

# Corrections Policy Committee Minutes - DRAFT

## November 8, 2022

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 8, 2022, at the Oregon Public Safety Academy in Salem, Oregon. Chair, Matthew English called the meeting to order at 10:00 a.m.

### **Committee Members:**

Matt English, Chair, Oregon State Sheriff's Association  
Carol Dishion, Vice Chair, Non-Management DOC, Coffee Creek  
Lee Eby, Oregon Sheriff's Jail Command Council  
John Frost, DOC Non-Management Corrections (Webex)  
Jaime Hepner, Oregon Association of Community Corrections Directors  
Gary Ninman, Department of Corrections Training Division (Webex)  
Erin Reyes, DOC Superintendent (Webex)  
Brian Pixley, Oregon State Sheriff's Association (Webex)  
Cody Smith, Non-Management Corrections Officer (Webex)  
Taj Shivvers, Non-Management Department of Corrections (Webex)  
Mark Boren, Public Member

### **Committee Members Absent:**

Michael Yoder, Oregon Dept. of Corrections (Designee for Heidi Steward, Acting Director)  
Ted Langley, Oregon Sheriff's Jail Command Council  
Jennifer Cameron, Non-Management Parole and Probation  
Vacant, Non-Management Corrections

### **Guests:**

Michael Porter  
Antony Ruvalcaba

### **DPSST Staff:**

Suzy Herring, Professional Standards Division Director  
Marsha Morin, Standards and Certification Program Manager  
Melissa Lang-Bacho, Professional Standards Case Manager  
Jennifer Levario, Professional Standards Case Manager  
Jennifer Howald, Administrative Rules Coordinator  
Erica Riddell, Criminal Justice Office Specialist  
Shelby Wright, Executive Support Specialist



### **1. Introductions**

Introductions of members, guests and staff.

### **2. Approve August 9, 2022 Meeting Minutes**

*Jamie Hepner moved to approve the minutes from the August 9, 2022, Corrections Policy Committee meeting. Mark Boren seconded the motion. The motion passed unanimously.*

**3. Administrative Closure Consent Agenda**

Presented by Melissa Lang-Bacho, Professional Standards Case Manager

The Department presented recommendations to administratively close the following professional standards cases to the Corrections Policy Committee.

**a) Sundin, Timothy (39688) Corrections**

On September 22, 2021, Timothy Sundin was charged with *Official Misconduct in the First Degree, Use of ESG/Tear Gas/Mace in the Second Degree, and Attempted Assault in the Fourth Degree*. Sundin was found not guilty on all counts and was acquitted by the court on all charges. The Department determined Sundin’s criminal citation did not result in a criminal disposition requiring review and therefore did not violate the Board’s moral fitness standards.

*Lee Eby moved to approve the Administrative Closure Consent Agenda recommendations made by the Department. Jamie Hepner seconded the motion. The motion passed unanimously.*

**4. Gilbertson, Randy (37702) Certification Review: Corrections**

Presented by Melissa Lang-Bacho, Professional Standards Case Manager

*Reason for Discretionary Review*

On August 19, 2021, the Department received an automated notification from the Law Enforcement Data System that Randy Gilbertson had been arrested for *Driving Under the Influence of Intoxicants (DUII), Interfering with a Peace Officer, and Fleeing or Attempting to Elude a Police Officer*.

<i>Policy Committee Discussion/Vote</i>	<i>Second</i>	<i>Vote</i>	<i>Outcome</i>
Jamie Hepner moved that the Corrections Policy Committee adopt the staff report.	Cody Smith	11 ayes; 0 nays;	Motion Passed Unanimously
<p>The Corrections Policy Committee found the following moral fitness violations and factors:</p> <p><i>Moral Fitness Violations:</i></p> <ul style="list-style-type: none"> <li>• Dishonesty: Gilbertson initially denied drinking alcohol when, in fact, he had.</li> <li>• Misuse of Authority: The committee did not identify elements of misuse of authority.</li> <li>• Misconduct: Gilbertson violated criminal law and was convicted of <i>Interfering with a Peace Officer</i>. Gilbertson threatened the safety of the arresting officer.</li> </ul> <p><i>Aggravating Factors:</i></p> <ul style="list-style-type: none"> <li>• Gilbertson was untruthful with the arresting officer.</li> <li>• Gilbertson attempted to assault the arresting officer.</li> <li>• Gilbertson fled from the arresting officer and stated that he did so because he recognized his actions could impact his career.</li> <li>• At the time of his arrest, Gilbertson was the superintendent of the institution.</li> </ul>			

