Police Policy Committee Minutes

June 18, 2020

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on June 18, 2020, at the Oregon Public Safety Academy in Salem, Oregon. Chair, John Teague called the meeting to order at 10:00 am

Committee Members:

John Teague, Chair, Oregon Association Chiefs of Police
Liz Lawrence, Non-Management Law Enforcement
Travis Hampton, Superintendent, Oregon State Police
Andy Heider, Oregon State Police Command Staff Representative
Craig Zanni, Oregon State Sheriff's Association
Mark Rauch, Public Member
Zachary Keeney, Non-Management Law Enforcement
DaNeisha Barret, Non-Management Law Enforcement
Jill Thissell, Non-Management Law Enforcement
Mark Garton, Oregon Association of Chiefs of Police

Committee Members Absent:

Bradley Robertson, Non-Management Law Enforcement Kristine Allison, Oregon Association of Chiefs' of Police Brian Wolfe, Vice Chair, Oregon State Sheriff's Association Dale Cummins, Oregon Association Chiefs of Police Loren 'Renn' Cannon, Federal Bureau of Investigation

Guests:

Nigel Deluna Sebastian Precup Robert Johnson Corbin Lantz Zach Mobley Abbie Mobley Emerson Lenon Peter Carini Nathan Sickler David Penkava Adam Lewis Christy Johnson

Thomas Houpt

DPSST Staff:

Eriks Gabliks, Director Linsay Hale, Professional Standards/Interim Training Division Director Wendy Nunez, Criminal Justice Office Specialist Jennifer Howald, Administrative Rules Coordinator Marsha Morin, Criminal Justice Certification Program Manager

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1. Introductions

Introductions of members, guest and staff were presented.

2. ***Executive Session***

The Police Policy Committee (PPC) went into executive session at approximately 10:05 a.m. to consider exempt public records. The executive session was held pursuant to ORS 162.660(2)(f).

Executive Session closed at approximately 10:30 am.

3. *David Fuller DPSST No. 16332

Presented by Linsay Hale

The PPC was asked to reconsider their recommendation to revoke certification.

Liz Lawrence moved to withdraw the Notice of Intent to Revoke Fuller's certifications and administratively close the case. DaNeshia Barrett seconded the motion. The motion passed unanimously.

4. Approve February 20, 2020 Meeting Minutes

DaNeshia Barrett moved to approve the minutes from the 2/20/2020, Police Policy Committee meeting. Mark Rauch seconded the motion. The motion passes unanimously.

5. Complaint – Glenn Palmer DPSST No. 18276

Presented by Linsay Hale

Issue tabled due to lack of quorum.

6. Administrative Closures – Police / Regulatory Specialists

Presented by Linsay Hale

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

Officer	Certifications	Summary
Carpenter, Daniel DPSST #60764	None	Conviction –Minor in Possession and Criminal Mischief. Unable to locate incident report and court documents to support conviction.
Gates, Adam DPSST #60627	None	Conviction – Open Container Possession in Boise, Idaho. Conviction occurred 6 years prior to employment and is the only conviction.
Krump, Matthew DPSST #56146	Basic	Arrest – Coercion and Harassment. Was charged with two counts of Attempt to Commit a Class C/Unclassified Felony and Harassment. All charges were dismissed.
Baker, Robert DPSST #50713	Basic	Separation – As a result of performance issues and insubordination.
Konzelman, Eric DPSST #45634	Advanced	Separation – Reinstated after arbitration.
Olmos, Miguel DPSST #36271	Intermediate	Separation – Reinstated after arbitration.

Zachary Keeney moved to approve the recommendations made by staff to administratively close the above listed cases. DaNeshia Barrett seconded the motion. The motion passes unanimously.

7. Johnson, Robert (50633) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

On August 19, 2019, Robert Johnson resigned from the Medford Police Department (MPD) as a result of a settlement agreement. In reviewing the incident that led to his separation, it has been determined that Johnson was less than truthful in his reporting of a use of force incident that stemmed from a call for service immediately following the event, and again during the subsequent investigation.

Robert Johnson provided verbal mitigation for committee consideration.

