

Corrections Policy Committee

Minutes (Draft)

November 18, 2008

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, November 18, 2008 scheduled for 9:00 a.m. in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Todd Anderson called the meeting to order at 9:50 a.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriff's Association, Chair
Brian Belleque, Designee for Director of Department of Corrections
Scott Brewen, Department of Corrections Training Division Director
Bryan Goodman, Non-Management Corrections Officer
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
Michael Gower, Department of Corrections Security Manager
Raimond Adgers, Oregon Sheriff's Jail Command Council

Committee Members Absent:

Shane Hagey, Oregon Assoc. of Community Corrections Directors

Guests:

Charles Peters, Oregon State Penitentiary
Carl Miller, Oregon State Penitentiary
Chris VanCleave, Snake River Correctional Institution
Brenda Britton
Erik Douglass, Marion County Sheriff's Office

DPSST Staff:

Marilyn Lorange, Certification and Records Supervisor
Bonnie Salle-Narvaez, Certification Coordinator
Theresa King, Professional Standards Coordinator
Steve Winegar, Research and Development
Cameron Campbell, Director of Training
Ryan Keck, Training Coordinator
Jan Myers, Training Coordinator
Carolyn Kendrick, Administrative Specialist



Staff requested that agenda item number 18 be moved to number 11 so that all revocation and denial cases are considered together. The committee agreed.

The Department of Corrections requested that agenda item 6 be moved to the next policy committee meeting due to the ongoing investigation in which Mr. Peters has yet to have due process on. The committee agreed.

1. Minutes (August 19, 2008)

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

See Appendix A for details.

Marie Tyler moved to approve the minutes of the August 19, 2008 Corrections Policy Committee meeting. Mitchell Southwick seconded the motion. The motion carried unanimously by all present.

2. Amy McBride (a.k.a. Amy Zepeda) – DPSST #39980

Presented by Theresa King

See Appendix B for details.

Bryan Goodman moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Marie Tyler seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? **Felony use of methamphetamine, history of drug use, and failure to complete due process.***
- b. What specific grounds do the facts relate to? **Mandatory disqualifying conduct and moral fitness as stated in OAR 259-008-0010(6)(b).***
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? **The committee agreed there is enough evidence, along with MCBRIDE'S admitted use of methamphetamines, that MCBRIDE did engage in this conduct.***
- d. Does the conduct constitute grounds for revocation? **The committee agreed MCBRIDE'S conduct does constitute grounds for revocation.***
- e. Does the conduct rise to the level that warrants revocation? **The committee agreed MCBRIDE'S conduct does rise to the level that warrants revocation.***

Mitchell Southwick moved to recommend to the board the revocation of Amy MCBRIDE'S (a.k.a. Amy Zepeda) certification based on a violation of the moral fitness standard and mandatory disqualifying conduct. Raimond Adgers seconded the motion. The motion carried unanimously by all present.

3. James D. Hepler – DPSST #26930

Presented by Theresa King

See Appendix C for details.

Ida Rovers stated for the record that she would abstain from voting as she works with James Hepler.

Michael Gower moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Marie Tyler seconded the motion. The motion carried unanimously by all present with Ida Rovers abstaining.

By discussion and consensus:

- a. What conduct is at issue? *Untruthfulness at time of arrest and discretionary disqualifying conviction.*
- b. What specific grounds do the facts relate to? *Moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that HEPLER did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed HEPLER'S conduct could constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation?

Bryan Goodman moved not to recommend to the board the revocation of James HEPLER'S certifications. Thomas Wright seconded the motion. The motion carried in a 6 – 3 vote with Todd Anderson, Raimond Adgers, and Marie Tyler voting no and Ida Rovers abstaining.

4. **Chris J. VanCleave – DPSST #32795**

Presented by Theresa King

See Appendix D for details.

Marie Tyler moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Brian Belleque seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Trespassing and discretionary disqualifying conviction.*
- b. What specific grounds do the facts relate to? *Moral fitness as stated in OAR 259-008-0010(6)(b), multiple police contacts, and the discretionary disqualifying conviction.*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that VANCLEAVE did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed VANCLEAVE'S conduct could constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee took into consideration the mitigating factors such as completion of restitution and keeping his record clean.*

Michael Gower moved not to recommend the revocation of Chris J. VANCLEAVE'S certifications. Bryan Goodman seconded the motion. The motion carried in a 7-3 vote with Raimond Adgers, Marie Tyler and Mitchell Southwick voting no.

5. **Koren V. Stills – DPSST #39797**

Presented by Theresa King

See Appendix E for details

Brian Belleque moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Marie Tyler seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Untruthfulness, drug trafficking, and providing contraband to inmates.*

- b. What specific grounds do the facts relate to? *Moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that STILLS did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed STILLS' conduct does constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee agreed STILLS' conduct does rise to the level that warrants revocation.*

Raimond Adgers moved to recommend to the board the revocation of Koren V. STILLS' certification based on a violation of the moral fitness standard. Marie Tyler seconded the motion. The motion carried unanimously by all present.

6. Charles Peters – DPSST #24999 – This item was removed from this agenda and will be placed on the agenda for the February 17, 2009 Corrections Policy Committee meeting.

7. Monte McKague – DPSST #44165

Presented by Theresa King

See Appendix F for details

Bryan Goodman moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Marie Tyler seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Disorderly conduct, resisting police, and mental health issues.*
- b. What specific grounds do the facts relate to? *Discretionary disqualifying conduct as stated in OAR 259-008-0070(3) and moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that MCKAGUE did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed MCKAGUE'S conduct could constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee agreed MCKAGUE'S conduct does rise to the level that warrants revocation.*

Scott Brewen moved to recommend to the board the revocation of Monte MCKAGUE'S certifications based on a violation of the moral fitness standard and the discretionary disqualifying conviction. Brian Belleque seconded the motion. The motion carried unanimously by all present.

8. Marcello Monares – DPSST #39814

Presented by Theresa King

See Exhibit G for details

Michael Gower moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Marie Tyler seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Intimate relationship with an inmate, truthfulness, and attempted resist of arrest.*
- b. What specific grounds do the facts relate to? *Discretionary disqualifying conviction as stated in OAR 259-008-0070(3) and moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that MONARES did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed that MONARES' conduct does constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee agreed that MONARES' conduct does rise to the level that warrants revocation.*

Marie Tyler moved to recommend to the board the revocation of Marcello MONARES' certifications based on a violation of the moral fitness standard and the discretionary disqualifying conviction. Ida Rovers seconded the motion. The motion carried unanimously by all present.

9. **George Ogden – DPSST #26505**

Presented by Theresa King

See Exhibit H for details

Mitchell Southwick moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Brian Belleque seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Failure to report DUI's, truthfulness, probation violations, non-compliance of court orders.*
- b. What specific grounds do the facts relate to? *Discretionary disqualifying conviction as stated in OAR 259-008-0070(3) and moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that OGDEN did engage in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed that OGDEN'S conduct does constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee agreed that OGDEN'S conduct does rise to the level that warrants revocation.*

Marie Tyler moved to recommend to the board the revocation of George OGDEN'S certifications based on a violation of the moral fitness standard and the discretionary disqualifying conviction. Raimond Adgers seconded the motion. The motion carried unanimously by all present.

10. **Aaron N. Whitmore – DPSST #31225**

Presented by Theresa King

See Exhibit I for details

Marie Tyler moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Brian Belleque seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Truthfulness and withholding of information from investigators during an investigation.*
- b. What specific grounds do the facts relate to? *Moral fitness as stated in OAR 259-008-0010(6)(b) and prejudice in the administration of justice.*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find WHITMORE engaged in this conduct.*
- d. Does the conduct constitute grounds for revocation? *The committee agreed that WHITMORE'S conduct does constitute grounds for revocation.*
- e. Does the conduct rise to the level that warrants revocation? *The committee agreed that WHITMORE'S conduct does rise to the level that warrants revocation.*

Brian Belleque moved to recommend to the board the revocation of Aaron N. WHITEMORE'S certifications based on a violation of the moral fitness standard. Raimond Adgers seconded the motion. The motion carried unanimously by all present.

11. Joel M. Pyle – DPSST #49555

Presented by Theresa King

See Exhibit J for details.

Marie Tyler moved that the committee adopt the staff report and related documents as the record on which the recommendation is based. Michael Gower seconded the motion. The motion carried unanimously by all present.

By discussion and consensus:

- a. What conduct is at issue? *Sexual harassment, untruthfulness, and pattern of behavior.*
- b. What specific grounds do the facts relate to? *Moral fitness as stated in OAR 259-008-0010(6)(b).*
- c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct? *The committee agreed there is enough evidence to find that PYLE did engage in this conduct.*
- d. Does the conduct constitute grounds for denial? *The committee agreed that PYLE'S conduct does constitute grounds for denial of training and subsequent certification.*
- e. Does the conduct rise to the level that warrants denial? *The committee agreed that PYLE'S conduct does rise to the level that warrants denial of training and subsequent certification.*

Bryan Goodman stated for the record he would abstain from voting as he supervises Joel Pyle.

