

Draft Example of Rules for Discussion Purposes Only  
Prepared by Staff  
6/30/22

Definitions:

**Finding** means a final determination by the decision maker of a disciplining body that a law enforcement officer has engaged in misconduct for which the decision maker making the determination has authority to impose disciplinary action.

**Disciplinary action** includes a personnel action against an employee in the form of a written reprimand, suspension without pay, reduction in salary, demotion, or termination of employment upon a finding that the law enforcement officer engaged in misconduct.

**Disciplining Body** means a law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body.

**Misconduct** means conduct that violates state or federal law or the policies of the law enforcement agency employing the law enforcement officer, or that subjects the law enforcement officer to disciplinary action under these rules.

Rules:

**Burden of Proof**

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. No collective bargaining agreement entered into or renewed on or after July 1, 2021, may include a standard of just cause other than the standard as defined in ORS 236.350.

**Disciplinary Action for Misconduct Not Identified By These Rules**

Upon a finding of misconduct not specifically identified within these rules, a disciplining body may take disciplinary action pursuant to the employing law enforcement agency's policies and practices so long as the disciplinary action is consistent with these rules.

**Multiple Instances of Misconduct**

For purposes of an arbitration proceeding concerning multiple instances of alleged misconduct by a law enforcement officer, if the arbitrator finds that a disciplining body has not met its burden of proof by a preponderance of the evidence to show that: (A) The officer engaged in one or more of the instances of alleged misconduct or (B) that the disciplinary action taken against the officer was with just cause, as defined in ORS 236.350, for one or more of the instances of misconduct, the arbitrator must rescind the disciplinary action imposed on those allegations of misconduct and refer the matter back to the disciplining body. The disciplining body may, at its discretion, amend the disciplinary action on any instances of misconduct upheld by the arbitrator. Nothing in this rule precludes the officer from

initiating an arbitration proceeding regarding a disciplinary action imposed after the referral by the arbitrator.

### **Incorporation of Rules**

(4) All disciplining bodies shall adopt policies incorporating these rules. The failure of a disciplining body to adopt policies incorporating these rules does not impair the application of these rules.

### **Application of Aggravating and Mitigating Factors**

(5) A disciplining body shall impose the presumptive sanction required by these rules unless it finds that one or more of the aggravating or mitigating factors enumerated in these rules [identify specific section] justifies a departure from the presumptive sanction. If the disciplining body determines that a mitigated sanction is justified, it shall impose a sanction that is no less than the mitigated sanction for the specific instance of misconduct but may impose a sanction that is no more than the presumptive sanction. Except when the presumptive sanction for misconduct is termination, if the disciplining body determines that an aggravated sanction is justified, it shall impose a sanction that is no more than the aggravated sanction for the specific instance of misconduct but may impose a sanction that is no less than the presumptive sanction. A disciplining body shall document its reasoning, including whether it found aggravating or mitigating factors, for imposing a disciplinary action other than the presumptive sanction.

### Discipline Standards for Misconduct:

#### SEXUAL ASSAULT (EXAMPLE):

A law enforcement agency or, if applicable, a civilian or community oversight board, agency or review 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.”

A. The presumptive sanction for an officer who has engaged in misconduct constituting an act of sexual assault shall be termination.

B. The mitigated sanction for an officer who has engaged in misconduct constituting an act of sexual assault shall be, upon the discretion of the law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body, suspension without pay, economic sanction, or demotion. The imposition of a mitigated disciplinary sanction may be accompanied by a last chance agreement.