<ul style="list-style-type: none"> <li>As the superintendent of the institution, Gilbertson would have expected the staff working at the institution to react differently under the circumstances than he did.</li> <li>As a leader of the institution, Gilbertson would be held to higher standards than the staff at the institution.</li> </ul> <p><i>Mitigating Factors:</i></p> <ul style="list-style-type: none"> <li>The committee did not identify any mitigating factors.</li> </ul>			
Jamie Hepner moved, after considering the identified violations of the Board’s moral fitness standards and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Gilbertson’s certification.	Carol Dishion	11 ayes; 0 nays;	Motion Passed Unanimously
Lee Eby moved, after considering the totality of the case, that Gilbertson be ineligible to hold public safety certification for a lifetime.	Jamie Hepner	11 ayes; 0 nays;	Motion Passed Unanimously

**5. Porter, Michael (56582) Certification Review: Corrections**

Presented by Melissa Lang-Bacho, Professional Standards Case Manager

*Reason for Discretionary Review*

On December 2, 2016, Michael Porter was terminated from his probationary employment with the Department of Corrections (DOC), Coffee Creek Correctional Facility (CCCF) after he was arrested and criminally charged with *Driving Under the Influence of Intoxicants (DUI)* on November 29, 2016.

At the time of Porter’s separation, he was not certified. On January 5, 2017, the Department deferred the review of Porter’s separation and criminal citation until he returned to a certifiable public safety professional position. On May 11, 2022, Porter was hired by DOC, CCCF.

*Michael Porter provided verbal mitigation for committee consideration.*

<i>Policy Committee Discussion/Vote</i>	<i>Second</i>	<i>Vote</i>	<i>Outcome</i>
Brian Pixley moved that the Corrections Policy Committee adopt the staff report.	Carol Dishion	11 ayes; 0 nays;	Motion Passed Unanimously
<p>The Corrections Policy Committee found the following moral fitness violations and factors:</p> <p><i>Moral Fitness Violations:</i></p> <ul style="list-style-type: none"> <li>Dishonesty: The committee did not identify elements of dishonesty.</li> </ul>			

<ul style="list-style-type: none"> <li>• Misuse of Authority: The committee did not identify elements of misuse of authority.</li> <li>• Misconduct: Porter violated criminal law and was convicted of a misdemeanor.</li> </ul> <p><i>Aggravating Factors:</i></p> <ul style="list-style-type: none"> <li>• This was Porter’s second <i>DUII</i>.</li> </ul> <p><i>Mitigating Factors:</i></p> <ul style="list-style-type: none"> <li>• Porter’s verbal and written mitigation provided to the committee were mitigating.</li> <li>• Porter took accountability for his actions in his verbal and written mitigation.</li> <li>• Porter successfully completed the terms of his first diversion.</li> <li>• Porter successfully completed the terms of his probation.</li> <li>• Porter was honest during his arrest.</li> <li>• Porter’s arrests occurred over six years ago, with none since.</li> <li>• Porter is now reemployed by the Department of Corrections.</li> </ul>			
Brian Pixley moved, after considering the identified violations of the Board’s moral fitness standards and weighing the aggravating and mitigating circumstances unique to this case, that no Board action should be taken against Porter’s certification.	Jamie Hepner	11 ayes; 0 nays;	Motion Passed Unanimously

**6. Ruvalcaba, Antony (31282) Certification Review: Corrections**

Presented by Melissa Lang-Bacho, Professional Standards Case Manager

*Reason for Discretionary Review*

On July 21, 2022, the Department opened a professional standards case to review the circumstances of Antony Ruvalcaba’s termination and subsequent arbitration decision from 2020 after determining that the Department closed its professional standards case without conducting a review of that information.