Policy Committee Discussion/Vote	Second	Vote	Outcome
Craig Zanni moved that the Police Policy Committee adopt the staff report.	Mark Rauch	10 ayes; 0 nays; 0 recused	Motion Passed Unanimo usly

The committee discussed the moral violation and identified the following aggravating and mitigating factors specific to this case:

Mitigating

- o MPD did not find or investigate if the use of force should have been reported after the arrest.
- The Jackson County District Attorney's office and Jackson County Sheriff's Office (JCSO) completed two separate investigations and did not find intentional dishonesty or misconduct..
- o Johnson did not quit from MPD, but settled the matter which resulted in his separation. If Johnson would have remained at the agency, he may not have been terminated.
- Johnson did acknowledge, during his verbal mitigation, that in hindsight the incident should have been reported as a use of force incident.
- Johnson was hired by JCSO following the completion of a background investigation.

Aggravating

- o Johnson specifically stated in his reporting that there was no use of force used in the incident.
- o Johnson misrepresented the events that occurred and concealed the true nature of his actions.

Mark Rauch moved, after	Travis Hampton	2 ayes;	Motion
considering the identified violations		8 nays;	Failed
of the Board's moral fitness		(Teague,	
standard and weighing the		Barrett,	
aggravating and mitigating		Garton,	
circumstances unique to this case,		Thissell,	

	Heider,	
	Keeney,	
	Lawrence,	
	Zanni)	
	0 recused	
DaNeshia	8 ayes;	Motion
Barrett	2 nays;	Passed
	(Hampton,	
	Rauch)	
	0 recused	
		Keeney, Lawrence, Zanni) 0 recused DaNeshia 8 ayes; Barrett 2 nays; (Hampton, Rauch)

8. <u>DeLuna, Nigel (54679) Certification Review: Police</u>

Presented by Linsay Hale

Reason for Discretionary Review

DPSST received an Application for Training (F5) from the Mt. Angel Police Department (MAPD) for Nigel DeLuna to attend the Police Career Officer Development Training.

While processing this application, staff uncovered a "flag" placed on DeLuna's file indicating the need for a professional standards review should DeLuna become employed in a public safety position in Oregon. This flag resulted from DeLuna's 11/17/16 resignation from the Portland Police Bureau (PPB). At the time of his resignation, PPB was in the process of terminating DeLuna from his probationary status for making derogatory comments about a co-worker's race and gender. At the time of his resignation DeLuna was not certified, requiring DPSST to stay this review.

Nigel DeLuna provided verbal mitigation for committee consideration.

Policy Committee Discussion/Vote	Second	Vote	Outcome	
Zachary Keeney recused himself due to a conflict of interest.				
Mark Rauch moved that the Police Policy Committee adopt the staff report.	Liz Lawrence	9 ayes; 0 nays; 1 recused (Keeney)	Motion Passed Unanimously	

The committee discussed the moral violation and identified the following aggravating and mitigating factors specific to this case:

- Mitigating
 - o DeLuna's age and immaturity at the time of this behavior.
 - o DeLuna appears to have since learned his lesson.

- o DeLuna took responsibility and apologized for the comments.
- o He has had no similar issues during his employment with MAPD.
- Aggravating
 - o DeLuna made inappropriate, immature comments on multiple occasions while employed in various capacities with the PPB.

DaNeshia Barrett moved, after	Liz Lawrence	9 ayes;	Motion Passed
considering the identified violations		0 nays;	Unanimously
of the Board's moral fitness		1 recused	
standard and weighing the		(Keeney)	
aggravating and mitigating			
circumstances unique to this case,			
that no Board action should be			
taken against DeLuna's application			
for training and subsequent			
certification.			

9. Lantz, Corbin (42610) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

On 11/16/18, Corbin Lantz resigned from the Department of Public Safety Standards and Training (DPSST) with a Settlement Agreement. Staff has determined, Lantz was untruthful with his co-workers and supervisor about taking unpaid meal breaks and later claiming he had received permission from previous supervisors which allowed him to do so.

Corbin Lantz provided verbal mitigation for committee consideration.

