

**Department of Public Safety Standards and Training  
(DPSST or the Department)  
Memo**

**Date:** February 2026

**To:** Telecommunications Policy Committee (TPC)  
Corrections Policy Committee (CPC)  
Police Policy Committee (PPC)

**From:** Jennifer Howald  
Administrative Rules Coordinator

**Subject:** **Proposed Rule Changes for Oregon Administrative Rules (OAR) 259-008-0005, 259-008-0290, 259-008-0300, 259-008-0310, 259-008-0320, 259-008-0330, 259-008-0340, and 259-008-0400**  
Amending Public Safety Professional Certification Denial and Revocation Standards and Processes

**Overview:**

The Criminal Justice Moral Fitness Workgroup met from September 2023 through December 2024, and again in October 2025, to review the current moral fitness standards and the denial and revocation procedures for public safety professional certifications. During this process, the Workgroup examined existing standards, discussed potential improvements, and considered draft rule changes. Each meeting was recorded and posted on the DPSST YouTube page, and copies of agendas, memos, and minutes are available on the DPSST rulemaking webpage.

This memo summarizes the proposed rule changes developed from Workgroup and DPSST staff recommendations. These changes address moral fitness standards and certification denial and revocation procedures. The Workgroup reviewed draft rules during its October 2025 meeting, and this summary and the attached proposed rule changes reflect revisions based on those discussions.

- Attachment A: Summary tables for changes to discretionary moral fitness violation definitions
- Attachment B: Proposed rule changes in revised text format
- Attachment C: Proposed rule changes in plain text “final draft” format

## **Summary of Recommended Changes:**

*Summaries are presented in rule number order. The rule sections that are noted for reference coordinate with the section numbering in the draft rule changes.*

### **OAR 259-008-0005 Definitions**

- DPSST recommends transferring several terms that are defined within OAR 259-008-0290 through 259-008-0340 to the definition rule. This will ensure the terms apply uniformly throughout and help to simplify the procedural portions of the rules. The terms are inserted in alphabetical order and the remaining definitions are renumbered accordingly.
  - (1) Aggravating Circumstances – transfers the interpretation from OAR 259-008-0290 and 259-008-0310
  - (14) Discharged – new, adds additional interpretation focusing on the manner of separation from employment and what is not included as a discharge, does not change the type of conduct that is considered “for cause” under OAR 259-008-0300
  - (15) Discriminatory conduct – transfers the definition found in OAR 259-008-0290 and 259-008-0300
  - (16) Dishonesty - transfers the definition found in OAR 259-008-0290 and 259-008-0300, and includes revision of the definition based on Workgroup and staff recommendations for better clarity
    - Workgroup recommendation: add “actions to conceal misconduct”
    - DPSST recommendation: remove “reckless disregard for the truth”
  - (21) Gross Misconduct – transfers the definition from OAR 259-008-0290
  - (22) Harm – new, provides interpretation for Gross Misconduct, Misconduct, and Misuse of Authority
  - (24) Ineligibility period – transfers the interpretation from OAR 259-008-0290 and 259-008-0310
  - (31) Misconduct - transfers the definition from OAR 259-008-0300, and includes separation of the different subcategories for clarity, and revises language addressing harm to “efficient operations of any agency”
    - NOTE: During the October 2025 Workgroup meeting, members discussed adding the word “significant” to misconduct that caused or could have caused harm. After additional consideration, DPSST recommends not using “significant” in this definition. This will help maintain a distinction between the pre-employment moral fitness violation of Gross Misconduct, which includes significant harm, and the discretionary revocation of certification for Misconduct, which is intended to be a broader definition for more discretion. Policy Committee review of cases with Misconduct will continue to be able to identify the significance of the harm as part of the aggravating circumstances and the reasons for denying or revoking certification and prescribing the recommended ineligibility period.
  - (32) Misuse of Authority - transfers the definition from OAR 259-008-0300, and includes a revised definition for clarity, improving application of the intent of the moral fitness violation

- (33) Mitigating Circumstances - transfers the interpretation from OAR 259-008-0290 and 259-008-0310
- DPSST recommends amending (10) Criminal Disposition to include a suspended sentence and a deferred prosecution agreement which are additional disposition outcomes that may not require an entered plea of guilt or a finding of guilt by a court. The definition is also reformatted as a list for cleaner punctuation and readability.

### **OAR 259-008-0290 Denial of Public Safety Professional Certifications for Pre-employment Criminal Dispositions**

- (2) DPSST added clarifying changes to improve readability.
- (3) and (4) DPSST added language that matches the full scope of the statutory authority which includes denying an application for training. *Similar changes have been included throughout OAR 259-008-0290 to 259-008-0340.*
- (3) DPSST added an exception clause that would allow the Applicant Review Committee and DPSST to waive the presumptive mandatory denial of training and certification under limited circumstances. *The criteria and process for the waiver are added in section (12) of this rule.*
- (4) DPSST transferred the definitions for the categories of pre-employment discretionary moral fitness violations (Dishonesty and Gross Misconduct) to OAR 259-008-0005.
- (5) The Workgroup recommended removing the automatic administrative closure process for a dismissed DUII, in recognition that even when the DUII is dismissed, the conduct that resulted in the DUII may include moral fitness violations.
- (6) DPSST included supporting changes for the mandatory denial waiver process.
- (7) DPSST recommends adding direction for staff to close cases opened in error. These closures do not require Committee approval.
- (8) and (9) The Workgroup recommended that administrative closures (currently referred to as Inquiry Closures and presented as informational content only during ARC meetings) be submitted to the ARC for approval, mirroring the process for administrative closures submitted to Policy Committees.
- (10) DPSST added clarifying language to link the opportunity for mitigation to the discretionary case review process. Mitigation is not requested when submitting an administrative closure recommendation to ARC.
- (10)(b) DPSST removed “in person” in recognition of the option to attend a meeting through remote access. The public safety professional must still attend the meeting to exercise the option for verbal mitigation. The change does not allow for pre-recorded statements.
- (11) DPSST transferred the language providing interpretation for “Aggravating Circumstances,” “Mitigating Circumstances,” and “Ineligibility Period” to the definition rule. These terms were also used in OAR 259-008-0310 for Policy Committee review of discretionary cases. The transfer helps simplify and streamline the process outlined in the rule. Section (11) maintains the consideration of mitigating circumstances that have been identified as circumstances that must be considered in every case.
- (11)(f) DPSST added language to codify the current outcome of a case when a Policy Committee negates and removes all of the moral fitness violations.

- (12) DPSST added a process to consider a waiver of the mandatory standards that require denial for convictions described in OAR 259-008-0300 (2). The proposed rule change limits opportunities for waivers to convictions for felonies that are not against a person and drug related convictions for use or possession. The proposed rule change also requires that 10 years have passed since the completion of court ordered obligations. Waivers would be reviewed by the Applicant Review Committee and either approved or denied. If the waiver is approved, the applicant would be approved for training and eligible for certification. If the waiver is denied, the applicant will be denied training and certification and be permanently ineligible for certification. Based on the definition of an applicant in this rule, the waiver review process only applies to a person who has been hired by a public safety agency.
  - NOTE: Mandatory convictions require denial or revocation, without consideration of mitigating circumstances, and are automatically a lifetime, permanent disqualifier. During the October 2025 Workgroup meeting, DPSST asked whether or not the automatic and permanent disqualification for a mandatory conviction should still be applied to applicants with convictions that occurred before they were employed in public safety. The Workgroup supported the opportunity to have a discretionary review for someone with a pre-employment criminal disposition that would otherwise be a mandatory lifetime denial based on the current application of OAR 259-008-0300 (2). The Workgroup discussions included consideration for what types of mandatory convictions might be eligible for discretionary review and how much time needs to pass to be eligible for consideration.

## **OAR 259-008-0300 Grounds for Denial, Revocation or Emergency Suspension of Public Safety Professional Certifications**

### **Mandatory Grounds, Section (2)**

- (2)(all) DPSST amended the rule language for convictions and discharge for cause throughout Section (2) to match ORS 181A.640(2). While ORS 181A.640(2) is specific to police officers, the OAR continues to apply to all public safety professionals based on DPSST’s original adoption of these mandatory grounds under ORS 181A.640 (5) and (6).
- (2)(b)(A) DPSST added language to address the Workgroup question about a DUI conviction where the intoxicant is a controlled substance, narcotic or dangerous drug. DUI convictions remain discretionary unless there were other convictions related to the controlled substance, narcotic or dangerous drug that fall under the mandatory grounds.
- (2)(g) DPSST added convictions for stalking.
  - NOTE: The Workgroup requested that stalking be added as a disqualifying mandatory conviction. DPSST shared draft rule language with the Workgroup during the October 2025 meeting. The draft rule required mandatory denial or revocation if “The public safety professional has a conviction in any jurisdiction for any offense involving stalking, as defined in ORS 163.732.” Feedback from the Workgroup indicated that this language was too broad and that it may be better for convictions involving stalking to remain discretionary.

