

Corrections Policy Committee

Minutes

August 17, 2010

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, August 17, 2010 in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:32 p.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriff's Association, Chair
Raimond Adgers, Oregon Sheriff's Jail Command Council
Tom Cramer, Department of Corrections Training Division Director
Erik Douglass, Non-Management Corrections Officer
Michael Gower, Designee for Director of Department of Corrections
Nancy Howton, Department of Corrections Security Manager
Amanda Rasmussen, Non-Management Corrections Officer
Ida Rovers, Department of Corrections, Women's Correctional Facility
Lisa Settell, Parole and Probation Officer
Marie Tyler, Oregon Sheriff's Jail Command Council
Thomas Wright, DOC Bargaining Unit Representative

Committee Members Absent:

Diana Simpson, Oregon State Sheriff's Association
Jeff Wood, Oregon Assoc. of Community Corrections Directors

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorance, Certification and Records Supervisor
Carolyn Kendrick, Administrative Specialist
Theresa King, Professional Standards Coordinator/Investigator



1. Minutes (May 18, 2010)

Approve the minutes of the May 18, 2010 Corrections Policy Committee meeting.

See Appendix A for details.

Raimond Adgers moved that the committee approve the minutes of the May 18, 2010 Corrections Policy Committee meeting as written. Marie Tyler seconded the motion. The motion carried unanimously.

2. Quarterly Review of DOC Basic Corrections Class

Presented by Theresa King

See Appendix B for details

Chair Todd Anderson thanked the Audit Team for their work and efficiency.

3. Darrel A. BLAIN – DPSST #35540

Presented by Theresa King

See Appendix C for details

- *Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Nancy Howton seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**
 - d. The identified conduct did not involve **Misuse of Authority**.
 - e. The identified conduct did not involve **Gross Misconduct**
 - f. The identified conduct did involve **Misconduct based on violation of law—contempt of court**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee considered a number of mitigating circumstances including the appeal from BLAIN’s wife, the fact he’s received counseling and fulfilled his obligations, and that BLAIN has proven himself during the last four years. No aggravating circumstances were noted.*
- *Michael Gower moved that the Corrections Policy Committee finds BLAIN’s conduct does not rise to the level to warrant the revocation of his certifications(s) or denial of Advanced Certification, and therefore recommends to the Board that these certification(s) not be revoked and his Advance Certification not be denied. Lisa Settell seconded the motion. The motion carried unanimously.*

4. Robert Owen DAVIS –DPSST #25755 – RE-CONSIDERATION

Presented by Theresa King

See Appendix D for details

- *Marie Tyler moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Erik Douglass seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did involve **Dishonesty—sexual harassment; endangering staff; racial comments**.
 - c. The identified conduct did involve a **Disregard for the Rights of Others—racial comments to stir people up; wouldn’t take accountability for actions**.

- d. The identified conduct did involve **Misuse of Authority**—*was in uniform*
 - e. The identified conduct did involve **Gross Misconduct**.
 - f. The identified conduct did involve **Misconduct**—*violation of law, DUII*
 - g. The identified conduct did involve **Insubordination**—*failure to follow the rules of a respectful workplace*.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted as an aggravating circumstance, DAVIS' additional poor behavior since the past issue, which is serious enough to cause fall from rank. No mitigating circumstances were noted.*
 - *Marie Tyler moved that the Corrections Policy Committee finds that the new information does not alter but only enhances the previous Policy Committee's recommendation that DAVIS' misconduct rose to the level to warrant the revocation of his certification(s), and that DAVIS' certifications should be revoked.*
 - *Marie Tyler moved that the Corrections Policy Committee finds that the new information does additionally support the Policy Committee's recommendation that DAVIS' misconduct continues to rise to the level to warrant the revocation of his certification(s), and that DAVIS' certifications should be revoked.*
 - *Based on the totality of factors, Marie Tyler moved that the Corrections Policy Committee recommends to the Board that DAVIS' misconduct reached the top end of all categories noted above with a focus on Dishonesty—a lifetime disqualifier; he may never reapply for certification. Erik Douglass seconded the motion. The motion carried unanimously.*

5. Steven D. COWLES – DPSST #38208

Presented by Theresa King

See Appendix E for details

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Ida Rovers seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did not involve **Dishonesty**
 - c. The identified conduct did involve a **Disregard for the Rights of Others**—*Using a taser for no lawful reason.*
 - d. The identified conduct did not involve **Misuse of Authority**
 - e. The identified conduct did involve **Gross Misconduct**—*Tased with aggression, a gross deviation of procedure and expectation of behavior.*
 - f. The identified conduct did involve **Misconduct**—*violation of law.*
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted as an aggravating circumstance the fact that COWLES' use of alcohol has gotten worse. No mitigating circumstances were noted.*

- *Marie Tyler moved that the Corrections Policy Committee finds COWLES' conduct does rise to the level to warrant the revocation of his certification(s) and therefore recommends to the Board that these certification(s) be revoked. Amanda Rasmussen seconded the motion. The motion carried unanimously.*
- *Nancy Howton moved that the Corrections Policy Committee recommend to the Board that COWLES' misconduct reached the top level of all categories noted above with a focus on Disregard for the Rights of Others-a fifteen year minimum period of ineligibility; COWLES may reapply for certification after fifteen years from the date of revocation. Raimond Adgers seconded the motion. The motion carried unanimously.*

6. **Jason O. JONES – DPSST #51425**

Presented by Theresa King

See Appendix F for details

- *Marie Tyler moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Ida Rovers seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did involve a **Disregard for the Rights of Others—reckless driving and DUII**.
 - d. The identified conduct did not involve **Misuse of Authority**.
 - e. The identified conduct did not involve **Gross Misconduct**.
 - f. The identified conduct did involve **Misconduct—violation of law**
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The fact that JONES' was 19 years old (9 years ago) and not involved in law enforcement when this misconduct occurred, and that the DUII was dismissed were mitigating circumstances stated by the committee. No aggravating circumstances were noted.*
- *Michael Gower moved that the Corrections Policy Committee finds JONES' conduct does not rise to the level to warrant the denial of his training and subsequent certifications(s) and therefore recommends to the Board that these certification(s) not be denied. Marie Tyler seconded the motion. The motion carried unanimously.*

7. **Alicia M. SILER – DPSST #44849**

Presented by Theresa King

See Appendix G for details

Chair Todd Anderson stated for the record that SILER is his employee and therefore recused himself from discussion and voting on this case.

