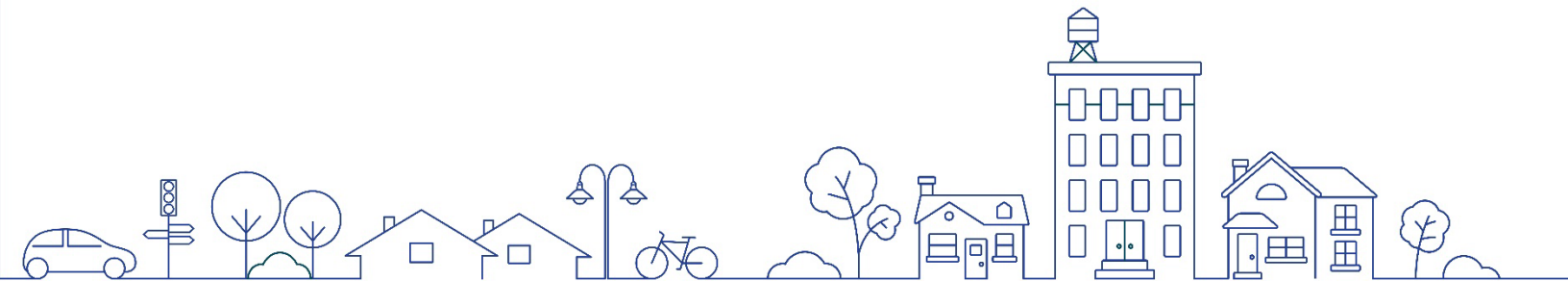


# Oregon Municipal Handbook

## CHAPTER 18: PUBLIC SAFETY



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# Chapter 18: Public Safety

Cities have a responsibility to provide for the safety, welfare, and morals of their residents.<sup>1</sup> For the safety of their residents, Oregon cities primarily provide law enforcement, but also may provide fire services. Emergency management, an essential component of fire and law enforcement response, helps to reduce threats to safety and cope with disasters.

This chapter is intended to provide an overview of a city’s public safety functions in fire services and law enforcement and will only provide an overview of the current search and seizure law in Oregon. For specific questions on police procedure, including search and seizure law, please consult your city attorney or district attorney.

## I. FIRE SERVICES

Fire services are essential to the safety of a city because fire poses a risk to life and property. Every 24 seconds, a fire department responds to a fire somewhere in the United States.<sup>2</sup> Although fire’s toll has declined steadily over the past two decades, fire continues to cause major losses.<sup>3</sup>

According to National Fire Protection Association’s (NFPA) latest reports, home fires and home fire deaths declined by about 50% since 1980.<sup>4</sup> However, the 7.8 deaths per 1,000 reported home fires reflects a 10% increase over the 7.1 rate in 1980.<sup>5</sup> In other words, while the number of U.S. home fires and home fire deaths has significantly declined over the past few decades, the death rate per 1,000 reported fires is actually a little higher.<sup>6</sup>

Fire services not only include extinguishing fire, but also include life safety services related to emergency medical, technical rescue, fire prevention, and fire code implementation.

### A. Firefighting

In Oregon, city fire protection began in the 1850s for the cities of Portland and Salem and the 1870s for the city of Eugene.<sup>7</sup> Many cities started with volunteers but moved to professional

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<sup>1</sup> ORS 30.315.

<sup>2</sup> See National Fire Protection Agency, *Reporter’s Guide: The Consequences of Fire*, available at: <https://www.nfpa.org/en/About-NFPA/Press-Room/Reporters-Guide-to-Fire/Consequences-of-fire> (last accessed September 3, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See City of Salem, *Fire Department History*, available at: <https://www.cityofsalem.net/community/safety/fire/about-the-salem-fire-department/fire-department-history#:~:text=Salem%2C%20Oregon's%20first%20fire%20company> (last accessed on September 3, 2024); Jackson County Fire District 1, *Oregon District History*, available at: <https://www.rogueriverfd.com/history> (last accessed September 3, 2024).

and paid fire departments. For example, Portland established its fire department when a huge fire in August 1873 destroyed 22 blocks of wooden buildings.<sup>8</sup>

Beginning in 1917, the state insurance commissioner served as the *ex officio* state fire marshal and oversaw the damages of property damages caused by fire.<sup>9</sup> Prior to 1930s, cities were not allowed to respond to fires outside of city limits because they would not have insurance therefore, there was little or no fire protection outside of the territory of cities.<sup>10</sup> In the 1929 legislative session, the Oregon Legislature authorized the formation of special districts called rural fire protection districts to provide services in unincorporated areas.<sup>11</sup>

Today, fire services can be provided by multiple governmental entities, including city fire departments, rural fire protection districts, or urban area special districts. For the best utilization of limited resources, the trend is for smaller cities to annex into rural fire protection districts or to enter into intergovernmental agreements to cooperate with other cities.<sup>12</sup>

City fire departments are focused on providing services within the city limits, but in some circumstances, can provide services to “unprotected areas.”<sup>13</sup> Areas outside of a city limit, such as wildfire or urban areas and those that are outside the boundaries of recognized fire protection for the area, are examples of areas that are “unprotected.”<sup>14</sup> For areas that are unprotected, a city’s governing body may give authority to the fire chief to respond when such fires cause or may cause undue jeopardy to life or property.<sup>15</sup> When authorized by the governing body, a fire department may, upon request, respond outside the limits of its city to a fire or other public safety incident and to aircraft emergencies and other incidents on transportation routes.<sup>16</sup> Fire

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<sup>8</sup> See John Killen, *Throwback Thursday: Portland’s Old Fire Houses are Part of Legacy Going Back to 1851*, THE OREGONIAN (Jan. 22, 2015), available at: [https://www.oregonlive.com/history/2015/01/throwback\\_thursday\\_portlands\\_o.html](https://www.oregonlive.com/history/2015/01/throwback_thursday_portlands_o.html) (last accessed September 3, 2024).

<sup>9</sup> See Office of the State Fire Marshal, *About Us*, available at: [https://www.oregon.gov/osp/programs/sfm/pages/aboutus.aspx#:~:text=OSFM%20History%3A.and%20served%20under%20the%20governor;Losses%20by%20Fire%20Total%20by%20Lee%20State%20Fire%20Marshal%20Places%20August%20Damage%20in%20State%20as%20\\$341%2C700,CORVALLIS%20GAZETTE-TIMES,Sep.16,1930](https://www.oregon.gov/osp/programs/sfm/pages/aboutus.aspx#:~:text=OSFM%20History%3A.and%20served%20under%20the%20governor;Losses%20by%20Fire%20Total%20by%20Lee%20State%20Fire%20Marshal%20Places%20August%20Damage%20in%20State%20as%20$341%2C700,CORVALLIS%20GAZETTE-TIMES,Sep.16,1930) (last accessed September 3, 2024).

<sup>10</sup> *Milk Substitutes for Water When Flames Menace, Creation of Fire Districts Outside of Incorporated Towns Explained by State Marshal*, THE NEWS-REVIEW, June 28, 1930; *Communities Plan to Form Fire Districts*, THE WORLD, May 3, 1932.

<sup>11</sup> *Id.*; *Rural Owners to Get Lower Rate Lee Says*, CAPITAL JOURNAL, July 10, 1930.

<sup>12</sup> See e.g., City of Eugene, *Eugene/Springfield Merger*, available at: <https://www.eugene-or.gov/331/Eugene-Springfield-Merger> (last accessed September 3, 2024).

<sup>13</sup> ORS 476.280; see also Office of the State Fire Marshal, *Oregon Structural Fire Protection Map*, available at: <https://www.oregon.gov/osfm/Docs/Oregon%20Structural%20Fire%20Protection.pdf> (last accessed September 3, 2024).

<sup>14</sup> OAR 837-130-0010(1).

<sup>15</sup> ORS 476.280; see also Office of the State Fire Marshal, *Oregon Structural Fire Protection Map*, available at: <https://www.oregon.gov/osfm/Docs/Oregon%20Structural%20Fire%20Protection.pdf> (last accessed September 3, 2024).

<sup>16</sup> ORS 478.310.

departments may bill and collect for the costs of fire department response accordance with a State Standardized-Cost Schedule for areas outside of the departments service area.<sup>17</sup>

The National Fire Protection Association (NFPA) provides guides based on the science of fire dynamics to the response strategy, tactics and best practices for firefighters controlling fires within a structure.<sup>18</sup> According to the NFPA, firefighting tactics are changing based on modern construction, newer on-scene technology, and evolving fuel loads.<sup>19</sup> Current firefighting guidance addresses the health and safety of firefighters by reinforcing the need for personal protective equipment and methodologies for contamination control.<sup>20</sup> It is also designed to help fire service organizations establish effective strategies that consider tactics, search, rescue, and fire suppression operations, as well as civilian and responder safety.<sup>21</sup>

The Oregon State Fire Marshal (OSFM) makes rules and regulations standardizing the equipment used for fire protection.<sup>22</sup> All fire protection equipment purchased by cities shall be equipped with standard thread for fire hose couplings and hydrant fittings as adopted by the OSFM.<sup>23</sup> Oregon law prohibits any person from selling in Oregon any fire protection equipment unless such equipment is fitted and equipped with the standard thread for fire hose couplings and hydrant fittings as adopted by the OSFM.<sup>24</sup>

The OSFM is responsible for the investigation of the cause of fire.<sup>25</sup> To investigate the fire, the OSFM has the authority to enter buildings and premises at reasonable hours to determine probable cause.<sup>26</sup> For just cause and to inspect the property, the OSFM may enter buildings and premises.<sup>27</sup> The OSFM appoints assistants, or where there is no such officer, the fire department chief are assistants to the OSFM.<sup>28</sup> The assistants to the OSFM aid in the administration and enforcement of inspections and investigations.<sup>29</sup>

## **B. Working With Other Agencies**

### **i. Mutual Aid Assistance**

Most cities with fire departments execute mutual aid agreements that provide for

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<sup>17</sup> ORS 476.290; ORS 478.310; OAR 837-130-0000 to 837-130-0020.