Policy Committee Discussion/Vote	Second	Vote	Outcome
DaNeshia Barrett moved that the Police Policy Committee adopt the staff report.	Mark Rauch	10 ayes; 0 nays;	Motion Passed Unanimously

The committee further identified the following aggravating and mitigating factors that influenced their decision on the severity of action to be taken.

- Mitigating
 - The DPSST culture seemed to lack accountability and failed to clearly establish employee expectations.
 - o The number of different supervisors Lantz had during his employment.
- Aggravating
 - o The conduct occurred during Lantz's employment as a public safety professional.
 - o Lantz's conduct occurred multiple times over the course of two years.
 - o The number of hours inappropriately claimed was significant.

- The fact that Lantz's behavior changed when he realized his time reporting was being monitored.
- o Lantz's admission that he knew he was violating the law and continued the behavior.

Travis Hampton 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 Lantz's Police Certifications be revoked.	Mark Garton	10 ayes; 0 nays; 0 recused	Motion Passed Unanimously
Travis Hampton moved, after considering the totality of the case, that Lantz's be ineligible to hold public safety certification for 3 Years.	Zachary Keeney		Motion Amended
Travis Hampton amended his motion, after further discussion and considering the totality of the case, that Lantz's be ineligible to hold public safety certification for 5 years.	Craig Zanni	9 ayes; 1 nays; (Zachary Keeney)	Motion Passed

10. Lohf, Terry (27923) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

On August 31, 2018, Terry Lohf was terminated from the Lakeview Police Department (LPD). This termination was related to Lohf's decision to not respond to a call for service involving a disruptive individual known to have active warrants, and his attempt to conceal his error in judgement by knowingly misleading the Town Manager on multiple occasions about what information was known by him at the time he made the decision not to respond.

The reason for this review is limited to Lohf's untruthfulness relating to his decision not to respond to a call, and about what information was available to him when he made that decision, specifically whether he knew that the subject of the call had an outstanding warrant for his arrest.

Policy Committee Discussion/Vote	Second	Vote	Outcome
Zach Keeney moved that the Police Policy Committee adopt the staff report.	Liz Lawrence	10 ayes; 0 nays;	Motion Passed Unanimously

The committee discussed the moral violation identified and identified the following aggravating and mitigating factors specific to this case:

Mitigating

- o Lohf did not attempt the hide information, instead was trying to justify his decision to the Town Manager.
- o Lohf's separation was justified, but does not rise to the level of a moral fitness violation that requires revocation.
- o There are issues that are seen with the leadership of the city, which appear to have played a part in the separation.

Aggravating

 Lohf clearly had an awareness of the warrants and attempted to minimize his awareness.

Zachary Keeney moved, after	Craig Zanni	6 ayes;	Motion Passed
considering the identified violations		4 nays;	
of the Board's moral fitness		(Hampton,	
standard and weighing the		Heider,	
aggravating and mitigating		Lawrence,	
circumstances unique to this case,		Rauch)	
that no Board action should be			
taken against Lohf's certifications.			

11. Maurry, Jason (43487) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

On 10/28/19, DPSST received notification from Jason Maurry, a police officer employed by the Multnomah County Sheriff's Office (MCSO) that he was arrested on 10/27/19 for *Driving Under the Influence of Intoxicants (DUII)* and *Reckless Driving*.

Maurry ultimately pled no contest and was granted diversion for the *DUII* on 11/19/19, and pled no contest and was convicted of *Reckless Driving* on 12/6/19.

Case tabled to allow for the presentation of additional information relating to Maurry's employment with MCSO.

12. Precup, Sebastian (60628) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

DPSST received an Application for Training (F5) for Sebastian Precup in which he disclosed an 11/14/18 conviction of a wildlife violation, specifically *Take Deer Prohibited Area-Public Road*.

The recentness of this criminal disposition requires a discretionary professional standards review be conducted pursuant to Oregon Administrative Rule.

Sebastian Precup provided verbal mitigation for committee consideration.

