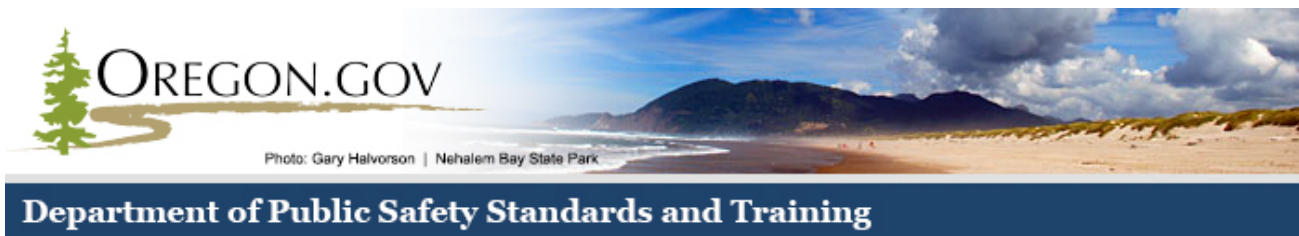


Subject: Oregon Department of Public Safety Standards and Training Daily Digest Bulletin
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From: OR Department of Public Safety Standards and Training
To: Anil Karia



HB 4205 – Duty to Intervene as it Applies to BPSST/DPSST Standards

07/22/2020

HB 4205 was passed with an emergency clause during the 2020 special legislative session and signed into law by the Governor on June 30th. This bill requires a police officer or reserve officer to intervene to prevent or stop another officer from engaging in misconduct. The law further establishes that an officer's failure to intervene or report an officer engaging in misconduct is grounds for disciplinary action, or the revocation or suspension of a Department of Public Safety Standards and Training (DPSST) certification.

The bill defines misconduct as:

- Unjustified or excessive use of force;
- Sexual harassment or sexual misconduct;
- Discrimination against a person based on race, color, religion, sex, sexual orientation, national origin, disability or age;
- A crime; or
- A violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established by the Board on Public Safety Standards and Training (Board).

The DPSST has received a number of questions from officers and agencies eager to comply with the new law, most seeking additional information about what types of behavior would constitute a violation of the Board's minimum standards, particularly the Board's moral fitness standards. (Note: Currently, the Board's minimum physical, emotional and intellectual standards apply at the time of hire only. It is not anticipated that a currently-employed officer would be in violation of these standards with regard to intervening and reporting misconduct.)

The current administrative rules that govern public safety moral fitness define moral fitness as the mandatory and discretionary grounds for denial or revocation of certification, and establish a process for which officer behavior is reviewed by the Department and the Board, in consultation with its Policy Committees. A certification review occurs any time an officer's conduct results in a plea or finding of guilt to any

crime, or an officer is separated from employment. This case-by-case review determines if the behavior that led to the criminal disposition or separation violates the Board's moral fitness standards.

While the authority to determine that a police officer has engaged in behavior that violates these moral fitness standards belongs to the Department and the Board, it is reasonable to expect a police officer or a reserve officer to intervene and report conduct to their employer upon witnessing conduct that could reasonably fit the definitions of the moral fitness violations found in rule. Aside from criminal conduct which is already in the bill's definition of misconduct, the Board's moral fitness violations include:

- Intentional conduct performed under the color of office to: Obtain false confessions; Make false arrests; Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression; Compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing; Deprive, or attempt to deprive, another person or persons of their legal rights; or Gain advantage for a public or private safety agency or for personal gain.
- Intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth.
- Intentional conduct that includes the use or attempted use of one's position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another.
- Conduct that threatens or harms persons, property or the efficient operations of any agency.

Based on the current administrative rules, a DPSST certification review of an officer who witnesses and fails to intervene would occur only if the witnessing officer's failure to intervene later resulted in criminal charges being filed, or the witnessing officer being separated from employment.

Any questions, concerns or comments about DPSST's interpretation of this legislation, or any other DPSST matter can be directed to (503) 378-2100 or odpsst@dpsst.state.or.us.

Sincerely,

Linsay Hale

Professional Standards/Interim Training Division Director

Department of Public Safety Standards and Training

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