- *Raimond Adgers moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously by all voting with Chair Todd Anderson abstaining.*

- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did involve **Dishonesty**—*lied in the letter; lied about the timeline and when she left.*
 - c. The identified conduct did involve a **Disregard for the Rights of Others**—*the mooning issue.*
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct**—*the use of her child in the area of the event.*
 - f. The identified conduct did involve **Misconduct**—*bizarre behavior and use of child.*
 - g. The identified conduct did involve **Insubordination**—*consistently late for work.*
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee stated as aggravating the fact SILER had been late for work twenty-eight times in the last five years and that she had used her child in the bizarre behavior. No mitigating circumstances were noted.*
- *Amanda Rasmussen moved that the Corrections Policy Committee finds SILER’s conduct does rise to the level to warrant the revocation of her certification(s) and therefore recommends to the Board that these certification(s) be revoked. Ida Rovers seconded the motion. The motion carried unanimously by all voting with Chair Todd Anderson abstaining.*
- *Marie Tyler moved that the Corrections Policy Committee recommends to the Board that SILER’s misconduct reached the top end of all categories noted above with a focus on Dishonesty—a lifetime disqualifier; she may never reapply for certification. Nancy Howton seconded the motion. The motion carried unanimously by all voting with Chair Todd Anderson abstaining.*

The committee convened in Executive Session at 3:18pm to discuss matters exempt from disclosure under ORS 192.660(1)(h) related to Eric HOHLT and Tyler PLAGMANN cases.

The committee reconvened in Regular Session at 3:24pm to take final action in the matters of HOHLT’s and PLAGMANN’s request for medical waivers.

8. Eric Hohlt

Presented by Marilyn Lorance

- *Michael Gower moved that the Corrections Policy committee recommends to the Board the approval of a waiver of the depth perception standard for Deputy HOHLT. Marie Tyler seconded the motion. The motion carried unanimously.*

9. Tyler PLAGMANN

Presented by Marilyn Lorance

- *Michael Gower moved that the Corrections Policy Committee recommends to the Board and the Executive Board the approval of a waiver of the depth perception standard for Deputy PLAGMANN. Marie Tyler seconded the motion. The motion carried unanimously.*

10. DUII Related Discretionary Cases

Presented by Marilyn Lorange

See Appendix H for details

The committee agreed this chart is a valuable resource and thanked staff for their work on this project.

11. Additional Business

Presented by Eriks Gabliks

- **The 2010 Leadership Seminar** was well received and we are currently working with the Sheriff's, Chief's, OSP, DOC, FBI, and a few others on the next training, which will occur Spring 2011.
- Thomas Wright has termed out with this committee. Oregon AFSCME is working on his replacement. This position requires the Governor's confirmation and Senate approval.
- The new two-week Police to Corrections class and is scheduled to begin October 25, 2010. So far there are 20 people registered to attend. The class can hold 40 participants.
- Basic Corrections Local 003 is currently in session, scheduled to graduate August 27, 2010.
- There are discussions regarding the Criminals Fines and Assessments Fund being dedicated for this agency and the other agencies currently funded by this source. The Legislature is working on this. We'll keep you posted as we learn more.
- This week DPSST is updating the Range 3000 MILO system equipment which is deployed often around the state for in-service training.

Legislative Update: Presented by Marilyn Lorange

DPSST is discussing with DOC the definitions of Corrections Officers that is in statute. When individuals are promoted to a certain level at DOC, they no longer meet the DPSST statutory definition of a Corrections Officer due to change in duties. As a result their certifications lapse. Staff has worked with DOC to develop an amendment to the definition of "Corrections Officer" that doesn't just apply to DOC but could also apply to the larger jails where command staff is separated from performing the direct supervision of inmates. This amendment will be put forward to the Legislature.

The committee asked if this would grandfather people back into certification... This is a continuing discussion. Staff will keep you posted as we learn more.

12. Next Scheduled Meeting – November 16, 2010

The next regularly scheduled meeting is November 16, 2010 at 1:30 p.m.

With no further business before the committee the meeting adjourned at 3:52 p.m.

Appendix A

Corrections Policy Committee Minutes (Draft) May 18, 2010

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, May 18, 2010 in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:33 p.m.

Attendees:

Committee Members:

Todd Anderson, Oregon State Sheriff's Association, Chair
Raimond Adgers, Oregon Sheriff's Jail Command Council
Tom Cramer, Department of Corrections Training Division Director
Erik Douglass, Non-Management Corrections Officer
Michael Gower, Designee for Director of Department of Corrections
Nancy Howton, Department of Corrections Security Manager
Amanda Rasmussen, Non-Management Corrections Officer
Lisa Settell, Parole and Probation Officer
Diana Simpson, Oregon State Sheriff's Association
Marie Tyler, Oregon Sheriff's Jail Command Council
Thomas Wright, DOC Bargaining Unit Representative

Committee Members Absent:

Shane Hagey, Oregon Assoc. of Community Corrections Directors
Ida Rovers, Department of Corrections, Women's Correctional Facility

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorance, Certification and Records Supervisor
Mindy Tucker, Professional Standards Coordinator
Carolyn Kendrick, Administrative Specialist
Theresa King, DOC Audit Team Coordinator
Ryan Keck, Training Coordinator
Steve Winegar, Education Program Specialist



Chair Todd Anderson announced that this is Thomas Wright's last meeting and thanked him for his 6 years of service on the Corrections Policy Committee.

13. Minutes (February 16, 2010)

Approve the minutes of the February 16, 2010 Corrections Policy Committee meeting.

See Appendix A for details.

Marie Tyler moved to approve the minutes of the February 16, 2010 Corrections Policy Committee meeting as written. Michael Gower seconded the motion. The motion carried unanimously.

