

Corrections Policy Committee

Minutes

May 20, 2008

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, May 20, 2008 at 1:30 p.m. in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located at 4190 Aumsville Hwy SE Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:32 p.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriffs' Association, Chair
Raimond Adgers, Oregon Sheriff's Jail Command Council
Bryan Goodman, Non-Management Corrections Officer
Michael Gower, Department of Corrections Security Manager
Ida Rovers, Department of Corrections, Women's Correctional Facility
Mitchell Southwick, Oregon State Sheriffs' Association
Marie Tyler, Oregon Sheriff's Jail Command Council
Thomas Wright, DOC Bargaining Unit Representative

Committee Members Absent:

Brian Belleque, Designee for Director of Department of Corrections
Scott Brewen, Department of Corrections Training Division Director
Shane Hagey, Oregon Assoc. of Community Corrections Directors

Guests:

Cheryl Pellegrini, Attorney General's Office
Deputy Erik Douglass, Marion County Sheriff's Office
Deputy John Nicklason, Josephine County Sheriff's Office

DPSST Staff:

Eriks Gabliks, Deputy Director
Carolyn Kendrick, Academy Training Administrative Assistant
Marilyn Lorange, Certification and Records Supervisor
Bonnie Salle, Certification Coordinator
Theresa King, Professional Standards Coordinator
Steve Winegar, Research and Development



1. *Minutes (February 19, 2008)

Approve the minutes of the February 19, 2008 Corrections Policy Committee meeting.

See Appendix A for details.

Raimond Adgers moved to approve the February 19, 2008 minutes. Thomas Wright seconded the motion. The motion carried unanimously by all voting.

Chair Anderson spoke about a consistent procedure for voting on revocations and denials.

2. *CARTER, Roy E. DPSST #32618

Presented by Theresa King

See Appendix B for details.

Marie Tyler moved to adopt the staff report as factual. Michael Gower seconded the motion. The motion carried unanimously by all voting.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would CARTER's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?

Committee consensus is yes.

2. Did CARTER's conduct involve dishonesty, fraud, deceit, or misrepresentation?

Committee consensus is yes.

3. Was CARTER's conduct prejudicial to the administration of justice?

Committee was unclear if this applicable.

4. Would CARTER's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

Committee consensus is yes.

Raimond Adgers moved to recommend to the Board the revocation of Roy E. Carter's certification based on a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

3. *NICKLASON, John C. DPSST #49022

Presented by Theresa King

See Appendix C for details.

It is the consensus of the committee to adopt staff's report as factual.

Marie Tyler moved to recommend to the Board not to deny John C. Nicklason's certification based on his conviction for a discretionary disqualifying misdemeanor. Raimond Adgers seconded the motion. The motion carried unanimously by all voting.

Thomas Wright moved to recommend to the Board not to deny John C. Nicklason's certification based on his conviction for a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

4. ***DUNGEY, Stephen H. DPSST #41288**

Presented by Theresa King

See Appendix D for details.

Marie Tyler moved to adopt the staff report as factual. Michael Gower seconded the motion. The motion carried unanimously by all voting.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would DUNGEY's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?

Committee consensus is yes.

2. Did DUNGEY's conduct involve dishonesty, fraud, deceit, or misrepresentation?

Committee consensus is yes.

3. Was DUNGEY's conduct prejudicial to the administration of justice?

Committee consensus is yes.

4. Would DUNGEY's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

Committee consensus is yes.

Raimond Adgers moved to recommend to the Board to revoke Stephen H. Dungey's certifications based on a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

5. **OAR 259-008-0060 – Proposed Rule**

Creditable Service Time

Presented by Bonnie Salle

See Appendix E for details

The committee asked if there was a surge in hiring, what if DPSST could not train enough students in the time allotted by this rule? Staff stated there is already statutory provision that allows for this if the DPSST cannot provide the training. If there was such a backlog that DPSST couldn't get somebody into training beyond that 12 month period and beyond the 12 months that is already within the agency's discretion to request an extension, there is no statutory provision to otherwise extend the requirement to become certified. DPSST would have to take different steps to the legislature for an amendment to the statute. This could not be fixed by an administrative rule change.

Mitch Southwick moved to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Bryan Goodman seconded the motion. The motion carried by all voting.

It is the consensus that there is no significant fiscal impact on small businesses.

6. OAR 259-008-0200 – Hearing Officer’s Report

Presented by Bonnie Salle

See Appendix F for details

Marie Tyler moved to adopt the proposed rule amending OAR 259-008-0200 as a permanent rule as originally approved by the Police Policy Committee and Board on Public Safety Standards and Training.

7. OAR 259-013-0000 – Proposed Rule

Criminal Records Check

Presented by Bonnie Salle

See Appendix G for details

Michael Gower moved to recommend filing the proposed language for OAR 259-013-0000 through 259-013-0300 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Marie Tyler seconded the motion. The motion carried by all voting.

