

Police Policy Committee

Minutes

May 13, 2008

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 13, 2008 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:30 p.m. by Chair Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Chair, Oregon State Sheriffs' Association
Andrew Jordan, Vice Chair, Oregon Association Chiefs of Police
Brian Martinek, Portland Police Bureau Assistant Chief
Ray Gruby, Non-Management Law Enforcement
Rob Gordon, Oregon State Sheriffs' Association
Dave Miller, SAC FBI, Oregon
Robert King, Non-Management Law Enforcement - teleconference
Stuart Roberts, Oregon Association Chiefs of Police
Tim McLain, Superintendent, Oregon State Police
Mike Healy, Oregon Association Chiefs of Police
Edward Mouery, Oregon State Police
Raul Ramirez, Oregon State Sheriffs' Association

Committee Members Absent

Steven Piper, Non-Management Law Enforcement

Guests:

Todd Anderson, Corrections Policy Committee Chair
Darin Tweedt, Assistant Attorney General, Oregon Department of Justice
Bruce McCain, Attorney for Bernard Giusto
Arthur Sulzburger, The Oregonian
Pat Dooris, KGW Television
Mike Galimanis, KGW Television
Stephanie Yap, The Oregonian
Brian Barker, KATU Television
Jon Farley, KATU Television

DPSST Staff:

John Minnis - Director
Eriks Gabliks, Deputy Director
Cameron Campbell, Director of Academy Training
Marilyn Lorange, Standards and Certification Supervisor
Bonnie Salle, Certification Coordinator
Theresa King, Professional Standards Coordinator
Lorraine Anglemier, Legal Services Coordinator
Shirley Parsons, Investigator
Jeanine Hohn, Public Information Officer
Tammera Hinshaw, Executive Assistant
Heather Hatch, Curriculum Specialist
Steve Winegar, Curriculum Research and Development



1. **Minutes of February 12, 2008 Meeting**

Approve minutes from the February 12, 2008 meeting.

See Appendix A for details

Tim McLain moved to approve the minutes from the February 12, 2008 meeting. Stuart Roberts seconded the motion. The motion carried unanimously by all present.

2. **Bernard GIUSTO – DPSST #07617**

See Appendix B for details

ACTION REQUESTED:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not GIUSTO's certifications should be revoked based on violation of the established moral fitness standards.

After lengthy discussion and clarification, Robert King moved to recommend to the Board to not decertify GIUSTO's certifications based on the two specific allegations brought back to committee by staff at the request of the committee. The motion failed due to the lack of a second.

When questioned by the committee, staff confirmed that Sheriff GIUSTO was invited to be interviewed and he, through his attorney, declined.

Brian Martinek moved to recommend to the Board to not decertify GIUSTO regarding the allegations of untruthfulness about his response about events and circumstances surrounding his transfer as security for Governor Goldschmidt and in his affidavit discussing those matters. Tim McLain seconded the motion. Motion carried unanimously by all voting with Gordon Huiras abstaining from voting.

Brian Martinek moved to recommend to the Board that GIUSTO be decertified based on issues related to truthfulness regard his conversation with LeRon Howland and Reg Madsen as applies to the considerations to the committee on 3 of 4 on OAR 259-008-0010(6) issues 1 and 3 of affidavit 2008. Tim McLain seconded the motion. The motion carried 10 to 1 with Robert King voting no and Gordon Huiras abstaining from voting.

A detailed transcript of the committee discussion on this matter can be found in Appendix B1.

3. **Break**

4. **OAR 259-008-0025(1) – Proposed Rule**

Basic Course – Mental Illness Training
Presented by Bonnie Salle

See Appendix C for details

Tim McLain moved to recommend filing the proposed language for OAR 259-008-0025(1) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Michael Healy seconded the motion. The motion carried unanimously by all voting.

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

5. **OAR 259-008-0025(5) – Proposed Rule**

Missing Children and Adults
Presented by Bonnie Salle

See Appendix D for details

Ed Mourey moved to recommend filing the proposed language for OAR 259-008-0025(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Raul Ramirez seconded the motion. The motion carried unanimously by all voting.

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

6. **OAR 259-008-0065 – Proposed Rule**

Certification Recall – Failing to Maintain First Aid/CPR Certification
Presented by Bonnie Salle

See Appendix E for details.

After much discussion the committee asked staff to bring this back to committee with new language, specifying one reporting time for tracking all training.

7. **OAR 259-008-0070(3) – Proposed Rule**

Denial/Revocation (Failing to attend Mental Health session after utilizing deadly physical force)
Presented by Bonnie Salle

See Appendix F for details.

Tim McLain moved to recommend filing the proposed language with the insertion of “resulting in the death of an individual” for OAR 259-008-0070(3) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Martinek seconded the motion. The motion carried 11 to 1 with Rob Gordon voting no.

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

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

Presented by Bonnie Salle

See Appendix G for details.

Rob Gordon moved to adopt the proposed rule amending OAR 2259-008-0200 as a permanent rule as originally approved by the Police Policy Committee and Board on Public Safety Standards and Training. Tim McLain seconded the motion. The motion carried unanimously by all voting.

9. **OAR 259-013-0000 – Proposed Rule**

Criminal Records Check Rule
Presented by Bonnie Salle

See Appendix H for details.

Tim McLain moved to approve the proposed language for OAR 259-013-0000 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Mike Healy seconded the motion. The motion carried unanimously by all voting.

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

10. Basic Police Training Update

Presented by Cameron Campbell

Firearms course information:

Staff has studied the data on the firearms qualification rates from past and present classes. The data shows that past and present rates are within one percent of each other on both the indoor and outdoor range. The new program is more difficult. The primary difference we see is we now have turning targets which operate on timers. This accounts for the one percent change.

Feedback on training:

The 16-week academy has been running for 1.5 years now and our feedback has been positive in regard to the training. We believe we have found the right balance of academics and scenario-based training given the amount of time we have. We will be reinstating the Curriculum Advisory Committee to take a look at the curriculum and get their feedback on whether or not there are areas they think need to be adjusted. This committee will name its recommendations to the Police Policy Committee.

Class scheduling:

Another issue being looked at is the number of classes and the speed with which officers can enroll in the academy. Right now we are looking at about 60 days from date of hire to admission to the academy. There are a number of factors. We have as many classes scheduled through this year and next as we can physically schedule into the facility. We believe this will be enough classes to meet the demand however, the facility is quickly running out of space.

VO2 Testing Project:

This project is strictly voluntary on behalf of the students. This low impact cardio vascular testing is able to correlate the VO2 test results to the cardiac health of the individual and potential future health if said individual continues with the current health regimen. We here are interested in the correlation of the VO2 test and ORPAT times.

With no further business before the committee, the meeting adjourned at 4:05 p.m.

Appendix A

Police Policy Committee Minutes (Draft) February 12, 2008

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 12, 2008 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31 p.m. by Chair Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Chair, Oregon State Sheriffs' Association
Andrew Jordan, Vice Chair, Oregon Association Chiefs of Police
Brian Martinek, Portland Police Bureau Assistant Chief
Ray Gruby, Non-Management Law Enforcement
Rob Gordon, Oregon State Sheriffs' Association
Dave Miller, SAC FBI, Oregon
Robert King, Non-Management Law Enforcement
Steven Piper, Non-Management Law Enforcement
Stuart Roberts, Oregon Association Chiefs of Police
Tim McLain, Superintendent, Oregon State Police
Mike Healy, Oregon Association Chiefs of Police
Edward Mouery, Oregon State Police
Raul Ramirez, Oregon State Sheriffs' Association

DPSST Staff:

Eriks Gabliks, Deputy Director
Cameron Campbell, Director of Academy Training
Marilyn Lorange, Standards and Certification Supervisor
Bonnie Salle, Certification Coordinator
Theresa King, Professional Standards Coordinator
Shirley Parsons, Second Investigator and Lead Interviewer
Lorraine Anglemier, Legal Services Coordinator
Darin Tweedt, Assistant Attorney General, Oregon Department of Justice
Jeanine Hohn, Public Information Officer
Carolyn Kendrick, Administrative Assistant

Guests:

Eric Taylor, KOIN Television
Dean Barron, KOIN Television
Alan Scaia, 1190 KEX Radio
Lee Cason Doss
Alexa Jeddelloh
Kate Ashby Jeddelloh
James McConney, KPTV Television
Andrew Theen, Oregon Public Broadcasting
Bruce McCain, Attorney for Bernard Giusto
Nicholas Budnick, Tribune

Pat Dooris, KGW Television
Arthur Sulzburger, Oregonian
Colby Reade, KXL Radio
Rod Stevens, KGW Television
Stephanie Yap, Oregonian
Melica Johnson, KATU Television
Gino Corridori, KATU Television
D'ana Jordan, KPAM Radio



1. **Minutes of November 13, 2007 Meeting**

Approve minutes from the November 13, 2007 meeting.