- Based on the Workgroup feedback, DPSST revised the draft rule language to specify that the conviction is for stalking as defined in ORS 163.732, or its statutory counterpart in another jurisdiction.
- DPSST recommends including stalking convictions as a mandatory disqualifier, not only based on the type of conduct, but also in consideration for the impact it has on the person’s ability to own or possess a firearm.
- (2)(h)(G),(H), and (I) The ORS 181A.640(2) discharge for cause standard included three policing specific forms of conduct. The Workgroup recommended that these be included in OAR and applicable to all public safety professionals. In the rule drafting process, DPSST found that it would be clearer to add “policing indicative of bias or discriminatory intent” as a separate and distinct category of discharge for cause while maintaining the current discharge for cause for discriminatory conduct, which remains applicable to any public safety professional.
- (2)(h)(J) DPSST recommends amending the mandatory discharge for cause based on discriminatory conduct to adopt the same definition of Discriminatory Conduct used in discretionary cases. The differences between a mandatory case and a discretionary case remain the same. It will be mandatory when the employer discharges the public safety professional for intentional conduct performed under the color of office. It will be discretionary when it was not a discharge, and discretionary cases are not limited to “color of office.”

#### Discretionary Grounds, Section (3)

- (3)(a) - DPSST transferred the definitions for the categories of discretionary moral fitness violations to OAR 259-008-0005. The definitions inserted into OAR 259-008-0005 include revisions to reflect Workgroup recommendations and additional DPSST clarifications.
- (3)(b) – DPSST recommends adding a finding of contempt of court, violation of an extreme risk protection order, violation of a restraining order, or violation of a stalking protective order as conduct that is subject to discretionary review for moral fitness violations.

#### Emergency Suspension, Section (6)

- (6)(a) DPSST recommends adding an option to issue an Emergency Suspension Order when a public safety professional is charged with a felony. The draft rule language identifies potential risk to public safety and based on feedback from the Workgroup adds a process for the Executive Committee of the Board to review the charge to determine if the Emergency Suspension Order is needed to preserve public safety.
- (6)(b) DPSST added the interpretation of the risk to public safety to the current discretionary issuance of an Emergency Suspension Order.
- In both cases, the “regardless of their employment status” is intended to include, but is not limited to, scenarios where the person is currently employed and acting as a public safety professional, on leave, or not currently employed. Without the Emergency Suspension Order in effect, the person may be able to continue to serve as a public safety professional until DPSST issues a Final Order to deny or revoke certification. *Supporting language was added to OAR 259-008-0320 to expressly state that while an Emergency*

*Suspension Order is in effect the person is prohibited from performing the duties of a certifiable public safety professional.*

## **259-008-0310 Denial/Revocation - Initiation and Review of a Professional Standards Case**

- (4) (*deleted*) The Workgroup recommended removing the automatic administrative closure process for a dismissed DUII, in recognition that even when the DUII is dismissed, the conduct that resulted in the DUII may include moral fitness violations.
- (4) (*added*) DPSST recommends adding direction for staff to close cases opened in error and cases when the person is deceased. These closures do not require Committee approval.
- (5)(b) DPSST added language to recognize current practice to recommend administrative closure of a case when records are incomplete or inconclusive.
- (6)(a) DPSST added language that codifies the outcome of an administrative closure that has been approved by a Policy Committee.
- (9) DPSST added clarifying language to link the opportunity for mitigation to the discretionary case review process. Mitigation is not requested when submitting an administrative closure recommendation to a Policy Committee.
- (9)(b) DPSST removed “in person” in recognition of the option to attend a meeting through remote access. The public safety professional must still attend the meeting to exercise the option for verbal mitigation. The change does not allow for pre-recorded statements.
- (10)(a) DPSST added language providing interpretation for ORS 181A.630(2)(a) “... the policy committee in the relevant discipline and the Board shall review [discretionary cases].”
- (10)(b)(D) The Workgroup recommended reducing the minimum ineligibility period to zero days and increasing the maximum ineligibility period for Misconduct (that does not include Discriminatory Conduct) and Misuse of Authority to 20 years.
- (10)(c) DPSST added language to codify the current outcome of a case when a Policy Committee negates and removes all of the moral fitness violations.
- (10)(c) and (d) (*deleted*) DPSST transferred the language providing interpretation for “Aggravating Circumstances,” “Mitigating Circumstances,” and “Ineligibility Period” to the definition rule. These terms were also used in OAR 259-008-0290 for pre-employment. The transfer helps simplify and streamline the process outlined in the rule.
- (11) DPSST added process clarification here and in (9)(a) to clearly indicate that a public safety professional’s mitigation is collected and submitted to the Policy Committee. The public safety professional does not have additional opportunities to submit mitigation to the Board after the Committee has reviewed the case and made its recommendation to the Board. The Board will continue to receive a copy of all of the mitigation that was submitted to the Committee and the Committee’s recommendation to the Board includes the factors that the Committee identified as aggravating and mitigating when making their recommendations.

### **259-008-0320 Scope of Denial/Revocation/Emergency Suspension and Eligibility for Certification Following Denial/Revocation**

- (2) DPSST added language that recognizes Emergency Suspension.
- (5) DPSST included clarifying revisions for interpretation and application of the start date of an ineligibility period.
- (6) DPSST replaced the current “eligibility to reapply” language with a more direct process statement.

### **259-008-0330 Surrendering Certifications**

- Note: There were no Workgroup discussion points related to this process.
- (2) DPSST included a minor edit for clarification on how the rule is interpreted and applied.

### **259-008-0340 Issuance of Notice of Intent/Request for Hearing and Contested Case Procedures**

- Note: There were no Workgroup discussion points related to this process.
- (2)(b) DPSST included minor edits to recognize processes that include denial of training, providing better alignment with statutory authority language.

### **259-008-0400 DPSST Review of Complaints Involving Public Safety Professionals**

- This rule change is presented as a re-write. The addition of definitions and the rewrite of sections (2) through (5) are intended to improve readability and provide more process information when members of the public are reviewing this rule.
- (4) and (5) DPSST continues to defer investigation of complaints to the employing agency. The changes to the agency response requirements are based on recommendations found in the 2021 Secretary of State Audit. The audit findings recommended that DPSST require agencies to include a brief synopsis of what they did with complaints forwarded by DPSST, including whether there was an investigation, whether the underlying allegations were substantiated, and whether any discipline was imposed. The Workgroup recommended that DPSST implement the changes to the agency reporting requirements per the audit guidance.
- (6) maintains DPSST’s discretionary ability to review complaints under specified circumstances.
- (7) updates DPSST processes to collect the documentation or records related to the complaint before determining if the complaint needs to be reviewed by a policy committee.
- (8) clarifies DPSST discretionary authority to close the complaint if review of the available mitigation, documentation, and records shows that there isn’t substantial evidence of a violation.

- (9) and (10) update the committee review process to follow the same steps for a discretionary professional standards case. Because DPSST will be collecting the information before submitting it to the policy committee and reviewing it for substantial evidence, complaints submitted to the policy committee for review will be reviewed to determine whether or not the public safety professional's certification should be denied or revoked.

### **Proposed Administrative Rule Fiscal & Economic Impact Statements:**

The denial and revocation standards and processes that apply to public safety professional certifications are amended by these rule changes. The majority of the changes are intended to provide better clarity to existing standards and improve the overall application of the standards and processes.

Any new fiscal impacts or changes to pre-existing fiscal impacts are unknown at this time. It is understood that any time a person's certifications are denied or revoked there is a fiscal impact, however this is not a new outcome. The Department identified three rule changes that may result in a change to or increase in pre-existing fiscal impacts.

First, the changes to OAR 259-008-0290 (5) and OAR 259-008-0310 (4) to eliminate automatic administrative closure of cases for deferred adjudications in which the only charge is for DUII (Driving Under the Influence of Intoxicants) may result in an increase in professional standards cases for the Department. However, the Department estimates that the increase will be low as the majority of DUII cases also involve additional charges such as reckless driving and already require discretionary review. Because these changes eliminate automatic administrative closure, if the Department proceeds with a professional standards case there is a potential fiscal impact to the public safety professional who is now subject to discretionary denial or revocation of their certification. This would not be retroactive and the Department would not open cases for DUII diversions that have already been administratively closed.

Second, the changes to the Emergency Suspension authority and process outlined in OAR 259-008-0300 (6) may have a fiscal impact. This rule change makes it possible for the Department to immediately suspend a public safety professional's certification (by issuing an Emergency Suspension Order) if they have been charged with a felony crime. An Emergency Suspension Order would prohibit the public safety professional from working as a public safety professional when there is danger to public safety and would remain in effect until either the Order is rescinded or until the Department's professional standards case is closed or completed. The Department estimates that when these cases occur, it is more likely than not that the person is either no longer employed or has already been placed on leave from their certifiable position by the employing agency. However, without the suspension of the certification it may appear to the public that the person is still employed and could be performing the duties of a public safety professional. Potential fiscal impacts include:

- Loss of wages or employment for the public safety professional if the person is employed and currently performing the duties of a public safety professional when the Emergency Suspension Order is issued.
- Additional staffing or payroll costs for the employing agency if the person is employed and currently performing the duties of a public safety professional when the Emergency Suspension Order is issued.
- Increased administrative costs for the Department to manage additional Executive Committee meetings as needed to review these specific professional standards cases in a timely manner, increased legal costs for consultation or representation from the Department of Justice when proceeding with these professional standards cases, increased costs for administrative hearings if the person requests a hearing to contest the Emergency Suspension Order.

