

Corrections Policy Committee Minutes

November 12, 2019

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 12, 2019, at the Oregon Public Safety Academy in Salem, Oregon. Chair, Nadine Purington called the meeting to order at 1:30 pm.

Committee Members:

Nadine Purington, Chair, Non-Management Parole & Probation
James Cook, Vice Chair, AFSCME Representative, DOC
Carol Dishon, Non-Management DOC, Coffee Creek
Rob Perrson, DOC Superintendent
Greg Martin, AOCE Representative, DOC
Kevin Marshal, Public Member
Jaime Hepner, Oregon Association of Community Corrections Directors
Matt English, Oregon State Sheriff's Association
Matthew Frohnert, Oregon Sheriff's Jail Command Council (Phone)
Gary Ninman, Professional Development Unit, DOC
Cody Smith, Non-Management Corrections Officer (Phone)

Committee Members Absent:

Gary Bergeron, Non-Management Corrections Officer
Mike Gower, DOC Director Designee

Guests:

Jeff Moura
Austin McCullough
K.C Dimmick
Greg Clouser

DPSST Staff:

Eriks Gabliks, Director
Linsay Hale, Professional Standards/Interim Training Division Director
Wendy Nunez, Criminal Justice Office Specialist
Kristen Hibberds, Professional Standards Coordinator/Investigator
Jennifer Howald, Administrative Rules Coordinator
Marsha Morin, Criminal Justice Certification Program Manager
Chris Enquist, Parole & Probation Training Program Training
Sara Stewart, Learning & Performance Coordinator
Scott Willadsen, Survival Skills Coordinator



1. Introductions

Introductions of members, guest and staff were presented.

2. ***** Executive Session *****

The Corrections Policy Committee (CPC) went into executive session at 1:35 to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation. The executive session was held pursuant to ORS 162.660(2)(h).

Executive Session closed at 1:55

3. ***Beers, Tyler 358455; Application for Training and Subsequent Certification**

Presented by Stacy Posegate

The CPC was asked to reconsider their recommendation regarding Beer's application for training and certification following advice from legal counsel.

Gary Ninman moved to withdraw Notice of Intent to Deny Beer's application for training and subsequent certification. Kevin Marshall seconded the motion. The motion carried unanimously.

Gary Ninman moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that no Board action should be taken against Beers' application for training and certification. Matthew English seconded the motion. Motion passes. 1 nay vote from Matthew Frohnert.

4. **Approve August 13, 2019 Meeting Minutes**

Matthew English moved to approve the minutes from the 8/13/2019, Corrections Policy Committee meeting with one minor correction. Gary Ninman seconded the motion. The motion carried unanimously.

5. ***Approval of New Armed Parole & Probation Officer Training Program**

Presented by Chris Enquist

The Training Division presented a new firearms training program for Parole & Probation Officers, following a pilot of the program approved by the CPC in July 2019. Along with an administrative rule concept that would ensure Parole and Probation Officers, permitted to carry a firearm, comply with ORS 166.263 which states the individual must attend a firearms course recognized by the Board on Public Safety Standards and Training.

Additionally, ORS 166.263 requires all parole and probation officers permitted to carry a firearm in the course of their duties to complete a firearms training program recognized by the Board on Public Safety Standards and Training. In May of 2019, the Oregon Association of Community Corrections Directors (OACCD) and DPSST agreed upon a conceptual system for ensuring this requirement is satisfied. Staff requested members of the CPC review this concept prior to drafting formal rule language implementing these standards. The concept includes:

1. PPOs will be required by rule to successfully complete the APP Program, or an equivalent approved by DPSST, within 18 months of being designated as an armed officer. Provisions for requesting a time extension will be created.
2. The rule will allow DPSST to waive this standard upon request in certain circumstances. (For example, the PPO was formerly employed, trained and certified as a police officer.)
3. Agencies may continue to facilitate their own training programs to satisfy this standard upon DPSST determination that the program meets or exceeds the current content of the APP Program.
4. The APP Program will be provided by DPSST at least once per calendar year.

