No. 21-35324

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ERIC WEAVER,
Plaintiff - Appellant,
v.

RON GREGORY, CARMEN SMITH, and ALYSSA MACY,
Defendant - Appellant.

Appeal from the United States District Court
For the District of Oregon
D.C. 3:20-cv-00783-HZ
Hon. Judge Marco A. Hernandez

OPENING BRIEF OF APPELLANT

Daniel E. Thenell, OSB #971655
Emerson Lenon, OSB #123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, OR 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff/Appellant
Eric Weaver

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I. JURISDICTIONAL STATEMENT

A. The District Court's Jurisdiction

The District Court's jurisdiction was based on 28 U.S.C. § 1331 and alternatively, 28 U.S.C. §1343.

B. The Court of Appeals' Jurisdiction

The Court of Appeals has jurisdiction in this matter in accordance with 28 U.S.C. §1291. Eric Weaver ("Weaver") appeals from a final judgment rendered by the District Court pursuant to Defendant-Appellees' motion to dismiss Weaver's Complaint.

C. Timeliness of the Appeal

Weaver filed his Notice of Appeal on April 23, 2021, within 30 days of the entry of the judgement of dismissal in accordance with the Federal Rules of Appellate Procedure ("Fed. R. App. P.") 4(a)(4).

D. This Appeal Is from a Final Order of Judgment

Weaver filed a timely notice of appeal from the following Orders:

1. District Court's Judgment of dismissal with prejudice dated April 5, 2021, pursuant to the District Court's Opinion & Order dated March 16, 2021[1].

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

[1] ER 000076-88.

1. Were Defendants' acting under "color of state law" for purposes of 42 U.S.C. § 1983 when they availed themselves of Oregon's statutory scheme in SB 412, agreed to abide by state laws, rules and regulations regarding the training and certification of their officers, the requirements for adequate insurance, and agreed to waive sovereign immunity to certain torts, as well as the act of filing a notification of separation to DPSST and reporting Plaintiff-Appellant's alleged misconduct.

2. Did the District Court abuse its discretion by denying Plaintiff leave to amend his Complaint in response to Defendants-Appellees motion to dismiss.

III. RELEVANT FACTS

This matter arises from the termination of Eric Weaver as a tribal police officer for the Confederated Tribes of Warm Springs. During his tenure at the Warm Springs Police Department Weaver witnessed alleged sexual and racial harassment, bullying and retaliation by other members of the Department, including supervisory officers.[2] In addition to witnessing the alleged harassment Weaver alleged he was subjected to sexual, racial and derogatory comments and offensive and unwanted

[2] ER 000001-18.

touching.[3] Weaver reported the allegations to multiple supervisors and to officials outside of the Department.[4] No remedial action was taken.[5]

Instead of addressing Weaver's complaints, the Defendants subjected Weaver to retaliation by reprimanding him and subjecting him to an investigation which self-servingly concluded he had violated Department use of force policies.[6] Weaver was then terminated without due process in violation of his property and liberty interests.[7] In addition to the direct employment actions taken against Weaver, Defendants also retaliated against him when they caused a personnel separation form to be submitted to the Oregon State Department of Public Safety Standards and Training ("DPSST").[8]

Weaver filed suit in US District Court on May 13, 2020, alleging two causes of action under 42 U.S.C. § 1983 for violations of the First and Fourteenth Amendments to the Constitution of the United States.[9] Weaver also alleged state whistleblowing and intentional infliction of emotional distress claims.[10] The Defendants filed motions to dismiss all Weavers claims alleging a lack of subject

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[3] ER 000003-4.
[4] ER 000004.
[5] ER 000004.
[6] ER 000005-8.
[7] ER 000008.
[8] ER 000152.
[9] ER 000001-18.
[10] ER 000001-18.

matter jurisdiction pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1)[11]; and failure to state a claim pursuant to Rule 12(b)(6).[12]

United States District Court Judge Marco A. Hernandez issued an opinion and order granting Defendant's motions to dismiss. Plaintiff raised the potential of amending the Complaint in his Response.[13] Judge Hernandez denied the informal request, gave Plaintiff fourteen days to file a formal motion for leave, and opined "the Court has serious doubts that amendment can cure the deficiencies" in the pleadings.[14] Plaintiff opted to appeal the legal ruling on "acting under color of state law" and filed timely notice of appeal.

IV. SUMMARY OF ARGUMENT

A. The Defendants were "Acting Under Color of State Law" for Purposes of 42 U.S.C. § 1983 When They Unlawfully Retaliated Against Weaver by Investigating and Terminating Him and Reporting to DPSST Weaver was Terminated for Misconduct.

The District Court erred when it found the Defendants' internal employment actions against a tribal employee are inherently actions taken under color of tribal law and they did not become state actors by receiving state training and resources and by retaliatorily reporting Weaver to DPSST. The District Court misapplied the

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[11] ER 000019-40.
[12] ER 000019-40.
[13] ER 000044.
[14] ER 000086.

holding in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) to conclude the Defendants merely abused a state reporting system by erroneously relying on *Lugar*'s pronouncement that "private misuse of a state [process] does not describe conduct that can be attributed to the State". Defendants were acting under color of state law when they availed themselves of the state's training and certification system including engaging in conduct which is exclusively the province of state, county or local government actors.

B. The District Court Abused Its Discretion by Denying Plaintiff Meaningful Leave to Amend.

The District Court abused its discretion by denying Plaintiff's request to amend his Complaint to more fully allege the elements of state action especially with respect to his First Amendment claim. The District Court's order that Plaintiff may renew his request by filing a motion for leave to amend was illusory because the District Court had already denied the Plaintiff's request once, and the District Court's order made it plain any request for leave to amend would be summarily denied. Requests to amend pleadings, especially in the early stages of litigation should be liberally granted in an effort "to facilitate decision on the merits, rather than on the pleadings or technicalities."[15] Here the District Court abused its discretion by requiring Plaintiff to engage in a procedural formality after

[15] *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003).

telegraphing the futility of such a filing. Plaintiff-Appellant intended to seek appellate review of the incorrect ruling on acting under color of state law. In the interest of judicial economy Plaintiff-Appellant brought both issues to the Ninth Circuit on entry of judgment.

V. ARGUMENT

A. The District Court Erred in Granting Defendants' Motion to Dismiss Based on Lack of Action Under Color of State Law.

1. Standard of Review

A District Court's dismissal under Rule 12(b)(6) is reviewed *de novo*.[16] The Court must accept "all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party."[17]

2. Action Under Color of State Law

For a defendant to incur liability under 42 U.S.C. § 1983 for the violation of the civil rights of another, that individual must have "acted under color of state law."[18] Acting under color of state law means taking some action which is only possible because the actor is clothed in the authority of state law.[19] Generally a public employee acts under color of state law while exercising responsibilities *pursuant to*

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[16] *Curtis v. Irwin Industries, Inc.*, 913 F.3d 1146, 1151 (9th Cir. 2019); *Puri v. Khalsa*, 844 F.3d 1152, 1157 (9th Cir. 2017).
[17] *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009) (internal quotations marks and citation omitted).
[18] *Long v. Cty. Of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).
[19] *United States v. Classic*, 313 U.S. 299, 326, 61 S.Ct. 1031, 85 L.Ed. 1368 (1941).

state law.[20] The District Court incorrectly concluded the Defendants report to DPSST using a state mandated form[21] was akin to the "private misuse of a state" process in *Lugar*.

In *Lugar* a private petroleum vendor sued to recover a debt from one of its customers in Virginia state court.[22] The custom, a lessee-operator of a truck stop brought a § 1983 action against the vendor arguing they had acted jointly with the State to deprive him of his property without due process of law.[23] The Supreme Court ultimately held the vendor had at most "misused a state statute" and such misuse alone did "not describe conduct that can be attributable to the State."[24]

The holding in *Lugar* is not binding on the present case because here the Defendants were not mere private actors misusing a state reporting system, instead they were fulfilling their state mandated responsibilities as required by state rule.[25] Defendant Smith personally signed a form which contained the following operative language:

> I attest that I am the Department Dead or hold DPSST Certification and am authorized by the Department Dead to sign below. I certify that the information entered on this form has been verified and is substantiated

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[20] *West v. Atkins*, 487 U.S. 42, 49-50, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).
[21] ER 000083; ER 000152; *Lugar*, 457 U.S. at 941.
[22] *Lugar*, 457 U.S. at 924.
[23] *Id*.
[24] *Id.* at 941.
[25] OAR 259-008-0020 (requires employers of public safety officers to report any separation from employment to DPSST using the F4 form).

> by records maintained by my agency, if certified by DPSST, I understand that falsification of this document makes my certification(s) subject to denial, suspension or revocation under ORS 181A.640 and OAR 259-008-0070.[26]

Unlike *Lugar* here the Defendants are public officials, in so far as they hold state certification only available to public safety and law enforcement agencies. This is qualitatively different from a private party availing themselves of a state created statutory system intended for use by any person. However, even if *Lugar's* holding were binding on this case, the facts are sufficiently distinguishable to permit a finding the Defendants acted under color of state law.

In the event the Court is convinced the Defendants are merely private actors interacting with a state procedural system their conduct still qualifies as under color of state law because they acted jointly with state officials by seeking training, licensing, certification, insurance and modifying the tribal code to permit their Department to qualify for a state statutory program to standardize application of state law across Oregon.[27] Defendants in a § 1983 action need not be state officials themselves, it is sufficient to find action under color of state law where "private persons [are] jointly engaged with state officials."[28]

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[26] ER 000152.
[27] ER 000089-151.
[28] *United States v. Price*, 383 U.S. 787, 794, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966).

The Defendants participation in state law may not render every internal decision one of a "state actor."[29] However, the specific actions alleged by Weaver extend beyond simple internal employment decisions because they inherently make use of a state system only utilized by public law enforcement entities and those actions have caused real lasting harm to Weaver's Constitutional rights. This case should be governed by the reasoning in *Pistor v. Garcia*, 791 F.3d 1104 (9th Cir. 2015). There the Court found the actions of tribal officials in concert with state officials was a valid predicate for § 1983 liability.

The District Court correctly held that *Pistor* allowed for suits against tribal officials in the individual capacities.[30] The question of whether the tribal officials were acting under color of state law was not properly before the court and therefore not decided, nevertheless the holding in *Pistor* gives clear guidance to look to established precedent on state action which the District Court failed to do here.[31] *Pistor* referenced two cases which previously held tribal officials were acting under color of state law and allowed suit to proceed.[32]

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[29] *See E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1306 (10th Cir. 2001) (The making of a contract with the State, or the acceptance of state or federal funds, does not convert tribal officials into state or federal actors.)
[30] ER 000082.
[31] *Pistor*, 791 F.3d at 1114.
[32] *Evans v. McKay*, 869 F.2d 1341, 1347-49 (9th Cir. 1989) (tribal defendants were acting under color of state law when they arrested the plaintiffs under a city ordinance); *Bressi v. Ford*, 575 F.3d 891, 869-97 (9th Cir. 2009) (tribal officials

The District Court concluded the Defendants were not exercising their authority to enforce Oregon law.[33] However this ignores the simple fact, but for their participation in state law under SB 412, the Defendants would not have been able to engage in the alleged retaliation against Weaver in violation of his Constitutional rights.[34]

One element of the retaliation was the malicious reporting to DPSST using the mandated F4 form. Completion of the F4 form was predicated on multiple affirmative steps by the Defendants. First, the tribe was required to modify its Code to comply with state statute.[35] Second, the Department was required to comply with all applicable laws and rules related to DPSST.[36] Third, the officers and officials in the Public Safety Department were required to obtain and maintain DPSST individual certifications.[37] Forth, the Department was required to investigate potential misconduct under DPSST rules and procedures.[38] Fifth, the Department Head or duly licensed and authorized agent was required to submit an F4 form to

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were acting under color of state law when they cited a non-Indian for a violation of state law).

[33] ER 000084.
[34] ER 000152.
[35] ER 000089-151.
[36] ORS 181A.355 to ORS 181A.670; OAR Chapter 259.
[37] ORS 181A.490; ORS 181A.685.
[38] OAR 259-008-0300.

DPSST.[39] Finally, this entire system in mandated by state law for all tribal police whose tribes have opted into SB 412.[40]

In essence there is such overlap between the operations of a tribal police department under SB 412, and a non-tribal police department that much if not all the internal operations of an SB 412 tribal police department are actions under color of state law.[41] Because of the intertwined nature of the state and tribal law enforcement system the acts of Defendants as alleged by Weaver were acts taken under color of state law.

B. Plaintiff Should Be Entitled to Amend His Complaint.

1. Standard of Review

The denial of a motion for leave to amend is reviewed for abuse of discretion.[42] "[L]eave to amend should be granted if it appears *at all possible* that the plaintiff can correct the defect."[43]

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[39] OAR 259-008-0020.
[40] OAR 259-008-0069.
[41] ER 000089-151; SB 412 requires modification of the tribal code to waive sovereign immunity for certain tort violations of tribal officers. SB 412 also requires training, certification and insurance for all tribal police. ORS 181A.685 requires tribal police to be certified (the same as all other police officers), requires compliance with any rules adopted by DPSST, and requires the tribal government to be in compliance with the terms of SB 412 (including the waiver of sovereign immunity). OAR 259-008-0069 requires tribal governments to comply with the relevant provisions of ORS Chapter 181A.
[42] *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013).
[43] *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

2. The District Court Abused Its Discretion by Foreclosing Consideration of Potential Amendment

"Leave to amend should be granted unless the district court determines that the pleading could not possibly be cured by the allegation of other facts."[44] The District Court effectively made this determination without a showing of its basis when it opined "given the limited nature of Plaintiff's allegations, the [District] Court has serious doubts that amendment can cure the deficiencies in his legal theories."[45] Rather than grant Plaintiff's request, as made in his response to Defendants' motion to dismiss, the District Court opined Plaintiff should file a motion for leave while at the same time effectively telling him it would be futile.[46]

Plaintiff was faced with a choice to incur additional fees, costs, and time jumping through a purely procedural hoop. Plaintiff believed the District Court had made a reversible legal error holding Defendants had not acted under color of state law. The District Court all but told Plaintiff any motion to amend would be denied based on this same erroneous legal reasoning. Therefore, Plaintiff understood the District Court had functionally denied his request for leave to amend and that an appeal would be necessary to seek relief on his claims. In the interest of judicial

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[44] *Bly–Magee v. California*, 236 F.3d 1014, 1019 (9th Cir.2001) (internal quotation marks omitted).
[45] ER 000086(O&O).
[46] ER 000044(Resp.); ER 000086(O&O).

economy Plaintiff brought both issues to this Court for appellate review. This Court should find the District Court abused its discretion by denying Plaintiff's informal request to amend and signaled a motion for leave to amend would be met with hostility. This Court should remand this case with an order for Plaintiff to enter an amended Complaint.

VI. CONCLUSION

The District Court erred in finding the Defendants did not act under color of state law. The intentional and voluntary intermingling of the tribal police system with the state law system requiring standardization in training, certification, insurance, and the waiver of sovereign immunity to tort claims brought Defendants conduct in investigating and disciplining a non-tribal, state certified police officer into the realm of state action. The Defendants retaliatory use of the DPSST F4 form to report his termination in connection with an investigation into misconduct was an act taken under color of state law.

Accordingly, pursuant to the argument and authority above, Eric Weaver respectfully requests this Court:

(1) Reverse the District Court's order on the Defendants' motions to dismiss and remand the case for further prosecution; and

(2) Order the District Court to allow Plaintiff to timely file an amended complaint upon remand.

DATED this 13th day of October, 2021.

THENELL LAW GROUP, P.C.

By: */s/ Daniel E. Thenell*

Daniel E. Thenell, OSB No. 971655
E-mail: dan@thenelllawgroup.com
Emerson Lenon, OSB No. 123728
E-mail: emerson@thenelllawgroup.com
Telephone: (503) 372-6450
Of Attorneys for Plaintiff-Appellant

STATEMENT OF RELATED CASES

Appellant is not aware of any related proceedings pending in any court. Appellant is attempting to bring a case against Defendants in Warm Springs Tribal Court, however such action has not yet been filed.

Date: October 13, 2021

/s/ Daniel E. Thenell
Daniel E. Thenell, OSB No. 971655
E-mail: dan@thenelllawgroup.com
Emerson Lenon, OSB No. 123728
E-mail: emerson@thenelllawgroup.com
Telephone: (503) 372-6450
Of Attorneys for Plaintiff-Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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No. 21-35324

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ERIC WEAVER,
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Defendant - Appellant.

Appeal from the United States District Court
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CERTIFICATE OF SERVICE OF OPENING BRIEF OF APPELLANT

Daniel E. Thenell, OSB #971655
Emerson Lenon, OSB #123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, OR 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff/Appellant
Eric Weaver

CERTIFICATE OF SERVICE

I hereby certify that I filed OPENING BRIEF OF APPELLANT with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 13, 2021

I certify that all participants in the case are registered CM/ECF users and that service will by accomplished by the appellate CM/ECF system.

Dated: October 13, 2021

THENELL LAW GROUP, P.C.

By: *_/s/ Tennile Scruggs_*
Tennile Scruggs

No. 21-35324

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RON GREGORY, CARMEN SMITH, and ALYSSA MACY,
Defendant - Appellant.

Appeal from the United States District Court
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APPENDIX TO OPENING BRIEF OF APPELLANT

Daniel E. Thenell, OSB #971655
Emerson Lenon, OSB #123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, OR 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff/Appellant
Eric Weaver

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Daniel E. Thenell, OSB No. 971655
Emerson Lenon, OSB No. 123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

ERIC WEAVER, an individual,

Plaintiff,

vs.

RON GREGORY, individually and as Acting Chief of Police for Warm Springs Police Department, CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs, ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs.

Defendants.

Case No.

COMPLAINT

(Civil Rights 1st Amendment/14th Amendment, Whistleblower retaliation, IIED)

42 U.S.C. § 1983
ORS 659A.199

Damages at least $1,000,000 or an amount to be proven at trial

JURY TRIAL DEMANDED

INTRODUCTORY STATEMENT

1. This action is filed by Plaintiff under 42 U.S.C § 1983 and ORS Chapter 659A for events from 2018 to the present, alleging violations of the First and Fourteenth Amendments of the United

States Constitution, retaliation for participation in protected activities, violations of the state whistleblower protections under ORS Chapter 659A, and intentional infliction of emotional distress.

2. This Court has jurisdiction over Plaintiff's claims of violations of Federal Constitutional Rights under 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper under 28 U.S.C. § 1391(b), in that one or more of the defendants reside in the District of Oregon and Plaintiff's claims for relief arose in this district.

4. The Confederated Tribes of the Warm Springs has enacted Tribal Code in compliance with the 2011 SB 412 passed by the Oregon Legislature and enrolled into law. The Warm Springs Tribal Code (WSTC) Section 390.130 authorizes "tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants, and employees." WSTC 205.001 provides the "Tribes, its subordinate organization, enterprises, officer, agents, servants and employees may be sued in the Warm Springs Tribal Court or other court of competent jurisdiction" when authorized by federal or tribal law. This court is a court of competent jurisdiction.

5. On or about September 25, 2019 Plaintiff caused a tort claim notice, pursuant to ORS 30.25, to be served in compliance with WSTC 205.006.

PARTIES

6. At all material times, ERIC WEAVER ("Plaintiff") is a citizen of the United States and a resident of Deschutes County, Oregon. At all times material, Plaintiff worked for Defendants at Warm Springs Police Department (the "Department"), a department of the Confederated Tribes of the Warm Springs.

7. At all material times, RON GREGORY ("Defendant GREGORY") was the Acting Chief of

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

Police for Warm Springs Police Department. Defendant GREGORY was the final policy maker for the Warm Springs Police Department. Defendant GREGORY is sued in his individual and official capacity.

8. At all material times, CARMEN SMITH ("Defendant SMITH") was the Manager of Public Safety for the Confederated Tribes of Warm Springs ("Warm Springs"). Defendant SMITH is sued in his individual and official capacity.

9. At all material times, Defendant ALYSSA MACY ("Defendant MACY") was the Chief Operations Officer for Warm Springs. Defendant MACY is sued in her individual and official capacity.

10. All Defendants acted under the color of state and federal law on behalf of Warm Springs at all times relevant to this Complaint.

11. Plaintiff is entitled to an award of attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

FACTUAL ALLEGATIONS

12. Plaintiff was a public safety officer for the Warm Springs Police Department from April 5, 2016 until he was terminated on September 11, 2019. Plaintiff is not a member of the Tribe and does not reside on the Tribal land.

13. Plaintiff, during his employment and at all times material, was a tribal police officer pursuant to ORS 181A680 to ORS 181A.692.

14. Beginning in 2018 Plaintiff began to note discrimination and harassment by management and his fellow officers. The behavior noted by Plaintiff was sexual, racial, and derogatory comments, offensive or unwanted touching, and other conduct in violation of WSTC, Oregon State Statutes, and Warm Springs Police Department Policy.

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

15. Plaintiff witnessed behavior including, but not limited to, sexual harassment both verbal and in the form of dildos being thrown at him and other officers in the station; one officer stated he would engage in sex with the Plaintiff's wife and engaged in similar verbal behavior including direct confrontations with other officers' spouses, racially derogatory language such as degrading references to Indian culture; Plaintiff was mocked for his learning disability including supervisors making statements such as "what are you, retarded", "you're handicapped" and he was denied a promotion expressly because of his dyslexia. Plaintiff and other officers were routinely exposed to pornographic images in the workplace.

16. Plaintiff verbally reported this conduct to multiple supervisors in his chain of command. Plaintiff's complaints were passed onto Defendant Gregory.

17. On or about January 1, 2019, Defendants SMITH and GREGORY called a Department-wide meeting. Defendants GREGORY and SMITH addressed the entire department; however, they singled out Plaintiff by staring at him repeatedly throughout the meeting. The Defendants told the Department they all needed to "grow up" and to "not worry about the little things." Plaintiff did not believe sexual and racial harassment were little things. Defendant GREGORY further stated, "someone does not need to be sending emails to our chain of command", or words substantially similar.

18. Plaintiff further attempted to report the misconduct to Defendant MACY. Plaintiff sent Defendant MACY three emails between January 2018 and July 8, 2019. Plaintiff received no response from Defendant MACY, nor did she take any remedial action.

19. On or about November 2018, acting Sergeant Scott Lane insisted Sgt. Chase put a written reprimand in Plaintiff's file for conduct for which Plaintiff was denied notice and opportunity

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

to address. Plaintiff was never provided with the details of this "write up" from his chain of command. On information and belief, this was retaliation for the disclosures alleged herein.

20. On or about July 6, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief, this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

21. On or about July 13, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

22. On or about July 31, 2019, Plaintiff was involved in a service call which involved a use of force. This incident was reviewed by Sergeant Josh Keyes and Officer Andrew Coffee and reported to management as a potential excessive use of force. On information and belief this incident was reported in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

23. On or about August 16, 2019, Det. Sam Williams was tasked with conducting a use of force investigation of one of the three incidents. Plaintiff was notified of this investigation. Det. Williams was later tasked with investigating all three incidents; however, Plaintiff was never provided notice of those investigations. On information and belief this investigation was

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THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

conducted in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

24. On or about August 16, 2019, Plaintiff was placed on Administrative Leave. The formal notice was silent as to his pay, Plaintiff was told verbally his leave would be without pay and told that the order came from Defendant SMITH. Plaintiff was instructed not to discuss the investigation and that any discussion of the investigation outside of those involved would be grounds for discipline up to and including suspension. On information and belief, the Department had not placed other officers on unpaid leave for past investigations. Plaintiff was not informed of the specific policies he was alleged to have violated. On information and belief, Plaintiff was placed on unpaid leave, instead of paid leave, in retaliation for one or more disclosures made by Plaintiff and described in this complaint.

25. Plaintiff was placed on unpaid leave but was never required to return any of his equipment. The Department instructed him he was not allowed to exercise any police powers but was left with possession of his patrol vehicle, his K9 unit, an AR-15, ballistic vest, sidearm and a large quantity of narcotics issued for the purpose of K9 Drug Detection training. Plaintiff was forced to secure this equipment as best he could at his residence, exposing himself and his family to liability as well as physical danger.

26. Plaintiff contacted his attorneys to notify them of the investigation and was advised not to submit to an interview without the assistance of counsel. On or about August 22, 2019, counsel for Plaintiff wrote to Defendant SMITH to notify him of Plaintiff's representation. Counsel's letter also raised the issue of the unpaid leave and requested records and documents related to

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

the internal investigation. Such documents are required to be disclosed under Oregon Statutes governing public safety officers. Counsel further asked Warm Springs to direct all communications to their office. No response was provided from Warm Springs nor the Department.

27. Having received no response from Defendant SMITH, on or about September 9, 2019 counsel for Plaintiff wrote to Defendant MACY again requesting information regarding why his leave was unpaid, why the investigators had not sought an interview, requesting the same documents as the August 22 letter and notifying Defendant MACY of the misconduct within the Department which Plaintiff had previously disclosed. Counsel never received a response to this letter.

28. Shortly after being placed on Administrative Leave, Plaintiff was removed from the Department schedule for the remainder of the calendar year. This was done despite the fact the investigation had just begun and had reached no conclusions about Plaintiff's alleged policy violations. On information and belief, this was retaliation for one or more disclosures made by Plaintiff and described in this complaint and was evidence he was being judged in bad faith prior to the conclusion of the investigation.

29. On or about August 28, 2019 Plaintiff contacted Det. Williams via text message and asked, "did anything get figured out about my pay and my admin leave?" Williams replied, "no changes, tried."

30. On or about August 28, 2019, Plaintiff received a voicemail from Det. Williams. Williams acknowledged receipt of notice that Plaintiff was represented by counsel and stated he would

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

attempt to contact Plaintiff's attorney. Plaintiff's counsel received no contact from Det. Williams.

31. On or about September 9, 2019, Plaintiff received a voicemail from one of the Warm Springs Police Department Supervisors asking him to come in on September 11, 2019 and meet with the supervisor and Defendant GREGORY. Plaintiff received no written notice of an interview.

32. On or about September 12, 2019, Plaintiff was contacted by a former officer for the Department. This person informed Plaintiff he was contacted by Acting-Sergeant Lane, and disclosed facts related to Plaintiff's leave and the investigation. On information and belief, no discipline was assigned to Sgt. Lane for this breach, despite the warnings given to Plaintiff.

33. On or about September 13, 2019, Plaintiff was contacted by a clerk at the Warm Springs Courthouse who informed Plaintiff that the court had dismissed all his cases because he was no longer an employee.

34. On or about September 14, 2019, Plaintiff received a letter from Defendant GREGORY stating Plaintiff had engaged in an unjustified use of force and had intentionally falsified his report to justify the use of force. Plaintiff had not been interviewed or provided any opportunity to explain or mitigate his conduct. The termination letter falsely stated Plaintiff had refused to cooperate with Det. Williams, and further falsely stated Plaintiff made no effort to contact Defendant GREGORY to reschedule the September 11, 2019 meeting. The letter did acknowledge the Department had received "emails and a phone call from an attorney claimed to represent you in this matter and our Tribal attorney has been notified."

35. The actions of Defendants have caused Plaintiff significant damage, including the loss of his current employment and future career, damage to Plaintiff's credit score, ability to meet his

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

financial obligations, caused him to fall behind in child support, and caused an aggravation of his diagnosed PTSD. His military disability rating for PTSD has increased from 50% to 70% because of this aggravation. He has incurred out-of-pocket medical expenses no less than $15,000 and will be larger at the time of trial.

36. The Department refused to pay him his final paycheck for over 15 days after it was due and the stated reason for his termination on his final check was "equipment has not been turned in."

37. Prior to his termination Plaintiff was assured he would be able to keep his K9 unit ("Bryta") because she was due to retire. It is common practice for officer handlers to retain their K9 units due to the deep bond formed between the handlers and their dogs. However, once Plaintiff was ordered to return his equipment, he was told he could no longer keep Bryta; instead Bryta was given to Defendant MOORE. In March 2020, Plaintiff was contacted by the vet providing medical treatment to Bryta. The vet informed Plaintiff Bryta was recently seen and she was not in good health because of poor care from Defendant MOORE.

FIRST CLAIM FOR RELIEF:

Violation of Federal Constitutional Rights 42 U.S.C. § 1983

Liberty Interest Deprivation

(All Defendants)

38. Plaintiff re-alleges all paragraphs previously alleged.

39. 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, 17 Stat. 13, creates a private right of action. Under the terms of the statute:

> "Every person who, under color of [law] … causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

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Telephone (503) 372-6450
Facsimile (503) 372-6496

> the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. § 1983

40. During all relevant time periods, Defendants had the practice, policy and/or custom of participating in or tolerating unlawful harassment, bullying, and retaliation of employees of the Department.

41. Defendants' conduct, as alleged in Plaintiff's Complaint, was pursuant to Defendants' practices, polices, and/or customs relating to harassment, bullying, and retaliation of employees of the Department.

42. Defendants GREGORY, SMITH, and MACY were deliberately indifferent to the practices, polices, and/or customs relating to harassment, bullying, and retaliation of employees of the Department. The history and pattern of harassment, bullying, and retaliation of employees of the Department put Defendants GREGORY, SMITH, and MACY on notice of this practice, policy, and/or custom.

43. At all times material to the events outlined in Plaintiff's Complaint, Defendant GREGORY, as the Chief of Police for the Department, was the final decision-maker within the Department who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.

44. At all times material to the events outlined in Plaintiff's Complaint, Defendant SMITH, as Public Safety Manager for Warm Springs, was the final decision-maker for Warm Springs Public Safety who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.

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45. At all times material to the events outlined in Plaintiff's Complaint, Defendant MACY, as Chief Operating Officer for Warm Springs, was the final decision-maker for Warm Springs who enforces the practice, policy and/or custom of harassment, bullying and retaliation of employees of the Department.

46. All Defendants acted under color of law when the participated in, authorized, or otherwise failed to prevent, the practices, polices, and/or customs relating to harassment, bullying, and retaliation of employees of the Department and to Plaintiff.