Tim McLain moved to approve the minutes from the November 13, 2007 meeting. Michael Healy seconded the motion. The motion carried unanimously by all present.

See Appendix A for details

2. **Bernard GIUSTO – DPSST #07617**

Overview of the process of denial and revocation presented by Marilyn Lorance
Staff summary presented by Theresa King

See Appendix B for details

Chair Andrew Bentz advised the committee of seeing and conversing with Sheriff Giusto at a conference in December. He stated that the conversation did not relate to anything to do with this case. Chair Bentz did, however, reiterate the process the Police Policy Committee and Board follows and that the Committee and Board would not be receiving any information until mid-January.

Robert King voiced his concerns of the neutrality and objectivity of the investigation itself as well as the use of the polygraph examination. In his earlier email to the committee, he asked for discussion about any concerns that might be present regarding the investigative process. Mr. King presented the committee with his analysis of the allegations. Mr. King asked the committee if anyone other than committee members would be able to speak at this meeting and how that decision would be made.

Loraine Anglemeier, DPSST Legal Services Coordinator, stated this committee can ultimately do whatever it wishes to do individually and collectively as far as the introduction and consideration of polygraph results but there is nothing operating in Oregon law that would bar the committee from consideration of the polygraph in this proceeding.

Darin Tweedt, Assistant Attorney General, stated in regards to secondary testimony on this issue, there is no precedent for allowing anyone else to participate in this proceeding. Counsel's concern is that if it is allowed, the Committee would be setting precedent for future cases.

Rob Gordon moved to disallow any secondary testimony during this case as this is not what this body was designed for. Contested case hearings are the proper venue for additional testimony. Steven Piper seconded the motion. The motion carried 12 to 1 with Robert King voting no.

Concern was voiced as to the credibility of allegations being brought forth. Staff stated that complaints are received from a variety of sources. Frequently complainants are turned back to an employer, to a district attorney if criminal in nature, or staff deals with the issue if it falls under DPSST jurisdiction. Staff assured the committee that all allegations were investigated for credibility.

Displeasure was voiced regarding the early release of the staff draft summary to the media. Darin Tweedt stated that the early release of the staff's draft summary to the media was due to a formal request of said information from the media. DPSST did not want to release the summary, especially in draft form, however, due to advice of counsel, reluctantly did so. The committee stated that DPSST should have declined the formal request and that the governing rules need to be changed to allow DPSST the right to do so.

Eriks Gabliks shared with the committee, DPSST's desire to address this loophole through legislation which will be introduced when the session convenes in January 2009.

After much discussion about the four allegations brought against Sheriff Giusto, the following questions were brought forth:

- Does the committee consider other allegations not brought forth by staff? Can we add another allegation or are we asking for additional information from staff.*
- Does staff want the committee to respond to the allegations as framed today regardless if we ask you to look into a 5th allegation that potentially exists?*

Staff stated the process would be best served by the committee determining how comfortable they are in closing out what is framed fully. Or, if the committee is more comfortable bringing a request for additional information and leaving the entire matter open to see if staff is able to obtain the requested information rather than a direct vote to close all allegations.

If there is going to be another allegation, in all fairness we would want to re-notice Sheriff Giusto and give him the opportunity through his counsel to provide any mitigating circumstances to committee for their review, as we do in all of the cases.

- The question was brought up about the conversation with the Oregon State Police Executives and Lt. Giusto which occurred in 1989. Lt. Giusto, at that time, would not have been a certified officer under BPST. If then he was not certified in 1989, and this committee is reviewing facts about a conversation that happened so long ago, why is this committee entertaining this discussion?*

Committee members stated that we're in a system that is designed to make sure arbitrary and capricious decisions are not made and that's what we're doing here. For us to look at that other part of it is our responsibility. The pattern of behavior is concerning, and unfortunately, what was given the committee to look at was not broad enough. Integrity and honesty are not negotiable.

- Did then Lt. Giusto, at that time, respond truthfully to the Oregon State Police executives and does that effect his certification?*

The committee asked staff to supply additional information to insert into current policy committee binders.

ACTION REQUESTED:

Staff requests the Police Policy Committee review each allegation and make a recommendation to the Board whether GIUSTO's certifications should be revoked based on a violation, or violations of the established standards for Oregon public safety officers.

Robert King moved to not send the first allegation to the Board because the information does not meet the preponderance of evidence for a violation of the moral fitness standard for the purposes of revocation. Robert King recommended the file be closed and not available for further investigation.

Brian Martinek proposed to amend Robert King's motion to include allegations one through four not be sent to the Board and that the committee specify that they want to keep the supporting materials available for further consideration.

Robert King withdrew his motion.

Brian Martinek moved that the four allegations as framed by staff in this investigation not be recommended for revocation to the Board. Michael Healy seconded the motion. The motion carried unanimously by all present.

Rob Gordon moved to have DPSST staff, as a separate allegation, rephrase incident number four so that Sheriff Giusto can receive notice and staff can review either current and/or additional information to inquire whether Sheriff Giusto truthfully answered Oregon State Police executives, whether he was honest or not as it relates to his relationship with the Governor's wife at the time.

Tim McLain seconded the motion. Motion carried with a 12 to 1 vote with Robert King voting no.

The committee asked staff to accelerate the Giusto investigation in order to bring resolution. A special Police Policy Committee meeting will be scheduled no later than the second week of March in order to have information available for the Board meeting in April.

3. Break

4. Convene in Executive Session

The committee convened in Executive Session at 4:30pm to discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether a medical waiver for Bobby Davis should be recommended to the Board.

5. Reconvene in Regular Session

The committee reconvened in regular session at 4:36pm to take final action regarding a determination of whether a medical waiver for Bobby Davis should be recommended to the Board.

ACTION ITEM #1: The committee needs to determine whether they will recommend approval to the Executive Committee for a waiver of the visual acuity standard for Bobby Davis so he can attend the next Basic Police course beginning March 3, 2008.

ACTION ITEM #2: The committee needs to determine whether they will recommend approval to the Executive Committee for a waiver of the depth perception standard for Bobby Davis so he can attend the next Basic Police course beginning March 3, 2008.

Robert King moved to recommend approval for a waiver of the visual acuity and depth perception standard for Bobby Davis to the Executive Committee so that he can attend the Basic Police course beginning March 3, 2008. Ray Gruby seconded the motion. The motion carried unanimously by all present.

6. **OAR 259-008-0010 Proposed Administrative Rule**

Contested Case Process
Presented by Bonnie Salle

See Appendix C for details.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

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

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

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

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

7. **OAR 259-008-0045(5) Proposed Administrative Rule**

Official College Transcripts
Presented by Bonnie Salle

See Appendix D for details.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a permanent rule if no comments are received.

Raul Ramirez moved to recommend filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Ed Mouery seconded the motion. The motion carried unanimously by all present.

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

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

8. **OAR 259-008-0060(9)(d) Proposed Administrative Rule Change**

Presented by Marilyn Lorance

See Appendix D for details.

Raul Ramirez moved to distinguish between instructor training and instructor-provided training. Instructors must maintain their maintenance training. Andrew Jordon seconded the motion. Motion carried in a 7-6 vote with Chair Andrew Bentz, Brian Martinek, Rob Gordon, Dave Miller, Robert King, and Steven Piper voting no.

9. Basic Police Training Update

Due to the length of the meeting, the committee requested staff to present the Basic Police Training update information at the special meeting in March.

With no further business before the committee, the meeting adjourned at 5:06pm.

Appendix B

DATE: May 13, 2008
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Bernard Giusto DPSST #07617

ISSUE:

Should Bernard GIUSTO's certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND and CASE OVERVIEW:

On February 12, 2008, the Police Policy Committee (PPC) reviewed GIUSTO Investigations #1 and #2. After extensive discussion, the Committee voted to recommend to the Board that GIUSTO's certifications not be revoked based on the specific allegations 1 through 4 brought forward to the Committee. However, the Committee directed staff to follow up to determine if GIUSTO had been truthful regarding discussions with his supervisors about his relationship with Margie Goldschmidt and if that relationship had any bearing on his transfer from the security detail.

The PPC discussion also included a request for staff to determine the certification status of GIUSTO at the time of the conduct under question, a suggestion that in-person and other follow-up interviews may be appropriate, and identification that, although allegations 1 through 4 had been closed, information contained in Investigations #1 and #2 may be relevant to the Committee's current request. Members therefore determined that Investigations #1 and #2 should remain open and available for staff review and the Committee's subsequent deliberations. Members directed DPSST to return the matter to the PPC for its review as soon as staff's work was completed.