14. Malinda R. Hoffman – DPSST #43735

Presented by Mindy Tucker

See Appendix B for details

- *Raimond Adgers moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Marie Tyler seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did involve **Dishonesty based on HOFFMAN's lies about the timesheet issue, falling asleep on the job, and her relationship with an inmate.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others. She put others at risk by sleeping on the job and her angry outburst.**
 - d. The identified conduct did involve **Misuse of Authority regarding payroll issues.**
 - e. The identified conduct did involve **Gross Misconduct by sleeping on the job.**
 - f. The identified conduct did involve **Misconduct regarding the payroll issue and the relationship with an inmate.**
 - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified as aggravating circumstances HOFFMAN's use of narcotics, the fact that she had to be addressed regarding timesheet issues multiple times, and the fact she could have fixed her timesheet any number of times. The only mitigating circumstance identified by the committee was how the payroll system was initially set up; supervisors gave employees authority to change timesheets.*
- *Diana Simpson moved that the Corrections Policy Committee finds HOFFMAN's conduct does rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) be revoked. Raimond Adgers seconded the motion. The motion carried unanimously.*
- *Marie Tyler moved to recommend to the Board that HOFFMAN's misconduct is a lifetime disqualifier; she may never reapply for certification. Michael Gower seconded the motion. The motion carried unanimously.*

15. Kristine M. Phillips – DPSST #28751

Presented by Mindy Tucker

See Appendix C for details

Erik Douglass recused himself from voting due to his probable future involvement with PHILLIP's employment reinstatement.

- *Diana Simpson moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Nancy Howton seconded the motion. The motion carried unanimously by all voting with Erik Douglass abstaining.*
- By discussion and consensus:
 - h. Identify the conduct that is at issue.
 - i. The identified conduct did not involve Dishonesty.
 - j. The identified conduct did involve a Disregard for the Rights of Others regarding the holding cell issue and the possible abuse that could have occurred.
 - k. The identified conduct did involve Misuse of Authority.
 - l. The identified conduct did involve Gross Misconduct by creating a danger and/or risk to inmate with handcuffing issue.
 - m. The identified conduct did involve Misconduct based on violation of the law.
 - n. The identified conduct did not involve Insubordination.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee stated PHILLIP's honesty regarding all misconduct as a mitigating circumstance and the fact that by accounts she tried to help inmates. Identified aggravating circumstances include: PHILLIP's put her and the agency in huge liability; she advocated sexual behavior in the holding cell; and that public perception could be severely damaged.*
- *Marie Tyler moved that the Corrections Policy Committee finds PHILLIPS' conduct does rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) be revoked. Thomas Wright seconded the motion. The motion carried unanimously by all voting with Erik Douglass abstaining.*
- *Diana Simpson moved that the Corrections Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be 15 years from the date of revocation. Marie Tyler seconded the motion. The motion carried unanimously by all voting with Erik Douglass abstaining.*

16. Mary M. Tanner – DPSST #34397

Presented by Mindy Tucker

See Appendix D for details

After much discussion, the committee agreed to let the record show that even though TANNER did not personally receive the call, she still should have responded. It is the consensus that this new information does not change the previous consensus of the committee regarding the Disregard for the Rights of Others, and in fact all items voted on last meeting remain the same.

- *Marie Tyler moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Amanda Rasmussen seconded the motion. The motion carried unanimously.*
- By discussion and consensus:

- h. Identify the conduct that is at issue.
 - i. The identified conduct *did* involve **Dishonesty**.
 - j. The identified conduct *did* involve a **Disregard for the Rights of Others**.
 - k. The identified conduct *did* involve **Misuse of Authority**.
 - l. The identified conduct *did* involve **Gross Misconduct**.
 - m. The identified conduct *did* involve **Misconduct**.
 - n. The identified conduct *did not* involve **Insubordination**.
- }
There was no change in these items from the last meeting dated Feb. 16, 2010.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.
 - By vote, the Corrections Policy Committee finds TANNER’s conduct *does/does not* rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*. ***The committee clarified the scope of their decisions at the current meeting, since they had already voted unanimously on this matter at the February 2010 meeting and recommended the revocation of TANNER’s certifications. Based on their discussion, it was the consensus of the committee that the vote stands from the previous meeting.***
 - ***Michael Gower moved that the Corrections Policy Committee recommends to the Board that TANNER’s misconduct remains a lifetime disqualifier; she may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.***

17. Matthew P. Lytle – DPSST #43767

Presented by Mindy Tucker

See Appendix E for details

- ***Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Marie Tyler seconded the motion. The motion carried unanimously.***
- By discussion and consensus:
 - h. Identify the conduct that is at issue.
 - i. The identified conduct *did* involve **Dishonesty based on the lie regarding use of the meal card—knowing the rules and regulations; and the lie by omission of the DUII.**
 - j. The identified conduct *did* involve a **Disregard for the Rights of Others, those paying his way through the academy.**
 - k. The identified conduct *did* involve **Misuse of Authority. He obtained a benefit for his brother. The DUII is a misuse of public trust.**
 - l. The identified conduct *did not* involve **Gross Misconduct.**
 - m. The identified conduct *did* involve **Misconduct by violation of standards and training.**
 - n. The identified conduct *did not* involve **Insubordination.**

- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The fact that LYTLE did not take any responsibility for his actions and in fact transferred blame for them greatly aggravated the committee. The committee identified the letter that LYTLE wrote—specifically his stated lack of training as a possible mitigating circumstance.*
- *Marie Tyler moved that the Corrections Policy Committee finds LYTLE’s conduct does rise to the level to warrant the denial of his application for training and subsequent certification(s); and therefore recommends to the Board that LYTLE’s application for training and subsequent certification(s) be denied. Thomas Wright seconded the motion. The motion carried unanimously.*
- *Raimond Adgers moved that the Corrections Policy Committee recommend to the Board that LYTLE’s misconduct is a lifetime disqualifier; he may never reapply for certification. Marie Tyler seconded the motion. The motion carried unanimously.*

18. CORPAT for Corrections

Presented by Steve Winegar

See Appendix F for details

DPSST needs justification—an anchor—to adopt some kind of time standard for a corrections physical ability test. Modifications of the tasks to make the test more appropriate for corrections will impact the average completion time for CORPAT. DPSST needs more basic data on the revised test and to look at injuries and success rates with corrections officers as we move forward. This will take another three to four years to accomplish.

Michael Gower moved that the Corrections Policy Committee recommend that DPSST continue the studies for CORPAT with the goal of someday having the data to implement a Corrections-based Physical Abilities Test. Marie Tyler seconded the motion. The motion carried unanimously.

