

Commission on Statewide Law Enforcement Standards of Conduct and Discipline
House Bill 2930 (2021)
Codified ORS 243.812
Initial Report to House Committee on Judiciary
September 1, 2022

Introduction

The following report is required by House Bill 2930 (2021), codified at ORS 243.812, which directs the Commission on Statewide Law Enforcement Standards of Conduct and Discipline (“the Commission”) to prepare and submit a report to the House Committee on Judiciary on an annual basis. This report is the Commission’s initial report. ORS 243.812(14)(b) requires the initial report to “describe the development and adoption of the uniform standards described under [ORS 243.812(1)], including the methodology used to apprise each law enforcement agency in this state and each civilian or community oversight board, agency, or review body, of the standards.”

Formation of the Commission

House Bill 2930 (2021). In 2021, the Oregon Legislative Assembly convened during a time of significant social change. In order to respond to then-current events, the House Subcommittee on Equitable Policing introduced House Bill 2930, a bill relating to “standards concerning law enforcement officer conduct.” One component of these legislative reforms addressing law enforcement conduct was the creation of the Commission, whose organic statute is now found at ORS 243.812.

The statute charges the Commission with adopting rules that prescribe uniform standards of conduct and disciplinary standards and procedures, applicable to the Oregon State Police, county sheriffs and city police officers. The Commission is required to do so no later than October 1, 2022, and the rules adopted by the Commission must, at a minimum, address standards of conduct and discipline regarding: 1) Unjustified or excessive use of physical or deadly force; 2) Sexual harassment; 3) Sexual assault; 4) Assault; 5) Conduct 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; 6) Moral character; and 7) The use of drugs or alcohol while on duty. Although the Commission is subject to Oregon’s Public Meetings Laws, the Legislative Assembly emphasized the importance of public engagement by expressly requiring the Commission to implement an open hearing process in order to obtain public input and deliberation.

Commission Membership. ORS 243.812(2) specifies the makeup of the Commission membership and directs the Attorney General and Department of Public Safety Standards and Training (DPSST) Director to jointly appoint the non-legislative members of the Commission. The table below summarizes the current Commission membership.

ORS 243.812(2) Demographic	Members
The Director of the Department of Public Safety Standards and Training or a designee from the department.	Brian Henson
The Attorney General or a designee from the Attorney General’s office.	Michael Slauson
Member of the Senate	Senator Floyd Prozanski
Member of the House of Representatives	Representative Ron Noble
Two members who are Chief Law Enforcement Officers	Chief John Teague Sheriff Angela Brandenburg
Two members who represent labor organizations who represent law enforcement officers.	Anil Karia Mark Makler
Two members who represent historically marginalized groups or community-based organizations that represent communities impacted by policing.	Benny Williams Tarron Anderson
One member who represents a federally recognized Indian tribe or association of tribes within this state.	Chief Timothy Addleman
Two members who are representatives of local government to represent the interests of cities and counties.	Steven Schuback Commissioner John Shafer
One member who represents public defender organizations established under ORS chapter 151 or the Oregon Criminal Defense Lawyers Association.	Laura Fine
One member who represents the interests of prosecutors in this state.	Michael Wu

Establishing the Commission. A majority of the 15-member Commission constitutes a quorum and majority approval is required for the Commission to take official action. The members of the Commission are required to elect one Commission member from DPSST and one member from the Department of Justice (DOJ) to serve as co-chairs. The co-chairs are responsible for presiding over meetings and executing the duties determined by the Commission to be necessary.

In September of 2021, DPSST and DOJ began convening regular coordination meetings. Consistent with the legislative charge, these agencies began recruitment efforts in October by soliciting suggestions for Commissioners, as well as broader input, from the following organizations:

- Basic Rights Oregon
- The Burns Paiute Tribe
- Center for Dialogue & Resolution

- Centro Latino Americano
- Community Alliance of Lane County
- Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians
- Confederated Tribes of Grand Ronde Community
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of the Warm Springs Reservation
- Cow Creek Band of Umpqua Tribe of Indians
- Imagine Black
- The Klamath Tribes
- Legislative Commission on Indian Services
- NAACP Alaska Oregon Washington State-Area Conference
- Oregon Association Chiefs of Police
- Oregon District Attorneys Association
- Oregon Coalition of Police and Sheriffs
- Oregon Criminal Defense Lawyers Association
- Oregon Cultural Heritage Commission
- Oregon Cultural Trust
- Oregon Historical Society
- Oregon Humanities
- Oregon Justice Resource Center
- Oregon State Sheriffs' Association
- Oregon Public Defense Services
- Restorative Justice Equity Group/Better Together
- Rogue Action Center
- Rural Organizing Project
- The Coquille Indian Tribe
- Unite Oregon
- Urban League

Concurrent with these recruitment efforts, DPSST and DOJ began assembling the infrastructure necessary to operate the Commission. These agencies created a website, published a description of the Commission's organization and the methods by which the public may obtain or submit information, and established and maintained a list of interested persons and organizations. In addition, a rule coordinator was appointed and consulted with the Secretary of States Archives Division in advance of the Commission's adoption of rulemaking rules.

Commission Funding and Staffing. In response to House Bill 2930 (2021), both DPSST and DOJ stated that the fiscal impact of the bill on their respective agencies was indeterminate. Although the bill created a standalone commission, no budget was created for the Commission and the Commission was given no employees to accomplish its mission. Once DOJ and DPSST, as cochairs, began working on the Commission, this oversight became readily apparent, and they both contributed staff time for the creation of the Commission. DOJ committed to providing interim staffing for the commission and submitted a letter to the January 2022

Interim Ways and Means Committee for an Executive Director, Staffing (OPA4), legal fees, travel costs and per diem. The February 2022 session provided DOJ with funding for an OPA 4 position, effective May 2022. DOJ has continued to provide the commission support services of two Assistant Attorneys General, one paralegal, one legal secretary and an Executive Director.

DOJ has submitted a Policy Option Package in its 2023-2025 Agency Requested Budget for an Executive Director, Paralegal, Legal Secretary, and funding to pay for legal services provided to the Commission. See Attachment 1.

Development of Uniform Standards

Preliminary Research. In October 2021, staff began researching law enforcement standards of conduct and discipline to provide a contextual framework and options for the Commission to consider. These research activities generally included the following:

- Various law enforcement policies and matrices, DAS and BOLI policies, statutes, rules and dictionaries were used to identify definitions;
- Discipline matrices that were incorporated by or in the process of incorporation by states or law enforcement agencies in several states including Oregon, Washington, California, New York, Arizona, Maryland, Rhode Island, Indiana and Vermont;
- Law enforcement standards of conduct posted online for several state and local law enforcement agencies in Oregon and other states; and,
- DPSST contacted multiple in-state law enforcement agencies via email looking for a response to specific questions regarding the agency's internal disciplinary process, aside from any action specifically taken against the certification by the Board on Public Safety Standards and Training at DPSST.