8. Convene in Executive Session

The committee convened in Executive Session at 2:30 p.m. to discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether a medical waivers for Crystal Jarvis and Randall Randolph should be recommended to the Board.

9. Reconvene in Regular Session

The committee reconvened in regular session at 2:48 p.m. to take final action regarding a determination of whether medical waivers for Crystal Jarvis and Randall Randolph should be recommended to the Board.

ACTION ITEM: The committee needs to determine whether they will recommend approval to the Board for a waiver of the visual acuity standard for Crystal Jarvis.

Raimond Adgers moved to recommend approval for a waiver of the visual acuity standard for Crystal Jarvis to the Board. Bryan Goodman seconded the motion. The motion carried unanimously by all voting.

ACTION ITEM: The committee needs to determine whether they will recommend approval to the Board for a waiver of the depth perception standard for Randall Randolph to the Board.

Michael Gower moved to recommend approval for a waiver of the depth perception standard for Randall Randolph to the Board. Thomas Wright seconded the motion. The motion carried unanimously by all voting.

Marie Tyler excused herself from discussion and voting on Randall Randolph’s medical waiver.

10. Next Regularly Scheduled Meeting – August 19, 2008 at 1:30 p.m.

With no further business before the committee the meeting adjourned at 2:50 p.m.

Appendix A

Corrections Policy Committee Minutes (Draft) November 20, 2007

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 20, 2007 at the Oregon Public Safety Academy in Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:41 p.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriffs' Association, Chair
Troy Bowser, Department of Corrections Security Manager
Brian Belleque, Designee for Director of Department of Corrections
Bryan Goodman, Non-Management Corrections Officer
Marie Tyler, Oregon Sheriff's Jail Command Council
Thomas Wright, DOC Bargaining Unit Representative
Theresa Smith, Department of Corrections, Women's Correctional Facility

Committee Members Absent:

Mitchell Southwick, Oregon State Sheriffs' Association
Shane Hagey, Oregon Assoc. of Community Corrections Directors'
Chris Hoy, Oregon Sheriff's Jail Command Council
Krista Fegley, Department of Corrections Training Division Director

DPSST Staff:

Eriks Gabliks, Deputy Director
Marilyn Lorange, Certification and Records Supervisor
Bonnie Salle, Certification Coordinator
Steve Winegar, Research and Development
Lorraine Anglemier, Legal Services Coordinator
Tammera Hinshaw, Executive Assistant
Jan Myers, Academy Training Coordinator



1. Minutes (August 21, 2007)

Approve the minutes of the August 21, 2007 Corrections Policy Committee meeting.

Marie Tyler moved to approve the minutes from the August 21, 2007 Corrections Policy Committee meeting. Bryan Goodman seconded the motion. The motion carried unanimously by all present.

2. Proposed Administrative Rule Change – OAR 259-008-0070 and OAR 259-008-0010

Information presented by Marilyn Lorange.

See Appendix A for further details.

Brian Belleque and Todd Anderson commended the work group on their hard work and dedication.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule.

Brian Belleque moved to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule. Theresa Smith seconded the motion. The motion carried unanimously by all present.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a permanent rule if no comments are received.

Brian Belleque moved to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a permanent rule if no comments are received. Thomas Wright seconded the motion. The motion carried unanimously by all present.

Action Item 3: Determine whether there is a significant fiscal impact on small business.

It is the consensus of the Committee that there is no fiscal impact on small business.

3. Proposed Administrative Rule Change – OAR 259-008-0010

Moral Fitness

Information presented by Marilyn Lorance.

See Appendix B for further details.

Bryan Goodman inquired if this rule applies to non-represented staff as well as management? Staff assured the Committee that this process is fair and unbiased. DPSST staff reviews complaints and seeks content from a large variety of sources, regardless of union representation. Approximately 20% of all the denial/revocation cases are of supervisors and above. The content of each case is researched equally regardless of the rank the person holds. The Board and Committees have moved to revoke many certifications of managers as well as union represented staff.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

Thomas Wright moved to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Marie Tyler seconded the motion. The motion carried unanimously by all present.

Action Item 3: Determine whether there is a significant fiscal impact on small business.

It is the consensus of the Committee that there is no fiscal impact on small business.

4. Proposed Administrative Rule Change – OAR 259-008-0070(5)

Information presented by Marilyn Lorange on behalf of Board Chair, Harold Burke-Sivers.

See Appendix C for further details.

Staff clarified that the Department does not move forward, after notification of intent is issued, on a professional fitness case until after arbitration has occurred.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a permanent rule if no comments are received.

Marie Tyler moved to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Belleque seconded the motion. The motion carried unanimously by all present.

Action Item 3: Determine whether there is a significant fiscal impact on small business.

It is the consensus of the Committee that there is no fiscal impact on small business.

5. Proposed Administrative Rule Change – OAR 259-008-0060(17)

Multi-Discipline Recall

Information presented by Bonnie Salle.

See Appendix D for further details.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a permanent rule if no comments are received.