The initial basis for the professional standards case was Ruvalcaba’s March 28, 2019, termination from the Department of Corrections (DOC), Coffee Creek Correctional Facility (CCCF). The termination stemmed from an incident in which Ruvalcaba compelled a new member in training with the Tactical Emergency Response Team (TERT) to receive a taser exposure and for his dishonesty during the subsequent investigation into the incident.

On August 3, 2020, Ruvalcaba had his employment reinstated after an arbitrator found that termination from DOC/CCCF was too severe under the just cause standard when considering Ruvalcaba’s otherwise satisfactory career. The arbitrator found the underlying facts supported the allegations of misconduct.

<i>Policy Committee Discussion/Vote</i>	<i>Second</i>	<i>Vote</i>	<i>Outcome</i>
---	---------------	-------------	----------------

Lee Eby moved that the Corrections Policy Committee adopt the staff report.	Jamie Hepner	11 ayes; 0 nays;	Motion Passed Unanimously
<p>The Corrections Policy Committee found the following moral fitness violations and factors:</p> <p><i>Moral Fitness Violations:</i></p> <ul style="list-style-type: none"> <li>• Dishonesty: Ruvalcaba was deceptive in his depiction of the conversation he had with the officer who was tased about how he would make amends for his misleading social media post; Ruvalcaba was dishonest when he stated that it was the officer in training who first raised the idea of being tased; Ruvalcaba was untruthful when he stated that he did not ask Sergeant H where he could obtain a taser; Ruvalcaba was untruthful when he denied that he heard Sergeant A object to tasing of the officer, and Ruvalcaba was untruthful when he denied that he obtained a taser before the officer agreed to be tased.</li> <li>• Misuse of Authority: Ruvalcaba used his position as the TERT Assistant Team Leader to compel an officer in training to receive taser exposure.</li> <li>• Misconduct: Ruvalcaba harmed the officer he tased; Ruvalcaba exposed the TERT officer in training to risks and threatened his health and safety by failing to observe the proper safety protocols for subjecting an officer to being tased; Ruvalcaba use of derogatory language during training harmed others; Ruvalcaba’s reaction to the false media post negatively impacted the efficient training of the TERT team and created an inefficient operation of the Department of Corrections.</li> </ul> <p><i>Aggravating Factors:</i></p> <ul style="list-style-type: none"> <li>• There were multiple instances of untruthfulness involved in the investigation and several moral fitness violations involved in the case.</li> <li>• Ruvalcaba was in a position of authority at the time and put his team members in harm’s way.</li> <li>• Ruvalcaba failed to take accountability for his actions and placed the blame on others.</li> <li>• Rubalcaba’s written mitigation was aggravating.</li> <li>• Ruvalcaba didn’t accept the facts of the situation.</li> <li>• Ruvalcaba lacked remorse for his actions.</li> <li>• Ruvalcaba singled out parts of the investigation that were in his favor and ignored others that were not.</li> <li>• At the time of the incident, Ruvalcaba had 23 years of service and was in a supervisory role.</li> </ul> <p><i>Mitigating Factors:</i></p> <ul style="list-style-type: none"> <li>• The committee did not identify any mitigating factors.</li> </ul>			
Jamie Hepner moved, after considering the identified violations of the Board’s moral fitness	Lee Eby	11 ayes; 0 nays;	Motion Passed Unanimously

standards and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Ruvalcaba's certifications.			
Jamie Hepner moved, after considering the totality of the case, that Ruvalcaba be ineligible to hold public safety certification for a lifetime.	Mark Boren	11 ayes; 0 nays;	Motion Passed Unanimously

**7. Saldana, Fernando (60511) Certification Review: Corrections**

Presented by Melissa Lang-Bacho, Professional Standards Case Manager

*Reason for Discretionary Review*

On June 29, 2020, the Department received an automated Law Enforcement Data Systems report indicating that Fernando Saldana was arrested on January 24, 2020, for Driving Under the Influence of Intoxicants (DUII). Saldana received a conviction for DUII, on July 12, 2022, after failing to complete the terms of his diverted sentence.