Staff compiled this research into a single document for the Commission. This summary document, [A Draft Discipline Matrix](#), was provided to the Commission for the April 19, 2022, Commission meeting. At the March 31, 2022, meeting, the Commission heard a presentation from New York City Police Deputy Commissioner Amy Litwin. Ms. Litwin discussed the creation and administration of the New York City Police Department's disciplinary standards, which became effective in February 2021 after an extensive public review process. A complete list of all resources that the Commission considered while drafting the rules is attached as Attachment 2.

Rule Structure. After considering these contextual materials, the Commission began in earnest to develop the structure of its proposed rules over the course of three meetings held in May. At the May 4 Commission meeting, Commissioners Karia and Schuback presented the [City of Portland's Corrective Action Guide](#) as a potential model for the structure of the Commission's rules. At the May 19 Commission meeting, Commissioner Schuback presented a [Draft Concept Guide](#) that further refined the Commission's approach to its administrative rules, and Executive Director Boss presented an illustrative [Framework for Conduct and Discipline Guidelines](#). On May 25, 2022, the Commission reviewed [Staff Draft Edits to Commissioner](#)

[Schuback's Draft Concept Guide](#). Through these presentations and the ensuing discussions, the Commission began to arrive at consensus concerning the structure of its proposed rules. Broadly speaking, this structure defined the underlying misconduct and created presumptive sanctions that, in some instances, could be increased based on aggravating factors or decreased based on mitigating factors.

Focus on Legislative Priorities. Armed with this basic structure and in an effort to meet the October 1 rulemaking deadline established in statute, the Commission began to focus its attention on the priorities established by the Legislative Assembly. That is, ORS 243.812 specifically requires that the rules adopted by the Commission include standards of conduct and discipline regarding seven categories of misconduct:

- 1) Unjustified or excessive use of physical or deadly force;
- 2) Sexual harassment;
- 3) Sexual assault;
- 4) Assault;
- 5) Conduct 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;
- 6) Moral character; and
- 7) The use of drugs or alcohol while on duty.

The Commission methodically addressed these seven areas of misconduct and incorporated them into its general framework, with a specific eye toward identifying misconduct that would result in termination. In addition, the Commission chose, for this initial round of rulemaking, to adopt pre-existing standards of conduct in some situations. For example, the Commission's proposed rules implicitly adopt standards surrounding the use of force that are contained in Oregon statutory law and agency policy. In this latter vein, proposed [OAR 265-005-0015](#) recognizes that local policies will continue to govern misconduct that is not specifically identified within the Commission's rules. These substantive decisions provided the Commission with the ability to focus on the seven areas of misconduct identified by the Legislative Assembly.

The Commission's Process. For each of the seven areas of misconduct, the Commission sought to describe the misconduct and identify an applicable presumptive sanction, maximum sanction and minimum sanction for officers who engage in that misconduct. The process employed by the Commission was intended to calibrate the appropriate sanction by identifying the most severe sanction for each class of misconduct that could be supported by a quorum of the Commission.

The first area of misconduct addressed by the Commission, sexual assault, illustrates how the Commission arrived at its proposed standards. The Commission discussed the definition of "sexual assault" adopted by the Legislative Assembly and incorporated that

definition into the language of a proposed administrative rule. From there, the Commission engaged in an iterative process to arrive at the appropriate sanction. The initial proposal was for termination to be the only possible sanction. A straw poll revealed four votes in support of that standard. Because, however, ORS 243.812 requires eight Commission votes to take official action, this proposal could not be adopted. The Commission next considered termination as a presumptive sanction that, depending on the facts underlying the misconduct, could be mitigated to a sanction of suspension without pay, salary reduction or demotion. This poll produced 4 votes. The Commission then conducted another poll with the added possible mitigated sanction of a written reprimand. That is, the Commission's final poll contemplated termination as a presumptive sanction that, depending on the facts underlying the misconduct, could be mitigated to a sanction of suspension without pay, salary reduction, demotion or written reprimand. This poll produced 8 votes and the Commission ultimately voted to approve the proposed rule on sexual assault by a vote of 10-0. This example of the Commission's process became the proposed text of [OAR 265-010-0001](#).

Proposed Administrative Rules. The Commission repeated this exercise for all seven of the legislative priorities and incorporated those standards of conduct and discipline into its proposed administrative rules. The Commission voted to authorize staff to file the proposed rules with the Secretary of State at its July 21, 2022, meeting. Copies of the proposed rules are attached as Attachment 3.

Methodology for Providing Notice of Proposed Standards

Website. Commission staff maintain a [public-facing website](#) with information about the commission's public meetings and rulemaking activities. This website was initially published in mid-April and contains all the materials that the Commission considered in developing the standards, as well as instructions for public participation in the commission's meetings and rulemaking. There is also [an email address](#) available for members of the public to provide input about the Commission's work.

Public Meetings. The public was notified of the Commission's meetings as required by the Oregon Public Meetings Law. All meetings were recorded, and the recordings are available on the Commission's webpage.

Notice Rule. The Commission adopted [OAR 265-001-0005](#). This rule requires the Commission to give notice of proposed rulemaking at least 28 days prior to the proposed rule's effective date to the following persons:

- The Associated Press;
- The Capitol Press Room;
- Each District Attorney in the state;
- Each Sheriff in the state;
- Each Chief of Police in this state;

- The Superintendent of the Oregon State Police; and,
- Each civilian or community oversight board, agency, or review body as defined in ORS 243.812(15)(b).

Identifying Notice Parties. Commission staff conducted online research to locate parties entitled to notice. When contact information was not available online, staff telephoned agency offices to request the most accurate contact information for notice parties.

Notice of Proposed Rulemaking. Commission staff filed the Notice of Proposed Rulemaking with the Secretary of State on July 28, 2022. The notice was published in the August 1, 2022, [Oregon Bulletin](#). Commission staff emailed copies of the Notice and proposed rules to the individuals and entities identified in OAR 265-001-0005, which includes sheriffs, chiefs of police, and civilian review bodies, among other parties. Copies of the certificates of service showing email service are attached as Attachment 4. Staff noted that four emails were returned as undeliverable. Three of those were due to scrivener's errors in the email addresses. Staff corrected those errors and resent the emails to the corrected addresses. The remaining returned email was because the recipient was no longer employed by the agency. Staff contacted the agency, received a new contact, and emailed the notice to that contact.