<sup>18</sup> See National Fire Protection Association. *The Standards Development Process*, available at: <https://www.nfpa.org/For-Professionals/Codes-and-Standards/Standards-Development> (last accessed September 30, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> ORS 476.030.

<sup>23</sup> ORS 476.410.

<sup>24</sup> ORS 476.440.

<sup>25</sup> ORS 476.210.

<sup>26</sup> ORS 476.070.

<sup>27</sup> *Id.*

<sup>28</sup> ORS 476.060.

<sup>29</sup> *Id.*

automatic assistance for structural and wildland protection within fire districts and cities, and for wildland protection in "unprotected" areas outside the boundaries of fire districts or cities.<sup>30</sup> For example, such agreements can provide that city provides fire protection services to neighboring rural fire protection districts and that rural fire protection district will provide the service in the city. This arrangement has become increasingly popular with small cities that can be served by large fire districts.

For example, the city of Ashland is a signatory along with all the other cities and fire protection districts of the Jackson/Josephine County Mutual Aid Agreement.<sup>31</sup> The agreement provides for automatic and/or mutual assistance with the other signatories.<sup>32</sup>

## **ii. State Conflagration Act**

Under the State Conflagration Act, the Oregon State Fire Marshal has created the Oregon Fire Service Mobilization Plan.<sup>33</sup> Fire services may also be mobilized under powers of the governor, and the governor's direction, through the declaration of a state of emergency.<sup>34</sup> The Oregon Office of Emergency Management has the authority to establish priorities for the assignment and use of resources on a statewide basis in cases of emergency.<sup>35</sup>

Although the state of Oregon is responsible for activating the state response system, an effective statewide response is dependent on the local governments and their mutual aid agreements to allow the state to draw on the local resources.<sup>36</sup>

## **iii. National Incident Management System**

On March 1, 2004, the U.S. Department of Homeland Security (DHS) published the first National Incident Management System (NIMS).<sup>37</sup> Fire services regularly use the NIMS and Incident Command System (ICS) to effectively manage firefighting activities in structural and wildfire emergencies.<sup>38</sup>

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<sup>30</sup> ORS Chapter 190 (giving cities the authority to enter into agreements with other governments); ORS Chapter 402 (giving cities the authority to enter into agreements with other governmental entities for purposes of reciprocal emergency aid and resources).

<sup>31</sup> See City of Ashland, *Service Outside Ashland*, available at: <https://www.ashland.or.us/Page.asp?NavID=13572> (last accessed September 3, 2024).

<sup>32</sup> *Id.*

<sup>33</sup> ORS 476.510 to ORS 476.610; ORS 476.990(4); see also OREGON STATE FIRE MARSHAL, OREGON FIRE SERVICE MOBILIZATION PLAN (2024), available at: <https://www.oregon.gov/osfm/Docs/Fire-Service-Mobilization-Plan.pdf> (last accessed September 3, 2024).

<sup>34</sup> ORS 401.165.

<sup>35</sup> ORS 401.062.

<sup>36</sup> See Rudy Owens, *The Oregon Mutual Aid System: Learning to Adapt and Confront Emerging Challenges* (Sept. 2019), available at: [The Oregon Mutual Aid System: Learning to Adapt and Confront Emerging Challenges \(iafc.org\)](https://www.iafc.org/the-oregon-mutual-aid-system-learning-to-adapt-and-confront-emerging-challenges) (last accessed September 3, 2024).

<sup>37</sup> See FEDERAL EMERGENCY MANAGEMENT AGENCY, ICS REVIEW DOCUMENT (March 2018), available at: <https://training.fema.gov/emiweb/is/icsresource/assets/ics%20review%20document.pdf> (last accessed September 3, 2024).

<sup>38</sup> *Id.*

NIMS provides a consistent template enabling federal, state, Tribal, and local governments, the private sector, and nongovernmental organizations to work together to prepare for, prevent, respond to, recover from, and mitigate the effects of incidents regardless of cause, size, location, or complexity.<sup>39</sup> NIMS is a method of structuring response that can respond to single jurisdiction emergency but can rapidly expand to multijurisdictional efforts.<sup>40</sup> NIMS establishes common terminology that allows diverse incident management and support organizations to work together across a wide variety of functions and hazard scenarios.<sup>41</sup>

As part of NIMS, the Incident Command System (ICS) is a standardized approach to the command, control, and coordination of on-scene incident management that provides a common hierarchy within which personnel from multiple organizations can be effective.<sup>42</sup> The ICS specifies an organizational structure for incident management that integrates and coordinates a combination of procedures, personnel, equipment, facilities, and communications.<sup>43</sup>

The ICS includes five major functional areas, staffed as needed, for a given incident: (1) Command, (2) Operations, (3) Planning, (4) Logistics, and (5) Finance/Administration. A sixth ICS Function, Intelligence/ Investigations, is only used when the incident requires these specialized capabilities.<sup>44</sup>

The Federal Emergency Management Agency (FEMA) provides training for NIMS and ICS systems.<sup>45</sup>

## C. Emergency Medical Services

For some cities, approximately 75% of emergency calls for service are for medical emergencies.<sup>46</sup> For this reason, 90% of cities providing fire services also provide emergency medical.<sup>47</sup> For example, a call to 9-1-1 often results in a dispatch of a fire apparatus staffed by firefighters and an ambulance staffed by paramedics, delivering emergency medical services. As a result, many Oregon cities require all firefighters to have a basic Emergency Medical Technician (EMT) license.<sup>48</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See <https://training.fema.gov/emiweb/is/icsresource/> (last accessed September 3, 2024).

<sup>46</sup> See City of Hillsboro, *Emergency Operations*, available at: <https://www.hillsboro-oregon.gov/our-city/departments/fire/operations> (last accessed September 3, 2024).

<sup>47</sup> See UnitekEMT, *EMT to Firefighter: Career Guide fo Firefighter EMTs*, available at: <https://www.unitekemt.com/blog/emt-to-firefighter-a-career-guide-for-aspiring-firefighter-emts/#:~:text=The%20majority%20of%20calls%20to,before%20jumping%20on%20the%20truck> (last accessed September 3, 2024).

<sup>48</sup> See City of Portland, *Frequently Asked Questions*, available at: <https://www.portland.gov/fire/join/frequently-asked-questions> (last accessed September 3, 2024).



The Oregon Health Authority (OHA) is responsible for developing a comprehensive emergency medical services and trauma system.<sup>49</sup> The OHA oversees the law requiring counties to adopt an ambulance service area plan that establishes ambulance service areas for the county.<sup>50</sup> The OHA is charged with adopting rules for the types of emergency vehicles such as ambulances, including the supplies and equipment carried, the procedures for summoning and dispatching aid, and licensing of emergency medical services providers.<sup>51</sup>

All ambulance operators must be licensed.<sup>52</sup> Emergency medical service providers fit into five different types of licenses, depending on the training and experience: (1) Emergency Medical Responders (EMR); (2) Emergency Medical Technicians (EMT); (3) Advanced EMT (AEMT); (4) EMT-Intermediate (EMT-I), and (5) Paramedics.<sup>53</sup> Oregon uses the National Emergency Medical Services Education Standards (NEMSES) for educational course requirements.<sup>54</sup>

Cities are immune from liability when providing emergency medical assistance, unless the acts or omissions violate the standards of reasonable care under the circumstances.<sup>55</sup> Cities also have no liability for emergency transportation assistance such as an ambulance unless the city was grossly negligent.<sup>56</sup>

#### **D. Special Skills in Emergencies**

Some incidents require special skills, equipment, or apparatus to enable firefighters to handle the emergency. Some examples include aircraft rescue and firefighting, hazardous materials, swift water rescue, and technical rescue for confined spaces or structural collapse. For example, Eugene Springfield Fire service has numerous teams to conduct these special emergencies.<sup>57</sup>

For special circumstances like confined spaces, Oregon Occupational Safety and Health (Oregon OSHA) requires the employer to work with rescue service provider such as a fire department to adopt a written program and training for emergency rescue.<sup>58</sup>

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<sup>49</sup> ORS 431A.050.

<sup>50</sup> OAR 333-260-0000 to OAR 333-260-0070.

<sup>51</sup> ORS 682.017.

<sup>52</sup> ORS 682.204.

<sup>53</sup> OAR 333-265-0000 to OAR 333-265-0170.

<sup>54</sup> OAR 333-265-0014; See also NATIONAL EMERGENCY MEDICAL SERVICES, EDUCATION STANDARDS (2021), available at: [https://www.ems.gov/assets/EMS\\_Education-Standards\\_2021\\_FNL.pdf](https://www.ems.gov/assets/EMS_Education-Standards_2021_FNL.pdf) (last accessed September 3, 2024).

<sup>55</sup> ORS 30.805.

<sup>56</sup> ORS 30.807.

<sup>57</sup> See *City of Eugene, Technical Rescue Team*, available at: <https://www.eugene-or.gov/4926/Technical-Rescue-Team> (last accessed September 3, 2024).

<sup>58</sup> OAR 437-002-0146.



## E. Fire Code

Tragic fires led to major improvements in codes and standards, including the 1908 Rhoades Opera House fire, which killed 170 people in Boyertown, Pennsylvania, and the 1911 Triangle Shirtwaist Factory fire, which killed 146 people in New York City.<sup>59</sup> As a result, local jurisdictions started to adopt regulations specify measures that we now take for granted—for example, that there be fire escapes and accessible exits.<sup>60</sup>

In Oregon, the SFM adopted its Oregon Fire Code, the minimum requirements related to fire prevention and standards for fire protection purposes.<sup>61</sup> Unlike the state building codes, local jurisdictions may adopt their own regulations, as long as the local regulations are consistent with the Fire Code.<sup>62</sup> The SFM reviews the local regulations and makes consistency findings.<sup>63</sup> For ease, most cities in Oregon default to the Oregon Fire Code.<sup>64</sup>

In 2018, the Oregon Building Codes Division Administrator and State Fire Marshal outlined best practices and suggestions to coordinate efforts with the state requirements such as providing code references and a plain statement of facts for citations and orders, providing electronic access to plans to local fire officials, schedule joint meetings with building and fire officials, develop a pre-application meeting with building and fire officials, and develop a parallel review process for the state building code and fire code.<sup>65</sup> Fire code matters pertaining to new construction are made by the building official with consideration for advice provided by the SFM or a fire official.<sup>66</sup>

One example is when the city of Hillsboro reviews the public infrastructure and private utility plans submitted through the building permit process.<sup>67</sup> Hillsboro reviews the submitted plans to ensure that the fire apparatus access roads meet the requirements of the Oregon Fire Code and that any required roads are serviceable during construction.<sup>68</sup>

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<sup>59</sup> See National Fire Protection Association, *Reporter's Guide: About Codes and Standards*, available at: <https://www.nfpa.org/en/About-NFPA/Press-Room/Reporters-Guide-to-Fire/About-codes-and-standards> (last accessed September 3, 2024).