19. Standards and Certification DOC Audit Team Update

Presented by Theresa King

See Appendix G for details

Staff shared that the DPSST DOC Audit team has compared DOC’s basic corrections program with DPPST’s basic corrections program in terms of the job task analysis, the performance objectives (which are conceptual objectives), and also the testing measures and have determined that in most categories the DOC program exceeded the state standards.

Staff asked if reports being supplied are acceptable to the committee and if not asked for additional direction for the Audit Team. A compilation of these reports will be presented at the next legislative session as mandated. Source documents are available to view for more in-depth detail. DOC thanked the Audit Team for their efforts and collaboration.

20. Basic Corrections Local Course Update

Presented by Ryan Keck

See Appendix H for details

The majority of the basic corrections curriculum has been completely or significantly revised to suit local correctional facilities. DPSST has recruited new agency loaned instructors from local facilities. Staff tried to create parody with the basic police program by including physical training, more scenario based training, ethics course and testing protocol in the revised curriculum.

DPSST will conduct its first class for current police officers training for local corrections in October 2010. It will be a 2 week course covering only materials not covered in the basic police program. This is will also be a good course for supervisors to take who move to different departments throughout their agencies.

Students are very pleased with current local basic corrections training. They share that their confidence level at the end of the class is increased. With new instructors and material students feel better prepared upon graduation.

21. Additional Business

Presented by Eriks Gabliks

DPSST is working on the 2011-13 budget. We are submitting to regain the leadership program and asking for regional training to be restored. DPSST has been asked to work a reduction of 25% in 5% increments as an exercise. This is still a work in progress. We will keep you posted.

22. Next Regularly Scheduled Meeting

The next regularly scheduled meeting is August 17, 2010 at 1:30 p.m.

With no further business before the committee the meeting adjourned at 4:12 p.m.

Appendix B

Department of Public Safety Standards and Training Memo

DATE: August 17, 2010
TO: Eriks Gabliks, Deputy Director
THRU: Marilyn Lorance
Standards and Certification Manager
FROM: Theresa King,
DOC BCC Audits Unit Coordinator

SUBJECT: Quarterly Review of DOC BCC by DPSST Audit Team

Issue:

Is the DOC BCC meeting the established standards for Basic Corrections Training?

Background:

The concept of Oregon Department of Corrections (DOC) providing its own training as an alternative to the DPSST 200-hour Basic Corrections Course (BCC) was proposed in the 2009 Governors' Recommended Budget as a cost saving for DOC. This concept was given statutory approval for a period of four years with the requirement that it meets or exceed the DPSST BCC course, that DPSST audit the DOC-BCC course and that DPSST provide a written report to the legislature in 2011.

In May 2010, the Audit Team provided the Corrections Policy Committee a quarterly update of the 240-hour DOC BCC. In that report the Audit Team found that the DOC BCC met the minimum standards as an equivalent to the DPSST Basic Corrections Course.

During this reporting period, between May and July 2010, the Audit Team conducted a series of audits of the DOC BCC which included Administrative Records Audits, Administrative on-site Audits, and Training On-Site Audits. After each audit, the results were provided to DOC PDU for review prior to forwarding to the institution. Within the audits, the Audit Team made determinations of whether the training did not meet the standards, met the standards or exceeded the standards. Additional observations and recommendations were made in areas of concern or areas in which compliance expectations were outlined.

During this reporting period there were five non-compliance letters issued to DOC PDU. The letters included the areas of non-compliance, the required remedy and a date by which compliance was required. One issue resulted in a compliance determination.

Audit Overview

DOC BCC Classes/Written Test Results

DOC BCC in-session classes

During this reporting period DOC BCC began three BCC across the state, making a total of 13 classes in some phase of training. A total of 132 students are attending some phase of the BCC.

DOC BCC testing results

During this reporting period, the average for Test #1 was 88, with 80 being the lowest average and 92 being the highest average. To date, the average for Test #2 is 88, with 85

being the lowest average and 92 being the highest average. DOC has experienced no Academic failure requiring remediation. DOC has experienced one Skills failure in Firearms and two Defensive Tactics failures, both requiring remediation.

DOC BCC training completed

During this reporting period, three students have completed the DOC BCC program and are now working on their Field Training Manual. These students must submit to a nine-month internal review conducted by field training officers, the field training supervisor and command staff to determine, based on the students' progress and achievements, whether they will continue in their trial service. It is at the 12-month mark that DOC will submit the F-7 along with documentation for DPSST Basic Corrections certification. It is important to note that after Test #2, all of the requirements of the DOC BCC have been met, for purposes of DPSST certification. While completion of the Field Training Manual is a requirement of certification, the methodology used is at the discretion of DOC, as it is with any other public safety agency.

Curriculum and Course Hour Updates

In May 2010, DPSST Basic Corrections completed a curriculum and subject/hour breakdown update. There were changes in that update which will now impact the DOC BCC program. DOC PDU has been provided with the updates on CD, and with an overview of the changes. During the next several months DOC PUD will review and update their curriculum accordingly.

Instructor Training and Certification

Instructor Development Courses

During this reporting period DOC has conducted a Firearms Instructor Course, a Health and Fitness Instructor Course, a Presentation Instructor Course and a FTEP Instructor Development Course across the state. In total there were 15 instructors were trained. Of the 15 instructors trained, seven were Field Training Officers who completed a 40-hour FTEP course. All instructors attending successfully completed the training.

Instructor Applications

During this reporting period, DOC has submitted 32 F-9 Instructor Applications. Of these, nine applications were granted certification in one or more categories and 23 applications were returned as insufficient. Of the returned applications one was returned for fingerprints, one for verification of typographical error and 21 required Social Security Numbers (SSN). SSN are required to perform routine criminal records checks and for state data entry requirements.

Audits

Administrative Records Audits

During this reporting period, the Audit Team conducted two administrative records audits. Administrative records audits include reviewing the timekeeping records and shift assignments of both the trainee and the trainers, as well as training documentation. The two audits included BCC 001 at EOIC and BCC 003 at CCCF.