Public Hearings. The Commission has scheduled four public hearings to receive comment on the proposed rules. Hearings will be both in person and virtual. The dates and locations of the hearings are:

- Aug. 30: 150 NW Pacific Park Lane, Suite 100, Bend
- Sept. 1: 100 SW Market St., Portland
- Sept. 7: 700 SE Emigrant, Suite 100, Pendleton
- Sept. 14: 1555 SE McAndrews Road, Suite 200, Medford

Conclusion

The Commission plans to have two meetings in late September to consider public comments, make appropriate revisions, and adopt the rules by the October 1, 2022, deadline.

POP # 254 – Commission on Statewide Law Enforcement Standards of Conduct and Discipline

Purpose: The 2021 Legislature passed House Bill 2930 to establish a Commission on Statewide Law Enforcement Standards of Conduct and Discipline. The Commission is a 15 member commission tasked with adopting rules and prescribing uniform standards of conduct and disciplinary standards and procedures regarding alleged misconduct by law enforcement officers. The non-legislative members of the commission are appointed by the Attorney General and the DPSST Director. The members must elect one person from DPSST and one from DOJ to serve as co-chairs of the commission.

At a minimum, the commission must adopt rules creating standards related to the following areas: unjustified or excessive use of physical or deadly force; sexual harassment; sexual assault; assault; conduct that is motivated by or based on a real or perceived factor of an individual's race, ethnicity, national origin, sex, gender, gender identity, sexual orientation, religion, or homelessness; moral character; and the use of drugs or alcohol while on duty. To accomplish that task, a majority of the commission must agree on (1) the relevant conduct at issue for each subject matter area, (2) the presumptive, mitigated, and aggravated penalties for each category of conduct within that subject matter area, (3) the relevant aggravating and mitigating factors that an employing agency must consider in making disciplinary decisions, and (4) any relevant definitions.

To put the above in context, consider the subject area of moral character. That term is not defined in the bill and the commission must not only agree on the subcategories of conduct that are encompassed within the subject area of moral character, such as truthfulness or conduct constituting a crime, the commission must also agree on the specific instances of misconduct comprising each subcategory. For example, conduct related to truthfulness could include making false or misleading statements in a variety of circumstances, such as testifying falsely, making a false statement in a report, lying to a supervisor, and so on. The commission must then agree on the presumptive, mitigated, and aggravated penalty for each identified act of misconduct, (*e.g.*, termination, days without pay, or training). The commission must also agree on any mitigating or aggravating factors that might apply to a particular instance of misconduct, such as whether the officer corrected or failed to correct the false statement when given an opportunity to do so. And, finally, the commission would have to agree on the relevant definitions, such as what is a material statement.

The commission has been constituted and conducted 13 work sessions. The Department of Justice has provided the infrastructure for the commission, including the services of the Executive Director, paralegal, legal secretary and two AAGs. With extensive assistance from DOJ staff, the commission adopted proposed rules to meet the legislatively imposed deadline. The proposed rules address the seven subject-matter areas required by the legislature and will be published for public comment. The commission, with the assistance of DOJ staff, has scheduled multiple public hearings to

encourage public participation. DOJ staff will also play a critical role in drafting and finalizing the commission's report to the legislature, which is due on September 1, 2022.

The commission's work is ongoing and, after the adoption of the permanent rules in the fall of 2022, we expect the commission to develop specific standards of conduct and expand upon the areas of conduct covered by the rules. At a minimum, DOJ needs funding for the executive director, paralegal and legal secretary positions to ensure that we meet the future work and objectives of the commission.

House Bill 2930 (2021) did fund a Law Enforcement Conduct and Discipline Policy Analyst (OPA 4) to support the commission. As tasks, duties and workload have been realized and classifications have been determined with DOJ-HR, it has been determined that the commission can best be supported with the following positions instead of the OPA 4 position. Therefore, the Department of Justice is requesting funding not provided in House Bill 2930 (2021) as follows: 1) to reclassify the existing OPA 4 position to a (PEM – E) position that was originally requested to serve as the Executive Director; 2) Paralegal position; 3) Legal Secretary position; 4) funding to pay for DOJ – General Counsel Division attorney time for legal advice for the Commission.

How Achieved: The Department of Justice is requesting reclassification of the current OPA 4 position to a PEM-E position to serve as the Executive Director plus two new, permanent, full-time positions (2.76 FTE) and for the anticipated attorney general charges from seeking DOJ legal advice from the General Counsel Division.

Quantifying Results: Funding for these positions will allow the work of the commission to continue in the most effective manner possible and will help the commission be successful.

2023-25 Staffing Impact: 2 Positions / 1.76 FTE

Paralegal – 1 position/0.88 FTE

Legal Secretary – 1 position/0.88 FTE

2025-27 Staffing Impact: 2 Positions / 2.00 FTE

Paralegal – 1 position/1.00 FTE

Legal Secretary – 1 position/1.00 FTE

Revenue Source: \$ 752,164 General Fund

Resources the Commission considered while drafting the rules are as follows and can be found on the Commission website <https://justice.oregon.gov/lesc/> :

- [NYPD Matrix](#)
- [Presentation by Amy Litwin, Deputy Commissioner, Department of Advocates Office, New York City Police Department](#)
- [Corrective Action Guide from the Portland Police Bureau](#)
- [Baltimore Disciplinary Matrix](#)
- [Old Portland Police Bureau Discipline Guide](#)
- [A Draft Discipline Matrix](#)
- [Power Point Presentation by Michael Slauson \(Commission's Work and Legislative Deadlines\)](#)
- [Commissioner Karia's email – City of Portland Corrective Action Guide](#)
- [Commissioner Makler's Email – Rodrigues v. City of Portland Police Bureau – Hearing Officer's Report and Recommendation](#)
- [Commissioner Schuback's Email – Draft Concept Guide](#)
- [Discipline Guide Example](#)
- [Elements of Rules – Power Point Presentation](#)
- [Staff Draft Edits to Commissioner Schuback's Draft Guide Format-For Discussion Purposes Only-Not Reviewed or Endorsed by Commission](#)
- [Eugene Police Department – Policy 103 – Standards Duties and Conduct 2-15-22](#)
- [Clackamas County Sheriff Code of Conduct](#)
- [NYPD Disciplinary System Penalty Guidelines Effective 01-15-2021 – Complete](#)
- [DPSST Moral Fitness – Private Security](#)
- [La Grande PD Policy Manual \(Lexipol Example\)](#)
- [National Consensus Policy on Use of Force 07102020v3](#)
- [Standards of Conduct June 2020 – IACP](#)
- [Use of Race Policy](#)
- [Commissioner Makler Email – OPB Article](#)
- [Commissioner Brandenburg Email – CCSO Policy #14 Code of Conduct \(Proposed\)](#)
- [Commissioner Karia Email – Working Draft Document](#)
- [Power Point Presentation – Sexual Assault, Assault, Unjustified/Excessive Force, Sexual Harassment](#)
- [Commissioner Schuback's Email – OAR 839-005-0030 and ORS 243.217](#)
- [Power Point Presentation – Conduct Based on Suspect Classification, Moral Character, Use of Drugs/Alcohol on Duty](#)
- [Draft Concept Guide](#)
- [Discussion Points – Revised during June 22, 2022 meeting](#)
- [Draft Mitigating and Aggravating Factors-For Discussion Purposes Only-Not Reviewed or Endorsed by Commission](#)
- [Draft Example of Rules – For Discussion Purposes only](#)
- [Discussion Points – Prepared by Staff – July 12, 2022](#)