Matthew English moved to recommend approval for implementation of the new Armed Parole & Probation Program. Carol Dishon seconded the motion. The motion carried unanimously

Nadine Purington moved to approve the concept for requiring and delivering the Armed Parole & Probation course to allow for the development of proposed Oregon Administrative Rule language. Gary Ninman seconded the motion. The motion carried unanimously.

6. *Approval of Changes to the Basics Corrections Local Curriculum

Presented by Sara Stewart

The Training Division requested the approval of the Corrections Policy Committee to make modifications to the Basic Corrections Local (BCL) curriculum based on a review completed by DPSST Survival Skills staff. Specifically, DPSST staff recommend converting 4 hours of existing Confrontational Simulations training into 4 hours of additional Defensive Tactics training. This change realigns course hours with the identified ratio between practice and scenarios to improve student performance.

Gary Ninman moved to recommend the Board approve of the proposed changes to the DPSST Basic Corrections Local curriculum. Kevin Marshall seconded the motion. The motion carried unanimously.

7. Administrative Closures – Corrections/Parole & Probation

Presented by Kristen Hibberds

Staff presented the following professional standards cases to the Corrections Policy Committee for administrative closure.

Nadine Purington recused herself from the Kevin Novinger DPSST #56068 administrative closure due to a conflict of interest.

Officer	Certifications	Summary	Flagged for Review (if hired in future)
Curtis, Lezlee DPSST #55575	Basic Corrections	Arrest – Fail to Pay Fine- Misdemeanor. Charge was dismissed.	No
Frazier, Vincent DPSST #45555	Basic Corrections	Arrest – Reckless Endangerment. No charges were filed by the District Attorney.	No
Lancaster, Chad DPSST #59986	None	Conviction – Misdemeanor Treated as a Violation. Conviction is not punishable as a crime.	No
Neider, Jared DPSST #60083	None	Conviction – False Application for Fish/Wildlife License/Tag/Permit. No culpable mental state, therefore not punishable as a crime.	No
Novinger, Kevin DPSST #56068	Basic Parole & Probation	Separation – Employment reinstated by Arbitrator. Insufficient evidence to prove dishonesty was intentional.	No
Nunez, Jozef DPSST #59183	None	Arrest – Driving Under the Influence. Separated from employment.	No
Pratt, Michael DPSST #60071	None	Conviction – Driving Under the Influence and Impaired Driving. Unable to locate records for Impaired Driving Under the Influence	No
Weltz, Steven DPSST #43689	Advanced Corrections	Arrest – Commercial Sexual Solicitation. Diversion completed and charge dismissed.	No

Matthew English moved to administratively close all cases except for Kevin Novinger DPSST #56068. Robert Persson seconded the motion. The motion carried unanimously.

Greg Martin moved to administratively close the Kevin Novinger case. Carol Dishon seconded the motion. The motion carried. Nadine Purington abstaining.

8. *Frame, Joshua #60022: Application for Training and Subsequent Certification – Curry County Sheriff’s Office

Presented by Kristen Hibberds

In June 2019, Frame submitted an Application for Training and self-disclosed he was convicted of a crime.

Staff identified violations of the Board’s minimum moral fitness standards for public safety professionals, specifically:

- **Gross Misconduct** when Frame was convicted of Unlawful Display of Evidence of Registration with Intent to Avoid Compliance, a misdemeanor.
- **Dishonesty** when Frame avoided compliance by unlawfully displaying evidence of registration.

Staff did not identify any violations of Disregard for the Rights of Others or Misuse of Authority

Committee Vote/Consensus	Second	Vote	Outcome
Gary Ninman moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Robert Persson	12 ayes; 0 nays;	Motion Passes Unanimously
Consensus reached that Frame’s behavior did not involve dishonesty but did involve Gross Misconduct as identified by staff. The identified Gross Misconduct is a violation of the Board’s moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> • The individual has one criminal disposition in their record. • The individual has complied with all of their court ordered obligations. • Conduct occurred before employment in public safety. • The individual self-reported the criminal disposition. • The date of the conviction and their age at the time. • The mitigation letter provided by Joshua Frame. • Frame’s seven-year fire career without any issues. Aggravating Factors <ul style="list-style-type: none"> • The individual was found guilty of one criminal disposition. 			
Robert Persson moved, after considering the identified violations of the Board’s moral fitness	Matthew English	12 ayes; 0 nays	Motion Passes Unanimously

standard and weighing the aggravating and mitigating circumstances unique to this case, that no Board action should be taken against Frame's Application for Training and subsequent Certification.			
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9. ***McCullough, Austin #60081; Application for Training & Subsequent Certifications – Department of Corrections /Two Rivers Correctional Institution**
Presented by Kristen Hibberds