Administrative Records Audit Findings:

DOC BCC Administrative Records audits resulted in a determination that, in general, for purposes of documentation of training, the recordkeeping meets

standards. As with any new program, the development of documentation and related processes are being identified and areas of concern by the Audit Team have been actively addressed by DOC PDU and institution staff.

Administrative On-Site Audits

During this reporting period the Audit Team conducted four administrative on-site audits. Administrative audits include an on-site review of trainee folders which contain all training documentation, records and progress reports. The four audits included on-site audits at SRCI, EOIC, TRCI and CRCI. The initial administrative on-site audits at each institution serve as an opportunity to meet with record-keeping and training staff, review the records and informally identify areas of concern as it relates to trainee records. There were three verbal debriefings after the audits and one Audit Report prepared.

Administrative On-site Audits Findings:

DOC BCC Administrative On-site Audits resulted in a determination that, in general, for purposes of documentation of training, the recordkeeping meets standards. As with any new program, the development of documentation and related processes are being identified and areas of concern by the Audit Team have been actively addressed by DOC PDU and institution staff.

Training On-Site Audits

During this reporting period the Audit Team conducted 23 training on-site audits. Training on-site audits include observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, and related areas. These audits included four basic corrections classes that were in their Classroom Weeks 1 and 2, the Skills Sheets Week 3, the Job Shadow Weeks 4 and 5, the six-month training and firearms training. These audits included a series of individual reports on individual classroom instruction and multiple day training. Of these audits, two extended over multiple days in the six-month training phase and Audit Reports were prepared.

Training On-site Audit Findings:

DOC BCC Training On-site Audits resulted in the determination that the training meets or exceed the DPSST BCC course. The concept of “learn, practice, demonstrate” is being carried throughout the training phases of the DOC BCC program and at the six-month phase culminates in a week-long class that includes Reality Based Training (RBT). The Audit Team found that DOC BCC exceeded the minimum standards in RBT at SRCI. The Audit Team found that one defensive tactics class failed to meet the minimum standards. This class was re-instructed prior to RBT, thereby resulting in a determination that the training meets the minimum standards.

Compliance concerns

Compliance Letters and Determinations

During this reporting period the Audit Team issued five compliance letters. Compliance letters identify an issue, what the required remedy is, the compliance timeline and the date that compliance is required. A compliance letter is generally supported by a memo which outlines the issue, provides the background and analysis of the issue, identifies the findings and establishes a recommendation.

Once compliance letters are issued, DOC PDU may provide additional information for consideration and a compliance determination is then made by the Audit Team. Four of the five compliance issues were resolved at the initial stage and one issue resulted in a compliance determination.

Ongoing review of issue

One issue that is currently being reviewed and addressed by the Standards and Certification Manager and DOC Human Resources related to the use of temporary employees.

Student Surveys

During this reporting period three Basic Corrections Classes were audited, and three student surveys were conducted. All three surveys were at the conclusion of the six-month class. The surveys assessed students' confidence level based on training received and effectiveness of the training received. The surveys continue to demonstrate an increased level of confidence in students' abilities to perform the tasks of a correctional officer as the training phases continue.

DOC COD

During this reporting period DOC has submitted two applications for Career Officer Development (COD) to DPSST based on prior-established criteria. To date neither applicant has provided the required documentation to allow for a determination.

Findings

Based on the information and audit results to date, the DOC BCC meets the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

Attachments:

- 1. Audit Site Visits*
- 2. Audit Tracking*
- 3. May 5, 2010 BCC 007 Firearms Qualifications*
- 4. June 14, 2010 Audit SRCI*
- 5. June 30, 2010 Audit CRCI*
- 6. July 1, 2010 Audit Salem*
- 7. July 1, 2010 Supplemental and Technical Report Salem*
- 8. Student Survey*
- 9. Administrative Report Audit CCCC*
- 10. Administrative Report Audit EOCI*
- 11. May 25, 2010 Compliance letter CE Task 44*
- 12. May 25, 2010 Compliance letter D3-002*
- 13. May 25, 2010 Compliance letter D3-003*
- 14. April 27, 2010 DPSST Review of DPSST and DOC Firearms Curriculum*
- 15. May 25, 2010 Compliance letter JTA 704*
- 16. March 25, 2010 DPSST Analysis of whether JTA #704 is covered in DOC BCC*
- 17. June 18, 2010 Compliance extension granted*
- 18. June 23, 2010 DOC Response on Compliance issues*
- 19. June 21, 2010 Compliance letter – instructor certification*
- 20. June 24, 2010 DPSST review of DOC negative response on PQCI*
- 21. June 25, 2010 Compliance determination by DPSST*

CLASSROOM FACILITIES

A. Ample firing lanes for the amount of students.

Rating: 2 Comments: Enough lanes to fire a relay of 7 students safely.

B. Adequate training equipment, pistols, ammunition and targets.

Rating: 2 Comments: Enough equipment was provided for all students to have all required safety equipment, including protective vest, and firearms.

C. First Aid equipment, AED located in central location, access to water and restrooms.

Rating: 2 Comments: First aid equipment with AED located in a central location.

D. Instructor checks the following areas.

Rating: 2 Comments: .

Condition of the range	OK
Impact area functional	YES
Target holders working properly	YES
Targets ready	YES
Communications/backup ready	YES
Safety briefing prepared	YES
Emergency procedures reviewed & read	YES
Emergency assignments are assigned	YES

INSTRUCTORS

A. Instructor displayed a professional appearance.

Rating: 2 Comments: none

B. Instructors were prepared for the arrival of students.

Rating: 2 Comments: none.

C. Students were informed of Performance Objectives.

Rating: N.O. Comments: Auditors spoke with students who related that they were informed of the Performance Objectives and expectations for qualification.

D. Instructor reads safety rules

Rating: N.O. Comments: Auditors spoke with students who related that the safety rules and emergency plan were reviewed by instructors.

E. Instructs material based on Lesson Plan and Performance Objectives

Rating: 2 Comments: Ultimately instructors followed the minimum state standards for the qualification course. Range Master was position in the center of the firing line with instructors on each side. Range Master used a shot clock that sounded an audio alarm when the time limit was up.

F. Displays competency in knowledge of subject

Rating: 2 Comments: Instructors were knowledgeable in the area of firearms skills. Mendenhall was very good at giving rationale and explanations why certain actions take place. Instructors were able to explain the why, how and corrective actions necessary to remedy students shooting difficulties.