- [Draft Rules – Revised during July 21, 2022, meeting](#)
- [Draft Aggravating and Mitigating Factors – Revised during July 21, 2022, meeting](#)
- [Commissioner Karia Email – Commissioner Karia Draft Aggravating/Mitigating Factors for Discussion](#)

DRAFT

RULES PROPOSED:

265-005-0001, 265-005-0005, 265-005-0010, 265-005-0015, 265-005-0020, 265-005-0025, 265-005-0030, 265-010-0001, 265-010-0005, 265-010-0010, 265-010-0015, 265-010-0020, 265-010-0025, 265-010-0030, 265-010-0035

ADOPT: 265-005-0001

RULE TITLE: Definitions

RULE SUMMARY: Provides the definitions that apply to these rules.

RULE TEXT:

- (1) "Assault" has the meaning given that term in ORS 163.115.
- (2) "Civilian or community oversight board, agency or review body" has the meaning given that term in ORS 243.812.
- (3) "Controlled Substance" has the meaning given that term in ORS 475.005.
- (4) "Deadly physical force" has the meaning given that term in ORS 161.015.
- (5) "Disciplinary action" includes a personnel action against a law enforcement officer 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.
- (6) "Disciplining body" means a law enforcement agency or, if applicable, a civilian or community oversight board, agency or review body.
- (7) "Domestic violence" has the meaning given that term in ORS 135.230.
- (8) "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.
- (9) "Intentional" has the meaning given that term in ORS 161.085.
- (10) "Justification" means a justifiable use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267.
- (11) "Just Cause" has the meaning given that term in ORS 236.350.
- (12) "Law enforcement agency" has the meaning given that term in ORS 131.930.
- (13) "Law enforcement officer" has the meaning given that term in ORS 131.930.
- (14) "Misconduct" means conduct that violates state, tribal 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.
- (15) "Misuse of authority for financial gain" occurs when a law enforcement officer's vote, opinion, judgment, action, decision or exercise of discretion is influenced by the officer's solicitation or acceptance of a financial benefit for the officer or a third person. This rule does not apply to agency-approved fundraising activities.

- (16) “Moral Character” means performing the duties of a law enforcement officer in a manner that demonstrates honesty, fairness, and respect for the rights of others and for the laws of the state and the nation.
- (17) “Physical Force” has the meaning given that term in ORS 161.015.
- (18) “Physical Injury” has the meaning given that term in ORS 161.015.
- (19) “Serious Physical Injury” has the meaning given that term in ORS 161.015.
- (20) “Sexual assault” has the meaning given that term in ORS 243.317.
- (21) “Sex crime” has the meaning given that term in ORS 163A.005.
- (22) “Sexual Harassment” has the meaning given that term in OAR 839-005-0030.
- (23) “Stalking” means engaging in conduct constituting the crime of stalking in ORS 163.732.
- (24) “Untruthfulness” means knowingly or willfully making false statements, 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. A statement is not considered untruthful 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.

ADOPT: 265-005-0005

RULE TITLE: Application of Oregon Revised Statutes

RULE SUMMARY: States that the rules are subject to the Oregon Revised Statutes.

RULE TEXT:

These rules are subject to the Oregon Revised Statutes, including but not limited to ORS 243.808, 236.350, and 243.706.

ADOPT: 265-005-0010

RULE TITLE: Burden of Proof

RULE SUMMARY: Adopts statutory burden of proof for disciplining bodies to prove misconduct.

RULE TEXT:

- (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 after July 1, 2021, may include a standard of just cause other than the standard as defined in ORS 236.350.

ADOPT: 265-005-0015

RULE TITLE: Disciplinary Action for Misconduct Not Identified By These Rules

RULE SUMMARY: States that disciplinary bodies may take disciplinary action pursuant to their own policies for misconduct not identified by these rules.

RULE TEXT:

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.

ADOPT: 265-005-0020

RULE TITLE: Multiple Instances of Misconduct

RULE SUMMARY: Establishes a procedure if, in an arbitration proceeding with multiple instances of misconduct at issue, the arbitrator finds that the disciplinary body did not meet its burden of proof on one or more instances of misconduct.

RULE TEXT:

(1) 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.

(2) The disciplining body may, at its discretion, amend the disciplinary action on any instances of misconduct upheld by the arbitrator.

(3) Nothing in this rule precludes the officer from initiating an arbitration proceeding regarding a disciplinary action imposed after the referral by the arbitrator.

ADOPT: 265-005-0025

RULE TITLE: Incorporation of Rules

RULE SUMMARY: Requires law enforcement agencies to incorporate these rules into their employment policies.

RULE TEXT:

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.

ADOPT: 265-005-0030

RULE TITLE: Application of Aggravating and Mitigating Factors

RULE SUMMARY: Establishes a procedure for a disciplinary body's application of aggravating and mitigating factors.

RULE TEXT:

- (1) 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 OAR 265-015-0035 justifies a departure from the presumptive sanction.
- (2) 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.
- (3) 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.
- (4) A disciplining body shall not apply an aggravating or mitigating factor if the factor is already included in determining whether misconduct occurred (example: intentionality).
- (5) A disciplining body has the discretion to impose mitigated or aggravated sanctions as permitted by these rules. A disciplining body shall document its reasoning, including whether it found aggravating or mitigating factors and the relative weight it gave to each factor, for imposing a disciplinary action other than the presumptive sanction.

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.

ADOPT: 265-010-0005

RULE TITLE: Sexual Harassment

RULE SUMMARY: Establishes that the presumptive sanctions for engaging in conduct constituting sexual harassment are economic sanctions and identifies mitigated sanctions and aggravated 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 sexual harassment:

- (1) The presumptive sanction shall be demotion, suspension without pay, or salary reduction.
- (2) The mitigated sanction shall be a written reprimand.
- (3) The aggravated sanction shall be termination.