The potential impacts to public safety professionals and employers may be mitigated by the processes for approval to issue an Emergency Suspension Order. Before the Department issues an Order, the circumstances at the time would be reviewed by the Executive Committee of the Board on Public Safety Standards and Training. The Executive Committee will have the opportunity to review the severity of the felony charges and may take into consideration circumstances such as the person's current employment status when determining whether or not there is a danger to public safety.

Third, the changes to OAR 259-008-0310 (10)(b) include changes to the time range of an ineligibility period for a discretionary case that results in denial or revocation of certification. The minimum ineligibility period is reduced from three years to zero days. The maximum ineligibility period for misconduct that does not include Dishonesty or Discriminatory Conduct is increased from 10 years to 20 years. The ineligibility period is how long a person must wait before they can be employed as a public safety professional after their certification has been denied or revoked. Increasing the maximum ineligibility period may increase fiscal impacts for the affected person by lengthening the amount of time they have to wait to be re-employed in public safety. Reducing the minimum ineligibility period may have a positive fiscal impact as the person may be able to be re-employed sooner.

Entities that may be economically affected by the rule change:

- Individuals employed as or seeking employment as a public safety professional
- State Agencies: The Department of Public Safety Standards and Training, Oregon State Police, Department of Corrections, Oregon Liquor and Cannabis Commission, Board of Parole and Post-Prison Supervision, Department of Justice, and Oregon Judicial Department
- Cities and Counties: Police Departments, Sheriff's Offices, Dispatch Centers, and Community Corrections agencies
- Tribal governments with public safety officers certified by DPSST
- Oregon Health Sciences University (OHSU)
- Public Universities with Police Departments

- Private Ambulance Companies with emergency medical dispatchers certified by DPSST

The Department estimates that there are five small businesses subject to this rule. Those businesses are private ambulance companies who have employees who are required to be certified by the Department as emergency medical dispatchers. The potential fiscal impacts described above also apply to these small businesses.

### **Department Recommendation:**

The Department recommends approval of the proposed rule changes for OAR 259-008-0005, 259-008-0290, 259-008-0300, 259-008-0310, 259-008-0320, 259-008-0330, 259-008-0340, and 259-008-0400.

If the Policy Committee votes to approve these proposed rule changes, the Department will submit the proposed rule change to the Secretary of State. A public comment period will follow.

- If substantive comments are received, the proposed rule changes may be resubmitted to the Policy Committees for further consideration.
- If no substantive comments are received, the Department will submit the rule changes to the Board on Public Safety Standards and Training for approval to adopt as permanent rule changes.

### **Action Items:**

**#1 Consensus** – (Discussion) Approve or amend the fiscal impact statements prepared by staff.

**#2 Vote** – (Motion) Approve the proposed rule changes for OAR 259-008-0005, 259-008-0290, 259-008-0300, 259-008-0310, 259-008-0320, 259-008-0330, 259-008-0340, and 259-008-0400, thereby recommending that the Board approve the rule changes as permanent rules, if no substantive comments are received.

**Attachment A – Changes to Discretionary Moral Fitness Violation Definitions**

DPSST is recommending that several definitions be relocated from OAR 259-008-0290 through 259-008-0340 to OAR 259-008-0005, including the definitions for discretionary moral fitness violations. The definitions for the discretionary moral fitness violations also include revisions. The following tables are provided to allow for better review of the revisions to the definitions.

**Table 1 - For Pre-employment Criminal Dispositions and Discretionary Cases Reviewed by the Applicant Review Committee**

<b>Current Rule Definition OAR 259-008-0290 (4)</b>	<b>Proposed Rule Definition OAR 259-008-0005</b>
(4)(a) Dishonesty. Dishonesty includes intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth; or	(16) “Dishonesty” means intentional conduct that is untruthful, including dishonesty by omission, deception, misrepresentation, falsification, or concealment of misconduct.
(4)(b) Gross Misconduct. Gross Misconduct includes: (A) Deliberate or reckless conduct that caused or could have caused significant harm to persons or property; (B) Conduct that includes violence against another person; (C) Conduct resulting in a criminal disposition for a sex-related offense; or (D) Discriminatory conduct. For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.	(21) “Gross Misconduct” includes: (a) Deliberate or reckless conduct that causes or could cause significant harm; (b) Conduct including violence against another person; (c) Conduct resulting in a criminal disposition for a sex-related offense; or (d) Discriminatory Conduct.  Note: See Table 3 for the supporting definitions of Discriminatory Conduct and Harm.

**Attachment A – Changes to Discretionary Moral Fitness Violation Definitions**

**Table 2 - For Discretionary Cases Reviewed by the Policy Committees**

<b>Current Rule Definition OAR 259-008-0300 (3)(a)</b>	<b>Proposed Rule Definition OAR 259-008-0005</b>
(A) Dishonesty. Dishonesty is intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;	(16) “Dishonesty” means intentional conduct that is untruthful, including dishonesty by omission, deception, misrepresentation, falsification, or concealment of misconduct.
(B) Misuse of Authority. Misuse of Authority is intentional conduct that includes the use or attempted use of one’s position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another; or	(32) “Misuse of Authority” means intentional conduct in which a public safety professional uses or attempts to use the authority or influence of their position as a public safety professional to gain an unfair personal advantage, harm others, or otherwise exploit the position's inherent power.
(C) Misconduct. (i) Misconduct includes conduct that violates criminal laws, conduct that threatens or harms persons, property or the efficient operations of any agency, or discriminatory conduct; (ii) For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.	(31) “Misconduct” includes: (a) Conduct that violates criminal laws; (b) Conduct that causes or could cause harm; (c) Discriminatory Conduct; or (d) Conduct that disrupts and negatively affects the operation of any agency.  Note: See Table 3 for the supporting definitions of Discriminatory Conduct and Harm.

**Attachment A – Changes to Discretionary Moral Fitness Violation Definitions**

**Table 3 – Supporting definitions transferred or added to OAR 259-008-0005**

<p>Transferred from 259-008-0290 (4)(b)(D) and 259-008-0300 (3)(a)(C)(ii) without revisions, to be a stand-alone term, and no longer a definition inside of a definition.</p> <p>“discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.”</p>	<p>(15) “Discriminatory Conduct” means a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.</p>
<p>A new, proposed definition for interpretation of Gross Misconduct, Misconduct, and Misuse of Authority</p>	<p>(22) “Harm” means:</p> <ul style="list-style-type: none"> <li>(a) Physical injury as defined in *ORS 161.015;</li> <li>(b) Emotional distress such as anguish, grief, fright, humiliation, or fury resulting from the conduct under review;</li> <li>(c) Loss of or damage to a person’s property; or</li> <li>(d) Loss of a person’s rights.</li> </ul>

\*ORS 161.015 (7) “Physical injury” means impairment of physical condition or substantial pain.

## Attachment B – Proposed Rule Changes in Revised Text Format

Attachment B provides proposed rule changes reflecting workgroup discussions and recommendations, DPSST recommendations, and amendments for improved clarity and implementation.

This version of the proposed rule changes includes revision marks showing recommended additions noted with **bold and underlined text** and deletions noted with ~~strikethrough text~~. (See Attachment C for a “final draft” in plain text without revisions.)

### 259-008-0005 Definitions

*For ease of review, the renumbering to this rule after inserting the new definitions has been completed without revision markings. All new and amended definitions include the revision markings. There are 10 new definitions and one amended definition for “criminal disposition.”*

**(1) “Aggravating Circumstance” means any condition, factor, or action identified by the Department or a Committee, when reviewing a professional standards case, that may increase the impact a moral fitness violation has on the decision to deny or revoke certification, or on the length of the resulting ineligibility period. Examples of circumstances that may be considered aggravating include, but are not limited to, the degree of the criminal disposition, prior criminal dispositions or misconduct, lack of accountability, the number of persons involved in the underlying conduct, the number of separate incidents, the recentness of the incident or incidents, or any other circumstance the Department or a Committee considers aggravating based on the specific facts and issues of the case.**

(2) “Armed Parole and Probation Officer” means a parole and probation officer who is authorized by the employing public safety agency to carry a firearm while engaged in official duties.

(3) "Assistant Department Head" means a public safety officer employed in the first position subordinate to a Department Head who is primarily responsible for supervision of middle managers and supervisors.

(4) "Board" means the Board on Public Safety Standards and Training.

(5) "Casual employment" means employment that is occasional, irregular, or incidental for which the employee does not receive seniority rights or fringe benefits.

(6) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181A.410.