The PPC specifically noted that GIUSTO's legal counsel was present at the PPC meeting and had heard the Committee discussion and direction to staff regarding matters to be further reviewed. As the Committee had requested, the investigative team mailed a letter to GIUSTO inviting him to participate in an interview regarding the current matters; reviewed related information from Investigations #1 and #2; conducted research; conducted a series of interviews; and prepared a timeline. At the conclusion of its work, staff prepared an Investigative Report, which is submitted to the PPC along with the Staff Report for Police Policy Committee review.

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.

Under Oregon Revised Statute 181.662(5), DPSST may take action on an Oregon public safety officer's certification, regardless of its status.

Moral Fitness

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

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

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

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

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

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

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

(A) Illegal conduct involving moral turpitude;

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

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

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

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

Mitigating or Aggravating Circumstances:

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

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

* * *

(D) When did the conduct occur in relation to the public safety professional's employment in law enforcement (i.e., before, during, after)?

* * *

(H) Do the actions violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(5), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation?

* * *

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

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

STANDARD OF PROOF:

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

ACTION REQUESTED:

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

Attached: Investigation #3
Referenced: Investigation #1 and #2

Information Only

SUBSEQUENT DUE PROCESS:

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

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

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

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

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

Appendix B1

POLICE POLICY COMMITTEE MEETING 5/13/08 TRANSCRIPT OF MEETING

MR. CHAIR: Item Number 2 is Bernard Giusto. Staff requests the committee review and recommend to the board whether Giusto's certification should be revoked based on a violation of -- violation of the established standards for Oregon public safety officers. You'll find the materials in your handouts.

(Pause)

MR. CHAIR: This is an action item that does require action.

SUPERINTENDENT McLAIN: Barring any other comments from staff, I think we could probably as a board move forward, Mr. Chair, based on the work papers presented us from the last round of interviews.

MR. CHAIR: I would agree. You did notice in there this body did ask that staff look into the items that we requested. This has been done. It is now back to you, so I would suggest that we do take their recommendation and move forward for discussion and for action on the floor.

SUPERINTENDENT McLAIN: Mr. Chair, I'm somewhat prepared to move forward with some comments.

MR. CHAIR: Please do.

SUPERINTENDENT McLAIN: Start -- start this. And bear with me, Mr. Chair, and members of the committee, because I didn't frame some of these comments. So I'll -- as best I can, I'll walk through them, but again, if other board members would like to stop me, I'd appreciate it -- if they have other comments or care to reframe my comments. But let me get this started.

First off, from the interviews conducted by staff of members of the Oregon State Police, members that worked back in the late '80s, maybe early '90s, in assignments whether in the dignitary protection unit or assignments assigned to the governor's mansion in this case, or executive security as it was called at the time -- I'd just say as a superintendent of the State Police, somewhat embarrassed and disappointed that at least that the interviews that I saw that at the time that the staff did not take other action than just to -- as I could see it -- stand by and do nothing even to the point of one member making the comment that -- felt that the activity they were witnessing was maybe of a personal nature and done on off duty time, clearly forgetting that the Oregon State Police role -- and continues in that role -- is to provide security for the governor and the governor's family. And that is our only role as Oregon State Police.

Again, taking into account -- I can say that easily enough probably today -- but that when presented those facts -- as in this case, Deputy Superintendent Reg Madsen was -- extremely difficult at the same time probably to launch what people have termed an investigation as that -- we can all tell -- that would be a very extremely sensitive and difficult -- probably -- assignment who would -- who would have been represented -- go do an investigation and find out if these rumors are true.

I look at Deputy Superintendent Madsen and I know we had some discussion earlier that referred to him as Superintendent Madsen -- was the one that probably handled that -- looking at the timeframe, it is correct as reported by various parties that Reg Madsen would have been the deputy superintendent at that time. I think at times though -- and probably I will be the same at some point in time -- that decisions I make clear back as a captain or a sergeant -- that people down -- down the road will sometimes say that was Superintendent McLain's decision, and clearly I might have been a captain at the time I made those decisions. So I guess we'll put that in reference.

But as a deputy superintendent, it wouldn't surprise me at the time that that would be his role to take care of a matter such as this and sometimes do it in the most quiet and efficient manner,

and seek the resolution that needed to be done at the time. So some of the comments made -- surprised that maybe the superintendent at that time, which would have been Superintendent Brandaw -- whether or not he was aware of it or not aware of it -- that doesn't surprise me. Although some thing of this magnitude, I would have thought the superintendent would have been informed of that.

But going back to that time, Deputy Superintendent Madsen's comments -- or excuse me -- fast forward to the interview that was conducted, so let's say retired Superintendent Madsen's -- and his memory, recollection from the events back a number of years ago, I, too, take into consideration I guess as some folks have that in his interview, knowing Red Madsen, I would find -- not a bit surprised that he would make the comment that he didn't remember what he had for breakfast last week. I, too, use that comment. That is a normal function that sometimes I don't remember what I had for breakfast last week. But I guess setting that aside, based on what was faced a number of years ago by then Deputy Superintendent Madsen and the assignment given him to bring one of our employees in and ask them the questions that he was to ask, I fully believe Red Madsen -- that his memory is very clear and sharp on the events that happened a number of years ago.

Now, where the discussion may lie is as far as the transfer -- and, also, I can't now go back but, again, I firmly believe Reg Madsen that the transfer in his eyes was based on the rumors and the need to resolve this as quickly as possible, which I can tell you, has been the practice and continues to be the practice of the State Police where we move people. And it will not be clearly noted in documentation other than the fact there may be a one paragraph that indicates the person is transferred effective tomorrow to a new assignment and that's all there will be.

But as we all know because of the period of time that we are to keep records, as the rule may be, that is not in this file. No secret to it. We all adhere to policies on how long we are to keep documentation. That is not with us unfortunately.

But now, I guess, would lead the discussion of whether or not at that time, Sergeant/Lieutenant Giusto was fully aware of the reason for the transfer. May not -- because I would imagine at the conclusion of that meeting, that Deputy Superintendent Madsen would have directed the staff member to make this transfer and make it happen now. And as you saw from some of the interviews of staff, is that one day he was there, the next day he has been transferred. So I just would open the discussion with that, and would somewhat apologize on behalf of the Oregon State Police that kind of a tarnished (coughing -- unintelligible) that that we allowed that to conduct to happen because I say conduct -- there was obviously conduct there whether we can define it in terms of friendship, relationship, or affair, but there was obviously conduct there, in my view, that wasn't becoming a State trooper and definitely not that of a supervisor of the Oregon State Police. And should have been addressed, and maybe it was at that time as best it could by then Deputy Superintendent Madsen. Thank you, Mr. Chair.

MR. CHAIR: Thank you, Superintendent. I -- as well as everybody -- I believe we appreciate your thoughts and your feelings on that. But I -- you know, this certainly is something that I -- you know, don't believe that you -- you know, you in your position, don't owe anybody -- owe any of us an apology on this. This is -- you're the superintendent of the State Police and you're taking care of business today. So -- but we appreciate the thought.

SUPERINTENDENT McLAIN: Thank you.

MR. CHAIR; Sure. Any other -- any other comment? I do want to reiterate that you -- you know, you will look at your investigation on number three, page 13 of 91. The two issues that this body asked staff to visit was Giusto certified through DPSST as a peace officer -- or a police officer at that time. And you all know that at that time, that organization as not necessarily under the full review per se of this body, but it does show that this particular subject obtained a certification number -- or DPSST number -- I'm sorry -- in 1976.

Number two is the issue of request that has Giusto been truthful about the events and circumstances surrounding his transfer as security for Governor Goldschmidt, and in his affidavit, discussing those matters. And you'll see the three statements made in this sworn affidavit and then the supporting documentation following that.

So those are the two issues in substance that were requested by all of us in this room to staff and this is what has been presented to you. Any other comment?

Motion? Action? Question?

MR. KING: Is there -- this is Robert King.

MR. CHAIR: Yes, Robert.

MR. KING: Though I understand what the allegation is that's listed in here, what evidence or proof do we have that he -- that he lied?

MR. CHAIR: Well, I believe some of the supporting is -- is beyond page 13 if you -- if you read back in -- through the interviews -- the first interviews and the follow-up interviews, if those were needed, as requested by this body, is the one talking about the conversations that did or did not occur in regards (phonetic) to transfer and whether or not anybody was talked to by the supervisory staff of the Oregon State Police.

