

4-29-26 Subcommittee notes: DRAFT rule/matrix

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265-XXXXX

Failure to Intervene (ORS 181A.681(2))

(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 by failing to intervene, in violation of 181A.681 (2).

(a) The presumptive sanction shall be suspension without pay, salary reduction, demotion

(b) The mitigated sanction shall be written reprimand or non-disciplinary corrective action.

(c) The aggravated sanction shall be termination.

(2) Failure to intervene is not misconduct under this rule if intervening would be unsafe.

option: (3) The terms provided in ORS 181A.681(1): sexual harassment, sexual misconduct, and discrimination are given their ordinary meaning. A crime is defined either by ORS 161.515 or as provided by applicable law. (for example: Federal law)

editing note: checking legislative history for further guidance on definitions

editing note: review providing definition to terms used in a separate statute

265-XXXXX

Failure to Report (ORS 181A.681(3))

(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 by failing to intervene, in violation of 181A.681 (3).

(a) The presumptive sanction shall be suspension without pay, salary reduction, demotion

(b) The mitigated sanction shall be written reprimand or non-disciplinary corrective action.

(c) The aggravated sanction shall be termination.

Proposed matrix language – for Guide

HOLD below. Better develop the rule first.

FAILURE TO INTERVENE

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Failure of an officer to intervene * when they witness another officer (from any agency) engage in misconduct, as identified in 181A.681.(1)**			

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Failure of an officer to intervene * when they witness another officer (from any agency) engage in misconduct, as identified in 181A.681.(1)**			

~~* Failure to intervene is not misconduct if intervening would be unsafe.~~

~~** Per ORS **181A.681**, as used in this specific rule, “misconduct” means:~~

~~—(a) Unjustified or excessive force that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement unit employing the offending officer;~~

~~—(b) Sexual harassment or sexual misconduct;~~

~~—(c) Discrimination against a person based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or age; or~~

~~—(d) A crime.~~

FAILURE TO REPORT

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Failure of an officer to report when they witness another officer (from any agency) engage in certain forms of misconduct and violations of minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410, that result in injury.	• Demotion • Salary Reduction • Suspension Without Pay	Termination	N/A

MISCONDUCT	MITIGATED	PRESUMPTIVE	AGGRAVATED
Failure of an officer to report * when they witness another officer (from any agency) engage in misconduct that results in no injury. **	• Written reprimand	• Demotion • Salary Reduction • Suspension Without Pay	Termination

for reference:

Statutory language on failure to intervene/report: (181A.681)

181A.681 Report of misconduct or violation of minimum standards; investigation; failure to intervene or report grounds for discipline; reporting requirement. (1) As used in this section, “misconduct” means:

(a) **Unjustified or excessive force** that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement unit employing the offending officer;

(b) **Sexual harassment or sexual misconduct;**

(c) **Discrimination** against a person based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or age; or

(d) **A crime.**

(2) Without regard to rank or assignment, a police officer or reserve officer shall intervene to prevent or stop another police officer or reserve officer engaged in any act the intervening officer knows or reasonably should know is misconduct, unless the intervening officer cannot intervene safely.

(3)(a) A police officer or reserve officer who witnesses another police officer or reserve officer engaging in misconduct or a violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410 shall report the misconduct or violation as soon as practicable, but no later than 72 hours after witnessing the misconduct or violation, to:

(A) A direct supervisor of the reporting officer;

(B) A person in the reporting officer’s chain of command; or

(C) The Department of Public Safety Standards and Training.

(b) If the person to whom a police officer reports misconduct or a violation under this subsection does not have the authority to direct an investigation into the alleged misconduct or violation, the person shall forward the report of misconduct or violation to a person who has the authority to direct an investigation into the alleged misconduct or violation as soon as practicable, but no later than 72 hours after receiving the report.

(c) A law enforcement unit that receives a report of misconduct or violation under this subsection shall complete an investigation of the misconduct or violation within three months after the date of the report unless circumstances prevent the investigation from being completed. The law enforcement unit shall notify the Department of Public Safety Standards and Training when an investigation results in a finding that sustains a report of misconduct, but need not notify the department when an investigation results only in a finding that sustains a report of a violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410.

(4) Failure to intervene or report as required by subsections (2) and (3) of this section is grounds for disciplinary action against a police officer or reserve officer by the law enforcement unit employing the officer or for the Department of Public Safety Standards and Training to suspend or revoke the officer's certification as provided in ORS 181A.630, 181A.640 and 181A.650.

(5) An employer may not discharge, demote, suspend or in any manner discriminate or retaliate against a police officer or reserve officer with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the officer intervened or reported as required by subsections (2) and (3) of this section. Violation of this subsection is an unlawful employment practice as provided in ORS 659A.199.

(6) The Department of Public Safety Standards and Training shall report at least annually to an appropriate committee of the Legislative Assembly on any rules adopted by the department implementing this section. [2020 s.s.1 c.5 §2; 2021 c.238 §1; 2021 c.367 §49]

Draft Rule language (to start discussion):

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 misuse of confidential information or records.

New proposal LESC OAR: 265-010-xxxx DRAFT