<sup>60</sup> *Id.*

<sup>61</sup> See OREGON FIRE CODE (2022), available at: <https://codes.iccsafe.org/content/ORFC2022P1> (last accessed on September 3, 2024).

<sup>62</sup> See OAR 837-039-0006.

<sup>63</sup> *Id.*

<sup>64</sup> See <https://www.oregon.gov/osfm/fire-service-partners/pages/oregon-fire-code.aspx> (last accessed September 3, 2024).

<sup>65</sup> Building Codes Division Administrator and State Fire Marshal letter to building and fire officials dated May 1, 2018, available at: <https://www.oregon.gov/bcd/codes-stand/Documents/20180515-joint-bcd-osfm-letter.pdf> (last accessed on September 3, 2024).

<sup>66</sup> ORS 455.485.

<sup>67</sup> See City of Hillsboro, *Fire Department Access Standard*, available at: <https://www.hillsboro-oregon.gov/our-city/departments/fire/fire-prevention/community-development/fire-department-access-3618> (last accessed September 3, 2024).

<sup>68</sup> *Id.*

## F. Staffing

Small cities usually use volunteer firefighters while medium-sized cities often use a combination of full-time and volunteer personnel. In large cities, fire departments are staffed by full-time professionals.

Firefighters can be certified through the Oregon Department of Public Safety Standards and Training (DPPST), although it is not required.<sup>69</sup> The DPPST provides entry-level, specialized, leadership, and maintenance training to firefighters, although most firefighter training happens at the local level.<sup>70</sup> Firefighters train regularly so their skills are second-nature when a serious incident occurs.

To protect the life, safety and health of firefighters, it is important to note that there are specific Oregon OSHA rules for firefighters.<sup>71</sup> These rules include requirements regarding personal protective devices, fire apparatus operation, incident management, and many other rules to protect firefighters.<sup>72</sup>

## G. Fire Prevention and Safety

Fire departments also work in the community to prevent fires and help with life safety. Most fire departments will actively work in their communities to help assess safety risks and emergency preparedness on issues such as smoke alarms, child safety seats, fire extinguishers and escape planning.<sup>73</sup> In addition, fire departments may issue burn permits with conditions to prevent fires, assist code enforcement to enforce weed abatement, and assist law enforcement with unlawful fireworks.<sup>74</sup>

The SFM has created tools to educate homeowners and renters about defensible space.<sup>75</sup> Creation of defensible space is a practice recommended to increase the chances of a home surviving a wildfire.<sup>76</sup>

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<sup>69</sup> See OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING, FIRE PROGRAM, available at: <https://www.oregon.gov/dpsst/FirePrograms/Documents/Fire%20Program%20Book%20reduced.pdf> (last accessed September 3, 2024).

<sup>70</sup> See Oregon Department of Public Safety Standards and Training, *Fire Programs*, available at: <https://www.oregon.gov/dpsst/fireprograms/pages/default.aspx> (last accessed September 3, 2024).

<sup>71</sup> See OAR 437-002-0182.

<sup>72</sup> *Id.*

<sup>73</sup> See e.g. City of Hillsboro, *Community Risk Reduction*, available at: <https://www.hillsboro-oregon.gov/our-city/departments/fire/community-risk-reduction> (last accessed September 3, 2024).

<sup>74</sup> See City of Ashland, *Frequently Asked Questions*, available at: <https://ashlandoregon.gov/faq.aspx> (last accessed September 3, 2024).

<sup>75</sup> See State Fire Marshal, *Creating Defensible Space*, available at: <https://oregondefensiblespace.org/> (last accessed on September 3, 2024); STATE FIRE MARSHAL, OREGON DEFENSIBLE SPACE FOR HOMEOWNERS & RENTERS, available at: <https://www.oregon.gov/osfm/Documents/OSFMDefensibleSpaceAssessmentTool.pdf> (last accessed on September 3, 2024).

<sup>76</sup> *Id.*

## II. LAW ENFORCEMENT

Law enforcement is among the most important public services provided to citizens in a community. Law enforcement agencies enforce laws, investigate crimes, and apprehend individuals who pose a threat to society. By deterring and preventing crime, policing helps create a safer environment for everyone.

Law enforcement is not just responding to police service calls, but includes investigating crimes, conducting patrols, assisting at accidents, performing first aid, assisting in emergency situations, conducting search and rescue operations, testifying in court, and working with schools as school resource officers.

Oregon cities are not legally required to provide law enforcement services, and some cities do not. When a city decides to provide police services, state and federal constitutional requirements relating to the rights of individuals become applicable.

This section is intended to give a general overview of law enforcement. For more general information, please see the U.S. Department of Justice’s Police- Community Relations Toolkit: Policing 101, available at: <https://www.justice.gov/file/1129671/dl?inline=> (last accessed September 3, 2024).

Volumes of materials exist for each topic. For specific questions, please consult with your city attorney or district attorney.

### A. Community Policing

Law enforcement has evolved throughout the centuries. The first police department in the United States was established in New York City in 1844.<sup>77</sup> Other major cities followed and used the London Metropolitan Police as a model.<sup>78</sup> At that time, policing was decentralized to the level of political

### Community Policing Strategies

1. Develop community partnerships with other government entities, private businesses, non-profits, service providers, and media.
2. Proactively identify and prioritize problems and develop innovative responses.
3. Create an organization that supports all ideas into an agency and provides line-level officers with decision-making authority and accountability.
4. Train and cross-train officers to increase knowledge and flexibility.

See Discover Policing, *What Is Community Policing?*, available at: <https://www.discoverpolicing.org/explore-the-field/what-is-community-policing/> (last accessed September 3, 2024).

<sup>77</sup> See POLICE DEPARTMENT CITY OF NEW YORK, THE HISTORY OF NEW YORK CITY POLICE DEPARTMENT (1993), available at: <https://www.ncjrs.gov/pdffiles1/Digitization/145539NCJRS.pdf> (last accessed September 3, 2024).

<sup>78</sup> *Id.*

wards and neighborhoods which developed relatively autonomous police units.<sup>79</sup> This was the predecessor to the current trend, *community policing*.<sup>80</sup>

In Oregon, the Portland Police Department started its law enforcement presence in 1851 with a single officer, the city marshal, and changed to a full-time force beginning in 1870.<sup>81</sup> The city of Eugene hired its first marshal in 1863 and in 1897, the first chief of police was appointed.<sup>82</sup>

Community policing is a philosophy that supports the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.<sup>83</sup> Community policing, recognizing that police rarely can solve public safety problems alone, encourages interactive partnerships with relevant stakeholders.<sup>84</sup> These partnerships can be used to accomplish the two interrelated goals of developing solutions to problems through collaborative problem solving and improving public trust.<sup>85</sup>

Community advisory boards are one of the most common forms of police-community engagement bodies to help create community policing.<sup>86</sup> However, some boards suffer from various deficiencies that inhibit their ability to achieve their goals.<sup>87</sup> Some ways to ensure that an advisory board is utilized effectively include setting clear expectations with operating procedures and meeting protocols, providing necessary technical knowledge, provide sufficient resources.<sup>88</sup>

An example of innovative community policing in Oregon is Crisis Assistance Helping Out On the Streets, known as CAHOOTS.<sup>89</sup> This mobile crisis intervention program is dispatched for people who are intoxicated, mentally ill, or disoriented.<sup>90</sup> Each dispatch is staffed with a medic and an experienced crisis worker.<sup>91</sup> CAHOOTS diverts 3-8% of the calls from law enforcement and effectively provides an alternative to police.<sup>92</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See Portland Police Museum and Historical Society, *Portland Police 1870*, available at: <https://portlandpolicemuseum.com/portland-police-to-1870.html> (last accessed September 3, 2024).

<sup>82</sup> See Eugene Police Department, *History*, available at: <https://www.eugene-or.gov/660/History> (last accessed September 3, 2024).

<sup>83</sup> See U.S. Department of Justice, *Community Policing Defined* (2009), available at: <https://www.cops.usdoj.gov/files/RIC/Publications/e030917193-CP-Defined.pdf> (last accessed September 3, 2024).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See Policing Project NYU School of Law, *Community Advisory Boards: What Works and What Doesn't*, available at: <https://www.policingproject.org/cab> (last accessed September 3, 2024).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See City of Eugene Police Department, *CAHOOTS*, available at: <https://www.eugene-or.gov/4508/CAHOOTS> (last accessed September 3, 2024).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

## B. Law Enforcement Since 2020

In 2020, two major events changed society: (1) the world-wide COVID-19 pandemic, which shut down businesses, schools, and travel; and (2) the death of George Floyd.