MR. KING: Okay. So is this about what Madsen said to Giusto?

MR. CHAIR: This is about the -- the questions are whether or not anybody talked to him or not.

MR. KING: And who are we saying talked to him?

MR. CHAIR: Deputy Superintendent did.

MR. KING: Madsen?

MR. CHAIR: Yes.

MR. KING: And so right now, what we're -- what we're up against from a factual standpoint is -- so in his sworn affidavit said -- he doesn't remember the conversation and Madsen said he does. Is that the substance of this -- of the proof or the evidence against Sheriff Giusto or are there other interviews of other people who were in that meeting or who were aware of what was said in that meeting other than Madsen and Giusto?

MR. CHAIR: Go ahead, Superintendent.

SUPERINTENDENT McLAIN: Mr. Chair -- Mr. King, this is Tim McLain. My understanding -- and what is presented to us today here -- and maybe it was somewhat confusing as we left this meeting -- our previous board meeting -- but I guess there was two -- two things that we could look at here today. First was if his recollection of it is that if somebody did talk to him, that he would have just said they were friends. And that was the terms of his relationship with the governor's wife. Okay. If we were to backtrack now -- or to take a look at the staff report currently presented in front of us from the comm -- from the interviews done of State Police staff, then I guess the question would lie in front of us, "Was he truthful or not," then if he had that conversation; whether he remembers it or not with superiors of the State Police; that he was just friends. And I think we can all come up with our own conclusions on that -- what's the definition of friends at the time, what the definition of affair, et cetera; but based on the interviews of staff of the State Police at that time -- mainly the staff that were responsible for security, I guess -- we can't really come to a conclusion -- at least I, personally, can't, whether he was truthful or not on the friends.

As I said earlier, I am concerned that obviously his conduct to me based on the interviews was beyond what his mission was and that was to protect the governor and his family.

The second thing that I see in front of us then is kind of a Catch-22 in some ways. If the question was asked, I believe again of the sheriff by media -- correct me if I'm wrong -- staff somewhere in the timeframe of 2007 -- whether or not superiors of the Oregon State Police had ever had him in and questioned him whether or not -- about this subject. The sheriff's response has been, "I don't have a recollection of that, but if they did, I would have told them we were just friends."

I guess me, personally, am I satisfied with that, "I have no recollection, but if we did, we were friends." Quite frankly, Mr. Chair and members, I'm -- I guess what I'm looking at -- that the fact is and what we discussed in our previous meeting is to have a conversation with your superior -- in this case the deputy superintendent -- I think we're going to remember. And I think we're going to clearly remember. That is a life changing -- or not life changing -- but it can be a life-changing event. And you're going to remember. Just as the superintendent said, "I remember it even though there's

times I don't want to remember it." It probably wasn't the most tasteful job that anybody could be tasked with at the time.

But I guess that would be where we have to draw -- and split the hairs here.

MR. KING: Do we have -- this is Robert King. Do we have any evidence that -- that Bernie Giusto was anything other than friends with Margie Goldschmidt? I mean, I know each one of us can have our own opinion, but is there -- is there evidence in the record that rises to the level of a preponderance of the evidence that they had anything other than a friendship?

MR. CHAIR: Mr. King, this is Chairman Bentz. I -- you know, I -- that's really not -- and you all have your right to your own opinion, and please state it. But that's not the point nor the issue that staff or this body needs to address. It's not about a relationship or not a relationship. It's about someone's truthfulness. That's what was requested by staff to look at. As a matter of fact, I -- when you read these documents and there's been lots of them, I think it was that staff seemed to go to great lengths to avoid any mucking around in someone's personal life or personal business. If you look again at page 13 of 91, the handout for this -- the packet for this particular meeting, the middle one -- and I'll take that one first -- "At no time during my career with the Oregon State Police, was I ever notified that my transfer of command to OSP dispatch center was due to my relationship with Margie Goldschmidt." And I think very fortunate for all of us, Superintendent McLain clearly stated that that conversation could have with all probability not have occurred. And I don't think -- I don't think that's really an issue. But the first paragraph -- or the first statement and the third statement is -- and I think comes to the heart of what we asked staff to investigate -- which they have and now it's come back under the two issues that we requested, "And I have no recollection of any specific conversation with OSP command personnel relating to my relationship with Margie Goldschmidt; however, if any such conversation occurred, I would have told my supervisors [-- quote, unquote anyway --] that I was good friends." That issue --

MR. KING: -- okay. I guess I --

MR. CHAIR: -- that issue -- again, that is not to a relationship -- you know, I think I understood your question, and I really think it's important that this body -- that we move beyond what someone's personal relationship -- whatever that may be or was or had been -- I don't think that's an issue. It's whether or not (unintelligible) --

MR. KING: -- (unintelligible) --

MR. CHAIR: -- it's about truthfulness.

MR. KING: I appreciate the clarification. And I'm glad that whether or not Sheriff Giusto had an affair or a friendship with Margie Goldschmidt is not the substance of the -- of the reason why we're reviewing this case today. But obviously, it all plays some role in it. So then what I -- what I take away from your comments then is we're evaluating whether or not some -- I don't know -- 15 to 20 years after Bernie Giusto had a conversation with his supervisors at OSP whether he is lying when he says that he does not recall the conversation. So it sounds to me like the substance of the dispute or the -- the weighing of the -- of the es -- of the statements in this matter is weighing what Deputy Superintendent Madsen says in his statement against what Sheriff Giusto said in his affidavit. So if I understand it correctly, the -- the deliberations of this committee rise and fall on the differences in those two recollections of a conversation that allegedly occurred some 15 to 20 years ago. Am I correct in that?

MR. CHAIR: Well, I -- I think there's a lot more supporting documentation to -- to probably refresh that and make that a little fresher than that. That would lead you to believe -- you know, that we're talking about the affidavit given January of 2008. Sheriff Gordon?

SHERIFF GORDON: I'm trying to wrap my -- my own thoughts around this, but -- you know, it's clear to me that -- that we're just don't have two statements here. We've got thousands and thousands of pages of statements and interviews and evidence covering a period of a career in the State Police, in Gresham, in the sheriff's office, and I think although when we looked at specific allegations last time, we let -- we asked that those other two four-inch notebooks be part of this record to see if they would add weight to the truth -- you know. After I've read these things over and over

again, I ca -- I'm sure there was gross misconduct -- gross misconduct by Lieutenant Giusto at the time. And I think certainly lapses in judgment throughout his career.

And then we have the superintendent apologizing for something the State Police did 20 years ago and we as managers are sitting here saying -- you know, considering the times and the politics involved and who was involved, no apology is necessary on that one, because I think we all would have made the same call -- probably would have done the exact same thing. Then we have a sheriff sitting around the room saying, "You know, it seems like we're dealing with an issue the voters in Multnomah County really have the responsibility to deal with." But they didn't, so now the question comes to us. And to me, it is -- you know, if you -- if you also conclude there's a lot of gross misconduct, that doesn't necessarily mean we would revoke his certification. But if we conclude that he had a conversation with the deputy superintendent -- it doesn't matter how long ago it was -- and it was related to this issue -- and we believe he -- there's no way that he could have forgot that conversation, then we would conclude that that was not a true statement in the affidavit. So to me, that's the single critical issue. And -- you know, I've -- I bet you I could walk around this room and say, "Do you remember talking to supervisors in a tense situation where you were being questioned about something you did, and if it was something you were uncomfortable about, it might have been a sergeant, might have been a lieutenant, you go back to your military days," -- talked to a sheriff this morning and said do you ever -- were you ever the subject of one of those kind of conversations? He said, "Man, I remember talking to a general when I was in the Army 40 years ago. And I can remember the look on his face and the tone in his voice and the exact words he said. And my exact response." And that's the kind of feeling I get about being called to the State Police headquarters. The State Police at that time was known to be a pretty stern organization. That was before the union existed, I believe.

If you go see the superintendent, that would be an important day in your life. So that's where I'm up against right now is it is reasonable to believe that anybody could forget that conversation. And I think that's the question we need to answer for what it's worth.

UNIDENTIFIED MALE VOICE: Mr. Chair:

MR. CHAIR: Deputy Chief?

UNIDENTIFIED MALE VOICE: When I looked at this, I looked at it and I stepped back and said, "What is our role?" I would like clarification if I state something wrong about what our role is and what we should be doing here.

If I understand it correctly, our role is advisory in an administrative process and we're at the front end of that administrative process. It's advisory in that we're making a recommendation to the board.