G. Did Instructor ask if there are any injuries because of training?

Rating: N.O Comments: Auditors departed before the final qualification course.

H. Instructor interacts with students in a manner that is meaningful and understandable.

Rating: 2 Comments: Instructors interacted with the students on a level that allowed the students to fully understand what was expected of them. Instructor explanations were clear, concise and understandable. Instructors put the students at ease when the time came for the actual qualification course. Mendenhall broke down the requirement for each stage of the qualification course, what the students needed to concentrate on, and asked if there were questions or clarification needed.

AFTER ACTION REPORT

Auditors debriefed with Firearms Rangemaster Lee Mendenhall, Firearms Instructor Leo Coolbaugh and Oneness Fish on 07/28/2010 @ 1610 hrs.

Comments: Auditors advised the instructors that they were impressed with instructors' adaptability and decision making when informed the first practice qualification course that was fired by the students did not meet the minimum state standards for qualification. Auditors were impressed with the clear and concise breakdown of instructions provided to the students and why movement is important to survival of a gun fight.

AUDITOR'S COMMENTS

Rating: 2 Comments: The first practice qualification course fired by the students did not meet the minimum state standards for pistol qualifications course. The students performed the first course of fire correctly. At the ten yard line, students started at the fifteen yard line, conducted a L-shape movement, moved to the ten yard line, drew their weapon, knelt conducted the course of fire. At the subsequent three courses of fire (the seven, five and three yard lines) the instructors did not require the students to engage in any movement during or after firing. At the final course of fire, the two yard line, the instructors required movement.

Prior to the next relay the Auditors spoke with the instructors, explained why the first practice qualification course did not meet the minimum state standard for the pistol qualification course. The Auditors provided the instructors with a copy of the PQC1 that identified movement at each stage of fire. The Auditors explained each phase of the qualification course, the movement requirement and the standard that the students need to meet.

The instructors sought clarification on how the pistol magazines should be loaded. The Auditors advised that decision is left up to DOC; however, DPSST and industry trends require that all magazines be fully loaded and that it is the responsibility of the students to ensure they do not run out of ammunition during the qualifying course of fire. Prior to the reload drill, students administratively remove the magazine in the weapon and download the magazine to one round then reinsert the magazine into the weapon. Instructors expressed concern about scoring the qualification course if there are more rounds on the target that the required number to be fired. The Auditors explained, through example, that if there were 27 rounds on the target when there should have been 25 rounds fired, instructors would deduct two of the highest scored rounds from the target. If the student has all 27 rounds in the 5 and 3 area and met all other requirements, they qualified. If two rounds were outside the 3 area, subtract 2 of the highest scored rounds; therefore they do not qualify. The instructors made the decision that students would fully load all magazines and they would run both relays through two practice qualification courses.

Instructors briefed the students on the qualification course, demonstrated the course, provided clear and concise instructions, and talked them through each stage of the qualification course. After completion of each relay firing two practice qualification courses under the required qualification standards; the actual qualification course was fired.

COMPLIANCE ISSUES Comments: Discussed above.

COMPLIANCE RESOLUTION Comments: Compliance issues were discussed and corrected for this practical qualification course.

FINDINGS: This qualification course meets minimum standards.

AUDITOR'S SIGNATURE Robert Sigleer

Date 07/29/2010 Time 0838

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: August 17, 2010
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Investigator/Coordinator

SUBJECT: Darrel A. Blain, DPSST #35540

ISSUE:

Should Darrel BLAIN's Basic and Intermediate Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

BACKGROUND and OVERVIEW

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

On April 27, 1998, BLAIN was hired by the Oregon Department of Corrections as a corrections officer.

On September 16, 1998, BLAIN signed his Criminal Justice Code of Ethics.

On May 27, 1999, BLAIN was granted a Basic Corrections Certificate.

On April 27, 2004, BLAIN was granted an Intermediate Corrections Certificate.

On April 22, 2010, BLAIN applied for his Advanced Corrections Certification by submitting an F7, Application for Certification. A routine records check showed that BLAIN had received a 2006 conviction for a Contempt of Court – Violation of a Restraining Order. DPSST requested and received documents from the arresting agency as well as from the court on this case.

In June 2010, DPSST sent a letter advising BLAIN that this matter would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

In July 2010 BLAIN provided information for the Policy Committee's consideration.

DISCUSSION:

ORS. 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;
(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or
(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;

- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds BLAIN's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Appendix D

Department of Public Safety Standards and Training Memorandum

DATE: August 17, 2010
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Investigator/Coordinator

SUBJECT: Robert Owen Davis DPSST #25755 Re-consideration

ISSUE:

Should Robert DAVIS' Basic, Intermediate and Advanced Corrections Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

STAFF NOTE: The purpose of the re-consideration is two-fold; to have the Policy Committee consider if the additional information alters their prior determination that DAVIS' certifications be revoked and to include the additional information during the contested case hearing.

BACKGROUND and OVERVIEW

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

DAVIS was employed with the Oregon Department of Corrections (DOC) in 1990 where he currently serves. DAVIS holds Basic, Intermediate and Advanced Corrections Certifications. In 1991 DAVIS signed his F11, Criminal Justice Code of Ethics.

On January 7, 2009, DAVIS was convicted of Criminal Mischief in the Second Degree, a Class A Misdemeanor. DAVIS also received a DUII diversion stemming from the same incident. DPSST obtained copies of the incident reports and the judgment from the court.

On January 26, 2009, DPSST mailed DAVIS a letter advising him that his case would be heard before the Corrections Policy Committee (CPC) and that he had an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent by regular and certified mail. DAVIS' employer was also notified.

In February 2009, DAVIS and his legal counsel provided information for the CPC's consideration.

In April 2009, DPSST sought to verify the discipline that DAVIS claimed to receive from his employer. DPSST obtained information from the employer which verified DAVIS had been demoted as a result of his misconduct, but disputed his claim that he received a transfer as a result of discipline. DPSST sought to verify DAVIS' claim that he had reported symptoms to the arresting officer who did not include them in his report. DPSST obtained information from the arresting officer disputing that such symptoms had been reported.