Brian Belleque moved to recommend to the board the denial of training and subsequent certification for Joel M. PYLE. Marie Tyler seconded the motion. The motion carried unanimously by all present with Brian Goodman abstaining.

The committee broke session for lunch at 12:00 p.m. and reconvened at 12:36 p.m.

12. OAD 259-001-0005 – Proposed Rule

Housekeeping Changes to Administrative Rulemaking Process
Presented by Bonnie Salle-Narvaez

See Exhibit K for details.

Marie Tyler moved to recommend filing the proposed language 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

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

13. OAD 259-008-0010(8) – Proposed Rule

Requirement of physical examination after separation due to physical inability to perform essential tasks of a law enforcement officer.
Presented by Bonnie Salle-Narvaez

See Exhibit L for details.

Mitchell Southwick moved to recommend filing the proposed language with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Michael Gower seconded the motion. The motion carried unanimously by all present.

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

14. OAD 259-008-0020 – Proposed Rule

Issuance of DPSST Numbers
Presented by Bonnie Salle-Narvaez

See Exhibit M for details.

Staff advised the committee that the Police Policy Committee requested clarification on wording and about their concerns regarding a fiscal impact on some of the systems they use. The Corrections Policy Committee agreed and requested more information and time to meet with their colleagues on the impact this proposed rule may have.

Michael Gower moved to table OAD 259-008-0020 until the next meeting on February 17, 2009. Raimond Adgers seconded the motion. The motion carried unanimously by all present.

15. OAD 259-008-0025 – Proposed Rule

Career Officer Development Course – Remediation
Presented by Bonnie Salle-Narvaez

See Exhibit N for details.

Michael Gower moved to recommend filing the proposed language of OAD 259-008-0025 with the Secretary of State as a temporary rule, a permanent rule, and as a permanent rule if no comments are received. Brian Belleque seconded the motion. The motion carried unanimously by all present.

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

16. OAR 259-008-0060 – Proposed Rule

College Credit – Basic Training Conversion
Presented by Bonnie Salle-Narvaez

See Exhibit O for details.

Brian Belleque moved to recommend filing the proposed language of OAR 259-008-0060 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.

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

17. Convene in Executive Session

Discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether medical waivers for Karl Johnson and Brian Kinney should be recommended to the Board

18. Reconvene in Regular Session

Take final action regarding a determination of whether medical waivers for Karl Johnson and Brian Kinney should be recommended to the Board

See Exhibit P and Q for details.

Karl Johnson:

Brian Belleque moved to recommend approval to the Board for a waiver of the visual acuity standard and depth perception standard for Karl Johnson. Marie Tyler seconded the motion. The motion carried unanimously by all present.

Brian Kinney:

Mitchell Southwick moved to recommend approval to the Board for a waiver of the color vision standard for Brian Kinney. Ida Rovers seconded the motion. The motion failed in a 3-7 vote with Todd Anderson, Raimond Adgers, Brian Belleque, Bryan Goodman, Michael Gower, Marie Tyler, and Thomas Wright voting no. There was no subsequent motion

19. ORPAT for Corrections – Additional Analysis

Discussion and Alternatives for Standards
Presented by Steve Winegar

See Exhibit R for details.

After extensive discussion, Marie Tyler moved to table any decision about implementing an ORPAT standard indefinitely to allow more time to collect sufficient data. Michael Gower seconded the motion. The motion carried unanimously by all present.

20. Next Regularly Scheduled Meeting

Tuesday, February 17, 2009 at 1:30p.m.

With no further business before the committee, the meeting was adjourned at 2:32 p.m.

Appendix A

Corrections Policy Committee Minutes (Draft) August 19, 2008

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, August 19, 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 1:34 p.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriffs' Association, Chair
Brian Belleque, Designee for Director of Department of Corrections
Scott Brewen, Department of Corrections Training Division Director
Bryan Goodman, Non-Management Corrections Officer
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:

Raimond Adgers, Oregon Sheriff's Jail Command Council
Michael Gower, Department of Corrections Security Manager
Shane Hagey, Oregon Assoc. of Community Corrections Directors

Guests:

Cheryl Pellegrini, Attorney General's Office
Reyes Daniel Romayor, Jr.

DPSST Staff:

Eriks Gabliks, Deputy Director
Carolyn Kendrick, Administrative Specialist
Marilyn Lorange, Certification and Records Supervisor
Bonnie Salle, Certification Coordinator
Theresa King, Professional Standards Coordinator
Steve Winegar, Research and Development
Kristen Turley, Standards and Compliance Coordinator
Cameron Campbell, Director of Training
Ryan Keck, Training Coordinator



21. Minutes (May 20, 2008)

Approve the minutes of the May 20, 2008 Corrections Policy Committee meeting.

See Appendix A for details.

Marie Tyler moved to approve the minutes of the May 20, 2008 Corrections Policy Committee meeting. Bryan Goodman seconded the motion. The motion carried unanimously by all voting.

22. OAR 259-008-0010 – Hearing Officer’s Report

Denial or Revocation of Certification

Presented by Bonnie Salle-Narvaez

See Appendix B(1-3) for details.

Mitchell Southwick moved to adopt the proposed rule language previously submitted to the Corrections Policy Committee, amending OAR 259-008-0010, as a permanent rule. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

23. OAR 259-008-0070 – Hearing Officer’s Report

Denial or Revocation of Certification

Presented by Bonnie Salle-Narvaez

See Appendix C(1-3) for details.

Brian Belleque moved to adopt the attached version of the proposed rules amending OAR 259-008-0070 as a permanent rule with the identified additional modifications to the original proposed rule language. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

24. Convene in Executive Session

The committee convened in executive session at 1:50 p.m. to discuss matters exempt from disclosure under ORS 92.662(2)(f) related to whether a medical waiver should or should not be granted for Brian Kinney.

25. Reconvene in Regular Session

The committee reconvened in regular session at 2:07 p.m. to determine whether or not to recommend approval to the Board for a waiver of the color vision standard for Brian Kinney.

See Appendix D for details

Marie Tyler moved to recommend getting clarification on documents that appear to be in disagreement with each other. Ida Rovers seconded the motion.

Brian Belleque stated that both the doctor’s evaluation as well as the field test have contradicting information and need to be clarified.

The motion carried unanimously by all voting.

26. Johnny Hawkins – DPSST #26585

Presented by Theresa King

See Appendix E for details

Convene in Executive Session

The committee convened in executive session at 2:13 p.m. to discuss matters exempt from disclosure under ORS 92.662(2)(f) related to medical issues related Johnny Hawkins’ case.

Reconvene in Regular Session

The committee reconvened in regular session at 2:17 p.m.

Brian Belleque stated for the record that since Johnny Hawkins is an employee of the Oregon State Penitentiary, he would abstain from voting.

1. The Corrections Policy Committee ***adopts*** the Staff report as the record upon which its recommendations are based.

Marie Tyler moved to adopt the staff report as the record upon which the Corrections Policy Committee recommendations are based. Scott Brewen seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.

2. The Corrections Policy Committee believes:
 - a. HAWKINS' actions ***do*** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land ***based on the illegal use of marijuana, lying, and driving under the influence.***
 - b. HAWKINS' conduct ***did*** involve ***dishonesty***, fraud, ***deceit***, or misrepresentation ***based on the illegal and undisclosed use of marijuana.***
 - c. HAWKINS' conduct ***was not*** prejudicial to the administration of justice.
 - d. HAWKINS' conduct ***did*** adversely reflect on his fitness to perform as a corrections officer ***based on illegal use of marijuana and probable lack of integrity regarding issues in his past.***
 - e. HAWKINS' actions ***do*** make him inefficient or otherwise unfit to render effective service because of the agency and the public's loss of confidence in his ability to perform competently ***based on deceitful use of marijuana and driving under the influence.***

Marie Tyler moved the committee believes that HAWKINS' actions do cause a reasonable person to have doubts about honesty, respect for the rights of others and respect for the laws of the land; HAWKINS' conduct did involve dishonesty, fraud and deceit; did not believe HAWKINS' conduct was not prejudicial to the administration of justice; and HAWKINS' conduct did adversely reflect and make him inefficient to perform as a corrections officer. Ida Rover seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.

3. The Corrections Policy Committee finds HAWKINS' conduct ***does*** rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that HAWKINS' certifications ***be revoked.***

Mitchell Southwick moved that the committee finds HAWKINS' conduct does rise to the level to warrant the revocation of his certification, and therefore recommends to the Board that Hawkins' certifications be revoked. Thomas Wright seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.

27. Dylan Michael Sims (a.k.a. Lon Jay Sims) – DPSST #41912

Presented by Theresa King

See Appendix F for details

1. The Corrections Policy Committee **adopts** the staff report as the record upon which its recommendations are based.

Bryan Goodman moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.

