

TO: Bill Taylor, Legislative Counsel, Oregon Joint Judiciary Committee
FROM: Amy L. Becerra
DATE: March 1, 2000
RE: **Definition of "Peace Officer" in 1999 Oregon Revised Statutes**

MEMORANDUM

At your request, I conducted a review of the 1999 Oregon Revised Statutes for definitions and uses of the term "peace officer." You also asked me to compare any definitions of "peace officer" I found in the ORS to that used in the LC 44 Draft. In addition to searching for Oregon definitions of the term, I looked to a general legal dictionary.

RESULTS:

A search of the 1997 Oregon Revised Statutes on Lexis-Nexus resulted in 89 statutes mentioning the term "peace officer." Of these, five were repealed by the 1999 ORS. Of the remaining 85 "active" statutes, 53 make absolutely no reference to the definition of the term. Two statutes explicitly define "peace officer." One statute defines "police officer." Twelve statutes defer to one of the explicitly defined "peace officer" statutes. The remaining 17 statutes either include "peace officer" in a list which, if strictly construed (unlikely in most cases), might be read to exclude some persons generally associated with law enforcement authority, or, in the alternative, grant "peace officer" authority and powers upon various state officials, thus expanding the meaning of the term.

"Peace officer" is a term variously defined by statute in the different states. Generally, the term includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace. A 'peace officer' is usually a person designated by public authority to keep the peace and to arrest persons guilty or suspected of crime. BLACK'S LAW DICTIONARY, 5TH ED., 1979. A more recent definition of "peace officer" is synonymous with "police officer" which is defined as 'one of the staff of persons employed in cities and towns to enforce the municipal laws and ordinances for preserving the peace, safety, and good order of the community.' WESTLAW ON-LINE BLACK'S LAW DICTIONARY, 2000.

LC 44 (Draft) does not define "peace officer." Peace officer is listed in the definition of "Public or Private official." An exclusionary reading of that definition could lead one to conclude that a peace officer is **not** a physician, dentist, school employee, nurse, psychologist, clergyman, licensed clinical social worker, optometrist, chiropractor, certified provider or employee of foster care, attorney, naturopathic physician, licensed professional counselor, licensed marriage and family therapist, firefighter, emergency medical technician, court appointed special advocate, child care provider, or employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a

county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program. LC 44 (draft), Sec. 1, (4) (a)-(s). However, a "peace officer" is not necessarily an employee or member of a "law enforcement agency" as defined in LC 44, Sec. 1, (3).

An explicit definition of "peace officer" is provided elsewhere by ORS 133.005. This provision defines the term to mean 'a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.' ORS 161.015 provides for essentially the same definition, albeit in slightly more abbreviated form. ORS 133.005 provides definition of the term over ORS 133.005 to 133.381.

Some statutes include the term "peace officer" in a list of persons. Inclusion of the term in such lists in some cases, if strictly construed, would suggest that some persons are excluded from the classification of "peace officer." Examples of persons that a peace officer is **not** might be: corrections officer, youth corrections officer, parole and probation officer, firefighter, or district attorney. ORS 163.208, ORS 167.248. One statute suggests that peace officers are sheriffs, police officers, or those appointed as peace officers (but does not include corrections officers). ORS 166.370.

The majority of statutes mentioning the term "peace officer" refer to specific appointments by various governing bodies in order to enforce the regulations or ordinances of that body. The addition of these various appointments might be read together to expand the general definition of a peace officer, particularly as many of the provisions creating such appointments grant to those appointed the power and authority of an undefined "peace officer." Examples of such appointed persons with the "power and authority of a peace officer" include: investigators employed by the Attorney General, investigators of organized crime, mass transit district employees, district school board law enforcement officials, community college employees, university and college employees, youth correction officers, corrections officers, the State Fish and Wildlife Director and deputies, Oregon State Fair and Exposition Center and county fair board employees, State Department of Agriculture employees, and port employees.

"Peace officer" is also included in the ORS 181.610 definition of "police officer." This definition incorporates all previously mentioned references and further includes Indian reservations, the Oregon State Lottery Commission, and the Governor as employers of law enforcement services.

"Peace officer" most likely refers to a person who possesses law enforcement duties, powers, and authority. However, this is not explicitly stated anywhere in the 1999 Oregon Revised Statutes. One must infer this from extra-statutory sources, relationships between statutory provisions and definitions, and common sense.

RELEVANT STATUTES:

ORS 133.005 : Definitions for ORS 131.655 and certain provisions of ORS 133.005 to 133.381 and 133.410 to 133.450. [U]nless the context requires otherwise:

(3): "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

ORS 163.208: Assaulting a public safety officer.

(1): A person commits the crime of assaulting a public safety officer if the person intentionally or knowingly causes physical injury to the other person, knowing the other person to be a peace officer, corrections officer, youth corrections officer, parole and probation officer or firefighter, and while the other person is acting in the course of official duty.

ORS 161.015: General definitions. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(4): "Peace officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office and such other persons as may be designated by law.