In June 2019, McCullough submitted an Application for Training and self-disclosed he was convicted of a crime.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- **Gross Misconduct** when McCullough was convicted of Theft in the 3rd Degree, a misdemeanor in 2010.
- **Dishonesty** because McCullough's conviction includes the element of dishonesty.

Staff did not identify any violations of Disregard for the Rights of Others or Misuse of Authority

Austin McCullough presented verbal mitigation.

Committee Vote/Consensus	Second	Vote	Outcome
Carol Dishon moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Gary Ninman	12 ayes; 0 nays;	Motion Passes Unanimously
Consensus reached that McCollough's behavior did not involve dishonesty but did involve Gross Misconduct as identified by staff. The identified Gross Misconduct is a violation of the Board's moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> • The individual only has one criminal disposition in their record • The individual has complied with all of their court ordered obligations • Conduct occurred before employment in public safety • The individual self-reported the criminal disposition • The date of the conviction and their age at the time. • McCullough's verbal statement. • McCullough took responsibility for his actions. Aggravating Factors			

<ul style="list-style-type: none"> The individual was found guilty of one criminal disposition. 			
Greg Martin moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that no Board action should be taken against officer McCullough's Application for Training & Subsequent Certifications.	Kevin Marshall	12 ayes; 0 nays	Motion Passes Unanimously

10. *Moura, Jeff #35987: Basic and Intermediate Corrections Certifications – Not Affiliated

Presented by Kristen Hibberds

In October 2018, DPSST was notified that Jeff Moura was cited for a crime for which he was subsequently convicted of in 2019.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- Gross Misconduct** when Moura was convicted of Wildlife-Unlawful Possession, a misdemeanor in 2019

Staff did not identify any violations of Dishonesty, Disregard for the Rights of Others, or Misuse of Authority.

Jeff Moura presented verbal mitigation.

Committee Vote/Consensus	Second	Vote	Outcome
Gary Ninman recused himself due to a conflict of interest.			
Matthew English moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Kevin Marshall	11 ayes; 0 nays; 1 Recused (Ninman)	Motion Passes
Consensus reached affirming the staff analysis identifying violations of the Board's moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> The individual did self-report the criminal disposition. The individual only has one criminal disposition in their record. Moura's verbal statement. Aggravating Factors <ul style="list-style-type: none"> The individual was found guilty of one criminal disposition. 			

<ul style="list-style-type: none"> • The recentness of the conviction. • The individual was sentenced to probation. 			
Greg Martin moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that no Board action should be taken against Moura's certifications.	Matthew Frohnert	11 ayes; 0 nays 1 Recused (Gary Ninman)	Motion Passes

11. *Fierro, Steven #55521: Basic Corrections Certification – Washington County Sheriff's Office

Presented by Kristen Hibberds

In August 2018, DPSST received a Personnel Action from WCSO indicating that Fierro had resigned while under investigation.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- **Gross Misconduct** when Fierro disregarded the Washington County Sheriff's Office (WCSO) agency policies and procedures thereby threatening the efficient operation of the agency by initiating off-duty contact with an individual whom he knew was recently an inmate at WCSO Jail and on probation
- **Dishonesty** when Fierro was knowingly dishonest when he engaged in untruthfulness, deception, and misrepresentation when he encouraged the former inmate to lie about the circumstances of their relationship.

Staff did not identify any violations of Disregard for the Rights of Others or Misuse of Authority.

Committee Vote/Consensus	Second	Vote	Outcome
Matthew Frohnert recused himself due to a conflict of interest.			
Mathew English moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Robert Persson	11 ayes; 0 nays; 1 Recused (Frohnert)	Motion Passes
Consensus was reached affirming the staff analysis identifying violations of the Board's moral fitness standard. The CPC added by consensus, a violation of Misuse of Authority when Fierro, used his position as a corrections deputy to obtain a benefit by initiating a relationship with a recently released inmate and avoided a detriment by influencing her decisions when it came to being truthful to the investigators.			