2. The Corrections Policy Committee believes:

- a. SIMS' actions **do** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land **based on lack of respect of rights of others, honesty, and respect for the laws of the land.**
- b. SIMS' conduct **did** involve dishonesty, fraud, deceit, or misrepresentation **based on inappropriate use of agency equipment, unreported inappropriate relationship with paroled sex offender, and driving with suspended license which was also unreported to supervisor.**
- c. SIMS' conduct **was** prejudicial to the administration of justice.
- d. SIMS' conduct **did** adversely reflect on his fitness to perform as a corrections officer **based on SIMS' statement refusing to protect or come to the aid of a coworker if they were being beaten by an inmate.**
- e. SIMS' actions **do** make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.

Bryan Goodman moved that SIMS' actions do cause a reasonable person to have doubts about his honesty, respect for the rights of others, and the laws of the land; that SIMS' conduct did involve dishonesty, fraud, and misrepresentation; that SIMS' conduct was prejudicial to the administration of justice; that SIMS' conduct did adversely reflect on his fitness to perform as a corrections officer; and that SIMS' actions do make him inefficient or otherwise unfit to render effective service because of the agency and public's loss of confidence in his ability to perform competently. Scott Brewen seconded the motion. The motion carried unanimously by all voting.

3. The Corrections Policy Committee finds SIMS' conduct **does** rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that SIMS' certifications **be revoked.**

Bryan Goodman moved that the Corrections Policy Committee finds SIMS' conduct does rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that SIMS' certifications be revoked. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

28. Reyes Daniel Romayor, Jr. – DPSST #38561

Presented by Theresa King

See Exhibit G for details

1. The Corrections Policy Committee **adopts** the staff report as the record upon which its recommendations are based.

Bryan Goodman moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.

2. The Corrections Policy Committee believes:
 - a. ROMAYOR'S actions **do** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land **based on deceitful translation for an officer, continued incidences with police, plus his two convictions.**
 - b. ROMAYOR'S conduct **did** involve dishonesty, fraud, deceit, or misrepresentation **based on his offer to help which was actually interference in an investigation.**
 - c. ROMAYOR'S conduct **was** prejudicial to the administration of justice **based on his translation for an officer and an involved party in which he advised said party not to tell the police anything.**
 - d. ROMAYOR'S conduct **did** adversely reflect on his fitness to perform as a corrections officer.
 - e. ROMAYOR'S actions **do** make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently **based on stated incidents above and the fact an adjoining state agency called with their concern about ROMAYOR'S conduct.**

Brian Belleque moved that ROMAYOR'S actions do cause a reasonable person to have doubts about his honesty, respect for the rights of others and the laws of the land; that ROMAYOR'S conduct did involve dishonesty, and misrepresentation; that ROMAYOR'S conduct was prejudicial to the administration of justice; that ROMAYOR'S conduct did adversely reflect on his fitness to perform as a corrections officer and do make him inefficient or otherwise unfit to render effective service because of the agency and public's loss of confidence in his ability to perform competently. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

- a. After a review of any mitigating and aggravating circumstances cited in the above "discretionary disqualifying convictions" section:
 - a. ROMAYOR'S case **contains** mitigating circumstances **based on ROMAYOR'S meeting restitution obligations and the letter he had written taking responsibility for his actions.**
 - b. ROMAYOR'S case **contains** aggravating circumstances **based on continued behavior after writing letter of apology, as well as his role in interpretation for officer.**

Marie Tyler moved that the Corrections Police Committee agrees there are both mitigating and aggravating circumstances. Brian Belleque seconded the motion. The motion carried unanimously by all voting.

- b. The Corrections Policy Committee finds ROMAYOR'S conduct *does* rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that ROMAYOR'S certifications *be revoked*, and his Intermediate Corrections certification *be denied*.

Brian Belleque moved that the Corrections Policy Committee finds ROMAYOR'S conduct does rise to the level to warrant the revocation of his Basic Corrections certifications, and therefore recommends to the Board that ROMAYOR'S certifications be revoked and his Intermediate Corrections certification be denied based upon moral turpitude and the discretionary disqualifying conviction. Mitchell Southwick seconded the motion. The motion carried unanimously by all voting.

29. Paul D. Cuff – DPSST #24364

Presented by Theresa King

See Exhibit H for details

For the record, Marie Tyler stated that Paul Cuff is a former employee of hers and asked if that disqualified her from voting. Staff stated she could vote if Marie felt she could be objective in the matter. Marie stated she indeed could and would be objective regarding this case.

1. The Corrections Policy Committee *adopts* the Staff report as the record upon which its recommendations are based.

Mitchell Southwick moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.

2. The Corrections Policy Committee believes:
 - a. CUFF'S actions *do* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land *based on his untruthfulness about the work log and perusing pornography while on duty.*
 - b. CUFF'S conduct *did* involve dishonesty, fraud, deceit, or misrepresentation *based on the fact that he said he was making his rounds when he was not.*
 - c. CUFF'S conduct *was* prejudicial to the administration of justice *based on the fact that he was supposed to be providing a safe environment for the inmates when in reality he lied about making his rounds.*
 - d. CUFF'S conduct *did* adversely reflect on his fitness to perform as a corrections officer *based on the fact he lied about working when he was not.*
 - e. CUFF'S actions *do* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently *based on the fact he lied about working when he was not.*

Mitchell Southwick moved that the Corrections Policy Committee believes that CUFF'S conduct does cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land; that CUFF'S conduct did involve dishonesty, fraud, and misrepresentation; that CUFF'S conduct was prejudicial to the administration of justice; and CUFF'S conduct did adversely reflect and make him

inefficient and unfit to perform as a corrections officer. Marie Tyler seconded the motion. The motion carried unanimously by all voting.

3. The Corrections Policy Committee finds CUFF'S conduct *does* rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that CUFF'S certifications *be revoked*.

Mitchell Southwick moved that the Corrections Policy Committee finds CUFF'S conduct rises to the level to warrant the revocation of his certifications, and recommends to the Board that CUFF'S certifications be revoked. Scott Brewen seconded the motion. The motion carried unanimously by all voting.

30. ORPAT for Corrections

Presented by Steve Winegar

See Exhibit I for details

Staff stated the average time difference between DOC and the counties is approximately 25 seconds. Part of the issue is counties pretest upon hiring, whereas DOC does not. The question for the Corrections Policy Committee is whether a fitness standard should be set, and if so, the time DPSST can defend is eight minutes for entry level basic corrections. Committee members stated that the sheriff's and jail commanders are not pleased with the numbers and don't agree that it is an accurate interpretation due to the class ratio of 70:30 DOC to county.

If DPSST sets a standard, it becomes a liability for the counties due their lower ORPAT time standard already in place for hiring. Part of the problem is DOC does not implement ORPAT upon hiring whereas the counties do. Student preparedness prior to entering the academy makes a dramatic difference in ORPAT times.

Staff proposed separating the counties' numbers from DOC's. The issue with doing that is there are not sufficient numbers to be statistically significant.

Committee members said this information may be valuable for DOC in considering establishing entry level testing which could prompt people to take the time standard more seriously.

Staff will provide the committee with separated numbers via email.

31. Next Regularly Scheduled Meeting – November 18, 2008

Due to the number of cases to be brought before committee in November, staff requests the November 18, 2008 meeting be broken into two sessions: morning session from 10:00am to noon; and the afternoon session from 1:00pm until finished. Committee members suggested starting earlier at 9:00am. Staff stated that the materials will be sent out in volumes to enable enough time for committee members to review the cases.

Therefore, the next regularly scheduled meeting will be November 18, 2008 from 9:00am-12:00pm and 1:00pm until finished.

With no further business before the committee, Brian Belleque moved the meeting be adjourned. Thomas Wright seconded the motion. The motion carried unanimously adjourning the meeting at 4:01 p.m.

Appendix B

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Amy MCBRIDE aka Amy ZEPEDA DPSST #39980

ISSUE:

Should Amy MCBRIDE's Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to McBRIDE:

On September 18, 2000, MCBRIDE was hired by the Oregon Department of Corrections as corrections officer.

On January 10, 2001, MCBRIDE signed an F-11, Criminal Justice Code of Ethics.

On August 21, 2001, MCBRIDE was granted her Basic Corrections Certification.

On April 30, 2007, MCBRIDE resigned in lieu of termination from the Oregon Department of Corrections.

On July 11, 2008, DPSST requested a copy of the underlying investigation that led to the resignation and subsequently received the requested documents. These documents included:

- 1. ODOC Investigative Report that revealed McBRIDE had used crystal methamphetamine within the prior two weeks of her arrest for a domestic violence assault.*
- 2. A pre-dismissal notification for the methamphetamine use.*
- 3. A memo of McBRIDE's resignation.*

DPSST sought the arrest and disposition records relating to the domestic violence assault arrest. This charge was ultimately dismissed.

On July 31, 2008, DPSST mailed MCBRIDE a letter advising her that her case would be heard before the Corrections Policy Committee and allowing her an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On July 3, 2008, DPSST received the Certified Mail return receipt. On August 4, 2008, DPSST received a Certified Mail return receipt.