Policy Committee Discussion/Vote	Second	Vote	Outcome	
Zachary Keeney recused himself due to a conflict of interest.				
Craig Zanni moved that the Police Policy Committee adopt the staff report.	Travis Hampton	9 ayes; 0 nays; 1 recused (Keeney)	Motion Passed	

The committee discussed the moral violation identified and identified the following aggravating and mitigating factors specific to this case:

- Mitigating
 - o Precup admitted his mistake and took responsibility.
 - o He was honest with the citing officer.
 - o Precup's actions following the arrest were commendable under the circumstances, specifically his taking responsibility and reporting his mistake to his supervisors and his current employer.
- Aggravating
 - o The committee did not identify any aggravating factors.

DaNeshia moved, after considering	Liz Lawrence	9 ayes;	Motion Passed
the identified violations of the		0 nays;	
Board's moral fitness standard and		1 recused	
weighing the aggravating and		(Keeney)	
mitigating circumstances unique to			
this case, that no Board action			
should be taken against Precup's			
application for training and			
subsequent certification.			
subsequent certification.			

13. Houpt, Thomas (60473) Certification Review: Police

Presented by Linsay Hale

Reason for Discretionary Review

DPSST received an Application for Training (F5) for Thomas Houpt, in which he disclosed multiple arrests and convictions. Specific to this review is a 2004 conviction of *Giving False Information to Police Officer*, a Class A misdemeanor.

Because this criminal disposition involves elements of dishonesty/deceit, Oregon Administrative Rule requires a discretionary professional standards review be conducted.

Thomas Houpt provided verbal mitigation for committee consideration.

Policy Committee Discussion/Vote	Second	Vote	Outcome
Craig Zanni moved that the Police Policy Committee adopt the staff report.	Liz Lawrence	10 ayes; 0 nays; 0 recused	Motion Passed Unanimously

The committee discussed the moral violation identified and identified the following aggravating and mitigating factors specific to this case:

- Mitigating
 - o Houpt was not employed in law enforcement at the time of the arrest or conviction.
 - o The conviction happened 16 years prior to employment.
 - o Houpt does not have any additional criminal dispositions on his record.
- Aggravating
 - o Houpt was dishonest with the officer during the arrest by claiming he was someone he wasn't when he was pulled over for a traffic violation.

Liz Lawrence moved, after	DaNeshia	10 ayes;	Motion Passed
considering the identified violations	Barrett	0 nays;	Unanimously
of the Board's moral fitness		0 recused	
standard and weighing the			
aggravating and mitigating			
circumstances unique to this case,			
that no Board action should be			
taken against Houpt's application			
for training and subsequent			
certification.			

14. <u>Proposed Rule Changes to Adopt OAR 259-006-0000 and 259-008-0290;</u> <u>Establishing DPSST Applicant Moral Fitness Standards</u>

Presented by Jennifer Howald

The Criminal Justice Background Investigation Workgroup was formed in 2019 to review the current Board/DPSST standards and processes for the pre-employment background investigation required for employment or utilization as a public safety professional. One of the issues identified during the Workgroup's discussions addressed hiring individuals into certifiable public safety positions who have a past criminal disposition which requires a professional standards review by a Policy Committee and the Board.

The current moral fitness standards and discretionary review processes for public safety professionals do not differentiate between currently employed public safety professionals and new hires. This means that a new hire who engaged in criminal behavior prior to entering a career in public safety, signing a Code of Ethics and becoming certified is subjected to the same review process as an employed, certified public safety professional who engaged in bad behavior.

Due to meeting schedules and agenda limitations, it is not uncommon for agencies to hire someone without knowing for months if the individual will be eligible for certification. This delay directly impacts the operations of the hiring agency as well as the public safety professional's training and certification timelines.

The following proposed rule adoptions and amendments present the Workgroup's recommendations for establishing standards and processes for review of criminal

dispositions that occurred prior to employment in public safety. The outcome for implementing these recommendations is a more streamlined discretionary review process that incorporates mitigation factors to consider the pre-employment nature of the individual's past criminal dispositions.