Mitigating Factors <ul style="list-style-type: none"> Staff found no mitigating circumstances. Aggravating Factors <ul style="list-style-type: none"> The individual's conduct occurred multiple times. The individual's conduct occurred during their employment as a public safety professional. 			
Matthew English moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Fierro's certification.	Carol Dishon	11 ayes; 0 nays 1 Recused (Frohnert)	Motion Passes
Greg Martin made a motion, after considering the totality of the case, that Fierro's be ineligible to hold public safety certification for life.	Matthew English	11 ayes; 0 nays; 1 Recused (Frohnert)	Motion Passes

12. ***Boles, Steven #50091: Basic Corrections Certification – Not Affiliated**

Presented by Kristen Hibberds

In April 2018 and in May 2018, DPSST received two separate Law Enforcement Data System (LEDS) notifications of arrest.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- Gross Misconduct** when Boles pled no contest of Endangering Another Person, a Class A Misdemeanor.
- Dishonesty** when Boles was knowingly dishonest when he provided the wrong key to open the storage unit listed on the court order requiring him to surrender all weapons.

Staff did not identify any violations of Disregard for the Rights of Others or Misuse of Authority.

Committee Vote/Consensus	Second	Vote	Outcome
Matthew English moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Kevin Marshall	12 ayes; 0 nays;	Motion Passes Unanimously
Consensus reached affirming the staff analysis identifying violations of the Board's moral fitness standard.			

Mitigating Factors <ul style="list-style-type: none"> • The individual only has one criminal disposition in their record. • The individual was granted diversion and the one criminal disposition was dismissed. • The individual has complied with all of their court ordered obligations. Aggravating Factors <ul style="list-style-type: none"> • The individual did not self-report the arrest/citation. • The recentness of the diversion. • The behavior involved inappropriate use of a firearm. • Boles' inability to possess firearms. 			
Matthew English moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Bole's certification.	Gary Ninman	12 ayes; 0 nays	Motion Passes Unanimously
Matthew English made a motion, after considering the totality of the case, that Bole's be ineligible to hold public safety certification for life.	Carol Dishon	12 ayes; 0 nays;	Motion Passes Unanimously

13. *Miller, Jason #47735: Basic Corrections Certifications – Department of Corrections/Warner Creek Correctional Facility

Presented by Kristen Hibberds

In August 2018, DPSST received a Personnel Action from Department of Corrections indicating that Miller had been discharged from employment.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- **Dishonesty** when Miller
 - Completed a Juror Response Form and participated as a juror for Lake County, Oregon indicating he was an Oregon resident when he was living in California.
 - Falsified an Oregon DMV Application for driving privileges on March 18, 2016, while living in California.
 - Falsified information in order to receive an Oregon Resident Combination Hunting and Fishing License when he was living in California.
- **Misuse of Authority** when Miller used his position to obtain personal gain or privileges not otherwise available to him by using the Warner Creek Correctional Facility's address as his home address to falsely represent himself as an Oregon resident.

- **Gross Misconduct** when Miller's dishonesty and abuse of his position for personal gain threatened the efficient operation of the Department of Corrections.

Staff did not identify any violations of Disregard for the Rights of Others.

Committee Vote/Consensus	Second	Vote	Outcome
Gary Ninman moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Kevin Marshall	12 ayes; 0 nays;	Motion Passes Unanimously
Consensus reached affirming the staff analysis identifying violations of the Board's moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> • Staff found no mitigating circumstances. Aggravating Factors <ul style="list-style-type: none"> • The individual's conduct occurred during their employment as a public safety. • The individual's conduct occurred multiple times. 			
Jamie Russell moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Officer Miller's certification	Rob Persson	12 ayes; 0 nays	Motion Passes Unanimously
Matthew Frohnert made a motion, after considering the totality of the case, that Officer Miller's be ineligible to hold public safety certification for life.	Carol Dishon	12 ayes; 0 nays;	Motion Passes Unanimously

14. *Hallam, Tim #33316; Basic, Intermediate and Advanced Corrections Certifications – Department of Corrections/Snake River Correctional Institution
Presented by Kristen Hibberds

In September 2018, DPSST received a Personnel Action from Department of Corrections indicating that Hallam had been discharged from employment.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- **Dishonesty** when Hallam lied to a supervisor about bringing a personal cell phone into the secure perimeter of the institution. Hallam's deception continued when he asked the supervisor to overlook his misconduct.

