

From: [Anil Karia](#)
To: [Boss Frederick](#); [Slauson Michael](#)
Cc: [ORLawEnf Commission](#)
Subject: LESC, Commissioner Karia Comments/Notes RE Proposed Rules
Date: Monday, September 19, 2022 6:54:49 PM
Attachments: [KARIA EDITS Notice of Proposed Rulemaking - OAR 265 \(Division 5\) 9.19.22.docx](#)
[KARIA EDITS Notice of Proposed Rulemaking - OAR 265 \(Division 10\) 9.19.22.docx](#)

CAUTION EXTERNAL EMAIL* This email originated from outside of DOJ. Treat attachments and links with caution. *CAUTION EXTERNAL EMAIL

Fred and Michael –

I will be at the airport and boarding a plane as the 9/21/22 meeting is being held. I will try to call-in, but no guarantees that I can meaningfully participate while the flight attendants are telling me what to do with my flotation device for a “water landing.”

In any event, I’ve gathered some of my notes about the proposed rules and included them in track changes format (attached). I have tried to reflect “clean-ups” that I believe are appropriate while staying true to the votes of the Commission.

I recall during our last meeting that Michael was working on a revised rule for single/multiple instances of misconduct. If Michael has that draft rule language available, is there any chance I can get a sneak peek at it so I can provide written comments before Wednesday?

Thanks,
Anil

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SECRETARY OF STATE

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DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 265

**COMMISSION ON STATEWIDE LAW ENFORCEMENT STANDARDS OF CONDUCT
AND DISCIPLINE**

FILED
07/28/2022 1:48 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Standards of Conduct and Disciplinary Procedures Applicable to Law Enforcement Officers

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/16/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Toni Kemple
971-673-1880
toni.c.kemple@doj.state.or.us

100 SW Market St
Portland, OR 97201

Filed By:
Toni Kemple
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/30/2022

TIME: 1:00 PM - 2:00 PM

OFFICER: Frederick Boss

ADDRESS: Oregon Department of Justice, Bend
150 NW Pacific Park Lane, Suite 100
Bend, OR 97701

SPECIAL INSTRUCTIONS:

All hearings will be conducted both in person and virtually. For information about how to participate virtually, please visit <https://justice.oregon.gov/lesc/> . Hearings may be extended for an additional hour if needed to ensure that all witnesses have the opportunity to testify.

DATE: 09/01/2022

TIME: 1:00 PM - 2:00 PM

OFFICER: Frederick Boss

ADDRESS: Oregon Department of Justice, Portland
100 SW Market St
Portland, OR 97201

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DATE: 09/07/2022

TIME: 1:00 PM - 2:00 PM

OFFICER: Frederick Boss

ADDRESS: Oregon Department of Justice, Pendleton

700 SE Emigrant, Suite 100

Pendleton, OR 97801

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DATE: 09/14/2022

TIME: 1:00 PM - 2:00 PM

OFFICER: Frederick Boss

ADDRESS: Oregon Department of Justice, Medford

1555 SE McAndrews Road, Suite 200

Medford, OR 97504

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NEED FOR THE RULE(S)

ORS 243.812 established the Commission on Statewide Law Enforcement Standards of Conduct and Discipline (“the Commission”). The purpose of the Commission is to adopt rules that provide uniform standards of law enforcement conduct and discipline. The Commission is required to adopt rules to establish uniform standards of conduct and discipline by October 1, 2022. These rules are proposed to meet the requirements of ORS 243.812.

ORS 243.812 applies to members of the Oregon State Police, sheriffs, and municipal police officers, the agencies that employ them, arbitrators, and civilian or community oversight boards, agencies or review boards. In order to meet the deadline set by the Legislature for the initial rules, the Commission focused on conduct where termination would be the exclusive or presumptive sanction. These rules are needed to provide uniformity in law enforcement discipline for these categories of conduct for the affected officers and agencies across the state.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The following list of all the materials that the Commission considered in drafting these rules is available on the website at <https://justice.oregon.gov/lesc/>

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- Commissioner Karia Email – Draft Aggravating / Mitigating Factors for Discussion

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules apply to law enforcement officers who are employed by the Oregon State Police, sheriffs, and municipal police departments. These rules set a statewide floor for law enforcement discipline for misconduct in seven specified categories. The rules also provide for aggravated and mitigated sanctions and set a procedure for the proper application of those factors. The result of these rules is that there will be a statewide standard of discipline so that regardless of where a law enforcement officer works, if they engage in misconduct that is covered by these rules, they will be subject to the same discipline standards. These uniform standards should foster equity across the law enforcement community because officers will be subject to the same standards.

In addition to the law enforcement officers, members of the public, including BIPOC communities, that have contact with law enforcement officers will be affected by these rules. Many of the areas of misconduct involve harm to others—such as sexual assault, assault, and unlawful use of force that results in death or serious injury. Setting uniform standards where the presumptive penalty for engaging in this misconduct is termination from employment ensures that such misconduct is addressed and that there are potentially career-ending consequences for engaging in such behavior. Establishing a system that ensures that serious police misconduct will be addressed, in a uniform manner across the state, will help improve trust and relationships between law enforcement and the communities with which they engage. By increasing trust and accountability, these rules will promote racial equity by reducing the disproportionate impact of police misconduct on historically marginalized BIPOC communities.