47. Defendants' practices, polices, and/or customs relating to harassment, bullying, and retaliation of employees of the Department caused a violation of Plaintiff's constitutional rights.

48. Defendants GREGORY, SMITH and MACY had insufficient and inadequate procedural safeguards in place to protect Plaintiff's liberty interest under the Fourteenth Amendments.

49. The internal affairs investigation policies, practices, and/or customs used by Defendants to perform internal investigations lacked adequate objective standards and permitted Defendants to apply standards, if any, unevenly and inconsistently and enabled Defendants to use internal affairs investigations as a fabricated pretext to terminate employees for discriminatory, retaliatory, or unlawful reasons.

50. The internal affairs investigation policies, practices, and/or customs used to perform the Internal Affairs investigation of Plaintiff allowed Defendants to terminate Plaintiff's employment for discriminatory, retaliatory, or otherwise unlawful purposes.

51. All Defendants acted under color of law when the participated in, authorized, or otherwise failed to prevent, the practices, polices, and/or customs used in the Internal Affairs

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Telephone (503) 372-6450
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investigation of Plaintiff and his subsequent termination for discriminatory, retaliatory, or otherwise unlawful purposes.

52. Defendants' termination of Plaintiff was for retaliatory purposes and based on erroneous claims of misconduct by Plaintiff and was disseminated by Defendant MOORE and others, and became widely known throughout the tightly knit law enforcement community and the public as a result.

53. Plaintiff has suffered an actual stigma connected to his discharge from the Department due to the erroneous and retaliatory claims of misconduct and false claims communicated by Defendants that Plaintiff used excessive force and was untruthful. The termination and false claims of misconduct have damaged Plaintiff's reputation.

54. Defendants' conduct in terminating Plaintiff precluded Plaintiff from finding work in the law enforcement profession, his chosen profession**.**

55. Plaintiff's right to pursue his chosen profession is a protected liberty interest.

56. In engaging in the conduct alleged Plaintiff's Complaint, Defendants acted arbitrarily and capriciously in depriving Plaintiff of his liberty interest in pursuing his chosen profession, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

57. Defendants' practice, policy and/or custom of harassment, bullying, and retaliation was the direct and proximate cause of Plaintiff's damages herein.

58. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of $500,000, or another amount to be proven at trial.

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Telephone (503) 372-6450
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59. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form of severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of $500,000, or another amount to be proven at trial.

60. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

Violation of Federal Constitutional Rights 42 U.S.C. § 1983

Retaliation for Free Speech (First Amendment)

(All Defendants)

61. Plaintiff re-alleges all paragraphs previously alleged.

62. 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, 17 Stat. 13, creates a private right of action. Under the terms of the statute:

> "Every person who, under color of [law] … causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. § 1983

63. Plaintiff engaged in protected speech by reporting, both internally and externally, the pattern, practice and/or custom of harassment, bullying and retaliation of employees of the Department.

64. Reporting unlawful sexual and racial harassment, bullying and retaliation occurring inside of a law enforcement department is a matter of grave public concern. Such speech relates to matter

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

of concern to the community. The community rightfully expects its law enforcement to be free from racial and sexual bias, to refrain from bullying, harassment, and retaliation and the fully and faithful execute the laws of the state.

65. Plaintiff engaged in protected speech on numerous occasions, both verbal and in writing. When Defendant GREGORY ignored his reports, he engaged in further protected speech to Defendants SMITH and MACY. None of the Defendants took any action to address, remedy or prevent the reported unlawful conduct.

66. Plaintiff's protected speech was not a task he was paid to perform and was made in his capacity as a private citizen.

67. Instead of addressing Plaintiff's reports of misconduct and illegality, Defendants acted in concert to subject Plaintiff to an internal affairs investigation and terminate him without just cause and in violation of his rights to due process.

68. The internal affairs investigation policies, practices, and/or customs used by Defendants to perform internal investigations lacked adequate objective standards and permitted Defendants to apply standards, if any, unevenly and inconsistently and enabled Defendants to use internal affairs investigations as a fabricated pretext to terminate employees for discriminatory, retaliatory, or unlawful reasons.

69. Th internal affairs investigation policies, practices, and/or customs used to perform the Internal Affairs investigation of Plaintiff allowed Defendants to terminate Plaintiff's employment for discriminatory, retaliatory, or otherwise unlawful purposes.

70. All Defendants acted under color of law when they participated in, authorized, or otherwise failed to prevent, the practices, polices, and/or customs used in the Internal Affairs

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Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

investigation of Plaintiff and his subsequent termination for discriminatory, retaliatory, or otherwise unlawful purposes.

71. Plaintiff has suffered an actual stigma connected to his discharge from the Department due to the erroneous and retaliatory claims of misconduct and false claims communicated by Defendants that Plaintiff used excessive force and was untruthful. The termination and false claims of misconduct have damaged Plaintiff's reputation.

72. Defendants' conduct in terminating Plaintiff precluded Plaintiff from finding work in the law enforcement profession, his chosen profession**.**

73. Plaintiff's right to pursue his chosen profession is a protected liberty interest.

74. In engaging in the conduct alleged in Plaintiff's Complaint, Defendants acted arbitrarily and capriciously in depriving Plaintiff of his liberty interest in pursuing his chosen profession, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

75. Defendants' practice, policy and/or custom of harassment, bullying, and retaliation was the direct and proximate cause of Plaintiff's damages herein.

76. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of $500,000 or another amount to be proven at trial.

77. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form or severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of $500,000 or another amount to be proven at trial.

78. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to 42 U.S.C. § 1983

THIRD CLAIM FOR RELIEF

Unlawful Retaliation ORS 659A.199

(All Defendants)

79. Plaintiff re-alleges all paragraphs previously alleged.

80. Defendants at all times acted as agents for Plaintiff's employer, Warm Springs. Warm Springs at all times was an employer for the purposes of ORS 659A.199.

81. Warm Springs, by and through its agents, discharged, discriminated, and retaliated against Plaintiff for the reason that Plaintiff, in good faith, reported the unlawful harassment, bullying and retaliation in the Department.

82. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered actual economic damages in the form of lost salary and benefits, back pay, front pay, and added financial consideration in the approximate amount of $500,000 or another amount to be proven at trial.

83. As a direct and proximate cause of Defendants' conduct, Plaintiff has also suffered non-economic damages, in the form or severe emotional distress, mental suffering, anxiety, humiliation, embarrassment, grief, depression, loss of enjoyment of life, increased sleeplessness, increased stress, increased worry, inability to gain employment in the field of law enforcement, and damage to his reputation for which Plaintiff seeks compensation in the approximate amount of $500,000 or another amount to be proven at trial.

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

84. Plaintiff is further entitled to an award of all relevant attorney fees and expert fees and costs pursuant to ORS 659A.885(1).

FOURTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(All Defendants)

85. Plaintiff re-alleges all paragraphs previously alleged.

86. Defendants' conduct, individually and in concert, consisted of extraordinary transgressions of the bounds of socially tolerable conduct and exceeded any reasonable limit of social toleration. The conduct of Defendants included without limitation: sexually harassing Plaintiff including by throwing dildos at his head at the workplace, statements implying fellow employees would engage in sex with Plaintiff's wife and others, racially derogatory language, mocking Plaintiff for having a learning disability.

87. These acts and others alleged in this Complaint were intended to cause Plaintiff severe mental and emotional distress; or in the alternative, such distress was certain or substantially certain to result in Plaintiff suffering severe mental and emotional distress.

88. Plaintiff, in fact, suffers severe mental and emotional distress as a result of Defendants' conduct.

89. Plaintiff is entitled to economic damages and non-economic damages in an amount to be more fully proven at trial, but in any case, no less than $250,000.

WHEREFORE Plaintiff pray as follows:

1. Finding that Defendants violated Plaintiff's constitutional liberty interest under the Fourteenth Amendment;

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12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

2. Finding that Defendants violated Plaintiff's constitutional right to free speech under the First Amendment;
3. Finding that Defendants terminated Plaintiff's in retaliation for engaging in protected speech;
4. Finding that Defendants violated ORS 659A.199 for retaliation for protected disclosures;
5. Finding that Defendants intentionally caused Plaintiff severe mental and emotional distress;
6. Judgment against Defendant for economic losses which will fully compensate Plaintiff for Plaintiff's economic damages in the amount of at least $500,000.00, or an amount to be determined by a jury;
7. Judgment against Defendants for non-economic losses to Plaintiff for the constitutional and statutory violations herein in the amount of at least $500,000.00, or an amount to be determined by a jury;
8. Judgment against Defendants for deterrence damages in a fair and reasonable amount to be proven at trial;
9. Equitable relief including, but not limited to, injunctive relief; and
10. Judgment for costs, interests, attorney fees and such other and further relief as the Court deems just and equitable.

DATED this 13th day of May 2020.

THENELL LAW GROUP, P.C.

By: */s/ Daniel E. Thenell*

Daniel E. Thenell, OSB No. 971655
E-mail: dan@thenelllawgroup.com
Emerson Lenon, OSB No. 123728
E-mail: emerson@thenelllawgroup.com
Telephone: (503) 372-6450
Of Attorneys for Plaintiff

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

Daniel S. Hasson, OSB No. 052773
E-mail: dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
E-mail: wearle@davisrothwell.com
DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.
200 S.W. Market Street, Suite 1800
Portland, Oregon 97201
Tel: (503) 222-4422
Fax: (503) 222-4428
Of Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON - PORTLAND DIVISION

ERIC WEAVER,

Plaintiff,

v.

RON GREGORY. Individually and as Acting Chief of Police for Warm Springs Police Department; CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs; ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs,

Defendants.

Case No. 3:20-CV-00783-HZ

DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) & 12(b)(6) AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Request for Oral Argument

LR 7-1(a) and LR 7-2 CERTIFICATIONS

Counsel for moving Defendants Ron Gregory and Carmen Smith[1] certifies that he completed a good faith conferral with counsel for Plaintiff concerning this issues raised herein, but the parties unable to reach an agreement resolving the dispute.

[1] Because Defendant Alyssa Macy does not appear to have been served, the present Motions have been brought by Defendants Ron Gregory and Carmen Smith only. Defendant Macy does not waive her right to assert all potentially available defenses (including without limitation, lack of personal jurisdiction, lack of subject matter jurisdiction, insufficiency of service/process).

Counsel further certifies that this Motion and its supporting Memorandum of Law complies with the applicable word-count limitations under LR 7-2(b), LR 26-3(b), LR 54-1(c), or LR 54-3(e) because it contains 6,295 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

MOTIONS

Motion One: Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), Defendants Ron Gregory and Carmen Smith request an order dismissing all four of Plaintiff Eric Weaver's Claims for Relief because they are barred by the doctrine of tribal sovereign immunity.

Motion Two: Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), Defendants Ron Gregory and Carmen Smith request an order partially dismissing all four of Plaintiff Eric Weaver's Claims for Relief because they are barred by the doctrine of tribal sovereign immunity to the extent alleged against Defendants in their "official" capacities.[2]

Motion Three: Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), Defendants Ron Gregory and Carmen Smith request an order dismissing Plaintiff Eric Weaver's First and Second Claims for Relief because 42 U.S.C. § 1983 claims cannot be brought for actions taken under color of tribal law.

Motion Four: Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. (6), Defendants Ron Gregory and Carmen Smith request an order dismissing Plaintiff Eric Weaver's Third and Fourth Claims for Relief because federal question (original) jurisdiction disappears if Plaintiff's 42 U.S.C. § 1983 claims are dismissed.

[2] To the extent that that dismissal is inappropriate for Motion Two because it is directed at only the "official capacity" aspects of Plaintiff's claims, moving Defendants alternatively characterize Motion Two as a Motion to Strike under Fed. R. Civ. P. 12(f).

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200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

Motion Five: Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Ron Gregory and Carmen Smith request an order dismissing Plaintiff Eric Weaver's Third Claim for Relief because ORS 659A.199 does not apply to tribal employment matters.

MEMORANDUM OF LAW

A. Introduction

This case arises out of a dispute surrounding Plaintiff's employment as a tribal police officer, and the cessation of his employment. The named Defendants are: (1) Ron Gregory, Chief of Police for the Warm Springs Police Department; (2) Carmen Smith, Public Safety Manager for the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS); and (3) Alyssa Macy, the Chief Operations Officer for the CTWS.

Plaintiff Eric Weaver alleges that beginning in 2018, he witnessed and was subjected to sexual, racial and derogatory comments, and offensive touching, during his employment for the Warm Springs Police Department.[3] Plaintiff alleges that he attempted to report this conduct up the chain of command in the Warm Springs Police Department, and ultimately, up to the Chief Operating Officer for the CTWS, but that no remedial action was taken.[4]

Plaintiff alleges he reprimanded, subsequently reported to management for his use of excessive use of force during three service calls, and that an internal affairs investigation ensued (during which he was placed on unpaid administrative leave).[5] Plaintiff alleges that the reprimand, report of his use of excessive force, the internal affairs investigation, and the decision to place him on unpaid administrative leave were all decisions made in retaliation for Plaintiff having reporting the alleged harassment issues.[6]

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[3] *See* Docket No. 1, Complaint, ¶¶ 13-14.
[4] *Id.* at ¶¶ 16-18.
[5] *Id.* at ¶¶ 19-24.
[6] *Id.*

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200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

Plaintiff further alleges he and his counsel experienced a general lack of cooperation during the investigation process.[7] Plaintiff alleges he was later taken off of the schedule, and that this decision was also made in retaliation for his reporting of the alleged harassment issues.[8] Finally, Plaintiff alleges he received a letter terminating his employment based on Plaintiff having used excessive force and having falsified a police report, but that in actuality that he was terminated in retaliation for his reporting of the alleged harassment issues.[9]

Plaintiff has brought four Claims for Relief against Defendants based on actions taken in their "individual" and "official" capacities: (1) Constitutional violation under 42 U.S.C. § 1983 (deprivation of "liberty interest"); (2) Constitutional violation under 42 U.S.C. § 1983 (retaliation for "free speech"); (3) Violation of ORS 659A.199; and (4) Intentional infliction of emotional distress.

B. Motion One: All of Plaintiff's Claims are Barred by the Doctrine of Tribal Sovereign Immunity

A claim of tribal sovereign immunity is jurisdictional in nature. *Puyallup Tribe, Inc. v. Department of Game*, 433 U.S. 165, 172, 97 S. Ct. 2616, 2621, 53 L. Ed. 2d 667, 674 (1977). An assertion of tribal sovereign immunity is properly raised as a motion to dismiss under Fed. R. Civ. P. 12(b)(1). *Alvarado v. Table Mt. Rancheria*, 509 F.3d 1008, 1015 (9th Cir. 2007). Because it is presumed that a case lies outside the Court's jurisdiction, the burden is on the party asserting jurisdiction to show that subject matter jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994).

It is a well-established rule that Indian tribes are immune from suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978). Tribal sovereign immunity

[7] *Id.* at ¶ 26-27.
[8] *Id.* at ¶ 28.
[9] *Id.* at ¶¶ 34 and 52.

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PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

is rooted in the unique relationship between the United States government and the Indian tribes, whose sovereignty substantially predates the Constitution. *United States v. Oregon*, 657 F.2d 1009, 1013 (9th Cir. 1981). Tribal sovereign immunity is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P. C.*, 476 U.S. 877, 890, 106 S. Ct. 2305, 90 L. Ed. 2d 881 (1986).

Absent a clear waiver by a tribe or congressional abrogation of tribal sovereign immunity, suits against tribes are barred. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, 111 S. Ct. 905, 112 L. Ed. 2d 1112 (1991); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754, 118 S. Ct. 1700, 140 L. Ed. 2d 981 (1998) ("As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.").

Because the CTWS is a federally recognized Indian tribe,[10] it is entitled to tribal sovereign immunity unless there has been a Congressional abrogation of that immunity or an express waiver of that immunity. Here, the only basis for waiver that Plaintiff alleges[11] is CTWS Tribal Code Chapter 205.001, quoted by Plaintiff as follows: "the Tribe and its employees can be sued in the Warm Springs Tribal Court or other court of competent jurisdiction when authorized by federal or tribal law." In actuality, Chapter 205.001 provides: "The Tribes, its subordinate organization, enterprises, officer, agents, servants and employees may be sued in the Warm Springs Tribal Court or other court of competent jurisdiction only when explicitly authorized by either (1) applicable federal law, or (2) by ordinance or resolution of the Tribal Council."

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[10] *See* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 80 Fed. Reg. 1200-01 (February 1, 2019) (listing the CTWS as one of 573 federally acknowledged tribes/entities in the 48 contiguous states acknowledged to have immunities and privileges available to federally recognized Indian Tribes).

[11] Docket No. 1, Complaint, ¶ 4.

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200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

Here, Plaintiff has not alleged the existence of any federal statute that abrogates tribal sovereign immunity. Nor has Plaintiff alleged any ordinance or resolution of the Tribal Council that would constitute a waiver of tribal sovereign immunity. As such, tribal sovereign immunity remains applicable.

Although the CTWS is not one of the named defendants in this case, it is moving Defendants' position that because they are CTWS employees who are alleged to have been acting within the scope of their authority, they are also entitled to invoke the CTWS' tribal sovereign immunity from suit. It is anticipated that Plaintiff rely on *Lewis v. Clarke*, 137 S. Ct. 1285, 1288, 197 L. Ed. 2d 631 (2017) in arguing that Defendants are not entitled to tribal sovereign immunity because they have been sued in their "individual" capacities.

Moving Defendants concede that a broad reading of *Lewis v. Clarke* could support such an argument, but a closer examination shows that it is distinguishable. *Lewis v. Clarke* involved a common law negligence claim against a tribal limousine driver for causing an off-reservation car accident on a Connecticut Interstate. The Connecticut Supreme Court held that the tribal employee was protected by the sovereign immunity afforded to his tribal employer. *Id.* at 1290.

On appeal, the Supreme Court reversed, holding that the tribal employee was not entitled to sovereign immunity because he, not the tribal employer, was the real party in interest in the suit. *Id.* at 1292. However, in explaining why the tribal employer was not the real party in interest (which would implicate sovereign immunity considerations), the Court noted the plaintiff had alleged negligent conduct that had had occurred off reservation, and on state lands:

> This is a negligence action arising from a tort committed by Clarke on an interstate highway within the State of Connecticut. The suit is brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment will not operate against the Tribe.

Id. at 1291 (emphasis added).

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The Court's multiple references to the off-reservation location of the driver's negligence arguably suggest that the outcome would have be different had the employee's alleged negligence occurred while on the tribal employer's reservation. At the very least, the Court's references to the driver's negligence occurring on "state lands" begs the question: If the issue were as simple as asking only whether the plaintiff's claim had been brought against the defendant in his "individual" capacity, there would be no need to discuss the location of the accident, much less the need to specific that the alleged negligence took place "within the State of Connecticut" and while "on state lands."

There is nothing in the opinion to suggest that these references should be disregarded as mere surplusage, and the decisions of Justice Ginsburg and Justice Thomas not to join in the majority opinion appear to support this conclusion. Both of these Justices took the opportunity to author separate concurrences discussing their opinions on a tribal entity's ability to assert sovereign immunity depending on whether the wrongful conduct occurred inside or outside of reservation boundaries. *See id.* at 1294-1295 (Ginsburg, J., concurring; Thomas J., concurring).

Thus, the present case is distinguishable from *Lewis v. Clarke*. Whereas the tribal employee limousine driver in that case committed a state common law tort while driving on Connecticut "state lands," Plaintiff here alleges only that Defendants made a series of internal (allegedly retaliatory) employment decisions involving a tribal employee while on tribal land, not on the lands of the State of Oregon.

Moving Defendants respectfully request that this Court rule that the CTWS' tribal sovereign immunity extends to its employees and officials, including moving Defendants. Tribal employees and officials are ordinarily the means by which sovereign Indian tribes act, and in this case, Defendants are alleged to have been acting within the course and scope of their authority

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when they made a series of internal employment decisions for the CTWS while on Warm Springs Reservation land. Extending sovereign immunity under these circumstances would both effectuate the basic purpose of the doctrine and signal a recognition that sovereign immunity remains "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 890, 106 S.Ct. 2305, 90 L.Ed.2d 881 (1986).

C. Motion Two: All of Plaintiff's Claims are Barred by Tribal Sovereign Immunity to the Extent Alleged Against Defendants in Their "Official" Capacities

In the alternative to dismissing Plaintiff's claims in their entirety, Plaintiff's claims should be dismissed on tribal sovereign immunity grounds to the extent they have been brought against Defendants in their "official" capacities.[12] *Lewis v. Clarke*, *supra*, 137 S. Ct. at 1290–91 ("[L]awsuits brought against employees in their official capacity 'represent only another way of pleading an action against an entity of which an officer is an agent,' and they may also be barred by sovereign immunity."); *Miller v. Wright,* 705 F.3d 919, 927–28 (9th Cir. 2013) ("A suit against ... [a tribe's] officials in their official capacities is a suit against the tribe [that] is barred by tribal sovereign immunity.") (internal quotation marks omitted).

D. Motion Three: 42 U.S.C. § 1983 Does Not Apply to Actions Taken Under Color of Tribal Law

Plaintiff's First and Second Claims for Relief are subject to dismissal because 42 U.S.C. § 1983 claims cannot be maintained for actions taken under color of tribal law. The justification for this rule was explained by the Ninth Circuit in *R.J. Williams Co. v. Fort Belknap Housing Authority*, 719 F.2d 979 (9th Cir. 1983):

> First, no action under 42 U.S.C. § 1983 can be maintained in federal court for persons alleging deprivation of constitutional rights under color of tribal law. Indian tribes are separate and distinct sovereignties, and are not constrained by the

[12] *See* Docket No. 1, Complaint, ¶¶ 7-9; 38; 61; 79; 85.

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> provisions of the fourteenth amendment. As the purpose of 42 U.S.C. § 1983 is to enforce the provisions of the fourteenth amendment, it follows that actions taken under color of tribal law are beyond the reach of § 1983…

Id. at 982. *See also*, *Evans v. McKay*, 869 F.2d 1341, 1347 (9th Cir. 1989) ("[A]ctions under section 1983 cannot be maintained in federal court for persons alleging a deprivation of constitutional rights under color of tribal law."); *Wallulatum v. Confederated Tribes of the Warm Springs Reservation of Oregon Pub. Safety Branch*, No. 6:08-CV-747-AA, 2012 WL 1952000, at *1 (D. Or. May 28, 2012) ("The law is clear that no action can be brought in federal court for alleged deprivations of constitutional rights under the color of tribal law.").

The test for determining whether a party charged with an alleged constitutional deprivation can be subjected to a 42 U.S.C. § 1983 claim is whether the party "may fairly be said to be a state actor," rather than a tribal actor. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937, 102 S. Ct. 2744, 2754, 73 L.Ed.2d 482 (1982).

Even a cursory review of Plaintiff's factual allegations reveals that they fall well short of the "state actor" standard. Plaintiff's Complaint alleges that Defendants took a series of employment actions against him based on his reporting of various instances of misconduct that had occurred in the Warm Springs Police Department. Plaintiff alleges that these actions deprived him of a "liberty interest" (precluding him in pursuing a career in law enforcement) and were otherwise made in "retaliation for exercise of free speech." Even accepting those allegations as true for purposes of this Motion, internal tribal employment decisions/actions of a tribal entity by tribal employees are, by definition, actions taken under color of *tribal* law, and uniquely within the Tribes' inherent right of self-governance.

Perhaps the easiest way to demonstrate the absence of any allegations of "state action" in this case is to juxtapose Plaintiff's allegations with those that the Ninth Circuit has found

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sufficient to bring tribal employees within the purview of 42 U.S.C. § 1983. In *Evans v. McKay*, 869 F.2d 1341, 1348 (9th Cir. 1989), the court held that tribal employee police officers' arrest of the plaintiffs under a city ordinance met the "state actor" standard, and even then, the court reached that conclusion only because there was evidence of a pre-existing agreement between the tribe and city that empowered tribal police officers to enforce both local and tribal law. Similarly, in *Bressi v. Ford*, 575 F.3d 891, 896-97 (9th Cir. 2009), the court held that tribal officials were acting under color of state law where the facts showed that the tribal officers had stopped a non-Indian at a public highway roadblock and cited him for a violation of state law.

Even more telling is the Oregon District Court decision in *Wallulatum v. Confederated Tribes of the Warm Springs Reservation of Oregon Pub. Safety Branch*, No. 6:08-CV-747-AA, 2012 WL 1952000. In *Wallulatum*, the court concluded that an allegation of a temporary police officer's use of excessive force against a plaintiff on the Warm Springs reservation did not allege action taken under state law for purposes of the plaintiff's 42 U.S.C. § 1983 claim:

> "It is undisputed that defendant Patterson was working as a tribal officer at the time of the incident giving rise to plaintiff's claims and that the incident occurred on the tribal sovereign land. Thus the actionable conduct, if any, *was under the color of tribal law* and 42 U.S.C. § 1983 does not provide a proper jurisdictional basis for this court to entertain plaintiff's claim."

Id. at *1 (italics added).

Simply stated, this case involves a dispute over the Tribe's application of its own employment practices to one of its tribal employees. Despite a diligent search, counsel for Defendants has yet to locate a single case, from any jurisdiction, which holds that a tribal employer's employment decisions/actions toward one of its own tribal employees can be characterized as "state action" for purposes of a 42 U.S.C. § 1983 claim. To the contrary, in

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every case located by counsel (including decisions from the Ninth Circuit Court and this Court), the courts reached the opposite conclusion, dismissing the employees' 42 U.S.C. § 1983 claims.

Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006) appears to be the sole Ninth Circuit authority on this issue. Allen involved a plaintiff who was a former employee of a tribal casino. He brought various claims (including a 42 U.S.C. § 1983 claim) against the tribe, the tribal casino, and an individual based on the allegation that he "was discharged in retaliation for reporting rats in the Casino's restaurant and for applying to 'the white man's court' for guardianship of three tribal children." *Id.* at 1045. In affirming the district court's dismissal of the 42 U.S.C. § 1983 claims, the *Allen* Court held that the retaliation allegations did not adequately allege the "state action" element required for such claims. *Id.* at 1048 ("The district court also properly dismissed Allen's claim under 42 U.S.C. § 1983 because there is no allegation that any defendant was acting under the color of state law.").

And somewhat conveniently, this Court had a chance to cite the holding in *Allen* in dismissing a similar case just last year. In *Toahty v. Kimsey*, No. 3:19-CV-01308-HZ, 2019 WL 5104742 (D. Or. Oct. 11, 2019), the plaintiff (who was apparently a former tribal employee) brought claims against the Grand Ronde Tribe, its Tribal Employment Rights Ordinance Division (TERO), and the Assistant Director of the TERO. The plaintiff alleged that he had been subjected to sexual misconduct and sexual harassment, and that "when he reported the harassment and misconduct to T.E.R.O. and the Human Resources department, he was subjected to retaliation, which included criticism, humiliation, and verbal assault." *Id.* at *1.

In addressing whether the Complaint adequately alleged a basis for federal question jurisdiction, this Court analyzed whether the plaintiff had alleged a viable First Amendment retaliation claim under 42 U.S.C. § 1983, ultimately holding that he had failed to do so:

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> To the extent that Plaintiff's complaint can be construed to assert a First Amendment retaliation claim under 42 U.S.C. § 1983, Plaintiff fails to allege that any Defendant was acting under color of state law. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) ("The district court also properly dismissed [plaintiff's] claim under 42 U.S.C. § 1983 because there is no allegation that any defendant was acting under the color of state law."); *R.J. Williams Co. v. Fort Belknap Housing Authority*, 719 F.2d 979 (9th Cir. 1983) ("no action under 42 U.S.C. § 1983 can be maintained in federal court for persons alleging deprivation of constitutional rights under color of tribal law.").

Id. at *2.

The District Court for the Eastern District of Wisconsin reached the same conclusion in *Louis v. Stockbridge-Munsee Cmty.*, No. 08-C-558, 2008 WL 4282589, (E.D. Wis. Sept. 16, 2008). In *Louis*, the plaintiff brought claims, including a 42 U.S.C. § 1983 claim, arising out of the termination of his employment at a tribally owned Health and Wellness Center. In addressing the viability of the plaintiff's 42 U.S.C. § 1983 claim, the *Louis* Court concluded: "A § 1983 action is unavailable 'for persons alleging deprivation of constitutional rights under color of tribal law.' Here, Louis' claims at most allege that the Tribe took unfavorable action against him under color of tribal law, which is insufficient to support a cognizable claim under § 1983." *Id.* at *3 (internal citations omitted).[13]

Tribal courts routinely reach the same conclusion. In *Bethel v. Mohegan Tribal Gaming Auth.*, the plaintiff brought a variety of claims, including a 42 U.S.C. § 1983 claim, against his tribal employer, a former supervisor and a co-employee, alleging physical harassment, demotion and termination from his employment. The Mohegan Gaming Disputes Trial Court dismissed the

[13] The District Court for the Eastern District of Wisconsin recently suggested that a defendant's mere status as a tribal employee will preclude a plaintiff from being able to state a claim for relief under 42 U.S.C. § 1983. *See Thurmond v. Forest Cty. Potawatomi Cmty.*, No. 18-CV-1047-PP, 2020 WL 488864, at *3 (E.D. Wis. Jan. 30, 2020) ("[I]f plaintiff was trying to allege that the Forest County Potawatomi Community and its employees were state actors who violated his federal constitutional rights (perhaps to equal protection), he could not state a claim…[A] person is liable under § 1983 only if that person was an employee, officer or agent of a state, a territory or the District of Columbia. These defendants were not employees of Wisconsin, or of a territory or of the district. They are a sovereign Indian tribe and employees of that tribe.").

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plaintiff's 42 U.S.C. § 1983 claim, reasoning that "under well established law, actions of a tribal government or its employees, do not constitute state action." *Bethel v. Mohegan Tribal Gaming Auth.*, 1 Am. Tribal Law 420, 1 G.D.R. 32, No. GDTC-T-98-105, 1998 WL 35281214 (Mohegan Gaming Trial Ct. Dec. 14, 1998).