- **Gross Misconduct** when Hallam threatened persons, property and the efficient operations of the Department of Corrections by introducing contraband (personal cell phone) into a secured facility

Staff did not identify any violations of Disregard for the Rights of Others or Misuse of Authority.

Committee Vote/Consensus	Second	Vote	Outcome
Gary Ninman moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Rob Persson	12 ayes; 0 nays;	Motion Passes Unanimously
Consensus reached affirming the staff analysis identifying violations of the Board's moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> • The committee found no mitigating circumstances. Aggravating Factors <ul style="list-style-type: none"> • The individual's conduct occurred during their employment as a public safety professional. • The individual's conduct did occur while they were acting in an official capacity. • The individual's conduct occurred multiple times. • Hallman's use of the internet for 31 minutes during a four-hour period. • Hallman possessing a cell phone in a controlled area. • Hallman's 21 years of experience. 			
Jamie Russell moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Hallam certifications.	Jamie Hepner	12 ayes; 0 nays	Motion Passes Unanimously
Greg Martin made a motion, after considering the totality of the case, that Hallam be ineligible to hold public safety certification for life	Jamie Russell	12 ayes; 0 nays;	Motion Passes Unanimously

15. *Poelz, Bryant #39212; Basic, Intermediate and Advanced Corrections
Certifications – Department of Corrections/Coffee Creek Correctional Facility
Presented by Kristen Hibberds

In July 2018, DPSST received a Personnel Action from Department of Correction indicating that Poelz had been discharged from employment.

Staff identified violations of the Board's minimum moral fitness standards for public safety professionals, specifically:

- **Dishonesty** when Poelz admitted to lying to the Department of Corrections multiple times regarding the circumstances surrounding his absence on August 6, 2017.

Staff did not identify any violations of Disregard for the Rights of Others, Misuse of Authority, or Gross Misconduct.

Committee Vote/Consensus	Second	Vote	Outcome
Rob Persson recused himself due to a conflict of interest.			
Gary Ninman moved that the Corrections Policy Committee adopt the staff report as the record upon which its recommendations are based.	Carol Dishon	11 ayes; 0 nays; 1 recused (Persson)	Motion Passes
Consensus reached affirming the staff analysis identifying violations of the Board's moral fitness standard.			
Mitigating Factors <ul style="list-style-type: none"> • Staff found no mitigating circumstances. Aggravating Factors <ul style="list-style-type: none"> • The individual's conduct occurred during their employment as a public safety professional. • The individual's conduct occurred multiple times. • Poelz's 18 years of experience and advanced certification. • Poelz continued to lie even after being confronted with the facts. 			
Gary Ninman moved, after considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, that Board action should be taken against Poelz's certifications	Carol Dishon	11 ayes; 0 nays; 1 Recused (Persson)	Motion Passes
Gary Ninman made a motion, after considering the totality of the case, that Poelz be ineligible to hold public safety certification for life	Greg Martin	11 ayes; 0 nays; 1 Recused (Persson)	Motion Passes

16. *Proposed Rule Changes for OAR 259-008-0015: Background Investigations

Presented by Jennifer Howald

In May, the Telecommunications (TPC), Corrections (CPC) and Police (PPC) Policy Committees reviewed the Criminal Justice Moral Fitness Workgroup recommendation that conducting a search of DPSST records should be a mandatory element of all pre-employment background investigations to ensure that hiring agencies are aware of any past or pending DPSST professional standards reviews or if the individual was the subject of any complaint filed with DPSST. The Moral Fitness Workgroup also recommended removing the requirement that the applicant's personal history statement be notarized, instead requiring an acknowledgment of "declaration under penalty of perjury."