ADOPT: 265-010-0010

RULE TITLE: Assault

RULE SUMMARY: Establishes that the presumption sanction for engaging in conduct constituting 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 intentional assault without justification:

- (1) The presumptive sanction shall be termination.
- (2) The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.

ADOPT: 265-010-0015

RULE TITLE: Unjustified or Excessive Use of Physical or Deadly Force

RULE SUMMARY: Establishes that the exclusive sanction for the unjustified use of deadly physical force that results in death or physical injury is termination. Establishes that the presumptive sanction for the unjustified use of physical force that results in death or physical injury is termination and identifies mitigated sanctions.

RULE TEXT:

- (1) 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 or excessive use of deadly physical force by the officer that results in death or serious physical injury.

(2) 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 unjustified or excessive use of physical force by the officer that results in death or serious physical injury:

(a) The presumptive sanction shall be termination.

(b) The mitigated sanction shall be suspension without pay, salary reduction, demotion, or a written reprimand.

ADOPT: 265-010-0020

RULE TITLE: Conduct 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

RULE SUMMARY: Establishes that the presumption sanction for engaging in conduct that is motivated by an individual's protected status is termination and identifies mitigated sanctions.

RULE TEXT:

(1) 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 in violation of statutory or constitutional law by intentionally targeting an individual for a suspected violation of law based solely on the individual's real or perceived race, ethnicity, national origin, sex, gender identity, sexual orientation, religion, or homelessness:

(a) The presumptive sanction shall be termination.

(b) The mitigated sanction shall be suspension without pay, salary reduction or demotion.

(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.

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.

ADOPT: 265-010-0030

RULE TITLE: The Use of Drugs or Alcohol While on Duty

RULE SUMMARY: Establishes that the presumptive sanction for use of drugs or alcohol on while on duty is termination and identifies mitigating sanctions

RULE TEXT:

(1) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the law enforcement officer engaged in misconduct by unlawfully using a controlled substance while on duty.

(a) The presumptive sanction shall be termination.

(b) The mitigated sanctions shall include suspension without pay, a salary reduction, or demotion.

(2) A disciplining body shall impose upon a law enforcement officer disciplinary action within the following disciplinary range upon a finding that the law enforcement officer engaged in misconduct by being impaired to any degree due to the consumption of an alcoholic beverage while reporting to duty or while on duty.

(a) The presumptive sanction shall be termination.

(b) The mitigated sanctions shall be suspension without pay, a salary reduction, demotion, or written reprimand.

(3) For the purposes of this rule, "being impaired to any degree" means having a BAC greater than 0.00.

ADOPT: 265-010-0035

RULE TITLE: Aggravating and Mitigating Factors

RULE SUMMARY: Identifies a non-exclusive 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.
- (e) Significant nature and extent of property damage or harm.
- (f) Officer made efforts to conceal or cover up conduct or behavior.
- (g) Does not accept responsibility if misconduct is undisputed.
- (h) Motivated by personal interest or gain.
- (i) Failure to meet documented expectations.
- (j) Supervisory position.
- (k) Failed or declined to attempt to de-escalate the encounter even though feasible to do so.
- (l) Low probability or limited potential for rehabilitation.
- (m) The nature of the event allowed time for deliberate reflection or action.
- (n) Victim's vulnerability.
- (o) The presence of training or experience that is germane to the incident.
- (p) Other relevant factors are present that justify imposing an aggravated sanction.

(2) Mitigating Factors:

- (a) Positive employment history.
- (b) Self-reported the violation.
- (c) Unintentional conduct.
- (d) Limited impact upon the agency's mission, reputation, or relationship with the community.
- (e) Limited nature and extent of property damage or harm.
- (f) Attempt to ameliorate or correct the conduct or behavior.
- (g) Officer promptly accepted responsibility.
- (h) Motivated by public interest or wellbeing of others.
- (i) No repeated or other sustained misconduct.
- (j) Role of the officer (subordinate to supervisor on scene).
- (k) Officer attempted to de-escalate the encounter.
- (l) Potential for rehabilitation.
- (m) The nature of the event was unpredictable, volatile, or unfolded rapidly, not allowing time for deliberate action.
- (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.

CERTIFICATE OF SERVICE

I certify that on August 1, 2022, I delivered copies of the Notices of Proposed Rulemaking including Statement of Need & Fiscal Impact (Chapter 265, Division 5 and Chapter 265, Division 10) to the following parties via e-mail:

Associated Press	apportland@ap.org
Capitol Press Room	cradnovich@statesmanjournal.com
Oregon Public Broadcasting	opbnews@opb.org
The Oregonian	newsroom@oregonian.com
Willamette Week	amesh@wweek.com
Rep. Janelle Bynum	Rep.JanelleBynum@oregonlegislature.gov
Senator Peter Courtney	Sen.PeterCourtney@oregonlegislature.gov
Senator Lew Frederick	Sen.LewFrederick@oregonlegislature.gov
Senator Girod	Sen.FredGirod@oregonlegislature.gov
Rep. Paul Holvey	Rep.PaulHolvey@oregonlegislature.gov
Rep. Jason Kropf	Rep.JasonKropf@oregonlegislature.gov
Rep. Ron Noble	Rep.RonNoble@oregonlegislature.gov
Rep. Tawana D. Sanchez	Rep.TawnaSanchez@oregonlegislature.gov
Senator Elizabeth Steiner Hayward	Sen.ElizabethSteinerHayward@oregonlegislature.gov
Police Accountability Commission (Portland)	policeaccountability@portlandoregon.gov
Police Advisory Board (Sherwood)	PoliceAdvisoryBoard@sherwoodoregon.gov
Public Safety Advisory Board Committee (West Linn)	publicsafetyadvisoryboard@westlinnoregon.gov
Police Advisory Board (Cornelius)	police@ci.cornelius.or.us
Civilian Review Board (Eugene)	PoliceAuditor@eugene-or.gov
Springfield Police Advisory Committee	jcrawford@springfield-or.gov
Community Police Review Advisory Board (Corvallis)	Kristine.Steeves@corvallisoregon.gov
Chiefs Advisory Group (Oregon City)	kdilbeck@orcify.org
Community Policing Advisory Commission (Forest Grove)	kkottkey@forestgrove-or.gov
Police Advisory Committee (Medford)	amanda.linville@cityofmedford.org

Dated this 1st day of August, 2022.

s/ Toni Kemple
Toni Kemple, Paralegal
Rules Coordinator
Oregon Department of Justice

CERTIFICATE OF SERVICE

I certify that on August 1, 2022, I delivered copies of the Notice of Proposed Rulemaking including Statement of Need & Fiscal Impact (Chapter 265, Division 5 and Chapter 265, Division 10) to the following parties via e-mail:

Baker County District Attorney Greg Baxter
gbaxter@bakercounty.org

Clackamas County District Attorney John
Wentworth jwentworth@clackamas.us

Columbia County District Attorney Jeff Auxier
jeff.auxier@columbiacountyor.gov

Crook County District Attorney Kari Hathorn
kari.hathorn@co.crook.or.us

Deschutes County District Attorney John
Hummel john.hummel@dcda.us

Gilliam County District Attorney Marion
Weatherford
marion.weatherford@co.gilliam.or.us

Harney County District Attorney Ryan Hughes
ryan.hughes@co.harney.or.us

Jackson County District Attorney Beth Heckert
heckerbe@jacksoncounty.org

Josephine County District Attorney Joshua
Eastman jeastman@josephinecounty.gov

Lake County District Attorney Ted Martin
tmartin@co.lake.or.us

Lincoln County District Attorney Lane
Danforth
ldanforth@co.lincoln.or.us

Malheur County District Attorney Dave
Goldthorpe dave.goldthorpe@malheurco.org

Morrow County District Attorney Justin
Nelson
jnelson@co.morrow.or.us

Polk County District Attorney Aaron Felton
felton.aaron@co.polk.or.us

Tillamook County District Attorney William
Porter
wporter@co.tillamook.or.us

Union County District Attorney Kelsie
McDaniel
kmcdaniel@union-county.org

Wasco County District Attorney Matthew Ellis
matthewe@co.wasco.or.us

Wheeler County District Attorney Gretchen
Ladd
gladd@co.wheeler.or.us

Benton County District Attorney John M.
Haroldson
john.m.haroldson@co.benton.or.us

Clatsop County District Attorney Ron
Brown
rbrown@co.clatsop.or.us

Coos County District Attorney Paul Frasier
pfrasier@co.coos.or.us

Curry County District Attorney Joshua
Spansail spansailj@co.curry.or.us

Douglas County District Attorney Rick
Wesenberg rlwesemb@co.douglas.or.us

Grant County District Attorney Jim
Carpenter carpenterj@grantcounty-or.gov

Hood River County District Attorney Carrie
Rasmussen
carrie.rasmussen@hoodrivercounty.gov

Jefferson District Attorney Steven Leriche
sleriche@jcda.us

Klamath County District Attorney Evelyn
Costello ecostello@klamathcounty.org

Lane County District Attorney Patty Perlow
patty.perlow@lanecountyor.gov

Linn County District Attorney Douglas
Marteeny
dmarteeny@co.linn.or.us

Marion County District Attorney Paige
Clarkson
pclarkson@co.marion.or.us

Multnomah County District Attorney Mike
Schmidt mike.schmidt@mcda.us

Sherman County District Attorney Wade
McLeod wmcleod@co.sherman.or.us

Umatilla County District Attorney Daniel
Primus
daniel.primus@umatillacounty.net

Wallowa County District Attorney Rebecca
Frolander wcda@co.wallowa.or.us

Washington County District Attorney Kevin
Barton kevin_barton@co.washington.or.us

Yamhill County District Attorney Bradley
Berry
berryb@co.yamhill.or.us

Dated this 1st day of August, 2022.

s/Toni Kemple

Toni Kemple, Paralegal

Rules Coordinator

Oregon Department of Justice

CERTIFICATE OF SERVICE

I certify that on August 1, 2022, I delivered copies of the Notice of Proposed Rulemaking including Statement of Need & Fiscal Impact (Chapter 265, Division 5 and Chapter 265 Division 10) to the following parties via e-mail:

Baker County Sheriff Travis Ash tash@bakersheriff.org	Benton County Sheriff Jef Van Arsdall jefri.vanarsdall@co.benton.or.us
Clackamas County Sheriff Angela	Clatsop County Sheriff Matthew Phillips sheriff@co.clatsop.or.us
Brandenburg angiebran@co.clackamas.or.us	Coos County Sheriff Craig Zanni craigzanni@co.coos.or.us
Columbia County Sheriff Brian Pixley brian.pixley@columbiacountyor.gov	Curry County Sheriff John Ward WardJ@co.curry.or.us
Crook County Sheriff John Gautney john.gautney@crookcountysheriff.org	Douglas County Sheriff John Hanlin j.hanlin@co.douglas.or.us
Deschutes County Sheriff Shane Nelson shane.nelson@deschutes.org	Grant County Sheriff Todd McKinley mckinleyt@grantcounty-or.gov
Gilliam County Sheriff Gary Bettencourt sheriff@co.gilliam.or.us	Hood River County Sheriff Matt English admin@hooddriversheriff.com
Harney County Sheriff Dan Jenkins dan.jenkins@co.harney.or.us	Jefferson County Sheriff Jason Pollock jpollock@jcsso.law
Jackson County Sheriff Nathan Sickler SickleNJ@jacksoncounty.org	Klamath County Sheriff Chris Kaber ckaber@klamathcounty.org
Josephine County Sheriff Dave Daniel jocosherriff@co.josephine.or.us	Lane County Sheriff Clifton Harrold clifton.harrold@lanecountyor.gov
Lake County Sheriff Michael Taylor mtaylor@co.lake.or.us	Linn County Sheriff Michelle Duncan m.duncan@linnsheriff.org
Lincoln County Sheriff Curtis Landers clanders@co.lincoln.or.us	Marion County Sheriff Joe Kast sheriff@co.marion.or.us
Malheur County Sheriff Brian Wolfe bwolfe@malheurco.org	Multnomah County Sheriff Michael Reese mike.reese@mcsso.us
Morrow County Sheriff Kenneth Matlack kmatlack@co.morrow.or.us	Sherman County Sheriff Brad Lohrey sheriff@shermancounty.net
Polk County Sheriff Mark Garton Garton.Mark@co.polk.or.us	Umatilla County Sheriff Terry Rowan terry.rowan@umatillacounty.gov
Tillamook County Sheriff Joshua R. Brown jbrown@co.tillamook.or.us	Wallowa County Sheriff Joel Fish wcsheriff@co.wallowa.or.us
Union County Sheriff Cody Bowen sheriff@union-county.org	Washington County Sheriff Patrick Garrett pat_garrett@co.washington.or.us
Wasco County Sheriff Lane Magill sheriff@co.wasco.or.us	Yamhill County Sherriff Tim Svenson sheriff@co.yamhill.or.us
Wheeler County Sheriff Mike Smith msmith@co.wheeler.or.us	

Dated this 1st day of August, 2022.

s/Toni Kemple
Toni Kemple, Paralegal
Rules Coordinator
Oregon Department of Justice