Brian Belleque moved to recommend filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Marie Tyler seconded the motion. The motion carried unanimously by all present.

Action Item 3: Determine whether there is a significant fiscal impact on small business.

It is the consensus of the Committee that there is no fiscal impact on small business.

6. *Proposed Rule – OAR 259-008-0200

Civil Penalties

Information presented by Bonnie Salle.

See Appendix E for further details.

Staff clarified for the Committee that civil penalties would not be imposed unless there is no compliance by the agency after numerous attempts of notification of non-compliance.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a permanent rule if no comments are received.

Brian Belleque moved to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Marie Tyler seconded the motion. The motion carried unanimously by all present.

Action Item 3: Determine whether there is a significant fiscal impact on small business.

It is the consensus of the Committee that there is no fiscal impact on small business.

7. ORPAT for Corrections

Information presented by Eriks Gabliks and Steve Winegar.

Eriks Gabliks apologized to the Committee for the erroneous information disseminated at the last policy committee meeting. Steve Winegar has compiled the correct information for review and discussion.

See Appendix F for further details.

Staff inquired what can be provided to the Committee to make it easier for discussion/decision on this matter. Todd Anderson suggested a paper with “talking points” showing how the Committee is moving forward on this subject from one meeting to the next. Marie Tyler complimented Steve Winegar on the compilation of information.

Discussion will still need to take place about the time required to pass ORPAT for DOC vs. Non-DOC employees. Staff pointed out that the difference in time, as stated in the provided materials, is only about 30 seconds. This is primarily noticed in the gender and age groups.

With no further business before the Committee, Brian Belleque moved to adjourn the meeting. Marie Tyler seconded the motion. The motion carried unanimously by all present and the meeting adjourned at 2:52 p.m.

Appendix B

DATE: May 20, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Roy E. Carter DPSST #32618

ISSUE:

Should Roy CARTER's Basic, Intermediate and Advanced Corrections certifications be revoked based on a violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND

On June 1, 1996, CARTER was hired by the Oregon Department of Corrections (DOC). CARTER subsequently obtained his Basic, Intermediate and Advanced Corrections certificates.¹ On April 30, 1997, CARTER signed his Criminal Justice Code of Ethics.² On February 28, 2007, CARTER resigned in lieu of termination. DPSST requested, and received the information that led to his resignation.³

CASE OVERVIEW

This case involves a 43-year old corrections officer who resigned in lieu of termination after an internal investigation which included allegations of untruthfulness and disrespect. The employer's commencement of the pre-dismissal process letter to CARTER identifies specific instances relating to their allegations.⁴

On April 6, 2006, DPSST mailed CARTER a letter advising him that his case would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.⁵ On April 10, 2007, DPSST received the certified mail return receipt, signed by CARTER.⁶ To date CARTER has not provided any response.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

Moral Fitness

OAR 259-008-0070(3) states, in part, "The Department may deny or revoke the certification of any public safety professional based upon a finding that . . .

¹ Ex A3

² Ex A2

³ Ex A1, A6

⁴ Ex A4, A5

⁵ Ex A7

⁶ Ex A8

(3) (c) “The public safety professional . . . fails to meet the applicable minimum standards . . . established under ORS 181.640.

ORS.181.640(a), states, in part, “ The department shall recommend and the board shall establish by rule reasonable minimum standards of . . .moral fitness for public safety personnel . . .”

OAR 259-008-0010(6), states, in part:

Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement Officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the Officer's performance on the job which makes the Officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the Officer's ability to perform competently.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

5. Would CARTER's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?
6. Did CARTER's conduct involve dishonesty, fraud, deceit, or misrepresentation?
7. Was CARTER's conduct prejudicial to the administration of justice?
8. Would CARTER's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION REQUESTED:

Staff requests the Policy Committee review the matter and make a recommendation to the Board whether or not to revoke CARTER's certifications, based a violation of the established moral fitness standards.

Attachments

Information Only

SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case. If the Board upholds a revocation recommendation by the Policy Committee, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action in front of an Administrative Law Judge.

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Examine reports and evidence against them as a part of discovery.*
- *Face or cross-examine their accuser.*
- *Call witnesses.*
- *Appear in person.*
- *Be represented by counsel.*

The Administrative Law Judge hearing the case is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures Act. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The Judge issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix C

DATE: May 20, 2008

TO: Corrections Policy Committee

FROM: Theresa King
Professional Standards Coordinator

SUBJECT: John C. NICKLASON DPSST #49022

ISSUE:

Should John NICKLASON's certification be denied based on a discretionary disqualifying conviction, or a violation of the Moral Fitness standards defined in OAR 259-008-0010, or both?