On August 25, 2008, MCBRIDE sent a letter for the Policy Committee Review. Staff asks that the CPC review this in its entirety.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke MCBRIDE's certification, based on violation of the established moral fitness standards using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: James D. HEPLER DPSST #26930

ISSUE:

Should James HEPLER's Basic and Intermediate Corrections certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or on the discretionary disqualifying conviction, or both?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to HEPLER:

On June 9, 1980, HEPLER was hired by the Oregon Department of Corrections as corrections officer.

On April 23, 1992, HEPLER was granted his Basic Corrections Certification.

On October 12, 1999, HEPLER was granted his Intermediate Corrections Certification.

On October 28, 2005, DPSST received information on HEPLER's arrest for DUII, which resulted in a diversion.

On April 11, 2008, DPSST was notified by the employer that HEPLER had been convicted of DUII.

On June 16, 2008, DPSST mailed HEPLER a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On June 30, 2008, DPSST received the Certified Mail return receipt.

On or about June 16, 2008, DPSST received a letter from HEPLER along with letters of support and appreciation. Staff asks that the Committee members read these documents in their entirety.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

Discretionary Disqualifying Convictions:

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

(I) Was the conviction a felony, misdemeanor, or violation?

(II) How long ago did the conviction occur? (refer to the matrix)

(III) Was the person a minor at the time and tried as an adult?

(IV) Did it occur before, during, after, or in between employment in law enforcement?

(V) Did the individual serve time in prison/jail? If so, how long?

(VI) If restitution was involved, has the person met all obligations?

(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?

(VIII) Are there any aggravating or mitigating circumstances that should be considered?

(IX) Do the actions violate the rule definition of moral fitness (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 individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?

(X) How many other convictions does this person have? Over what period of time?

(XI) Has this person been convicted of this same crime more than once?

(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period))?

(XIII) Does this conviction involve any domestic violence situation?

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke HEPLER's certifications, based on violation of the established moral fitness standards, or the discretionary disqualifying conviction, or both, using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit D

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Chris J. VANCLEAVE DPSST #32795

ISSUE:

Should Chris J. VANCLEAVE's Basic and Intermediate Corrections certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or on the discretionary disqualifying conviction, or both?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to VANCLEAVE:

On April 1, 1996, VANCLEAVE was hired by the Oregon Department of Corrections as corrections officer.

On December 11, 1996, VANCLEAVE signed an F-11, Criminal Justice Code of Ethics.

On May 26, 1997, VANCLEAVE was granted his Basic Corrections Certification

On June 5, 2003 VANCLEAVE was granted his Intermediate Corrections Certification.

On August 15, 2006, DPSST was advised that VANCLEAVE was arrested for DUII. DPSST subsequently received the judgment from the court on the DUII conviction.

On August 25, 2008, DPSST requested a copy of the incident report and received the requested documents.

DPSST also received documentation from the employer regarding the arrest. VANCLEAVE received discipline for the DUII conviction which consisted of a suspension without pay and removal from the TERT team.

DPSST received notification from the employer that VANCLEAVE had received a citation for Trespass which occurred in September 2006. DPSST requested and received the incident report relating to this incident. VANCLEAVE received a "withheld judgment" and once he completed the terms of this Order, the charge was dismissed.

On June 17, 2008, DPSST mailed VANCLEAVE a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On July 3, 2008, DPSST received the Certified Mail return receipt. On July 9, 2008, DPSST staff spoke with VANCLEAVE on the telephone and once it was determined that he had been off work due to an injury, and therefore had not received the letter, he was granted an additional thirty (30) days for his response to the CPC.

On or about July 27, 2008, DPSST received a letter from VANCLEAVE along with letters of apology, proof of completion a Drug and Alcohol Treatment Program, and letters of support and appreciation, as well as his training record.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

Discretionary Disqualifying Convictions:

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

(I) Was the conviction a felony, misdemeanor, or violation?

(II) How long ago did the conviction occur? (refer to the matrix)

(III) Was the person a minor at the time and tried as an adult?

(IV) Did it occur before, during, after, or in between employment in law enforcement?

(V) Did the individual serve time in prison/jail? If so, how long?

(VI) If restitution was involved, has the person met all obligations?

(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?

(VIII) Are there any aggravating or mitigating circumstances that should be considered?

(IX) Do the actions violate the rule definition of moral fitness (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 individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?

(X) How many other convictions does this person have? Over what period of time?

(XI) Has this person been convicted of this same crime more than once?

(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period))?

(XIII) Does this conviction involve any domestic violence situation?

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke VANCLEAVE's certifications, based on violation of the established moral fitness standards, or the discretionary disqualifying conviction, or both, using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? *(The Committee should articulate what conduct they are considering.)*
 - b. What specific grounds do the facts relate to? *(The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.)*
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? *(There may be one or more separate events.)*
 - e. Does the conduct rise to the level that warrants revocation? *(The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.)*
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit E

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Koren V. STILLS DPSST #39797

ISSUE:

Should Koren STILLS Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to STILLS:

On August 28, 2000, STILLS was hired by the Oregon Department of Corrections (DOC) as a corrections officer.

On November 6, 2000, STILLS signed an F-11, Criminal Justice Code of Ethics.

On July 3, 2001, STILLS was granted a Basic Corrections certification.

On June 19, 2008, STILLS resigned during an investigation.

On July 11, 2008, DPSST mailed a letter to the employer requesting information. Subsequent to this, DPSST received the requested information.

These documents include:

- 1. A three-page Notice of Pre-dismissal letter.*
- 2. A two-page training record.*
- 3. A two-page Performance Evaluation.*
- 4. A DOC Code of Ethics.*
- 5. A four-page Investigative Report.*
- 6. 10-page transcription of STILLS' interview.*
- 7. Fax cover and 19-page incident report, forensic laboratory results and related documents.*

On July 31, 2008, DPSST mailed STILLS a letter advising her that her case would be heard before the Corrections Policy Committee and allowing her an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

On August 6, 2008, DPSST received the Certified Mail return receipt. To date STILLS has not provided a 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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke STILL'S' certification, based on violation of the established moral fitness standards using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit F

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Monte MCKAGUE, DPSST #44165

ISSUE:

Should Monte MCKAGUE's Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or on the discretionary disqualifying conviction, or both?

Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to MCKAGUE:

On December 15, 2003, MCKAGUE was hired by Oregon Department of Corrections (DOC) as a corrections officer.

On May 14, 2004, MCKAGUE signed an F-11, Criminal Justice Code of Ethics.

On December 2, 2004, MCKAGUE was granted his Basic Corrections Certification.

On June 27, 2006, the employer notified DPSST that MCKAGUE had been arrested for Disorderly Conduct and Resisting Arrest. This included the following:

- 1. Cover fax*
- 2. Pendleton Police Routing Slip*
- 3. 4-page Incident Report – vehicle vandalizing*
- 4. 3-pg Action Taken – resisting arrest and disorderly*
- 5. 4-pg Action Taken – vehicle of wife vandalized, suicide issues*
- 6. 2-pg Arrest Report*
- 7. Administrative Leave letter.*

On July 5, 2006, DPSST mailed a letter to the City of Pendleton Prosecutor seeking a Stipulated Order as a part of any plea agreement.

On April 17, 2007, DPSST requested and received information from the employer on their internal investigation of MCKAGUE's misconduct. This included the following:

- 1. Cover fax*
- 2. 3-page disciplinary letter*
- 3. Administrative Leave letter*
- 4. 2-page Email containing personal medical information*

On June 29, 2007, DPSST received court documents showing a conviction on the Disorderly Conduct and that the Resisting Arrest was dismissed.

On June 17, 2008, DPSST mailed MCKAGUE a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

On July 7, 2008, DPSST received the Certified Mail return receipt. To date MCKAGUE has not provided a 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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

Discretionary Disqualifying Convictions:

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

(I) Was the conviction a felony, misdemeanor, or violation?

(II) How long ago did the conviction occur? (refer to the matrix)

(III) Was the person a minor at the time and tried as an adult?

(IV) Did it occur before, during, after, or in between employment in law enforcement?

(V) Did the individual serve time in prison/jail? If so, how long?

(VI) If restitution was involved, has the person met all obligations?

(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?

(VIII) Are there any aggravating or mitigating circumstances that should be considered?

(IX) Do the actions violate the rule definition of moral fitness (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

individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?

(X) How many other convictions does this person have? Over what period of time?

(XI) Has this person been convicted of this same crime more than once?

(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period))?

(XIII) Does this conviction involve any domestic violence situation?

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke MCKAGUE's certification, based on violation of the established moral fitness standards, or the discretionary disqualifying conviction, or both, using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? *(The Committee should articulate what conduct they are considering.)*
 - b. What specific grounds do the facts relate to? *(The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.)*
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? *(There may be one or more separate events.)*
 - e. Does the conduct rise to the level that warrants revocation? *(The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.)*
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit G

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Marcello MONARES, DPSST #39814

ISSUE:

Should Marcello MONARES' Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or on the discretionary disqualifying conviction, or both?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to MONARES:

On August 16, 2000, MONARES was hired by Washington County Community Corrections (WCCC) as corrections officer.