(7) "Commissioned" means being authorized to perform various acts or duties of a police officer, certified reserve officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

## Attachment B – Proposed Rule Changes in Revised Text Format

(8) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including, but not limited to, vocational or technical education programs or lower division collegiate programs.

(9) "Corrections Officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers described in paragraph (a) of this subsection; or

(c) Is any full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.

~~(9) "Criminal Disposition" means a conviction, violation, adjudication, civil compromise, an entered plea of guilty or no contest, or a finding of guilty except for insanity or its equivalent for any violation of a criminal law under the law of the jurisdiction where the criminal disposition occurred.~~

**(10) "Criminal Disposition" means any of the following outcomes for a violation of a criminal law under the law of the jurisdiction where the disposition occurred:**

**(a) a conviction;**

**(b) a violation;**

**(c) an adjudication;**

**(d) a civil compromise;**

**(e) an entered plea of guilty or no contest;**

**(f) a suspended sentence;**

**(g) a deferred prosecution agreement; or**

**(h) a finding of guilty except for insanity, or its equivalent.**

(11) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

## Attachment B – Proposed Rule Changes in Revised Text Format

(12) "Department Head" means the chief of police, sheriff, superintendent or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit or agency.

(13) "Director" means the Director of the Department of Public Safety Standards and Training.

**(14) "Discharged" means a separation of employment that was initiated by the public safety professional's employer, including separations such as dismissed, fired, terminated, or separated. "Discharged" does not include a separation that occurs in lieu of a discharge, as a result of a settlement agreement, or when employment is reinstated through an arbitration proceeding.**

**(15) "Discriminatory Conduct" means a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.**

**(16) "Dishonesty" means intentional conduct that is untruthful, including dishonesty by omission, deception, misrepresentation, falsification, or concealment of misconduct.**

(17) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(18) "Emergency Medical Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(19) "First-Level Supervisor" means a public safety officer employed in a position between the operational level and the middle manager, who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(20) "Full-time employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

**(21) "Gross Misconduct" includes:**

**(a) Deliberate or reckless conduct that causes or could cause significant harm;**

**(b) Conduct including violence against another person;**

**(c) Conduct resulting in a criminal disposition for a sex-related offense; or**

**(d) Discriminatory Conduct.**

**(22) "Harm" means:**

## Attachment B – Proposed Rule Changes in Revised Text Format

**(a) Physical injury as defined in ORS 161.015;**

**(b) Emotional distress such as anguish, grief, fright, humiliation, or fury resulting from the conduct under review;**

**(c) Loss of or damage to a person’s property; or**

**(d) Loss of a person’s rights.**

(23) "High School" is a school accredited as a high school by the Oregon Department of Education, a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

**(24) “Ineligibility Period” means the length of time that the public safety professional or applicant is ineligible for public safety certifications and prohibited from performing the duties of a certifiable public safety professional after their training is denied or their certifications are denied, suspended, or revoked.**

(25) “Jurisdiction” means any tribunal with authority to render a criminal disposition, including but not limited to municipal, state, federal including military, tribal tribunals, and any tribunal outside the United States or a United States owned territory where a criminal offense must be proven beyond a reasonable doubt.

(26) "Law Enforcement Officers" means police, corrections, parole and probation officers and regulatory specialists as described in the Public Safety Standards and Training Act.

(27) "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.121 or 353.125, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.680 that employs authorized tribal police officers as defined in ORS 181A.680, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Marshal's Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;

## Attachment B – Proposed Rule Changes in Revised Text Format

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor and Cannabis Commission with regard to regulatory specialists; or

(e) A humane investigation agency as defined in ORS 181A.340.

(28) "Leave" means an authorized absence granted to a public safety professional by their employing public or private safety agency.

(29) "Limited Duration, Administrative Position" means a non-elected, certifiable public safety position where the primary duties relate to the administration, operation, and accountability of a public safety agency, including, but not limited to, the responsibility for command assignments and the supervision of subordinate managers.

(a) Primary duties are regular or recurring supervisory or managerial duties that are performed in a continuous manner and are the foundation of a limited duration, administrative position.

(b) Non-supervisory or non-managerial public safety duties, such as patrol, criminal investigations, or enforcement actions are not primary duties of a limited duration, administrative position.

(30) "Middle Manager" means a public safety officer working in a position that is between a first-level supervisor and a department head, who is primarily responsible for management and command duties. A middle manager position does not include a position with limited or acting middle management duties.

**(31) "Misconduct" includes:**

**(a) Conduct that violates criminal laws;**

**(b) Conduct that causes or could cause harm;**

**(c) Discriminatory Conduct; or**

**(d) Conduct that disrupts and negatively affects the operation of any agency.**

**(32) "Misuse of Authority" means intentional conduct in which a public safety professional uses or attempts to use the authority or influence of their position as a public safety professional to gain an unfair personal advantage, harm others, or otherwise exploit the position's inherent power.**

**(33) "Mitigating Circumstance" means any condition, factor, or action identified by the Department or a Committee, when reviewing a professional standards case, that may reduce the impact a moral fitness violation has on the decision to deny or revoke certification, or on the length of the resulting ineligibility period. Examples of circumstances that may be considered mitigating include, but are not limited to, written**

**letters of support, demonstrated truthfulness, cooperation during the incident or investigation, the passage of time since the date of the incident or incidents, or any other circumstance the Department or a Committee considers mitigating based on the specific facts and issues of the case.**

(34) “Multi-disciplined Officer” or “Multi-discipline Certified” means a law enforcement officer, telecommunicator or emergency medical dispatcher who is employed by one public safety agency in more than one discipline for employment and certification purposes that support the efficient operation of the employing agency.

(35) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for 80 hours or less per month for a period of more than 90 consecutive calendar days.

(36) "Parole and Probation Officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation;

(b) An officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation;

(c) An officer who is certified as a parole and probation officer and is employed full-time by the State Board of Parole and Post-Prison Supervision; or

(d) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.570.

(37) "Police Officer" means:

## Attachment B – Proposed Rule Changes in Revised Text Format

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.680, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney’s office if the investigator is or has been certified as a peace officer in this or another state;

(c) A humane special agent commissioned under ORS 181A.340;

(d) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540;

(e) An authorized tribal police officer as defined in ORS 181A.680; or

(f) Any full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.

(38) “Primary Discipline” means the discipline specified by the employing agency as the discipline that a public safety officer is assigned to for the majority of their employment functions or duties when a public safety officer is employed and certified as a multi-disciplined officer.

(39) "Public or private safety agency" means:

(a) A law enforcement unit; or

(b) A unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, police, ambulance or emergency medical services.

(40) “Public Safety Professional”, “Public Safety Personnel” and “Public Safety Officer” include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators and regulatory specialists.

(41) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(42) “Regulatory Specialist” means a full-time employee of the Oregon Liquor and Cannabis Commission (OLCC) who is authorized to act as an agent of the OLCC in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing ORS Chapter 471, ORS 474.005 to 474.095, 474.115, 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655, OLCC rules and any other statutes the OLCC considers related to regulating liquor, marijuana or marijuana-derived products.

## Attachment B – Proposed Rule Changes in Revised Text Format

(43) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181A.665, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(44) "Reserve Officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in ORS 181A.680, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.121 or 353.125, the Governor or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(45) "Seasonal Employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(46) "Staff" means those employees occupying full-time, part-time, or temporary positions with the Department.

(47) "Telecommunicator" means:

(a) A person employed as an emergency communications worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through the emergency communications system as defined in ORS 403.105; or

(b) A full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.

(48) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(49) "The Act" refers to the Public Safety Standards and Training Act (ORS 181A.355 to 181A.670).

(50) "Waiver" means to refrain from pressing or enforcing a rule.

259-008-0290 Denial of Public Safety Professional Certifications for Pre-employment Criminal Dispositions

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public’s trust in the public safety profession, protecting the public and ensuring that the conduct of a public safety professional or an applicant does not reflect adversely on the public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to the duties performed by a certified public safety professional.

(2) This rule defines the grounds for denial and processes for review of professional standards cases where the public safety professional is ~~a new~~ **an** applicant for ~~DPSST training and certification~~ and the professional standards case is based on a **pre-employment** criminal disposition ~~that occurred prior to employment in public safety. For the purposes of this rule:~~

(a) ~~An applicant is~~ **“Applicant” means** an employed public safety professional applying for DPSST training or certification; and

(b) ~~“Pre-employment criminal dispositions” are~~ **means a** criminal dispositions, **as defined in OAR 259-008-0005**, that occurred prior to any employment in any jurisdiction as a police officer, reserve officer, corrections officer, parole and probation officer, regulatory specialist, telecommunicator, or emergency medical dispatcher as those terms are defined in OAR 259-008-0005.