BACKGROUND

On November 26, 2007, NICKLASON was hired by the Josephine County Sheriff's Office. On November 28, 2007, NICKLASON submitted an F5, Application for Training, to DPSST and answered "yes" to the question regarding a prior criminal conviction.⁷ NICKLASON handwrote "Aggravated Animal Abuse I 2001" on the back of this form, along with three speeding violations. In error, DPSST scheduling section did not further investigate NICKLASON's disclosed conviction. DPSST scheduled NICKLASON into Basic Corrections which he attended and successfully completed.⁸

Although the employer submitted NICKLASON's fingerprints on November 20, 2007, they were not processed by Oregon State Police Identification Section until December 28, 2007⁹, and NICKLASON had begun Basic Corrections on December 10, 2007. A subsequent LEADS check in March 2008 revealed that the actual crime that NICKLASON was convicted of was Animal Abuse in the Second Degree, and that this event occurred in 2002 and the conviction occurred in 2003¹⁰. Animal Abuse in the Second Degree is a discretionary disqualifying event. DPSST notified NICKLASON and the employing agency of the discretionary disqualifying crime and advised that this matter must be reviewed by the Corrections Policy Committee (CPC)¹¹. Both NICKLASON and the employer provided mitigating circumstances for the CPC review.¹²

CASE OVERVIEW

This case involves a 24-year old corrections officer who was convicted of Animal Abuse in the Second Degree, a Class B Misdemeanor, stemming from an incident which occurred nearly six years ago when NICKLASON was approximately 19-years old.

In this case, NICKLASON self-reported to police that he had killed a neighbor's dog. NICKLASON and the neighbor both had dogs that were not fenced in and had trespassed on one another's property in the past. Prior to this event, the neighbor's dog had mated with another dog owned by NICKLASON. Also prior to this event, NICKLASON's dog

⁷ Ex A4

⁸ Ex A1

⁹ Ex A6

¹⁰ Ex A5

¹¹ Ex A7

¹² Ex A8 – A15

had gone onto the neighbor's property and killed some chickens. During the event at issue, the neighbor's dog had just mated with NICKLASON's dog, but they had separated when NICKLASON called to them, and the neighbor's dog was not aggressive toward NICKLASON nor his family at the time NICKLASON shot it.¹³

NICKLASON was forthright with the police officer. NICKLASON was originally charged with Animal Abuse in the First Degree. This was later dismissed and NICKLASON was then charged with Animal Abuse in the Second Degree, to which he pled guilty. NICKLASON paid the court fine and restitution to the owner of the dog.

When NICKLASON applied for a corrections officer position with the Josephine County Sheriff's Office, he was forthright and honest with the background investigator, disclosing all of the required information. In his letter to the CPC, NICKLASON acknowledged his prior poor judgment call, but affirmed that he has learned from this incident. Staff requests the CPC read NICKLASON's and JCSO's staff's supporting letters in their entirety.¹⁴

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

Discretionary Criminal Conviction

OAR 259 008 0070 (3) Discretionary Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor: The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(b) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in subsection (2), in this state or any other jurisdiction. In determining whether to take action on a conviction, the Department must use the following guidelines:

(C) The Department may take action on any discretionary disqualifying conviction that occurred after January 1, 2001.

Moral Fitness

OAR 259-008-0070(3) states, in part, "The Department may deny or revoke the certification of any public safety professional . . . based upon a finding that . . .

(3) (c) "The public safety professional . . . fails to meet the applicable minimum standards . . . established under ORS 181.640.

¹³ Ex A11

¹⁴ Ex A8 – A15

ORS.181.640(a), states, in part, “ The department shall recommend and the board shall establish by rule reasonable minimum standards of . . .moral fitness for public safety personnel . . .”

OAR 259-008-0010(6), states, in part:

Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement Officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the Officer's performance on the job which makes the Officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the Officer's ability to perform competently.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Mitigating or Aggravating Circumstances:

OAR 259-008-0070(5)(d) states, in part:

(d) Policy Committee and Board Review: The Policy Committees and Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying conduct, including the following:

- (A) Was a conviction a felony, misdemeanor, or violation?
- (B) How long ago did a conviction occur?
- (C) Was the public safety professional a minor at the time and tried as an adult?
- (D) When did the conduct occur in relation to the public safety professional's employment in law enforcement (i.e., before, during, after)?
- (E) Did the public safety professional serve time in prison/jail? If so, how long?
- (F) If restitution was involved, has the public safety professional met all obligations?
- (G) Was the public safety professional on parole or probation? If so, when did the parole or probation end? Is the public safety professional still on parole or probation?
- (H) Do the actions violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(6), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation?
- (I) How many other convictions does this public safety professional have? Over what period of time?
- (J) Has the public safety professional been convicted of the same conduct more than once? Is this a repeated violation or a single occurrence?
- (K) Does the conduct involve domestic violence?
- (L) Did the public safety professional self report the conduct?

Under OAR 259-008-0010(6):

9. Would NICKLASON's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?
10. Did NICKLASON's conduct involve dishonesty, fraud, deceit, or misrepresentation?
11. Was NICKLASON's conduct prejudicial to the administration of justice?
12. Would NICKLASON's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION REQUESTED:

Staff requests the Policy Committee review the matter and make a recommendation to the Board whether or not to deny NICKLASON's certification, based on his conviction for a discretionary disqualifying misdemeanor, or a violation of the established moral fitness standards, or both.