On September 28, 2000, MONARES signed an F-11, Criminal Justice Code of Ethics.

October 12, 2001, MONARES was granted his Basic Corrections Certification.

On May 9, 2008, the employer notified DPSST that MONARES had been convicted of Attempted Resisting Arrest. This conviction was verified through OJIN.

On June 11, 2008, MONARES resigned in lieu of termination from WCCC.

On July 14, 2008, DPSST requested a copy of the incident report and received the requested documents. These documents include:

- 1. Cover letter indicating resignation in lieu of termination.*
- 2. Four-page pre-disciplinary letter from RITCHEY to MONARES describing misconduct including involvement in an intimate relationship with a former resident of the institution, untruthfulness about the relationship, and an incident that led to a conviction of attempt to resist arrest.*

On August 4, 2008, DPSST mailed MONARES a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

On August 8, 2008, DPSST received the Certified Mail return receipt. To date MONARES has not provided a response.

On August 25, 2008, DPSST requested a copy of the incident report on the Attempted Resisting Arrest conviction and received the requested documents.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

Discretionary Disqualifying Convictions:

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

(I) Was the conviction a felony, misdemeanor, or violation?

(II) How long ago did the conviction occur? (refer to the matrix)

(III) Was the person a minor at the time and tried as an adult?

(IV) Did it occur before, during, after, or in between employment in law enforcement?

(V) Did the individual serve time in prison/jail? If so, how long?

(VI) If restitution was involved, has the person met all obligations?

(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?

(VIII) Are there any aggravating or mitigating circumstances that should be considered?

(IX) Do the actions violate the rule definition of moral fitness (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 individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?

(X) How many other convictions does this person have? Over what period of time?

(XI) Has this person been convicted of this same crime more than once?

(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period))?

(XIII) Does this conviction involve any domestic violence situation?

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke MONARES' certification, based on violation of the established moral fitness standards, or the discretionary disqualifying conviction, or both, using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit H

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: George OGDEN - DPSST #26505

ISSUE:

Should George OGDEN's Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or on the discretionary disqualifying conviction, or both?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to OGDEN:

On August 27, 1984, OGDEN was hired by the Oregon Department of Corrections as corrections officer.

On December 16, 1997, OGDEN was granted his Basic Corrections Certification.

On June 17, 2008, DPSST received a F4. Personnel Action Report showing OGDEN had retired. A routine records check revealed that OGDEN had a 2006 DUII conviction that had not been reported to DPSST.

On August 25, 2008, DPSST requested a copy of OGDEN's judgment of conviction. This was subsequently received.

On September 3, 2008, DPSST requested a copy of the incident report and received the requested documents.

On July 31, 2008, DPSST mailed OGDEN a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

On August 6, 2008, DPSST received the Certified Mail return receipt. To date DPSST has not received a response from OGDEN.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

Discretionary Disqualifying Convictions:

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

(I) Was the conviction a felony, misdemeanor, or violation?

(II) How long ago did the conviction occur? (refer to the matrix)

(III) Was the person a minor at the time and tried as an adult?

(IV) Did it occur before, during, after, or in between employment in law enforcement?

(V) Did the individual serve time in prison/jail? If so, how long?

(VI) If restitution was involved, has the person met all obligations?

(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?

(VIII) Are there any aggravating or mitigating circumstances that should be considered?

(IX) Do the actions violate the rule definition of moral fitness (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 individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?

(X) How many other convictions does this person have? Over what period of time?

(XI) Has this person been convicted of this same crime more than once?

(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period))?

(XIII) Does this conviction involve any domestic violence situation?"

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke OGDEN's certification, based on violation of the established moral fitness standards, or the discretionary disqualifying conviction, or both, using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.

2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit I

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Aaron N. WHITMORE DPSST #31225

ISSUE:

Should Aaron N. WHITMORE's Basic and Intermediate Corrections certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to WHITMORE:

On June 10, 1995, WHITMORE was hired by the Yamhill County Sheriff's Office (YCSO) as a corrections officer.

On May 28, 2006, WHITMORE signed an F-11, Criminal Justice Code of Ethics.

On January 7, 1998, WHITMORE was granted his Basic Corrections Certification

On June 2, 2006, WHITMORE was granted his Intermediate Corrections Certification.

On July 6, 2007, WHITMORE resigned from YCSO.

On July 20, 2007, DPSST requested information from YCSO relating to WHITMORE's resignation during an internal investigation. Subsequent to this DPSST received the requested information. These documents include:

- 1. A three-page internal investigation.*
- 2. A ten-page criminal investigation.*

On June 17, 2008, DPSST mailed WHITMORE a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On July 8, 2008, DPSST received the Certified Mail returned, "Unclaimed". The regular mail was not returned to DPSST. To date DPSST has not received a response from WHITMORE.

On August 25, 2008, DPSST sent an inquiry to the Yamhill County District Attorney's Office to determine the status of any pending criminal charges; OJIN showed no activity on this case. To date DPSST has received no information from the District Attorney's office.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently."

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke WHITMORE's certifications, based on violation of the established moral fitness standards using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and applicable discretionary disqualifying crimes, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for revocation? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants revocation? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)
3. By *vote*, the Committee *recommends/does not recommend* revocation.

Exhibit J

Department of Public Safety Standards and Training Memorandum

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Joel M. Pyle DPSST #49555

ISSUE:

Should Joel PYLE's Basic Corrections training and subsequent certification be denied based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to PYLE :

On April 21, 2008, PYLE was hired by the Oregon Department of Corrections (DOC) as corrections officer.

On April 25, 2008, PYLE was admitted to the DPSST Basic Corrections Academy.

On July 9, 2008, PYLE signed an F11, Criminal Justice Code of Ethics.

On July 15, 2008, PYLE was suspended from the DPSST Basic Corrections Academy after an investigation revealed that he violated the Academy Student Rules and Regulations.

On July 23, 2008, DOC prepared a new F5, Application for Training, requesting that PYLE return to training. With this application PYLE submitted a new F11, Criminal Justice Code of Ethics.

On August 4, 2008, and again on September 22, 2008, DOC mailed a letter to Director Minnis requesting that PYLE be re-admitted to the DPSST Basic Corrections Academy.

DPSST Standards and Certification Professional Standards Section sought and obtained a copy of the DPSST Academy Training Division's investigation. After a review of the fact pattern, a determination was made that this case must go before the Corrections Police Committee for review and recommendation whether to deny the request for training and subsequent certification. These documents include:

- 1. A 2-page dismissal letter from Captain Rau to PYLE which cites administrative rules relating to suspension and dismissal from the DPSST Academy.*
- 2. A 7-page memo which outlines inappropriate comments made by PYLE and summarizes his responses during his interview by Academy Training staff.*

On October 1, 2008, DPSST mailed PYLE a letter advising him that his case would be heard before the Corrections Policy Committee and allowing him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. This letter was also sent in an email to PYLE and his employer.

On October 6, 2008, DPSST received the Certified Mail return receipt.

On October 2, 2008, DPSST addressed inquires from Bryan Goodman, Oregon Department of Corrections, regarding the letter that was sent to PYLE and the subsequent process.

On October 3, 2008, Human Resource Manger Nass, Oregon Department of Corrections, provided DPSST a letter of on behalf of PYLE identifying remedial training conducted.

On October 15, 2008, Lt. David Beal, Oregon Department of Corrections, provided DPSST a memorandum for the Policy Committee Review. Staff asks that the CPC review these materials in their entirety.

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct, which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

(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:

...

(c) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640. (moral fitness)

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.

...

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

Moral Fitness

OAR 259-008-0010(6) states, in part, “All law enforcement officers must be of good moral fitness. Moral fitness is described as:

(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 law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently.”

ACTION REQUESTED:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to deny PYLE's training and subsequent certification, based on violation of the established moral fitness standards using the following guidelines:

1. By *vote*, the Committee *does/does not* adopt the staff report and related documents as the record on which the recommendation is based.
2. By *discussion and consensus*:
 - a. What conduct is at issue? (*The Committee should articulate what conduct they are considering.*)
 - b. What specific grounds do the facts relate to? (*The Committee should compare the conduct with the established moral fitness standards in OAR 259-008-0010, and articulate which subsection(s) apply.*)
 - c. Is there enough evidence to find, by a preponderance, that the officer engaged in this conduct?
 - d. Does the conduct constitute grounds for denial? (*There may be one or more separate events.*)
 - e. Does the conduct rise to the level that warrants denial? (*The Committee should articulate the mitigating or aggravating circumstances they considered when reaching this determination.*)

By *vote*, the Committee *recommends/does not recommend* denial of Pyle's training and subsequent certification.

Exhibit K

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Rules Coordinator

Subject: OAR 259-001-0005 – Proposed Rule
Housekeeping Changes to Administrative Rulemaking Process

Issue: The Department of Justice (DOJ) has recommended amending OAR 259-001-0005 to include a reference to statutory language that retains the Department's ability to adopt the Attorney General's Model Rules without a formal rulemaking process.