All three Policy Committees unanimously approved the Moral Fitness Workgroup recommendations and DPSST filed the proposed rule changes for public comment opportunity. During the proposed rule public comment period, staff received comment regarding the deletion of the notary requirement.

Staff presented the comment to the Background Investigation Workgroup and The Criminal Justice Moral Fitness Workgroup, both ultimately recommended the proposed rule changes, including removing the notarization requirement, move forward as proposed.

The Department of Justice (DOJ) provided DPSST with rule language to replace what was originally filed as proposed for the acknowledgment of "declaration under penalty of perjury." The revised language provided by DOJ maintains the original intent of the proposed rule language and does not need to be resubmitted for a second public comment period.

Matthew English moved to recommend that the Board adopt the background investigation process changes recommended by the Moral Fitness Workgroup and approve filing the amended proposed rule changes for OAR 259-008-0015 as a permanent rule. Kevin Marshall seconded the motion. The motion carried unanimously.

17. *Proposed Rule Changes for OAR 259-008-0010, 259-008-0011 and 259-008-0067: Establishing the Expiration of DPSST Public Safety Professional Certifications

Presented by Jennifer Howald

Under the current application of the statutes relating to lapse of public safety professional certifications, a lapsed certification is treated like an inactive certification that remains subject to revocation for violations of the moral fitness standards no matter how long the certifications have been lapsed.

The Workgroup recommended that public safety certifications should expire after five years of separation from a DPSST certifiable position. The Workgroup recognized that

any person returning to the public safety profession, would be subject to a background investigation by a hiring agency, as well as a DPSST criminal history check conducted for certification purposes.

The Workgroup reaffirmed moving forward with the recommendation that all public safety certifications expire after five years of separation. The reapplication for certification will continue to be handled under the current rules and processes with the understanding that current and future workgroups tasked with assessing minimum training standards will be asked to review the requirements for reapplying for certifications after they have lapsed or expired.

Consensus reached approving the fiscal impact statements provided by staff.

Matthew English moved recommend that the Board adopt the proposed rule changes for OAR-259-008-0010, 259-008-0011 and 259-008-0067 as a permanent rule if no comments are received. Cody Smith seconded the motion. The motion carried unanimously.

18. *Proposed Rule Changes for OAR 259-008-0070: Criminal Justice Moral Fitness Workgroup Recommendations and Review Comments
Presented by Jennifer Howald

When staff presented the Workgroup recommendations and proposed rule changes to the May Policy Committees, the PPC expressed concerns about the impacts of the mandatory minimum three year ineligibility period and the Board approval as the effective date of any ineligibility period. The PPC concerns identified potential outcomes that were more punitive than necessary in some cases and the inability to apply discretion to adjust for a lesser penalty. Staff acknowledged the PPC concerns and assured the PPC that the comments would be considered along with the comments received during public comment.

All three Policy Committees approved staff's recommendation to file the proposed rules for public comment. As a part of the outreach and opportunity for comment, the public comment period extended from May 29, 2019 through August 30, 2019 and included four administrative rule hearings.

Staff received one additional submission of public comment from the Oregon Coalition of Police and Sheriffs (ORCOPS). The concerns submitted by ORCOPS addressed the changes to the title and definition of Misconduct, the effective date of the ineligibility period, and how the mandatory disqualifier drug language may impact review of marijuana offenses.

The Criminal Justice Moral Fitness Workgroup met on September 5, 2019, to review the comments and the original recommendations. The resulting recommendations are outlined below.

1. Mandatory Denial or Revocation for Drug Related Convictions

OAR 259-008-0070 (1) defines the grounds for mandatory denial or revocation of public safety professional certifications and includes mandatory denial or revocation for “a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug.” The concerns submitted by ORCOPS identified that the proposed rule language does not include the current rule language that provides exception for discretionary review of marijuana offenses.

The workgroup approved staff’s recommendation to re-insert language that would maintain an exception to the mandatory denial/revocation for unlawful use/possession of controlled substances, directing marijuana offenses to the discretionary review process. While marijuana has been legalized in Oregon, the majority of other jurisdictions still consider use/possession to be unlawful. The Workgroup reaffirmed that it is important to recognize that an individual is expected to follow the laws that apply to their jurisdiction and recommended these cases remain discretionary.