These recommendations:

- Establish a discipline neutral review committee that would meet on a monthly or as needed basis (Applicant Review Committee).
- Delegate the discretionary review process to DPSST staff and the Applicant Review Committee (ARC).
 - Staff will be responsible for the initial review and determination that the applicant for training and certification has a past criminal disposition that meets the definition of a discretionary moral fitness violation.
 - The ARC will be responsible for reviewing cases that staff identify as discretionary moral fitness violations. The ARC's decision regarding denial and ineligibility will be the final disposition.
- Establish separate discretionary grounds for denial that apply only to a newly hired public safety professional who has never been employed in public safety before.
 - Dishonesty uses the same definition as the discretionary moral fitness violation used for certified public safety professionals.
 - Gross misconduct identifies egregious behavior including violence against another person and sex-related offenses.
- Require the consideration of mitigating factors related to the pre-employment nature of the criminal disposition.
 - The criminal disposition occurred prior to employment in public safety which means there is no color of office to consider and no violation of a code of ethics.
 - The individual has been hired by a public safety agency that completed a background investigation, is aware of the past criminal history and did not find it an obstacle to employment within their agency.
- Establish an ineligibility period range from zero days to 10 years:
 - A Zero-days minimum ineligibility period recognizes that while the discretionary moral fitness violation exists the mitigation outweighs the violation.
 - A 10-year maximum ineligibility period recognizes that because the discretionary criminal disposition occurred before employment in public safety the individual cannot be precluded from certification for life. This is consistent with other occupational licenses and in line with

national regulation that recognizes that at a minimum the passage of time mitigates the behavior.

The following standards still apply

- All public safety professionals, including new hires, are subject to the same mandatory disqualifiers (felony convictions, convictions involving domestic violence or drugs, and convictions requiring registration as a sex offender).
- Individuals can present written and verbal mitigation for the ARC to consider.
- The ARC's discretionary denial of certification applies to all public safety professional certifications.
- The ineligibility period for a criminal disposition will begin from the date of the criminal disposition.
- All due process rights and contested case procedures still apply.

Consensus reached approving the fiscal impact statements provided by staff.

Liz Lawrence moved to recommend that the Board adopt OAR 259-006-000 and 259-008-0290 approve filing the proposed rule change. Mark Rauch seconded the motion. The motion passed unanimously.

15. <u>Law Enforcement Memorial Wall Nomination – Marshall Zachariah H. Stroud, Harney City</u>

Presented by Eriks Gabliks

While conducting off-duty historic research, Rebecca Hannon, of our Standards & Certification Section, found online newspaper articles about a line-of-duty death of a Harney City Marshal Zachariah H. Stroud on Wednesday, September 11, 1912. His name is not on the Oregon Fallen Law Enforcement Officers Memorial Wall at DPSST or the National Fallen Officers Memorial in Washington, D.C. His death certificate can be found online at FindAGrave.com.

DPSST staff reached out to Harney County Sheriff Dan Jenkins and Lt. Brian Needham who contacted the Harney County Museum for assistance. The Museum was able to conduct historic research which gleaned more details including an eyewitness statement from a local oral history collection. Harney City Marshal Zachariah H. Stroud had encountered four individuals carelessly firing weapons in front of the post office. He cautioned the group to stop or else they would be arrested. The group resisted resulting in a fusillade of gunfire, injuries to several of those involved, and the death of Harney City Marshal Stroud. Stroud was 44 years of age at the time of his death, unmarried, and left behind his mother and father. Three of the four individuals involved in the incident were found guilty of manslaughter.

Craig Zanni moved to recommend that the name of Harney City Marshal Zachariah H. Stroud will be included on the Law Enforcement Memorial Wall. DaNeisha Barrett seconded the motion. The motion passes unanimously.

16. Department Update

Linsay Hale Reported:

- Linsay welcomed Jill Thissell to the Police Policy Committee.
- Kristen Hibberds has left DPSST to accept a promotion with another State agency. Kristen will be missed and we wish her all the luck in her new position.
- PPC members reviewed and recommended approval of the formation of the Applicant Review Committee. That recommendation was the result of multiple meetings of the Background Investigator Workgroup which focused on reviewing the DPSST's role in the hiring of public safety officers. This recommendation was be reviewed by the TPC and CPC and unanimously recommended the Board adopt the changes at their meeting in July. Another Workgroup recommendation regarding the sharing of background information between public safety agencies, and the idea of DPSST serving as a repository for applicant/agency information is being reviewed by the Department of Justice.
- We are excited to have Basic classes back in session. BP398 has returned, with BP399 and 400 scheduled to return on 7/6. All classes will follow DPSST's Health and Safety Plan implemented to help mitigate COVID-19 risks.