<i>Policy Committee Discussion/Vote</i>	<i>Second</i>	<i>Vote</i>	<i>Outcome</i>
Brian Pixley moved that the Corrections Policy Committee adopt the staff report.	Carol Dishion	11 ayes; 0 nays;	Motion Passed Unanimously
<p>The Corrections Policy Committee found the following moral fitness violations and factors:</p> <p><i>Moral Fitness Violations:</i></p> <ul style="list-style-type: none"> <li>• Dishonesty: The committee did not identify elements of dishonesty.</li> <li>• Misuse of Authority: The committee did not identify elements of misuse of authority.</li> <li>• Misconduct: Saldana violated criminal law and received a conviction for <i>DUII</i>.</li> </ul> <p><i>Aggravating Factors:</i></p> <ul style="list-style-type: none"> <li>• Saldana was granted diversion, which was extended twice, and he still failed to complete the program.</li> <li>• As an officer of the law, Saldana has an obligation to follow the directives of the court.</li> <li>• Saldana was employed in public safety at the time of his conviction.</li> </ul> <p><i>Mitigating Factors:</i></p> <ul style="list-style-type: none"> <li>• The committee did not identify any mitigating factors.</li> </ul>			
Jamie Hepner moved, after considering the identified violations of the Board's moral fitness standards and weighing the	Brian Pixley	11 ayes; 0 nays;	Motion Passed Unanimously

aggravating and mitigating circumstances unique to this case, that Board action should be taken against Saldana's certification.			
Brian Pixley moved, after considering the totality of the case, that Saldana be ineligible to hold public safety certification for 5 years.	Jamie Hepner	10 ayes; 0 nays; 1 abstention due to technical difficulties (Cody Smith)	Motion Passed

**8. Proposed Rule Changes for Oregon Administrative Rule (OAR) 259-008-0010, 259-008-0011, 259-008-0015 and 259-008-0080**

Presented by Jennifer Howald, Administrative Rules Coordinator

House Bill 2936, section 3, directs DPSST to create a uniform background checklist and a standardized personal history questionnaire for use by law enforcement units in hiring applicants to be public safety officers. DPSST formed a Background Workgroup to collect constituent input in the development of the checklist and questionnaire and review the current background investigation requirements defined in OAR 259-008-0015. DPSST consulted with the Department of Justice (DOJ) on interpretation of HB 2936, the legal sufficiency of the draft checklist and questionnaire, and statutory authority for implementing the checklist and questionnaire as required minimum standards.

Implementation of the checklist and questionnaire standards prescribed by HB 2936 will require amendments to the administrative rules that address the background investigation requirements for public safety officers and instructors and the minimum employment standards for public safety officers. Draft rule changes and discussion items will be presented to the Telecommunications, Corrections and Police Policy Committees. The collective discussions from the committees will be incorporated into the proposed rule changes submitted to the Board for approval. CPC review of the rule changes presented by staff included the following key discussions:

- As written, the requirement to investigate use of force history included all use of force and did not capture the intent to investigate misuse of force history if previously employed in public safety; consensus that review of complaints and disciplinary action against an officer would encompass unlawful use of force or any other misconduct related to use of force [OAR 259-008-0015(2)(b)(E)].
  - As written: “(E) Employment History. This includes but is not limited to the applicant’s prior public safety employment and any history of complaints, disciplinary action against the public safety officer, and the public safety officer’s use of force history.”
- Split preferences between the two options provided relating to investigation of the applicant’s memberships and associations; a majority preferred option 1 [OAR 259-008-0015(2)(b)(G)].

- Option 1 stated “(G) Memberships and Associations. This includes but is not limited to the applicant’s membership or participation in a group, organization or association that supports discrimination or violence against a person or group of persons relating to statuses that are protected classes under state or federal law.”
- Option 2 stated “(G) Memberships and Associations. This includes but is not limited to the applicant’s membership or participation in hate groups, racist organizations, or militant groups.”
- Additional clarification needed in defining when a psychological evaluation is required [OAR 259-008-0010(11)(b)]:
  - When rehired by the same agency there should be a timeframe that allows re-employment without a new psychological evaluation; suggested 30 days in recognition of the common practice of rehiring officers after retirement.
  - When an officer transitions to the police discipline there should be the ability to use the original psychological evaluation that was previously conducted when it is the same evaluation that would be administered if hired as a police officer.
- Agreement with the implementation and effective date of the rules as July 1, 2023.