2. The Definition and Application of the Discretionary Moral Fitness Disqualifier - Misconduct

OAR 259-008-0070 (2) defines the grounds for discretionary denial or revocation of public safety professional certifications. When a public safety professional engages in conduct that requires a review for a moral fitness violation, DPSST staff and the Policy Committee are tasked with the review of the conduct to determine whether or not the conduct includes elements of Dishonesty, Misuse of Authority or Misconduct. Each of these moral fitness categories are defined within the rule. The Workgroup’s initial recommendations included clarifying amendments to these three categories and elimination of the category Disregard for the Rights of Others.

Current Definition:

Gross Misconduct: Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency.

Proposed Definition:

Misconduct. Misconduct includes conduct that violates criminal laws or conduct that threatens or harms persons, property or the efficient operations of any agency.

After considering the public comment, the current definition and the proposed definition, the Workgroup agreed to recommend that the Policy Committees and the Board approve the proposed definition for Misconduct as initially proposed. The reasons supporting this recommendation include the following:

3. The Effective Date of an Ineligibility Period

As proposed, OAR 259-008-0310 (11) (d) identifies an ineligibility period as “the timeframe that the public safety professional or applicant is ineligible for public safety certifications and employment as a certifiable public safety professional as the

result of the total impact of the moral fitness violations and the aggravating and mitigating circumstances on the public safety professional's moral fitness for certification.”

The current rule prescribes the first day of the ineligibility period as either the date of the criminal disposition or the date of separation from employment depending on the trigger for the discretionary review. The Workgroup's recommendation to change the effective date for all ineligibility periods to the date the action as approved by the Board resulted from discussions about the scenarios where public safety professionals are never actually penalized by the revocation process, remaining in the profession and continuing to serve the public. While the certification may be revoked, the person remained employed and serving the public in a certified capacity.

Both the PPC and the ORCOPS identified potential adverse impacts for implementing the effective date as the Board approved date in all cases. Both groups expressed concern for excessive penalty for conduct that happened prior to employment as a public safety professional and conduct that is delayed for review due to employer or DPSST processes. In review of the identified concerns, the Workgroup agreed that ineligibility periods for criminal dispositions that occurred prior to employment should continue to be administered with the date of the criminal disposition as the first date of the ineligibility period. In these cases, it is appropriate that the passage of time may result in no further delay in employment or certification.

When considering how to apply an ineligibility period to conduct that occurs while employed as a public safety professional, the Workgroup maintained that there is a distinction between a public safety professional who continues to be employed and in the service of the public and a public safety professional who has remained separated from acting in a certifiable capacity. To resolve the disparity between the two scenarios, the Workgroup recommended administering the ineligibility period according to the circumstance that applies to the case. Examples:

- When the conduct is a criminal disposition that occurred before the person was employed as a public safety professional or after a separation from employment (retirement) - apply the effective date of the ineligibility period as the date of the criminal disposition.
- When the conduct occurred while the person was a public safety professional, the conduct results in separation from a certifiable position, and the person remains separated from serving the public in a certifiable capacity - apply the effective date of the ineligibility period as the date of the separation.
- When the conduct occurred while the person was a public safety professional but the conduct does not result in separation from a certifiable position or the person gains certifiable employment with another agency after a separation - apply the effective date of the ineligibility period as the date the Board approved the action. In this scenario, the Workgroup recommends that any period of time where there was a gap in employment is accounted for as “time served” when calculating the dates for the final order.

ADDITIONAL DEPARTMENT RECOMMENDATIONS:

The Department recommends including the following amendments to OAR 259-008-0005, 259-008-0010 and 259-008-0011.

- Relocating the definition of criminal disposition from the denial/revocation rules (259-008-0070, et al) to the definition rule (259-008-0005).
- Adding a definition for the term jurisdiction to the definition rule.
- Deleting outdated employment requirement language tied to the denial/revocation crimes lists that were deleted from the denial/revocation rule in 2017.

Consensus Reached reaffirming the fiscal impact statements prepared by staff.

Jamie Russell moved to recommend that the Board approve filing the proposed rule changes for OAR 259-008-0005, 259-008-0010, 259-008-0011 and 259-008-0070, including the adoption of new rule numbers, as permanent rules if not comments are received. Carol Dishon seconded the motion. The motion carried unanimously.