And when I look at that, I also look at our standard of proof as a preponderance of the evidence -- more likely than not -- that this occurred, and our role is make an assessment of the question -- the allegation -- and make a recommendation based on that standard and based on our role there. Which means that we're not -- we're not in a court, so we don't have the same standards of proof that the court has or even the administrative law judge if this were to get to a contested case hearing. Correct? It's not the same venue. And we don't have the same role here.

So when I look at this and read through all these documents, including the investigation one and two that we kept open purposely and apply the standard of preponderance of the evidence or it's more likely than not, and I look at the questions that I thought we were asking is was then Sergeant Giusto truthful with his supervisors at the time about whether he had a relationship beyond friendship with his -- with the then governor's wife?

Based on this evidence here -- which would include hearsay evidence -- and I assume in an administrative hearing -- my understanding is that hearsay evidence is part of the record -- allowable -- I would say that any reasonable person evaluating this and that's what we're asked to do, I believe, would have to say that it is beyond a preponderance of the evidence that -- we would have to apply that that understanding or interpretation (unintelligible).

So then the next question to me is whether then Sergeant Giusto -- Lieutenant Giusto -- some question about (unintelligible) at the time was actually asked by anyone in the Oregon State Police chain of command that question and whether his answer was truthful. And, again, looking at the evidence, I can see at least two places where that's clear to me. Eventual Superintendent Howland, I believe his name is -- is that right?

UNIDENTIFIED MALE VOICE: Correct.

UNIDENTIFIED MALE VOICE: LeRon Howland and eventual Superintendent Reg Madsen both -- it's clear to me -- confronted Sergeant Giusto about that and they were told by Sergeant Giusto to the best of their very clear recollection -- even 20 years later -- that they did not have anything beyond a platonic relationship. Clearly beyond a preponderance of the evidence if you take the personalities out of it and you just weigh it, based on all this, it's clearly to me beyond -- I think it meets a higher standard, to be honest with you.

So then I'm left with -- the only question I'm left with that was part of the discussion last time as I recall and probably needs to be part of the discussion here is are we -- should we be entertaining this 18, 19 years later. Is there some type of statute of limitations on any of this and anything that we do with this board as it relates to certification -- for this board, that seems to be the -- to me, to be the only issues to be addressed. And -- and the one place it leaves me at after we decide the statute of limitations question is the only way we get to the real answer of whether people were truthful or not is to be able to talk to now Sheriff Giusto. And the only venue I'm aware of where we can do that unless he's willing to come to either our investigators or to the board is through a contested hearing that he would, of course, through his counsel, decide to have. And so maybe that's in the best interest of everyone involved if that's -- that's where we end up. But that's how I see it right now and I -- I think there's a lot of evidence to support both of those things.

Now, is that's not the allegation, then I need to be straightened out on that, but that's my understanding of what they are. That's my understanding of how this reads when it says (unintelligible) related to the transcript.

(Cell phone rings.)

UNIDENTIFIED MALE VOICE: Sorry, gentlemen. Put it on vibrate.

UNIDENTIFIED MALE VOICE: That's the sign Tim gives me when he wants me to shut up. (unintelligible) --

UNIDENTIFIED MALE VOICE: -- sorry --

UNIDENTIFIED MALE VOICE: -- is I don't believe that we have the preponderance of the evidence to decide the question about whether the transfer was clearly communicated to Sergeant Giusto -- Lieutenant Giusto at the time. I -- I can't find that in here and I've heard Superintendent McLain explain that that is the reality of it because the organization and I think some of us know that of ours so -- for what it's worth.

MR. CHAIR: Yeah. I'd agree with that and I think it was pretty well said -- very well spoken about -- is that -- and that was my problem with the second one of the three was that -- you know, you get transferred and somebody may or may not tell you exactly why you're going to a different assignment and so -- but what we want to do and I -- I, too, struggled with the time and really how we got from 20 some years ago to current place in history. Isn't really what this agency got saddled with -- it's whether or not the people were -- were truthful or not discussing it. Really when you look at these three -- this comes from (unintelligible)

UNIDENTIFIED MALE VOICE: And I'd have to say the place where I go where (unintelligible) we haven't had a discussion about this -- the time between that original behavior that -- this was brought back up in 2007 in the affidavit.

THE CHAIR: Yeah.

UNIDENTIFIED MALE VOICE: So that to me it is sort of renewed (unintelligible) discussion and I realize it was brought about for a variety of other reasons that -- in there, but (unintelligible) the reason for that discussion here (unintelligible).

MR. KING: Chair Bentz, this is Robert King.

THE CHAIR: Yes, Robert.

MR. KING: One of the things that's troubled me about this entire matter since we've begun to review it is that it spans back in time as far as it does. What concerns me or troubles me about that is there's a statute of limitations on criminal matters. The court -- the law precludes prosecution of -- of defendants or suspects in cases where there is evidence that they have engaged in criminal conduct for which they could be punished by imprisonment and fined. So it's -- it troubles me and it concerns me on principle that as an administrative matter -- and administrative matters are by their nature less serious and they're less onerous and they're less impactful than -- than criminal matters that we would have the authority or the discretion to go back to an incident that occurred as long ago as this -- as this particular incident is -- is alleged to have. And the reason that concerns me is it is -- I think it's entirely possible -- I mean, while -- while I've heard people in the room say that -- that certain substantial conversations that -- that they've had in their lives, they'll recall and remember always -- that in this case, that -- it comes down to ultimately what the deputy superintendent says versus what Sheriff Giusto says. And we have actually no reason to believe that both men are not completely honest in what they've said. We have absolutely no evidence to suggest that the statements made by Sheriff Giusto about not recalling are -- are any less true than the statements that Deputy Superintendent Madsen made. So what really troubles me about this is I don't -- I think that untruthfulness for a certified police officer in the State of Oregon is as serious an allegation that there is. It impacts our ability obviously to retain our certificate and I do not -- I do not believe that that these two statements -- one pitted against the other -- particularly because they go back in time as -- as far as they do -- that we can't arrive in good faith at a conclusion that the sheriff was dishonest, that he was intentionally deceptive, and that he lied when he provided a sworn affidavit. I mean, whatever -- whatever issues in our minds about what was going on at the time, or our personal opinions about Sheriff Giusto, or the news reporting that's attended this matter, or the high profile nature and the controversial nature of some of the facts surrounding this particular governor, I think that if you look just really narrowly at whether or not Sheriff Giusto lied, that as a body, I don't believe we can conclude by a preponderance of the evidence that he did, and -- and it -- and if this was a case in the police bureau, where the police bureau was making an allegation and they decided to fire an officer for this, that we would obviously look to other facts that were relevant to evaluate the credibility of these two different individuals.

And as far as I can tell, there's not any evidence in the record that Sheriff Giusto has ever lied in his 34 years as a law enforcement officer in the State of Oregon. No evidence around the time in Gresham, no other evidence around the time with the Oregon State Police, no specific evidence of any dishonesty or deceit during the time he's been elected the sheriff of Multnomah County -- so my problem is if this really and truly comes down to whether or not the sheriff was being untruthful in his sworn affidavit about a state -- about a conversation that occurred between him and the deputy superintendent years and years and years before -- and there's literally no other evidence that's in the record that proves he lied, then I don't see how as a body we can reasonably conclude untruthfulness and move for decertification.

UNIDENTIFIED MALE VOICE: Mr. Chair?

THE CHAIR: Yes.

UNIDENTIFIED MALE VOICE: Well, this is not a criminal proceeding, so I want to remind everyone of that and it's an administrative hearing which is Oregon Administrative Rule which is State law, so the question I would ask legal counsel if we can is is there a statute of limitations to this -- what is the response to Officer King's concern about the length of time, number one. I guess I'll let that go and then follow up.

DEPUTY CHIEF MARINEK: Mr. Chair, Deputy Chief Marinek. There is no statute of limitations. This is a discretionary decision that the members of the committee and ultimately the board will take up and you are entitled by virtue of your years of experience and your training to uphold the minimum standards of professional conduct for your profession. And -- and you can reach back as far as you need to -- I would suggest for both yourself and members of the committee that

you -- as you continue to struggle with this -- or identify this issue -- that you look at your materials in terms of the OARs that you're looking at and comparing the facts that you're about to find against the standards of moral fitness that are -- that are applied in this case.

THE CHAIR: So -- so for clarification and maybe interpretation of what you just said, I would refer everyone to page three of the four in the -- in the detailed case and its consideration for the policy committee. Is that not what you're referring to when you talk about the OARs as it fits this particular circumstances and there are four guidelines there?

DEPUTY SHERIFF MARTINEK: That's exactly correct. You have accurately summarized the role of the committee which first off is to find facts as it relates to this case; and then secondly to compare those facts to those standards for moral fitness, and then reach a conclusion about whether or not the sheriff should continue to retain his certification.