(3) Mandatory Grounds for Denial. The Department must deny **the application for training and deny the certification of an applicant** ~~an applicant’s certification~~ based upon a finding that the applicant has a conviction for an offense constituting mandatory grounds for denial of public safety certification as defined in OAR 259-008-0300 (2), **except when the Applicant Review Committee approves a waiver of this requirement under section (12) of this rule.**

(4) Discretionary Grounds for Denial. The Department may deny **the application for training and deny the certification of an applicant** ~~an applicant’s certification~~ based upon a finding that the applicant has a pre-employment criminal disposition, other than a conviction constituting mandatory grounds for denial as defined in OAR 259-008-0300(2), in which the criminal disposition or the underlying conduct includes either or both of the following elements:

**(a) Dishonesty, as defined in OAR 259-008-0005 (16); or**

**(b) Gross Misconduct, as defined in OAR 259-008-0005 (21).**

~~(a) Dishonesty. Dishonesty includes intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth; or~~

~~(b) Gross Misconduct. Gross Misconduct includes:~~

~~(A) Deliberate or reckless conduct that caused or could have caused significant harm to persons or property;~~

## Attachment B – Proposed Rule Changes in Revised Text Format

~~(B) Conduct that includes violence against another person;~~

~~(C) Conduct resulting in a criminal disposition for a sex-related offense; or~~

~~(D) Discriminatory conduct. For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.~~

**(5) Review of discretionary criminal dispositions applies to criminal dispositions that occurred on or after January 1, 2001. The Department will not open a case to review discretionary criminal dispositions that occurred prior to January 1, 2001.** The Department will not open a discretionary case under this rule for the following:

~~(a) A criminal disposition that occurred prior to January 1, 2001; or~~

~~(b) A criminal disposition for a successfully completed deferred adjudication or diversion in which the only charge is for driving under the influence of intoxicants. For the purposes of this rule the term "intoxicant" includes intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination of these intoxicants.~~

**(6) The Board delegates the review of discretionary professional standards cases and requests for waiver of a mandatory denial** for an applicant's pre-employment criminal dispositions to the Department and the Applicant Review Committee.

(a) The Department will **open a professional standards case to** review an applicant's pre-employment criminal disposition ~~and open a case~~ when the criminal disposition or underlying conduct may constitute discretionary grounds for denial as defined in section (4) of this rule.

(b) The Applicant Review Committee will review discretionary cases opened by the Department and determine whether the applicant is denied or not denied **training and** certification for the discretionary grounds defined in section (4) of this rule.

**(7) The Department may close a professional standards case as described in OAR 259-008-0310 (4).**

**(8) The Department may recommend administrative closure of a professional standards case to the Applicant Review Committee when the Department determines:**

**(a) The conduct being reviewed does not meet the statutory and administrative rule requirements for denial;**

**(b) The conduct being reviewed may meet the statutory and administrative rule requirements for denial but the records are incomplete or inconclusive; or**

**(c) The conduct being reviewed may meet the statutory and administrative rule requirements for denial but the conduct occurred more than 10 years before the date of employment as a public safety professional.**

**(9) The Applicant Review Committee must approve or overturn the Department’s recommendation for administrative closure.**

**(a) When the Applicant Review Committee approves the recommendation for administrative closure, the Department will administratively close the professional standards case, and no action will be taken to deny the application for training or to deny certification.**

**(b) When the Applicant Review Committee overturns the recommendation for administrative closure, the Department will prepare the case for a complete review by the Committee pursuant to sections (10) and (11) of this rule.**

**(10)** ~~(7)~~ Prior to submitting a discretionary case to the Applicant Review Committee **for disposition under section (11) of this rule**, the Department will notify the applicant. The notification will include the deadlines for the applicant to provide evidence of factors that may support mitigation. The applicant may provide mitigation evidence by one or both of the following:

(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for the Applicant Review Committee to consider.

(b) Arranging with the Department to attend an Applicant Review Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented ~~in person~~ by the applicant or their representative.

**(11)** ~~(8)~~ The Applicant Review Committee will review the case to:

(a) Affirm, modify or negate the Department-identified moral fitness violations;

(b) Identify aggravating and mitigating circumstances unique to the case;

**(c) Consider the following as mitigating circumstances:**

**(A) The applicant was not employed in a certifiable position when the conduct occurred; and**

**(B) The applicant has been hired by a public safety agency that is aware of the applicant’s criminal background;**

**(d)** ~~(e)~~ Determine how the moral fitness violations and aggravating or mitigating circumstances impact the applicant’s fitness for certification; and

**(e)** ~~(d)~~ When denying certification, determine how long the individual should be ineligible for certification. **In cases where training and certification are denied,**

determine the ineligibility period, which may range from zero days to a maximum of ten years.

(f) In cases where the Applicant Review Committee negates all moral fitness violations, the Committee’s disposition, that there were no such violations and therefore no basis to deny, is considered an approved administrative closure of the case.

~~(9) Aggravating and mitigating circumstances are conditions, factors or actions that increase or decrease the total impact that the identified moral fitness violation has on the applicant’s fitness for certification.~~

~~(a) Aggravating circumstances generally increase the severity of the impact the moral fitness violation has on fitness for certification and may, in addition to the moral fitness violation, be grounds to deny certification. Aggravating circumstances may increase the recommended ineligibility period. Circumstances that may be considered aggravating include, but are not limited to, the degree of the criminal disposition, prior criminal dispositions or misconduct, lack of accountability, number of persons involved in the underlying conduct, number of separate incidents, passage of time from date of incident or incidents, or any other circumstance the Department or the Applicant Review Committee consider aggravating given the specific issues in the case.~~

~~(b) Mitigating circumstances do not excuse or justify the conduct, but generally decrease the severity of the impact the moral fitness violation has on fitness for certification and may decrease the recommended ineligibility period.~~

~~(A) Circumstances that must be considered mitigating include the fact that the applicant was not employed in a certifiable position at the time of the conduct and the fact that the applicant has been hired by a public safety agency who is aware of the criminal background.~~

~~(B) Circumstances that may be considered mitigating include, but are not limited to, written letters of support, truthfulness, cooperation during the incident or investigation, or any other circumstance the Department or the Applicant Review Committee consider mitigating given the specific issues in the case.~~

~~(10) The ineligibility period is the timeframe that the applicant is ineligible for public safety certifications and employment as a certifiable public safety professional as the result of the total impact of the moral fitness violations and the aggravating and mitigating circumstances on the applicant’s moral fitness for certification. The Applicant Review Committee may prescribe an ineligibility period from zero days to ten years.~~

**(12) Waiver of Denial for a Mandatory Conviction.**

**(a) An applicant may request a waiver of denial for a conviction that constitutes the mandatory grounds for denial of public safety training and certification as defined in OAR 259-008-0300 (2) only if:**

Attachment B – Proposed Rule Changes in Revised Text Format

**(A) The conviction was for a crime constituting OAR 259-008-0300 (2)(a) and the crime was not against a person, or the conviction was for a crime constituting OAR 259-008-0300 (2)(b) and the crime was not for delivery or manufacture of a controlled substance, narcotic or dangerous drug; and**

**(B) At least 10 years must have passed since the final date that the applicant completed all imprisonment, parole, probation, and post-prison supervision for the conviction.**

**(b) An applicant’s request for this waiver will be submitted to the Applicant Review Committee following the processes for a discretionary case under sections (10) and (11)(a) through (11)(d) of this rule.**

**(A) In cases where the waiver is approved, no action will be taken to deny the application for training or to deny certification.**

**(B) In cases where the waiver is denied, the Department must deny the applicant’s training and certification and the applicant will be permanently ineligible for certification as a public safety professional in accordance with OAR 259-008-0320 (3).**

**(13)** ~~(11)~~ The moral fitness standards defined in administrative rule in effect on the date the Department or the Applicant Review Committee determined that the applicant was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted, regardless of any subsequent amendment or repeal of the rules.

**(14)** ~~(12)~~ Any Department action to deny an applicant’s public safety professional certification will be administered in accordance with OAR 259-008-0290 through OAR 259-008-0340 and the applicable provisions of the Attorney General’s Model Rules of Procedure adopted under OAR 259-005-0015.

## 259-008-0300 Grounds for Denial, Revocation or Emergency Suspension of Public Safety Professional Certifications

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public’s trust in the public safety profession, protecting the public and ensuring that the conduct of a public safety professional or an applicant does not reflect adversely on the public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to the duties performed by a certified public safety professional.