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Baker County Sheriff Travis Ash
tash@bakersheriff.org
Clackamas County Sheriff Angela
Brandenburg angiebran@co.clackamas.or.us
Columbia County Sheriff Brian Pixley
brian.pixley@columbiacountyor.gov
Crook County Sheriff John Gautney
john.gautney@crookcountysheriff.org
Deschutes County Sheriff Shane Nelson
shane.nelson@deschutes.org
Gilliam County Sheriff Gary Bettencourt
sheriff@co.gilliam.or.us
Harney County Sheriff Dan Jenkins
dan.jenkins@co.harney.or.us
Jackson County Sheriff Nathan Sickler
SickleNJ@jacksoncounty.org
Josephine County Sheriff Dave Daniel
jocosherriff@co.josephine.or.us
Lake County Sheriff Michael Taylor
mtaylor@co.lake.or.us
Lincoln County Sheriff Curtis Landers
clanders@co.lincoln.or.us
Malheur County Sheriff Brian Wolfe
bwolfe@malheurco.org
Morrow County Sheriff Kenneth Matlack
kmatlack@co.morrow.or.us
Polk County Sheriff Mark Garton
Garton.Mark@co.polk.or.us
Tillamook County Sheriff Joshua R. Brown
jbrown@co.tillamook.or.us
Union County Sheriff Cody Bowen
sheriff@union-county.org
Wasco County Sheriff Lane Magill
sheriff@co.wasco.or.us
Wheeler County Sheriff Mike Smith
msmith@co.wheeler.or.us

Benton County Sheriff Jef Van Arsdall
jefri.vanarsdall@co.benton.or.us
Clatsop County Sheriff Matthew Phillips
sheriff@co.clatsop.or.us
Coos County Sheriff Craig Zanni
craigzanni@co.coos.or.us
Curry County Sheriff John Ward
WardJ@co.curry.or.us
Douglas County Sheriff John Hanlin
j.hanlin@co.douglas.or.us
Grant County Sheriff Todd McKinley
mckinleyt@grantcounty-or.gov
Hood River County Sheriff Matt English
admin@hooddriversheriff.com
Jefferson County Sheriff Jason Pollock
jpollock@jcsso.law
Klamath County Sheriff Chris Kaber
ckaber@klamathcounty.org
Lane County Sheriff Clifton Harrold
clifton.harrold@lanecountyor.gov
Linn County Sheriff Michelle Duncan
m.duncan@linnsheriff.org
Marion County Sheriff Joe Kast
sheriff@co.marion.or.us
Multnomah County Sheriff Michael Reese
mike.reese@mcso.us
Sherman County Sheriff Brad Lohrey
sheriff@shermancounty.net
Umatilla County Sheriff Terry Rowan
terry.rowan@umatillacounty.gov
Wallowa County Sheriff Joel Fish
wcsheff@co.wallowa.or.us
Washington County Sheriff Patrick Garrett
pat_garrett@co.washington.or.us
Yamhill County Sherriff Tim Svenson
sheriff@co.yamhill.or.us

Dated this 1st day of August, 2022.

s/Toni Kemple
Toni Kemple, Paralegal
Rules Coordinator
Oregon Department of Justice

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ABC	
Marcia Harnden, Chief of Police (Albany)	marcia.harnden@cityofalbany.net
Tighe O'Meara, Chief of Police (Ashland)	tighe.omeara@ashland.or.us
Stacy Kelly, Chief of Police (Astoria)	ehalverson@astoria.or.us
Eric Halverson, Deputy Chief of Police	skelly@astoria.or.us
Richard Schmitz, Chief of Police (Aumsville)	rschmitz@aumsville.us
Ty Duby, Chief of Police (Baker City)	Chief@bakercitypd.gov
Cory Dhillon, Chief of Police (Bandon)	cdhillon@cityofbandon.org
Ronda Groshong, Chief of Police (Beaverton)	rgroshong@beavertonoregon.gov
Mike Krantz, Chief of Police (Bend)	policechief@bendoregon.gov
Rick Stokoe, Chief of Police (Boardman)	rstokoe@cityofboardman.com
Kelby McCrae, Chief of Police (Brookings)	mccraek@brookings.or.us
Nancy Gardner, Chief of Police (Burns)	ngardner@cityofburnsor.gov
Jorge Tro, Chief of Police (Canby)	troj@canbypolice.com
Jason Schermerhorn, Chief of Police (Cannon Beach)	schermerhorn@ci.cannon-beach.or.us
Kevin J. Martinez, Chief of Police (Carlton)	kmartinez@ci.carlton.or.us
Kristine Allison, Chief of Police (Central Point)	kris.allison@centralpointoregon.gov
Larry Larson, Chief of Police (Coburg)	larry.larson@ci.coburg.or.us
Gerald Bartolomucci, Operations Sergeant (Columbia City)	gbartolomucci@columbia-city.org
Chris Chapanar, Chief of Police (Coos Bay)	cchapanar@coosbay.org
Scott Sanders, Chief of Police (Coquille)	ssanders@cityofcoquille.org
Nicholas P. Hurley, Chief of Police (Corvallis)	police@corvallisoregon.gov
Scott Shepherd, Chief of Police (Cottage Grove)	scotts@cgpolicy.org
DEFGH	
Thomas Simpson, Chief of Police (Dallas)	tom.simpson@dallasor.gov
Darin May, Chief of Police (Eagle Point)	darinmay@cityofeaglepoint.org
Chris Skinner, Chief of Police (Eugene)	policechief@ci.eugene.or.us
John Pitcher, Chief of Police (Florence)	john.pitcher@ci.florence.or.us
Henry Reimann, Chief of Police (Forest Grove)	hreimann@forestgrove-or.gov
Jeffrey T. Bowman, Chief of Police (Gearhart)	gearhartpd@cityofgearhart.com
Mark Chase, Chief of Police (Gervais)	mchase@cityofgervais.com
John Schmerber, Chief of Police (Gladstone)	jschmerber@gladstoneoregon.us
Warren Hensman, Public Safety Director/Chief (Grants Pass)	whensman@grantspassoregon.gov
Travis Gullberg, Chief of Police (Gresham)	travis.gullberg@greshamoregon.gov
Richard Sheldon, Chief of Police (Happy Valley)	rsheldon@clackamas.us
Jason Edmiston, Chief of Police (Hermiston)	jedmiston@hermiston.or.us
Jim Coleman, Chief of Police (Hillsboro)	jim.coleman@hillsboro-oregon.gov