On appeal, the Mohegan Gaming Disputes Court of Appeals began its examination of the issue by emphasizing that, "[c]ourts have held that an action by an Indian tribe is not the equivalent of the state action required to sustain an action under a 42 U.S.C. § 1983 action." *Bethel v. Mohegan Tribal Gaming Auth.*, 2 Am. Tribal Law 373, 1 G.D.A.P. 1, No. GDCA-T-98-500, 2000 WL 35733912 (Mohegan Gaming C.A. June 15, 2000) (citing *R.J. Williams Co., supra*). The *Bethel* Court went on to affirm the trial court's dismissal of the plaintiff's 42 U.S.C. § 1983 claim, explaining: "In the present appeal, the complaint is devoid of any allegations that the MTGE, the MTGA, or the individual defendant Keane were acting under any authority other than that of the Mohegan tribe. The trial court properly dismissed Count 9 of plaintiff's complaint for failure to allege an essential element of a claim under 42 U.S.C. § 1983." *Id.*

Similarly, in *DeLorge v. Mashantucket Pequot Gaming Enter.*, the plaintiff brought various claims, including a 42 U.S.C. § 1983 claim, based on the allegation that he was coerced into resigning from his position as a gaming inspector through the Gaming Commission's use of illegally recorded private telephone conversations. After citing the litany of cases holding that the actions of tribal governments/leaders are not "state actors" for purposes of 42 U.S.C. § 1983, the Mashantucket Pequot Tribal Court dismissed the plaintiff's 42 U.S.C. § 1983 claim:

> The plaintiff bases his claims on actions purportedly taken by employees and officials of the Gaming Commission. There is no allegation that state officials were involved or that the persons involved were acting under state law to deprive the plaintiff of rights protected by the United States Constitution or federal law.
> * * *

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> The purpose of 42 U.S.C. § 1983 is "to enforce the provisions of the fourteenth amendment" of the United States Constitution. In applying the precepts of Native American tribal sovereignty, federal courts have consistently held that no action may be maintained under 42 U.S.C. § 1983 where the defendant acted under color of tribal law.
> There being no cognizable action against a tribal government or a tribal agency, such as the Gaming Commission, under 42 U.S.C. § 1983, Count Six is dismissed for failure to state a claim for which relief may be granted, as well as for lack of subject matter jurisdiction.

DeLorge v. Mashantucket Pequot Gaming Enter., 2 Mash.Rep. 198, No. CV-GC-1997-0109, 1997 WL 34641750, at *8 (Mash. Pequot Tribal Ct. July 23, 1997), on reconsideration, No. CV-GC-1997-0109, 1997 WL 34641775 (Dec. 4, 1997) (internal citations omitted).

As the foregoing cases demonstrate, an allegation that a tribe or a tribal employee has taken adverse employment action (even up to and including termination) cannot support a 42 U.S.C. § 1983 claim as a matter of law. The reasoning of these decisions makes perfect sense. Tribal employment decisions are, by their very nature, actions taken under color of tribal law, and as a corollary, they lack the element of "state action" upon which Plaintiff's 42 U.S.C. § 1983 claims are predicated.

And yet, that is precisely what Plaintiff alleges as the basis for his 42 U.S.C. § 1983 claims here: a series of adverse employment actions taken by a tribal employer that resulted in his termination as a tribal employee. As a matter of law, those are allegations of actions taken under color of tribal law, not state law, and therefore they cannot support a claim under 42 U.S.C. § 1983. Indeed, and as the United States District Court for the Eastern District of Wisconsin explained, such "claims at most allege that the Tribe took unfavorable action against him under color of tribal law, which is insufficient to support a cognizable claim under § 1983." *Louis v. Stockbridge-Munsee Cmty.*, *supra*, 2008 WL 4282589 at *3. Plaintiff's First and Second Claims for Relief should be dismissed accordingly.

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E. Motion Four: If the 42 U.S.C. § 1983 Claims are Dismissed, Federal Question Jurisdiction Disappears and Plaintiff's Remaining State Law Claims Should Also be Dismissed

If the Court grants Motion Three (dismissing Plaintiff's 42 U.S.C. § 1983 claims), Plaintiff's remaining claims for violation of ORS 659A.199 (Third Claim for Relief) and intentional infliction of emotional distress (Fourth Claim for Relief) should also be dismissed because federal question jurisdiction would no longer exist.

A federal district court's decision to retain or decline jurisdiction over state law claims following dismissal of the claim(s) over which it had original jurisdiction is governed by 28 U.S.C. § 1367(c)(3). That statute provides that, "district courts may decline to exercise supplemental jurisdiction over a claim ... if—the district court has dismissed all claims over which it has original jurisdiction."

Although the exercise of pendent jurisdiction to consider remaining state claims lies within the discretion of the district court, the United States Supreme Court has indicated that "if the federal claims are dismissed before trial ... the state claims should be dismissed as well." *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). The decisions of the Ninth Circuit are in accord. *See, e.g.*, *Les Shockley Racing, Inc. v. Nat'l Hot Rod Ass'n*, 884 F.2d 504, 509 (9th Cir. 1989) ("When, as here, the court dismisses the federal claim leaving only state claims for resolution, the court should decline jurisdiction over the state claims and dismiss them without prejudice.").

The factors for federal district courts to consider in deciding whether to retain jurisdiction over pendent state claims are "economy, convenience, fairness, and comity." *Express Car Wash Corp. v. Irinaga Bros.*, 967 F. Supp. 1188, 1195 (D. Or. 1997). Here, those factors all weigh against retention of jurisdiction over Plaintiff's remaining state law claims.

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This case is still in its infancy. It was filed only last month by Plaintiff, and moving Defendants are only now filing their first appearance through the present Motions. As such, there has been only limited expenditure of time/cost by the parties, and therefore the factors of economy, convenience, and fairness all weigh "powerfully" against federal court retention of jurisdiction. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351, 108 S. Ct. 614, 619, 98 L. Ed. 2d 720 (1988) ("When the single federal-law claim in the action was eliminated at an early stage of the litigation, the District Court had a powerful reason to choose not to continue to exercise jurisdiction.").

Relatedly, but perhaps even more importantly, comity for the CTWS and the Warm Springs Tribal Court system strongly supports declining to retain jurisdiction over Plaintiff's two remaining state law claims. "Under federal Indian law, the Warm Springs tribes, like other federally recognized tribes, are a distinct community. Although their reservation is within the exterior boundaries of Oregon, it is not fully part of the state. The Tribes occupy their own territory, within particular boundaries, in which the laws of Oregon have no force, and into which the citizens of Oregon have no right to enter, except with the assent of the Indians themselves, or in conformity with treaties and acts of Congress."[14]

The Warm Springs Tribal Court is the judicial branch of the CTWS tribal government. It was established in the 1950s to adjudicate criminal and civil matters within the jurisdiction of the Warm Springs Tribe as provided in the Warm Springs Tribal Code. The Warm Springs Tribal Court is the successor to the U.S. Department of Interior Court of Indian Offenses that operated pursuant to federal law on the Warm Springs Reservation from the late Nineteenth Century until replaced by the Warm Springs Tribal Court, which operates pursuant to Warm Springs tribal law

[14] *North Pacific Insurance Co. v. Switzler*, 143 Or. App. 223, 234, 924 P.2d 839, 846 (1996).

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and exercises the inherent sovereign authority of the CTWS affirmed by nearly two centuries of American jurisprudence.[15]

In cases like this one, where Warm Springs Tribal Court has subject matter jurisdiction, plaintiffs (including Plaintiff here) are required to exhaust their tribal court remedies before seeking recourse in federal or state forums.[16] The requirement that a plaintiff exhaust their tribal court remedies is not merely procedural in nature, but also requires deference be shown to the tribal court's findings and judgment. Indeed, "[a]s a general rule, federal courts must recognize and enforce tribal court judgements under principles of comity."[17]

Beyond the issue of mere jurisdiction to hear Plaintiff's claims, it should also be noted that the Warm Springs Tribal Court is among the oldest and most established tribal courts in the Pacific Northwest. It consists of three full time judges: the Chief Judge and two Associate Judges. In addition to the three full time judges, the Warm Springs Tribal Court also employs Judges *Pro Tempore* to hear cases in which the Chief Judge and the Associate Judges are unavailable or disqualified from presiding. It has been the practice of the Warm Springs Tribal Court to appoint one of the *pro tem* judges to hear all cases arising under the CTWS Tort Claims Ordinance, in order to avoid any appearance of bias by the Tribal Court judges in favor of the CTWS or its government employees. Moreover, appeals from the final orders and judgments of the Warm Springs Tribal Court are heard by the Warm Springs Court of Appeals, pursuant to

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[15] *See generally Worcester v. Georgia*, 31 U.S. 515 (1832); *U.S. v. Wheeler*, 435 U.S. 313, 328-329 (1978).

[16] *Marceau v. Blackfeet Housing Authority*, 540 F.3d 916, 920-921 (9th Cir. 2008) ("Principles of comity require federal courts to dismiss or abstain from deciding claims over which tribal court jurisdiction is 'colorable'").

[17] *FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916, 930-31 (9th Cir. 2019) ("As a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity").

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Warm Springs Tribal Code Chapter 203. The Warm Springs Court of Appeals currently consists of four judges, all with extensive legal and judicial experience and backgrounds.

While there are of course some differences between the Warm Springs Tribal Court system and the federal court system, both federal and Oregon state courts have consistently recognized that the procedures of the Warm Springs Tribal Court afford litigants due process.[18]

Since the Warm Springs Tribal Court has subject matter jurisdiction, provides a fair and impartial forum in which Plaintiff's claims may be adjudicated, and can provide adequate remedies for Plaintiff on his claims if proven at trial, the "comity" factor also strongly favors declining retention of jurisdiction over Plaintiff's two remaining state law claims.

Thus, even if one were to disregard the United States Supreme Court's guidance stating that "if the federal claims are dismissed before trial ... the state claims should be dismissed as well," all of the factors that operate to guide the Court's inquiry militate against retaining supplemental jurisdiction over any of Plaintiff's remaining state law claims.

F. Motion Five: ORS 659A.199 is Inapplicable to Tribal Employment Matters

"A state ordinarily may not regulate the property or the conduct of tribes or tribal member Indians in Indian Country." *Felix S. Cohen's Handbook of Indian Federal Law,* §6.03[1][a], p. 511 (2012) (cataloguing federal and state cases all supporting that proposition); *see also*, *Fisher v. Dist. Court of Sixteenth Judicial Dist. of Montana, in & for Rosebud Cty.*, 424 U.S. 382, 386, 96 S. Ct. 943, 946, 47 L. Ed. 2d 106 (1976) ("The right of [an Indian tribe] to govern itself independently of state law has been consistently protected by federal statute."); *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 168, 93 S. Ct. 1257, 1260, 36 L. Ed. 2d 129 (1973) ("[T]he policy of leaving Indians free from state jurisdiction and control is deeply

[18] *See, e.g., Selam v. Warm Springs Tribal Correctional Facility*, 134 F.3d 948, 954 (9th Cir. 1998); *In re Marriage of Red Fox*, 23 Or. App. 393, 542 P.2d 918 (1975).

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rooted in the Nation's history… It followed from this concept of Indian reservations as separate, although dependent nations, that state law could have no role to play within the reservation boundaries. ").

The basis for the absence of state power over tribal affairs "stems from the United States Constitution, which vests exclusive legislative authority over Indian affairs in the federal government. This constitutional vesting of federal authority vis-à-vis the states allows tribal sovereignty to prevail in Indian country, unless Congress act to the contrary." Cohen, *Handbook of Indian Federal Law*, §6.03[1][a], p. 512 (2012) (as amended by 2015 supplement). Based on this federal dominance, Cohen explains, "Indian activities and property in Indian country are ordinarily immune from state taxes and regulations." *Id.* at p. 513.

Notably, Oregon's appellate courts have routinely recognized that the State of Oregon lacks power to regulate on-reservation conduct and activities. The Court of Appeals has expressly stated that, "the state has no regulatory control over the reservation,"[19] and the Oregon Supreme Court has even gone so far as to reject the ability of the state to pursue state law criminal charges for on-reservation criminal conduct.

In *State v. Smith*, 277 Or. 251, 560 P.2d 1066 (1977), the defendant was taken from Jefferson County jail to the reservation for a dental appointment, whereupon he fled custody. In holding that the State of Oregon lacked jurisdiction to prosecute the defendant on a state criminal escape charge, the *Smith* Court explained: "[T]he relations between white and Indians in 'Indian

[19] *Warm Springs Forest Prod. Indus., a div. of Confederated Tribes of Warm Springs Reservation of Oregon v. Employee Benefits Ins. Co.*, 74 Or. App. 422, 428, 703 P.2d 1008, 1012 (1985), affirmed sub nom 300 Or. 617, 716 P.2d 740 (1986).

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country' and the conduct of Indians themselves in Indian country are not subject to the laws or the courts of the several states.'" *Id.* at 255-58.[20]

And if there were any remaining question as to whether there might be some federal law that would allow Oregon to assume jurisdiction over Warm Springs tribal matters, that uncertainty is foreclosed by 28 USC § 1360(a), which provides that, "Oregon shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within Oregon, *except the Warm Springs Reservation*." (italics added); *see also*, *N. Pac. Ins. Co. v. Switzler*, 143 Or App 223, 229, (1996) (state subject matter jurisdiction is not pre-empted by 28 U.S.C. § 1360 for matters involving Warm Springs members arising off of Warm Springs reservation boundaries).

Lastly, it should be noted that even the federal government, which does possess the power to regulate Indian affairs, has still chosen not to do so in some of its most prominent employment/labor legislation. *See, e.g.*, 42 U.S.C. § 2000e(b) (specifically excluding Indian tribes from the definition of an "employer" under Title VII of the Civil Rights Act of 1964); 42 U.S.C. § 12111(5)(B)(i) (specifically excluding Indian tribes from the definition of an "employer" under Title I of the Americans with Disabilities Act).

Since Oregon's statutory scheme for regulation of employment practices (including ORS 659A.199) is inapplicable to tribal employment matters arising on the Warm Springs Reservation, Plaintiff's Third Claim for Relief fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

///

[20] *See also*, *State v. McGill,* 115 Or. App. 122, 124, 836 P.2d 1371(1992) (Oregon has no jurisdiction over crimes committed by Native Americans on the Warm Springs Reservation); 18 U.S.C. § 1162(a) (Oregon does not have jurisdiction over offenses committed by or against Indians on the Warm Springs Reservation).

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CONCLUSION

For all of the reasons set forth above, moving Defendants Ron Gregory and Carmen Smith respectfully request that the Court enter an Order granting the Motions to Dismiss set forth herein.

DATED this 26th day of June, 2020.

DAVIS ROTHWELL
EARLE & XÓCHIHUA P.C.

s/Daniel S. Hasson

Daniel S. Hasson, OSB No. 052773
dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
wearle@davisrothwell.com
200 SW Market Street, Suite 1800
Portland Oregon 97201
Tel: 503-222-4422
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) & 12(b)(6) AND MEMORANDUM OF LAW IN SUPPORT THEREOF** on the following attorneys of record:

Daniel Thenell, OSB No. 971655
Emerson Lenon, OSB No. 123728
Thenell Law Group
12909 SW 68th Parkway, Suite 290
Portland OR 97223
Tel: 503-372-6450
Fax: 503-372-6496
Email: dan@thenelllawgroup.com
Email: emerson@thenelllawgroup.com
Of Attorneys for Plaintiff

by filing it with the court's electronic-filing and service system and by e-mailing a courtesy copy to the attorneys stated above, on this day.

DATED this 26th day of June, 2020.

DAVIS ROTHWELL
EARLE & XÓCHIHUA, P.C.

s/Daniel S. Hasson

Daniel S. Hasson, OSB No. 052773
dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
wearle@davisrothwell.com
200 SW Market Street, Suite 1800
Portland Oregon 97201
Tel: 503-222-4422
Attorneys for Defendants

Daniel E. Thenell, OSB No. 971655
Emerson Lenon, OSB No. 123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

ERIC WEAVER, an individual, Plaintiff, vs. RON GREGORY, individually and as Acting Chief of Police for Warm Springs Police Department, CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs, ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs, Defendants.	Case No. 3:20-cv-00783-HZ PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (b)(1) & 12(b)(6)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff Eric Weaver ("Plaintiff"), hereby submits his opposition to Defendants Ron Gregory and Carmen Smith's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12 (b)(1) & 12(b)(6). Plaintiff's Complaint meets and exceeds the standards governing the form of a complaint contemplated by

Federal Rule of Civil Procedure 8(a) and this Court has subject matter jurisdiction, accordingly, Defendants' motions should be denied in their entirety.

I. Plaintiff's claims are sufficiently stated, and the Court has subject matter jurisdiction.

The named defendants to this suit are being sued in both their individual capacity, (in which the tribal sovereign immunity they seek in this motion does not apply) as well as their official capacity (in which tribal sovereign immunity has been waived by tribal code). All defendants were acting pursuant to state law through an amendment to the tribal code, and all defendants waived sovereign immunity for torts committed by tribal police, as discussed further below.

A. Plaintiff's suit is not barred by the doctrine of tribal sovereign immunity.

In their first and second motions, which are addressed together in this response, Defendants Ron Gregory and Carmen Smith move to dismiss all four of Plaintiff's Claims for Relief. The motions ask for this relief as a full dismissal, or alternatively a partial dismissal, stating the claims are barred by the doctrine of tribal sovereign immunity.

In support of their Motion, Defendants argue correctly the general rule stating tribes are immune from suit. This is not, however, a suit directly against the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS). Defendants neglect to acknowledge, two key points: 1) a waiver by the CTWS to allow suit and expressly waive sovereign immunity based upon the signing into law of Senate Bill 412, and 2) the inability to raise tribal sovereign immunity as a defense to claims against Defendants in their personal capacity.

The implementation of SB 412 is codified in the Warm Springs Tribal Code (WSTC) under Chapter 390. The chapter notes the Oregon governor signed SB 412 into law in July 2011, allowing officers employed by a federally recognized tribe in Oregon to enforce state law. The CTWS believed

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

it already held this power but agreed to implement SB 412 to make this power more clearly defined. (WSTC 390.001) To accept this power, the tribe had to agree to specifically authorize tort claims against state certified tribal officers, which they did, stating:

> The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees subject to the conditions and limitation set forth in Warm Springs Tribal Code Chapter 205. Any tort claim brought against the Tribe, the WSPD, a State Certified Tribal Officer, or other Tribal official arising from the Tribe's state law enforcement authority under SB 412 must be asserted in accordance with Chapter 205, except that the limitations on damages set forth in WSTC 205.004(1) shall be inapplicable to tort claims arising from the Tribe's state law enforcement authority under SB 412.

WSTC 390.130. To date, there have been no cases filed to date under this authority, but nonetheless, it exists and is properly used in the matter at hand. Here, the claims are brought against officers and agents of the tribe, and met the conditions of WSTC Chapter 205, as pled in the Complaint.

Should the court find an inability to bring suit against defendants in their official capacities despite the tribe's express waiver, claims against the defendants in their individual capacities would still stand. Defendants sued in their individual capacities for money damages are not entitled to sovereign immunity, even though they are sued for actions taken in the course of their official duties. *Pistor v. Garcia*, 791 F.3d 1104 (9th Cir. 2015).

In *Pistor*, Plaintiffs were "advantage gamblers," or those who use techniques to gain a statistical advantage in a casino game. They brought suit, specifically 42 U.S.C. §1983 claims, against the tribal police chief, tribal gaming office inspector, and the general manager of the casino, for detaining Plaintiffs and seizing their property. The casino was owned and operated by the tribe on tribal land. The Court held an officer sued in his individual capacity cannot claim sovereign immunity

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

from suit "so long as the relief is sought not from the [government] treasury but from the officer personally." *Id. at 1112 citing Alden v. Maine*, 527 U.S. 706, 757 (1999).

The 10th Circuit has explained the difference, stating:

> The general bar against official-capacity claims . . . does not mean that tribal officials are immunized from individual-capacity suits arising out of actions they took in their official capacities . . . Rather, it means that tribal officials are immunized from suits brought against them because of their official capacities—that is, because the powers they possess in those capacities enable them to grant the plaintiffs relief on behalf of the tribe.

Native Am. Distrib. v. Seneca-Cayuga Tobacco Co., 546 F.3d 1288, 1296 (10th Cir. 2008). Taken one step further, here there has been a waiver to allow an official-capacity claim, and there can be no tribal sovereign immunity for individual-capacity suits, thus both claims in the instant matter should be allowed to proceed.

B. Plaintiff's 42 U.S.C. § 1983 claims are brought under the color of state law

In their third motion, Defendants Ron Gregory and Carmen Smith request an order dismissing Plaintiff's First and Second Claims for Relief, stating 42 U.S.C. § 1983 claims cannot be brought for actions taken under color of tribal law. Plaintiff disagrees with the assertion the instant claims for relief alleged were the result of actions taken solely under the color of tribal law. Instead the allegations in the case at hand is that Defendants' conduct was committed under the color of *state* law.[1]

Defendants correctly note the test for subjecting a party to a 42 U.S.C. § 1983 claim is whether the party is a "state actor" rather than a "tribal actor." *Lugar v. Edmondson Oil Co., Inc.,* 457 US 922, 937, 102 S. Ct. 2744, 2754, 73 L.Ed.2d 482 (1982). A person may be a state actor because "he is a

[1] Should the Court not deem the allegations sufficiently clear to assert violations made under the color of state law, Plaintiff is happy to amend his complaint where appropriate.

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State." *Id.*

The CTWS cannot have it both ways – they cannot get state training and certification to enforce state law under SB 412, making them state officials, and then hide under tribal protections when they act under those same laws and trainings. That is what is being done here. The CTWS police department wanted certification through the state, so Defendant Gregory and others on the department became state certified. These actions taken by a state certified officer to investigate, discipline, and terminate an officer and then report those findings to the state certification board is done under the color of state law, and not tribal law.

This litigation is in the early stages, and discovery has not yet been done, but it appears clear at the very least documentation of Plaintiff's termination was provided to the state's Department of Public Safety Standards & Training (DPSST). A quick search of the DPSST's website lists Plaintiff's "separation from employment" as an Open/Pending Professional Standards Case as of 7/17/20. *Decl. of Daniel E. Thenell*, Ex. 1. This open investigation has ramifications for Plaintiff's state certification. In order for that to have happened, Defendants must have provided that notice to DPSST. That likely required a state DPSST Personnel Action New Hires and State Changes Form, commonly known as an F4, to be completed and submitted. Completion and submission of this state form, especially doing so as a form of retaliation against an officer, is an action taken under the color of state law. Therefore, while adverse employment actions may have initially been taken under the color of tribal law, doing so as a state actor and then further reporting the result of those retaliatory actions to the state, giving rise to potential ramifications to Plaintiff's state certification, are done under the color of state law. While discovery is being conducted, these claims as pled should stand.

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

C. Even if the 42 U.S.C. §1983 claims are dismissed, this Court should retain jurisdiction

Should the Court dismiss Plaintiff's 42 U.S.C. §1983 claims as being actions solely under the color of tribal law, the remaining claims should be retained by this Court, and not dismissed as requested by Defendants' 4th motion. A federal district court has discretion to retain or decline supplemental jurisdiction under 28 U.S.C. §1367(c)(3), specifically highlighted by the use of "may" within the statute, rather than "shall".

Here, Plaintiff claims members of the CTWS police department took actions against him that eventually resulted in his unlawful termination from the department. Plaintiff is not a tribal member. While the Warm Springs Tribal Court is well established, the allegations raised in the matter at hand will be complicated if heard within the tribal court venue. Given the nature of his claims, Plaintiff's ability to get a fair trial in the Warm Springs Tribal Court for his remaining state law claims is shaky, at best. For the allegations raise herein, the present venue is best for all claims for economy, convenience, fairness, and comity.

D. ORS 659A.199 extends to tribal employment matters

In their fifth motion, Defendants Ron Gregory and Carmen Smith request an order Dismissing Plaintiff's Third Claim for Relief because ORS 659A.199 does not apply to tribal employment matters. However, the CTWS, by adopting WSTC 390.001 has waived tribal sovereign immunity for actions sounding in tort. There is no exclusion in the tribal code for tort claims brought in violation of state laws protecting whistleblowers. The Oregon statute exists, in part to help root out corruptions, waste, fraud, and abuse in public institutions such as law enforcement organizations. The CTWS again can not have it both ways, they cannot participate in training and certification of their officers, enjoy the power to enforce State Laws, and then ignore those very same state laws within the police department.

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

The Defendants now are attempting to deprive Plaintiff, a non-tribal member, of the legal protections which apply to him by virtue of state law, while availing themselves of the benefits of those same state laws. If the Court is unconvinced of the applicability of ORS 659A.199 to tribal entities and persons Plaintiff is willing to amend the Complaint to more fully allege his theory of liability under state, federal, and/or tribal law.

II. Conclusion

Accordingly, for the reasons set forth herein, the Plaintiff respectfully requests the Court deny Defendants Ron Gregory and Carmen Smith's Motions to Dismiss, as the tribe has waived sovereign immunity, and the actions were taken under the color of state law. Should the court choose to dismiss all of the Federal claims, it should retain jurisdiction over the remaining claims as the most unbiased venue available to Plaintiff.

DATED this 24th day of July 2020.

THENELL LAW GROUP, P.C.

By: */s/ Daniel E. Thenell*

Daniel E. Thenell, OSB No. 971655
E-mail: dan@thenelllawgroup.com
Emerson Lenon, OSB No. 123728
E-mail: emerson@thenelllawgroup.com
Telephone: (503) 372-6450
Of Attorneys for Plaintiff

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2020 I served the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTION TO DISMISS on:

Daniel S. Hasson
William G. Earle
Davis Rothwell Earle & Xochihua P.C.
200 SW Market Street, Suite 1800
Portland, OR 97201
dhasson@davisrothwell.com
wearle@davisrothwell.com
Of Attorneys for Defendants

SENT VIA:

☐ U.S. Postal Service, ordinary first-class mail
☐ U.S. Postal Service, certified or registered mail, return receipt requested
☐ Hand Delivery
☐ Facsimile
☑ Electronic Service
☑ Email
☐ Other (specify) _____

THENELL LAW GROUP, P.C.

By: _____
Anne M. Puppo, Legal Assistant

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

Daniel E. Thenell, OSB No. 971655
Emerson Lenon, OSB No. 123728
Thenell Law Group, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone: (503) 372-6450
Facsimile: (503) 372-6496
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

ERIC WEAVER, an individual, Plaintiff, vs. RON GREGORY, individually and as Acting Chief of Police for Warm Springs Police Department, CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs, ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs, Defendants.	Case No. 3:20-cv-00783-HZ DECLARATION OF DANIEL E. THENELL IN SUPPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (b)(1) & 12(b)(6)

I, Daniel E. Thenell, state the following based upon personal knowledge and that I am competent to testify as to the matters stated herein:

1. I am an attorney licensed to practice law in the states of Idaho, Oregon, Washington, and Alaska. I began the practice of law as a law clerk in the United States District Court for the District of Oregon in 1996. I was a Deputy District Attorney in Washington County, Oregon, from 1999 to 2005. Since 2005, I have been in private practice in Portland, Oregon. The majority of my practice involves insurance coverage litigation in Oregon, Idaho, and Washington. I am the managing shareholder of Thenell Law Group, P.C., and am one of the attorneys of record for Plaintiff Eric Weaver, hereinafter "Plaintiff".

2. Attached as Exhibit 1 is a true and accurate copy of the DPSST's Open/Pending Professional Standards Cases as of July 17, 2020.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 24th day of July 2020.

THENELL LAW GROUP, P.C.

By: */s/ Daniel E. Thenell*
Daniel E. Thenell, OSB No. 971655
E-mail: dan@thenelllawgroup.com

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2020 I served the foregoing DECLARATION OF DANIEL E. THENELL IN SUPPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS RON GREGORY AND CARMEN SMITH'S MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (b)(1) & 12(b)(6) on:

Daniel S. Hasson
William G. Earle
Davis Rothwell Earle & Xochihua P.C.
200 SW Market Street, Suite 1800
Portland, OR 97201
dhasson@davisrothwell.com
wearle@davisrothwell.com
Of Attorneys for Defendants

SENT VIA:

☐ U.S. Postal Service, ordinary first-class mail
☐ U.S. Postal Service, certified or registered mail, return receipt requested
☐ Hand Delivery
☐ Facsimile
☑ Electronic Service
☑ Email
☐ Other (specify) _____

THENELL LAW GROUP, P.C.

