

Comment on Proposed Rulemaking for Commission on Statewide Law Enforcement Standards of Conduct and Discipline

12/21/23

Dear Commissioners,

I am writing to offer comments on the latest iteration of the Discipline Matrix and corresponding rules and definitions.

First, the current discipline matrix uses the term “excessive use of force” but the work to date does not offer a definition of that term. Most of the other terminology in the Discipline Matrix is clearly defined, but “excessive use of force” is not, see below.

Discipline Matrix Term	Definition (from OAR 265-005-0001)
SEXUAL ASSAULT	<i>“Sexual assault” has the meaning given that term in ORS 243.317.</i>
SEXUAL HARASSMENT	<i>“Sexual Harassment” has the meaning given that term in OAR 839-005-0030.</i>
ASSAULT	<i>“Assault” has the meaning given that term in ORS 163.115.</i>
UNJUSTIFIED OR EXCESSIVE USE OF DEADLY FORCE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY	<p><i>“Deadly physical force” has the meaning given that term in ORS 161.015.</i></p> <p><i>“Justification” means a justifiable use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267.</i></p> <p>“Excessive Use of Deadly Force” means ?</p>
UNJUSTIFIED OR EXCESSIVE USE OF PHYSICAL FORCE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY	<p><i>“Physical Force” has the meaning given that term in ORS 161.015.</i></p> <p><i>“Justification” means a justifiable use of physical or deadly physical force pursuant to ORS 161.205 to ORS 161.267.</i></p> <p>“Excessive Use of Physical Force” means ?</p>
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.	Not explicitly defined.

<p>ENGAGING IN MISCONDUCT DEMONSTRATING LACK OF GOOD MORAL CHARACTER</p>	<p><i>“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.</i></p>
--	--

Second, from a practical standpoint, how is the Discipline Matrix going to have any impact if the investigation of the alleged wrong-doing is flawed? Whether or not an officer’s conduct is within policy is often determined within the agency, out of the public eye and not through an independent review team without personal relationships to the officers under investigation. There are documented cases (for example, [Macduff](#), [Kenny](#)) where significant flaws with the internal review process have been noted. Officers will never be held accountable regardless of the Discipline Matrix if the review process rarely finds anyone out of policy.

Third, as was the topic of conversation at the last LESC meeting (Dec. 14, 2023), the injury of the victim due to wrongful actions of the law enforcement officer should not have any bearing on whether or not discipline would apply. Does someone have to die or have serious bodily injury for an unjustified use of force to result in consequence to the offending officer? Wouldn’t the agency involved want to discipline an individual who has misused force options *prior* to them seriously injuring or killing someone?

Finally, the work of the Commission would gain credibility if there was more effort to include a more diverse representation of life experiences among the Commissioners. This Commission is heavily weighted toward people who have positive lived experiences with law enforcement. The [original version of Senate Bill 808](#) would have replaced one of *two* police chiefs and one of *two* labor representatives currently on the Commission with two general community members. Unfortunately, that provision was discarded before SB-808 was passed. Also, the current legislation does not require a voice on the Commission from anyone who has actually suffered the loss or serious injury of a family member to police violence or misconduct. There are roughly [30 uses of deadly force](#) every year in Oregon with about half resulting in death (plus other instances of misconduct, e.g. in-custody death or injuries, sexual assault, etc. that aren’t as well-publicized or documented), so the community of impacted family members is a sizeable and growing population (*at least* 400 hundred families going back to 2010) that should be represented.

Thank you for the opportunity to comment.

Sincerely,

Barbara H. Kenny, Ph.D., Lt. Col., USAF, ret.
 Mother of child killed by law enforcement