The societal impacts of the pandemic are likely reflected in the crime rates in Oregon. Since 1995, the number of violent crimes and property crimes in Oregon has dropped by nearly one-half.<sup>93</sup> However, coinciding with the COVID-19 pandemic shut down in 2020 and 2021, the number of violent crimes jumped 17%, and property crimes jumped 10 %.<sup>94</sup>

The Oregon Criminal Justice Commission believes that the 2022 data suggests crime levels could soon return to pre-pandemic levels.<sup>95</sup> The reasons for the spike in crime are complicated, but Washington County District Attorney Kevin Barton believes that a number of factors have contributed to the data, including the COVID-19 pandemic, the rise in unhoused persons, the impact of the addiction epidemic, and an increase in mental health issues.<sup>96</sup>

On May 25, 2020, Minneapolis Police Officer Derek Chauvin pressed his knee into African American George Floyd's neck for 9½ minutes, killing him.<sup>97</sup> Later, Chauvin was convicted of murdering Floyd and three other officers were convicted for not intervening to stop Chauvin or willfully violating Floyd's constitutional rights by not providing medical care when he lost a pulse.<sup>98</sup>

George Floyd's death sparked protests nationwide about police use of force and the role of racial inequality.<sup>99</sup> In Portland, there were more than 100 nights of protests.<sup>100</sup> As a result of the interaction between the protesters and Portland's Police Bureau's crowd management response with crowd munitions, tear gas and pepper spray, community members filed hundreds of complaints and multiple reviews were conducted into the Portland Police.<sup>101</sup> Demonstrators

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<sup>93</sup> See Federal Bureau of Investigation, *Crime Data Explorer*, available at: [CDE \(cjis.gov\)](https://cde.cjis.gov) (last accessed September 3, 2024).

<sup>94</sup> *Id.*

<sup>95</sup> Conrad Wilson and Jonathan Levinson, *Crime in Oregon Starts to Trend Down, According to FBI Data Oregon Public Broadcasting*, OREGON PUBLIC BROADCASTING, April 19, 2023, available at: <https://www.opb.org/article/2023/04/19/fbi-data-oregon-crime-starts-to-go-down-in-2022/> (last accessed September 3, 2024).

<sup>96</sup> *Id.*

<sup>97</sup> *How George Floyd Died, and What Happened Next*, THE NEW YORK TIMES, July 29, 2022, available at: <https://www.nytimes.com/article/george-floyd.html> (last accessed September 3, 2024).

<sup>98</sup> Press Release from U.S. Department of Justice, Feb. 24, 2022, available at: <https://www.justice.gov/opa/pr/three-former-minneapolis-police-officers-convicted-federal-civil-rights-violations-death> (last accessed September 3, 2024).

<sup>99</sup> Jayarti Ramakrishnan, *Protesters Take to Portland Streets Following Minneapolis Police Killing Of George Floyd*, OREGONIAN, May 28, 2020, available at: <https://www.oregonlive.com/news/2020/05/protesters-take-to-portland-streets-following-minneapolis-police-killing-of-george-floyd.html> (last accessed September 3, 2024).

<sup>100</sup> *100 Days of Portland Protests - Top Photos*, OREGONIAN, July 20, 2020, available at: [100 Days of Portland Protests - Top Photos - oregonlive.com](https://www.oregonlive.com/news/2020/07/100-days-of-portland-protests-top-photos-oregonlive.com) (last accessed September 3, 2024).

<sup>101</sup> See City of Portland, *Lessons Learned: City's Response to Protests Exposed Vulnerabilities in Portland's Police Accountability System*, available at: <https://www.portland.gov/ipr/news/2022/4/12/lessons-learned-citys-response-protests-exposed-vulnerabilities-portlands-police> (last accessed September 3, 2024).

caused tens of millions of dollars of damage on public and private property.<sup>102</sup>

To address the wide-spread outrage, the Oregon Association Chiefs of Police and the League of Oregon Cities worked closely with the Oregon Legislature to pass more than 20 police reform measures designed to enhance the way cities screen, hire, train, and hold police officers accountable.<sup>103</sup>

In 2020, the Oregon Legislature passed the following police reform package:

- Limits the instances when a choke hold or other physical tactics that restrict the air and blood flow in the neck can be used to instances in which deadly force is authorized under existing law.<sup>104</sup> The practice will be banned as a means of securing custody or control of an individual.<sup>105</sup>
- Requires that all police and reserve officers must intervene in instances of excessive force and other serious misconduct and report that misconduct to a supervisor.<sup>106</sup>
- Creates state-level database or requires data maintenance on officer decertifications, disciplinary actions and/or misconduct; adds grounds requiring or allowing certification suspension or revocation.<sup>107</sup> Creates an online database of officers who have had actions taken against their police certifications and requires police agencies to keep the personnel records of police officers for 10 years and provide those records to any agency seeking to hire a police officer who works for has worked for them.<sup>108</sup> A city would also have immunity from civil action for releasing that information.<sup>109</sup>
- Bans the use of projectile fired tear gas or other irritants to disperse public disturbances but allows their use during a declared riot.<sup>110</sup> Aerosol sprayers, such as the containers an officer carries on their belt, which must be used in close proximity, are not addressed in the bill.<sup>111</sup>

In 2021, the Oregon Legislature approved the following police reform bills:

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<sup>102</sup> Everton Bailey Jr., *\$23 Million Cited as Portland Protest Damages Was Mostly Tied to Coronavirus Closures*, OREGONIAN, <https://www.oregonlive.com/portland/2020/07/coronavirus-closures-inflated-23-million-reported-in-downtown-portland-protest-damages.html> (last accessed September 3, 2024).

<sup>103</sup> Press Release from Oregon Association Chiefs of Police and League of Oregon Cities, Jan. 28, 2023, available at: [https://www.orcities.org/download\\_file/533c38de-f59b-4654-917f-c1de9221bf0e/1852](https://www.orcities.org/download_file/533c38de-f59b-4654-917f-c1de9221bf0e/1852) (last accessed October 6, 2024).

<sup>104</sup> HB 4203 (2020).

<sup>105</sup> *Id.*

<sup>106</sup> HB 4205 (2020).

<sup>107</sup> HB 4207 (2020).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> HB 4208 (2020).

<sup>111</sup> *Id.*



- Modifies the crime of interfering with a police officer when an offense is charged for the same conduct.<sup>112</sup>
- Prohibits law enforcement agencies from releasing booking photographs unless necessary for a public safety interest and prohibits the practice requiring individuals to pay private websites to remove booking photographs.<sup>113</sup>
- Requires that all police officers be trained to identify, report and investigate crimes committed due to a person’s perceived gender.<sup>114</sup>
- Imposes limitations on arbitrators’ decisions concerning alleged misconduct by law enforcement officers.<sup>115</sup> Collective bargaining agreements entered into after July 1, 2021, and grievances related to misconduct allegations for law enforcement officers will be resolved pursuant to the new statutory requirements.<sup>116</sup> The burden of proof, upon the employer, is set at a “preponderance of the evidence” rather than the traditional “clear and convincing” evidence standard.<sup>117</sup> The appointed arbitrator shall uphold the disciplinary action unless the arbitrator finds that the disciplinary action is arbitrary and capricious.<sup>118</sup> The bill also creates a commission through the DPSST to build a non-bargainable statewide discipline guide to address significant misconduct in the specified areas of misconduct.<sup>119</sup>
- Requires police officers to be trained in airway and circulatory anatomy and physiology and certified in cardiopulmonary resuscitation.<sup>120</sup>
- Eliminates mandatory custody arrests of persons who fail to disperse when an unlawful assembly is declared.<sup>121</sup>
- Requires law enforcement agencies serving cities with populations greater than 150,000 to clearly identify officers engaged in crowd control activities by name or a unique identifying number.<sup>122</sup>
- Directs the Oregon Criminal Justice Commission to establish statewide database of reports of use of physical force by peace officers and corrections officers.<sup>123</sup>
- Clarifies the requirement that police officers report misconduct by other officers to supervisors with the authority to act on the report.<sup>124</sup>

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<sup>112</sup> HB 3164 (2021).

<sup>113</sup> HB 3273 (2021).

<sup>114</sup> HB 2986 (2021).

<sup>115</sup> HB 2930 (2021).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> HB 2513 (2021).

<sup>121</sup> HB 3059 (2021).

<sup>122</sup> HB 3355 (2021).

<sup>123</sup> HB 2932 (2021).

<sup>124</sup> HB 2929 (2021).



- Declares legislative findings that racism has no place in policing and gives cities greater ability to investigate the background of police candidates.<sup>125</sup> Requires the DPSST to investigate person’s character before accepting person for training and certification as police officer or reserve officer.<sup>126</sup> Law enforcement agencies must adopt policies that set standards for speech and expression by officers in and outside the course and scope of employment.<sup>127</sup>
- Requires police agencies with 35 officers or more to become accredited through an accrediting body determined by the state.<sup>128</sup> Police agencies with 100 or more officers must become accredited by July 1, 2025, and agencies with 35-99 officers must meet this standard by July 1, 2026.<sup>129</sup>

In 2022, the Oregon Legislature addressed administrative issues that arose from the passage of public safety reform legislation.<sup>130</sup> The legislation also addressed legal interpretations of changes to crowd control statutes.<sup>131</sup> Specifically, the bill does the following:

- Creates a definition of “crowd management” to help clarify when crowd dispersal tactics and tolls may and may not be utilized by law enforcement.
- Distinguishes handheld chemical incapacitants, such as belt cannister of pepper spray from tear gas.
- Prohibits the use of handheld chemical incapacitants for crowd control while ensuring that a police officer may use this tool in situations that would otherwise be allowed by law, thus preventing the indiscriminate use of chemical agents.
- Allows the deployment of tear gas only when “objectively reasonable” as opposed to only when a riot exists.
- Bans the use of kinetic projectile munitions for crowd management and prohibits an officer from targeting a person’s head unless deadly force is authorized. Officers could still utilize these munitions when doing so would be otherwise allowed under Oregon’s use of force statute.
- Requires local hospitals to be notified when tear gas and impact munitions are deployed in a crowded setting.
- Requires agencies to clean up spent munitions as soon as is practicable after their deployment.<sup>132</sup>

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<sup>125</sup> HB 2936 (2021).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> HB 2162 (2021).

<sup>129</sup> *Id.*

<sup>130</sup> HB 4008 (2022).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

As a result, Oregon law enforcement leaders, including Oregon Association Chiefs of Police and the League of Oregon Cities, worked closely with the Oregon Legislature to pass over 20 police reform measures designed to enhance the way cities screen, hire, train and hold accountable police officers.<sup>133</sup>

### C. Legal Duties and Authorities

In Oregon, municipal police generally swear an oath to the United States Constitution, the Oregon Constitution, the laws of the state of Oregon, and the local laws such as city ordinances. There is no state statute that requires such an oath for local law enforcement, but the oath sets expectations for the role of law enforcement as holders of the public trust in our communities.