ORS 166.370: Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school.

(3)(a): Subsection (1) of this section does not apply to: A sheriff, police officer, other duly appointed peace officers or a corrections officer while acting within the scope of employment.

(5)(b)(B): By a law enforcement officer acting within the officer's official capacity.

ORS 167.248: Search and seizure of conveyance in which drugs unlawfully transported or possessed.

(in relevant part) A district attorney or peace officer charged with the enforcement of... ..the district attorney or peace officer may seize them, arrest any person in charge of the conveyance... The district attorney or peace officer shall also, without delay, make and file a complaint...

ORS 180.350: Investigators to have authority of peace officers.

Investigators employed by the Attorney General under ORS 180.320 to 180.360 (Division of Child Support) shall have all the authority given by statute to peace officers of this state, including the authority to serve and execute warrants of arrest.

ORS 180.620: Investigators to have authority of peace officers.

All investigators employed pursuant to ORS 180.600 to 180.630 (Investigation of Organized Crime) shall have all statutory powers and authority of peace officers and police officers of the State of Oregon.

ORS 181.030: Powers and duties of [State Police] department and its members.

(3): Each member of the state police shall have in general the same powers and authority as those conferred by law upon sheriffs, police officers, constables, peace officers and may be appointed as deputy medical examiners.

ORS 181.610: Definitions for ORS 181.610 to 181.712 [Public Safety Standards and Training].

(14): "Police officer" means an officer, member or employee of a law enforcement unit who is employed 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, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security or is an investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state.

ORS 267.150: Ordinances; regulating use of facilities; public hearings; route; schedule changes. [Mass Transit Districts]

(2): (in relevant part) A district may appoint peace officers who shall have the same authority as other peace officers, except that such authority shall be limited to the enforcement of police ordinances of the district and the enforcement, for purposes relating to the protection, use and enjoyment of district property and facilities, of state and local laws.

ORS 332.531: Law enforcement agency; personnel as peace officers. [District School Boards]

(2): Persons employed and compensated as members of a law enforcement agency of a school district, when appointed and duly sworn, are peace officers as defined in ORS 161.015(4), but only for the purpose of carrying out the duties of their employment. They are not police officers within the meaning of ORS 243.736. (Strangely enough, 'police officer' is not defined in that statute.)

ORS 341.300: Traffic control; conditions on parking privileges; penalty. [Community Colleges]

(2): (in relevant part) The board, for the purpose of enforcing its regulations governing traffic control, may appoint peace officers who shall have the same authority as other peace officers as defined in ORS 133.005.

ORS 352.360: Traffic control on properties under state board; enforcement; fees; use. [Institutions of Higher Education]

(5): (in relevant part) The board, for the purpose of enforcing its rules and regulations governing traffic control, may appoint peace officers who shall have the same authority as other peace officers as defined in ORS 133.005.

ORS 420A.023: Authority of director to authorize youth correction officers to exercise power of peace officer.

(1): The Director of the Oregon Youth Authority may authorize an individual youth correction officer or group of youth correction officers to exercise the powers and authority of a peace officer in the supervision and custody of youth offenders and persons in the physical custody of the youth authority under ORS 137.124 or other applicable law.

ORS 423.076: Director's authority to grant peace officer power to corrections officer.

(1): The Director of the Department of Corrections may grant to an individual corrections officer or classification of corrections officer all the powers and authority of a peace officer over inmates.

ORS 496.605: Enforcement of wildlife laws by State Fish and Wildlife Director, deputies and peace officers.

The State Fish and Wildlife Director and any deputies of the director and all other peace officers of this state or any political subdivision thereof have jurisdiction of and may enforce any of the provisions of the wildlife laws.

ORS 565.640: Peace officers; authority; power of arrest. [Fairs]

The peace officers of the Oregon State Fair and Exposition Center, county fair board or any of the societies mentioned in ORS 565.610 [district society formed for the promotion and encouragement of agriculture, stock growing or horticulture],... shall have all the authority of a deputy sheriff...

ORS 585.220: Department employees have power of peace officers; jurisdiction of courts. [Agricultural Marketing and Warehousing]

(in relevant part) Duly authorized employees of the State Department of Agriculture have the power and authority of peace officers for the purpose of enforcing the provisions of ORS 585.010 to 585.220.

ORS 777.190: Ordinances for policing or regulating of port property. [Ports generally]

(in relevant part) A port... may appoint peace officers who shall have the same authority, for the purpose of the enforcement of the ordinances, as other peace officers.

ORS 778.260: Ordinances for regulating use of port airports; port peace officers; jurisdiction. [Port of Portland]

(2): The port may appoint peace officers who shall have the same authority as other peace officers, for the enforcement of port, city and county ordinances and state laws at airports owned, operated, maintained or controlled by the port.

LC 44 (Draft): [Child abuse reporting; creating new provisions; and amending ORS 419B.005, 419B.010 and 419B.025.] (in relevant part)

(4) "Public or Private official" means:

(f) Peace officer.