UNIDENTIFIED MALE VOICE: So, Mr. Chair, when I apply these to the multitude of documents that we have and the observations of numerous sworn police officers at the time -- Oregon State patrol officers most of them -- again I reach the standard of proof that we need to pass this on to the next body, and I would also want to remind -- at least my interpretation -- I'm asking -- someone correct me if I'm wrong here -- but yes, the -- the behavior happened in '88, '89, '90, but this came back up again in 2007, and now 2008. And the same two people were in -- well, one -- two -- two of three people were interviewed that were former superintendents -- Howland and Madsen -- and -- and then Sheriff Giusto provided an affidavit. So it's still the -- they're still saying the same thing and -- so to me, it isn't back in '89 or '90, Robert, it's -- it's here and now and I also think that our role is different here than it is at the police bureau if this were a personnel matter -- not that different though -- as -- as you know from the review board panels (phonetic) that we have in that we're -- we're here to look at this at the -- at our professional standard -- as you said at the -- minimum standard for it --

UNIDENTIFIED MALE VOICE: That's correct. Yes.

UNIDENTIFIED MALE VOICE: So --

MR. KING: Mr. Chair, this is Robert King.

THE CHAIR: Yes.

MR. KING: My concern is that the message that this sends to certified police officers in the State of Oregon -- and I think the message is this -- is as the employer or -- or now as the policy committee or the full DPSST board, I think this is the message. If you do not recall something years later your employer remembers telling you, you can be decertified. If you do not recall the details of a conversation you had with your employer years later, for that you can be decertified. And I don't think that's the message that as a board we should be sending to the certified police officers of this State. I don't think that's the standard that is objective and I don't think it's one that very many people can live up to.

THE CHAIR: Well, Mr. King, I -- I would and in a certain sense, I share your concern if -- if I believed that was the case here.

UNIDENTIFIED MALE VOICE: Correct.

UNIDENTIFIED MALE VOICE: Mr. Chair?

THE CHAIR: Yes.

UNIDENTIFIED MALE VOICE: I don't think we're talking about a mere conversation. We're talking about a potential career changing event. I think the magnitude of what we're evaluating here needs to be taken into consideration every bit as much as the remainder of the facts. And for me it was about being able to draw a reasonable inference from all the information that we've been able to review and at the same time giving due weight for credibility to those persons who provided information -- personal information about what they knew to be fact at the time. And I think we do have jurisdiction in this matter and from where I sit, I think the burden of proof has been met on several levels and -- and I'm prepared to move forward.

THE CHAIR: Any other discussion? Questions of the staff? They're all here present for you if you would so wish.

MR. KING: Mr. Chair?

THE CHAIR: Yes, Robert.

MR. KING: This is Robert King. Can I make a motion that we not decertify Sheriff Giusto on the basis -- with respect to these two specific allegations -- these two matters -- on the basis of the evidence that we have currently in the investigative file?

THE CHAIR: So your motion -- correct me, please -- as I reiterate it. Your motion is to not decertify based on these two -- not standards -- but you're talking about the four ORS standards or are you talking about the two issues that we referred back to staff?

MR. KING: Well, we've already voted on the four previous allegations and these two new issues that we redirect -- that we directed staff to investigate. Those are the two specific issues that I'm referring to -- the two specific allegations.

UNIDENTIFIED MALE VOICE: Procedural note, Mr. Chair?

THE CHAIR: Yes.

UNIDENTIFIED MALE VOICE: We are not the body to decertify. Correct?

THE CHAIR: No, we're not.

UNIDENTIFIED MALE VOICE: We are merely making a recommendation to the full board.

THE CHAIR: That's correct.

MS. LORANCE: Mr. Chair?

THE CHAIR: Yes.

MR. KING: Mr. Chair? Just a second, Marilyn has a (unintelligible)

MS. LORANCE: Just a -- this is -- for the record, this is Marilyn Lorange. Chief Healy, just as an additional clarification. The board is also not the body decertifying. The -- both the policy committee and the board processes are preliminary to formal due process. And so no decertification action would occur based specifically on either the committee or the board recommendation. Both of those actions are recommendations and then a board determination to move forward to open formal due process.

THE CHAIR: Mr. King, you (unintelligible)

MR. KING: -- (unintelligible) --

THE CHAIR: -- motion still have the floor, so go ahead.

MR. KING: Particularly -- the -- the first allegation that Giusto was told by OSP that his transfer was because of his relationship with Ms. Goldschmidt, that's the first allegation that I'm recommending we not decertify him on. And the second allegation that Giusto lied when he said that he did not recall the specific conversations with OSP supervisors about his relationship with Ms. Goldschmidt. Those are the two specific allegations and I'm recommending we not decertify him for. And I just wanted to make a comment that as a practical matter, that when the police policy committee or other DPSST policy committees make a recommendation, it takes two-thirds of the full board -- the -- two-thirds of the full 24 member board to overturn that recommendation. And I think that in the majority of the cases where there is a police policy committee recommendation for decertification, that that is upheld through the administrative law judge procedure, so as a practical matter -- although maybe it's a semantical one -- a semantic one rather, when we recommend for decertification, that as a practical matter -- in effect, we are decertifying.

THE CHAIR: Is there a second?

(No audible response.)

THE CHAIR: Calling again, is there a second?

(No audible response.)

THE CHAIR: Motion dies, lack of second. Any further discussion?

UNIDENTIFIED MALE VOICE: Question, Mr. Chair?

THE CHAIR: Yes, Deputy Chief.

UNIDENTIFIED MALE VOICE: So are we -- are we limited to the recommendation of decertify or certify? Is that what our -- are we limited to that as the only recommendations we can make? And these allegations, is it -- is that what we're left with? We recommend to (unintelligible)

MS. LORANCE: To revoke or -- or not to revoke, yes, sir.

UNIDENTIFIED MALE VOICE: To revoke or not to revoke. Those are the options?

THE CHAIR: Does that -- does that answer the question?

UNIDENTIFIED MALE VOICE: (No audible response.)

THE CHAIR: Any other discussion or comment?

(No audible response.)

Motion? Action?

UNIDENTIFIED MALE VOICE: Sheriff, if I may?

THE CHAIR: Yes.

UNIDENTIFIED MALE VOICE: Mr. Chair -- I think what's disquieting and I just want to hear it in my own mind from staff. Staff approached Sheriff Giusto and asked for a statement -- asked for an interview. Is that correct? During the course of -- of one of these investigations?

MS. KING: We did.

UNIDENTIFIED MALE VOICE: Okay. And -- and you approached the second time after the board -- after this board asked you to investigate more?

MS. KING: Yes, we invited --

UNIDENTIFIED MALE VOICE: Okay.

MS. KING: -- Sheriff Giusto to (unintelligible) --

UNIDENTIFIED MALE VOICE: -- (unintelligible) and what we have is -- is a presentation of a sworn affidavit from the sheriff?

MS. KING: Yes.

UNIDENTIFIED MALE VOICE: In which he could have presented any free flowing conversation or discussion he would have wanted within that affidavit. There's nothing to prescribe him from explaining -- over explaining this issue.

MS. KING: He prepared the affidavit on his own, I'm sure with legal counsel.

UNIDENTIFIED MALE VOICE: Okay. But, again, he could have explained and over explained the circumstances and the events surrounding this -- as our question is here?

MS. KING: That is correct.

UNIDENTIFIED MALE VOICE: Okay. Okay. Thank you. And I think what I heard you say, Deputy Chief, was we haven't heard really from the sheriff. It's disquieting to us that we're not engaged in a conversation back and forth relative to this issue or that staff has engaged in direct conversation with the sheriff as to what -- no recollection of any specific conversation, means in his mind.

UNIDENTIFIED MALE VOICE: That's correct.

UNIDENTIFIED MALE VOICE: Okay.

THE CHAIR: Point of clarification. (unintelligible) please give us the correct information. He was invited and declined. Is that true?

MS. KING: He was invited --

THE CHAIR: -- (unintelligible) -- interviews?

MS. KING: -- (unintelligible) yes. He was invited on two occasions to be interviewed by investigators. The most recent one by letter that the Department of Justice wrote, and then the other one I believe was February 22nd by myself in a letter to him.

THE CHAIR: Did you get -- the responses are in here?

MS. KING: He, through his attorney --

THE CHAIR: Yes --

MS. KING: -- declined.

THE CHAIR: Okay.