(2) Mandatory Denial or Revocation of a Public Safety Professional’s Certifications. The Department must **deny the application for training, or** deny or revoke **the certification, of a** public safety **professional** ~~professional’s certifications~~ based upon a finding that:

## Attachment B – Proposed Rule Changes in Revised Text Format

(a) The public safety professional has a conviction for any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(b) The public safety professional has a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except for ~~criminal dispositions~~ **offenses** involving **the** use or possession of marijuana; ~~which are reviewed as discretionary cases under section (3) of this rule;~~

**(A) Subsection (2)(b) above does not apply to convictions for driving under the influence of intoxicants as long as the arrest or citation does not result in any other convictions that involve the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug;**

**(B) Convictions for the use or possession of marijuana and convictions for driving under the influence of intoxicants are subject to review as discretionary cases under section (3) of this rule;**

**(c) The public safety professional has a conviction in any jurisdiction for any offense involving domestic violence, as defined in ORS 135.230;**

~~(d) (e) The public safety professional has a conviction in any jurisdiction for any offense involving domestic violence. For the purposes of this rule, domestic violence includes abuse of a child, and the term “domestic violence” has the meaning given by ORS 135.230, the term “abuse” has the meaning given by ORS 107.705, and the term “child” means a child.~~ **The public safety professional has a conviction in any jurisdiction for any offense involving abuse, as defined in ORS 107.705, of a child** who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as the public safety professional;

~~(e) (d)~~ (e) The public safety professional has a conviction in any jurisdiction for a bias or hate crime;

~~(f) (e)~~ (f) The public safety professional is a sex offender pursuant to **as defined in** ORS 163A.005(6); ~~or~~

**(g) The public safety professional has a conviction for stalking, as defined in ORS 163.732, or its statutory counterpart in another jurisdiction; or**

~~(h) (f)~~ (h) The public safety professional has been discharged for cause from employment as a public safety professional. For the purposes of this rule, “for cause” means **as a result of** intentional conduct performed under the color of office to:

(A) Obtain false confessions;

## Attachment B – Proposed Rule Changes in Revised Text Format

- (B) Make false arrests;
- (C) Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression;
- (D) Compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing;
- (E) Deprive, or attempt to deprive, another person or persons of their legal rights;
- (F) Gain advantage for a public or private safety agency or for personal gain; ~~or~~
- (G) Use force that was determined to be excessive or without justification;**
- (H) Engage in the abuse of lawful authority;**
- (I) Engage in policing indicative of bias or discriminatory intent against an individual based on the individual’s real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability; or**
- (J) Engage in Discriminatory Conduct, as defined in OAR 259-008-0005 (15).**
- ~~(G) Discriminate against a person based on the public safety professional’s perception of that person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law.~~

### (3) Discretionary Denial or Revocation of a Public Safety Professional’s Certifications.

(a) The Department may **deny the application for training, or** deny or revoke **the certification, of** a public safety **professional** ~~professional’s certifications~~ based upon a finding that the public safety professional engaged in conduct that includes any or all of the following elements:

- (A) Dishonesty, as defined in OAR 259-008-0005 (16);**
- (B) Misconduct, as defined in OAR 259-008-0005 (31); or**
- (C) Misuse of Authority, as defined in OAR 259-008-0005 (32).**

~~(A) Dishonesty. Dishonesty is intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;~~

~~(B) Misuse of Authority. Misuse of Authority is intentional conduct that includes the use or attempted use of one’s position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another; or~~

~~(C) Misconduct.~~

## Attachment B – Proposed Rule Changes in Revised Text Format

~~(i) Misconduct includes conduct that violates criminal laws, conduct that threatens or harms persons, property or the efficient operations of any agency, or discriminatory conduct;~~

~~(ii) For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.~~

(b) For the purposes of this rule, conduct subject to discretionary review includes, but is not limited to:

(A) A criminal disposition when the criminal disposition is not a conviction constituting mandatory grounds as defined in section (2) of this rule;

(B) Conduct related to an arrest, a criminal citation to appear or its equivalent, or a criminal disposition;

**(C) Conduct related to a finding of contempt of court, violation of an extreme risk protection order, violation of a restraining order, or violation of a stalking protective order;**

~~(D)~~ (C) Conduct related to circumstances concurrent to a separation of employment from a certifiable position such as, but not limited to, investigation, settlement agreement or allegations of misconduct;

~~(E)~~ (D) Conduct that violates the standards of student conduct defined in OAR 259-012-0010;

~~(F)~~ (E) Falsification of any information on any documents submitted to the Board or the Department. **This does not apply to information that the Department determines was submitted incorrectly or in error;** or

~~(G)~~ (F) Conduct identified through receipt or discovery of information that would lead an objectively reasonable person to conclude that the public safety professional violated Board established employment, training, or certification standards for public safety professionals.

(c) Review of discretionary criminal dispositions applies to criminal dispositions that occurred on or after January 1, 2001. The Department will not open a case to review **discretionary** criminal dispositions that occurred prior to January 1, 2001.

(4) The Department will not open a case ~~on~~ **for** a criminal disposition or conduct that was previously reviewed by the Department, a Policy Committee or the Board and determined not to violate standards for public safety professional certification or resulted in no action to **deny**

## Attachment B – Proposed Rule Changes in Revised Text Format

**training, or** deny or revoke certification, using the administrative rules in effect at the time of the review.

(a) Nothing in this rule precludes the Department from opening a case upon discovery of additional mandatory or discretionary grounds for denial or revocation.

(b) Nothing in this rule precludes the Department, a Policy Committee or the Board from considering previous criminal dispositions or conduct as an aggravating circumstance in a separate discretionary case review.

(5) The moral fitness standards defined in administrative rule in effect on the date the Department or the Board determined that the applicant or public safety professional was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the moral fitness standards have been subsequently amended or repealed.

(6) Emergency Suspension. ~~The Department must issue an Emergency Suspension Order immediately suspending a public safety professional's certifications when a Policy Committee, the Board or the Board's Executive Committee finds that there is a serious danger to public health and safety.~~

**(a) The Department may issue an Emergency Suspension Order immediately suspending a public safety professional's certifications, regardless of their employment status, when the individual has been charged with a crime that, if convicted, requires revocation under section (2)(a) of this rule.**

**(A) After receiving notification of the charge, the Department will submit any supporting documentation available at the time to the Board's Executive Committee.**

**(B) The Executive Committee will review the information to determine if there is a serious danger to public safety by allowing the public safety professional to retain certification and the ability to perform the duties of a public safety professional while such egregious charges are pending.**

**(C) In recognition that the charges may result in a conviction or other criminal disposition subject to the mandatory or discretionary grounds for revoking certification under sections (2) and (3) of this rule, the Emergency Suspension Order will remain in effect until a Final Order to revoke certification is issued or the case is closed without revocation.**

**(b) The Department may issue an Emergency Suspension Order immediately suspending a public safety professional's certifications, regardless of their employment status, when a Policy Committee, the Board, or the Board's Executive Committee takes action to revoke a public safety professional's certification and finds that there is a serious danger to public safety by allowing the public safety professional to continue to perform the duties of a public safety professional while**

**the Department completes the administrative procedures for revoking certification. The Emergency Suspension will remain in effect until a Final Order revoking certification is issued or the case is closed without revocation.**

(7) Any ~~Board or~~ Department action to deny, revoke or emergency suspend a public safety professional's certifications will be administered in accordance with OAR 259-008-0300 through OAR 259-008-0340 and the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

### 259-008-0310 Denial/Revocation - Initiation and Review of a Professional Standards Case

(1) When the Department receives information from any source that a certifiable public safety professional or an applicant may not meet the established standards for public safety professionals, the Department will review the information to determine if substantial evidence exists to support denial, revocation or emergency suspension of certifications under the statutory and administrative rule requirements for public safety professional certification.

(2) In professional standards cases where the Department has determined that the conduct being reviewed violates the moral fitness standards established by the Board as mandatory grounds for denial or revocation as defined in OAR 259-008-0300 (2), the Department will administratively process the denial or revocation.

(3) The Department will defer review of professional standards cases for individuals who have not been certified and are not currently employed as a public safety professional until the individual is re-employed as a certifiable public safety professional except when the Department has the authority to proceed pursuant to ORS 181A.640 **(10)** ~~(9)~~.

~~(4) The Department will administratively close discretionary professional standards cases for deferred adjudications in which the only charge is for ORS 813.010 (Driving Under the Influence of Intoxicants) upon confirmation of dismissal.~~

**(4) The Department may close a professional standards case if it determines the case was opened in error, or upon receiving notice that the public safety professional is deceased.**

~~(5) The Department may recommend administrative closure of a discretionary professional standards case to a Policy Committee when the Department determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial or revocation.~~ **The Department may recommend administrative closure of a discretionary professional standards case to a Policy Committee when the Department determines that the conduct being reviewed:**

## Attachment B – Proposed Rule Changes in Revised Text Format

**(a) Does not meet the statutory and administrative rule requirements for denial or revocation; or**

**(b) May meet the statutory and administrative rule requirements for denial or revocation but the records are incomplete or inconclusive.**

(6) When the Department recommends administrative closure of a discretionary professional standards case to a Policy Committee, the Policy Committee must either approve or overturn the Department's recommendation.

(a) When the Policy Committee approves the recommendation for administrative closure, the Department will administratively close the professional standards case, **and no action will be taken to deny the application for training, or to deny or revoke certification.**

(b) When the Policy Committee overturns the recommendation for administrative closure, the Department will prepare the case for a complete review by the Policy Committee pursuant to sections (9) and (10) of this rule.

(7) In professional standards cases where the Department has determined that the conduct being reviewed may meet the statutory and administrative rule requirements for denial or revocation but is not supported by adequate factual information, the Department may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation of the matter.

(8) In professional standards cases where there has been an arbitrator's opinion related to the public safety professional's employment, the Department will proceed as follows:

(a) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the Department will proceed with review of the professional standards case pursuant to this rule.