Attachments

Information Only

SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case. If the Board upholds a revocation recommendation by the Policy Committee, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action in front of an Administrative Law Judge.

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Examine reports and evidence against them as a part of discovery.*
- *Face or cross-examine their accuser.*
- *Call witnesses.*
- *Appear in person.*
- *Be represented by counsel.*

The Administrative Law Judge hearing the case is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The Judge issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix D

DATE: May 20, 2008

TO: Corrections Policy Committee

FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Stephen H. DUNGEY DPSST #41288

ISSUE:

Should Stephen DUNGEY's Basic, Intermediate and Advanced Parole and Probation certifications be revoked based on a violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND

On September 17, 2001, DUNGEY was hired by the Jackson County Community Justice. DUNGEY subsequently obtained his Basic, Intermediate and Advanced Parole and Probation certificates.¹⁵ On October 15, 2001, DUNGEY signed his Criminal Justice Code of Ethics.¹⁶

On March 23, 2007, DUNGEY resigned during an internal investigation. DPSST requested, and received the information that led to his resignation.¹⁷

CASE OVERVIEW

This case involves a 39-year old parole and probation officer who resigned during an internal investigation which included allegations of falsifying reports of information to the district attorney's office, the court and community justice, falsifying documents entered into the statewide databases that track offender activity, failure to request warrants in a timely manner, failure to maintain accurate client records, lying to supervisors and conducting personal business while on duty. The employer's pre-disciplinary letter to DUNGEY identifies specific instances relating to their allegations.¹⁸

On July 9, 2007, DPSST mailed DUNGEY a letter advising him that his case would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.¹⁹ On July 12, 2007, DPSST received the certified mail return receipt, signed by DUNGEY.²⁰ To date DUNGEY has not provided any response.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

¹⁵ Ex A1

¹⁶ Ex A2

¹⁷ Ex A5

¹⁸ Ex A6

¹⁹ Ex A7

²⁰ Ex A8

Moral Fitness

OAR 259-008-0070(3) states, in part, “The Department may deny or revoke the certification of any public safety professional . . . based upon a finding that . . .

(3) (c) “The public safety professional . . . fails to meet the applicable minimum standards . . . established under ORS 181.640.

ORS.181.640(a), states, in part, “ The department shall recommend and the board shall establish by rule reasonable minimum standards of . . .moral fitness for public safety personnel . . .”

OAR 259-008-0010(6), states, in part:

Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement Officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the Officer's performance on the job which makes the Officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the Officer's ability to perform competently.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

13. Would DUNGEY's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?
14. Did DUNGEY's conduct involve dishonesty, fraud, deceit, or misrepresentation?
15. Was DUNGEY's conduct prejudicial to the administration of justice?
16. Would DUNGEY's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION REQUESTED:

Staff requests the Policy Committee review the matter and make a recommendation to the Board whether or not to revoke DUNGEY certifications, based a violation of the established moral fitness standards.

Attachments

Information Only

SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case. If the Board upholds a revocation recommendation by the Policy Committee, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action in front of an Administrative Law Judge.

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Examine reports and evidence against them as a part of discovery.*
- *Face or cross-examine their accuser.*
- *Call witnesses.*
- *Appear in person.*
- *Be represented by counsel.*

The Administrative Law Judge hearing the case is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The Judge issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix E

DATE: April 22, 2008

TO: Corrections Policy Committee

FROM: Bonnie Sallé
Hearing Officer

SUBJECT: Hearing Officer's Report and Recommendation
OAR 259-008-0200

The Corrections Policy Committee and Board on Public Safety Standards and Training reviewed and approved filing a proposed permanent rule with the Secretary of State's office to impose a civil penalty on public safety agencies for violations of ORS 181.644, 181.652, 181.653 and 181.665. These statutes primarily outline the requirements for Basic certification for individuals working in the criminal justice disciplines.

FINDINGS OF FACT:

1. On February 15, 2008, a Notice of Proposed Rulemaking Hearing was filed with the Secretary of State's office (see Exhibit A)
2. On March 1, 2008, the Notice of Proposed Rulemaking Hearing was published in the Secretary of State's monthly publication (Bulletin). (see Exhibit B)
3. During the month of March 2008, the Notice of Proposed Rulemaking Hearing was posted on the Department of Public Safety Standards and Training's website.
4. On March 24, 2008, a public hearing was held. Zero (-0-) individuals attended the hearing and no public testimony was given.
5. On March 24, 2008, the public comment period closed.

A total of one (1) comment was received during the open comment period. The comment is summarized below.

Comment #1: On March 14, 2008, an e-mail comment was received indicating the following:

"I would like to take this opportunity to relay my concerns regarding the DPSST proposal to enact OAR 259-008-0200 for Civil Penalties.