By: _____
Anne M. Puppo, Legal Assistant

THENELL LAW GROUP, P.C.
12909 SW 68th Parkway, Suite 290
Portland, Oregon 97223
Telephone (503) 372-6450
Facsimile (503) 372-6496

DPSST Open/Pending Professional Standards Cases as of 7/17/2020

INCLUSION ON THIS LIST IS NOT PROOF OF MISCONDUCT

Date Case Opened	Officer Last Name	Officer First Name	DPSST #	Employing Agency (at the time of alleged conduct)	Discipline	Reason for Opening Case
4/9/2019	Abraham	Douglas	49651	DOC/Oregon State Correctional Institutio	Corrections	Arrest/Criminal Disposition
6/29/2020	Adair	Forest	60663	DOC/Oregon State Penitentiary	Corrections	Separation from Employment
9/28/2018	Adams	Japheth	49285	Lebanon Police Department	Police	Separation from Employment
12/26/2019	Alberts II	Richard	57223	DOC/Coffee Creek Correctional Facility	Corrections	Arrest/Criminal Disposition
6/26/2020	Alden	Rian	44063	Washington County Sheriff's Office	Police	Arrest/Criminal Disposition
8/23/2019	Anderson	Elijah	50087	DOC/Eastern Oregon Correctional Institut	Corrections	Separation from Employment
5/14/2020	Arnautov	Peter	36986	Oregon State Police	Police	Separation from Employment
2/27/2020	Ashpole	Andrew	47945	Newport Police Department	Police	Separation from Employment
7/30/2018	Banks	Sean	53077	Marion County Sheriff's Office	Police	Arrest/Criminal Disposition
1/30/2020	Barbee	Matthew	47086	Not Affiliated	Police	Arrest/Criminal Disposition
12/26/2019	Barnett	Danny	28005	Not Affiliated	Police	Arrest/Criminal Disposition
1/15/2020	Bartell	Crystal	55696	Yamhill County Dept of Community Justice	P & P	Arrest/Criminal Disposition
11/26/2019	Beem	Christopher	58055	Warrenton Police Department	Police	Separation from Employment
1/30/2020	Beers	Della	41421	Not Affiliated	Corrections	Arrest/Criminal Disposition
6/1/2020	Belding	Blair	39399	Deschutes County Sheriff's Office	Corrections	Arrest/Criminal Disposition
3/20/2020	Belleque	Brode	56771	DOC/Oregon State Penitentiary	Corrections	Separation from Employment
12/26/2019	Benitez	Bryant	58640	Washington County Sheriff's Office	Police	Separation from Employment
4/28/2020	Beovich	Brandon	59934	Oregon State Police	Police	Separation from Employment
3/20/2020	Berg	Nicholas	56785	Umatilla Tribal Police Department	Police	Separation from Employment
1/16/2020	Bergam	Gregory	32978	DOC/Snake River Correctional Institution	Corrections	Separation from Employment
3/21/2019	Berreth	Kristin	44821	Oregon Liquor Control Commission	Regulatory Sp	Separation from Employment
4/28/2020	Blakely	Michael	42823	Oregon City Police Department	Police	Separation from Employment
2/28/2019	Blum	Patricia	39953	Baker County Sheriff's Office	P & P	Separation from Employment
6/1/2020	Bottoms	Christopher	61006	Josephine County Sheriff's Office	Police	Arrest/Criminal Disposition
3/22/2019	Boyd	Michael	55287	Multnomah County Sheriff's Office	Corrections	Separation from Employment
10/23/2018	Boyll	Scott	50225	Tualatin Police Department	Police	Separation from Employment
7/2/2018	Branford	Angela	49801	Washington County Sheriff's Office	Corrections	Separation from Employment
3/20/2020	Bravo	Rene	27948	Silverton Police Department	Police	Arrest/Criminal Disposition
10/23/2018	Brester	Justin	45588	Yamhill County Sheriff's Office	Police	Separation from Employment
8/29/2019	Bryant	Kyle	37775	Not Affiliated	Corrections	Arrest/Criminal Disposition
6/29/2020	Buchanan	Jacob	58405	DOC/Oregon State Correctional Institution	Corrections	Separation from Employment
5/31/2019	Bucher	Jeffery	52069	Lakeview Police Department	Tele/EMD	Separation from Employment

DPSST Open/Pending Professional Standards Cases as of 7/17/2020

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Date Case Opened	Officer Last Name	Officer First Name	DPSST #	Employing Agency (at the time of alleged conduct)	Discipline	Reason for Opening Case
1/30/2020	Buckley	Cory	38975	Redmond Police Department	Police	Separation from Employment
1/18/2019	Candiff	James	51133	Scappoose Police Department	Police	Separation from Employment
12/26/2019	Cant	Cody	56429	DOC/Eastern Oregon Correctional Institut	Corrections	Separation from Employment
11/22/2019	Carballo	Matt	49974	Dallas Police Department	Police	Separation from Employment
6/2/2020	Carman	Mitchell	60929	Eugene Police Department	Police	Arrest/Criminal Disposition
3/22/2019	Carr	Scott	57039	DOC/Eastern Oregon Correctional Institut	Corrections	Separation from Employment
4/30/2019	Carter	Shawn	44728	Lincoln County Sheriff's Office	Police	Separation from Employment
7/7/2020	Caswell	Eric	59384	Dallas Police Department	Police	Separation from Employment
4/28/2020	Cernazanu	David	53881	DOC/Powder River Correctional Facility	Corrections	Arrest/Criminal Disposition
6/1/2020	Chakwin	Damien	45087	DOC/Columbia River Correctional Institut	Corrections	Separation from Employment
2/28/2019	Chastain	Chance	35785	Douglas County Sheriff's Office	Corrections	Separation from Employment
10/23/2018	Christensen	Anthony	55811	Junction City Police Department	Police	Separation from Employment
9/28/2018	Clements	Joel	54291	DOC/Snake River Correctional Institution	Corrections	Arrest/Criminal Disposition
5/14/2020	Cody	Jeffrey	50809	Lincoln City Police Department	Tele/EMD	Separation from Employment
10/23/2018	Collins	Seth	50235	Cannon Beach Police Department	Police	Separation from Employment
5/6/2019	Condon	Jeremiah	52012	Washington County Sheriff's Office	Police	Arrest/Criminal Disposition
1/4/2019	Conklin	Robert	53852	Harney County Sheriff's Office	Corrections	Separation from Employment
7/18/2019	Coyne	Kinsey	55676	W.C.C.C.A	Tele/EMD	Arrest/Criminal Disposition
6/29/2020	Crouch	David	44209	DOC/Oregon State Correctional Institution	Corrections	Arrest/Criminal Disposition
5/30/2017	Cudmore	Mark	00499	Multnomah County Sheriff's Office	Police	Arrest/Criminal Disposition
7/30/2018	Currey	James	26140	Umatilla Tribal Police Department	Police	Arrest/Criminal Disposition
12/20/2017	Daley	Benjamin	56374	DOC/Oregon State Penitentiary	Corrections	Separation from Employment
4/28/2020	Daugherty	Austin	59944	Oregon State Police	Police	Separation from Employment
11/29/2018	Davis	Jeffrey	28980	Clackamas County Sheriff's Office	Police	Separation from Employment
2/28/2019	Davis	Brian	25612	Not Affiliated	Corrections	Arrest/Criminal Disposition
9/17/2019	Davis Jr	Jared	59727	DOC/Snake River Correctional Institution	Corrections	Separation from Employment
4/28/2020	DeLance	Joseph	57721	Deschutes County Sheriff's Office	Police	Separation from Employment
2/18/2020	DeLuna	Nigel	54679	Portland Police Bureau	Police	Separation from Employment
1/16/2020	Dennis	Robert	25972	DOC/Santiam Correctional Institution	Corrections	Separation from Employment
1/30/2020	DeVore	Steven	56742	Oregon Liquor Control Commission	Regulatory Sp	Arrest/Criminal Disposition
9/18/2017	DeWeese	Jeffrey	38524	Not Affiliated	Police	Arrest/Criminal Disposition
10/23/2018	Dews	Ryan	46380	Columbia County Sheriff's Office	Police	Separation from Employment

DPSST Open/Pending Professional Standards Cases as of 7/17/2020

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Date Case Opened	Officer Last Name	Officer First Name	DPSST #	Employing Agency (at the time of alleged conduct)	Discipline	Reason for Opening Case
4/9/2019	DiGregorio	Sean	57783	Portland Police Bureau	Police	Separation from Employment
3/21/2019	Domingue	Daniel	56759	Josephine County Sheriff's Office	Corrections	Separation from Employment
9/28/2018	Dominy	George	15726	DPSST	Instructor	Separation from Employment
7/7/2020	Dominy	David	43910	Lebanon Police Department	Police	Separation from Employment
10/29/2019	Dube	Raymond	41238	Oregon State Police	Police	Separation from Employment
4/9/2019	Duwelius	David	46066	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
5/31/2019	Eagleston	Janet	33603	Marion County Sheriff's Office	Corrections	Arrest/Criminal Disposition
10/23/2018	Eckley	Hallie	57007	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
10/16/2019	Edwards	Robert	27266	Oregon State Police	Police	Separation from Employment
11/30/2018	Elder	Angie	48587	Yamhill County Sheriff's Office	Police	Separation from Employment
5/14/2020	Ellis	Jason	58333	Douglas County Sheriff's Office	Corrections	Separation from Employment
10/23/2018	Ellis	Brandon	56618	Klamath County Sheriff's Office	Police	Separation from Employment
8/13/2018	Falkenhagen	John	53278	Medford Police Department	Police	Separation from Employment
10/31/2019	Farley	Jannalyn	56519	Eugene Police Department	Police	Separation from Employment
1/24/2020	Farrell	Zackery	57262	DOC/Santiam Correctional Institution	Corrections	Separation from Employment
1/31/2019	Fauver	Ryan	51694	Douglas County Sheriff's Office	Police	Separation from Employment
4/9/2019	Felton	Desteni	45595	Baker County Sheriff's Office	Corrections	Separation from Employment
6/1/2020	Fraker	Donald	41641	Redmond Police Department	Police	Separation from Employment
9/17/2012	Fuller	David	16332	Columbia County Sheriff's Office	Police	Separation from Employment
2/27/2020	Gardner	Trevor	52212	Reedsport Police Department	Police	Separation from Employment
9/17/2019	Gardner	Justin	55056	University of Oregon Police Department	Police	Separation from Employment
6/28/2019	Garland	Garrick	32091	Washington County Sheriff's Office	Police	Separation from Employment
9/30/2019	Good	Drew	59683	Curry County Sheriff's Office	Police	Separation from Employment
11/22/2019	Gorman	Robert	36970	Oregon State Police	Police	Arrest/Criminal Disposition
3/16/2020	Govenor	Ronda	60582	Mercy Flights	Tele/EMD	Arrest/Criminal Disposition
7/30/2018	Gray	Richard	31346	John Day Police Department	Police	Separation from Employment
4/20/2017	Gustafson	Rodney	23996	Portland Police Bureau	Police	Arrest/Criminal Disposition
11/22/2019	Haga	Jan	25694	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
4/28/2020	Hansen	Dylan	59946	Oregon State Police	Police	Separation from Employment
10/23/2018	Hanson	Christopher	30677	Rogue River Police Department	Police	Separation from Employment
4/30/2020	Harrell	Andrew	60946	DOC/Eastern Oregon Correctional Institut	Corrections	Arrest/Criminal Disposition
2/28/2019	Harris	Andrew	58060	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment

DPSST Open/Pending Professional Standards Cases as of 7/17/2020

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Date Case Opened	Officer Last Name	Officer First Name	DPSST #	Employing Agency (at the time of alleged conduct)	Discipline	Reason for Opening Case
4/28/2020	Hartman	Laura	38142	Lane County Sheriff's Office	Tele/EMD	Separation from Employment
9/17/2019	Hawk	Andrew	59930	Oregon State Police	Police	Separation from Employment
12/17/2016	Haynes	Brian	32994	DOC/Snake River Correctional Institution	Corrections	Arrest/Criminal Disposition
10/29/2019	Heath	Coby	58572	Not Affiliated	Corrections	Arrest/Criminal Disposition
8/13/2018	Higgins	Matthew	50256	Marion County Sheriff's Office	Police	Separation from Employment
3/25/2019	Higgins	Spencer	48698	Not Affiliated	Corrections	Arrest/Criminal Disposition
4/30/2020	Honl	Jacob	53200	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
10/29/2019	Horn	Cordelle	60077	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
1/6/2020	Houpt III	Thomas	60473	Grant County Sheriff's Office	Police	Arrest/Criminal Disposition
12/26/2019	Huber	Michael	28130	McMinnville Police Department	Police	Separation from Employment
4/1/2020	Huffman	Christopher	26128	Not Affiliated	Police	Arrest/Criminal Disposition
3/21/2019	Hughes	Kasey	40208	Sunriver Police Department	Police	Arrest/Criminal Disposition
8/27/2018	Huitt	Charles	45375	Marion County Sheriff's Office	Police	Separation from Employment
6/2/2020	Ingram	Clifford	50213	Washington County Sheriff's Office	Corrections	Arrest/Criminal Disposition
2/27/2020	Ireland	Myles	60487	Albany Police Department	Police	Separation from Employment
10/23/2018	Irvine	Michael	32743	Hillsboro Police Department	Police	Separation from Employment
1/15/2020	Jauregui	Cenobio	60662	DOC/Oregon State Penitentiary	Corrections	Arrest/Criminal Disposition
3/20/2020	Johnson	Paul	39931	Klamath Falls Police Department	Police	Separation from Employment
8/29/2019	Johnson	Robert	50633	Medford Police Department	Police	Separation from Employment
5/22/2019	Jorgensen	Kai	53484	DOC/South Fork Forest Camp	Corrections	Arrest/Criminal Disposition
7/30/2018	Karthauser	Diana	39070	Columbia County 9-1-1 Communication District	Tele/EMD	Separation from Employment
6/19/2019	Kearns	Brandon	50094	Clackamas County Sheriff's Office	Corrections	Arrest/Criminal Disposition
10/16/2019	Kelsch	Jesse	51752	DOC/Snake River Correctional Institution	Corrections	Separation from Employment
2/28/2019	Kendall	Franklin	49118	Umatilla County Sheriff's Office	Corrections	Separation from Employment
5/22/2019	Keyser	Chris	35121	Clackamas County Sheriff's Office	Corrections	Separation from Employment
4/1/2020	King	Nathan	60408	Klamath County Sheriff's Office	Police	Separation from Employment
10/29/2019	Kinyon	Justin	35316	Marion County Sheriff's Office	Police	Separation from Employment
2/20/2018	Kozowski	Eric	42173	Deschutes County Sheriff's Office	Police	Separation from Employment
1/4/2019	Krieger	Luke	42202	Not Affiliated	Corrections	Arrest/Criminal Disposition
4/28/2020	Lacer	Michael	49712	Oregon State Police	Police	Separation from Employment
9/28/2018	Lantz	Corbin	42610	DPSST	Police	Separation from Employment
7/31/2019	Larsen	Adrian	47880	Not Affiliated	Corrections	Arrest/Criminal Disposition

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6/19/2019	Larson	Brent	31307	The Dalles Police Department	Police	Separation from Employment
10/23/2018	Larson	Crescent	47496	Not Affiliated	Corrections	Arrest/Criminal Disposition
5/22/2019	Lindley	Quinn	56901	Monmouth Police Department	Police	Separation from Employment
7/15/2020	Lister	Brian	36594	Clackamas County Sheriff's Office	Police	Arrest/Criminal Disposition
7/31/2019	Litten	Kevin	44056	Douglas County Sheriff's Office	Police	Separation from Employment
9/7/2018	Lohf	Terry	27923	Lakeview Police Department	Police	Separation from Employment
8/23/2019	Longhorn	Megan	55101	DOC/Eastern Oregon Correctional Institut	Corrections	Separation from Employment
5/14/2020	Lopez	Christian	59360	Columbia River Inter-Tribal Police Department	Police	Separation from Employment
4/28/2020	Luedke	Sean	50154	St. Helens Police Department	Police	Separation from Employment
11/29/2018	Luttmer	Travis	46752	Lebanon Police Department	Police	Separation from Employment
7/31/2019	Lynch	James	28066	Oregon Liquor Control Commission	Regulatory Sp	Separation from Employment
12/13/2019	Lyon	Patricia	57573	DOC/Coffee Creek Correctional Facility	Corrections	Arrest/Criminal Disposition
4/30/2019	Mahoney	James	43650	DOC/Powder River Correctional Facility	Corrections	Separation from Employment
10/16/2019	Markillie	Richard	32236	Douglas County Sheriff's Office	Corrections	Separation from Employment
3/20/2020	Martin	Andrew	55294	John Day Police Department	Police	Separation from Employment
6/2/2020	Martin	Jessica	60947	DOC/Eastern Oregon Correctional Institut	Corrections	Arrest/Criminal Disposition
10/29/2019	Martinez	Brandon	47202	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
4/30/2019	Mathiasen	Russell	53541	Gilliam County Sheriff's Office	Police	Arrest/Criminal Disposition
10/29/2019	Maurry	Jason	43487	Multnomah County Sheriff's Office	Police	Arrest/Criminal Disposition
6/29/2020	May	William	45613	Talent Police Department	Police	Separation from Employment
12/26/2019	Mayberry	Steven	22901	Salem Police Department	Police	Separation from Employment
11/26/2019	McCutchen	Charles	38887	Forest Grove Police Department	Police	Separation from Employment
1/18/2019	McGehee	Aaron	57858	DOC/Snake River Correctional Institution	Corrections	Arrest/Criminal Disposition
10/16/2019	Mechanic	Lianna	53161	Multnomah County Sheriff's Office	Corrections	Arrest/Criminal Disposition
6/1/2020	Merwin	Jacoby	60318	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
9/28/2018	Miller	Daniel	40862	Junction City Police Department	Police	Separation from Employment
6/19/2019	Miller	Terry	23790	DPSST	Police	Separation from Employment
1/4/2019	Miltich	Anthony	49415	St Helens Police Department	Police	Separation from Employment
6/1/2020	Miro	Nomarie	59965	W.C.C.C.A	Tele/EMD	Separation from Employment
1/15/2020	Mitchell	Christine	54502	Washington County Community Corrections	Corrections	Separation from Employment
2/27/2020	Mobley	Abigail	45844	Grant County Sheriff's Office	Corrections	Arrest/Criminal Disposition
4/30/2019	Monson	Mario	40624	DOC/Powder River Correctional Facility	Corrections	Separation from Employment

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Date Case Opened	Officer Last Name	Officer First Name	DPSST #	Employing Agency (at the time of alleged conduct)	Discipline	Reason for Opening Case
1/18/2019	Montero	Christian	44687	DOC/Columbia River Correctional Institut	Corrections	Separation from Employment
9/30/2019	Morehead	Angelique	59723	DOC/Columbia River Correctional Institut	Corrections	Separation from Employment
8/28/2017	Morgan	Tony	41117	DOC/Two Rivers Correctional Institution	Corrections	Arrest/Criminal Disposition
4/9/2019	Motlagh	Amyr	58470	Lane County Sheriff's Office	Corrections	Separation from Employment
9/13/2018	Moyer	Andrew	31899	Columbia County Sheriff's Office	Police	Separation from Employment
4/30/2020	Navarrete	Elvis	60938	DOC/Two Rivers Correctional Institution	Corrections	Arrest/Criminal Disposition
7/15/2020	Needham	Brian	33137	Harney County Sheriff's Office	Police	Separation from Employment
5/22/2019	Nelson	Jonathan	54701	DOC/Shutter Creek Correctional Institution	Corrections	Arrest/Criminal Disposition
12/13/2019	Noli	Alex	53367	Gresham Police Department	Police	Separation from Employment
2/28/2019	Nygren	Nicole	56393	Roseburg Police Department	Police	Separation from Employment
11/29/2018	Obenauf	Robert	32107	Washington County Sheriff's Office	Police	Separation from Employment
1/15/2020	O'Brien	Shawn	41278	Marion County Sheriff's Office	P & P	Separation from Employment
8/29/2019	Ogrady	William	08804	Not Affiliated	Corrections	Arrest/Criminal Disposition
6/1/2020	Opel	Meagan	59465	Linn County Sheriff's Office	Tele/EMD	Separation from Employment
8/23/2019	Palmateer	Joan	26982	DOC	Corrections	Arrest/Criminal Disposition
3/22/2019	Palmer	Michael	39580	DOC/Snake River Correctional Institution	Corrections	Separation from Employment
3/22/2019	Pastore	Andrew	40175	Tigard Police Department	Police	Separation from Employment
6/19/2019	Patnode	Joseph	34407	Sunriver Police Department	Police	Separation from Employment
7/18/2019	Paton	Matthew	44975	Marion County Sheriff's Office	Corrections	Arrest/Criminal Disposition
1/18/2019	Payne	Michael	34804	DOC/Snake River Correctional Institution	Corrections	Arrest/Criminal Disposition
12/26/2019	Pemberton	Jessica	50369	DOC/Oregon State Penitentiary	Corrections	Separation from Employment
12/13/2019	Perez	Ryan	54021	Not Affiliated	Corrections	Arrest/Criminal Disposition
12/26/2019	Peters	Loren	55373	DOC/Deer Ridge Correctional Institution	Corrections	Arrest/Criminal Disposition
11/26/2019	Petersen	Brandon	51772	Tigard Police Department	Police	Separation from Employment
12/26/2019	Phillips	Troy	54498	University of Oregon Police Department	Police	Separation from Employment
5/31/2019	Phillips	Darrin	23794	Not Affiliated	Police	Arrest/Criminal Disposition
1/15/2020	Pierce	Alexandra	60441	American Medical Response Northwest	Tele/EMD	Arrest/Criminal Disposition
6/1/2020	Pierson	Nicholas	60209	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
2/27/2020	Pippenger Jr	Robert	39857	Tillamook County Sheriff's Office	Police	Separation from Employment
11/22/2019	Pittman	Lisa	40830	Washington County Community Corrections	P & P	Separation from Employment
3/20/2020	Poole	David	34568	Redmond Police Department	Police	Separation from Employment
9/13/2018	Powell	Christen	33913	McMinnville Police Department	Police	Separation from Employment

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1/15/2020	Precup	Sebastion	60628	Portland Police Bureau	Police	Arrest/Criminal Disposition
11/22/2019	Randleas	Lucas	60182	Grant County Sheriff's Office	Corrections	Arrest/Criminal Disposition
6/29/2020	Reeves	Tony	44804	West Linn Police Department	Police	Separation from Employment
11/26/2019	Rhoades	Perry	46858	Oregon State Police	Police	Separation from Employment
6/26/2020	Richman	Andrew	51981	DOC/Oregon State Penitentiary	Corrections	Arrest/Criminal Disposition
6/28/2019	Rivera	Frank	35576	Warm Springs Police Department	Police	Separation from Employment
6/19/2019	Roberts	Justen	54117	DOC/Oregon State Penitentiary	Corrections	Arrest/Criminal Disposition
11/18/2016	Robinson	Cheryl	24294	Portland Police Bureau	Police	Arrest/Criminal Disposition
5/14/2020	Rogers	Brendan	57572	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
4/30/2020	Romero	Pete	60937	DOC/Coffee Creek Correctional Facility	Corrections	Arrest/Criminal Disposition
4/30/2019	Rose	Jeffrey	20103	DPSST	Instructor	Separation from Employment
8/30/2019	Routh	Emily	57228	Bureau of Emergency Communications	Tele/EMD	Arrest/Criminal Disposition
1/30/2020	Rowe	Ethan	59403	Sweet Home Police Department	Police	Separation from Employment
12/26/2019	Rupel	Lindsay	56987	Baker County Sheriff's Office	Tele/EMD	Separation from Employment
4/30/2019	Ruvalcaba	Antony	31282	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
10/16/2019	Saldivar	Mike	56400	DOC/Snake River Correctional Institution	Corrections	Separation from Employment
8/23/2019	Sallee	Andrea	52092	Frontier Regional 911	Tele/EMD	Separation from Employment
6/30/2020	Sanguinetti	Antonio	48276	DOC/Snake River Correctional Institution	Corrections	Arrest/Criminal Disposition
6/1/2020	Sanguino	Liliana	60086	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
5/31/2019	Scott	Morse	25847	Not Affiliated	Corrections	Arrest/Criminal Disposition
9/30/2019	Sebens	Richard	36530	Stayton Police Department	Police	Separation from Employment
11/30/2018	Serrano	Jorge	55372	Jefferson County Sheriff's Office	Corrections	Separation from Employment
1/18/2019	Shelby	Alec	57571	Clatsop County Sheriff's Office	Police	Separation from Employment
2/27/2020	Sherman-Burt	Wilson	60378	Portland Police Bureau	Police	Separation from Employment
1/15/2020	Shodin	James	35850	DOC/Santiam Correctional Institution	Corrections	Separation from Employment
2/28/2019	Smith	Michael	37881	Clatsop County Sheriff's Office	Police	Separation from Employment
11/30/2018	Smith	Jason	42666	Junction City Police Department	Tele/EMD	Separation from Employment
5/14/2020	Smith	Elizabeth	35497	W.C.C.C.A	Tele/EMD	Separation from Employment
10/20/2017	Smith	Patrick	33050	Coquille Police Department	Police	Separation from Employment
9/17/2019	Smith	Tyler	54768	Grant County Sheriff's Office	Police	Arrest/Criminal Disposition
1/24/2020	Sneath Jr	Richard	48654	Clackamas County Sheriff's Office	Corrections	Separation from Employment
2/27/2020	Soto	Gustabo	60079	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment

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9/17/2019	Spencer	Timothy	57025	Lane County Sheriff's Office	Police	Separation from Employment
7/15/2020	Stack	Torin	57842	DOC/Santiam Correctional Institution	Corrections	Arrest/Criminal Disposition
2/27/2020	Stewart	Sarah	60771	Curry County Sheriff's Office	Corrections	Arrest/Criminal Disposition
2/28/2019	Sytsma	David	50389	Lakeview Police Department	Police	Separation from Employment
1/18/2019	Taylor	James	26072	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
6/18/2018	Thomas	Nathan	53344	Roseburg Police Department	Police	Separation from Employment
10/23/2018	Thompson	Mark	58058	Clackamas County Sheriff's Office	Police	Separation from Employment
6/19/2019	Thurman	Ashlea	58928	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
10/16/2019	Torres-Renter	Erick	59025	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
11/22/2019	Townsend	Carolyn	51621	Columbia County Sheriff's Office	Corrections	Separation from Employment
3/20/2020	Tracy	Colin	46028	Oregon State Police	Police	Arrest/Criminal Disposition
5/14/2020	Treat	Douglas	29837	Lake Oswego Police Department	Police	Separation from Employment
10/16/2019	Valadez Jr	Alfonso	51796	Portland Police Bureau	Police	Separation from Employment
11/22/2019	VanPelt	Anthony	27952	DPSST	Instructor	Separation from Employment
5/14/2020	Veenendaal	Richard	27446	DOC/Coffee Creek Correctional Facility	Corrections	Separation from Employment
10/23/2018	Verduzco	Sergio	42247	DOC/Deer Ridge Correctional Institution	Corrections	Separation from Employment
4/30/2019	Viereck	Dennis	36201	Scappoose Police Department	Police	Separation from Employment
6/29/2020	Vogt	Jason	60514	DOC/Two Rivers Correctional Institution	Corrections	Separation from Employment
1/30/2020	Wallace	Orrin	51611	Coquille Police Department	Police	Separation from Employment
6/19/2019	Ware	John	30288	Not Affiliated	Corrections	Arrest/Criminal Disposition
2/27/2020	Warner	William	30695	Not Affiliated	Police	Arrest/Criminal Disposition
12/26/2019	Weaver	Eric	56198	Warm Springs Police Department	Police	Separation from Employment
1/30/2020	Weaver Jr	Tony	50583	Columbia County Sheriff's Office	Corrections	Separation from Employment
4/1/2020	Wenzel	Larry	31852	Multnomah County Sheriff's Office	Corrections	Arrest/Criminal Disposition
6/2/2020	West	Benjamin	60954	DOC/Coffee Creek Correctional Facility	Corrections	Arrest/Criminal Disposition
6/30/2020	Wetzsteon	Adam	61100	Portland Police Bureau	Police	Arrest/Criminal Disposition
8/7/2017	White	Larissa	52624	Turner Police Department	Police	Separation from Employment
11/29/2018	White	Justin	53769	DOC/Two Rivers Correctional Institution	Corrections	Arrest/Criminal Disposition
1/15/2020	Whitmore	Korey	59551	Josephine County Sheriff's Office	Corrections	Arrest/Criminal Disposition
4/9/2019	Wileman	Jason	46517	Medford Police Department	Police	Separation from Employment
8/23/2019	Williams	Benjamin	58465	Douglas County Sheriff's Office	Police	Separation from Employment
6/19/2019	Winnie	Patricia	47307	Not Affiliated	Corrections	Arrest/Criminal Disposition

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9/17/2019	Wishart	Naomi	54867	Lane County Sheriff's Office	Corrections	Separation from Employment
9/28/2018	Withington	Michael	44320	DPSST	Police	Separation from Employment
5/22/2019	Wollenschlaeg	Jerry	34042	Marion County Sheriff's Office	Police	Separation from Employment
1/4/2019	Wright	Cindy	52928	DOC/Shutter Creek Correctional Institution	Corrections	Arrest/Criminal Disposition
8/29/2019	Wrightson	Kash	56240	Umatilla County Sheriff's Office	Corrections	Separation from Employment
11/9/2017	Yeager	Jimmy	13084	Klamath Falls Police Department	Police	Arrest/Criminal Disposition
1/18/2019	Yeaney	Joseph	25561	DOC/Columbia River Correctional Institut	Corrections	Separation from Employment
5/6/2018	Zelinka	Zachary	49984	Portland Police Bureau	Police	Separation from Employment

Daniel S. Hasson, OSB No. 052773
E-mail: dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
E-mail: wearle@davisrothwell.com
DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.
200 S.W. Market Street, Suite 1800
Portland, Oregon 97201
Tel: (503) 222-4422
Fax: (503) 222-4428
Of Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON - PORTLAND DIVISION

ERIC WEAVER,

Plaintiff,

v.

RON GREGORY. Individually and as Acting Chief of Police for Warm Springs Police Department; CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs; ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs,

Defendants.

Case No. 3:20-CV-00783-HZ

DEFENDANTS RON GREGORY AND CARMEN SMITH'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) & 12(b)(6)

Request for Oral Argument

Defendants Ron Gregory and Carmen Smith submit the following Reply in Support of their Motion to Dismiss:

I. Motion One

Defendants' Motion One sought dismissal of all of Plaintiff's Claims for Relief on the grounds that they are barred by the doctrine of tribal sovereign immunity. In his Response Brief, Plaintiff argues that his claims against Defendants are permitted under *Pistor v. Garcia*, 791 F.3d

1104, 1108 (9th Cir. 2015). Defendants acknowledge that *Pistor* does allow for "individual capacity" (as opposed to "official capacity") claims to be asserted against tribal officials based on alleged constitutional violations.[1]

However, and as discussed in Defendants' original Motion, the United States Supreme Court has applied a more recent analysis that appears to limit application of that rule (at least implicitly) to actions involving tortious conduct that has occurred off reservation lands. *See Lewis v. Clarke*, 137 S. Ct. 1285, 1291, 197 L. Ed. 2d 631 (2017) ("This is a negligence action arising from a tort committed by Clarke on an interstate highway within the State of Connecticut. The suit is brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment will not operate against the Tribe.") (emphasis added).