Eriks Gabliks Reported:

- DPSST is tracking the tragic death of George Floyd due to the actions of a
 Minneapolis police officer and actively listening to the discussions taking place
 around the state and nation. As the state's standards and training agency for many
 public safety disciplines, including law enforcement, there is much interest in the
 work of DPSST. DPSST has responded to inquiries from local, state and federal
 elected officials.
- DPSST supports a national database of officers who are terminated. The reason, for almost 20 years, DPSST has participated in a national decertification database that is operated by the International Association of Directors of Law Enforcement Standards and Training (IADLEST). This system, the National Decertification Index (NDI), is used by dozens of state criminal justice certification agencies but the challenge is that not all states certify, decertify, or use the same language for their actions. NDI is a "pointer system" that sends agencies to the state that entered the information for more details. The case of a decertified Oregon police officer has been used to share the benefits of NDI as the decertified applied to work in law enforcement a few months later in Alaska and again months after that in the mid-west. Each time NDI was the tool used to prevent this individual from being hired as a police officer. DPSST has pledged to provide whatever information is needed and to assist any legislative committees that are formed that will improve law enforcement professionalism through standards and training.
- At the end of June, DPSST was asked by IADLEST to assist with a review of Minnesota's Board on Peace Officer Standards and Training (POST) and Linsay Hale, DPSST's Professional Standards Division Director, was assigned this task.
- DPSST will offer webinars next weeks for community leaders, elected officials, state legislators and media. The webinars will be one hour each and will cover topics such as DPSST professional standards for law enforcement, DPSST basic police training, and DPSST use of force training.

- Oregon Secretary of State Audits Division is commencing a performance audit of DPSST. The audit will be generally focused on law enforcement use of force practices, police accountability, and community policing objectives. DPSST welcomes the review and looks forward to working with the auditors.
- DPSST hosted the State's Fallen Law Enforcement Officer Memorial On May 5, 2020. While the campus was closed to the public, it was necessary to honor and remember Oregon's fallen police, corrections and parole and probation officers. A limited number of honor guard members participated in the modified ceremony and the names of all of the fallen were read. DPSST livestreamed the event on Facebook and also created a video afterwards that has generated more than 25,000 views to date.
- DPSST continues to work on its 2021-2023 Agency Request Budget as are other state agencies. DPSST is waiting to hear if reductions will be taken in the current 2019-2021 biennium. If reductions are taken the training programs at the agency would be impacted. Under our current schedule, DPSST will complete the delivery of our 15 budgeted Basic Police classes by the end of the year. Eight 16-week Basic Police classes have been delivered since the beginning of the biennium on July 1, 2019. Three are in session at the Academy. Two scheduled for August and September are full already with 40 students each and the October class (BP 403) already has 20 new hires enrolled. Basic Police 404 scheduled to tentatively begin in November has only four individuals enrolled to date. DPSST submitted a request for funds for additional classes for the February 2020 legislative session but no action was taken. DPSST staff is actively tracking hiring and retirement numbers as well as budget discussions at state, local, county, tribal and university law enforcement agencies based on economic uncertainties.
- Two new police departments are being formed and DPSST staff is assisting both of them. The Board of Trustees at Oregon State University took formal action to form a police department and end a long-standing agreement with the Oregon State Police. The Cow Creek Band of Umpqua Tribe of Indians in Southern Oregon is also moving forward with the creation of a police department. DPSST is working with the tribe on Senate Bill 412 compliance and state certification and training issues. Cow Creek will be a hybrid model with tribal officers working together with county deputies continuing under contract.
- DPSST is working with the Portland Police Bureau on needed paperwork for their new Chief Chuck Lovell so he can join the Board and designate a representative for the Police Policy Committee.

17. Next Police Policy Committee Meeting: August 20, 2020 at 10:00 am

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.