On May 19, 2009, the Corrections Policy Committee reviewed this matter and by a unanimous vote, the CPC determined DAVIS' misconduct constituted grounds for revocation and that the conduct rises to the level to warrant revocation. By a unanimous vote, the CPC determined that DAVIS' misconduct was a lifetime disqualifier; he may never seek re-eligibility for certification.

On July 23, 2009, the Board considered this matter and affirmed the CPC recommendation as a part of the consent agenda.

On July 23, 2009, DPSST issued DAVIS a Notice of Intent to Revoke certifications, based on the determination of the CPC and the Board.

On July 29, 2009, DAVIS, through his legal counsel, made a timely request for a hearing.

NEW INFORMATION for RECONSIDERATION

On February 10, 2010, the Oregon Department of Justice (DOJ), DPSST's legal counsel, submitted the matter to the Office of Administrative Hearings. On May 21, 2010, a pre-hearing conference was held before Administrative Law Judge Dove Gutman and at that time, DPSST notified DAVIS that additional information had come to light regarding DAVIS' ongoing misconduct and the agency intended to return the matter for consideration to the CPC and Board; at which time an Amended Notice of Intent would be issued to DAVIS.

On May 21, 2010, DPSST mailed DAVIS a letter advising him that his additional misconduct would be reviewed by the CPC and afforded him an opportunity to provide mitigating circumstances to the Committee.

Between the months of May 2010, DAVIS' legal counsel had discussions with DOJ about signing a Stipulated Order Revoking Certifications as a part of a resignation agreement. No such agreement was solidified and to date, DAVIS has not offered mitigating circumstances for the Committee's consideration.

Between May and July, DPSST continued to obtain additional information for the Committee's consideration relating to DAVIS' misconduct.

DISCUSSION:

ORS. 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4),(9))

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

- (a) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
 - (A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
 - (B) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;

(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

ACTION ITEM 1:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke DAVIS' Basic, Intermediate and Advanced Corrections Certifications based on his discretionary disqualifying misconduct.

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds:
 - a. The new information *does/does not* alter the previous Policy Committee's recommendation that DAVIS' misconduct rose to the level to warrant the revocation of his certification(s), and that DAVIS' certifications should be revoked.
 - b. The new information *does/does not* additionally support the Policy Committee's recommendation that DAVIS' misconduct continues to rise to the level to warrant the revocation of his certification(s), and that DAVIS' certifications should be revoked.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be *identify period of time* from the date of revocation.

Appendix E

Department of Public Safety Standards and Training Memorandum

DATE: August 17, 2010
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Investigator/Coordinator

SUBJECT: Steven D. Cowles, DPSST #38208

ISSUE:

Should Steven COWLES' Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

BACKGROUND and OVERVIEW

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

On October 11, 1999, COWLES was hired by the Multnomah County Sheriff's Office (MCSO) as a corrections officer.

On March 27, 2000, COWLES signed his Criminal Justice Code of Ethics.

On July 31, 2000, COWLES was granted a Basic Corrections Certificate.

In July 2009 became aware of pending criminal charges against COWLES and tracked the case in Oregon Judicial Information Network (OJIN).

In December 2009, COWLES was convicted of ORS 163.212, Unlawful Use of Stun Gun, a Class A Misdemeanor. This crime is identified in DPSST rules as a "Category IV" crime, whose elements meet DPSST's definition of Gross Misconduct, and which carries a presumptive length of ineligibility of 5 to 10 years

DPSST requested and received documents from the arresting agency as well as from the court on this case. In January 2010, COWLES resigned from the MCSO.

In June 2010, DPSST sent a letter advising COWLES that this matter would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. To date COWLES has not provided information for the Committee's consideration.

DISCUSSION:

ORS. 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or
- (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds COWLES' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Appendix F

Department of Public Safety Standards and Training Memorandum

DATE: August 17, 2010
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Investigator/Coordinator

SUBJECT: Jason O. Jones, DPSST #51425

ISSUE:

Should Jason JONES' training and subsequent certification be denied, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

BACKGROUND and OVERVIEW

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

On April 19, 2010, JONES was hired by the Washington County Community Corrections as a corrections officer. JONES submitted an F-5, Application for Training, and disclosed one misdemeanor conviction.

A routine records check showed that he had been arrested and charged with DUII, Reckless Driving, and Recklessly Endangering Another in 2001. Oregon Judicial Information Network (OJIN) showed that the DUII was diverted and subsequently dismissed. The other two Class A Misdemeanor Crimes resulted in convictions. ORS 811.140, Reckless Driving, is a Class A Misdemeanor and a discretionary disqualifying crime. This crime is identified in DPSST rules as a "Category IV" crime, whose elements meet DPSST's definition of Gross Misconduct, and which carries a presumptive length of ineligibility of 5 to 10 years. ORS 163.195 Recklessly Endanger Another, is a Class A Misdemeanor and a discretionary disqualifying crime. This crime is identified in DPSST rules as a "Category IV" crime, whose elements meet DPSST's definition of Gross Misconduct, and which carries a presumptive length of ineligibility of 5 to 10 years.

DPSST sought to obtain the incident report; however, the reporting agency advised that the documents had been archived and were no longer available. DPSST sought to obtain the judgment on the misdemeanor crimes from the court and received only information relating to the DUII diversion.

In June 2010, DPSST sent a letter advising JONES that this matter would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. JONES provided an email response.

In July, JONES provided information for the Committee's consideration and a copy of the incident report. DPSST followed up with the employer to determine if JONES had fully disclosed his 2001 incident and both of his convictions during his background investigation. DPSST requested a copy of the incident report.

DISCUSSION:

ORS. 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other

misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or
- (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

- (A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;
- (B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.
- (C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.
- (D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;
- (E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that “Contempt of Court” meets the definition of Misconduct within this category; or
- (F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional’s or instructor’s refusal to comply with the rule or order constitutes a substantial breach of that person’s duties.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional’s or instructor’s employment in public safety (i.e., before, during after);
- (B) If the misconduct resulted in a conviction:
 - (i) Whether it was a misdemeanor or violation;
 - (ii) The date of the conviction(s);
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

- (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;
- (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;
- (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;
- (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

ACTION ITEM 1:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to deny JONES training and subsequent certification based on violation of the established moral fitness standards:

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds JONES' conduct *does/does not* rise to the level to warrant the denial of his training and subsequent certification(s), and therefore recommends to the Board that these certification(s) *be denied/not be denied*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy

Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: August 17, 2010
TO: Corrections Policy Committee
FROM: Theresa King
Professional Standards Investigator/Coordinator

SUBJECT: Alicia M. SILER DPSST #44849

ISSUE:

Should Alicia SILER's Basic and Intermediate Corrections Certifications be revoked based on her discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

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

On August 1, 2004, SILER was employed with the Tillamook County Sheriff's Office as a Corrections Officer.