First let me say that I am fully supportive of DPSST's efforts at increasing professional standards in law enforcement. Revocations and denials on the state level are important and are helpful to agencies that are fighting with unions over terminations. The one local revocation that I am aware of was very appropriate and frankly long overdue. I support holding agencies accountable and to high standards. With that said, here are my concerns.

Being a new Chief of Police of a small 10-officer department, I find my duties can be overwhelming at times. Reality dictates that you develop a three to five year strategic plan to accomplish all the tasks necessary to get the department to the highest level of professionalism. I can speak from relatively new experience that keeping up with supervisor issues, policy issues, legal issues (I could go on) and a small city's endless demands on department heads, with few resources or experienced staff to rely on, can be an enormous challenge. Add to that DPSST's valid, but ongoing changes in policies and procedures, and you can easy [sic] get lost in all the issues that come across your desk. If you add a civil penalty to a small agency, you would be penalizing an agency without resources including a budget that can't absorb the fine.

My agency looks to DPSST to be a resource that helps continue our improvement and reach our goals, not to fine us. This does not mean that I don't support a Civil Penalty. My concern is in (1)(d) and section (2). I believe that Civil Penalties are appropriate only when an agency has been advised of a lack of compliance, and is making no effort to remedy their violations. This doesn't seem to be the intent of the OAR as section (2) addresses single violations, which I take to mean "one strike and you're out." I don't believe this is your intent, but it does read that way.

My suggestion is that language is added to (1)(d) and perhaps it should be incorporated into section (2) where violations can only lead to fines when an agency has a history of violations or fails to prevent recurrence of a violation."

CONCLUSION:

The Department presented the proposed rule amendment to OAR 259-008-0200 to the Corrections Policy Committee, Telecommunications Policy Committee, and Police Policy Committee. It was reviewed and discussed by all committee members from each committee and the Department received approval from all three committees to forward their recommendation to approve the proposed language for OAR 259-008-0200 to the Board.

The Department presented the proposed rule amendment to OAR 259-008-0200 to the Board. It was reviewed by Board members and the Department received approval to file the proposed amendment with the Secretary of State's office as a proposed rule.

The Department provided notice of a proposed rulemaking hearing to:

- a) The Secretary of State's office;
- b) Legislative Counsel;
- c) The agency interested parties' list; and
- d) The Department's website;

The Department received one public comment representing the interpretation of the rule by a single individual.

It is the conclusion of the hearing officer that the Department provided ample notice of the proposed rule amendment to OAR 259-008-0200 to the largest extent possible to public safety agencies and public safety personnel. One single comment was received in opposition to the rule amendment. After careful consideration of issues raised in the opposing comment, contrasted with the extensive public notice given, the single negative comment does not appear to represent a statewide concern among public safety agencies about the rule amendment as originally drafted.

HEARING OFFICER'S RECOMMENDATION: Adopt the proposed rule amending OAR 259-008-0200 as a permanent rule as originally approved by the Corrections Policy Committee and Board on Public Safety Standards and Training.

Appendix F

Date: April 22, 2008

To: Corrections Policy Committee

From: Bonnie Sallé
Rules Coordinator

Subject: OAR 259-013-0000 – Proposed Rule
Criminal Records Check Rule

Issue:

During 2007, the Oregon Legislature enacted HB 2157 relating to criminal records checks. The Department is responsible for receiving, reviewing and processing fingerprint cards and conducting criminal records checks for public safety professionals, polygraph intern or general license applicants, private security professionals, private investigators, fire service professionals, certified retired officers and candidates for election to the office of Sheriff.

Because the new legislation requires many state agencies to adopt administrative rules outlining the procedures for a criminal records check, the Department of Justice provided guidance to state agencies on the formulation of criminal records check rules. Staff has included the relevant portions of the Department of Justice's recommendations within the attached rule language as well as the new provisions relating to criminal records checks for individuals who are required to have a criminal record check prior to licensing or certification.

The attached new language for OAR 259-013-0000 through 259-013-0300 contains recommended additions (**bold and underlined**).

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-013-0000 through 259-013-0300 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-013-0000 through 259-013-0300 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses. (see form attached)

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

DIVISION 13

CRIMINAL RECORDS CHECK RULES

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DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

DIVISION 13

CRIMINAL RECORDS CHECK RULES

259-013-0000

Statement of Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to establish the reasonable screening procedures for:

(a) All public safety professionals;

(b) Instructors;

(c) Any individual who occupies a position requiring a license or certification or is under investigation by the Department; or

(d) Reissuance of a license or certificate that is issued by the Department.

(2) Authority. These rules are authorized under ORS 181.534 and 181.612.

(3) When Rules Apply. These rules are to be applied when evaluating the criminal history of a subject individual identified in (1) of this rule. The fact that a subject individual is approved does not guarantee licensure or certification.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0005

Definitions

As used in OAR chapter 259, division 013, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a criminal records check has been completed on an individual and the Department has not identified any criminal record that would make the individual ineligible for licensure or certification.