(b) If the arbitrator has ordered employment reinstatement after a separation of employment without a finding related to whether the misconduct occurred, the Department will proceed with review of the professional standards case pursuant to this rule.

(c) If the arbitrator's opinion finds that underlying facts did not support the allegations of misconduct, the Department will recommend administrative closure of the professional standards case to a Policy Committee, unless the Department receives or discovers additional information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals.

(9) ~~When the Department submits~~ **Before submitting** a discretionary professional standards case to a Policy Committee **for disposition under section (10) of this rule**, the Department will notify the public safety professional. The notification will include the deadlines for the public safety professional to provide evidence of factors that may support mitigation. A public safety professional may provide mitigation evidence by one or both of the following:

## Attachment B – Proposed Rule Changes in Revised Text Format

(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for ~~the~~ **the Policy Committee to consider** ~~and Board consideration.~~

(b) Arranging with the Department to attend a Policy Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented ~~in person~~ by the public safety professional or their representative.

### (10) Policy Committee Review of Discretionary Professional Standards Cases.

(a) In professional standards cases where the Department has determined that the conduct being reviewed violates the moral fitness standards established by the Board as discretionary grounds for denial or revocation as defined in OAR 259-008-0300 (3), the Department will submit its findings to ~~a Policy Committee~~ **the Policy Committee in the relevant discipline** for disposition. The Policy Committee's disposition will be submitted as a recommendation to the Board for approval. **The relevant discipline is determined in the following order:**

**(A) If the conduct occurred while the person was employed as a public safety professional, the discipline in which they were employed at the time of the conduct.**

**(B) If the conduct occurred after employment as a public safety professional, the discipline in which they were previously employed.**

**(C) If the conduct occurred before employment as a public safety professional and is not subject to OAR 259 008 0290, and the person has not been previously employed as a public safety professional, the discipline in which they are currently employed.**

**(D) If multi-discipline employment or certification applies, use the agency designated primary discipline as defined in OAR 259 008 0005 (28). In cases where the conduct occurred during employment in one discipline, use the discipline active at the time of the conduct.**

(b) The Policy Committee will review the professional standards case to:

(A) Affirm, modify or negate the Department-identified moral fitness violations;

(B) Identify aggravating and mitigating circumstances unique to the professional standards case;

(C) Determine how the moral fitness violations and aggravating or mitigating circumstances impact the public safety professional's fitness for certification; and

(D) ~~When recommending denial or revocation of public safety professional certifications, determine how long the individual should be ineligible for certification.~~ **In cases where an application for training is denied, or**

**certification is denied or revoked, determine the ineligibility period based on the moral fitness violations and the following ranges:**

**(i) Dishonesty: Zero days to a maximum of lifetime.**

**(ii) Misuse of Authority: Zero days to a maximum of 20 years.**

**(iii) Misconduct that does not include Discriminatory Conduct: Zero days to a maximum of 20 years.**

**(iv) Misconduct that includes Discriminatory Conduct: Zero days to a maximum of lifetime.**

**(c) In cases where a Policy Committee negates all moral fitness violations, the Committee's disposition, that there were no such violations and therefore no basis to deny or revoke, will be the recommendation submitted to the Board for approval.**

(c) Aggravating and mitigating circumstances are conditions, factors or actions that increase or decrease the total impact that the identified moral fitness violation has on the public safety professional's fitness for certification.

(A) Aggravating circumstances generally increase the severity of the impact the moral fitness violation has on fitness for certification and may, in addition to the moral fitness violation, be grounds to deny or revoke certification. Aggravating circumstances may increase the recommended ineligibility period. Circumstances that may be considered aggravating include, but are not limited to, the degree of the criminal disposition, prior criminal dispositions or misconduct, lack of accountability, number of persons involved in the underlying conduct, number of separate incidents, passage of time from date of incident or incidents, or any other circumstance the Department or the Policy Committee consider aggravating given the specific issues in the case.

(B) Mitigating circumstances do not excuse or justify the conduct, but generally decrease the severity of the impact the moral fitness violation has on fitness for certification and may decrease the recommended ineligibility period. Circumstances that may be considered mitigating include, but are not limited to, written letters of support, truthfulness, cooperation during the incident or investigation, or any other circumstance the Department or the Policy Committee consider mitigating given the specific issues in the case.

(d) The ineligibility period is the timeframe that the public safety professional or applicant is ineligible for public safety certifications and prohibited from performing the duties of a certifiable public safety professional as the result of the total impact of the moral fitness violations and the aggravating and mitigating circumstances on the public safety professional's fitness for certification.

## Attachment B – Proposed Rule Changes in Revised Text Format

~~(A) When the identified moral fitness violations include Dishonesty or Misconduct that is discriminatory as defined in OAR 259-008-0300(3), the Policy Committee may recommend an ineligibility period from three years to lifetime.~~

~~(B) When the identified moral fitness violations do not include Dishonesty or Misconduct that is discriminatory as defined in OAR 259-008-0300(3), the Policy Committee may recommend an ineligibility period from three years to ten years.~~

(11) Board Review of a Professional Standards Case. The Board will review the professional standards case, ~~aggravation and mitigation~~ **the mitigation submitted by the public safety professional to the Policy Committee**, and the Policy Committee's recommendations to determine whether or not to approve all or part of the Policy Committee's recommendations.

(a) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the Policy Committee.

(b) The Board may approve the Policy Committee recommendation by a majority vote of the members present.

(c) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the Policy Committee. The Board may return a recommendation only once.

(A) The Policy Committee must reconsider its recommendation, along with the Board's instructions and any new information the Department submits to the Policy Committee.

(B) The Policy Committee will submit a revised or renewed recommendation to the Board.

(d) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.

(A) When the Board disapproves a recommendation that proposes no action be taken to **deny training, or** deny or revoke certification, the Board must make its own determination as to whether the public safety professional has engaged in conduct that violates the discretionary grounds for denial or revocation of certifications. The Board's review of the case must follow the process for Policy Committee review as outlined in section (10) of this rule.

(B) The Board may identify their own findings or adopt all or any part of the Policy Committee's findings as the basis for the determination.

## Attachment B – Proposed Rule Changes in Revised Text Format

(C) If the Board review results in a determination to **deny training, or** deny or revoke **certification** public safety professional certifications, the Department will issue a Notice of Intent pursuant to OAR 259-008-0340. Where the Board review results in no action to **deny training, or** deny or revoke **certification** public safety professional certifications, the issued Notice of Intent will be withdrawn and the professional standards case will be closed.

### 259-008-0320 Scope of Denial/Revocation/**Emergency Suspension** and Eligibility for Certification Following Denial/Revocation

(1) ~~When the Department denies or revokes public safety professional certifications~~ **When the Department denies the training, or denies, revokes, or immediately suspends the certification, of a public safety professional** pursuant to OAR 259-008-0290 through OAR 259-008-0340, the ~~denial or revocation~~ **denial, revocation, or suspension** will encompass all of the public safety professional certifications subject to OAR chapter 259 division 8.

**(2) An individual who is issued an Emergency Suspension Order is prohibited from performing the duties of a certifiable public safety professional until the Department withdraws the Emergency Suspension Order.**

**(3)** ~~(2)~~ An individual denied or revoked for mandatory grounds is prohibited from performing the duties of a certifiable public safety professional and the individual is permanently ineligible for certification as a public safety professional.

**(4)** ~~(3)~~ An individual denied or revoked for discretionary grounds is prohibited from performing the duties of a certifiable public safety professional and ineligible for public safety professional certifications until the prescribed ineligibility period has been satisfied.

**(5)** ~~(4)~~ The first day of a discretionary denial or revocation ineligibility period is determined by the following circumstances:

(a) ~~When certifications are denied or revoked for a criminal disposition that resulted from conduct that occurred prior to or after separation from employment as a public safety professional, the first day of the ineligibility period is the date of the conviction or the plea of guilt for a deferred sentence or other criminal disposition. When there is more than one criminal disposition determined to be a moral fitness violation, the most recent disposition will be used to determine the first day of the ineligibility period;~~ **For moral fitness violations that occurred before employment, or after separation from employment, as a public safety professional, the first date of the ineligibility period is that date of the criminal disposition.**

Attachment B – Proposed Rule Changes in Revised Text Format

**(A) When there is more than one criminal disposition determined to be a moral fitness violation, the most recent disposition will be used to determine the first day of the ineligibility period; or**

**(B) For cases without a criminal disposition, the first day of the ineligibility period is the date the Department opened the professional standards case;**

~~(b) When certifications are denied or revoked for any moral fitness violation concurrent to a separation of employment as a public safety professional,~~ **For moral fitness violations that occur while employed and concurrent to a separation from employment as a public safety professional,** the first day of the ineligibility period is the date of the separation from the certifiable position as reported to the Department pursuant to OAR 259-008-0020; or

~~(c) When certifications are denied or revoked for any moral fitness violation that occurred during employment~~ **For moral fitness violations that occur while employed** as a public safety professional and the public safety professional is employed in a certifiable position at the time of the Board's review, **or for any moral fitness violations that do not fit the circumstances of paragraphs (a) or (b) above,** the first day of the ineligibility period is the date that the Board makes the final determination to deny or revoke. ~~Periods of separation from a certifiable position as a result of the moral fitness violation will be applied to the satisfaction of the ineligibility period.~~

**(A) Periods of separation from a certifiable position as a result of the moral fitness violation will be applied to the satisfaction of the ineligibility period.**

**(B) A period of separation includes the number of days that have passed beginning from the date of separation from a certifiable position to the date of Board approval, or if the person was hired in a certifiable position before the Board approval, from the date of separation to the date of hire.**

**(C) To apply the period of separation toward the satisfaction of the ineligibility period, the Department will subtract the period of separation from the ineligibility period to determine when the individual may reapply for training or certification.**

**(6) Reapplication for Certification. After the end of the ineligibility period, an individual may apply for training or certification. To be approved for training or issued certification the individual must meet all of the minimum requirements for employment, training, and certification as defined in OAR chapter 259 division 008.**

~~(7)~~ ~~(5)~~ Any application for training or certification submitted by an individual whose ineligibility period has not been satisfied will be denied pursuant to OAR 259-008-0340.