*Consensus reached approving the fiscal impact statements provided by staff.*

*Lee Eby moved to recommend that the Board adopt amended proposed rule changes for OAR 259-008-0010, 259-008-0011, 259-008-0015 and 259-008-0080 as permanent rules, if no substantive comments are received. Jamie Hepner seconded the motion. The motion passed unanimously.*

## **9. Applicant Review Committee Member Nominations**

Presented by Suzy Herring, Professional Standards Division Director

*Jamie Hepner moved to re-appoint Cody Smith and Carol Dishion to serve on the Applicant Review Committee. Mark Boren seconded the motion. The motion passed unanimously.*

## **10. Agency Updates**

- Melissa Lang-Bacho, Professional Standards Case Manager
  - Current Cases

### **Open Cases - 107**

- 4 - Pending Closure/Final Order Appeal Time
- 14 - Case Were Opened Since the Last Meeting
- Of the 14 Cases Opened 8 are for an Arrest/Criminal Citation and 6 are for Separations
- 45 - Cases we have Received info to Review and Determine the Next Step
- 20 - Cases are Pending Criminal/Employment Issues; 42 are Waiting for Records to be Received

### **Closed Cases - 11 - Cases Closed Since the August 9<sup>th</sup> Meeting**

- 1 - ARC Case – No Action (Pre-Employment)



- 5 - CPC Professional Standards Closed – Admin Closed/No Action
- 5 - CPC Professional Standards Closed – Revoked/Stipulated Orders
  
- Marsha Morin, Standards and Certification Program Manager
  - FTO Training Development Workgroup. A secondary workgroup has been formed to focus on the training a field training officer should receive to obtain and maintain certification. The group has met once and will be meeting again this month to continue discussions.
  - Background Workgroup. Though the primary focus of the workgroup was the implementation of HB2936, the following additional topics were discussed.
    - DPSST Fingerprint Checks. Though the Department has access to LEDS for conducting Oregon criminal history checks based on its status as a certifying agency, DPSST does not have NCIC as it is not considered a law enforcement agency by federal standards. DPSST has relied on agencies and their officers to report any out of state criminal conduct. The workgroup discussed options relating to how DPSST could gain direct access into NCIC. Currently this is limited to DPSST submitting fingerprint cards to get a one-time view of an officer's/dispatcher's out of state criminal conduct. As this will come at a high cost, DPSST will continue to work with agencies on the best approach to ensure proper reporting of out of state criminal conduct while researching other avenues of receiving that data.
    - Applicant Registration Database. This workgroup and a previous workgroup identified a need for a single point where individuals wishing to apply for a job in public safety would register for and receive an identification number which would be used during the application process. Ultimately this registration number would be linked to all agencies the individual applied for employment and provide valuable information to background investigators. A legal sufficiency review was completed on the concept which indicated that though DPSST did not have jurisdiction over individuals applying for public safety professional positions and could not make this a requirement, they could make it a requirement for agencies to utilize this system. DPSST is moving forward with options on how to implement a system.
    - Agencies Releasing Background Investigations. The question was raised if the background rule should be updated to include a requirement for agencies to release background investigations as part of another agencies background investigation. It was determined DPSST does not have the authority to require this and there is a statute that does.
  
- Suzy Herring, Professional Standards Division Director
  - The following new Professional Standards staff were introduced to the policy committee:
    - Jennifer Levario, Professional Standards Case Manager. This position was added to assist with the professional standards caseload.

- Juanita Birdsong, Professional Standards Case Coordinator. This position coordinates the pre-employment criminal conduct cases heard by the Applicant Review Committee (ARC)
- The recruitment process for a new Department Director is ongoing.
- DPSST is working to fill a vacancy on the CPC for a non-management corrections member.
- DPSST may not have any professional standards cases for the February meeting due to staffing changes.

**11. Next Corrections Policy Committee Meeting: February 7, 2022 at 10:00 a.m.**

*Administrative Notes:*

*These minutes reflect the order of the discussion/voting items as they appear on the official meeting agenda. The actual order in which they were discussed may vary.*

*All documents reviewed and discussed in this meeting are subject to Oregon Public Records Law (ORS 192.410 to ORS 192.505). These documents can be requested by contacting DPSST at [dpsst.records@dpsst.oregon.gov](mailto:dpsst.records@dpsst.oregon.gov).*