This section is intended to give a brief overview of the state and federal constitutions and the laws that govern policing. This section is *not* intended to duplicate the extensive training given to law enforcement officers. For more information about the latest training for the Oregon DPSST's, Basic Police Student Manual (2023), please see: [https://www.oregon.gov/dpsst/CPE/Documents/BP432\\_student\\_manual\\_09272023.pdf](https://www.oregon.gov/dpsst/CPE/Documents/BP432_student_manual_09272023.pdf) (last accessed September 3, 2024).

In addition, the DPSST maintains a legal update bulletin that provides the latest legal updates for law enforcement, available at: <https://www.oregon.gov/dpsst/cj/pages/announcements.aspx> (last accessed September 3, 2024).

#### i. United States and Oregon Constitutions

The foundation of the American criminal justice system is located within the U.S. Constitution, specifically in the Bill of Rights, the first 10 amendments to the Constitution—which guarantees all citizen certain fundamental liberties and rights.<sup>134</sup> Separate and distinct from the U.S. Constitution, state constitutions, such as the Oregon Constitution, provide similar framework for protecting certain individual rights from government interference.<sup>135</sup>

The U.S. Constitution sets forth several provisions that directly related to law enforcement granting protection to citizens, including:

- The Bill of Rights, including those of the Fourth, Fifth, Sixth, and Eighth Amendments. Found within these amendments are protections relating to searches, the privilege against self-incrimination, the right to a speedy trial, the right to counsel, the ability to confront witnesses, and the right to avoid cruel and unusual punishment.<sup>136</sup>

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<sup>133</sup> Press Release from Oregon Association Chiefs of Police and League of Oregon Cities (Jan. 28, 2023).

<sup>134</sup> U.S. DEPARTMENT OF JUSTICE, KNOW YOUR RIGHTS – A GUIDE TO THE UNITED STATES CONSTITUTION, available at: <https://www.justice.gov/usao-ne/publications> (last accessed on May 30, 2024).

<sup>135</sup> *E.g.*, Or Const, Art I, § 9 (prohibiting unreasonable searches or seizures).

<sup>136</sup> Constitution Annotated, Amendment 14 s1.5.5.1, available at: [https://constitution.congress.gov/browse/essay/amdt14-S1-5-5-1/ALDE\\_00013759/](https://constitution.congress.gov/browse/essay/amdt14-S1-5-5-1/ALDE_00013759/) (last accessed September 3, 2024).

- The Fourteenth Amendment’s guarantee of procedural due process affects procedures in state criminal cases in two ways. First, through the doctrine of incorporation, the U.S. Supreme Court has held that the Due Process Clause applies to the states nearly all the criminal procedural guarantees of the Bill of Rights. Second, the U.S. Supreme Court has held that the Due Process Clause prohibits government practices and policies that violate precepts of fundamental fairness, even if they do not violate specific guarantees of the Bill of Rights.<sup>137</sup>

State constitutions are separate and distinct from the federal constitution.<sup>138</sup> State constitutional provisions often grant more protection to individual defendants than that given by the federal constitution because state courts interpret their own constitutions with independent analysis.<sup>139</sup>

Similar to the U.S. Constitution, the state of Oregon also has a constitution, with its own bill of rights.<sup>140</sup> Directly relating to law enforcement are the following provisions in the Oregon Constitution that have corresponding provisions in the federal constitution:

- *Article I, Section 9 of the Oregon Constitution* is comparable to the Fourth Amendment of the US Constitution prohibiting unreasonable searches or seizures.<sup>141</sup>
- *Article I, Section 20 of the Oregon Constitution* is comparable to the 14th Amendment of the US Constitution.<sup>142</sup>

In Oregon, the Oregon courts interpret the Oregon Constitution and how the Oregon constitution grants certain rights to individuals.<sup>143</sup> It is notable that there is no comparable due process language in the Oregon Constitution.<sup>144</sup> Although neither the Equal Protection Clause nor Due Process rights are expressly provided for in the Oregon Constitution, Oregon courts have found similar or even greater protections in other guarantees.<sup>145</sup> However, the Oregon

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<sup>137</sup> *Id.*

<sup>138</sup> Paul Marcus, *State Constitutional Protection for Defendants in Criminal Prosecutions*, WM & MARY FAC. PUB. (1988), available at: <https://scholarship.law.wm.edu/facpubs/575> (last accessed September 3, 2024).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Or Const, Art I, § 9 (“Unreasonable searches or seizures. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized”).

<sup>142</sup> Or Const, Art I, § 20 (“No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens”).

<sup>143</sup> Thomas A. Balmer, *Does Oregon’s Constitution Need a Due Process Clause? Thoughts on Due Process and Other Limitations on State Action*, 91 WASH. L. REV. ONLINE 157 (2016), available at: <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1018&context=wlro> (last accessed September 3, 2024).

<sup>144</sup> *Id.*

<sup>145</sup> Janet Hoffman, Shannon Riordan & Thalia Sady, *Making a Legal Record Under the*

Constitution analysis is different from the federal counterparts.<sup>146</sup> For example, this interpretation has created more free speech rights under the Oregon Constitution than the federal constitution.<sup>147</sup>

What does it mean if a law enforcement action violates either the rights granted by the U.S. Constitution or Oregon Constitution? It depends on the rights violated. For Fourth Amendment (search and seizure) violations, the evidence obtained may be excluded from consideration for the criminal or civil trial. For an illegally obtained confession obtained in violation of the Fifth Amendment, the confession would be excluded from consideration for the criminal trial.<sup>148</sup>

## **ii. Oregon Criminal Code and Local Laws**

In addition to the U.S. and Oregon Constitutions, law enforcement is responsible for the enforcement of state and local laws. Law enforcement primarily enforces the offenses in the Oregon Criminal Code, which generally governs the prosecution of and punishment of any state offense, including crimes or violations.<sup>149</sup>

Cities may use law enforcement to enforce city ordinances. Most city ordinances are civil violations, because Oregon courts presume all local criminal laws to be preempted.<sup>150</sup> In larger cities, civil violations are enforced by code enforcement officers. For more information about preemption of local laws, please see League of Oregon Cities' Legal Guide to Oregon's Statutory Preemptions of Home Rule, available at: [https://www.orcities.org/download\\_file/385/1852](https://www.orcities.org/download_file/385/1852) (last accessed September 3, 2024).

## **iii. Community Caretaking**

In addition to the enforcement of criminal laws, police officers are authorized to perform community caretaking functions.<sup>151</sup> These are actions and activities that may not directly include enforcement of the law, but that contribute to the overall wellbeing of the public.<sup>152</sup> These include, but are not limited to, such tasks as the following: welfare checks; death notifications; public assistance to persons who may be lost, confused, or affected by mental or physical illness;

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*Oregon Constitution*, OREGON STATE BAR LITIGATION JOURNAL, Vol 29, No. 1 (Winter 2010), available at: [https://jhoffman.com/wp-content/uploads/2011/07/Making\\_a\\_Legal\\_Record\\_Under\\_the\\_Oregon\\_Constitution1.pdf](https://jhoffman.com/wp-content/uploads/2011/07/Making_a_Legal_Record_Under_the_Oregon_Constitution1.pdf) (last accessed September 3, 2024).

<sup>146</sup> *Id.*

<sup>147</sup> See *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 121 P 3d 671, 677 (2005).

<sup>148</sup> *Edwards v. Arizona*, 451 US 477 (1981); *Oregon v. Bradshaw*, 462 US 1039 (1983).

<sup>149</sup> See generally, ORS Chapters 161 to 167.

<sup>150</sup> See Or Const, Article XI, § 2; League of Oregon Cities, *Home Rule 101*, available at: [https://www.orcities.org/download\\_file/1024/1852](https://www.orcities.org/download_file/1024/1852) (last accessed September 3, 2024).

<sup>151</sup> ORS 133.033.

<sup>152</sup> OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING, MAINTENANCE TRAINING FOR POLICE CERTIFICATION EQUITY (2023), available at: <https://www.oregon.gov/dpsst/CJ/Documents/EquityResourcesGuide.pdf> (last accessed September 3, 2024).

traffic control; medical emergencies; lifesaving services; crime prevention; public information; and community engagement.<sup>153</sup>

#### iv. Stops

A police officer who reasonably suspects that a person has committed or is about to commit a crime may stop a person to make a reasonable inquiry.<sup>154</sup> The stop may only be made after the officer informs the person that the officer is a officer.<sup>155</sup> The detention must be in the vicinity of the stop and only for a reasonable time.<sup>156</sup> The questions are reasonable if the questions are limited to the circumstances that aroused the officer's suspicion, any other circumstances that arose during the course of the detention that gave rise to a reasonable suspicion of criminal activity, and ensuring the safety of the officer.<sup>157</sup>

Officers may obtain consent to search, but the consent shall be documented that the person gave informed and voluntary consent.<sup>158</sup> A police officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects the person is armed and dangerous.<sup>159</sup>

A person who operates a motor vehicle on a public road or place open to the public is implied by law to have given consent to search for a breath or blood test to determine whether the driver is under the influence of intoxicants.<sup>160</sup>

#### v. Searches

Police officers execute search warrants issued by judges.<sup>161</sup> To obtain a warrant for a criminal case, law enforcement officers must show that there was probable cause to believe a search is justified, that a crime was committed, and evidence of that crime is available.<sup>162</sup>

Probable cause exists when the facts set out in the warrant would lead a reasonable person to believe that the sought things will probably be found in the location to be searched.<sup>163</sup> The warrant must specifically identify the persons and places to be searched.<sup>164</sup> The objects to be

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<sup>153</sup> *Id.*

<sup>154</sup> ORS 131.615.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> ORS 131.625.

<sup>160</sup> ORS 813.100; ORS 813.131; ORS 813.135.

<sup>161</sup> ORS 133.545.