19. Department Update

Linsay Reported:

- Thank you to everyone who served on the Criminal Justice Moral Fitness Workgroup.
- The Criminal Justice Background Investigation Workgroup continues to meet to develop recommendations regarding DPSST's role in background investigations and the possible establishment of a pre-employment standards and process which applies to applicants for certification who engaged in criminal behavior prior to employment in public safety.

Eriks Reported:

- Governor Brown has approved Hood River County Sheriff Matt English to serve on the Board taking the place of recently Sheriff Jason Myers representing the Oregon State Sheriff's Association. Sheriff English will also serve on the Board's Corrections Policy Committee in his new role. DPSST staff will work with OSSA to request a replacement for Sheriff English's seat on the Committee.
- Enrollment at the Oregon Public Safety Academy remains steady for Basic Police and Basic Telecommunications classes. Basic Corrections remains manageable but Basic Parole and Probation has slowed. Feedback indicates the slowdown in Parole and Probation is tied to state funding reductions which will be discussed during the 2020 Oregon legislative session. To see an updated enrollment information please go to:
<https://www.oregon.gov/dpsst/cj/Documents/AcademyEnrollments.pdf>
- A complete review and update of the two-week Supervision and Middle-Management courses continues with the assistance of a diverse work group that includes police, corrections, 9-1-1, and parole and probation stakeholders. Dr.

Steven James from Washington State University is assisting DPSST staff and the work group.

- The revised Parole & Probations Firearms class, which was increased from one to two weeks, was well received by the students who attended the pilot course.
- A work group to update the Parole & Probation field training manual held its first meeting. This group's work will take a number of months to complete with a target of the summer of 2020 for completion.
- In 2020, DPSST's Training Division will begin a comprehensive review of the Basic Corrections class. This review will bring together city, county and state corrections professionals.
- On the legislative front, DPSST is working on a number of projects for both the 2020 and 2021 sessions. BPSST's Private Security Committee unanimously supported the introduction of legislation during the 2021 session that will address how private security company officer look and how their vehicles are marked. An additional legislative concept will require private security companies to have written use of force policies and other management tools for day to day operations. The Board unanimously approved these proposed legislative concepts at its October meeting.
- During the 2020 session, BPSST approved a request from DPSST to request four additional 16-week Basic Police classes to address the continued wave of retirements. DPSST has seen a downturn in the number of student enrolled in the Parole & Probation Course which we have been told is tied to the state funding discussions that will occur during the 2020 session. DPSST training staff is looking at possibly delaying the start date for the next class as community corrections leaders and legislators discuss funding.
- DPSST is working with public safety partners to support the first-ever Public Safety Peer Support conference. This event being held at the Salem Convention Center will be open to all public safety peer support members and clinicians. The pre-conference with various training classes will be on Tuesday, February 4, 2020 and the conference will be held on February 5-7, 2020. For more information please go to <https://responderlife.org/northwest-peer-support-conference/>
- DPSST is offering a new opportunity in 2020 called the Elected Officials and Community Partners Academy. This five-hour session will give attendees insight into the work of the Board, Policy Committees, DPSST, and the responsibilities of employers. A tour of the Academy will also be offered. DPSST has hosted similar opportunities for the Association of Oregon Counties, Oregon Mayors Association, League of Oregon Cities, and many Citizen Police Academies with much success. This project will be very similar but offered on a quarterly basis for elected officials and community partners from around the state, not a single organization or community. For more information <https://drive.google.com/file/d/1h4gRtWGW9rS0y23IJGmMfgEQUU2TZcab/view>
- Mike Leloff, DPSST's Training Division Director recently resigned. Mike retired from the Portland Police Bureau as Assistant Chief and joined DPSST over two years ago. During a recent performance appraisal session, Linsay Hale, DPSST's Professional Standards Division Director, asked to oversee the Training Division

on an interim basis to learn more about the organization and to broaden her leadership capabilities. Linsay has been doing a very good job working with the solid management team in the Training Division.

20. Next Corrections Policy Committee Meeting: February 20, 2020 at 1:30 p.m.

Administrative Note:

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.