oath of Office, a Bias or Hate Crime, Domestic Violence, Assault, or Sexual Assault			

* Marijuana excepted

6. Moral Character

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Intentionally Making a False or Misleading Official Statement			
Abuse of Authority for Financial Gain			

7. Drug and Alcohol Use

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Possession or Consumption of a Controlled Substance without a Prescription While on Duty*			
Impaired Due to an Intoxicating Substance While Reporting to Duty or While on Duty			
Use or purchase of Alcohol on Duty*			

* **Exceptions for a Legitimate Law Enforcement Objective May Apply (Example: PPB 0310.50 – A limited exception to the standards in this directive exists when the member reasonably believes that use or purchase (i) is necessary due to the nature of a member’s assignment, such as an undercover assignment; (ii) is necessary to acquire information for a criminal investigation, or (iii) to protect the member or others from an articulable threat. The use or purchase in these circumstances must be for a specific and legitimate law enforcement purpose and must be temporary in nature.**

G. Definitions

Abuse of Authority for Financial Gain – An officer’s solicitation or acceptance of any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion of the officer will thereby be influenced. ORS 162.025 (bribe receiving).

Assault – 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. ORS 163.115.

Deadly Physical Force – Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (e.g. the use of a deadly weapon, such as discharging a firearm, against a person). ORS 161.015 (3).

False statement – An intentional statement that an officer knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made. A statement is not considered false when the officer reasonably believes that deception (i) is necessary due to the nature of the officer’s assignment, such as an

undercover assignment; (ii) is necessary to acquire information for a criminal investigation, or (iii) to protect the officer or others from an articulable threat. The use of deception in these circumstances must be for a specific and legitimate law enforcement purpose and must be temporary in nature. NYPD; PPB 0310.50.

Law Enforcement Agency – An agency employing law enforcement officers to enforce criminal laws. ORS 131.930.

Law Enforcement Officer – A member of the Oregon State Police, a sheriff or a municipal police officer. ORS 131.930.

Material – That which could have affected the course or outcome of any proceeding or transaction. NYPD.

Misleading statement – A statement that is intended to misdirect the fact finder. Examples include statements that intentionally omit relevant facts or claim an inability to remember a particular event or circumstance when a reasonable person would remember the event or circumstance. A statement is not considered misleading when the officer reasonably believes that deception (i) is necessary due to the nature of the officer's assignment, such as an undercover assignment; (ii) is necessary to acquire information for a criminal investigation, or (iii) to protect the officer or others from an articulable threat. The use of deception in these circumstances must be for a specific and legitimate law enforcement purpose and must be temporary in nature. NYPD; PPB 0310.50.

Physical Force – Physical force includes, but is not limited to, the use of an electrical stun gun, tear gas or mace. ORS 161.015 (6).

Physical Injury – The impairment of a person's physical condition or causing a person substantial pain. Substantial pain refers to degree and duration of the pain suffered by the victim; the pain must be considerable and must be more than momentary. ORS 161.015 (7).

Profiling – The targeting of an individual on suspicion of the individual's having violated a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law. ORS 131.930.(5)

Serious Physical Injury – Physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of function of any bodily organ. ORS 161.015(8)

Sexual Assault – Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation. ORS 243.317.

Sexual Harassment – Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
- (2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. DAS policy (50.010.01)

Unlawful Restraint – The use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person in a circumstance in which physical force is not justified under ORS 161.209 and 161.215. ORS 161.237.

Aggravating and Mitigating Factors.

Note: The mitigating and aggravating factors are used only to alter a corrective action level within a specified category, and these factors do not alter the category of conduct. An aggravating or mitigating factor will not be considered if already considered in determining the category. CALCULATION

Aggravating Factors - Add point/s Points

- Intentional conduct 2
- Significant impact on community member or City operations/mission 2
- Significant property damage or serious physical injury 2
- Does not accept responsibility if policy violation is undisputed 1
- Delay in reporting 1
- Attempt to cover up conduct or behavior 2
- Motivated by personal interest 1
- Failure to meet documented expectations 1
- Supervisory Position 1
- Other (specified on a case-by-case basis) (Only to be used by final decision maker) 1

Total:

14

Mitigating Factors - Subtract point/s Points

- Unintentional conduct 1
- No impact on community member or City operations/mission 1
- No property damage or physical injury 1
- Self-reported the violation 1
- Attempt to ameliorate or correct the error (but not done to hide the error) 2
- Positive attitude; accepts responsibility 2
- Motivated by public interest or wellbeing of others 2
- Positive work history 1
- No repeated or other sustained violations 2
- Other (specified on a case-by-case basis) (Only to be used by final decision maker) 1

Total:

CALCULATION 14

Each factor that applies receives a corresponding point value. Factors that do not apply receive no point value. Subtract mitigation total (green) from aggravation total (red). If the number is negative, corrective action is mitigated. If the number is positive, the violation is aggravated. If the number is 0, the violation is neither mitigated nor aggravated. Aggravating and mitigating factors apply to the totality of the conduct sustained. Note: An aggravating or mitigating factor will not be considered if already considered in determining the category.

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