<sup>162</sup> *Id.*; see also OREGON DEPARTMENT OF PUBLIC SAFETY, BASIC POLICE ACADEMY STUDENT MANUAL (2023), available at: [https://www.oregon.gov/dpsst/CPE/Documents/BP432\\_student\\_manual\\_09272023.pdf](https://www.oregon.gov/dpsst/CPE/Documents/BP432_student_manual_09272023.pdf) (last accessed September 3, 2024).

<sup>163</sup> Or Const, Art I, § 9; ORS 133.565(2)(c); *United States v. Grubbs*, 547 US 90, 95 (2006)

<sup>164</sup> *Id.*

seized must be described with particularity in the search warrant.<sup>165</sup>

Cities that seize property shall take reasonable steps to safeguard and protect things seized against loss, damage and deterioration.<sup>166</sup> Portable electronic devices may only be forensically searched with a search warrant or consent.<sup>167</sup>

#### **vi. Issue Citations**

Police officers may issue criminal citations if the officer has probable cause to believe that the person has committed a misdemeanor, felonies subject to misdemeanor treatment, or violations.<sup>168</sup> All citations must be on the Oregon Uniform Citation and Complaint form if a separate complaint will not be filed.<sup>169</sup>

The citation issued shall contain the following: (1) name of the court in which the cited person is to appear; (2) name of the person cited; (3) complaint containing at least name of court, name of public body bringing action and name of defendant; (4) readily understandable statement of the crime and date, time and place of alleged offense; (5) certification by the officer; and (6) time, date and place the person cited is to appear in court.<sup>170</sup>

#### **vii. Arrests**

An arrest means to place a person under restraint or take a person into custody for the purpose of charging them with an offense.<sup>171</sup> A police officer may make an arrest under an arrest warrant or without an arrest warrant if the officer has probable cause to believe that the person has committed a crime.<sup>172</sup> A police officer may make an arrest if the officer is notified by another officer of any state that there exists an arrest warrant.<sup>173</sup> Arrest warrants may be issued by a judge if there is probable cause to believe the person has committed the crime.<sup>174</sup>

When a police officer responds to incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, or to believe that one place the other in fear of imminent serious physical injury, the officer must arrest and take into custody the alleged assailant.<sup>175</sup> A police officer shall arrest a person without a warrant when the officer has probable cause to believe that there is a restraining order or protective order and

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<sup>165</sup> *Id.*

<sup>166</sup> ORS 133.357.

<sup>167</sup> ORS 133.539.

<sup>168</sup> ORS 133.055(1).

<sup>169</sup> ORS 133.069; ORS 153.045.

<sup>170</sup> ORS 133.007; ORS 133.015; ORS 153.048; ORS 153.051.

<sup>171</sup> ORS 133.005

<sup>172</sup> ORS 133.220; ORS 133.310(1).

<sup>173</sup> ORS 133.310(2).

<sup>174</sup> ORS 133.120.

<sup>175</sup> ORS 133.055(2).

that the person to be arrested has violated the terms of the order.<sup>176</sup> A police officer shall arrest if the officer has probable cause to believe that the person has been released under a pretrial release order and the person has failed to comply with a no contact condition of the release agreement.<sup>177</sup>

The Oregon Supreme Court has held that unlike federal search and seizure law, a valid custodial arrest does not alone give rise to a unique right to search.<sup>178</sup> Such a warrantless search must be justified by the circumstances surrounding the arrest.<sup>179</sup> The three valid justifications for a search incident to a lawful arrest are the following: (1) to protect the officer's safety and/or prevent escape; (2) to prevent the destruction of evidence; and (3) to discover evidence relevant to the crime for which the defendant is being arrested.<sup>180</sup>

#### **viii. Use of Force**

A police officer is justified in using physical force upon another person only when it is objectively reasonable, under the totality of the circumstances known to the officer to believe: (1) the person poses an imminent threat of physical injury to the officer or to a third person; or (2) physical force is necessary to make a lawful arrest when the officer has probable cause to believe the person has committed a crime; or (3) to prevent the escape from custody.<sup>181</sup> The officer shall only use the physical forces that the officer reasonably believes is necessary to prevent injury, to make the arrest, or prevent escape.<sup>182</sup> A police officer may only use *deadly* physical force when the circumstances meet the above conditions *and* the officer has probable cause to believe a person has committed a violent felony.<sup>183</sup>

Knowing use of physical force that impedes breathing or circulation is not allowed, except in circumstances which physical force is justified in defense of a person under ORS 161.209 and not limited by ORS 161.215.<sup>184</sup>

#### **ix. Custody and Interrogation**

The U.S. Supreme Court held that if a person is subjected to custodial police interrogation, any statements obtained therefrom, whether incriminating or exculpatory, are not admissible unless the prosecution demonstrated that sufficient procedural safeguards were afforded the accused.<sup>185</sup> The reading of the person's *Miranda* warning is that procedural safeguard. *Miranda* warnings must have the following: (1) the accused person has the right to remain silent; (2) any

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<sup>176</sup> ORS 133.310(3).

<sup>177</sup> ORS 133.310(6).

<sup>178</sup> See *State v. Caraher*, 293 Or 741 (1982)

<sup>179</sup> *Id.*

<sup>180</sup> *State v. Owens*, 302 Or 196 (1986); *State ex rel Juv. Dept. v. Singh*, 151 Or App 223 (1997); *State v. Crampton*, 176 Or App 62 (2001).

<sup>181</sup> ORS 161.233.

<sup>182</sup> *Id.*

<sup>183</sup> ORS 161.242; *Tennessee v. Garner*, 471 US 1 (1985).

<sup>184</sup> ORS 161.237.

<sup>185</sup> *Miranda v. Arizona*, 384 US 486 (1966)



statement made may be used against the accused; (3) the accused has the right to an attorney prior to and during questioning, and (4) an attorney may be appointed to represent the accused if accused is unable to afford one.<sup>186</sup>

A suspect may waive their constitutional rights if it is voluntary, knowing, and intelligent.<sup>187</sup> Except in rare circumstances, if a suspect is represented by counsel, there cannot be any further interrogation about the charged crimes.<sup>188</sup>

## **B. Employment Relations**

The Oregon Department of Public Safety Standards and Training (DPSST) certifies all individuals as police officers and sets for the minimum requirements to be an officer.<sup>189</sup> As discussed below, candidates for law enforcement must pass a psychological evaluation, pass a background check for moral fitness, and be able to meet the physical demands of the position.

### **i. Recruitment**

According to the FBI Law Enforcement Bulletin, law enforcement is having a record number of people leaving the profession, with a corresponding decrease in recruits.<sup>190</sup> The article states:

A Police Executive Research Forum survey indicated that between 2020 and 2021, the law enforcement resignation and retirement rates increased by 18% and 45%, respectively. Four of the largest metropolitan police departments are collectively down over 5,400 officers during 2022 and 2023. Further, law enforcement is experiencing a drastic decrease in the number of recruits—27% to 60%, depending on the area.<sup>191</sup>

Local governments are struggling to retain and recruit new law enforcement officers. A decade ago, officers would typically remain on the job 20 years or more, but many now leave after six to 11 years for a variety of reasons.<sup>192</sup> In Oregon, Portland ranks 48th among 50 big

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<sup>186</sup> *Id.*

<sup>187</sup> *State v. Vondehn*, 348 Or 462 (2010); *State v. McGrew*, 38 Or App 493 (1979); *State v. Collins*, 253 Or 74 (1969).

<sup>188</sup> *Fare v. Michael C.*, 442 US 707 (1979); *State v. Charboneau*, 323 Or 38 (1996).

<sup>189</sup> ORS 181A.490.

<sup>190</sup> See <https://leb.fbi.gov/archives> (last accessed September 3, 2024).

<sup>191</sup> Timothy Karch, *Playing the Long Game: Law Enforcement Recruitment*, FBI LAW ENFORCEMENT BULLETIN (March 7, 2024), available at: <https://leb.fbi.gov/articles/featured-articles/playing-the-long-game-law-enforcement-recruitment> (last accessed September 3, 2024).

<sup>192</sup> Maxine Bernstein, *State Basic Police Academy Seeks to Increase Class Sizes, Add Night Courses to Address Backlog*, OREGONIAN, May 6, 2023, available at: <https://www.oregonlive.com/crime/2023/05/state-basic-police-academy-seeks-to-increase-class-sizes-add-night-courses-to-address-backlog.html#:~:text=While%20officers%20a%20decade%20ago,is%20currently%2C%E2%80%9D%20he%20said.> (last accessed September 3, 2024).

cities for police officers per capita at 1.2 officers for every 1,000 people in the city.<sup>193</sup> As a result, many cities are struggling to recruit and train more people for law enforcement.

## ii. Certification

The DPSST has established minimum requirements for hiring of law enforcement officers.<sup>194</sup> Applicants must be at least 21 years of age, submit fingerprints, and meet the academic proficiency standards.<sup>195</sup> After July 1, 2023, Oregon administrative rules require a standardized background checklist and personal history statements that meets the moral fitness for certification.<sup>196</sup>

The administrative rules require a pre-employment psychological evaluation for newly hired police officers and reserves.<sup>197</sup> The psychological evaluation is used to identify mental conditions, personality disorders, personality traits, or behavior patterns that may adversely affect the applicant’s ability to perform the essential functions of the job with reasonable skill, safety, and judgment based upon the psychological evaluation criteria established by the hiring agency.<sup>198</sup> The evaluation is also used to conduct an assessment of the applicant’s tendencies, feelings and opinions toward diverse cultures, races and ethnicities and differing social, political, economic and life statuses.<sup>199</sup>

Applicants must be able to meet the physical standards such as sufficient vision, depth perception, hearing resting blood pressure, and normal pulmonary capacity, and no prescribed medications with side effects that would interfere with the ability to perform the essential functions of the job.<sup>200</sup> Applicants are also required to pass the Oregon Physical Abilities Test—a 1235-foot obstacle run, a push pull machine, and a “dummy” drag.<sup>201</sup>

To attend basic training, the individual must be employed as a police officer at a public agency in Oregon.<sup>202</sup> Once hired, recruits report to the DPSST Oregon Police Academy in Salem,

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<sup>193</sup> Lucas Manfield, *Portland Ranks 48<sup>th</sup> Among 50 Big Cities for Cops per Capital*, WILLAMETTE WEEK, Sept. 28, 2022, available at: <https://www.wweek.com/news/2022/09/28/portland-ranks-48th-among-50-big-cities-for-cops-per-capita/> (last accessed September 30, 2024).