(2) "Authorized Designee" means a person who is authorized by the Department to receive, review and process criminal history information.

(3) "Conviction" means that a person was convicted in a court of law. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges. An expunged juvenile or adult record may be considered a conviction under these rules for purposes of eligibility for licensure or certification.

(4) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on a Department form, and any other information obtained by or provided to the Department. "Criminal history information" may include violations or infractions for purposes of eligibility for licensure or certification.

(5) "Criminal Records Check" means the Oregon Criminal Records Check and, when required, a National Criminal Records Check or a State-Specific Criminal Records Check, and the processes and procedures required by these rules.

(6) "Denied" means a criminal records check has been completed on an individual and the individual is ineligible to obtain licensure or certification.

(7) "Department" means the Oregon Department of Public Safety Standards and Training.

(8) "National Criminal Records Check" means obtaining and reviewing criminal records nationwide or from states or jurisdictions other than Oregon. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources.

(9) "Oregon Criminal Records Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal Records Check may also include, but is not limited to: Oregon Justice Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal records information systems, or other official law enforcement agency or court records in Oregon.

(10) "Potentially Disqualifying Crime" means a crime listed or described in OAR 259-013-0260.

(11) "Records Information" includes criminal justice records, fingerprints, court records, sexual offender registration records, warrants, arrests, DMV information, information provided on the Department's criminal records check forms, and any other information obtained by or provided to the Department for the purpose of conducting a fitness determination.

(12) "State-Specific Criminal Records Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal records information resources located in a state or jurisdiction outside Oregon.

(13) "Subject individual" means a person for whom a criminal records check is required pursuant to these rules.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0220

Individuals Subject to Criminal Records Checks

(1) The Department may require the fingerprints of:

(a) A fire service professional or volunteer;

(b) A public safety professional or instructor;

(c) A private security professional;

(d) A Private Investigator;

(e) A Certified Retired Police Officer applicant;

(f) A Polygraph Intern or General License applicant;

(g) A candidate for election to the office of Sheriff;

Stat. Auth.: ORS 181.534, 181.612 & 206.015

Stats. Implemented: ORS 181.612

259-013-0230

Criminal Records Check Required

(1) Who Conducts Check.

(a) The Department may request that the Department of State Police conduct a criminal records check on a subject individual. If a nationwide criminal records check of a subject individual is necessary, the Department may request that the Department of State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(b) The Department may conduct criminal records checks on subject individuals through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) When a public safety professional applies for, or is employed by, a law enforcement agency, the public safety professional or applicant must submit to a criminal records check as required by OAR 259-008-0010.

(b) When a person applies for a license to conduct polygraphs, the polygrapher, or applicant, must submit to a criminal records check as required by the provisions of OAR 259-0020-0010 or 259-0020-0015.

(c) When a person applies for certification as a certified retired officer, the applicant must submit to a criminal records check as required by the provisions of OAR 259-008-0068.

(d) When a person is elected or appointed to the Office of Sheriff, the applicant must submit to a criminal records check as required by the provisions of OAR 259-008-0075.

(e) When a person applies for a private security certificate or license, the applicant must submit to a criminal records check as required by the provisions of OAR 259-060-0120.

(f) When a person applies for a private investigator license, the applicant must submit to a criminal records check as required by the provisions of OAR 259-061-0070.

(g) When a person is an instructor for the Department who is not certified as a public safety professional.

(h) When a check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department;

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0235

Refusal to Consent to a Criminal records Check

(1) If any subject individual refuses to consent to a criminal records check, or refuses to be fingerprinted when required, the Department may revoke or deny any application, license or certificate issued by the Department.

259-013-0240

Oregon Criminal Records Check Process

(1) Processing.

(a) The Department will obtain criminal records information from the Oregon State Police Law Enforcement Data System and from other sources of criminal, judicial and motor vehicle information.

(b) The Department will authorize one or more designees to receive and evaluate Oregon criminal records information from the Oregon State Police as allowed by applicable statutes.

(c) A subject individual may be required to obtain and provide additional criminal, judicial or other background information to the Department or its authorized designee.

(d) Criminal records information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and OAR Chapter 257, Division 15.

(2) Additional Information Required. The Department may require additional information from a subject individual in order to conduct an Oregon Criminal Record Check. The information may include, but is not limited to, proof of identity, residential history, names used while living at each residence, or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0250

National Criminal Records Check Process

(1) National Criminal Records Check. In addition to an Oregon criminal records check (OAR 259-013-0250), the Department may require a national criminal records check consistent with the requirements for licensure or certification.

(2) Processing. The individual must complete and submit fingerprint card(s) when requested by the Department.

(3) Additional Information Required. In order to conduct a national check, the Department may require additional information such as, but not limited to, proof of identity, residential history, names used while living at each residence, or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0260

Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and may include offenses that are classified as violations or infractions for purposes of eligibility for licensure or certification. (See ORS 161.505 through 161.565).