In this case, the actions that form the basis of Plaintiffs' claims are alleged to have occurred while on reservation land, not while on state land. Therefore, to the extent that the United States Supreme Court's more recent opinion in *Lewis v. Clarke* suggests that the rule followed in *Pistor* only applies to tortious conduct occurring on state lands, Defendants maintain that all of Plaintiff's remain subject to dismissal for lack of subject matter jurisdiction.

II. Motion Two

Defendants' Motion Two argued that even if Plaintiff's "individual capacity" claims survive, the Claims for Relief alleged against Defendants in their "official capacities" must be dismissed because they are barred by the doctrine of tribal sovereign immunity. *See Lewis v. Clarke, supra*, 137 S. Ct. at 1290–91 ("[L]awsuits brought against employees in their official

[1] Defendants note that the constitutional violation claims brought under 42 U.S.C. § 1983 in *Pistor* were based on actions allegedly taken under color of state law since the tribal officials had acted in concert with the Gila County Sheriff's Office and the Arizona Department of Gaming to steal the plaintiffs' property. *See id.* at 1109. This distinction is germane to the arguments made by Defendants in support of Motion Three.

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200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

capacity 'represent only another way of pleading an action against an entity of which an officer is an agent,' and they may also be barred by sovereign immunity.")

For his part, Plaintiff does not appear to dispute that Defendants have cited the correct rule disallowing "official capacity" suits. Indeed, the *Pistor* case relied upon by Plaintiff expressly states as much. *Pistor*, 791 F.3d at 1112 ("'[T]ribal sovereign immunity 'extends to tribal officials when acting in their *official* capacity and within the scope of their authority'") (italics in original).

Plaintiff's only argument in support of the viability of his official capacity claims is that tribal sovereign immunity has been waived by CTWS Tribal Code Chapter 390.130 – a Chapter that specifically involves the implementation of Senate Bill 412. That Chapter provides:

> The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees subject to the conditions and limitation set forth in Warm Springs Tribal Code Chapter 205. Any tort claim brought against the Tribe, the WSPD, a State Certified Tribal Officer, or other Tribal official arising from the Tribe's state law enforcement authority under SB 412 must be asserted in accordance with Chapter 205, except that the limitations on damages set forth in WSTC 205.004(1) shall be inapplicable to tort claims arising from the Tribe's state law enforcement authority under SB 412. Instead, limitations of liability applicable to tort claims arising from the Tribe's state law enforcement authority under SB 412 shall be the limitations of liability applicable to a "local public body" (as that term is defined in ORS 30.260(6)) set forth in the Oregon Tort Claims Act, ORS 30.260 to ORS 30.300.

The problem with Plaintiff's argument is that it misconstrues the function of CTWS Tribal Code Chapter 390.130. The CTWS has already agreed to a waiver of its tribal sovereign immunity for torts, but it has done so only within its own tribal court as set forth in its tort claims code. This general waiver of tribal sovereign immunity for suits brought in CTWS Tribal Court is found in CTWS Tribal Code Chapter 205.001 (entitled "Authorization for Suit"), which provides as follows:

DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.
200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

> The Tribes, its subordinate organization, enterprises, officer, agents, servants and employees may be sued in the Warm Springs Tribal Court or other court of competent jurisdiction only when explicitly authorized by either (1) applicable federal law, or (2) by ordinance or resolution of the Tribal Council.

Thus, the general rule is that tort claims can be brought against the CTWS and its tribal officials, but only in CTWS Tribal Court unless there has been a Congressional law or a Tribal Council resolution that allows suit to be brought in an alternate forum. CTWS Tribal Code Chapter 390 does not expand that general waiver of sovereign immunity. Rather, it speaks only to the issue of the amount of damages that may be recovered in suits brought against tribal law enforcement officials depending on the nature of the claim asserted.

Under CTWS Tribal Code Chapter 390.130, if a claim is based on SB 412 activity (i.e. tribal law enforcement officials' enforcement of Oregon criminal or traffic laws), then the Tribes are not allowed to invoke their regular liability limits (i.e. the regular maximum recoverable damages). In such a case, CTWS Tribal Code Chapter 390.130 provides that the Oregon Tort Claims Act's liability limits apply, not the Tribe's regular liability limits. But if tribal law enforcement officials are being sued for some other conduct that does not involve the enforcement of Oregon criminal or traffic laws, then the Tribe's regular liability limits still apply. This distinction is further confirmed by CTWS Tribal Code Chapter 390.001 (entitled "Objective"), which provides as follows:

> In July 2011, the governor of the State of Oregon signed into law Senate Bill 412 ("SB 412"), which gives officers employed by a federally recognized Indian tribe located within the boundaries of the State of Oregon the power to enforce state law provided that certain requirements are met. Although the Tribe believes that it may already enforce state law under the Oregon Supreme Court's decision in State v. Kuriz, 350 Or. 65, 249 P.3d 1271 (2011), the Tribal Council has determined that it is in the best interests of the Tribe to implement SB 412 so that the ability of the Tribe to enforce state law on and off the Warm Springs Indian Reservation is clearly defined. The Tribal Council believes that implementation of SB 412 will improve public safety in the Warm Springs community, especially in

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200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

> light of the significant number of non-Indians residing on and visiting the Reservation, over which the Tribe does not have criminal jurisdiction under the current United States Supreme Court case law. This chapter is intended to apply only to activities by the Warm Springs law enforcement personnel conducted under SB 412 – i.e., the enforcement of criminal and traffic laws of the State of Oregon. Thus, all provisions under this chapter shall be narrowly constructed to apply only to such state law enforcements activities, and to no other activities conducted by Warm Springs law enforcement personnel.

It bears repeating at this point that waivers of tribal sovereign immunity are strongly disfavored. *Demontiney v. United States*, 255 F.3d 801, 811 (9th Cir. 2001) ("There is a strong presumption against waiver of tribal sovereign immunity."). Waivers of tribal sovereign immunity may not be implied, and must be expressed unequivocally. *Kescoli v. Babbitt*, 101 F.3d 1304, 1310 (9th Cir. 1996); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148, 71 L. Ed. 2d 21, 102 S. Ct. 894 (1982) (tribe's sovereign power remains intact "unless surrendered in unmistakable terms").

Here, the only general waiver of tribal sovereign immunity that has been agreed to by Tribal Council resolution is found in CTWS Tribal Code Chapter 205.001. CTWS Tribal Code Chapter 390.130 only impacts the equation insofar as it allows recovery of larger damage amounts if the claimed tort involved the enforcement of Oregon criminal or traffic laws. What CTWS Tribal Code Chapter 390.130 did not do was expand the Tribe's general waiver of sovereign immunity (other than the damages recoverable) to allow it to be sued in the United States District Court or any other forum. Indeed, the relevant portion of CTWS Tribal Code Chapter 390.130 provides just the opposite: "The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees *subject to the conditions and limitation set forth in Warm Springs Tribal Code Chapter 205*. Any tort claim brought against the Tribe, the WSPD, a State Certified Tribal Officer, or other Tribal

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200 SW MARKET ST, SUITE 1800
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official arising from the Tribe's state law enforcement authority under SB 412 *must be asserted in accordance with Chapter 205*." (Italics added).

When CTWS Tribal Code Chapter 390.130 states that the Tribe has authorized actions "subject to the conditions and limitation set forth in Warm Springs Tribal Code Chapter 205," and that such claims "must be asserted in accordance with Chapter 205," it means just that. Perhaps the most important of these of CTWS Chapter 205 "conditions" and "limitations" is the command that suit must be brought in CTWS Tribal Court since there has not been any Congressional authorization for suit to be brought elsewhere.

Thus, this is not a case where application of the doctrine of tribal sovereign immunity leaves Plaintiff without either a remedy or forum in which to pursue his claims. There is an appropriate forum: the CTWS Tribal Court. Plaintiff's official capacity claims should be dismissed accordingly.

III. Motion Three

Defendants' Motion Three argued that Plaintiff's First and Second Claims for Relief are subject to dismissal because 42 U.S.C. § 1983 claims cannot be maintained for actions taken under color of tribal law.

Plaintiff's Response Brief does not dispute that Defendants have correctly stated the law on this issue. Rather, Plaintiff argues that Defendants have somehow been transformed into agents of the State of Oregon for all purposes merely by the passage of SB 412. Defendants urge the Court to reject this argument because it is based on a misunderstanding of what SB 412 does, and more importantly, what it does not do.

Simply stated, SB 412 does not transform all tribal law enforcement personnel into agents of the State of Oregon for any activity they might perform. It only provided tribal law

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PORTLAND, OREGON 97201
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enforcement officials with confirmation of their discretionary right to enforce Oregon state criminal and traffic laws while on and off tribal lands. That legislation was enacted in response to *State v. Kurtz*, 350 Or. 65, 249 P.3d 1271 (2011), a case that involved a person who committed a traffic offense while on the Warm Springs reservation, but who was not arrested by tribal law enforcement until after he crossed the boundary into Jefferson County. The defendant was charged with attempting to elude a "police officer" and resisting arrest by a "peace officer."

On appeal of the trial court's denial of a motion for acquittal, the Oregon Court of Appeals in *Kurtz* reversed, holding that the defendant could not be charged with either offense because the arresting tribal law enforcement official was neither a "police officer" nor a "peace officer" under the terms of the relevant statutes. *State v. Kurtz,* 233 Or. App. 573 (2010). The case was then appealed to the Oregon Supreme Court.

While the case was on appeal to the Oregon Supreme Court, and during the 2011 legislative session, the Tribes caused SB 412 to be introduced, which was designed to provide statutory confirmation that trained tribal police officers[2] have the same "peace officer" status as state law enforcement officials, thereby clarifying their jurisdiction to enforce state law within their discretion both within and outside of reservation boundaries. As it turned out, the Oregon Supreme Court ended up reversing the Oregon Court of Appeals, holding that for purposes of the crimes of fleeing or attempting to elude a police officer and resisting arrest, the legislature intended the statutory terms "police officer" and "peace officer" to include tribal police officers. 350 Or. at 67.

The foregoing background is provided here merely to explain the context of how and why SB 412 came into being. What SB 412 did not, and was never intended to do, was to transform

[2] CTWS police officers have actually been going to state police academy for training and certification since the 1970s.

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all tribal law enforcement officials into "state actors" any time they made an internal tribal employment decision (a matter that is uniquely within the Tribe's sovereign right of self-governance). The legislation was unquestionably designed to serve the important public safety purpose of confirming tribal law enforcement officials' authority to enforce Oregon criminal and traffic laws both on and off of the reservation.

With this background in mind, the critical question is whether Defendants were engaging in conduct involving an internal tribal employment matter, or whether they were engaging in "state action" (i.e. the enforcement of Oregon state criminal and traffic laws). And on this issue, the case law is clear: in those cases that have allowed 42 U.S.C. § 1983 claims to proceed, actual enforcement of state criminal or traffic laws was required. *See, e.g.*, *Evans v. McKay*, 869 F.2d 1341, 1348 (9th Cir. 1989) (tribal employee police officers' arrest of the plaintiffs under a city ordinance met the "state actor" standard for purposes of a 42 U.S.C. § 1983 claim); *Bressi v. Ford*, 575 F.3d 891, 896-97 (9th Cir. 2009) (tribal officials were acting under color of state law for purposes of a 42 U.S.C. § 1983 claim in stopping a non-Indian at a public highway roadblock and citing him for a violation of state law).

This case obviously does not involve a criminal arrest or traffic stop of Plaintiff. That is precisely why Plaintiff does not appear to allege that there has been any enforcement of Oregon criminal or traffic law sufficient to meet the "state actor" requirement for his 42 U.S.C. § 1983 claims. Instead, Plaintiff has pivoted to an unpled, novel theory of liability that argues that merely by submitting unspecified information to the Department of Public Safety Standards & Training ("DPSST"), Defendants were thereby automatically transformed into "state actors" for purposes of 42 U.S.C. § 1983.

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The short response to Plaintiff's argument is that there is no allegation in the Complaint about the submission of any information to DPSST; no allegation of what was allegedly reported (or whether the information submitted was even untrue); what was done by DPSST in response to this unspecified information; or that this alleged reporting of information actually caused any of the damages claimed in this case.[3]

But the more comprehensive response to this new theory of liability is that even if Defendants did report information about the separation of Plaintiff's employment to DPSST, the mere fact that a tribal entity decides to submit information about a separation of employment from one of its employees does not turn a tribal entity or its officials into "agents" or "actors" of the State of Oregon for purposes of 42 U.S.C. § 1983 claims.

Plaintiff's Response Brief is remarkable in that it does not cite a single case in support of this unpled novel theory of liability. But the absence of any cited authority is to be expected, given that the Ninth Circuit, this Court, and other jurisdictions have held that a private party's mere reporting of information to a public body, even if inaccurate, does not transform that party into a "state actor" for purposes of 42 U.S.C. § 1983. *See, e.g., Lockhead v. Weinstein*, 24 F. App'x 805, 806 (9th Cir. 2001) ("[T]he mere furnishing of information to police officers does not constitute joint action under color of state law which renders a private citizen liable under § 1983.") (citing *Benavidez v. Gunnell,* 722 F.2d 615, 618 (10th Cir.1983)); *Sawyer v. Legacy Emanuel Hosp. & Health Ctr.*, 2019 WL 1982530, at *5 (D. Or. May 3, 2019) (a private doctor, acting pursuant to Oregon's mandatory reporter laws, was not a "state actor" for 42 U.S.C. §

[3] In fact, Plaintiff's Complaint does not allege that any DPSST reporting caused his damages. The Complaint alleges only that "Defendants' practice, policy and/or custom of harassment, bullying and retaliation was the direct and proximate cause of Plaintiff's damages herein." *See* Complaint, ¶¶ 57 and 75.

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1983 purposes even though the report imposed various investigative duties upon public officials).

These holdings make perfect sense, considering that any ruling to the contrary would affect a sweeping "state actor" transformation for any private entity or person who decides to communicate with the State of Oregon on any issue. This result is not only untenable in general application, it is exponentially so for cases involving sovereign tribal entities, who have been repeatedly and consistently recognized by this country's highest court as "'distinct, independent political communities, retaining their original natural rights' in matters of local self-government." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 98 S. Ct. 1670, 1675, 56 L. Ed. 2d 106 (1978).

In the absence of any case supporting the argument that a sovereign tribal entity becomes a state agent/actor merely for reporting an employment separation, the Court should follow the Ninth Circuit and Oregon District Court case law that actually is on point with the allegations that Plaintiff has pled in his Complaint. These cases hold that where a tribal employer engages in allegedly retaliatory employment actions, such actions are performed under color of tribal law, and therefore cannot support 42 U.S.C. § 1983 claims as a matter of law. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (plaintiff's employment retaliation allegations do not adequately allege the "state action" element required for 42 U.S.C. § 1983 claims); *Toahty v. Kimsey*, No. 3:19-CV-01308-HZ, 2019 WL 5104742 (D. Or. Oct. 11, 2019) (plaintiff's allegation of retaliation for reporting harassment and misconduct did not allege a viable claim under 42 U.S.C. § 1983).

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Because Plaintiff has not and cannot adequately allege the "state actor" element necessary to support his 42 U.S.C. § 1983 claims, they remain subject to dismissal under Fed. R. Civ. P. 12(b)(6).

IV. Motion Four

Defendants' Motion Four argued that if Plaintiff's 42 U.S.C. § 1983 claims are dismissed, then his remaining claims for violation of ORS 659A.199 and intentional infliction of emotional distress should also be dismissed because federal question jurisdiction would no longer exist.

In support of this argument, Defendants pointed out that although dismissal of the pending state law claims is not mandatory, both the United States Supreme Court and the Ninth Circuit have strongly suggested that if federal question claims are dismissed, any remaining state law claims should also be dismissed. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966) ("if the federal claims are dismissed before trial...the state claims should be dismissed as well."); *Les Shockley Racing, Inc. v. Nat'l Hot Rod Ass'n*, 884 F.2d 504, 509 (9th Cir. 1989) ("When, as here, the court dismisses the federal claim leaving only state claims for resolution, the court should decline jurisdiction over the state claims and dismiss them without prejudice.").

Plaintiff has not even addressed, let alone challenged, any of these cases. Nor has Plaintiff addressed the "economy, convenience, fairness, and comity" factors that guide this Court's analysis of the issue. In the interest of brevity, Defendants rely on the arguments set forth in their original Motion showing that these factors weigh unanimously in favor of declination of jurisdiction.

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Rather than addressing Defendants' cited case law or the factors, Plaintiff has instead chosen to snipe at the legitimacy of the Warm Springs Tribal Court. Plaintiff's Response Brief concedes that the Warm Springs Tribal Court is "well established," but goes on to state that his ability to get a fair trial in that forum remains "shaky." Plaintiff does not come out and say why he believes that he cannot get a fair outcome in the Warm Springs Tribal Court, but he does point out that "Plaintiff is not a tribal member." The implication appears to be that Plaintiff believes he cannot get a fair trial because all of the potential tribal judges would rule against him based on some sort of prejudice or bias. That argument is not only unsupportable, it is offensive to the countless men and women (both tribal and non-tribal members alike) who have spent decades of time and effort in developing one of the oldest and most established tribal courts in the Pacific Northwest.

V. Motion Five

Defendants' Motion Five argued that Plaintiff's ORS 659A.199 claim should be dismissed because that statute does not apply to tribal employment matters. In support of this argument, Defendants cited a litany of cases from the United States Supreme Court, as well as the leading *Cohen* treatise on Indian law, in support of the proposition that Indian tribes are separate nations, and as such, individual states lack the power to regulate them or govern their internal tribal matters. If regulation of Indian Tribes or tribal matters is to occur, that is a decision for the United States Congress to make (as it has done in various areas); such decisions cannot be made by the Oregon Legislature.

Again, Plaintiff's Response Brief does not address any of the authority discussed in Defendants' Motion. Instead, Plaintiff again falls back again on the argument that in enacting

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CTWS Tribal Code Chapter 390.001, the CTWS has broadly "waive[d] tribal sovereign immunity for actions sounding in tort."

As discussed at length above, CTWS Tribal Code Chapter 390.001 does not contain some broad expansion of the Tribe's waiver of sovereign immunity such that it can be sued in any forum and for any action arising in tort. To the contrary, CTWS Tribal Code Chapter 205.001 mandates that suits be brought in CTWS Tribal Court unless there has been some Congressional act that allows suit to be brought elsewhere. There is no such Congressional act here, and all that CTWS Tribal Code Chapter 390 did was expand the amount of damages available in claims arising out of tribal law enforcement officials' enforcement of Oregon criminal or traffic laws.

In any event, it remains quite clear that ORS 659A.199 is a state law anti-retaliation whistleblower statute; it is not federal legislation enacted by Congress. As such, it is inapplicable to internal tribal employment matters. If Congress chooses to consider regulating the internal employment matters of tribal entities, it is certainly free to do so with due consideration given to the potential costs and benefits of such legislation. It is not, however, within the power of the Oregon Legislature to regulate the internal employment matters of sovereign tribal entities. *See generally*, *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 168, 93 S. Ct. 1257, 1260, 36 L. Ed. 2d 129 (1973) ("[T]he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history…It followed from this concept of Indian reservations as separate, although dependent nations, that state law could have no role to play within the reservation boundaries."). Dismissal of Plaintiff's ORS 659A.199 claim remains appropriate.

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DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.
200 SW MARKET ST, SUITE 1800
PORTLAND, OREGON 97201
T (503) 222-4422 F (503) 222-4428

CONCLUSION

For all of the reasons set forth above and in their original Motions, Defendants Ron Gregory and Carmen Smith respectfully request that the Court enter an Order granting their Motions to Dismiss.

DATED this 6th day of August, 2020.

DAVIS ROTHWELL
EARLE & XÓCHIHUA P.C.

s/Daniel S. Hasson

Daniel S. Hasson, OSB No. 052773
dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
wearle@davisrothwell.com
200 SW Market Street, Suite 1800
Portland Oregon 97201
Tel: 503-222-4422
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS RON GREGORY AND CARMEN SMITH'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) & 12(b)(6)** on the following attorneys of record:

Daniel Thenell, OSB No. 971655
Emerson Lenon, OSB No. 123728
Thenell Law Group
12909 SW 68th Parkway, Suite 290
Portland OR 97223
Tel: 503-372-6450
Fax: 503-372-6496
Email: dan@thenelllawgroup.com
Email: emerson@thenelllawgroup.com
Of Attorneys for Plaintiff

by filing it with the court's electronic-filing and service system and by e-mailing a courtesy copy to the attorneys stated above, on this day.

DATED this 6th day of August, 2020.

DAVIS ROTHWELL
EARLE & XÓCHIHUA, P.C.

s/Daniel S. Hasson

Daniel S. Hasson, OSB No. 052773
dhasson@davisrothwell.com
William G. Earle, OSB No. 831859
wearle@davisrothwell.com
200 SW Market Street, Suite 1800
Portland Oregon 97201
Tel: 503-222-4422
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ERIC WEAVER,

Plaintiff,

v.

RON GREGORY, individually and as Acting Chief of Police for Warm Springs Police Department; CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs; ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs,

Defendants.

No. 3:20-cv-0783-HZ

OPINION & ORDER

HERNÁNDEZ, District Judge:

Plaintiff Eric Weaver brings this civil rights and tort action against Defendants Ron Gregory, Carmen Smith, and Alyssa Macy. This matter comes before the Court on Defendants' Motion to Dismiss. For the following reasons, the Court GRANTS Defendants' Motion.

BACKGROUND

Plaintiff was a tribal police officer for the Warm Springs Police Department from April 2016 until he was terminated in September 2019. Compl. ¶¶ 12-13, ECF 1. At all times relevant, Defendant Ron Gregory was the Acting Chief of Police for the Warm Springs Police Department, *id.* at ¶ 7; Defendant Carmen Smith was the Manager of Public Safety for the Confederated Tribes of Warm Springs ("CTWS"), *id.* at ¶ 8; and Defendant Alyssa Macy was the Chief Operations Officer for the CTWS, *id.* at ¶ 9.

Plaintiff alleges that, beginning in 2018, he witnessed and was subjected to sexual, racial, and derogatory comments and offensive and unwanted touching during his employment for the Warm Springs Police Department. *Id.* at ¶¶ 13-15. Plaintiff reported this conduct to multiple supervisors in his chain of command, and his complaints were passed on to Defendant Gregory. *Id.* at ¶ 16. On January 1, 2019, Defendants Gregory and Smith called a department-wide meeting and, although addressing the department as a whole, singled out Plaintiff by staring at him repeatedly, minimized his complaints, and discouraged the bringing of grievances up the chain of command. *Id.* at ¶ 17. Plaintiff also reported the misconduct to Defendant Macy, but no remedial action was taken. *Id.* at ¶ 18.

Plaintiff alleges Defendants retaliated against him for reporting the harassment and discrimination issues by formally reprimanding him, reporting him to management for using excessive force during three service calls, placing him on unpaid administrative leave during the investigation of those use-of-force incidents, and ultimately terminating him based on the findings of that investigation. *Id.* at ¶¶ 19-24, 34. Plaintiff further alleges that he and his legal counsel experienced a general lack of cooperation from Defendants Smith and Macy during the investigation process. *Id.* at ¶¶ 26-27.

Plaintiff brings four Claims for Relief against Defendants based on actions taken in their "individual" and "official" capacities: (1) Constitutional violation under 42 U.S.C. § 1983 ("Liberty Interest Deprivation"); (2) Constitutional violation under 42 U.S.C. § 1983 ("Retaliation for Free Speech (First Amendment)"); (3) Whistleblower retaliation in violation of Oregon Revised Statute § ("O.R.S.") 659A.199; and (4) Intentional infliction of emotional distress. Defendants Gregory and Smith (hereinafter "Defendants") move to dismiss pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1) and 12(b)(6).[1]

STANDARDS

I. Rule 12(b)(1)

A motion to dismiss brought pursuant to Rule 12(b)(1) addresses the court's subject matter jurisdiction. The party asserting jurisdiction bears the burden of proving that the court has subject matter jurisdiction over his claims. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

A Rule 12(b)(1) motion may attack the substance of the complaint's jurisdictional allegations even though the allegations are formally sufficient. *See Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 979-80 (9th Cir. 2007) (court treats motion attacking substance of complaint's jurisdictional allegations as a Rule 12(b)(1) motion); *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996) ("[U]nlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency[.]") (internal quotation omitted). Additionally, the court may consider evidence outside the pleadings to resolve factual disputes. *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009); *see also*

[1] Defendant Macy has not been served and therefore does not join in Defendants' Motion; however, the forgoing analysis applies with equal force to Plaintiff's allegations against her.

Dreier, 106 F.3d at 847 (a challenge to the court's subject matter jurisdiction under Rule 12(b)(1) may rely on affidavits or any other evidence properly before the court).

II. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). When evaluating the sufficiency of a complaint's factual allegations, the court must accept all material facts alleged in the complaint as true and construe them in the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). A motion to dismiss under Rule 12(b)(6) will be granted if a plaintiff alleges the "grounds" of his "entitlement to relief" with nothing "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)[.]" *Id*. (citations and footnote omitted).

To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). A plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. In other words, a complaint must state a plausible claim for relief and contain "well-pleaded facts" that "permit the court to infer more than the mere possibility of misconduct[.]" *Id*. at 679.

DISCUSSION

Defendants move to dismiss the Complaint because: (1) the Court lacks subject matter jurisdiction under tribal sovereign immunity; (2) Plaintiff's § 1983 claims fail to state a cause of

action due to lack of state action; and (3) the Court should decline to exercise supplemental jurisdiction over the state law claims.

I. Tribal Sovereign Immunity

Defendants move to dismiss Plaintiff's claims under the doctrine of tribal sovereign immunity. "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (citations omitted). Suits against Indian tribes are therefore barred by sovereign immunity absent an express waiver by the tribe or congressional abrogation. *Id.*

The Court lacks jurisdiction over Plaintiff's claims to the extent they are brought against Defendants in their "official" capacities. "In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself." *Lewis v. Clarke*, 137 S. Ct. 1285, 1291, 197 L. Ed. 2d 631 (2017) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *Dugan v. Rank*, 372 U.S. 609, 611 (1963)). "[L]awsuits brought against employees in their official capacity 'represent only another way of pleading an action against an entity of which an officer is an agent[.]'" *Id.* (quoting *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Thus, "[a] suit against [a tribe's] officials in their official capacities is a suit against the tribe and is barred by tribal sovereign immunity unless that immunity has been abrogated or waived." *Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 2013) (internal quotation marks omitted).

Plaintiff argues the CTWS waived sovereign immunity in Warm Springs Tribal Code ("WSTC") Chapter 390:

> The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees subject to the conditions and limitation set forth in Warm Springs Tribal Code Chapter 205. Any tort claim brought against the Tribe, the WSPD, a State Certified Tribal Officer, or other Tribal official arising from the Tribe's state law enforcement authority under

> SB 412 must be asserted in accordance with Chapter 205, except that the limitations on damages set forth in WSTC 205.004(1) shall be inapplicable to tort claims arising from the Tribe's state law enforcement authority under SB 412. Instead, limitations of liability applicable to tort claims arising from the Tribe's state law enforcement authority under SB 412 shall be the limitations of liability applicable to a "local public body" (as that term is defined in ORS 30.260(6)) set forth in the Oregon Tort Claims Act, ORS 30.260 to ORS 30.300.

WSTC § 390.130.[2]

However, Chapter 390 "is intended to apply only to activities by the Warm Springs law enforcement personnel conducted under SB 412 – i.e., the enforcement of criminal and traffic laws of the State of Oregon." WSTC § 390.001. "[A]ll provisions under [Chapter 390] shall be narrowly constructed to apply only to such state law enforcements activities, and to no other activities conducted by Warm Springs law enforcement personnel." *Id.* Plaintiff's claims are not based on Defendant's enforcement of Oregon criminal and traffic laws. Accordingly, Chapter 390's waiver is not applicable to the allegations at hand.

Furthermore, even assuming Plaintiff's claims are within the scope of Chapter 390, Plaintiff misunderstands the extent of WSTC § 390.130's waiver. A claim brought pursuant to Chapter 390 is "subject to the conditions and limitations" and "must be asserted in accordance with Chapter 205." WSTC § 390.130. Chapter 205 provides that "[t]he Tribes, its subordinate organization, enterprises, officer, agents, servants and employees may be sued in the Warm Springs Tribal Court or other court of competent jurisdiction only when explicitly authorized by either (1) applicable federal law, or (2) by ordinance or resolution of the Tribal Council." WSTC § 205.001. Plaintiff does not contend that Congress has abrogated CTWS's sovereign immunity, and, for its part, the CTWS has consented to be sued "only in the Tribal Court[.]" WSTC § 205.004. As Judge Sullivan previously concluded, WSTC "§ 205.001 is a limited waiver for

[2] The WSTC is available at: https://warmsprings-nsn.gov/government/tribal-code/.

tort actions in Tribal Court, and is not a waiver of immunity for all purposes." *Est. of Kalama ex rel. Scott v. Jefferson Cnty.*, No. 3:12-CV-01766-SU, 2013 WL 3146858, at *5 (D. Or. June 18, 2013); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982) (Tribal sovereign immunity "will remain intact unless surrendered in unmistakable terms"); *Demontiney v. U.S. ex rel. Dep't of Interior, Bureau of Indian Affs.*, 255 F.3d 801, 811 (9th Cir. 2001) ("There is a strong presumption against waiver of tribal sovereign immunity."). Because the CTWS has not waived its sovereign immunity, the Court lacks subject matter jurisdiction over Plaintiff's claims to the extent they are brought against Defendants in their official capacities.

