

Summary of 2021 Legislation Relating to the Investigation and Reporting of Misconduct by Law Enforcement Officers

- ORS 181A.681

-Requires investigation and reporting of certain misconduct by law enforcement officers (LEOs), and violations of minimum standards for physical, emotional, intellectual and moral fitness.

-Generally defines “misconduct” as the use of unjustified or excessive force, unlawful discrimination, sexual harassment or misconduct, or commission of a crime.

-Mandates reporting by LEOs who witness misconduct or violations, and mandates investigation by LE agencies.

-Mandates reporting to DPSST of substantiated misconduct; optional reporting in cases where only violations of minimum standards are substantiated.

-Authorizes personnel disciplinary action against LEOs who fail to report or intervene.

-ORS 181A.684

-Directs DPSST to maintain an online database of suspensions and revocations of certifications, and of discipline against LEOs involving economic sanctions. Must include at a minimum:

- Officer’s name,
- Officer’s LE agency, and
- Description of the facts underlying the suspension, revocation or discipline.

-DPSST Professional Standards/Economic Sanctions Database:

<https://www.oregon.gov/dpsst/cj/pages/cases.aspx>

-No requirement to post discipline that does not include an economic sanction, even if the underlying behavior met the statutory definition of “misconduct”.

-No requirement to post on investigations that do not result in an adverse finding.

-No requirement to post violations of minimum standards for physical, emotional, intellectual and moral fitness that do not result in suspension or revocation, or discipline including an economic sanction.

-181A.686: Requires LE agencies to report to DPSST any disciplinary action that results in an economic sanction.

-181A.689: Requires LE agencies to adopt policies that set standards for speech and expression by officers in and outside the course and scope of employment.

Relevant Statutes:

181A.355 Definitions for ORS 181A.355 to 181A.689. As used in ORS 181A.355 to 181A.689, unless the context requires otherwise:

- (1) "Abuse" has the meaning given that term in ORS 107.705.
- (2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181A.360.
- (3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181A.410.
- (4) "Commissioned" means being authorized to perform various acts or duties of a police officer, certified reserve officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.
- (5) "Corrections officer" means an officer or member employed full-time by a law enforcement unit who:
 - (a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or
 - (b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers described in paragraph (a) of this subsection.
- (6) "Department" means the Department of Public Safety Standards and Training.
- (7) "Director" means the Director of the Department of Public Safety Standards and Training.
- (8) "Domestic violence" means abuse between family or household members.
- (9) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.
- (10) "Family or household members" has the meaning given that term in ORS 107.705.
- (11) "Fire service professional" means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not mean forest fire protection agency personnel.
- (12) "Law enforcement unit" means:
 - (a) A police force or organization of the state, a city, university that has established a police department under ORS 352.121 or 353.125, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.940 that employs authorized tribal police officers as defined in ORS 181A.940, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Marshal's Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is one or more of the following:
 - (A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;
 - (B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or
 - (C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;
 - (b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;
 - (c) A district attorney's office;

(d) The Oregon Liquor and Cannabis Commission with regard to regulatory specialists; or

(e) A humane investigation agency as defined in ORS 181A.340.

(13) "Parole and probation officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation;

(b) An officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(c) An officer who is certified as a parole and probation officer and is employed full-time by the State Board of Parole and Post-Prison Supervision.

(14) "Police officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.940, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) A humane special agent commissioned under ORS 181A.340;

(d) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540; or

(e) An authorized tribal police officer as defined in ORS 181A.940.

(15) "Public or private safety agency" means a unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, fire fighting, police, ambulance or emergency medical services.

(16) "Public safety personnel" and "public safety officer" include corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators, regulatory specialists and fire service professionals.

(17) "Regulatory specialist" has the meaning given that term in ORS 471.001.

(18) "Reserve officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.940, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(19) “Telecommunicator” means a person employed as an emergency communications worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through the emergency communications system as defined in ORS 403.105.

(20) “Youth correction officer” means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of adjudicated youths confined in a youth correction facility. [Formerly 181.610; 2021 c.173 §4; 2021 c.314 §1; 2021 c.351 §10; 2021 c.489 §21]

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]

181A.683 Form for reports; forwarding of reports to law enforcement unit. (1) The Department of Public Safety Standards and Training shall establish and maintain a form for reports under ORS 181A.681 of misconduct or violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410. The form must be available on the department's website.

(2) When the department receives a report of misconduct or violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410 directly from a police officer or reserve officer under ORS 181A.681 (3)(a)(C), the department shall forward the report to the law enforcement unit employing the subject of the report for investigation. [2021 c.238 §2]

181A.684 Database of discipline and suspensions and revocations of certification of police officers; reporting requirement. (1) The Department of Public Safety Standards and Training shall establish a statewide online database of suspensions and revocations of the certifications of police officers and discipline of police officers involving economic sanctions that is accessible by the public.

(2) The department shall publish information on the database when the department suspends or revokes the certification of a police officer under ORS 181A.630, 181A.640 and 181A.650, and when the department receives notice of discipline of a police officer under ORS 181A.686, including but not limited to:

- (a) The name of the officer;
- (b) The law enforcement unit at which the officer was employed; and
- (c) A description of the facts underlying the suspension, revocation or discipline.

(3)(a) The department shall publish the information related to a suspension or revocation of certification required under subsection (2) of this section within 10 days after:

(A) The time for filing an appeal of the department's decision under ORS 181A.650 has passed and no appeal has been filed; or

(B) The decision of the department is appealed under ORS 181A.650 and the department's decision has been sustained by the Court of Appeals or the appeal has been dropped.

(b) The department shall publish the information related to discipline of an officer required under subsection (2) of this section within 10 days after receiving notice of the discipline under ORS 181A.686.

(4) The department shall submit an annual report to an appropriate committee of the Legislative Assembly summarizing and analyzing the data in the database. [2020 s.s.1 c.7 §3; 2021 c.634 §3]

181A.686 Report on discipline to Department of Public Safety Standards and Training. Within 10 days after an economic sanction as part of discipline imposed on a police officer has become final and the arbitration process is complete, the law enforcement unit that imposed the discipline shall report on the discipline to the Department of Public Safety Standards and Training. The report must include:

- (1) The name and rank of the officer disciplined;
- (2) The name of the law enforcement unit at which the officer is or was employed; and
- (3) A description of the facts underlying the discipline imposed, including a copy of any final decision. [2021 c.634 §2]

181A.688 Findings regarding racism. The Legislative Assembly finds that:

- (1) Racism has no place in public safety.
- (2) Law enforcement officers hold a unique position in our community and must demonstrate principles of equity, transparency, honesty and trust with all members of society.
- (3) Membership or participation in hate groups, racial supremacist organizations or militant groups erodes public trust in law enforcement officers and community safety.
- (4) Participation in racist organizations and displays of symbols of racism or racial supremacy are at odds with the position of trust and authority law enforcement officers occupy in our community. [2021 c.299 §2]

181A.689 Standards for speech and expression. A law enforcement unit that employs police officers or reserve officers shall adopt policies that set standards for speech and expression by officers in and outside the course and scope of employment. The policies must apply to all forms of speech and expression, including but not limited to film, video, print media, public and private speech and use of Internet services including but not limited to electronic mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums and video and other file-sharing sites. The policies may not violate the constitutional rights to free speech and expression. [2021 c.299 §4]