FISCAL AND ECONOMIC IMPACT:

These rules apply to law enforcement officers employed by the Oregon State Police, sheriffs, and municipal police departments. Thus, the affected agencies are Oregon State Police, and cities and counties throughout the state. These initial rules set disciplinary standards for conduct that is already defined in the Oregon Revised Statutes. In other words, these rules do not change conduct expectations for law enforcement officers—they set uniform disciplinary sanctions when a law enforcement officer engages in misconduct.

The fiscal and economic effect of these rules on individual agencies is indeterminate because it depends on the individual agency's current practices with respect to law enforcement officer discipline. For example, the rules require a disciplining body to document its reasoning when it imposes a disciplinary action other than the presumptive sanction. The law enforcement managers on the Commission indicated that their agencies currently maintain this documentation so there would be no change in the status quo. However, if an agency does not already so document, there may be an additional recordkeeping requirement imposed by these rules.

Law enforcement agencies may choose to provide training on these rules. The Commission is unable to determine whether training on these rules specifically will increase training costs for individual agencies. The Commission plans to publish a guide to assist law enforcement agencies in applying these standards, which should decrease any training costs.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State agencies: Oregon State Police Units
of local government: Cities and counties

(2)(a) No small businesses are affected by this adoption.

(2)(b) None

(2)(c) None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules. ORS 243.812 specifies the membership of the Commission and does not include small business. By statute, these rules will apply only to the Oregon State Police and city and county law enforcement agencies.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

ORS 243.812 established the Commission solely for the purpose of promulgating rules. The membership of the Commission was specified by the Legislature and includes representatives from groups who have subject matter expertise and who are most likely to be affected by these rules. In addition, ORS 243.812 expressly requires an open hearing process for public input and deliberation that includes public notice, public outreach to solicit broad participation and public hearings to receive public comment. The Commission has sought and will continue to seek a broad base of participation from public and private sources, in order to provide the benefit of multiple, informed perspectives.

RULES PROPOSED:

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

ADOPT: 265-005-0001

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

CHANGES TO RULE:

265-005-0001

Definitions

- (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" means 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, consistent with ORS 133.403, and must be temporary in nature.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-005-0005

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

CHANGES TO RULE:

265-005-0005

Application of Oregon Revised Statutes

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

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

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 after July 1, 2021, may include a standard of just cause for law enforcement officers other than the standard as defined in ORS 243.808 and 236.350.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-005-0015

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

CHANGES TO RULE:

265-005-0015

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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-005-0020

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.

CHANGES TO RULE:

265-005-0020

Multiple Instances of Misconduct

(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 exclusive representative as defined in ORS 243.650(8) or, if not represented by an exclusive representative, the law enforcement officer, from re-initiating an arbitration proceeding before the same arbitrator regarding a disciplinary action imposed after the referral by the arbitrator.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-005-0025

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

CHANGES TO RULE:

265-005-0025

Incorporation of Rules

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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-005-0030

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

CHANGES TO RULE:

265-005-0030

Application of Aggravating and Mitigating Factors

- (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.
Statutory/Other Authority: ORS 243.812
Statutes/Other Implemented: ORS 243.812

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COMMISSION ON STATEWIDE LAW ENFORCEMENT STANDARDS OF CONDUCT AND DISCIPLINE

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FISCAL AND ECONOMIC IMPACT:

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COST OF COMPLIANCE:

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(1) State agencies: Oregon State Police

Units of local government: Cities and counties

(2)(a) No small businesses are affected by this adoption.

(2)(b) None

(2)(c) None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

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RULES PROPOSED:

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: 265-010-0001

RULE SUMMARY: Establishes that the presumption sanction for engaging in conduct constituting sexual assault is termination and identifies mitigated sanctions.

CHANGES TO RULE:

265-010-0001

Sexual Assault

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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0005

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

CHANGES TO RULE:

265-010-0005

Sexual Harassment

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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0010

RULE SUMMARY: Establishes that the presumption sanction for engaging in conduct constituting assault is termination and identifies mitigated sanctions.

CHANGES TO RULE:

265-010-0010

Assault

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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0015

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.

CHANGES TO RULE:

265-010-0015

Unjustified or Excessive Use of Physical or Deadly Force

(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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0020

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.

CHANGES TO RULE:

265-010-0020

Conduct that is Motivated by or Based on a Real or Perceived Factor of an Individuals Race, Ethnicity, National Origin, Sex, Gender Identity, Sexual Orientation, Religion, or Homelessness

(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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0025

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.

CHANGES TO RULE:

265-010-0025

Moral Character

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

(a) A felony under state or federal law.

(b) Domestic violence.

(c) Stalking.

(d) A drug-related offense, except for offenses involving use or possession of marijuana.

(e) A bias or hate crime under state or federal law.

(f) A sex crime.

(g) Work-related 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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0030

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

CHANGES TO RULE:

265-010-0030

The Use of Drugs or Alcohol While on Duty

(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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812

ADOPT: 265-010-0035

RULE SUMMARY: Identifies a non-exclusive list of aggravating and mitigating factors that a disciplining body may consider.

CHANGES TO RULE:

265-010-0035

Aggravating and Mitigating Factors

(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) 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) 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) 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.

Statutory/Other Authority: ORS 243.812

Statutes/Other Implemented: ORS 243.812