Ryan DeLange, Chief of Police (Hines)	rdelange@ci.hines.or.us
David Rash, Chief of Police (Hubbard)	drash@cityofhubbard.org
IJKLM	
Robert Mason, Chief of Police (Independence)	mason.robert@ci.independence.or.us
Sgt Scott Moore, Chief of Police (John Day)	moores@grantcounty-or.gov
Bob Morris, Chief of Police (Junction City)	bmorris@jcpolice.org
John Teague, Chief of Police (Keizer)	teaguej@keizer.org
Ernest Happala, Chief of Police (King City)	ehappala@ci.king-city.or.us
Rob Dentinger, Chief of Police (Klamath Falls)	rdentinger@klamathfalls.city
Gary Bell, Chief of Police (La Grande)	gbell@cityoflagrande.org
Dale Jorgensen, Chief of Police (Lake Oswego)	djorgensen@ci.oswego.or.us
Frank Stevenson, Chief of Police (Lebanon)	fstevenson@ci.lebanon.or.us
Jerry Palmer, Chief of Police (Lincoln City)	jpalmer@lincolncity.org
Tanner Stanfill, Chief of Police (Madras)	tstanfill@ci.madras.or.us
Matt Scales, Chief of Police (McMinnville)	matt.scales@mcminnvilleoregon.gov
Justin Ivens, Chief of Police (Medford)	Justin.iven@cityofmedford.org
Doug Boedigheimer, Chief of Police (Milton-Freewater)	doug.boedigheimer@milton-freewater-or.gov
Luke Strait, Chief of Police (Milwaukie)	StraitL@milwaukieoregon.gov
Chris Long, Chief of Police (Molalla)	clong@molallapolice.com
Isaiah Haines, Chief of Police (Monmouth)	ihaines@ci.monmouth.or.us
Mark Daniel, Chief of Police (Mount Angel)	mdaniel@ci.mt-angel.or.us
Jonathan Brewster, Chief of Police (Myrtle Creek)	jpbrewster@myrtlecreek.org
Scott Robinson, Chief of Police (Myrtle Point)	s.robinson@myrtlepointpolice.com
NOPQR	
Jeff Kosmicki, Chief of Police (Newberg-Dundee)	jeff.kosmicki@newbergoregon.gov
Jason Malloy, Chief of Police (Newport)	j.malloy@newportpolice.net
Gary McCullough, Chief of Police (North Bend)	gmccullough@northbendpd.org
James Haxton, Chief of Police (North Plains)	James_haxton@co.washington.or.us
Don Ballou, Chief of Police (Nyssa)	dballou@nyssacity.org
Kevin Martin, Chief of Police (Oakridge)	kevinmartin@ci.oakridge.or.us
Michael Iwai, Chief of Police (Ontario)	michael.iwai@ontariooregon.org
Jim Band, Chief of Police (Oregon City)	jband@orcitey.org
Charles Byram, Chief of Police (Pendleton)	Chuck.Byram@ci.pendleton.or.us
Ken Rueben, Chief of Police (Philomath)	ken.rueben@philomathoregon.gov
William J. Caldera, Chief of Police (Pilot Rock)	william.caldera@cityofpilotrock.org
Hank Hobart, Chief of Police (Port Orford)	hhobart@portorford.org
Charles Lovell, Chief of Police (Portland)	charles.lovell@portlandoregon.gov
Dale Cummins, Chief of Police (Prineville)	dcummins@prinevillepd.org
Greg Griffith, Chief of Police (Ranier)	ggriffith@cityofrainier.com
Devin Lewis, Chief of Police (Redmond)	Devin.lewis@redmondoregon.gov
Bob Gross, Chief of Police (Reedsport)	b.gross@cityofreedsport.org
Jim Williams, Chief of Police (Rogue River)	j.williams@rogueiverpolice.org
Gary Klopfenstein, Chief of Police (Roseburg)	gklopfenstein@cityofroseburg.org
STUVWXYZ	

Brian Greenway, Chief of Police (Saint Helens)	bgreenway@sthelensoregon.gov
Trevor Womack, Chief of Police (Salem)	twomack@cityofsalem.net
Ernie Roberts, Chief of Police (Sandy)	eroberts@ci.sandy.or.us
Steven Lougal, Chief of Police (Scappoose) Sgt Justin Stevenson	slougal@scappoosepolice.com jstevenson@scappoosepolice.com
Dave Ham, Chief of Police (Seaside)	dham@cityofseaside.us
Jeff Groth, Chief of Police (Sherwood)	grothj@sherwoodoregon.gov
Jim Anglemier, Chief of Police (Silverton)	janglemier@silverton.or.us
Andrew Shearer, Chief of Police (Springfield)	ashearer@springfield-or.gov
Bryon Zumwalt, Chief of Police (Stanfield)	zumwalt@cityofstanfield.com
David Frisendahl, Chief of Police (Stayton)	dfrisendahl@ci.stayton.or.us
Cory Darling, Chief of Police (Sunriver)	cory.darling@sunriverpd.org
Troy Mills, Chief of Police (Sutherlin)	t.mills@ci.sutherlin.or.us
Jeff W. Lynn, Chief of Police (Sweet Home)	jlynn@sweethomeor.gov
Jennifer Snook, Chief of Police (Talent)	snook@cityoftalent.org
Tom M. Worthy, Chief of Police (The Dalles)	tworthy@ci.the-dalles.or.us
Kathy McAlpine, Chief of Police (Tigard)	Kathy.McAlpine@tigard-or.gov
Raymond Rau, Chief of Police (Tillamook)	rrau@tillamookor.gov
Michael Pace, Chief of Police (Toledo)	michael.pace@cityoftoledo.org
Greg Pickering, Chief of Police (Tualatin)	gpickering@tualatin.gov
Donald Taylor, Chief of Police (Turner)	chiefdtaylor@cityofturner.org
Darla Huxel, Chief of Police (Umatilla)	Huxel@umatilla-city.org
Michael Conner, Chief of Police (Vernonia)	conner@vernonia-or.gov
William Elliott, Chief of Police (Warm Springs)	william.elliott@wstribes.org
Matthew J. Workman, Chief of Police (Warrenton)	mworkman@ci.warrenton.or.us
Peter Mahuna, Chief of Police (West Linn)	pmahuna@westlinnoregon.gov
Robert Wurpes, Chief of Police (Wilsonville)	robertwur@clackamas.us
Marty Pilcher, Chief of Police (Woodburn)	marty.pilcher@ci.woodburn.or.us
Greg Graven, Chief of Police (Yamhill)	greg.graven@cityofyamhill.org
Superintendent Terri Davie Oregon State Police	Terri.davie@osp.oregon.gov ask.osp@osp.oregon.gov

Dated this 1st day of August, 2022.

s/ Toni Kemple
Toni Kemple, Paralegal
Rules Coordinator
Oregon Department of Justice