DOJ has also recommended clarifying the Department's requirement to provide notice to interested parties as part of the proposed *permanent* rulemaking process. The Department is not currently required to provide notice to interested parties when filing temporary rules because temporary rules are not part of the proposed *permanent* rulemaking process.

The following revised language for OAR 259-001-0005 contains recommended additions (**bold and underlined**).

259-001-0005

Notice to Interested Persons on Proposals to Adopt, Amend, or Repeal any Administrative Rule Affecting Police Officers, Corrections Officers, or Parole and Probation Officers, Telecommunicators, Emergency Medical Dispatchers, Fire Service Professionals, Law Enforcement Units, and Public or Private Safety Agencies as Defined in ORS 181.610

In accordance with ORS 183.341(4), **and except as provided in ORS 183.341(1)**, to provide a reasonable opportunity for interested persons to be notified of the proposed actions affecting police officers, corrections officers, parole and probation officers, telecommunicators, emergency medical dispatchers, fire service professionals, law enforcement units, or public or private safety agencies, the Board and the Department shall give notice of the proposed **permanent** adoption, amendment, or repeal of rule(s):

(1) At least twenty-one (21) days prior to the effective date of the intended action, in the Secretary of State's Bulletin referred to in ORS 183.360.

* * *

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-001-0005 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-001-0005 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.

Exhibit L

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Rules Coordinator

Subject: OAR 259-008-0010(8) – Proposed Rule
Requirement of Physical Examination after separation due to physical inability to perform essential tasks of a law enforcement officer

Issue: The Department is responsible for ensuring all newly hired law enforcement officers meet minimum physical standards to perform the essential tasks of a law enforcement officer. Current law requires that the Department lapse the certification of a law enforcement officer on the 91st day after the officer separates employment from a certifiable position. Prior to 2006, all officers were required to complete an F-2 medical examination when employed, or re-employed, regardless of whether they were currently certified in this or another jurisdiction. A rule change was previously approved by the Board in October 2005, and became effective in 2006, that allowed certified law enforcement officers who separated from employment to return to a full-time, certifiable, position without completing a new physical examination if they return to employment within the 90 day period prior to lapsing. However, there are occasions when the reason an officer has separated from employment is due to a physical inability to perform the essential tasks of the position.

Staff is recommending an amendment to the current rule to require a law enforcement officer who is separated from employment due to a physical inability to perform the essential tasks of the position to complete a new F-2 (Physical Examination) if seeking re-employment or retired police officer certification, even if the officer's certification has not yet lapsed. This proposed rule would still allow an individual or agency to submit a request for a medical waiver under the normal waiver process.

The following revised language for OAR 259-008-0020 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~). For ease of review, only the relevant rule portions have been provided.

Minimum Standards for Employment as a Law Enforcement Officer

259-008-0010

* * *

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) **Except as provided in (e) below,** ~~the~~ Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position or applying for certified retired officer status.

* * *

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.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

Exhibit M

Department of Public Safety Standards and Training Memo

Date: October 18, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Rules Coordinator

Subject: OAD 259-008-0020 – Proposed Rule
Issuance of DPSST Number

Issue: The Department is responsible for issuing a DPSST number to all newly appointed public safety professionals. However, the Department often receives personnel action reports for non-public safety personnel, some of whom may be eligible to obtain a DPSST number.

Staff recommends amending the current rule to clarify those instances when a DPSST number will be issued, when a DPSST number may not be issued and the process for requesting a DPSST number for a non-public safety employee.

The following revised language for OAD 259-008-0020 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0020

Personnel Action Reports

(1) All law enforcement units and public or private safety agencies ~~shall furnish to the Department~~ **must submit** the name, address, and other pertinent information concerning any newly appointed public safety professional **to the Department** on a Personnel Action Report (DPSST Form F-4) within ten (10) business days after employment.

(a) A Department (DPSST) number will be established for each newly appointed employee identified on a Personnel Action Report (DPSST Form F-4) if:

(A) The individual is employed in a certifiable position as a police officer, corrections officer, parole and probation officer, telecommunicator or emergency medical dispatcher;

(B) The individual is employed as a reserve police officer; or

(C) An individual's employer has submitted a written request identifying a demonstrated law enforcement need for an employee to obtain a DPSST number and the Department has approved the request. These positions may include, but are not limited to:

(i) An individual granted Federal Arrest Powers by the Department;

(ii) An individual who operates an Intoxilyzer or other law enforcement device for which a DPSST number is necessary; or

(iii) An individual who is required to file a police or other criminal justice report for which a DPSST number is necessary.

(b) No DPSST number will be assigned to an individual who has not been identified as a newly appointed public safety professional unless approved by the Department.

(2) Whenever public safety personnel resign, retire, or terminate employment, are promoted, demoted, discharged, deceased, take a leave of absence, or transfer within a law enforcement unit, or private or public safety agency, the department head shall report this information to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days of the action.

(3) All applicable sections of the Personnel Action Report (DPSST Form F-4) must be completed and signed by the department head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Report (DPSST Form F-4) their social security number. The social security number is used to accurately identify the applicant during computerized criminal history (CCH) and Department record checks and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

[ED. NOTE: Forms referenced are available from the agency.]

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0020 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0020 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.

Exhibit N

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Subject: OAR 259-008-0025 – Proposed Rule
Career Officer Development Course – Remediation

Background: The Executive Committee met on September 11, 2008 and reviewed staff's request for policy to address the appropriate course of action to take when an individual fails to successfully pass a Career Officer Development Course.

The Executive Committee determined that an individual who failed to successfully complete a COD Course would be given one opportunity to re-test within 60 days or be required to attend the full Basic Course. The Executive Committee also approved the development of proposed rule language to reflect the implementation of this policy. (see **Attachment "A"**)

Staff is also requesting the policy committee's consideration of filing the proposed language as a temporary rule while the permanent rulemaking process is taking place.

The following revised language for OAR 259-008-0060 contains recommended additions (**bold and underlined**) and deletions (~~striketrough text~~). For ease of review, only the relevant portion of text has been provided.

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers shall satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion shall be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual shall be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610, subsections (5), (13) and (14), and OAR 259-008-0005, subsections (7), (19), (23), and (24), during the last five (5) years or more, shall satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and 259-008-0005(14) and (32) for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant shall provide proof of successful completion of prior equivalent training.

(C) The applicant shall provide documentation of the course content with hour and subject breakdown.

(D) The applicant shall obtain a minimum passing score on all written examinations for the course.

(E) The applicant shall demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant shall only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14), and OAR 259-008-0005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years shall complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course shall begin training at an academy operated by the Department within 90 days of their initial date of employment. A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) Training on the law, theory, policies and practices related to vehicle pursuit driving and vehicle pursuit training exercises shall be included in the basic course for police officers.

(A) This requirement is subject to the availability of appropriate facilities and funding.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2 1/2) and five (5) years, shall satisfactorily complete the Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course ~~shall~~ **must** also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing tests score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position shall satisfactorily complete the prescribed Supervision Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed a prescribed Supervision Course, within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete the prescribed Middle Management Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed a prescribed middle management course within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, shall be trained on how to investigate and report cases of missing children.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs shall be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a temporary rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule.

ACTION ITEM 3: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 4: Determine whether there is a significant fiscal impact on small businesses.

Exhibit O

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Rules Coordinator
Subject: OAR 259-008-0060 – Proposed Rule
College Credit – Basic Training Conversion

Issue: The Department currently allows public safety personnel to convert college education credits into training credit when applying for upper levels of certification.

The Department also provides Basic Police and Basic Corrections students the opportunity to obtain college credits for successfully completing the Basic Courses. Recent rule changes have eliminated the past practice of officers claiming both educational credit and training credit for the same training event. The current rule allows for a unilateral 1:20 ratio for conversion, which means the Department can grant 20 training hours for each college credit converted to training or deduct 20 training hours for each college credit obtained from training, whichever is to the advantage of an individual applying for upper levels of certification.

Based on information from Oregon community colleges, the 1:20 ratio in DPSST's rule has been determined to be appropriate for "practical" or "skills based training, because it is comparable to the general ratios the colleges use. However, community colleges typically grant credit for "academic" learning at an approximate ratio of one credit per 10 hours of comparable learning.

Conversion at a 1:20 ratio for basic police and basic corrections students who receive college credit for successfully completing the Basic Course currently results in deducting a disproportionate number of training hours than are granted for either the Basic Police or Basic Corrections courses.

For example, the following list depicts current training hours given for course completion, as well as the number of eligible college credits a student may apply for and the current conversion of credits to training utilizing a 1:20 ratio conversion.

Basic Course	Total Training Hours	# College Credits	Conversion of credits to training hours:
Basic Police	640 hours	21	(21 credits x 20 trg. Hours = 420 hours)
Basic Corrections	200 hours	12	(12 credits x 20 trg. Hours = 240 hours)

Staff is proposing to adopt the following conversion table to represent the deductions to be made from any training hours converted from college credit earned during attendance at the Basic Police or Basic Corrections course when applied toward upper levels of certification:

Program	Transferable Credit (convert at 1:10)	Non-Transferable credit (convert at 1:20)	Total Training Hour Deduction
Basic Police	9 (90)	12 (240)	330
Basic Corrections	6 (60)	6 (120)	180

Staff also recommends amending the current rule to clarify those instances when staff will convert transferable credits at a ratio of 1:10, and when staff will convert non-transferable credits at a ratio of 1:20.