However, Plaintiff's claims against Defendants in their individual capacities are not barred by tribal sovereign immunity. "Although tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority, tribal defendants sued in their individual capacities for money damages are not entitled to sovereign immunity, even though they are sued for actions taken in the course of their official duties." *Pistor v. Garcia*, 791 F.3d 1104, 1112 (9th Cir. 2015) (internal citations and quotation marks omitted). Defendants concede that *Pistor* allows individual-capacity suits against tribal officials but argues that the United States Supreme Court's decision in *Lewis v. Clarke* implicitly limited application of that rule to claims where the tribal official's conduct occurred off reservation land. 137 S. Ct. at 1291. Defendant's argument is unpersuasive. Simply put, the location of the tribal defendant's tortious conduct was merely a fact of that case that had no bearing on *Lewis*'s holding that tribal sovereign immunity did not bar the action from proceeding against the tribal defendant in his individual capacity. *Id.* ("This is not a suit against Clarke in his official capacity. It is simply a suit against Clarke to recover for his personal actions, which 'will not require action by the sovereign or disturb the sovereign's property.'") (citation omitted). Accordingly,

the Court denies Defendants' motion to dismiss Plaintiff's claims to the extent they are brought against Defendants in their individual capacities.

II. 42 U.S.C. § 1983 Claims

Defendants move to dismiss Plaintiff's First and Second Claims for Relief for lack of state action. Actions under 42 U.S.C. § 1983 "cannot be maintained in federal court for persons alleging a deprivation of constitutional rights under color of tribal law." *Evans v. McKay*, 869 F.2d 1341, 1347 (9th Cir. 1989). Rather, to state a cognizable § 1983 claim, Plaintiff must allege that Defendants deprived him of a right secured by the Constitution and acted "under color of *state* law." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015) (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988)) (emphasis added).

Defendants' internal employment actions against a tribal employee are inherently actions taken under color of tribal law. Nevertheless, Plaintiff argues Defendants became state actors by receiving state training and resources and by retaliating against him by reporting his termination to the Oregon Department of Public Safety Standards and Training ("DPSST"). As a preliminary note, the Complaint does not allege that Defendants submitted information about Plaintiff to DPSST. More importantly, even if Plaintiff had so alleged, Defendant's "private misuse of a state [process] does not describe conduct that can be attributed to the State[.]" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982); *cf. Zielinski v. Serv. Emps. Int'l Union Loc. 503*, No. 3:20-CV-00165-HZ, 2020 WL 6471690, at *3 (D. Or. Nov. 2, 2020) (finding no state action where a union defendant allegedly abused a state reporting process by falsely representing the plaintiff's membership status and thereby causing his state employer to deduct unauthorized union dues from his paycheck).

Additionally, Defendants' receipt of "state training and certification to enforce state law under SB 412" does not make them "state actors" when making internal tribal employment decisions. Pl. Resp. 5, ECF 14. "The making of a contract with the State, or the acceptance of state or federal funds, does not convert tribal officials into state or federal actors." *Sandoval v. Lujan*, No. CV 03-01431 JEC/ACT, 2004 WL 7337521, at *5 (D.N.M. Oct. 14, 2004) (citing *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1306 (10th Cir. 2001)). Under the state-action test, "the [constitutional] deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible." *Lugar*, 457 U.S. at 937. Defendants were not exercising their authority to enforce Oregon law when they allegedly violated Plaintiff's constitutional rights. Accordingly, the Court grants Defendants' motion and dismisses Plaintiff's § 1983 claims for lack of state action.

III. State Law Claims

Because Plaintiff's federal claims have been dismissed, the Court must determine whether it should exercise supplemental jurisdiction over his state law claims. A district court may decline to exercise supplemental jurisdiction over state law claims if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). When a court dismisses all federal law claims before trial, "the balance of the factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *accord Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc); *see also Crane v. Allen*, No. 3:09-cv-1303-HZ, 2012 WL 602432, at *10 (D. Or. Feb. 22, 2012) ("Having resolved all claims over which it had original jurisdiction,

this court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.").

The Court finds that the factors of judicial economy, convenience, fairness, and comity weigh in favor of declining to exercise supplemental jurisdiction. Neither the Court nor the parties have invested significant time and resources sufficient to justify retaining jurisdiction. As Defendants correctly note, Plaintiff's baseless assertion that he cannot get a fair trial at the Warm Springs Tribal Court "is not only unsupportable, it is offensive to the countless men and women (both tribal and non-tribal members alike) who have spent decades of time and effort in developing one of the oldest and most established tribal courts in the Pacific Northwest." Defs. Reply 12, ECF 16. The Tribal Court is a convenient forum for the parties and declining to exercise supplemental jurisdiction shows comity for the CTWS's sovereignty.[3] For these reasons, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. Accordingly, Plaintiff's Third and Fourth Claims for Relief are dismissed without prejudice.

IV. Leave to Amend

Rule 15(a) states that the Court should "freely give leave" to amend the complaint "when justice so requires." Fed. R. Civ. P. 15(a). Whether to grant or deny leave to amend is within the Court's discretion. *Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1331 (9th Cir. 1996). That discretion is guided, however, by the "underlying purpose of Rule 15 . . . to facilitate decision on the merits, rather than on the pleadings or technicalities." *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003) (citation omitted). Accordingly, the policy favoring amendment should be

[3] In declining to exercise supplemental jurisdiction over Plaintiff's state law claims, the Court need not address Defendants' argument that O.R.S. 659A.199 does not apply to tribal employment matters.

applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted).

Five factors weigh on the propriety of a motion for leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether the plaintiff has previously amended its complaint. *Nunes*, 375 F.3d at 808 (citation omitted). Prejudice to the opposing party is the "touchstone" of the Rule 15(a) inquiry and carries the greatest weight. *Eminence Capital*, LLC, 316 F.3d at 1052 (citation omitted). Absent prejudice or a strong showing on any of the other factors, there is a presumption under Rule 15(a) in favor of granting leave to amend. *Id.*

Although Plaintiff states that he "is happy to amend his complaint where appropriate" if the Court finds he failed to adequately plead "violations made under the color of state law," he neglects to explain how he intends to cure the deficiencies in the Complaint. Pl. Resp. 4 n.1. Nor does Plaintiff address the leave-to-amend factors discussed above. Moreover, given the limited nature of Plaintiff's allegations, the Court has serious doubts that amendment can cure the deficiencies in his legal theories. Therefore, Plaintiff's request for leave to amend is denied. Nonetheless, Plaintiff may renew his request by filing a motion for leave to amend under Rule 15(a) along with the proposed amended complaint. A renewed motion for leave to amend, if any, is due within 14 days of this Opinion & Order.

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CONCLUSION

The Court GRANTS Defendants' Motion to Dismiss [10]. If Plaintiff does not timely renew his request for leave to amend, the Court will enter judgment in favor of Defendants.

IT IS SO ORDERED.

DATED: March 16, 2021.

MARCO A. HERNÁNDEZ
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ERIC WEAVER,

Plaintiff,

v.

RON GREGORY, individually and as Acting Chief of Police for Warm Springs Police Department; CARMEN SMITH, individually and as Public Safety Manager for Confederated Tribes of Warm Springs; ALYSSA MACY, individually and as Chief Operation Officer for Confederated Tribes of Warm Springs,

Defendants.

No. 3:20-cv-0783-HZ

JUDGMENT

HERNÁNDEZ, District Judge:

Based on the record, IT IS ORDERED AND ADJUDGED that this action is dismissed with prejudice as to the federal claims, and without prejudice as to the state law claims. Pending motions, if any, are denied as moot.

DATED: April 5, 2021.

MARCO A. HERNÁNDEZ
United States District Judge

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

Enrolled
Senate Bill 412

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

CHAPTER .....

AN ACT

Relating to tribal police officers; creating new provisions; amending ORS 40.275, 90.440, 131.605, 133.005, 133.033, 133.318, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 810.410, 811.720 and 830.005; repealing sections 4, 14, 15, 16, 17, 23, 24 and 39, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 4 of this 2011 Act:

(1) "Authorized tribal police officer" means a tribal police officer who is acting:

(a) In accordance with sections 1 to 4 of this 2011 Act; and

(b) While employed by a tribal government that is in compliance with sections 1 to 4 of this 2011 Act.

(2) "Indian country" has the meaning given that term in 18 U.S.C. 1151.

(3) "Tribal government" means a federally recognized sovereign tribal government whose borders lie within this state or an intertribal organization formed by two or more of those governments.

(4) "Tribal police officer" means an employee of a tribal government whose duties include the enforcement of criminal law.

SECTION 2. A tribal police officer is eligible to act as an authorized tribal police officer if the officer:

(1) Is acting within the scope of employment as a tribal police officer;

(2) Is certified as a police officer under the provisions of ORS 181.610 to 181.712;

(3) Is in compliance with any rules adopted by the Department of Public Safety Standards and Training under sections 1 to 4 of this 2011 Act; and

(4) Is employed by a tribal government that:

(a) Is in compliance with the requirements of ORS 181.610 to 181.712 applicable to a law enforcement unit as defined in ORS 181.610;

(b) Is in compliance with sections 1 to 4 of this 2011 Act and any rules adopted by the department under sections 1 to 4 of this 2011 Act;

(c) Has submitted to the department the resolution and documents described in section 3 of this 2011 Act;

(d) Has adopted a provision of tribal law:

(A) That requires the tribal government to participate in, and be bound by, a deadly physical force plan approved under ORS 181.781 to 181.796, to the same extent that the county sheriff is required to participate in, and be bound by, the plan;

(B) That requires the tribal government to retain records related to the exercise of the authority granted to authorized tribal police officers under sections 1 to 4 of this 2011 Act in a manner substantially similar to the manner in which the provisions of ORS 192.005 to 192.170 require the Department of State Police to retain public records;

(C) That provides members of the public with the right to inspect records of the tribal government related to the exercise of the authority granted to authorized tribal police officers under sections 1 to 4 of this 2011 Act in a manner substantially similar to the manner in which the provisions of ORS 192.410 to 192.505 provide members of the public with the right to inspect public records of the Department of State Police;

(D) That requires the tribal government to preserve biological evidence in a manner substantially similar to sections 2 to 6, chapter 275, Oregon Laws 2011, when the biological evidence:

(i) Is collected as part of a criminal investigation, conducted by an authorized tribal police officer, into a covered offense as defined in section 2, chapter 275, Oregon Laws 2011; or

(ii) Is otherwise in the possession of the tribal government and reasonably may be used to incriminate or exculpate any person for a covered offense as defined in section 2, chapter 275, Oregon Laws 2011; and

(E) That waives sovereign immunity, in a manner similar to the waiver expressed in ORS 30.260 to 30.300, as to tort claims asserted in the tribal government's court that arise from the conduct of an authorized tribal police officer. The waiver described in this subparagraph:

(i) Must apply to the conduct of an authorized tribal police officer that occurs while the provision of tribal law is in effect;

(ii) Must allow for recovery against the tribal government in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local public body;

(iii) May require that the claim be asserted in accordance with any applicable tort claims procedures of the tribal government; and

(iv) May exclude claims that could be brought in federal court under the Federal Tort Claims Act; and

(e) Has adopted or is exempt from adopting, in accordance with this paragraph, a written pretrial discovery policy that describes how a tribal government and its authorized tribal police officers will assist the district attorney, in criminal prosecutions conducted in state court in which an authorized tribal police officer arrested or cited the defendant, in meeting the pretrial discovery obligations imposed on the state by ORS 135.805 to 135.873. The process for adopting, and determining whether a tribal government is exempt from adopting, a written pretrial discovery policy is as follows:

(A) A tribal government may request in writing that the sheriff of a county with land that is contiguous to the land of the tribal government provide the tribal government with a copy of any written pretrial discovery policy adopted by the sheriff that describes how the sheriff's office assists the district attorney in meeting the pretrial discovery obligations imposed by ORS 135.805 to 135.873. Not later than 30 days after receiving the request, the sheriff shall provide the tribal government with a copy of the policy or notify the tribal government that the sheriff has not adopted the policy.

(B) If a tribal government fails to submit a written request to each sheriff of a county that is contiguous to the land of the tribal government or if each sheriff has adopted a written pretrial discovery policy described in subparagraph (A) of this paragraph, the tribal government shall, not later than 90 days after the effective date of this 2011 Act, adopt a written pretrial discovery policy.

(C) A tribal government may create and adopt a written pretrial discovery policy or may adopt the written pretrial discovery policy adopted by the sheriff of a county with land that is contiguous to the land of the tribal government.

(D) If the sheriff of any county with land that is contiguous to the land of the tribal government has not, on the date the sheriff receives a request described in subparagraph (A) of this paragraph, adopted a written pretrial discovery policy, the tribal government is exempt from adopting a written pretrial discovery policy.

SECTION 3. (1) The Legislative Assembly finds and declares that the purpose of sections 1 to 4 of this 2011 Act is to provide authorized tribal police officers with a limited ability to exercise the powers of, and to receive the same authority and protections provided to, law enforcement officers under the laws of this state, without incurring any additional costs or loss of revenue to the State of Oregon or a political subdivision of the State of Oregon.

(2) Notwithstanding section 2 of this 2011 Act, a tribal police officer may not act as an authorized tribal police officer outside of Indian country, unless the officer:

(a) Is investigating an offense alleged to have been committed within Indian country;

(b) Leaves Indian country in fresh pursuit as defined in ORS 133.420;

(c) Is acting in response to an offense committed in the officer's presence; or

(d) Has received the express approval of a law enforcement agency having jurisdiction over the geographic area in which the tribal police officer is acting.

(3) When an authorized tribal police officer issues a citation for the commission of an offense for which the State of Oregon has jurisdiction and the tribal government employing the officer does not have jurisdiction, the citation must:

(a) Summon the person cited to appear in the circuit court of the county in which the offense was committed; and

(b) Be submitted to the district attorney of the county in which the offense was committed.

(4) A tribal government that employs tribal police officers may submit to the Department of Public Safety Standards and Training a resolution declaring that the tribal government is self-insured or has purchased and maintains in force:

(a) Public liability and property damage insurance for vehicles operated by authorized tribal police officers; and

(b) Police professional liability insurance from a company licensed to sell insurance in this state.

(5) The tribal government shall attach the following documents to the resolution submitted to the department under subsection (4) of this section:

(a) A declaration that the tribal government has complied with the requirements of sections 1 to 4 of this 2011 Act; and

(b)(A) A full copy of the public liability and property damage insurance policy for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in this state; or

(B) A description of the tribal government's self-insurance program.

(6) A self-insurance program or insurance policy described in subsections (4) and (5) of this section must provide:

(a) That the self-insurance program or insurance policy is available to satisfy settlements and judgments arising from the tortious conduct of authorized tribal police officers in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local public body; and

(b) That the tribal government and the insurance carrier will not raise the defense of sovereign immunity for claims that are asserted in the tribal government's court and involve the tortious conduct of an authorized tribal police officer, provided that the claims:

(A) Are asserted in accordance with any applicable tort claims procedures of the tribal government; and

(B) Could not be brought in federal court under the Federal Tort Claims Act.

(7) If, after submitting the resolution and documents described in subsections (4) and (5) of this section, there is a material change in the tribal government's self-insurance program or insurance policy, the tribal government shall file with the department a written description of the change within 30 days of the effective date of the change.

(8) The department shall maintain a file of submissions made by tribal governments under this section. The department shall permit inspection and copying of the submissions in accordance with ORS 192.410 to 192.505.

(9) For purposes of ORS 30.260 to 30.300, an authorized tribal police officer is not an officer, employee or agent of the State of Oregon or of any other public body as defined in ORS 174.109. A public body or an officer, employee or agent of a public body is not liable for certifying a tribal police officer under ORS 181.610 to 181.712, for accepting for filing the resolution and documents described in subsections (4) and (5) of this section or for the acts or omissions of an authorized tribal police officer.

(10) Nothing in sections 1 to 4 of this 2011 Act:

(a) Affects the authority of a county sheriff to appoint duly commissioned police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the State of Oregon;

(b) Affects the existing status and sovereignty of tribal governments whose traditional lands and territories lie within the borders of the State of Oregon as established under the laws of the United States; or

(c) Authorizes a tribal government to receive funds from, or in lieu of, the State of Oregon or a political subdivision of the State of Oregon.

(11) A tribal government or tribal police department is not a seizing agency for purposes of ORS 131.550 to 131.600 or ORS chapter 131A.

(12) The department may adopt rules to carry out the provisions of sections 1 to 4 of this 2011 Act and shall require tribal governments that employ authorized tribal police officers to reimburse the department for any costs incurred in carrying out the provisions of sections 1 to 4 of this 2011 Act.

SECTION 4. (1) Not later than 90 days after the effective date of this 2011 Act, the Superintendent of State Police, the sheriff of any county with land that is contiguous to the land of a tribal government, or the chief executive officer of any other local law enforcement unit whose political boundaries are contiguous to the land of a tribal government, may submit a written application requesting that the tribal government authorize nontribal police officers employed by the applicant to exercise all or a portion of the powers of a tribal police officer while on tribal land. The application shall be addressed to the tribal government and shall propose terms and conditions under which the nontribal police officers employed by the applicant would be eligible to exercise all or a portion of the powers of a tribal police officer while on tribal lands. The application:

(a) Must name each proposed nontribal police officer employed by the applicant;

(b) Must describe how the nontribal police officers employed by the applicant will comply with requirements established by the tribal government that are substantially similar to the requirements necessary for a tribal police officer to act as an authorized tribal police officer under sections 1 to 4 of this 2011 Act;

(c) Must describe how the political entity that employs the nontribal police officers will comply with requirements established by the tribal government that are substantially similar to the requirements necessary for a tribal government to employ authorized tribal police officers under sections 1 to 4 of this 2011 Act;

(d) May propose that the tribal government authorize nontribal police officers employed by the applicant to enforce state or tribal law while on tribal lands;

(e) May propose that the tribal government adopt provisions of state criminal law into the tribal code; and

(f) Must indicate that the nontribal police officers employed by the applicant will complete, before exercising all or a portion of the powers of a tribal police officer while on tribal land, any training and educational prerequisites specified by the tribal government, including instruction in the tribal government's history, culture, sovereign authority, tribal code and court procedures.

(2) When a citation for the commission of a tribal offense is issued by a nontribal police officer employed by an applicant and authorized by a tribal government to exercise all or a portion of the powers of a tribal police officer as to tribal members suspected of committing violations of tribal law while on tribal land, the citation must:

(a) Summon the person cited to appear in the tribal court of the tribal government on whose lands the offense was committed; and

(b) Be submitted to the prosecutor of the tribal government on whose lands the tribal offense was committed.

(3)(a) A tribal government may adopt a provision of tribal law providing that, for purposes of the Tort Claims Act of the tribal government, a nontribal police officer employed by an applicant and authorized by a tribal government to exercise all or a portion of the powers of a tribal police officer while on tribal land is not an officer, employee or agent of the tribal government.

(b) Unless the law of the tribal government provides otherwise, a tribal government is not liable for authorizing a nontribal police officer employed by an applicant to exercise all or a portion of the powers of a tribal police officer while on tribal land or for the acts or omissions of a nontribal police officer authorized under this section.

(4) Nothing in this section:

(a) Affects the authority of the tribal government to appoint any person as a tribal police officer for any purpose;

(b) Affects the existing status and sovereignty of the State of Oregon or the tribal government; or

(c) Authorizes the State of Oregon or any of its political subdivisions to receive funds from, or in lieu of, a tribal government.

(5) A tribal government that authorizes a nontribal police officer employed by an applicant to exercise all or a portion of the powers of a tribal police officer while on tribal land may require the applicant to reimburse the tribal government for any costs incurred in carrying out the provisions of this section.

(6)(a) A tribal government that employs, or seeks to employ, authorized tribal police officers under sections 1 to 4 of this 2011 Act, no later than 90 days after receiving an application under subsection (1) of this section, or within such additional time as the tribal government determines is appropriate, shall accept, accept with modifications or reject an application filed under this section.

(b) Before acting on an application, a tribal government that employs, or seeks to employ, authorized tribal police officers shall engage in good faith consultation with the applicant concerning the terms and conditions of the proposed authorization of nontribal police officers.

(7)(a) If the tribal government rejects the application, or accepts the application with modifications that are rejected by the applicant:

(A) The applicant and a tribal government that employs, or seeks to employ, authorized tribal police officers shall, from the date of rejection until June 1, 2012, collect individualized data on the frequency of instances known to the applicant or the tribal government in which nontribal police officers employed by the applicant encountered, but were forced to release without further action due to a lack of legal authority, persons suspected of committing violations of the law while on tribal lands;

(B) The applicant shall promptly report any such instance to the tribal government and the tribal government shall promptly report any such instance to the applicant;

(C) The applicant and tribal government shall classify the suspected offenses according to their potential to endanger public safety; and

(D) The tribal government and applicant shall engage in good faith consultation concerning the collection and classification of data; and

(b) No later than September 1, 2013, the tribal government shall report to the Legislative Assembly, in the manner provided in ORS 192.245, on the data collected under paragraph (a) of this subsection. The tribal government and the applicant shall engage in good faith consultation concerning the contents of the report.

SECTION 5. Sections 1 to 4 of this 2011 Act become operative on the effective date of this 2011 Act.

PROVISIONS APPLICABLE FROM JULY 1, 2013, TO JUNE 30, 2015

SECTION 6. Section 3 of this 2011 Act is amended to read:

Sec. 3. (1) The Legislative Assembly finds and declares that the purpose of sections 1 to 4 of this 2011 Act is to provide authorized tribal police officers with [*a limited*] **the** ability to exercise the powers of, and to receive the same authority and protections provided to, law enforcement officers under the laws of this state, without incurring any additional costs or loss of revenue to the State of Oregon or a political subdivision of the State of Oregon.

[*(2) Notwithstanding section 2 of this 2011 Act, a tribal police officer may not act as an authorized tribal police officer outside of Indian country, unless the officer:*]

[*(a) Is investigating an offense alleged to have been committed within Indian country;*]

[*(b) Leaves Indian country in fresh pursuit as defined in ORS 133.420;*]

[*(c) Is acting in response to an offense committed in the officer's presence; or*]

[*(d) Has received the express approval of a law enforcement agency having jurisdiction over the geographic area in which the tribal police officer is acting.*]

[*(3)*] **(2)** When an authorized tribal police officer issues a citation for the commission of an offense for which the State of Oregon has jurisdiction and the tribal government employing the officer does not have jurisdiction, the citation must:

(a) Summon the person cited to appear in the circuit court of the county in which the offense was committed; and

(b) Be submitted to the district attorney of the county in which the offense was committed.

[*(4)*] **(3)** A tribal government that employs tribal police officers may submit to the Department of Public Safety Standards and Training a resolution declaring that the tribal government is self-insured or has purchased and maintains in force:

(a) Public liability and property damage insurance for vehicles operated by authorized tribal police officers; and

(b) Police professional liability insurance from a company licensed to sell insurance in this state.

[*(5)*] **(4)** The tribal government shall attach the following documents to the resolution submitted to the department under subsection [*(4)*] **(3)** of this section:

(a) A declaration that the tribal government has complied with the requirements of sections 1 to 4 of this 2011 Act; and

(b)(A) A full copy of the public liability and property damage insurance policy for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in this state; or

(B) A description of the tribal government's self-insurance program.

[*(6)*] **(5)** A self-insurance program or insurance policy described in subsections [*(4) and (5)*] **(3) and (4)** of this section must provide:

(a) That the self-insurance program or insurance policy is available to satisfy settlements and judgments arising from the tortious conduct of authorized tribal police officers in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local public body; and

(b) That the tribal government and the insurance carrier will not raise the defense of sovereign immunity for claims that are asserted in the tribal government's court and involve the tortious conduct of an authorized tribal police officer, provided that the claims:

(A) Are asserted in accordance with any applicable tort claims procedures of the tribal government; and

(B) Could not be brought in federal court under the Federal Tort Claims Act.

[*(7)*] **(6)** If, after submitting the resolution and documents described in subsections [*(4) and (5)*] **(3) and (4)** of this section, there is a material change in the tribal government's self-insurance program or insurance policy, the tribal government shall file with the department a written description of the change within 30 days of the effective date of the change.

[*(8)*] **(7)** The department shall maintain a file of submissions made by tribal governments under this section. The department shall permit inspection and copying of the submissions in accordance with ORS 192.410 to 192.505.

[*(9)*] **(8)** For purposes of ORS 30.260 to 30.300, an authorized tribal police officer is not an officer, employee or agent of the State of Oregon or of any other public body as defined in ORS 174.109. A public body or an officer, employee or agent of a public body is not liable for certifying a tribal police officer under ORS 181.610 to 181.712, for accepting for filing the resolution and documents described in subsections [*(4) and (5)*] **(3) and (4)** of this section or for the acts or omissions of an authorized tribal police officer.

[*(10)*] **(9)** Nothing in sections 1 to 4 of this 2011 Act:

(a) Affects the authority of a county sheriff to appoint duly commissioned police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the State of Oregon;

(b) Affects the existing status and sovereignty of tribal governments whose traditional lands and territories lie within the borders of the State of Oregon as established under the laws of the United States; or

(c) Authorizes a tribal government to receive funds from, or in lieu of, the State of Oregon or a political subdivision of the State of Oregon.

[*(11)*] **(10)** A tribal government or tribal police department is not a seizing agency for purposes of ORS 131.550 to 131.600 or ORS chapter 131A.

[*(12)*] **(11)** The department may adopt rules to carry out the provisions of sections 1 to 4 of this 2011 Act and shall require tribal governments that employ authorized tribal police officers to reimburse the department for any costs incurred in carrying out the provisions of sections 1 to 4 of this 2011 Act.

SECTION 7. Section 1 of this 2011 Act is amended to read:

Sec. 1. As used in sections 1 to 4 of this 2011 Act:

(1) "Authorized tribal police officer" means a tribal police officer who is acting:

(a) In accordance with sections 1 to 4 of this 2011 Act; and

(b) While employed by a tribal government that is in compliance with sections 1 to 4 of this 2011 Act.

[*(2) "Indian country" has the meaning given that term in 18 U.S.C. 1151.*]

[*(3)*] **(2)** "Tribal government" means a federally recognized sovereign tribal government whose borders lie within this state or an intertribal organization formed by two or more of those governments.

[*(4)*] **(3)** "Tribal police officer" means an employee of a tribal government whose duties include the enforcement of criminal law.

SECTION 8. The amendments to sections 1 and 3 of this 2011 Act by sections 6 and 7 of this 2011 Act become operative on July 1, 2013.

NOTE: Section 9 was deleted by amendment. Subsequent sections were not renumbered.

PROVISIONS APPLICABLE FROM EFFECTIVE DATE TO JUNE 30, 2015

SECTION 10. ORS 40.275 is amended to read:

40.275. (1) As used in this section, "unit of government" means**:**

(a) The federal government or any state or political subdivision thereof**; or**

(b) A tribal government as defined in section 1 of this 2011 Act, if the information relates to or assists in an investigation conducted by an authorized tribal police officer as defined in section 1 of this 2011 Act.

(2) A unit of government has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(3) The privilege created by this section may be claimed by an appropriate representative of the unit of government if the information was furnished to an officer thereof.

(4) No privilege exists under this section:

(a) If the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the unit of government.

(b) If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the unit of government is a party, and the unit of government invokes the privilege, and the judge gives the unit of government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the unit of government elects not to disclose identity of the informer, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make any order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government. All counsel and parties shall be permitted to be present at every stage of proceedings under this paragraph except a showing in camera, at which no counsel or party shall be permitted to be present.

(c) If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible. The judge may require the identity of the informer to be disclosed. The judge shall, on request of the unit of government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this paragraph except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government.

SECTION 11. ORS 90.440 is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

(c) "Peace officer" means a sheriff, constable, marshal or deputy**,** [*or*] a member of a state or city police force **or an authorized tribal police officer as defined in section 1 of this 2011 Act**.

(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal drugs:

(a) The tenant fails a test for alcohol or illegal drug use;

(b) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol or illegal drug use; or

(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

This notice is to inform you that you must move out of _____ (insert address of group recovery home) by _____ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is _____ (specify use or possession of alcohol or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is _____ (specify facts).

If you did not use or possess alcohol or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office _____ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

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(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255

and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the Oregon Health Authority no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the tenant did not use or possess alcohol or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

SECTION 12. ORS 131.605 is amended to read:

131.605. As used in ORS 131.605 to 131.625, unless the context requires otherwise:

(1) "Crime" has the meaning provided for that term in ORS 161.515.

(2) "Dangerous weapon," "deadly weapon" and "person" have the [*meaning provided for*] **meanings given** those terms in ORS 161.015.

(3) "Frisk" is an external patting of a person's outer clothing.

(4) "Is about to commit" means unusual conduct that leads a peace officer reasonably to conclude in light of the officer's training and experience that criminal activity may be afoot.

(5) "Peace officer" has the meaning given that term in ORS 133.005.

[*(5)*] **(6)** "Reasonably suspects" means that a peace officer holds a belief that is reasonable under the totality of the circumstances existing at the time and place the peace officer acts as authorized in ORS 131.605 to 131.625.

[*(6)*] **(7)** A "stop" is a temporary restraint of a person's liberty by a peace officer lawfully present in any place.

SECTION 13. ORS 133.005 is amended to read:

133.005. As used in ORS 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Federal officer" means a special agent or law enforcement officer employed by a federal agency who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(3) "Peace officer" means**:**

(a) A member of the Oregon State Police**;** [*or*]

(b) A sheriff, constable, marshal[*,*] **or** municipal police officer[*,*]**;**

(c) 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[*, or*]**;**

(d) An investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon**; or**

(e) An authorized tribal police officer as defined in section 1 of this 2011 Act.

SECTION 14. ORS 133.033 is amended to read:

133.033. (1) Except as otherwise expressly prohibited by law, any peace officer of this state[*, as defined in ORS 133.005,*] is authorized to perform community caretaking functions.

(2) As used in this section, "community caretaking functions" means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public. "Community caretaking functions" includes, but is not limited to:

(a) The right to enter or remain upon the premises of another if it reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons; or

(C) Locate missing persons.

(b) The right to stop or redirect traffic or aid motorists or other persons when such action reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons; or

(C) Locate missing persons.

(3) Nothing contained in this section shall be construed to limit the authority of a peace officer that is inherent in the office or that is granted by any other provision of law.

