Summary of Revisions to Policy 20.9.1
(House Bill 2713)

General summary: Amends and adds new provisions to ORS 236.350, 236.360, 236.370, and 652.750 to give safeguards for disciplinary investigations and actions relating to all public safety officers who are not represented by a collective bargaining agreement requiring just cause for disciplinary action.

Effective as of:
  - Applies to investigations started January 1, 2010 or after.
  - Does not apply to investigations started December 31, 2009 or before.

DOC employees afforded these safeguards:
- All correctional series supervisory and management staff. This includes Lieutenant, Captain, Security Manager, and Assistant Superintendent of Security.

When the safeguard apply:
- When the public safety officer is under investigation concerning a matter that the officer reasonably believes may lead to economic sanctions or dismissal from employment and is subject to interview by the officer’s employer.

When the safeguards do not apply:
- When under investigation concerning matters which would be expected to lead to a level of discipline below economic sanctions.
- During the 12 months of an employee’s probationary employment.
- “In the normal course of informal verbal admonishment . . . or other routine or unplanned contact.”
- If an investigation is “concerned solely with alleged criminal activities.”

Safeguards:
(a) Interviews will be conducted during normal working hours. If off duty, the public safety officer will be compensated at his/her appropriate rate.
(b) The public safety officer "may have a representative of the officer’s choosing present at the interview."
(c) “No more than two interviewers at a time may question the public safety officer.”
(d) Interviewers shall identify themselves and will tell the public safety officer of their authority to compel a statement, meaning that "refusal may lead to disciplinary actions."
(e) The public safety officer is not required to answer any questions in the interview until he/she:
  - “has been informed of the nature of the investigation.”
  - has been informed of facts reasonably sufficient to know the "circumstances surrounding the allegations of the investigation."
Exception to the above: Preliminary questions designed to get a general understanding of the events and to determine if an investigation is necessary.

(f) The length of the interview must not last an “unreasonable amount of time, taking into consideration the gravity and complexity of the matter.”

(g) The public safety officer “must be allowed to attend to physical needs.”

(h) Interviewers must not use offensive language and the interviewers cannot threaten punitive action. The exception to this is noted in (d) above.

(i) Documentation of the interview:
   o The public safety officer may choose to record the interview.
   o If the interviewers record the interview, the person interviewed may request and will receive a copy of this recording.
   o If the interviewers record and transcribe the interview, the person interviewed may request and will receive a copy of the transcription.
   o The person interviewed “must be given a copy of any written statement or report describing the [person’s] statements.”
   o Each interview’s documentation noted above must be given to the person interviewed before any subsequent interviews in the investigation.

(j) If it is determined that the person interviewed “may be charged with a criminal offense, the person must be informed of his/her right to criminal defense counsel.”

(k) In a disciplinary or administrative investigation, the person’s chosen representative “may not be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the” person to his/her representative.

Directives for investigations and disciplinary actions:

- Disciplinary actions may not be taken without just cause. This is a different standard from that normally applied to management service employees.

- When the employer intends to take disciplinary action, they shall:
  o Notify the public safety officer in writing of the charges and proposed disciplinary action.
  o Provide the public safety officer an opportunity to “respond to the charges at an informal hearing which may be recorded, with the person or persons having authority to impose the proposed disciplinary action.”

- Investigations and notifications to the public safety officer will be completed within six months from the date of the first interview, except when:
  o The person investigated is incapacitated or unavailable.
  o “The investigation involves an allegation of worker’s compensation or disability fraud.”
  o The person investigated waives the time limit in writing.
  o The investigation requires a “reasonable extension of time for coordination with one or more other jurisdictions.”
  o The investigation is for more than one person and requires a “reasonable extension of time.”
  o The alleged misconduct is also the subject of criminal investigation, which is not limited by the six months.
  o The alleged misconduct involves civil litigation, which is not limited by the six months.
The investigation involves allegations from someone who is being charged with a crime. The time required for resolution of those criminal charges is not counted as part of the six months.

- An investigation may be reopened if:
  1) “Significant new evidence is discovered that is likely to affect the outcome of the investigation and
  2) The new evidence came from:
     - Disclosure by the person investigated during his/her predisciplinary response or
     - The evidence “could not have been discovered by the employer without resorting to extraordinary measures.”

**Directives for Personnel Records: Section 4**

- Personnel records do not include records relating to criminal convictions.
- When requested by the person investigated, the employer must provide a certified copy of all personnel records used “to determine the employee’s qualification for employment, promotion, additional compensation or employment termination or other disciplinary action” within 45 days.
  - If the records are not readily available, the employer and the employee may agree to extend this timeframe.
  - Another exception is when the person being investigated asks to inspect their “own personnel records at a reasonable time at the location where the records are kept by the employer.”
    - If, after this inspection, the person “believes that any portion of the material is mistakenly or unlawfully placed” in the personnel records, “they may request in writing” that the information is corrected. Specific corrections must be given, the reasons for such, and supporting documentation provided if needed.
    - The employer has 30 days to respond to the above request.
    - If the employer does not make the requested corrections, the person’s written request and the employer’s response become part of the personnel record.
- A document with adverse comments regarding an employee may not be placed in his/her personnel records unless the person has first read and signed the document. There are two exceptions to this requirement:
  - When the employee refuses to sign a document containing adverse comments, the employer adds a notation that the employee read the document, but refused to sign, and then the documents are put into the personnel record.
  - When the person is not available to read and sign the document, the employer will mail a copy to the employee “by regular mail or interoffice mail.”
- The employee has 30 days to write a response to a document with adverse comments intended for his/her personnel records. The employee’s response will be included in the personnel records.