The following revised language for OAR 259-008-0060 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~). For ease of review, only the relevant portion of text has been provided.

259-008-0060

Public Safety Officer Certification

* * *

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the ~~total number of training hours for which~~ **number of** college credits ~~was awarded~~ **based on training attended**.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

~~(c)~~ **(g)** Notwithstanding subsection ~~(f)~~ **(e)** and ~~(g)~~ **(f)** above, no credit can be applied toward both an education credit and training point when originating from the same training event.

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).

Exhibit P

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Subject: Medical Waiver – Karl Johnson

Issue: Multnomah County Sheriff's Office (MCSO) is supporting a request for a waiver of the medical requirements for Parole and Probation Officer Karl Johnson. OAR 259-008-0010(8)(j) allows the Board to "waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers.

Background: The MCSO is requesting a review of the visual acuity standard for Officer Johnson. As part of the hiring process, Officer Johnson was referred to Cascade Occupational Medicine Clinic on February 12, 2008 for a physical examination (see **Exhibit B**). His examination revealed deficiencies in the areas of visual acuity and depth perception. Because he did not meet the minimum requirements for depth perception he was referred to an eye specialist. On April 17, 2008, Officer Johnson had another eye exam performed by Valentin Ardeleanu, O.D. While his findings indicated that he did not meet the depth perception vision standard, he did state in the comment section, "his best corrected vision with contacts is 20/25 in his right eye and 20/40 in his left eye. His stereo acuity with these contacts is 100 seconds of arc." (see **Exhibit C**).

Dr. Guitteau indicated on the medical examination that "applicant doesn't meet visual acuity or depth perception standards. He is advised to see eye doctor to see if this is correctable." On page eight (8) of the medical examination, Dr. Guitteau indicated Officer Johnson has a condition which suggests further examination and indicated the applicant has a physical condition that would prevent him from performing the essential functions/tasks of the job (see boxes 31 and 32 of physical examination).

The MCSO indicated in its letter of July 22, 2008 that Officer Johnson has scarring on his left cornea and has been working diligently with his ophthalmologist. The MCSO indicated Officer Johnson has succeeded in correcting his depth perception and his visual acuity has improved from 20/50 to 20/40 in his left eye and according to his ophthalmologist this is Officer Johnson's best corrected vision. The MCSO is requesting a waiver of the depth perception requirement to allow Officer Johnson the opportunity to pursue a career as a public safety officer because he has been employed as a Juvenile Counselor, Community Justice Manager and a Basic Office Safety Trainer and the MCSO believes Officer Johnson can perform all the duties required in the position of a parole/probation officer. (see **Exhibit A**)

Information Request: Staff has contacted Dr. Ardeleanu by telephone and letter (see **Exhibit D**) requesting that he respond to questions about Officer Johnson's ability to perform the essential tasks of a parole and probation officer. Staff has received no response to date, but will provide an update to the Committee during the November 18 meeting.

Item #1: OAR 259-008-0010(8)(a)(C) requires that applicants depth perception shall be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

Officer Johnson's initial depth perception results on February 12, 2008, was:

"50 seconds of arc "titmus machine" 5 out of 9 stereo depth." (see **Exhibit B**).

A follow-up test conducted by Valentin Ardeleanu, O.D., indicated Officer Johnson's stereo acuity with his contacts is 100 seconds of arc (see **Exhibit C**).

Multnomah County is requesting a waiver to the depth perception standard because they believe that Officer Johnson's depth perception loss will not interfere with, or compromise, the safety of the public or Officer Johnson.

Item #2: OAR 259-008-0010 requires that an applicant's corrected vision must be at least 20/30 (Snellen) in each eye.

Officer Johnson's initial eye exam results on February 12, 2008 was:

Corrected Visual Acuity	L 20/50	R 20/30
Uncorrected Visual Acuity	L 20/200	R 20/200

A follow-up test conducted by Valentin Ardeleanu, O.D. indicated Officer Johnson's best corrected vision with contacts is:

Corrected Visual Acuity	L 20/40	R 20/25
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Because Officer Johnson's vision in his left eye cannot be corrected any further, he does not meet the minimum standard for visual acuity.

Correspondence from the Multnomah County Department of Community Justice and Officer Johnson's physician, are attached.

ACTION ITEM #1: The Committee needs to determine whether they will recommend approval to the Board for a waiver of the visual acuity standard for Officer Johnson.

ACTION ITEM #2: The Committee needs to determine whether they will recommend approval to the Board for a waiver of the depth perception standard for Officer Johnson so he can attend the next available Basic Corrections Course.

Attachment "A" – Letter from MCDOCJ, dated 7/22/08

Attachment "B" – DPSST Form F-2 (Physical Examination)

Attachment "C" – Medical Examination by Valentin Ardeleanu, Ophthalmologist

Attachment "D" – Letter to Dr. Ardeleanu, dated 10/20/08

Exhibit Q

Department of Public Safety Standards and Training Memo

Date: October 21, 2008
To: Corrections Policy Committee
From: Bonnie Sallé-Narváez
Subject: Medical Waiver – Brian Kinney

Issue: Department of Corrections (DOC) is supporting a request for a waiver of the medical requirements for Correctional Officer Brian Kinney. OAR 259-008-0010(8)(j) allows the Board to "waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers.

Background: The DOC is requesting a review of the visual acuity standard for Mr. Kinney. As part of the hiring process, Mr. Kinney was referred to Physician's Primary Care Center on December 6, 2007 for a physical examination (see **Exhibit B**). His examination revealed a deficiency in the area of color vision. His examination revealed he correctly read three of the first 13 plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

On December 18, 2007, a color vision field test for corrections officers was conducted. Officer Kinney was noted to be able to demonstrate the ability to correctly identify color clothing during daylight, darkness and low lighting conditions. However, he was unable to demonstrate the ability to correctly identify the color status lights during darkness. The evaluator noted he, "failed and partially passed offender screen." (see **Exhibit "C"**)

On August 3, 2007, Officer Kinney's physician indicated, "Brian can see primary colors. He is color deficient only." (see **Exhibit D**)

On March 14, 2008, the DOC administered a color vision field test to Officer Kinney. He was able to correctly identify the color of clothing during daylight and darkness, or low lighting conditions. However, he was not able to successfully demonstrate the ability to correctly identify the color status lights during daylight or the color of inmate tattoos during darkness, clear weather or low lighting conditions. (see **Exhibit E**).

Corrections Policy Committee Review: On August 19, 2008, the Corrections Policy Committee met and reviewed Officer Kinney's request for a medical waiver. The Committee recommended getting additional information about the two field tests submitted by DOC because the field tests had conflicting information that needed to be clarified. Staff advised DOC of the Committee's recommendation and requested additional information. (see **Exhibit F**)

Follow-Up Information Submitted: On October 10, 2008, the Department of Corrections submitted additional information from Mr. Kinney's Optometrist that indicated the following:

- a) Officer Kinney was given an Ishihara color vision test and was determined to be "poor at discriminating small differences in hues in the red, orange, yellow, green region of the spectrum." (see Exhibit G)
- b) Officer Kinney was given two color vision field tests in two different locations. The first one was administered in the Human Resource Office and the second one was administered inside

the institution in the Institutional Security Manager's Office. The tests were conducted on different dates and had differing results when distinguishing the differences between staff and inmate in both light and limited visibility conditions; identifying the color of inmate tattoos during limited visibility (low light) conditions and in describing all color lights and color buttons available on each indicator panel during limited visibility (low light) conditions. Additionally, when Mr. Kinney was asked to identify the colors of Forest Service Uniform Colors (tan, forest green, yellow, dark green, green, blue stripe), he mixed the green and tan colors when tested on 12/17/07, but passed when tested on 3/14/078. (see **Exhibit G**)

DOC noted that Officer Kinney's current driver's license has no restrictions and he has been accident free for 15 years. (see **Exhibit G**)

Item #1: DOC is requesting a waiver of the color vision standard because they believe that Mr. Kinney "is capable of completing the position duties of a Correctional Officer and has demonstrated the ability to sufficiently discriminate colors while testing and during employment." (see **Exhibit A and G**)

ACTION ITEM #1: The Committee needs to determine whether they will recommend approval to the Board for a waiver of the color vision standard for Brian Kinney.

Attachment "A" – Letter from DOC, dated 4/8/08

Attachment "B" – DPSST Form F-2 (Physical Examination)

Attachment "C" – Color Vision Field Test, dated 12/18/07

Attachment "D" – Medical Examination by Ryan Nielson, O.D

Attachment "E" – Color Vision Field Test, dated 3/14/08.