SECTION 15. ORS 133.318 is amended to read:

133.318. (1) Any person who provides to a peace officer a copy of a writing purporting to be a foreign restraining order as defined by ORS 24.190 knowing that no valid foreign restraining order is in effect shall be guilty of a Class A misdemeanor.

(2) Any person who represents to a [*police*] **peace** officer that a foreign restraining order is the most recent order in effect between the parties or that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order knowing that the representation is false commits a Class A misdemeanor.

SECTION 16. ORS 133.525 is amended to read:

133.525. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

(1) "Judge" means any judge of the circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.

(2) "Police officer" means**:**

(a) A member of the Oregon State Police;

(b) A sheriff[,] **or** municipal police officer[*, member of the Oregon State Police,*] **or an authorized tribal police officer as defined in section 1 of this 2011 Act;**

(c) 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[,]**;** or

(d) An investigator of the Criminal Justice Division of the Department of Justice.

SECTION 17. ORS 133.721 is amended to read:

133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication that is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and that is being used by the subscriber or user in the ordinary course of its business or being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

[*(6) "Investigative or law enforcement officer" means an officer or other person employed by a county sheriff or municipal police department, the Oregon State Police, Attorney General, a district attorney or the Department of Corrections, and officers or other persons employed by law enforcement agencies of other states or the federal government, to investigate or enforce the law.*]

(6) "Investigative or law enforcement officer" means:

(a) An officer or other person employed to investigate or enforce criminal laws by:

(A) A county sheriff or municipal police department;

(B) The Oregon State Police, the Department of Corrections, the Attorney General or a district attorney; or

(C) Law enforcement agencies of other states or the federal government; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased.

SECTION 18. ORS 133.726 is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that:

(A) There is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; or

(B)(i) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(ii) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(iii) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(iv) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a)(A) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(B) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime; or

(b)(A) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(B) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(C) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(D) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.904 to 475.910 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

[*(11) As used in this section, "law enforcement officer" means an officer employed by the United States, this state or a municipal government within this state, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws.*]

(11) As used in this section, "law enforcement officer" means:

(a) An officer employed to enforce criminal laws by:

(A) The United States, this state or a municipal government within this state; or

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 19. ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007, is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

[*(11) As used in this section, "law enforcement officer" means an officer employed by the United States, this state or a municipal government within this state, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws.*]

(11) As used in this section, "law enforcement officer" means:

(a) An officer employed to enforce criminal laws by:

(A) The United States, this state or a municipal government within this state; or

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 20. ORS 136.595 is amended to read:

136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section, a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem. Proof of the service is made in the same manner as in the service of a summons.

(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required, the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to actually notify the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall contact the court and a continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department**,** [*or*] a municipal police department **or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act**.

(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena is not required to be served if:

(a) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(b) The party who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by:

(A) Certified or registered mail, return receipt requested; or

(B) Express mail.

SECTION 21. ORS 147.425 is amended to read:

147.425. (1) As used in this section:

(a) "Health care provider" has the meaning given that term in ORS 192.519.

(b) "Law enforcement agency" means:

(A) A city or municipal police department.

(B) A county sheriff's office.

(C) The Oregon State Police.

(D) A district attorney.

(E) A special campus security officer commissioned under ORS 352.385 or 353.050.

(F) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(d) "Personal representative" means a person selected under subsection (2) of this section to accompany the victim of a crime to certain phases of an investigation and prosecution.

(e) "Protective service worker" means an employee or contractor of a local or state agency whose role it is to protect children or vulnerable adults from abuse or neglect.

(2) A victim of a person crime, who is at least 15 years of age at the time the crime is committed, may select a person who is at least 18 years of age as the victim's personal representative for purposes of this section. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative.

(3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.

(4) A health care provider, law enforcement agency, protective service worker or court may not prohibit a personal representative from accompanying a victim as authorized by subsection (3) of this section unless the health care provider, law enforcement agency, protective service worker or court believes that the personal representative would compromise the process.

(5) A health care provider, law enforcement agency, protective service worker or court is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to a decision under subsection (4) of this section to prohibit a personal representative from accompanying a victim.

(6) The fact that a personal representative was allowed or was not allowed to accompany a victim may not be used as a basis for excluding otherwise admissible evidence.

(7) The fact that a victim has or has not selected a personal representative under this section may not be used as evidence in the criminal case.

SECTION 22. ORS 153.005 is amended to read:

153.005. As used in this chapter:

(1) "Enforcement officer" means:

(a) A member of the Oregon State Police.

(b) A sheriff or deputy sheriff.

(c) A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

(d) 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.

(e) An investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

(f) A Port of Portland peace officer.

(g) An authorized tribal police officer as defined in section 1 of this 2011 Act.

[*(g)*] **(h)** Any other person specifically authorized by law to issue citations for the commission of violations.

(2) "Traffic offense" has the meaning given that term in ORS 801.555.

(3) "Violation" means an offense described in ORS 153.008.

(4) "Violation proceeding" means a judicial proceeding initiated by issuance of a citation that charges a person with commission of a violation.

SECTION 23. ORS 161.015 is amended to read:

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

(1) "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

(3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(4) "Peace officer" means**:**

(a) A member of the Oregon State Police;

(b) A sheriff, constable, marshal[,] **or** municipal police officer[*, member of the Oregon State Police,*]**;**

(c) An investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office**;**

(d) An authorized tribal police officer as defined in section 1 of this 2011 Act; and

(e) [*such other persons as may be*] **Any other person** designated by law **as a peace officer**.

(5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

SECTION 24. ORS 163.730 is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school;

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or

(L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

[*(6) "Law enforcement officer" means any person employed in this state as a police officer by a county sheriff, constable, marshal or municipal or state police agency.*]

(6) "Law enforcement officer" means:

(a) A person employed in this state as a police officer by a county sheriff, constable or marshal or a municipal or state police agency; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

SECTION 25. ORS 165.535 is amended to read:

165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

(1) "Conversation" means the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication.

[*(2) "Person" means any person as defined in ORS 174.100 and includes public officials and law enforcement officers of the state, county, municipal corporation or any other political subdivision of the state.*]

(2) "Person" has the meaning given that term in ORS 174.100 and includes:

(a) Public officials and law enforcement officers of the state and of a county, municipal corporation or any other political subdivision of the state; and

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

(4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

SECTION 26. ORS 181.010 is amended to read:

181.010. As used in ORS 181.010 to 181.560 and 181.715 to 181.730, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police bureau of criminal identification.

(2) "Criminal justice agency" means:

(a) The Governor;

(b) Courts of criminal jurisdiction;

(c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutive functions, attorney employees of the office of public defense services and nonprofit public defender organizations established under contract with the Public Defense Services Commission;

(e) Law enforcement agencies;

(f) The Department of Corrections;

(g) The State Board of Parole and Post-Prison Supervision;

(h) The Department of Public Safety Standards and Training; and

(i) Any other state or local agency with law enforcement authority designated by order of the Governor.

(3) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Designated agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(7) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest.

(8) "Law enforcement agency" means**:**

(a) County sheriffs, municipal police departments[*,*] **and** State Police[*,*]**;**

(b) Other police officers of this state and other states**;**

(c) A tribal government as defined in section 1 of this 2011 Act that employs authorized tribal police officers as defined in section 1 of this 2011 Act; and

(d) Law enforcement agencies of the federal government.

(9) "State Police" means the members of the state police force appointed under ORS 181.250.

(10) "Superintendent" means the Superintendent of State Police.

SECTION 27. ORS 181.610 is amended to read:

181.610. In ORS 181.610 to 181.712, unless the context requires otherwise:

(1) "Abuse" has the meaning given the term in ORS 107.705.

(2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181.620.

(3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(4) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer or certified reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(5) "Corrections officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Director" means the Director of the Department of Public Safety Standards and Training.

(8) "Domestic violence" means abuse between family or household members.

(9) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(10) "Family or household members" has the meaning given that term in ORS 107.705.

(11) "Fire service professional" means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(12)(a) "Law enforcement unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, [*Indian reservation,*] **tribal government as defined in section 1 of this 2011 Act that employs authorized tribal police officers as defined in section 1 of this 2011 Act, the** Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission or common carrier railroad whose primary duty, as prescribed by law, ordinance or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means:

(A) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff;

(B) A district attorney's office; and

(C) A private, nonprofit animal care agency that has maintained an animal welfare investigation department for at least five years and has had officers commissioned as special agents by the Governor.

(13) "Parole and probation officer" means:

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

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

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

(b) Any officer who:

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

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

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

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

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

(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,*] **tribal government as defined in section 1 of this 2011 Act,** 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 **or is an authorized tribal police officer as defined in section 1 of this 2011 Act**.

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

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

(17) "Reserve officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, [*Indian reservation,*] **tribal government as defined in section 1 of this 2011 Act,** 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;

(b) Who is armed with a firearm; and

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

(18) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing

and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105.

(19) "Youth correction officer" means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of youth offenders confined in a youth correction facility.

SECTION 27a. ORS 181.781 is amended to read:

181.781. As used in ORS 181.781 to 181.796:

(1) "Employ," when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon**,** [*and*] a municipal corporation of the State of Oregon **and a tribal government**, that maintains a law enforcement unit as defined in ORS 181.610 (12)(a)(A).

(3) "Police officer" means a person who is:

(a) A police officer or reserve officer as defined in ORS 181.610; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

(4) "Tribal government" means a tribal government as defined in section 1 of this 2011 Act:

(a) With land that is contiguous to the county in which the deadly physical force planning authority is created; and

(b) That has adopted the provision of tribal law described in section 2 (4)(d)(A) of this 2011 Act.

SECTION 27b. ORS 181.783 is amended to read:

181.783. (1) There is created in each county a deadly physical force planning authority consisting of the following members:

(a) The district attorney and sheriff of the county.

(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are unions representing police officers within the county, the district attorney and sheriff shall select the police officer from among candidates nominated by any union representing police officers within the county.

(c) If at least one city within the county employs a police chief, a police chief selected by the police chiefs within the county.

(d) A representative of the public selected by the district attorney and sheriff. The person selected under this paragraph may not be employed by a law enforcement agency.

(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

(f) A tribal police officer as defined in section 1 of this 2011 Act, when requested by a tribal government.

(2) The district attorney and sheriff are cochairpersons of the planning authority.

(3) The law enforcement agency that employs the police officer selected under subsection (1)(b) of this section shall release the officer from other duties for at least 16 hours per year to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities.

(4) The planning authority shall develop a plan consisting of the following:

(a) An element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

(b) An element dealing with the immediate aftermath of an incident in which a police officer used deadly physical force.

(c) An element dealing with the investigation of an incident in which a police officer used deadly physical force.

(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.

(e) An element dealing with collecting information regarding a police officer's use of deadly physical force, debriefing after an incident in which a police officer used deadly physical force and revising a plan developed under this subsection based on experience.

(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in paragraphs (a) to (e) of this subsection.

(5) The planning authority shall conduct at least one public hearing in the county before submitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7) of this section.

(6) The planning authority may consult with anyone the planning authority determines may be helpful in carrying out its responsibilities.

(7) The planning authority shall submit the plan developed under subsection (4) of this section, and revisions of the plan, to the governing body of each law enforcement agency within the county except for the Department of State Police and the Department of Justice.

(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7) of this section within 60 days after receiving the plan. The governing body may not amend the plan.

(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.

(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in ORS 181.786. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan:

(a) Each law enforcement agency within the county to which the plan applies is subject to the provisions of the plan; and

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS 181.796.

(11) If the plan is not approved by the Attorney General, the planning authority shall develop and submit a revised plan.

(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject to a provision of a plan approved under subsection (10) of this section that:

(a) Conflicts with a provision of a city or county charter or a general ordinance that applies to the law enforcement agency; or

(b) Imposes an obligation not required by ORS 181.789 if complying with the provision would require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of the people, in order to comply with the provision.

(13) The Attorney General shall periodically publish all approved plans.

(14) A law enforcement agency within a county has a duty to participate in good faith in the planning process of the planning authority for the county.

(15) A person bringing an action challenging the validity or enforceability of a plan approved under subsection (10) of this section shall serve the Attorney General with a copy of the complaint. If the Attorney General is not a party to the action, the Attorney General may intervene in the action.

SECTION 27c. ORS 181.796 is amended to read:

181.796. (1) As used in this section, "expenses" does not include personnel costs.

(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice shall make grants to law enforcement agencies to reimburse the law enforcement agencies for expenses incurred in implementing and revising the plans required by ORS 181.783. A grant under this section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

(3) The department may not make a grant under this section to a law enforcement agency unless the law enforcement agency is subject to a plan that has been approved by the Attorney General under ORS 181.783 (10).

(4) The department may not make a grant under this section to a tribal government.

[*(4)*] **(5)** The department shall adopt rules necessary for the administration of this section.

SECTION 28. ORS 348.270 is amended to read:

348.270. (1) In addition to any other scholarships provided by law, the Oregon Student Assistance Commission shall award scholarships in any state institution under the State Board of Higher Education, in the Oregon Health and Science University, in any community college operated under ORS chapter 341, or in any Oregon-based regionally accredited independent institution, to any student applying for enrollment or who is enrolled therein, who is:

(a) The natural child, adopted child or stepchild of any public safety officer who, in the line of duty, was killed or so disabled, as determined by the Oregon Student Assistance Commission, that the income of the public safety officer is less than that earned by public safety officers performing duties comparable to those performed at the highest rank or grade attained by the public safety officer; or

(b) A former foster child who enrolls in an institution of higher education as an undergraduate student not later than three years from the date the student was removed from the care of the Department of Human Services, the date the student graduated from high school or the date the student received the equivalent of a high school diploma, whichever date is earliest.

(2) Scholarships awarded under this section to students who are dependents of public safety officers or who are former foster children shall equal the amount of tuition and all fees levied by the institution against the recipient of the scholarship. However, scholarships awarded to students who attend independent institutions shall not exceed the amount of tuition and all fees levied by the University of Oregon.

(3) If the student who is the dependent of a deceased public safety officer continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education and four years of post-graduate education.

(4) If the student who is a former foster child or who is the dependent of a public safety officer with a disability continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education.

(5) The Oregon Student Assistance Commission may require proof of the student's relationship to a public safety officer described in subsection (1) of this section or proof that the student is a former foster child.

(6) As used in this section:

(a) "Former foster child" means an individual who, for a total of 12 or more months while between the ages of 16 and 21, was a ward of the court pursuant to ORS 419B.100 (1)(b) to (e) and in the legal custody of the Department of Human Services for out-of-home placement.

(b) "Public safety officer" means:

(A) A firefighter or police officer as those terms are defined in ORS 237.610.

(B) A member of the Oregon State Police.

(C) An authorized tribal police officer as defined in section 1 of this 2011 Act.

SECTION 29. ORS 414.805 is amended to read:

414.805. (1) An individual who receives medical services while in the custody of a law enforcement officer is liable:

(a) To the provider of the medical services for the charges and expenses therefor; and

(b) To the Oregon Health Authority for any charges or expenses paid by the authority out of the Law Enforcement Medical Liability Account for the medical services.

(2) A person providing medical services to an individual described in subsection (1)(a) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the authority out of the Law Enforcement Medical Liability Account.

(3)(a) If the provider has not been paid within 45 days of the date of the billing, the provider may bill the authority who shall pay the account out of the Law Enforcement Medical Liability Account.

(b) A bill submitted to the authority under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care service contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care service contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care service contractor after receiving payment from the authority, the provider shall repay the authority the amount received from the public agency less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) As used in this section:

(a) "Law enforcement officer" means**:**

(A) An officer who is commissioned and employed by a public agency as a peace officer to enforce the criminal laws of this state or laws or ordinances of a public agency**; or**

(B) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(b) "Public agency" means the state, a city, port, school district, mass transit district or county.

SECTION 30. ORS 419B.902 is amended to read:

419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by delivering a copy to the witness personally. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is not accompanied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the subpoena is served personally or by mail, copies of a subpoena commanding production and inspection of books, papers, documents or other tangible things before trial must be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period.

(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena may be made. A designated individual must be available during normal business hours. In the absence of a designated individual, service of a subpoena under paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to an individual designated by the agency that employs the officer no later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department [*or*]**,** a municipal police department **or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act**.

(3) Under the following circumstances, service of a subpoena to a witness by mail has the same legal force and effect as personal service:

(a) The attorney mailing the subpoena certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed; or

(b) The subpoena was mailed to the witness more than five days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient and the attorney received a return receipt signed by the witness prior to trial.

(4) Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents or other tangible things that is not accompanied by a command to appear at trial or hearing or at a deposition under ORS 419B.884.

(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server is not required to certify that the server is not a party in the action or an attorney for a party in the action.

SECTION 31. ORS 420.905 is amended to read:

420.905. As used in ORS 420.905 to 420.915, "peace officer" means**:**

(1) A [*any*] sheriff, constable[*,*] **or** marshal, or the deputy of any such officer[*,*]**;**

(2) A [*any*] member of the state police [*or*]**;**

(3) A [*any*] member of the police force of any city**; or**

(4) An authorized tribal police officer as defined in section 1 of this 2011 Act.

SECTION 32. ORS 801.395 is amended to read:

801.395. "Police officer" includes a member of the Oregon State Police, a sheriff, a deputy sheriff, a city police officer, **an authorized tribal police officer as defined in section 1 of this 2011 Act,** a Port of Portland peace officer or a law enforcement officer employed by a service district established under ORS 451.410 to 451.610 for the purpose of law enforcement services.

SECTION 33. ORS 810.410 is amended to read:

810.410. (1) A police officer may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act as provided by ORS 133.235 and 133.310.

(2) A police officer may issue a citation to a person for a traffic violation at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act:

(a) When the traffic violation is committed in the police officer's presence; or

(b) When the police officer has probable cause to believe an offense has occurred based on a description of the vehicle or other information received from a police officer who observed the traffic violation.

(3) A police officer:

(a) Shall not arrest a person for a traffic violation.

(b) May stop and detain a person for a traffic violation for the purposes of investigation reasonably related to the traffic violation, identification and issuance of citation.

(c) May make an inquiry into circumstances arising during the course of a detention and investigation under paragraph (b) of this subsection that give rise to a reasonable suspicion of criminal activity.

(d) May make an inquiry to ensure the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.

(e) May request consent to search in relation to the circumstances referred to in paragraph (c) of this subsection or to search for items of evidence otherwise subject to search or seizure under ORS 133.535.

(f) May use the degree of force reasonably necessary to make the stop and ensure the safety of the [*peace*] **police** officer, the person stopped or other persons present.

(g) May make an arrest of a person as authorized by ORS 133.310 (2) if the person is stopped and detained pursuant to the authority of this section.

(4) When a police officer at the scene of a traffic accident has reasonable grounds, based upon the police officer's personal investigation, to believe that a person involved in the accident has committed a traffic offense in connection with the accident, the police officer may issue to the person a citation for that offense. The authority under this subsection is in addition to any other authority to issue a citation for a traffic offense.

SECTION 34. ORS 811.720 is amended to read:

811.720. (1) Except as provided in subsection (4) of this section, any accident occurring on a highway or upon premises open to the public resulting in injury or death to any person is subject to the reporting requirements under the following sections:

(a) The reporting requirements for drivers under ORS 811.725.

(b) The reporting requirements for occupants of vehicles in accidents under ORS 811.735.

(c) The reporting requirements for owners of vehicles under ORS 811.730.

(2) Except as provided in subsection (4) of this section, an accident occurring on a highway or upon premises open to the public resulting in damage to the property of any person in excess of $1,500 is subject to the following reporting requirements:

(a) The driver of a vehicle that has more than $1,500 damage must report the accident in the manner specified under ORS 811.725.

(b) The owner of a vehicle that has more than $1,500 damage must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(c) If the property damage is to property other than a vehicle involved in the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 and each owner of a vehicle involved in the accident must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(d) If a vehicle involved in the accident is damaged to the extent that the vehicle must be towed from the scene of the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 and each owner of a vehicle involved in the accident must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(3) The dollar amount specified in subsection (2) of this section may be increased every five years by the Department of Transportation based upon any increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest $100.

(4) The following are exempt from the reporting requirements of this section:

(a) Operators of snowmobiles, Class I all-terrain vehicles or Class III all-terrain vehicles.

(b) A law enforcement official acting in the course of official duty if the accident involved a law enforcement official performing a lawful intervention technique or a law enforcement official and a person acting during the commission of a criminal offense. As used in this paragraph:

(A) "Law enforcement official" means a person who is responsible for enforcing the criminal laws of this state or a political subdivision of this state and who is employed or volunteers:

(i) As a peace officer commissioned by a city, port, school district, mass transit district, county or county service district authorized to provide law enforcement services under ORS 451.010;

(ii) With the Department of State Police or the Criminal Justice Division of the Department of Justice; [*or*]

(iii) As an investigator of a district attorney's office, if the investigator is certified as a peace officer in this state**; or**

(iv) As an authorized tribal police officer as defined in section 1 of this 2011 Act.

(B) "Lawful intervention technique" means a method by which one motor vehicle causes, or attempts to cause, another motor vehicle to stop.

SECTION 35. ORS 830.005 is amended to read:

830.005. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Marine Board.

(2) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(3) "Boating offense" means violation of any provision of law that is made a crime or violation under the provisions of this chapter.

(4) "In flight" means from the moment a seaplane starts its takeoff run until the end of a normal power-off landing run.

(5) "Length" means the length of a boat measured from end to end over the deck excluding sheer.

(6) "Motorboat" means any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

(7) "Navigable waters of the United States" means those waters of the United States, including the territorial seas adjacent thereto, the general character of which is navigable, and that, either by themselves or by uniting with other waters, form a continuous waterway on which boats or vessels may navigate or travel between two or more states, or to and from foreign nations.

(8) "Operate" means to navigate or otherwise use a boat.

(9) "Operator of a boat livery" means any person who is engaged wholly or in part in the business of chartering or renting boats to other persons.

(10) "Passenger" means every person on board a boat who is not the master, operator, crew member or other person engaged in any capacity in the business of the boat.

(11) "Peace officer" includes a member of the Oregon State Police, a sheriff or deputy sheriff [*and*]**,** a city police officer **and an authorized tribal police officer as defined in section 1 of this 2011 Act**.

(12) "State waters" means those waters entirely within the confines of this state that have not been declared navigable waters of the United States.

(13) "Waters of this state" means all waters within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as part of a journey or ride to or from the shore of this state.

SECTION 36. The amendments to ORS 40.275, 90.440, 131.605, 133.005, 133.033, 133.318, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 810.410, 811.720 and 830.005 by sections 10 to 35 of this 2011 Act become operative on the effective date of this 2011 Act.

PROVISIONS APPLICABLE
ON AND AFTER JULY 1, 2015

SECTION 37. ORS 40.275, as amended by section 10 of this 2011 Act, is amended to read:

40.275. (1) As used in this section, "unit of government" means[*:*]

[*(a)*] the federal government or any state or political subdivision thereof**.**[*; or*]

[*(b) A tribal government as defined in section 1 of this 2011 Act, if the information relates to or assists in an investigation conducted by an authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(2) A unit of government has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(3) The privilege created by this section may be claimed by an appropriate representative of the unit of government if the information was furnished to an officer thereof.

(4) No privilege exists under this section:

(a) If the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a

holder of the privilege or by the informer's own action, or if the informer appears as a witness for the unit of government.

(b) If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the unit of government is a party, and the unit of government invokes the privilege, and the judge gives the unit of government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the unit of government elects not to disclose identity of the informer, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make any order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government. All counsel and parties shall be permitted to be present at every stage of proceedings under this paragraph except a showing in camera, at which no counsel or party shall be permitted to be present.

(c) If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible. The judge may require the identity of the informer to be disclosed. The judge shall, on request of the unit of government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this paragraph except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government.

SECTION 38. ORS 90.440, as amended by section 11 of this 2011 Act, is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

(c) "Peace officer" means a sheriff, constable, marshal or deputy[,] **or** a member of a state or city police force [*or an authorized tribal police officer as defined in section 1 of this 2011 Act*].

(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal drugs:

(a) The tenant fails a test for alcohol or illegal drug use;

(b) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol or illegal drug use; or

(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

This notice is to inform you that you must move out of _____ (insert address of group recovery home) by _____ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is _____ (specify use or possession of alcohol or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is _____ (specify facts).

If you did not use or possess alcohol or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office _____ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

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(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the Oregon Health Authority no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the tenant did not use or possess alcohol or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven

days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

SECTION 39. ORS 133.005, as amended by section 13 of this 2011 Act, is amended to read:

133.005. As used in ORS 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Federal officer" means a special agent or law enforcement officer employed by a federal agency who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(3) "Peace officer" means:

(a) A member of the Oregon State Police;

(b) A sheriff, constable, marshal or municipal police officer;

(c) 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; **or**

(d) An investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.[*; or*]

[*(e) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

SECTION 40. ORS 133.525, as amended by section 16 of this 2011 Act, is amended to read:

133.525. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

(1) "Judge" means any judge of the circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.

(2) "Police officer" means:

(a) A member of the Oregon State Police;

(b) A sheriff or municipal police officer [*or an authorized tribal police officer as defined in section 1 of this 2011 Act*];

(c) 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; or

(d) An investigator of the Criminal Justice Division of the Department of Justice.

SECTION 41. ORS 133.721, as amended by section 17 of this 2011 Act, is amended to read:

133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication that is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and that is being used by the subscriber or user in the ordinary course of its business or

being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(6) "Investigative or law enforcement officer" means[*:*]

[*(a)*] an officer or other person employed to investigate or enforce criminal laws by:

[*(A)*] **(a)** A county sheriff or municipal police department;

[*(B)*] **(b)** The Oregon State Police, the Department of Corrections, the Attorney General or a district attorney; or

[*(C)*] **(c)** Law enforcement agencies of other states or the federal government**.**[*; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased.

SECTION 42. ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007, and section 19 of this 2011 Act, is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means[*:*]

[*(a)*] an officer employed to enforce criminal laws by:

[*(A)*] **(a)** The United States, this state or a municipal government within this state; or

[*(B)*] **(b)** A political subdivision, agency, department or bureau of the governments described in **paragraph (a) of this subsection.** [*subparagraph (A) of this paragraph; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 43. ORS 136.595, as amended by section 20 of this 2011 Act, is amended to read:

136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section, a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem. Proof of the service is made in the same manner as in the service of a summons.

(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required, the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to actually notify the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall contact the court and a continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department[,] **or** a municipal police department [*or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act*].

(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena is not required to be served if:

(a) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(b) The party who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by:

(A) Certified or registered mail, return receipt requested; or

(B) Express mail.

SECTION 44. ORS 147.425, as amended by section 21 of this 2011 Act, is amended to read:

147.425. (1) As used in this section:

(a) "Health care provider" has the meaning given that term in ORS 192.519.

(b) "Law enforcement agency" means:

(A) A city or municipal police department.

(B) A county sheriff's office.

(C) The Oregon State Police.

(D) A district attorney.

(E) A special campus security officer commissioned under ORS 352.385 or 353.050.

[*(F) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(d) "Personal representative" means a person selected under subsection (2) of this section to accompany the victim of a crime to certain phases of an investigation and prosecution.

(e) "Protective service worker" means an employee or contractor of a local or state agency whose role it is to protect children or vulnerable adults from abuse or neglect.

(2) A victim of a person crime, who is at least 15 years of age at the time the crime is committed, may select a person who is at least 18 years of age as the victim's personal representative for purposes of this section. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative.

(3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.

(4) A health care provider, law enforcement agency, protective service worker or court may not prohibit a personal representative from accompanying a victim as authorized by subsection (3) of this section unless the health care provider, law enforcement agency, protective service worker or court believes that the personal representative would compromise the process.

(5) A health care provider, law enforcement agency, protective service worker or court is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to a decision under subsection (4) of this section to prohibit a personal representative from accompanying a victim.

(6) The fact that a personal representative was allowed or was not allowed to accompany a victim may not be used as a basis for excluding otherwise admissible evidence.

(7) The fact that a victim has or has not selected a personal representative under this section may not be used as evidence in the criminal case.

SECTION 45. ORS 153.005, as amended by section 22 of this 2011 Act, is amended to read:

153.005. As used in this chapter:

(1) "Enforcement officer" means:

(a) A member of the Oregon State Police.

(b) A sheriff or deputy sheriff.

(c) A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

(d) 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.

(e) An investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

(f) A Port of Portland peace officer.

[*(g) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

[*(h)*] **(g)** Any other person specifically authorized by law to issue citations for the commission of violations.

(2) "Traffic offense" has the meaning given that term in ORS 801.555.

(3) "Violation" means an offense described in ORS 153.008.

(4) "Violation proceeding" means a judicial proceeding initiated by issuance of a citation that charges a person with commission of a violation.

SECTION 46. ORS 161.015, as amended by section 23 of this 2011 Act, is amended to read:

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

(1) "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

(3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(4) "Peace officer" means:

(a) A member of the Oregon State Police;

(b) A sheriff, constable, marshal or municipal police officer;

(c) An investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office; **and**

[*(d) An authorized tribal police officer as defined in section 1 of this 2011 Act; and*]

[*(e)*] **(d)** Any other person designated by law as a peace officer.

(5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

SECTION 47. ORS 163.730, as amended by section 24 of this 2011 Act, is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school;

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or

(L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

(6) "Law enforcement officer" means[*:*]

[*(a)*] a person employed in this state as a police officer by a county sheriff, constable or marshal or a municipal or state police agency**.**[*; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

SECTION 48. ORS 165.535, as amended by section 25 of this 2011 Act, is amended to read:

165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

(1) "Conversation" means the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication.

(2) "Person" has the meaning given that term in ORS 174.100 and includes[*:*]

[*(a)*] public officials and law enforcement officers of the state and of a county, municipal corporation or any other political subdivision of the state**.**[*; and*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

(4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

SECTION 49. ORS 181.010, as amended by section 26 of this 2011 Act, is amended to read:

181.010. As used in ORS 181.010 to 181.560 and 181.715 to 181.730, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police bureau of criminal identification.