<sup>194</sup> OAR 259-008-0010.

<sup>195</sup> OAR 259-008-0010.

<sup>196</sup> *Id.*; OAR 259-008-0015.

<sup>197</sup> OAR 259-008-0010; see also OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING, AGENCY BACKGROUND AND PSYCHOLOGICAL SCREENING REFERENCE GUIDE (2023), available at: <https://www.oregon.gov/dpsst/CJ/Documents/BackgroundPsychReferenceGuide.pdf> (last accessed September 3, 2024).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> See Oregon Department of Public Safety Standards and Training, *Oregon Physical Abilities Test*, available at: <https://www.oregon.gov/dpsst/cj/pages/orpat.aspx#:~:text=The%20ORPAT%20consist%20of%20a,power%20and%20general%20physical%20endurance> (last accessed September 3, 2024) (describing the Oregon Physical Abilities Test (ORPAT)).

<sup>202</sup> OAR 259-008-0010.

Oregon to attend 16 weeks of basic instruction.<sup>203</sup> Upon graduation, officers are required to participate in a structured field training program.<sup>204</sup> Some city police departments also maintain their own instruction programs.

All Oregon full-time law enforcement officers must be certified by the DPSST within 18 months of hire.<sup>205</sup> Individuals working less than 80 hours a month and responsible for enforcing criminal law are considered reserves.<sup>206</sup> Reserve officers are not certified; however they are required to be reported to the DPSST and have a full background check.<sup>207</sup> Oregon maintains a searchable database of all the DPSST certification, training and employment records relating to public safety officers in Oregon.<sup>208</sup>

### iii. Discipline

In 2021, the Oregon Legislature, as part of a police reform package, passed a bill that adopted statewide uniform rules for law enforcement standards of conduct and disciplinary standards. Previously, local governments had difficulty in disciplining officers for misconduct, because the discipline was often grieved and decided by an arbitrator. For example, there were many instances in which an arbitrator ordered the reinstatement of officers after the employer has imposed discipline that included termination of employment.<sup>209</sup>

Oregon law now establishes that a statewide commission adopts rules for disciplinary standards and procedures.<sup>210</sup> Employers, civilian oversight boards, and arbitrators are required to use the statewide standards and procedures.<sup>211</sup> Further, arbitrators, when determining the reasonableness of the disciplinary action imposed by a city, must uphold the discipline unless it is arbitrary and capricious.<sup>212</sup> An arbitrator is also prohibited from overturning or reducing discipline of termination if doing so would be inconsistent with the public interest.<sup>213</sup> However, the employer must prove, by a preponderance of the evidence, the following elements: (1) the officer engaged in misconduct; and (2) the discipline met the statutory just cause standard.<sup>214</sup>

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<sup>203</sup> OAR 259-008-0085.

<sup>204</sup> *Id.*

<sup>205</sup> OAR 259-008-0060.

<sup>206</sup> OAR 259-008-0005.

<sup>207</sup> OAR 259-008-0015.

<sup>208</sup> See Oregon Department of Public Safety Standards and Training, *Criminal Justice Information Records Inquiry System (IRIS)*, available at: [SMS Employee Search \(bpl-orsnapshot.net\)](https://www.oregonlive.com/bpl-orsnapshot.net) (last accessed on September 3, 2024).

<sup>209</sup> Maxine Bernstein, *Disciplining Portland Police Proves Challenging Task*, OREGONIAN, July 15, 2012, available at: [https://www.oregonlive.com/portland/2012/07/disciplining\\_portland\\_police\\_p.html](https://www.oregonlive.com/portland/2012/07/disciplining_portland_police_p.html) (last accessed September 3, 2024); Maxine Bernstein, *Arbitrator Overturns Portland Police Officer's Firing, Orders Reinstatement With Reprimand, Back Pay*, OREGONIAN, July 9, 2021, available at: <https://www.oregonlive.com/crime/2021/07/arbitrator-overturns-portland-police-officers-firing-orders-reinstatement-with-reprimand-back-pay.html> (last accessed September 3, 2024).

<sup>210</sup> ORS 243.812.

<sup>211</sup> *Id.*

<sup>212</sup> ORS 243.808.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

Officers who witness another officer engage in violations of physical, emotional, intellectual, and moral fitness standards or misconduct shall report the violation as soon as practicable, but no later than 72 after witnessing it.<sup>215</sup> Such allegations that require investigations include the following:

- 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;
- Sexual harassment or sexual misconduct;
- Discrimination against a person based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or age; or
- Crime,<sup>216</sup>

Law enforcement agencies are required to investigate such allegations within three months of receipt of the report.<sup>217</sup>

Oregon law requires law enforcement agencies to report discipline imposed on a police officer that contains an economic sanction to the DPSST within 10 days after the discipline has become final and any arbitration process is complete.<sup>218</sup>

The DPSST maintains a searchable database of the DPSST Professional Standards Cases and an agency police officer discipline that includes economic sanctions.<sup>219</sup> The DPSST is required to publish the officer's name, their employer, and a description of the facts underlying the imposed discipline.<sup>220</sup> Officers remain on this list until five years after date closed.<sup>221</sup> The complete file can be requested by submitting a public records request.<sup>222</sup>

The DPSST reports revocations of public safety professional certifications to the National Decertification Index (NDI) and serves as Oregon's gatekeeper for public safety agencies to gain access to NDI data.<sup>223</sup> The NDI is a registry of certificate or license revocation actions involving police or correction officers.<sup>224</sup>

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> ORS 181A.681.

<sup>218</sup> ORS 181.686.

<sup>219</sup> ORS 181A.684.

<sup>220</sup> *Id.*

<sup>221</sup> See Oregon Department of Public Safety Standards and Training, *Professional Standards*, available at: <https://www.oregon.gov/dpsst/cj/Pages/ProfessionalStandards.aspx> (last accessed September 30, 2024).

<sup>222</sup> *Id.*

<sup>223</sup> See Oregon Department of Public Safety Standards and Training, *Oregon Criminal Justice Background Resources*, available at: <https://www.oregon.gov/dpsst/cj/pages/backgrounds.aspx> (last accessed September 3, 2024).

<sup>224</sup> *Id.*

## D. Jurisdiction and Working with Other Law Enforcement

Once certified, officers may enforce Oregon laws throughout the state, regardless of where they are employed.<sup>225</sup> For practical reasons, officers are unlikely to enforce laws outside their scope of work because an officer will not be compensated for the work.

Cities work with other state and local agencies for specific law enforcement purposes, such as narcotics task force, law enforcement records management systems, and sharing of criminal history information.<sup>226</sup> Smaller cities may choose to enter into an intergovernmental agreement with the county for them to provide police services.<sup>227</sup> Additionally, some cities choose to develop mutual aid agreements with neighboring jurisdictions if a city's police department needs assistance in managing a situation.<sup>228</sup>

Cities may operate their own local correctional facilities.<sup>229</sup> However, with the exception of a handful of cities such as Springfield, Florence, Cottage Grove, and Junction City, most local correctional facilities are operated by counties.

In emergencies, police officers maintain public safety by responding to emergency and non-emergency calls, patrolling designated areas, and enforcing laws and regulations. They also work closely with other public safety agencies, such as fire departments and emergency medical services, to ensure a coordinated emergency response. When local resources are exhausted, cities work with other governments to protect lives, property, the environment, and incident stabilization. This cooperation is also essential for the maximum use of available resources.

## E. Accreditation

Accreditation is a procedure where an independent body reviews an agency's practices and procedures for compliance with accreditation standards.<sup>230</sup> Accreditation standards are considered the best practices for a specific policy or procedure. The standards relate to the operation of police agencies according to recognized industry benchmarks. Operating a police agency in compliance with accepted industry standards constitutes good, responsible administration, promotes the safety and efficiency of its officers, and mitigates liability.

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<sup>225</sup> ORS 133.405.

<sup>226</sup> Press Release from US Attorney's Office District of Oregon, March 15, 2024, available at: <https://www.justice.gov/usao-or/pr/three-sentenced-federal-prison-klamath-basin-drug-trafficking> (last accessed September 3, 2024); City of Portland, *Regional Justice Information Network*, available at: <https://www.portland.gov/police/divisions/regjin> (last accessed September 3, 2024).

<sup>227</sup> *E.g.*, City of Fairview, Resolution 26-2017, available at: <https://fairvieworegon.gov/Archive/ViewFile/Item/2314> (last accessed September 3, 2024).

<sup>228</sup> *E.g.*, City of Springfield, General Order 2.3.1 (2019), available at: <https://springfield-or.gov/wp-content/uploads/2020/12/2-3-1.pdf> (last accessed September 3, 2024).

<sup>229</sup> ORS 169.030.

<sup>230</sup> Northwest Accreditation Alliance, *Why Accreditation*, available at: <https://www.oracall.org/why-accreditation/> (last accessed September 3, 2024).

The DPSST has designated the Oregon Accreditation Alliance (now known as Northwest Accreditation Alliance) and the Commission on Accreditation for Law Enforcement Agencies, Inc. as the accrediting bodies.<sup>231</sup> Northwest Accreditation Alliance standards are derived from the standards produced by the Commission on Accreditation for Law Enforcement Agencies.<sup>232</sup>

The first step to accreditation is for an agency to determine its own level of compliance with the accreditation standards. At that time, the agency reviews its own policies and procedures and revises as necessary. Second, an independent reviewer goes onsite to review the agency's policies, procedures, and practices to determine whether the agency is compliant with the accreditation standards. A report is drafted with a recommendation to award accreditation.