(1) Any crime or offense listed in OAR 259-008-0070;

(2) Any crime listed in OAR 259-008-0070;

(3) Any crime listed in OAR 259-060-0015;

(4) Any crime listed in OAR 259-061-0040.

(5) Any federal crime.

(6) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule.

(7) Any other felony in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule.

(8) Any crime or offense in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes identified in this section or as determined by an authorized designee of the Department.

(9) Any crime adopted by the Legislature that is the substantial equivalent of any of the crimes listed in this section.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0270

Record Keeping, Confidentiality

(1) LEADS Reports.

(a) Confidentiality. All LEADS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEADS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access.

(i) The subject individual must be allowed to inspect the LEDS report if the subject individual requests to see it. The LEDS report, and photocopies of the LEDS report, must not be given to the subject individual, with the following exception:

(ii) If a fingerprint-based criminal records check was conducted on the subject individual, then the individual shall not only be permitted to inspect the individual's own state and national criminal offender records in the custody of the Department, but if requested by the individual, be provided with a copy of those same records.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination.

(A) National criminal information provided by the FBI is confidential and may not be disseminated by the Department, with the following exception:

(B) If a fingerprint-based criminal records check was conducted on the subject individual, then the subject individual shall not only be permitted to inspect the individual's own state and national criminal offender records in the custody of the Department, but if requested by the subject individual, be provided with a copy of those same records.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) Fingerprint Cards:

(a) The Federal Bureau of Investigation (FBI) must return or destroy the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. If the FBI policy authorizing return or destruction of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the FBI but shall continue to process the information through other available resources.

(b) If the FBI returns the fingerprint cards to the Department of State Police, the department must destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(c) The Department of State Police may retain or destroy fingerprint cards after a criminal records check is completed and the results of the criminal records check is provided to the Department in accordance with rules adopted and procedures established by the Department of State Police.

(d) If only a state criminal records check is conducted, the Department of State Police may retain or destroy the fingerprint cards after the criminal records check is completed and the results of the criminal records check are provided to the Department in accordance with rules adopted and procedures established by the Department of State Police.

Stat. Auth.: ORS 181.534 & 181.612
Stats. Implemented: ORS 181.612

Immunity from Liability

The Department and its authorized designees have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.612 that a subject may not obtain or maintain a license or certificate issued by the department, or be employed. The Department or its employee acting within the course and scope of employment who in good faith complies with ORS 181.534 is not liable for employment-related decisions based on the fitness determination. No Department, or an employee of the state, the Department, a business or an organization acting within the course and scope of employment, is liable for defamation, invasion of privacy, negligence or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.534.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

259-013-0290

Appeal Process

(1) If an individual has been convicted of a potentially disqualifying crime, the Department will proceed in accordance with the relevant process for denial or revocation identified in either OAR 259-008-0070, 259-009-0070, 259-020-0031, 259-060-0300 or 259-061-0040.

(2) An individual may appeal a determination of the Department in accordance with the applicable rules identified in subsection (1) of this section.

259-013-0300

Fees

Fees may not exceed the actual cost of acquiring and furnishing criminal offender information.

Stat. Auth.: ORS 181.534 & 181.612

Stats. Implemented: ORS 181.612

Appendix G

Date: April 22, 2008
To: Corrections Policy Committee
From: Bonnie Sallé
Rules Coordinator
Subject: OAR 259-008-0060 – Proposed Rule
Creditable Service Time

Issue:

All corrections officers are required to obtain certification within 12 months pursuant to ORS 181.652. If an officer fails to obtain certification within this timeframe, the officer is prohibited by law from being employed as a correctional officer. However, the Department does not currently have a rule in place to indicate that an officer will not receive creditable service time if the officer continues to be employed with an agency when the time to obtain certification has expired. The Department seeks to identify those instances when an individual will not be eligible to accrue creditable service time and when the Department will “stop the clock” when a public safety officer is on leave of absence.

The following revised language for OAR 259-001-0060 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0060

* * *

(11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, **creditable service time for experience will cease to accrue under the following circumstances:**

(A) When an individual is employed in a casual, seasonal, or temporary **capacity;** ~~employment shall not qualify as experience toward certification. Experience~~

(B) When an individual is on “leave.” This includes, but is not limited to, medical leave, a leave of absence or military leave;

(C) Notwithstanding section (B) of this rule, a public safety professional may submit a written request for credit for military time served upon return from a military leave. The Department may approve credit for military time served if the public safety professional’s military duties are determined to be equivalent to the duties the public safety professional was performing prior to the public safety professional’s military leave. Any credit received for time served will be at the discretion of the Department.

(D) From the date a public safety professional's certification is recalled until it is reinstated by the Department;

(E) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional;

(b) Experience acquired as a certified part-time parole and probation officer, as defined under OAR 259-008-0005(22) and (23) and OAR 259-008-0066, shall count on a pro-rated basis.

~~(b)~~ **(c)** Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

~~(c)~~ **(d)** Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses. (see form attached)