(2) "Criminal justice agency" means:

(a) The Governor;

(b) Courts of criminal jurisdiction;

(c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutive functions, attorney employees of the office of public defense services and nonprofit public defender organizations established under contract with the Public Defense Services Commission;

(e) Law enforcement agencies;

(f) The Department of Corrections;

(g) The State Board of Parole and Post-Prison Supervision;

(h) The Department of Public Safety Standards and Training; and

(i) Any other state or local agency with law enforcement authority designated by order of the Governor.

(3) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Designated agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(7) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest.

(8) "Law enforcement agency" means:

(a) County sheriffs, municipal police departments and State Police;

(b) Other police officers of this state and other states; **and**

[*(c) A tribal government as defined in section 1 of this 2011 Act that employs authorized tribal police officers as defined in section 1 of this 2011 Act; and*]

[*(d)*] **(c)** Law enforcement agencies of the federal government.

(9) "State Police" means the members of the state police force appointed under ORS 181.250.

(10) "Superintendent" means the Superintendent of State Police.

SECTION 50. ORS 181.610, as amended by section 27 of this 2011 Act, is amended to read:

181.610. In ORS 181.610 to 181.712, unless the context requires otherwise:

(1) "Abuse" has the meaning given the term in ORS 107.705.

(2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181.620.

(3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(4) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer or certified reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(5) "Corrections officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Director" means the Director of the Department of Public Safety Standards and Training.

(8) "Domestic violence" means abuse between family or household members.

(9) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(10) "Family or household members" has the meaning given that term in ORS 107.705.

(11) "Fire service professional" means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(12)(a) "Law enforcement unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government [*as defined in section 1 of this 2011 Act that employs authorized tribal police officers as defined in section 1 of this 2011 Act*], the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission or common carrier railroad whose primary duty, as prescribed by law, ordinance or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means:

(A) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff;

(B) A district attorney's office; and

(C) A private, nonprofit animal care agency that has maintained an animal welfare investigation department for at least five years and has had officers commissioned as special agents by the Governor.

(13) "Parole and probation officer" means:

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

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

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

(b) Any officer who:

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

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

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

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

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

(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, tribal government [*as defined in section 1 of this 2011 Act*], 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 [*or is an authorized tribal police officer as defined in section 1 of this 2011 Act*].

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

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

(17) "Reserve officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government [*as defined in section 1 of this 2011 Act*], 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;

(b) Who is armed with a firearm; and

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

(18) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105.

(19) "Youth correction officer" means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of youth offenders confined in a youth correction facility.

SECTION 50a. ORS 181.781, as amended by section 27a of this 2011 Act, is amended to read:

181.781. As used in ORS 181.781 to 181.796:

(1) "Employ," when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon[,] **and** a municipal corporation of the State of Oregon [*and a tribal government*], that maintains a law enforcement unit as defined in ORS 181.610 (12)(a)(A).

(3) "Police officer" means a person who is:

(a) A police officer or reserve officer as defined in ORS 181.610; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

[*(4) "Tribal government" means a tribal government as defined in section 1 of this 2011 Act:*]

[*(a) With land that is contiguous to the county in which the deadly physical force planning authority is created; and*]

[*(b) That has adopted the provision of tribal law described in section 2 (4)(d)(A) of this 2011 Act.*]

SECTION 50b. ORS 181.783, as amended by section 27b of this 2011 Act, is amended to read:

181.783. (1) There is created in each county a deadly physical force planning authority consisting of the following members:

(a) The district attorney and sheriff of the county.

(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are unions representing police officers within the county, the district attorney and sheriff shall select the police officer from among candidates nominated by any union representing police officers within the county.

(c) If at least one city within the county employs a police chief, a police chief selected by the police chiefs within the county.

(d) A representative of the public selected by the district attorney and sheriff. The person selected under this paragraph may not be employed by a law enforcement agency.

(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

[*(f) A tribal police officer as defined in section 1 of this 2011 Act, when requested by a tribal government.*]

(2) The district attorney and sheriff are cochairpersons of the planning authority.

(3) The law enforcement agency that employs the police officer selected under subsection (1)(b) of this section shall release the officer from other duties for at least 16 hours per year to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities.

(4) The planning authority shall develop a plan consisting of the following:

(a) An element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

(b) An element dealing with the immediate aftermath of an incident in which a police officer used deadly physical force.

(c) An element dealing with the investigation of an incident in which a police officer used deadly physical force.

(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.

(e) An element dealing with collecting information regarding a police officer's use of deadly physical force, debriefing after an incident in which a police officer used deadly physical force and revising a plan developed under this subsection based on experience.

(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in paragraphs (a) to (e) of this subsection.

(5) The planning authority shall conduct at least one public hearing in the county before submitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7) of this section.

(6) The planning authority may consult with anyone the planning authority determines may be helpful in carrying out its responsibilities.

(7) The planning authority shall submit the plan developed under subsection (4) of this section, and revisions of the plan, to the governing body of each law enforcement agency within the county except for the Department of State Police and the Department of Justice.

(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7) of this section within 60 days after receiving the plan. The governing body may not amend the plan.

(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.

(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in ORS 181.786. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan:

(a) Each law enforcement agency within the county to which the plan applies is subject to the provisions of the plan; and

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS 181.796.

(11) If the plan is not approved by the Attorney General, the planning authority shall develop and submit a revised plan.

(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject to a provision of a plan approved under subsection (10) of this section that:

(a) Conflicts with a provision of a city or county charter or a general ordinance that applies to the law enforcement agency; or

(b) Imposes an obligation not required by ORS 181.789 if complying with the provision would require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of the people, in order to comply with the provision.

(13) The Attorney General shall periodically publish all approved plans.

(14) A law enforcement agency within a county has a duty to participate in good faith in the planning process of the planning authority for the county.

(15) A person bringing an action challenging the validity or enforceability of a plan approved under subsection (10) of this section shall serve the Attorney General with a copy of the complaint. If the Attorney General is not a party to the action, the Attorney General may intervene in the action.

SECTION 50c. ORS 181.796, as amended by section 27c of this 2011 Act, is amended to read:

181.796. (1) As used in this section, "expenses" does not include personnel costs.

(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice shall make grants to law enforcement agencies to reimburse the law enforcement agencies for expenses incurred in implementing and revising the plans required by ORS 181.783. A grant under this section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

(3) The department may not make a grant under this section to a law enforcement agency unless the law enforcement agency is subject to a plan that has been approved by the Attorney General under ORS 181.783 (10).

[*(4) The department may not make a grant under this section to a tribal government.*]

[*(5)*] **(4)** The department shall adopt rules necessary for the administration of this section.

SECTION 51. ORS 348.270, as amended by section 28 of this 2011 Act, is amended to read:

348.270. (1) In addition to any other scholarships provided by law, the Oregon Student Assistance Commission shall award scholarships in any state institution under the State Board of Higher

Education, in the Oregon Health and Science University, in any community college operated under ORS chapter 341, or in any Oregon-based regionally accredited independent institution, to any student applying for enrollment or who is enrolled therein, who is:

(a) The natural child, adopted child or stepchild of any public safety officer who, in the line of duty, was killed or so disabled, as determined by the Oregon Student Assistance Commission, that the income of the public safety officer is less than that earned by public safety officers performing duties comparable to those performed at the highest rank or grade attained by the public safety officer; or

(b) A former foster child who enrolls in an institution of higher education as an undergraduate student not later than three years from the date the student was removed from the care of the Department of Human Services, the date the student graduated from high school or the date the student received the equivalent of a high school diploma, whichever date is earliest.

(2) Scholarships awarded under this section to students who are dependents of public safety officers or who are former foster children shall equal the amount of tuition and all fees levied by the institution against the recipient of the scholarship. However, scholarships awarded to students who attend independent institutions shall not exceed the amount of tuition and all fees levied by the University of Oregon.

(3) If the student who is the dependent of a deceased public safety officer continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education and four years of post-graduate education.

(4) If the student who is a former foster child or who is the dependent of a public safety officer with a disability continues to remain enrolled in a state institution of higher education or a community college or an independent institution within the State of Oregon, the student shall be entitled to renewal of the scholarship until the student has received the equivalent of four years of undergraduate education.

(5) The Oregon Student Assistance Commission may require proof of the student's relationship to a public safety officer described in subsection (1) of this section or proof that the student is a former foster child.

(6) As used in this section:

(a) "Former foster child" means an individual who, for a total of 12 or more months while between the ages of 16 and 21, was a ward of the court pursuant to ORS 419B.100 (1)(b) to (e) and in the legal custody of the Department of Human Services for out-of-home placement.

(b) "Public safety officer" means:

(A) A firefighter or police officer as those terms are defined in ORS 237.610.

(B) A member of the Oregon State Police.

[*(C) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

SECTION 52. ORS 414.805, as amended by section 29 of this 2011 Act, is amended to read:

414.805. (1) An individual who receives medical services while in the custody of a law enforcement officer is liable:

(a) To the provider of the medical services for the charges and expenses therefor; and

(b) To the Oregon Health Authority for any charges or expenses paid by the authority out of the Law Enforcement Medical Liability Account for the medical services.

(2) A person providing medical services to an individual described in subsection (1)(a) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the authority out of the Law Enforcement Medical Liability Account.

(3)(a) If the provider has not been paid within 45 days of the date of the billing, the provider may bill the authority who shall pay the account out of the Law Enforcement Medical Liability Account.

(b) A bill submitted to the authority under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care service contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care service contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care service contractor after receiving payment from the authority, the provider shall repay the authority the amount received from the public agency less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) As used in this section:

(a) "Law enforcement officer" means[*:*]

[*(A)*] an officer who is commissioned and employed by a public agency as a peace officer to enforce the criminal laws of this state or laws or ordinances of a public agency**.**[*; or*]

[*(B) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(b) "Public agency" means the state, a city, port, school district, mass transit district or county.

SECTION 53. ORS 419B.902, as amended by section 30 of this 2011 Act, is amended to read:

419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by delivering a copy to the witness personally. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is not accompanied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the subpoena is served personally or by mail, copies of a subpoena commanding production and inspection of books, papers, documents or other tangible things before trial must be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period.

(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena may be made. A designated individual must be available during normal business hours. In the absence of a designated individual, service of a subpoena under paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to an individual designated by the agency that employs the officer no later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department[*,*] **or** a municipal police department [*or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act*].

(3) Under the following circumstances, service of a subpoena to a witness by mail has the same legal force and effect as personal service:

(a) The attorney mailing the subpoena certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed; or

(b) The subpoena was mailed to the witness more than five days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient and the attorney received a return receipt signed by the witness prior to trial.

(4) Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents or other tangible things that is not accompanied by a command to appear at trial or hearing or at a deposition under ORS 419B.884.

(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server is not required to certify that the server is not a party in the action or an attorney for a party in the action.

SECTION 54. ORS 420.905, as amended by section 31 of this 2011 Act, is amended to read:

420.905. As used in ORS 420.905 to 420.915, "peace officer" means:

(1) A sheriff, constable or marshal, or the deputy of any such officer;

(2) A member of the state police; **or**

(3) A member of the police force of any city**.**[*; or*]

[*(4) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

SECTION 55. ORS 801.395, as amended by section 32 of this 2011 Act, is amended to read:

801.395. "Police officer" includes a member of the Oregon State Police, a sheriff, a deputy sheriff, a city police officer, [*an authorized tribal police officer as defined in section 1 of this 2011 Act,*] a Port of Portland peace officer or a law enforcement officer employed by a service district established under ORS 451.410 to 451.610 for the purpose of law enforcement services.

SECTION 56. ORS 811.720, as amended by section 34 of this 2011 Act, is amended to read:

811.720. (1) Except as provided in subsection (4) of this section, any accident occurring on a highway or upon premises open to the public resulting in injury or death to any person is subject to the reporting requirements under the following sections:

(a) The reporting requirements for drivers under ORS 811.725.

(b) The reporting requirements for occupants of vehicles in accidents under ORS 811.735.

(c) The reporting requirements for owners of vehicles under ORS 811.730.

(2) Except as provided in subsection (4) of this section, an accident occurring on a highway or upon premises open to the public resulting in damage to the property of any person in excess of $1,500 is subject to the following reporting requirements:

(a) The driver of a vehicle that has more than $1,500 damage must report the accident in the manner specified under ORS 811.725.

(b) The owner of a vehicle that has more than $1,500 damage must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(c) If the property damage is to property other than a vehicle involved in the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 and each owner of a vehicle involved in the accident must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(d) If a vehicle involved in the accident is damaged to the extent that the vehicle must be towed from the scene of the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 and each owner of a vehicle involved in the accident must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.

(3) The dollar amount specified in subsection (2) of this section may be increased every five years by the Department of Transportation based upon any increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest $100.

(4) The following are exempt from the reporting requirements of this section:

(a) Operators of snowmobiles, Class I all-terrain vehicles or Class III all-terrain vehicles.

(b) A law enforcement official acting in the course of official duty if the accident involved a law enforcement official performing a lawful intervention technique or a law enforcement official and a person acting during the commission of a criminal offense. As used in this paragraph:

(A) "Law enforcement official" means a person who is responsible for enforcing the criminal laws of this state or a political subdivision of this state and who is employed or volunteers:

(i) As a peace officer commissioned by a city, port, school district, mass transit district, county or county service district authorized to provide law enforcement services under ORS 451.010;

(ii) With the Department of State Police or the Criminal Justice Division of the Department of Justice; **or**

(iii) As an investigator of a district attorney's office, if the investigator is certified as a peace officer in this state.[*; or*]

[*(iv) As an authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(B) "Lawful intervention technique" means a method by which one motor vehicle causes, or attempts to cause, another motor vehicle to stop.

SECTION 57. ORS 830.005, as amended by section 35 of this 2011 Act, is amended to read:

830.005. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Marine Board.

(2) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(3) "Boating offense" means violation of any provision of law that is made a crime or violation under the provisions of this chapter.

(4) "In flight" means from the moment a seaplane starts its takeoff run until the end of a normal power-off landing run.

(5) "Length" means the length of a boat measured from end to end over the deck excluding sheer.

(6) "Motorboat" means any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

(7) "Navigable waters of the United States" means those waters of the United States, including the territorial seas adjacent thereto, the general character of which is navigable, and that, either by themselves or by uniting with other waters, form a continuous waterway on which boats or vessels may navigate or travel between two or more states, or to and from foreign nations.

(8) "Operate" means to navigate or otherwise use a boat.

(9) "Operator of a boat livery" means any person who is engaged wholly or in part in the business of chartering or renting boats to other persons.

(10) "Passenger" means every person on board a boat who is not the master, operator, crew member or other person engaged in any capacity in the business of the boat.

(11) "Peace officer" includes a member of the Oregon State Police, a sheriff or deputy sheriff[,] **and** a city police officer [*and an authorized tribal police officer as defined in section 1 of this 2011 Act*].

(12) "State waters" means those waters entirely within the confines of this state that have not been declared navigable waters of the United States.

(13) "Waters of this state" means all waters within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as part of a journey or ride to or from the shore of this state.

SECTION 58. (1) Sections 1 to 4 of this 2011 Act are repealed on July 1, 2015.

(2) The amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726e 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 of this 2011 Act become operative on July 1, 2015.

(3) The repeal of sections 1 to 4 of this 2011 Act by subsection (1) of this section and the amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 of this 2011 Act:

(a) Return the law applicable to tribal police officers to the state in which the law existed on the date immediately before the effective date of this 2011 Act; and

(b) Do not deprive tribal police officers of any power, authority or protection provided to tribal police officers by law on the date immediately before the effective date of this 2011 Act.

MISCELLANEOUS PROVISIONS

SECTION 59. ORS 133.033, 133.318 and 133.400 are added to and made a part of ORS 133.005 to 133.381.

SECTION 60. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

CONFLICT AMENDMENTS

SECTION 61. If Senate Bill 405 becomes law, section 4, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 90.440), is repealed and ORS 90.440, as amended by section 11 of this 2011 Act, is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

[*(c) "Peace officer" means a sheriff, constable, marshal or deputy, a member of a state or city police force or an authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(c) "Peace officer" means:

(A) A sheriff, constable, marshal or deputy;

(B) A member of a state or city police force;

(C) A police officer commissioned by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); or

(D) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal drugs:

(a) The tenant fails a test for alcohol or illegal drug use;

(b) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol or illegal drug use; or

(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

This notice is to inform you that you must move out of _____ (insert address of group recovery home) by _____ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is _____ (specify use or possession of alcohol or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is _____ (specify facts).

If you did not use or possess alcohol or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office _____ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

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(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the Oregon Health Authority no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the tenant did not use or possess alcohol or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

SECTION 62. If Senate Bill 405 becomes law, section 14, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 133.721), is repealed and ORS 133.721, as amended by section 17 of this 2011 Act, is amended to read:

133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication that is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and that is being used by the subscriber or user in the ordinary course of its business or being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

[*(6) "Investigative or law enforcement officer" means:*]

[*(a) An officer or other person employed to investigate or enforce criminal laws by:*]

[*(A) A county sheriff or municipal police department;*]

[*(B) The Oregon State Police, the Department of Corrections, the Attorney General or a district attorney; or*]

[*(C) Law enforcement agencies of other states or the federal government; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(6) "Investigative or law enforcement officer" means:

(a) An officer or other person employed to investigate or enforce the law by:

(A) A county sheriff or municipal police department, or a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405);

(B) The Oregon State Police, the Department of Corrections, the Attorney General or a district attorney; or

(C) Law enforcement agencies of other states or the federal government; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased.

SECTION 63. If Senate Bill 405 becomes law, section 15, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 133.726), is repealed and ORS 133.726, as amended by section 18 of this 2011 Act, is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that:

(A) There is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; or

(B)(i) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(ii) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(iii) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(iv) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a)(A) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(B) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime; or

(b)(A) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(B) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(C) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(D) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.904 to 475.910 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

[*(11) As used in this section, "law enforcement officer" means:*]

[*(a) An officer employed to enforce criminal laws by:*]

[*(A) The United States, this state or a municipal government within this state; or*]

[*(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(11) As used in this section, "law enforcement officer" means:

(a) An officer employed to enforce criminal laws by:

(A) The United States, this state or a municipal government within this state;

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(C) A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 64. If Senate Bill 405 becomes law, section 16, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 133.726), is repealed and ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007, and section 19 of this 2011 Act, is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

[*(11) As used in this section, "law enforcement officer" means:*]

[*(a) An officer employed to enforce criminal laws by:*]

[*(A) The United States, this state or a municipal government within this state; or*]

[*(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(11) As used in this section, "law enforcement officer" means:

(a) An officer employed to enforce criminal laws by:

(A) The United States, this state or a municipal government within this state;

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(C) A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 65. If Senate Bill 405 becomes law, section 17, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 136.595), is repealed and ORS 136.595, as amended by section 20 of this 2011 Act, is amended to read:

136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section, a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem. Proof of the service is made in the same manner as in the service of a summons.

(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served

by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required, the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to actually notify the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall contact the court and a continuance may be granted to allow the officer to be personally served.

[*(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act.*]

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department, a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405), or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act.

(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena is not required to be served if:

(a) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(b) The party who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by:

(A) Certified or registered mail, return receipt requested; or

(B) Express mail.

SECTION 66. If Senate Bill 405 becomes law, section 23, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 163.730), is repealed and ORS 163.730, as amended by section 24 of this 2011 Act, is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school;

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or

(L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

[*(6) "Law enforcement officer" means:*]

[*(a) A person employed in this state as a police officer by a county sheriff, constable or marshal or a municipal or state police agency; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(6) "Law enforcement officer" means:

(a) A person employed in this state as a police officer by:

(A) A county sheriff, constable or marshal;

(B) A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); or

(C) A municipal or state police agency; or

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

SECTION 67. If Senate Bill 405 becomes law, section 24, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 165.535), is repealed and ORS 165.535, as amended by section 25 of this 2011 Act, is amended to read:

165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

(1) "Conversation" means the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication.

[*(2) "Person" has the meaning given that term in ORS 174.100 and includes:*]

[*(a) Public officials and law enforcement officers of the state and of a county, municipal corporation or any other political subdivision of the state; and*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(2) "Person" has the meaning given that term in ORS 174.100 and includes:

(a) Public officials and law enforcement officers of:

(A) The state and of a county, municipal corporation or any other political subdivision of the state; and

(B) A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); and

(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

(4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

SECTION 68. If Senate Bill 405 becomes law, section 39, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405) (amending ORS 419B.902), is repealed and ORS 419B.902, as amended by section 30 of this 2011 Act, is amended to read:

419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by delivering a copy to the witness personally. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is not accompanied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the subpoena is served personally or by mail, copies of a subpoena commanding production and inspection of books, papers, documents or other tangible things before trial must be served on each

party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period.

(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena may be made. A designated individual must be available during normal business hours. In the absence of a designated individual, service of a subpoena under paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to an individual designated by the agency that employs the officer no later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

[*(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act.*]

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department, a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405), or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act.

(3) Under the following circumstances, service of a subpoena to a witness by mail has the same legal force and effect as personal service:

(a) The attorney mailing the subpoena certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed; or

(b) The subpoena was mailed to the witness more than five days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient and the attorney received a return receipt signed by the witness prior to trial.

(4) Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents or other tangible things that is not accompanied by a command to appear at trial or hearing or at a deposition under ORS 419B.884.

(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server is not required to certify that the server is not a party in the action or an attorney for a party in the action.

SECTION 69. If Senate Bill 405 becomes law, section 38 of this 2011 Act (amending ORS 90.440) is repealed and ORS 90.440, as amended by sections 11 and 61 of this 2011 Act, is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

(c) "Peace officer" means:

(A) A sheriff, constable, marshal or deputy;

(B) A member of a state or city police force; **or**

(C) A police officer commissioned by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)[*; or*]

[*(D) An authorized tribal police officer as defined in section 1 of this 2011 Act*].

(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal drugs:

(a) The tenant fails a test for alcohol or illegal drug use;

(b) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol or illegal drug use; or

(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

This notice is to inform you that you must move out of _____ (insert address of group recovery home) by _____ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is _____ (specify use or possession of alcohol or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is _____ (specify facts).

If you did not use or possess alcohol or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office _____ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

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(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255

and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the Oregon Health Authority no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the tenant did not use or possess alcohol or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

SECTION 70. If Senate Bill 405 becomes law, section 41 of this 2011 Act (amending ORS 133.721) is repealed and ORS 133.721, as amended by sections 17 and 62 of this 2011 Act, is amended to read:

133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication that is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and that is being used by the subscriber or user in the ordinary course of its business or being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(6) "Investigative or law enforcement officer" means[:]

[*(a)*] an officer or other person employed to investigate or enforce the law by:

[*(A)*] **(a)** A county sheriff or municipal police department, or a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405);

[*(B)*] **(b)** The Oregon State Police, the Department of Corrections, the Attorney General or a district attorney; or

[*(C)*] **(c)** Law enforcement agencies of other states or the federal government.[*; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased.

SECTION 71. If Senate Bill 405 becomes law, section 42 of this 2011 Act (amending ORS 133.726) is repealed and ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007, and sections 19 and 64 of this 2011 Act, is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means[*:*]

[*(a)*] an officer employed to enforce criminal laws by:

[*(A)*] **(a)** The United States, this state or a municipal government within this state;

[*(B)*] **(b)** A political subdivision, agency, department or bureau of the governments described in [*subparagraph (A) of this paragraph*] **paragraph (a) of this subsection**; or

[*(C)*] **(c)** A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)**.**[*; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 72. If Senate Bill 405 becomes law, section 43 of this 2011 Act (amending ORS 136.595) is repealed and ORS 136.595, as amended by sections 20 and 65 of this 2011 Act, is amended to read:

136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section, a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent,

guardian or guardian ad litem. Proof of the service is made in the same manner as in the service of a summons.

(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required, the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to actually notify the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall contact the court and a continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department[,] **or** a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)[*, or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act*].

(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena is not required to be served if:

(a) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(b) The party who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by:

(A) Certified or registered mail, return receipt requested; or

(B) Express mail.

SECTION 73. If Senate Bill 405 becomes law, section 47 of this 2011 Act (amending ORS 163.730) is repealed and ORS 163.730, as amended by sections 24 and 66 of this 2011 Act, is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school;

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or

(L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

(6) "Law enforcement officer" means[*:*]

[*(a)*] a person employed in this state as a police officer by:

[*(A)*] **(a)** A county sheriff, constable or marshal;

[*(B)*] **(b)** A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405); or

[*(C)*] **(c)** A municipal or state police agency.[*; or*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

SECTION 74. If Senate Bill 405 becomes law, section 48 of this 2011 Act (amending ORS 165.535) is repealed and ORS 165.535, as amended by sections 25 and 67 of this 2011 Act, is amended to read:

165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

(1) "Conversation" means the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication.

(2) "Person" has the meaning given that term in ORS 174.100 and includes[*:*]

[*(a)*] public officials and law enforcement officers of:

[*(A)*] **(a)** The state and of a county, municipal corporation or any other political subdivision of the state; and

[*(B)*] **(b)** A police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405).[*; and*]

[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

(4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

SECTION 75. If Senate Bill 405 becomes law, section 53 of this 2011 Act (amending ORS 419B.902) is repealed and ORS 419B.902, as amended by sections 30 and 68 of this 2011 Act, is amended to read:

419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by delivering a copy to the witness personally. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is not accompanied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the subpoena is served personally or by mail, copies of a subpoena commanding production and inspection of books, papers, documents or other tangible things before trial must be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period.

(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena may be made. A designated individual must be available during normal business hours. In the absence of a designated individual, service of a subpoena under paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to an individual designated by the agency that employs the officer no later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, a municipal police department[,] **or** a police department established by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)[*, or, if the witness whose attendance at trial is required is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act*].

(3) Under the following circumstances, service of a subpoena to a witness by mail has the same legal force and effect as personal service:

(a) The attorney mailing the subpoena certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed; or

(b) The subpoena was mailed to the witness more than five days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient and the attorney received a return receipt signed by the witness prior to trial.

(4) Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents or other tangible things that is not accompanied by a command to appear at trial or hearing or at a deposition under ORS 419B.884.

(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server is not required to certify that the server is not a party in the action or an attorney for a party in the action.

SECTION 76. If Senate Bill 405 becomes law, the amendments to ORS 90.440, 133.721, 133.726, 136.595, 163.730, 165.535 and 419B.902 by sections 61 to 68 of this 2011 Act become operative on January 1, 2012.

SECTION 77. If Senate Bill 405 becomes law, section 58 of this 2011 Act is amended to read:

Sec. 58. (1) Sections 1 to 4 of this 2011 Act are repealed on July 1, 2015.

(2) The amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 **and 69 to 75** of this 2011 Act become operative on July 1, 2015.

(3) The repeal of sections 1 to 4 of this 2011 Act by subsection (1) of this section and the amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902, 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 **and 69 to 75** of this 2011 Act:

(a) Return the law applicable to tribal police officers to the state in which the law existed on the date immediately before the effective date of this 2011 Act; and

(b) Do not deprive tribal police officers of any power, authority or protection provided to tribal police officers by law on the date immediately before the effective date of this 2011 Act.

EMERGENCY CLAUSE

SECTION 78. **This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

Passed by Senate June 6, 2011

Repassed by Senate June 29, 2011

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 29, 2011

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Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State

OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Personnel Action-SEPARATION

Recieved 12/02/2019 wn

F4s

Send to DPSST within ten days of effective date of action [OAR 259-008-0020]

Email: schedulecert@state.or.us; Fax: 503-378-4600; Mail: 4190 Aumsville HWY SE; Salem OR 97317

Questions? Call DPSST at 503-378-2100 or email schedulecert@state.or.us

See instructions on second page

Revised 03/04/18

Employee Information

1. Amended Reason (if applicable):

2. Last Name	First Name	Middle Name	3. DOB	4. DPSST Number
Weaver	Eric	C	[redacted]	56198

5. Agency/Institution	6. Rank or Position
Warm Springs Police Department	Police Officer

Separation

7. Separation Date: 9/11/19

8. Discipline(s) employee is being separated from:

- [x] Police
- [ ] Corrections
- [ ] Regulatory Specialist
- [ ] Parole & Probation
- [ ] Telecommunications
- [ ] Emergency Medical Dispatch
- [ ] Reserve Police Officer
- [ ] DPSST/DOC Instructor

9. Separation Reason (REQUIRED: Please explain, in detail, the reason for the separation.)

Unjustified Use of Force, untruthfullness and falsifying police reports

10. Additional Questions (Required to check yes or no)	Yes	No
a. Was the separation the result of a settlement agreement?	○	◉
b. Was the separation the result of (even in part) an active or pending investigation being conducted by your agency or another public agency into allegations of misconduct involving the separated individual?	◉	○
c. (Answer only if 10.b. is NO) Were there any uninvestigated allegations of misconduct or other complaints made against the individual prior to the individual separating from your agency? (See Note on pg. 2)	○	○

Contacts

11. Provide any additional individuals who DPSST may contact regarding this form. Include only work email addresses.
Rank, Name, Email and Phone Number

ron.gregory@wstribes.org

Signature

12. Form prepared by (optional):

I attest that I am the Department Head or hold DPSST Certification and am authorized by the Department Head to sign below. I certify that the information entered on this form has been verified and is substantiated by records maintained by my agency. If certified by DPSST, I understand that falsification of this document makes my certification(s) subject to denial, suspension or revocation under ORS 181A.640 and OAR 259-008-0070.

Signature: [signature] Date: 9-13-19

Printed Name: Carmen Smith Title: PSGM DPSST No.: 45560

Email Address: carmen.smith@wstribes.org Phone: 541-553-3272

DPSST USE

Compliance Review: Reviewer: KAB Date of Review: 12/17/19

FP Number: 19185496

LEDS: ☒ Clear OJIN E-Court: ☐ Clear

Form Data Entry Completed By/Date: MV 12-20-19

Copy forwarded to Professional Standards? ☐ Yes ☐ No Date: 12/17/19

Code As:

- ☐ Deceased
- ☒ Discharge
- ☐ Lay-off
- ☐ Probationary Discharge
- ☐ Resignation
- ☐ Retirement

Database Cleanup - lapsed certification MV