To maintain accreditation, local agencies need to be reassessed according to the requirements of the accreditation agency. No later than July 1, 2025, each law enforcement agency in Oregon with 100 or more sworn police officers must be accredited.<sup>233</sup> No later than July 1, 2026, each law enforcement agency in Oregon with 35 or more sworn police officers must be accredited.<sup>234</sup>

## F. Public Records

A public record is defined as, “any writing that contains information relating to the conduct of the public’s business...regardless of physical form or characteristics.”<sup>235</sup> The term “writing” is defined to mean “handwriting, typewriting, printing, photographing and every means of records, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.”<sup>236</sup>

Some of the public records created by the police include police reports, emergency calls, body camera footage, vehicle camera footage, and photographs. All of these are considered public records and are subject to disclosure unless the information is exempt from disclosure or otherwise contains confidential or sensitive information. Examples of confidential, sensitive, or exempted information in police public records include, but are not limited to:

- Elder abuse;<sup>237</sup>
- Child abuse;<sup>238</sup>
- Physical and mental health information;<sup>239</sup>

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<sup>231</sup> OAR 259-008-0500.

<sup>232</sup> Northwest Accreditation Alliance, *Why Accreditation*, available at: <https://www.oracall.org/why-accreditation/> (last accessed September 3, 2024).

<sup>233</sup> ORS 181A.657.

<sup>234</sup> *Id.*

<sup>235</sup> ORS 192.311(5)(a).

<sup>236</sup> ORS 192.311(7).

<sup>237</sup> ORS 124.090.

<sup>238</sup> ORS 419B.035.

<sup>239</sup> ORS 192.355(2)(a).

- Information related to an ongoing investigation;<sup>240</sup> and
- Certain personal information.<sup>241</sup>

For police reports, if there is an ongoing criminal investigation, cities will not be able to release information related to an ongoing investigation unless the public interest requires disclosure in the particular instance.<sup>242</sup> However, the arrest record shall be disclosed unless there is a clear need to delay, including the need to protect the complaining party or the victim.<sup>243</sup>

## G. Body Cameras

For video cameras worn by police officers (body cams), the disclosure of the video record is exempt from disclosure unless the public interest requires disclosure.<sup>244</sup> Regardless, the video will not be released if a court orders body camera footage to not be disclosed.<sup>245</sup> Requests for disclosure of video camera footage must identify the approximate date and time of an incident and must be reasonably tailored to request only that material for which a public interest requires disclosure.<sup>246</sup> The disclosed video must be edited to make the faces of the persons unidentifiable.<sup>247</sup>

Cities must establish a policy and procedure for the use of body cameras.<sup>248</sup> The recording will be retained for at least 180 days but no more than 30 months for a recording not related to a court proceeding.<sup>249</sup>

Officers are required to set the cameras to record continuously, beginning when the officer develops reasonable suspicion or probable cause to believe a crime or violation has occurred, is occurring or will occur, and the officer begins to make contact with the person suspected of committing the offense.<sup>250</sup> Officers may stop recording when it reasonably appears to the officer that such privacy may outweigh any legitimate law enforcement interest in recording.<sup>251</sup> Officers will activate the body-worn camera when privacy is no longer an issue, unless the circumstances do not require recording.<sup>252</sup>

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<sup>240</sup> ORS 192.345(3); *see also Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (“investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings.”).

<sup>241</sup> ORS 192.355(2)(a).

<sup>242</sup> ORS 192.345(3).

<sup>243</sup> *Id.*

<sup>244</sup> ORS 192.345(40).

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> ORS 133.741.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*



The body camera footage may not be used for any purpose other than legitimate law enforcement.<sup>253</sup> For example, cities may not collect or maintain information about the political, religious, or social views, associations or activities of any individual group, association, organization, cooperation, business or partnership unless such information directly relates to an investigation of criminal activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.<sup>254</sup>

## H. Homelessness on Public Property

Traditionally, cities have prohibited camping on public property such as streets, sidewalks, and parks through local ordinances. The purpose of these no camping ordinances was to address the safety and public health risks created by unregulated camping on public property. Such safety and health risks may include inadequate facilities for the basic health and safety of the persons using public property for camping such as drinking water, trash disposal, restrooms and showers, and safe cooking facilities.

In 2018, in the case *Martin v. City of Boise*, the U.S. Ninth Circuit Court of Appeals ruled that homeless persons cannot be punished for sleeping outside on public property in the absence of practical access to a shelter, or unless the law imposes “reasonable time, place and manner” restrictions on the regulated activities in public space.<sup>255</sup> The Ninth Circuit found such ordinances as a violation of the Cruel and Unusual Clause of the Eighth Amendment to the U.S. Constitution because the city had criminalized “conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping.”<sup>256</sup>

In 2021, the Oregon Legislature enacted a law to codify some of the key holdings within the *Martin* case.<sup>257</sup> The law requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness.<sup>258</sup>

In 2022, in the case *Johnson v. City of Grants Pass*, the U.S. Ninth Circuit Court of Appeals affirmed a U.S. District Court’s decision ruling that the city of Grants Pass’ ordinances that prohibited public sleeping and camping on public property violated the Cruel and Unusual Clause of the Eighth Amendment.<sup>259</sup> The city argued that the public ordinances are enforced through civil fines, not through criminal fines or jail terms.<sup>260</sup> The U.S. Ninth Circuit Court of Appeals opined that cities violate the Eighth Amendment if they punish a person for the mere act

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<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Martin v. City of Boise*, 902 F3d 1031, 1048 (2018).

<sup>256</sup> *Id.*

<sup>257</sup> HB 3115 (2021).

<sup>258</sup> ORS 195.530.

<sup>259</sup> *Johnson v. City of Grants Pass*, 50 F4th 787 (9th Cir 2022) [formerly *Blake v. City of Grants Pass*; class representative Blake became deceased during pendency of the appeal].

<sup>260</sup> *Id.*

of sleeping outside or for sleeping in their vehicles at night when there is no other place in the city for them to go.<sup>261</sup> This decision expands the application of *Martin v. Boise* to civil fines, not just criminal penalties.

On January 12, 2024, the U.S. Supreme Court granted the city of Grants Pass Petition for Certiorari.<sup>262</sup> The League of Oregon Cities, as well as 24 other states, filed amicus briefs, arguing that the Ninth Circuit's decisions applying the Cruel and Unusual Clause of the Eighth Amendment to prohibiting camping on public property should be reversed.<sup>263</sup> On June 28, 2024, the U.S. Supreme Court released its opinion<sup>264</sup> considering the question of whether the city of Grants Pass's ordinance regulating public property by prohibiting activities such as camping or parking overnight on city property or parks violated the U.S. Constitution's Eighth Amendment, particularly as it relates to people experiencing homelessness. The court held that it does not.

Despite the Supreme Court reversing and remanding the case, HB 3115 (2021) remains in effect and remains enforceable. The practical effects of the Grants Pass decision will not be significant. Municipal attorneys are still challenged in determining the answers to such questions as the following: what regulations are objectively reasonable and what qualifies as measures necessary for an individual to survive outdoors.

For more information, please see the League of Oregon Cities' Guide to Persons Experiencing Homelessness in Public Spaces (2024), available at: [https://www.orcities.org/download\\_file/2308/1852](https://www.orcities.org/download_file/2308/1852) (last accessed September 3, 2024).

## I. Measure 110

In November 2020, Oregon voters passed Ballot Measure 110, also known as the Drug Addiction and Treatment Recovery Act, making Oregon the first state to decriminalize the personal possession of illegal drugs.<sup>265</sup> The measure decriminalized possession of small amounts of street drugs, giving violators a choice of paying a \$100 fine or undergoing drug screening by phone where they will be connected with optional treatment.<sup>266</sup> The measure also reduced penalties for possession of larger amounts of drugs down to a misdemeanor in most cases.<sup>267</sup>

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<sup>261</sup> *Id.*

<sup>262</sup> *Johnson v. City of Grants Pass*, 50 F4th787 (9th Cir 2022), *cert. granted* (U.S. Jan. 12, 2024).

<sup>263</sup> See U.S. Supreme Court Docket, No. 23-175, available at: <https://www.supremecourt.gov/docket/docketfiles/html/public/23-175.html> (last accessed September 3, 2024).

<sup>264</sup> See [https://www.supremecourt.gov/opinions/23pdf/23-175\\_19m2.pdf](https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf) (last accessed September 3, 2024).

<sup>265</sup> Dianne Lugo, *Measure 110 Rollback: Oregon Senate Sends Bill Recriminalizing Drug Possession to Kotek*, SALEM STATESMAN JOURNAL, March 1, 2024, available at: <https://www.statesmanjournal.com/story/news/politics/2024/03/01/oregon-senate-passes-bill-recriminalizing-drug-possession/72808436007/> (last accessed September 3, 2024).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

Critics of Measure 110 say it did little to incentivize drug users to seek treatment.<sup>268</sup> Further, there is an alarming rise in fentanyl overdose-related deaths.<sup>269</sup> As a result, the Oregon District Attorneys Association, the Oregon Association of Chiefs of Police, the Oregon State Sheriffs Association and the League of Oregon Cities released an 11-point outline to reform Oregon’s substance abuse policies.<sup>270</sup>

In response of the statewide outcry about Measure 110, the 2024 Oregon Legislature passed a bill to recriminalize possession of a controlled substance, increase penalties for distribution of narcotics that leads to death, and create a criminal offense for the public consumption of drugs.<sup>271</sup> The bill also shifts financial authority over Measure 110 funds away from the Oregon Health Authority’s Oversight and Accountability Committee to the Alcohol and Drug Policy Commission.<sup>272</sup>

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<sup>268</sup> Oregon District Attorneys Association, the Oregon Association of Chiefs of Police, the Oregon State Sheriffs Association and the League of Oregon Cities, *A Comprehensive Approach to Addressing Oregon’s Addiction and Community Livability Crisis*, available at: [https://www.orcities.org/download\\_file/view/3086/1818](https://www.orcities.org/download_file/view/3086/1818) (last accessed September 3, 2024).

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> HB 4002 (2024); *see also* League of Oregon Cities 2024 Legislative Session Summary available at: [https://www.orcities.org/application/files/7317/1812/4416/2024\\_Legislative\\_Session\\_Summary\\_FINAL.pdf](https://www.orcities.org/application/files/7317/1812/4416/2024_Legislative_Session_Summary_FINAL.pdf) (last accessed September 3, 2024).

<sup>272</sup> *Id.*