Attachment "F" – Letter to DOC requesting additional information, dated 8/20/08

Attachment "G" – Letter to DPSST from DOC, dated 10/10/08

Exhibit R

**Department of Public Safety Standards and Training
Memorandum**

DATE: November 18, 2008
TO: Corrections Policy Committee
FROM: Steve Winegar
Curriculum Unit
SUBJECT: ORPAT for Corrections
Additional Analysis
Discussion and Alternatives for Standards

Background: The Corrections Policy Committee has expressed interest in adopting a legally defensible standard for completion of the ORPAT as part of the Basic Corrections Academy course requirements.

Issues:

Comparison of Department of Corrections Officers and Local Agency Officers

DPSST staff conducted additional review of ORPAT completion times for students at the Basic Corrections Academy course, comparing the completion times for Department of Corrections’ (referred to as DOC in this report) officers and those officers not employed by the Department of Corrections (referred to as local agencies in this report).

At the request of members of the Committee, data from the past two years were analyzed. The reasoning behind this request is that many local agencies have adopted an ORPAT completion standard as part of their hiring process, and those standards should impact average ORPAT completion times for local agency officers. To address this request, the ORPAT times used for this analysis were times for officers attending the Basic Corrections Academy course who were hired on or after July 1, 2006. The students included those who were part of Basic Corrections Class #233 which graduated August 8, 2008.

ORPAT Completion Times for DOC vs. Local Agencies – Change over Time

The ORPAT completion times for Basic Corrections students have increased slightly over the past several years. DPSST staff earlier analyzed ORPAT data from Basic Corrections Academy classes between 2000 (class 151) and 2004 (class 197).

Comparing the data from nearly 5 years of classes from 2000 through 2004 and data for corrections officers hired during the past two years, the average completion time has increased from 319 seconds (5 minutes 19 seconds) to 331 seconds (5 minutes 31 seconds), an increase of 12 seconds. The standard deviation increased from 75 seconds to 84 seconds; this means the range of completion times for the recently hired officers is more spread out than for the earlier hired group of officers. Comparing DOC and local agency officers for the past two years, the data show that DOC officers tend to complete ORPAT in slower times than local agency officers. The table below shows the analysis of the various sets of data:

	2000 through 2004		Hired after 07/01/06	
	Total Seconds	Minutes/seconds	Total Seconds	Minutes/seconds

Mean (average) ORPAT time	319	5:19	331	5:31
Standard Deviation time	75	1:15	84	1:24
Mean + 2 std. dev. time	469	7:49	499	8:19
DOC Officers				
Mean (average) ORPAT time			345	5:45
Standard Deviation time			84	1:24
Local Agency Officers				
Mean (average) ORPAT time			306	5:06
Standard Deviation time			79	1:19

Establishing a Minimum Standard of Physical Fitness for Corrections Officers

The Corrections Policy Committee has expressed the desire to develop a “qualification standard” for completion of ORPAT for Basic Corrections Academy students, and the Committee would then make a recommendation to the Board for adoption.

DPSST staff reviewed ORPAT data for Basic Corrections Academy students, their employment/retention status, data beginning early 2004 on deficiencies during training at the Academy, and since January 2007 injuries during training. We have analyzed ORPAT data from a disparate impact perspective, success on the job and success in training (no deficiencies), in an effort to establish what a “reasonable minimum standard” might be.

Disparate Impact Analysis

Below is a summary of ORPAT completion times for students in the Basic Corrections Academy classes at DPSST from 2000 (Basic Corrections Class 151) through 2008 (Basic Corrections Class 233). This data is based on over 2400 students.

ORPAT Time at Entry to Academy (Pre-Test Time)

Mean (average) time (324)	5:25
standard deviation (80)	1:21
Mean plus two standard deviations (484)	8:07

In order to establish a qualification standard that does not have adverse impact on any protected class, the passing rate of any protected class must be at least 4/5 (80%) of the passing rate for the highest passing group. To meet this requirement the qualification standard time for ORPAT for Basic Corrections Academy students the qualification standard time would have to be about the mean (average) time plus two (2) standard deviations which is eight minutes seven seconds (8:07). Statistically this means that “on average” if you had 100 students take the test, about 96 would meet or exceed the standard. (For purposes of analysis for this paper we conducted all analysis using eight minutes.)

It is important to recognize that adverse impact is usually the first level of analysis used to evaluate tests used for SCREENING APPLICANTS FOR EMPLOYMENT. The data that DPSST has on ORPAT completion times is for STUDENTS in the Basic Corrections Academy. These students may or may not represent the level of physical fitness of all APPLICANTS for corrections jobs, so any

standard recommended to the Board may NOT be a reasonable standard for screening applicants for employment.

DPSST staff performed the basic “4/5 test” utilizing ORPAT data only from those officers hired after 7/1/2006 to determine if a lower “qualification standard” could be established based on more recent numbers. The below tables examined both the proposed 480 second (8 minutes) qualification standard and the 330 second (5 minutes 30 seconds) qualification standard that was adopted for police.

Using 8 minute ORPAT completion standard:

	Total Number	Male Pass Rate	Female Pass Rate
DOC Officers	410	324	86
Number passing at 480	383	319	64
Percentage passing at 480	93%	98%	74%*
4/5 male pass rate			79%
Local Agency Officers	241	194	47
Number passing at 480	233	191	42
Percentage passing at 480	97%	98%	89%*
4/5 male pass rate			79%

Note: The number with asterisk “*” must be greater than the number in the shaded cell in order to avoid adverse impact

Using 5 minutes 30 second ORPAT completion standard:

	Total Number	Male Pass Rate	Female Pass Rate
DOC Officers	410	324	86
Number passing at 330	217	212	5
Percentage passing at 330	53%	65%	6%*
4/5 male pass rate			52%
Local Agency Officers	241	194	47
Number passing at 330	176	167	9
Percentage passing at 330	73%	86%	19%*
4/5 male pass rate			69%

Note: The number with asterisk “*” must be greater than the number in the shaded cell in order to avoid adverse impact

Using the data from a combination of all recently hired students from DOC and local agencies (since 7/1/2006) there is no adverse impact based on gender when a qualification standard of 480 seconds is used. Examining only local agency officers, there is no adverse impact based on gender if you reduce a qualification time to 460 seconds, but if the qualification time is reduced another 10 seconds (to 450 seconds) there would be adverse impact based on gender. There IS evidence of adverse impact based on gender if the police standard of 330 seconds is applied to recently hired (since 7/1/2006) students in the Basic Corrections Academy classes.

Reasonable Minimum Standard of Physical Fitness for the Job

Inadequate time has elapsed since most of the officers in the sample were hired (hired after 7/1/2006) to determine if ORPAT times are related to ability to perform the job of a corrections officers is indicated by successful completion of a probationary period.

ORPAT Standard and Successful Completion of Academy Training

The relationships between ORPAT completion times for recently hired officers and sustaining an injury during training and successful performance during training at the Basic Corrections Academy is similar to the relationships observed using all students since 2000.

DPSST still does not have adequate data on injuries during training; we only have accumulated just over 18 months of injury data with sufficient and consistent detail (starting January 2007). The data continues to show that recently hired corrections students who complete ORPAT in times greater than 8:00 are more likely to sustain an injury during training, but the numbers are insufficient to support a defensible conclusion at this time.

The data on deficiencies during training for recently hired corrections students show similar relationships, but again the numbers are relatively small (there have been only 42 deficiencies in the past two years). The data on recently hired corrections students show that Basic Corrections Academy students who complete ORPAT with times greater than 8:00 are significantly more likely to be deficient than corrections students who complete ORPAT in less than 8:00. Data from all students since 2000 show that over 45% of the students who complete the ORPAT with a time greater than 8:00 at entry to the Basic Corrections Academy experience a deficiency during training that requires them to return to the Academy to remediate the deficiency. Data from corrections students hired since 7/1/2006 show that students who complete the ORPAT with a time greater than 8:00 at entry to the Basic Corrections Academy, continue to be about seven times more likely to experience a deficiency in their training than students who complete the ORPAT in less than 8:00 (who experience a deficiency rate of less than 5%). In spite of an increase in the average ORPAT completion time for corrections students hired since 7/1/2006 as compared to all students in the Basic Corrections Academy course since 2000, the rate of deficiencies has actually decreased. The difference in the deficiency rates for DOC and local agency officers is not statistically significant.

8 Minute ORPAT Standard for Corrections

The data from ALL corrections students hired since 7/1/2006 show that there would not be adverse impact on based on gender with an ORPAT completion standard of 480 seconds (8 minutes). Separating DOC and local agency corrections students hired since 7/1/2006, the data shows adverse impact based on gender for students from DOC but no adverse impact based on gender for local agency students. For local agency students the standard could be as low as 460 seconds (7 minutes 40 seconds) and there would be no adverse impact on gender. For this discussion DPSST staff conducted adverse impact analysis only on gender and did not conduct the analysis for adverse impact on other protected classes.

The data shows that there would be adverse impact based on gender if the 330 second (5 minutes 30 seconds) police standard were applied to corrections students.

The data on recently hired corrections students continues to show a significantly higher rate of deficiency for corrections students who complete ORPAT in greater than 480 seconds (8 minutes).