

LESC Possible Priorities for New Projects

Guide Updates and Procedure Development		
Rank	Project	Notes
1	Align Guide to rule changes	Incorporate Rule Language changes and new definitions once adopted (for misuse of authority, intentional, knowing, reckless, excessive)
	Review Guide for additional updates	Review Guide for potential updates not directly connected to proposed rule changes, to be added to E.D.'s list of updates ranging from housekeeping to substantive.
	Assault v UoF	Clarify distinction between Assault and Use of Force (e.g. that one might fall under scope of allowable police powers for legitimate law enforcement purposes, where assault is use of force that does not have any possible legal justification. Language drafted.
	Develop additional procedural guidance	Do we want to flesh out the guide to include steps other than just imposition of discipline? E.g., start creating processes and setting expectations for fair, impartial complaint process (receiving, logging, tracking of complaints, investigative standards, due process, fair, unbiased determinations free from conflict of interest, technical assistance, education, role expectations, etc.
		Gather data on most common types of misconduct disciplined, consider addressing those. Many allegations of misconduct covered by LESC rule are probably relatively rare for LEAs.
		Extending required retention of disciplinary history for review

Possible New or Amended Rules		
Rank	Project	Notes
✓ 1	Non-disciplinary Corrective Action	Define and include Non-disciplinary Corrective Action as option for mitigation for certain offenses. Draft language has been through NPRM process, ready for final vote.
✓ 2	Misuse of Confidential Information	Draft language complete and ready for NPRM process.
3	Failure to Intervene	Possible language has been drafted and on agenda for vote to commence NPRM.
4	Failure to Report	Possible language has been drafted and on agenda for vote to commence NPRM.
	Failure to Act/derelection of duty	
	Misuse of Authority/ Official Misconduct	Possible separate Misuse of Authority rule (to capture different kinds and those that may not rise to the level of Moral Character violation.)

	Use of controlled substance on duty OAR 265-010-0030	Feedback has been received that “use” needs to be better identified. A failed drug test might apply, though some may argue that using MJ 20 days earlier is not “use” while on duty, but would show on a drug test. Also that the DUI standard of impaired to a noticeable and perceptible degree would be considered use, however, this may need corroboration of a drug test or admission to use of a controlled substance.
	Off-duty use of controlled substances	If considering Use of Controlled Substances on duty, we might want to also consider off duty use at the same time.
	Off-duty DUI	If considering Use of Controlled Substances on duty, we might want to also consider off duty use at the same time.
	Untruthfulness	Defining untruthfulness differently, creating a separate rule for it, addressing Reckless Disregard for Truth, or untruthfulness not relevant to the duties of the job classification. DPSST definition adds “reckless” to intentional. Our rules don’t cover those. Agencies say without ability to mitigate, current rule may be too draconian. Draft?
	Sexual Harassment	Craft new or additional definitions for sexual harassment outside BOLI workplace context, e.g. cases involving the public that don’t fit new Moral Character rule definition (soliciting or engaging in sexual favors) or for conduct that doesn’t rise to level for which mandatory termination is appropriate.
	Hate Group membership/activity/social media, etc.	While hate crimes are covered by Moral Character, feedback has noted that membership in hate groups, acts or social media/public comments that target protected groups (but do not constitute a hate crime) are not covered. See 181A.688 Findings regarding racism . And 181A.689 Standards for speech and expression .
	Biased policing or Disparate treatment (beyond our current profiling rule)	Related to above, LESC could address discrimination beyond profiling, e.g., something like PPB’s “Intentional Misuse of Police Authority based on Protected Class Status,” defined as something like “a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s protected class, that would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.”
	Treatment/accommodation of people with disabilities	This might be considered an extension of the previous, or it could be stand-alone.
	Abuse of Authority	Abuse of Authority (separate from Moral Character, for financial gain) could be its own rule, including things like

		obtaining false confessions, making false arrests, creating or using falsified evidence or testimony, depriving another person of their rights, etc.
	Harassment (ORS 166.065)	
	Retaliation	
	Off-duty use of controlled substances	
	Off-duty DUI	
	Protests/Crowd Control?	

Proposed Legislative Requests		
Rank	Project	Notes
	Sexual Assault Definition	Proposal to adopt a new definition of sexual assault as current definition of “unwanted behavior of a sexual nature...” is broader than criminal definition, could potentially include things that would’t be considered sexual assault as normally understood.
	Changes in LESC composition	Add additional representation or change composition of Commission. Proposed: add 2 civil rights attorneys (1 with litigation experience representing victims of LE misconduct, 1 from advocacy organization focused on constitutional/civil rights); Corrections; Probation/Parole; broader range of community seats including immigrants, LGBTQ, people with disabilities, and people with lived experience of police misconduct. One recommendation was to add two members, one directly impacted by police violence or misconduct, and one representing civilian oversight of law enforcement, to replace one chief law enforcement officer seat and one police labor organization seat.

Problem Solving/ Pain Point Analysis		
Rank	Project	Notes
	Ensuring Compliance	How should we/can we respond to non- compliance, situations that might arise, and what would be needed to ensure/enforce compliance.
	What interferes with consistent/uniform standards of conduct and discipline?	Closer examination of issues that interfere with LESC goals of consistent and uniform standards of conduct and discipline for officers across the state, where the process breaks down.
	Application of mitigating/aggravating factors	Possible issue with applying mitigating/aggravating factors of prior history of misconduct. Even though all disciplinary records must be kept for 10 years beyond separation, that could in theory be in archives only, not in the active personnel file, so not

		reviewed for prior history of misconduct. Some agencies are only required/permitted to keep a record of findings for 2-5 years in the active personnel file – not long if looking for patterns of problem behavior.
	Review Disciplinary Process steps for problem areas.	E.D. has list of suggested elements if Commission think that focus is appropriate.

Miscellaneous		
Rank	Project	Notes
	Vision/Mission Statement	Do we want develop a draft vision and/or mission statement, to clarify to our stakeholders and the public what we're about, what we are trying to achieve, our values or vision for the Commission? Just to have something for presentations, I took this language from ORS 243.808(c) (on arbitration): "The LESC serves the public interest in maintaining community trust, enforcing a higher standard of conduct for law enforcement officers, and ensuring a consistent, accountable, fair and just disciplinary process."
	Improving Rule Implementation tracking and reporting processes	Per statute, "The commission shall include in reports submitted after 9/1/22 information regarding the progress of each LE agency and civilian/community oversight board, agency or review body, towards implementing and applying the uniform standards and the commission's recommendations on updates to the standards, as are considered necessary." While we have a tracker, only about half of agencies provide data in any given year, and we lack a robust database for conduct and discipline.
	Reporting requirements for misconduct (related to above).	We don't currently have a good way to track compliance with LESC rules to ensure compliance in investigation, sanctions, and arbitration outcomes. Survey is overly onerous for large agencies, though OK for small ones. Since reporting is required for any sanctions that include economic sanctions (or up to termination), which can trigger fitness determinations and potential decertification, duplicate reporting to both DPSST and to LESC would not be desirable. And there's not full alignment between DPSST reporting requirements and what we need to track. It would help to capture more information than required under ORS 181A.681-686
	Training for those applying the standards	Finish and schedule training on rules and application and potentially on using them.

	Educational efforts	Progress toward adopting and implementing means promoting, educating, offering technical assistance. Need to develop training materials, starting and tracking outreach/educational efforts
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