On August 15, 2005, SILER signed her Criminal Justice Code of Ethics.

On December 14, 2005, SILER was issued her Basic Corrections certificate.

On November 7, 2008, SILER was issued her Intermediate Corrections certificate.

On February 19, 2010, SILER resigned from the Tillamook County Sheriff's Office during an investigation and under a Settlement Agreement.

DPSST sought and obtained the underlying investigations and related documents that led to SILER's resignation.

On May 18, 2010, DPSST mailed SILER a letter advising her that her case would be reviewed by the Corrections Policy Committee and afforded her an opportunity to provide mitigating circumstances to the Committee.

In June, 2010, SILER provide information for the Committee's consideration.

DISCUSSION:

ORS. 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4),(9))

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(b) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(C) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(D) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

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

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

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);
- (B) If the misconduct resulted in a conviction:
- (i) Whether it was a misdemeanor or violation;
 - (ii) The date of the conviction(s);
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

ACTION ITEM 1:

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke SILER's Basic and Intermediate Corrections Certifications based on her discretionary disqualifying misconduct.

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

2. By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds SILER's conduct *does/does not* rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be *identify period of time* from the date of revocation.

Appendix H

DEPARTMENT OF PUBLIC SAFETY STANDARDS & TRAINING

MEMORANDUM

DATE: July 8, 2010

TO: Marilyn Lorance
Standards & Certification Program Manager

FROM: Kristen L. Turley
Standards & Compliance Coordinator

SUBJECT: Table on DUII Related Discretionary Cases

On April 22, 2010 the Board on Public Safety Standards and Training requested the attached information be provided for their review and to all Policy Committees for information only. In response to the Board's request, I have prepared the attached table summarizing all the DUII cases that the policy committees and Board reviewed from 2008 until April 2010.



Table of DUII Related Discretionary Cases 2008-April 2010

Date	Name	Agency	Disposition	Votes	Convictions	Comments	Notes	Term
4/22/10	Maestas, Christopher	Corrections	Revoke	3	7-09 DUII 5-09 DUII 2006 DUII	1. Driving while suspended. 2. Two events three months apart. 3. Attempted to blame crash on the passenger	None	1. Lifetime- Discretionary
10/22/09	Leffmann, James	Police	Revoke	4	2009 DUII 2001 DUII 2000 DUII 1997 DUII	1. Multiple offenses for the same crime.	None	10 Yrs
10/22/09	Hubbard, Brian	Police	NOT to be Revoeked	2	2009 DUII Diversian 2009 Reckless Driving	None	1. Accepted responsibility for his actions. 2. His comments showed integrity and a willingness to work on his alcohol related issues. 3. Agency addressed the matter as an employer.	
4/23/09	Bloodworth, Ryan	Police	Revoke	2	2008-2 DUII Convictions	1. Repeated conduct within a year of obtaining certification and did not provide information or a response to the PPC or Board.	None	10 Yrs



Table of DUI Related Discretionary Cases 2008-April 2010

4/23/09	Garbay, Michael	Police	NOT be Denied	Unanimously	2	2002-DUII 2008-DWS	None	1. Convictions occurred prior to entering public safety, demonstrated changes in his lifestyle, living alcohol free. 2. Took responsibility for his conduct, has made contribution to his community since then and the character references.	
4/23/09	Bellinger, Charles	Police	NOT be Revoked	Unanimously	1	2007-DUII Diversions 2007 - Criminal Mischief II	None	1. Single event that occurred after serving 10-ys in public safety. 2. Did not involve dishonesty and he took responsibility for his misconduct. 3. Agency remediated his conduct through discipline and a last chance agreement.	
4/23/09	Dowry, Levi	Police	NOT be Denied	Unanimously	1	2006-Reckless Driving DUII-Dismissed	1. Single event that occurred prior to entering public safety. 2. He was honest and has not repeated the behavior. 3. Work performance and character information received from the agency.	Prior to new rule implementation	
1/22/09	Ogden, George	Corrections	Revoke	Unanimously	1	2006-DUII	1. Untruthfulness by omission when he failed to notify his employer of his conviction. 2. Violated his probation on several occasions.	None	
1/22/09	Vandhey, Terry	Telecommunicator	Revoke	Unanimously	2	2006-DUII 2008-DUII	1. Failed to complete Diversion. 2. Multiple convictions, refused intoxlyzer test. 3. Untruthfulness.	None	Prior to new rule implementation
1/22/09	VanCleave, Chris	Corrections	NOT be Revoked	7 to 3	2	2006-DUII 2006-Trespass- Dismissed	1. Pattern of police contact involving alcohol.	1. Completed drug treatment, received discipline through employer and accepted responsibility. 2. Initiated contact with EAP and his positive work performance.	



Table of DUII Related Discretionary Cases 2008-April 2010

Date	Name	Agency	Disposition	Panel	Members	Case No.	Reasoning	Comments	Prior to new rule implementation
1/22/09	Hepfer, James	Corrections	NOT be Revoked	6 to 3	2	2005-DUII Diversion 2008-DUII	Concern was expressed over: 1. Untruthful with police but CPC recognized he was intoxicated and was not subsequently untruthful. 2. Received a 2 nd DUII following an earlier diversion. However he has not had a problem since the last incident.	1. 28-yr career in public safety. 2. Positive work performance, treatment and compliance with the court.	
10/23/08	Mathews, Lori	Telecommunicator	Revoke	Unanimously	4	7/2007-DUII 10/2007-DUII	1. Multiple contacts with law enforcement related to alcohol abuse. 2. Attempts to use her position as a dispatcher to threaten the arresting officer. 3. Lack of truthfulness with officers and employer.	None	Prior to new rule implementation