UNIDENTIFIED MALE VOICE: So for me if we're left at -- if we're left there, I'm still at -- beyond the preponderance -- preponderance of the evidence more likely than not, and if that's the way to get Sheriff Giusto to respond to this body, then I would move that we find the allegation -- if -- if we break it down this way -- allegation -- the allegation referring to the transfer -- the truthfulness of the transfer and the communication there, I would make a motion that we not decertify on that particular portion of the allegation. And I would move that we do on the conversation related to his truthfulness to his immediate supervisor -- or supervisors of the Oregon State Police at the time and in his affidavit of 2007.

UNIDENTIFIED MALE VOICE: I would second that motion.

THE CHAIR: Okay. Let's clarify the motion. We have a motion and a second that on page 13 of 91, taking the first statement that he requested a transfer which indicates that it did not, and then number three, the no recollection of any specific conversation -- back to page 3 of 4, consideration for the policy committee under ORA (Phonetic) 259-008-0001(06), is that what your motion is covering?

UNIDENTIFIED MALE VOICE: Yes (unintelligible) yes.

UNIDENTIFIED MALE VOICE: That's where I believe -- my second (unintelligible)

THE CHAIR: We have a motion and a second. Any com -- discussion?

UNIDENTIFIED MALE VOICE: Only -- only in that it's a compound motion and does -- and does it please the chair to break it into two different motions or to leave it a compound motion?

UNIDENTIFIED MALE VOICE: Let me check with staff and counsel.

THE CHAIR: Yeah. Let's do that.

(Discussion unintelligible.)

It would be handier to have it split.

UNIDENTIFIED MALE VOICE: Then I would amend my motion to bifurcate and split the two into two separate votes.

THE CHAIR: Okay.

UNIDENTIFIED MALE VOICE: One being that -- the matter being that -- for the discussion -- the allegation that he -- then Sergeant Giusto -- was not truthful about his response to knowing of -- and being told and informed by OSP command of the transfer -- that would not recommend decertify on that allegation.

UNIDENTIFIED MALE VOICE: Second on that one, again.

THE CHAIR: Okay. Motion and a second on -- to not recommend revocation on the topic of whether or not anyone specifically talked to -- about a transfer. Is that correct?

(No audible response.)

Okay. Motion and a second. All in favor aye?

(Chorus of ayes.)

THE CHAIR: All opposed, the same?

(No audible response.)

THE CHAIR: All right. Now, we need a second motion.

UNIDENTIFIED MALE VOICE: The second motion -- amended to that we recommend that Sheriff Giusto -- to the board that Sheriff Giusto be decertified for issues related to truthfulness regarding his conversation with Ron Howland and Reg -- is it Madsen?

UNIDENTIFIED MALE VOICE: Correct, sir.

UNIDENTIFIED MALE VOICE: Reg Madsen, the eventual OSP superintendent -- deputy superintendent at the time, I believe, and I don't remember what LeRon Frank (Phonetic) was, but (unintelligible) was, but --

UNIDENTIFIED MALE VOICE: Second.

THE CHAIR: Question?

UNIDENTIFIED MALE VOICE: Question. Did you intend to include the comments in the affidavit or just the original conversations? Originally you said --

UNIDENTIFIED MALE VOICE: I said --

UNIDENTIFIED MALE VOICE: -- conversations with the superintendents and the subsequent affidavits?

UNIDENTIFIED MALE VOICE: Well, as it applies to the considerations for the pub -- the policy committee on page 3 of 4.

UNIDENTIFIED MALE VOICE: And that was your second, too?

UNIDENTIFIED MALE VOICE: -- OAR (unintelligible)

UNIDENTIFIED MALE VOICE: -- that was my second, too. That's my understanding.

UNIDENTIFIED MALE VOICE: (unintelligible)

UNIDENTIFIED MALE VOICE: Okay.

THE CHAIR: Okay. So we have a motion and a second to -- under consideration for policy committee to move to the full board recommendation for revocation on issues one and three off affidavit 2008 (phonetic). Is that correct? Okay.

We have a motion and a second. Any discussion? Hearing none, all in favor aye? (Chorus of ayes.)

THE CHAIR: All opposed, the same?

MR. KING: This is Robert King, opposed.

THE CHAIR: Okay.

UNIDENTIFIED MALE VOICE: And, Mr. Chair, would you show abstain on both those votes, please?

THE CHAIR: Abstain? (unintelligible) chief. Do you have that down? Okay. All right.

CERTIFICATE

I, Cleta M. McMorris, hereby certify that I am an electronic transcriptionist for Business Support Services of Salem, Inc., that as such electronic transcriptionist, I prepared from a duplicated Olympus CD recording provided by DPSST, the foregoing typewritten meeting of the above-entitled matter at the time and place set forth in the caption hereof; and that the foregoing pages, which are numbered 1 through 36, all inclusive, are the true, accurate and complete transcript of the testimony adduced in behalf of the respective parties.

WITNESS my hand as electronic transcriptionist this 9th day of June 2008.

Cleta M. McMorris, Transcriptionist

cmc/cmc

Appendix C

Date: April 15, 2008
To: Police Policy Committee
From: Bonnie Sallé
Rules Coordinator
Subject: OAR 259-008-0025(1) – Proposed Rule
Basic Course – Mental Illness Training

Issue:

During 2007, the Oregon Legislature enacted HB 2765 requiring training in the recognition of mental illness which created a new provision under ORS 181.641. The new legislation includes a provision to require police officers to receive a minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model prior to obtaining certification. Staff is recommending a change to the current rule to include this requirement.

The following revised language for OAR 259-008-0025(1) contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~). For ease of review, only the recommended new language has been included.

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 law enforcement officers and telecommunicators, may challenge the Basic 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) 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.

(h) 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).

(i) 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.

(j) **The basic course for police officers must include:**

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

~~(B) Vehicle pursuit training exercises, shall be included in the basic course for police officers. This requirement is subject to the availability of appropriate facilities and funding; and~~

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model.

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

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0025(1) 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)

Appendix D

Date: April 15, 2008
To: Police Policy Committee
From: Bonnie Sallé
Rules Coordinator

Subject: OAR 259-008-0025(5) – Proposed Rule
Missing Children and Adults

Issue:

During the 2007 legislative session, SB 351 enacted legislation relating to missing persons which created a new provision under ORS 181.643. The Department's administrative rules currently require all police officers and certified reserve officers to be trained to investigate and report cases of missing children subject to the availability of funds. The new legislation includes "adults" in this provision. Staff is recommending a change to the current rule to include "adults."

The following revised language for OAR 259-008-0045(5) contains recommended additions (**bold and underlined**). For ease of review, only the recommended new language has been included.

259-008-0025

Minimum Standards for Training

* * *

(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 **and adults**.
- (A) The above mandated training is subject to the availability of funds.
- (d) Federal training programs shall be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0025(5) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0025(5) 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.

Appendix E

Date: April 15, 2008

To: Police Policy Committee

From: Bonnie Sallé
Rules Coordinator

Subject: OAR 259-008-0065 – Proposed Rule
Certification Recall – Failing to Maintain First Aid/CPR

Issue: Pursuant to OAR 259-008-0065, in order to maintain certification, all active police officers must maintain current First Aid/CPR certification and complete a total of at least 84 hours of agency approved training every three years. However, the current rules only provide for recall of certification for failing to meet the mandatory training portion of this requirement.

ORS 181.640 provides the statutory authority for the Board to set the minimum standards and training for certification for active police officers and has the authority to establish by rule reasonable minimum training for all levels of professional development, basic through executive, including but not limited to qualifications for public safety personnel. It also provides, “Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel * * as being qualified under the rules established by the Board.

Staff recommends amending the current rule to include the recall of certification for officers who fail to maintain certification under OAR 259-008-0065 by failing to maintain current first aid/CPR certification.

The following revised language for OAR 259-008-0065 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0065

Maintenance of Certification For Active Police Officers

(1)(a) The Board is responsible for setting the standards for active police officer training and the maintenance of certification. The Department is required to uphold those standards, while each agency determines what training will be provided to meet the standards.

(b) It is recommended that agencies provide training time and training opportunities to enable the active police officer to meet the required maintenance training hours.

(2) In order to maintain certification:

(a) All active police officers must maintain current First Aid/CPR certification.

(b) Proof of First Aid/CPR certification renewal must be reported to the Department no later than 30 days after an active police officer’s First Aid or CPR certification expires. Proof includes submission of the following:

(A) An F-6 Course Roster reporting completion of training and identifying certification expiration dates. This will result in credit for training hours and update of the officer's First Aid/CPR certification expiration dates; or

(B) A photocopy of front and back of First Aid/CPR certification card, identifying new expiration dates. Agency head or authorized designee must sign and date photocopy. This will result in an update of the officer's First Aid/CPR expiration dates only. No training hours will be added to the officer's record, unless accompanied by an F-6 Course Roster.

~~(b)~~ **(c)** All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years. The eighty-four (84) hours will include:

(A)(i) Eight (8) CORE hours of training annually, from either the "Firearms" or "Use of Force" subject areas:

(ii) This training must be reported to the Department as twenty-four (24) hours of CORE training, once every three years.

(B)(i) Active police officers who hold a Supervision, Mid-Management or Executive certification, must complete at least twenty-four (24) hours of agency approved Leadership/Professional training, every three years:

(ii) This training must be reported to the Department as twenty-four (24) hours of agency approved Leadership/Professional training, once every three (3) years.

(C)(i) In addition to the CORE (A)(i) (required of all officers) and Leadership/Professional (B)(i) training hours (only required of officers with Supervision Certification and above), the remaining hours must be completed from the category of "General Law Enforcement" training in the recommended, but not limited to, subject areas of Law and Legal, Ethics and Communication, Investigations, Survival Skills, Child Abuse, Sex Abuse, and Elder Abuse:

(ii) These remaining training hours must be reported to the Department as "General Law Enforcement" training, once every three (3) years.

(3) Beginning on the date a police officer returns to work from any leave of absence, the following requirements must be met:

(a) Maintenance Training Requirements as described in section (7) or (8) of this section;

(b) Proof of current First Aid and CPR cards;

(c) Any other applicable requirement for employment, training or certification as specified in OAR 259-008-0010, 259-008-0025 or 259-008-0060.

(4)(a) The employing agency must maintain documentation of required training **and First Aid/CPR certification** on each ~~law enforcement~~ **police** officer;

(b) Any training submitted to the Department on an F-6 Course Roster will be entered into each officer's DPSST training record.

(c) Maintenance training submitted on an F-6 will be credited towards the number of hours required for each maintenance training category in section (2) above.

(d) (A) On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training or First Aid/CPR certification according to Department records and provide notification to the officer and his/her employing agency.

(B) In addition to the notification of training and First Aid/CPR deficiencies identified in (A) above, the Department will periodically, but no more often than quarterly, identify all police officers who are deficient in maintaining current First Aid/CPR certifications according to Department records and provide notification to the officer and his/her employing agency.

(e) Within ~~60~~ **30** days of receipt of the notification in (d)(A) above, the agency must notify the Department of the training status of all police officers identified as deficient in maintenance training by submitting a Form F-15M-Police to the Department, identifying the training completed during the previous three (3) year reporting period.

(A) Maintenance training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Failure to notify the Department of completion of the required training for officers with identified training deficiencies will result in a warning notification letter being sent to the agency head and the officer.

~~(C) A six (6) month extension to complete maintenance training requirements or submit an F-15M-Police will be automatically authorized for officers reporting maintenance requirements due on December 31, 2006.~~

(f)(A) Within 30 days of receipt of the notification in (d)(A) or (B) above, the agency must notify the Department of the First Aid/CPR certification status of all police officers identified as deficient in First Aid/CPR certification.

(B) Failure to notify the Department of current First Aid/CPR certification for officers with identified certification deficiencies will result in a warning notification letter being sent to the agency head and the officer.

(C) Notification of current First Aid/CPR certification must be submitted as provided in subsection (2) (b) of this rule.

(5) **The Department will recall a police officer's certification for:**

(a) Failure to complete the required training within the maintenance period;

(b) Failure to maintain current First Aid/CPR certification as provided in section (2) of this rule, or

(c) Failure to ~~or~~ submit the completed Form F-15M-Police, within 30 days after the warning notification letter has been sent, and before the ~~six (6) month extension has expired~~, will result in the recall of the active police officer's certification.

(a) ~~(6)~~ A police officer with a recalled certification cannot work in a certified position.

(b) ~~(7)(a)~~ Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) ~~The employing agency head~~ **A written request for re-certification from the employing agency head, along with an explanation of why the training or First Aid/CPR certification was not completed obtained; and**

(B) ~~Verification~~ **An F-6 Course Roster verifying that the any missed training has been obtained, and identifying the training as "Maintenance make-up" training was completed.; and**

(C) Verification of current First Aid/CPR certification, submitted as provided in subsection (2) (b) of this rule.

(e) ~~(b)~~ After 2 1/2 years in a recalled status the police officer will be required to complete an Career Officer Development Course before s/he can be recertified.

(d) ~~(c)~~ After ~~over~~ **more than** 5 years in a recalled status the police officer will be required to complete basic training in the appropriate discipline.

(6) ~~(8)~~ Agency heads of the employing agency may document "excused leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(7) ~~(9)~~ Maintenance Training Requirements for Police Officers on Leave of Absence.

(a) A police officer who is on leave of absence for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave of absence date.

(b) A police officer who is on leave of absence for more than 180 days, but less than one year will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave of absence for more than one year, but less than 2 1/2 years will receive an extension of up to three years from the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a warning notification or recall of a police officer's certification as described in subsection (4) or (5) of this section.

(8) ~~(10)~~ Maintenance Training Requirements for Previously Certified Police Officers.

(a) Any police officer who has not been employed as a police officer for between one year and five years, or whose certification has lapsed following 2 1/2 years in a leave status, must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0065 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0065 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).

Appendix F

Date: April 15, 2008

To: Police Policy Committee

From: Bonnie Sallé
Rules Coordinator

Subject: OAR 259-008-0070(3) – Proposed Rule
Denial/Revocation (Failing to attend Mental Health Session after utilizing deadly physical force)

Issue:

During 2007, the Oregon Legislature enacted SB 111 relating to the use of deadly physical force which created new provisions under ORS 181.640 and 181.662. The new legislation includes a requirement for an officer who utilizes deadly physical force to attend at least one session with a mental health professional within six months after the incident in which the officer was involved. Failing to comply with this provision may be grounds to deny, suspend or revoke the officer's certification. Staff is recommending a change to the current rule to include this provision which becomes operative July 1, 2008.

Additionally, this section of the Department's rule was recently open for public comment. The comment period for the extensive revisions relating to mandatory and discretionary misconduct as well as the arbitration process closed on March 24, 2008 and comments were received. The Department is working with the Department of Justice to determine if additional clarification is needed and intends to update the Committee on the content of the comments and the Department's response at the next committee meeting. When the additional revisions to this section are filed as permanent, the numbering sequence relating to failure to attend a mental health session after utilizing deadly physical force may require modification.

The following revised language for OAR 259-008-0070 contains recommended additions (**bold and underlined**). For ease of review, only the section with the recommended new language has been included.

259-008-0070 **Denial/Revocation**

* * *

(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:

(a) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(b) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in subsection (2), in this state or any other

jurisdiction. In determining whether to take action on a conviction, the Department must use the following guidelines:

(A) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(B) The Department will not take action on a discretionary conviction that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

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

(D) The Board may reconsider any mandatory conviction which subsequently becomes a discretionary conviction, upon the request of the public safety professional or instructor.

(E) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(F) Notwithstanding subsection (2)(b) of this section, all denial and revocation standards must apply to public safety professionals and instructors.

(G) A public safety professional or agency will not be held accountable for failing to report a discretionary conviction that occurred prior to January 1, 2003.

(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.

(d) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, resulting in the death of an individual,¹ as required by ORS 181.789.

(4) Scope of Revocation. Whenever the Department denies or revokes the certification of any public safety professional, the denial or revocation will encompass all certificates the Department has issued to that person.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070(3) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070(3) 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.

¹ Italicized language was proposed by the Police Policy Committee at its meeting May 13, 2008

Appendix G

DATE: April 15, 2008

TO: Police Policy Committee

FROM: Bonnie Sallé
Hearing Officer

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

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

FINDINGS OF FACT:

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

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

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

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

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

Being a new Chief of Police of a small 10-officer department, I find my duties can be overwhelming at times. Reality dictates that you develop a three to five year strategic plan to accomplish all the tasks necessary to get the department to the highest level of professionalism. I can speak from relatively

new experience that keeping up with supervisor issues, policy issues, legal issues (I could go on) and a small city's endless demands on department heads, with few resources or experienced staff to rely on, can be an enormous challenge. Add to that DPSST's valid, but ongoing changes in policies and procedures, and you can easy [sic] get lost in all the issues that come across your desk. If you add a civil penalty to a small agency, you would be penalizing an agency without resources including a budget that can't absorb the fine.

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

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

CONCLUSION:

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

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

The Department provided notice of a proposed rulemaking hearing to:

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

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

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

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

Appendix H

Date: April 15, 2008
To: Police Policy Committee
From: Bonnie Sallé
Rules Coordinator
Subject: OAR 259-013-0000 – Proposed Rule
Criminal Records Check Rule

Issue:

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

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

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

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

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

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