~~(6) In order to be eligible for the issuance of certifications after satisfying an ineligibility period, the individual must meet all of the minimum requirements for employment, training and certification as defined in OAR chapter 259 division 008.~~

### 259-008-0330 Surrendering Certifications

- (1) A public safety professional may request that the Department accept the surrender of their public safety certifications.
- (2) In considering whether to accept the request to surrender public safety certifications, the Department may request further information from the present or prior employer pursuant to ORS 181A.670 or conduct its own investigation to determine if any minimum standards for certification have been violated and proceed with initiation and review of a professional standards case pursuant to ~~OAR 259-008-0340~~ **OAR 259-008-0290 through 259-008-0340**.
- (3) If an administrative proceeding has commenced pursuant to OAR 259-008-0340, the Department may, in its discretion, withdraw its Notice of Intent and accept the individual's surrender of the public safety certifications.
- (4) The public safety professional will remain certified until the Department accepts the surrender.
- (5) Once the surrender has been accepted by the Department, the individual may no longer perform the duties of a certifiable public safety professional.
- (6) The Department will enter a Final Order permanently revoking the certifications of a public safety professional.
- (7) An individual with public safety professional certifications revoked pursuant to this rule is permanently ineligible for certification as a public safety professional.

### 259-008-0340 Issuance of Notice of Intent/Request for Hearing and Contested Case Procedures

- (1) Upon a determination to proceed with an emergency suspension or a denial or revocation, the Department will prepare and serve a Notice of Intent on the individual or public safety professional.
- (2) Response Time:
  - (a) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order to file a written request for a hearing with the Department.

## Attachment B – Proposed Rule Changes in Revised Text Format

- (b) A party who has been served with a **Notice of Intent to Deny Training or** a Notice of Intent to Deny Certification has 60 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department. **The Department may combine these Notices when both training and certification are denied.**
- (c) A party who has been served with a Notice of Intent to Revoke Certification has 20 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department.
- (3) Default Orders. If the Department does not receive a timely request for a hearing, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672.
- (4) Hearing Request. If the Department receives a timely request for a hearing, it will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.
- (5) Proposed and Final Orders. When a hearing is requested, Proposed Orders, Exceptions, and Final Orders will be issued pursuant to the applicable provisions of the Attorney General’s Model Rules of Procedures adopted under OAR 259-005-0015.
- (6) Notice and Hearing Procedures Specific to Professional Standards Cases.
- (a) When a Policy Committee recommends denial or revocation of public safety professional certifications, the Department will serve the Notice of Intent on the individual or public safety professional prior to the Board’s review.
- (b) Department-proposed amendments to a Proposed Order issued by an Administrative Law Judge in a case that was originally reviewed by a Policy Committee and the Board must be considered by the Policy Committee and the Board before a Final Order can be issued.
- (c) The administrative law judge presiding at a contested case hearing may not adjust the ineligibility period approved by the Board under OAR 259-008-0310 or the Applicant Review Committee under OAR 259-008-0290.
- (d) If the Department does not receive a timely request for a hearing in cases heard by a Policy Committee, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672 upon final approval by the Board.

### 259-008-0400 ~~Review of Complaints~~

- ~~(1) The Department will review all complaints received to determine if the allegations contained in the complaint, if proven, would lead an objectively reasonable person to conclude that the~~

## Attachment B – Proposed Rule Changes in Revised Text Format

~~public safety professional or applicant violated Board-established employment, training, or certification standards for public safety professionals.~~

~~(2) Complaints determined to be unrelated to the statutory and administrative rule requirements for public safety professional certification or complaints that fall outside of DPSST's statutory authority for other reasons will be closed and not reviewed for further action.~~

~~(3) When a complaint against a currently employed public safety professional is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department will refer the complaint to the public safety professional's employing agency.~~

~~(a) The Department will defer any further investigation, discipline or remedy to the employing agency.~~

~~(b) The employing agency will be required to respond to the Department that the allegations made in the complaint have been reviewed and handled in an appropriate manner as dictated by the employing agency.~~

~~(c) If the public safety professional's employing agency is non-responsive to the Department's requests for response, the Department may present the complaint to a Policy Committee for disposition.~~

~~(4) When a complaint against a certified public safety professional who is not currently employed in a certifiable position is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department may present the complaint to a Policy Committee for disposition.~~

~~(5) When a complaint against an elected official serving as a public safety professional is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department may present the complaint to a Policy Committee for disposition.~~

~~(6) Prior to presenting a complaint to a Policy Committee, the Department will notify the person against whom the complaint was made and provide that affected person the opportunity to submit written mitigation or rebuttal for consideration.~~

~~(7) The Department will review any mitigation or rebuttal submitted by the affected person in accordance with the notice provided by section (6) of this rule.~~

~~(a) Where the Department finds that the mitigation or rebuttal provides information that the conduct, even if proven, does not violate the statutory and administrative rule requirements for public safety professional certification or does not fall within the Department's statutory authority, the Department will close the complaint.~~

~~(b) Where the Department finds that the mitigation or rebuttal does not disprove or otherwise resolve the complaint, the Department will present the complaint to a Policy Committee for disposition.~~

## Attachment B – Proposed Rule Changes in Revised Text Format

~~(8) When a complaint is submitted to a Policy Committee, the Policy Committee will review the complaint and any mitigation or rebuttal submitted by the affected person to determine how to proceed with the complaint.~~

~~(a) Where the Policy Committee finds no basis for investigating the complaint further, the Department will close the complaint.~~

~~(b) Where the Policy Committee finds a basis for an investigation, the Policy Committee may direct the Department to conduct an investigation and present the complaint as a professional standards case to the Policy Committee for review pursuant to OAR 259-008-0310.~~

### DPSST Review of Complaints Involving Public Safety Professionals (new title)

**(1) Definitions. In addition to the terms defined in OAR 259-008-0005, the following terms apply to this rule.**

**(a) “Disciplinary action” means a personnel action against a public safety professional such as a written reprimand, suspension without pay, reduction in salary, demotion, or termination of employment.**

**(b) “Employing Agency” means:**

**(A) The public or private safety agency that is the current employer of the public safety professional who is the subject of a complaint; or**

**(B) When the subject of the complaint is the department head of the public or private safety agency, the person or persons directly responsible for hiring or appointing the department head. This does not apply to the Office of Sheriff.**

**(c) “Jurisdictional Complaint” means allegations that, if proven, would lead an objectively reasonable person to determine that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12.**

**(d) “Non-jurisdictional Complaint” means allegations that, whether proven or not, are:**

**(A) Outside the scope of the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12; or**

**(B) Against someone who is not employed or certified as a public safety professional.**

**(2) When the Department receives a complaint against a public safety professional, the Department will review the complaint to determine if the allegations contained in the complaint, if proven, are jurisdictional or non-jurisdictional.**

**(3) When the Department determines that a complaint is non-jurisdictional, the complaint will be closed.**

**(a) The Department will notify the complainant of the determination.**

**(b) If the public safety professional is currently employed, the Department will notify their employing agency of the complaint and the Department's determination.**

**(4) When the Department determines that a complaint is jurisdictional, the Department will forward the complaint to the public safety professional's employing agency. The Department defers investigation of the complaint to the employing agency.**

**(5) When the Department forwards a jurisdictional complaint to the employing agency, the employing agency must submit a written response to the Department.**

**(a) The written response must be submitted to the Department within 90 days of receiving the forwarded complaint, unless the employing agency notifies the Department that additional time is needed to review the complaint or to satisfy employment due process requirements.**

**(b) The written response must state whether the allegations made in the complaint have been reviewed, whether the complaint resulted in an investigation, whether any of the allegations in the complaint were substantiated by a finding, and whether any of the findings resulted in disciplinary action. The written response is not required to identify what form of disciplinary action was taken.**

**(6) The Department may conduct further review of a jurisdictional complaint when:**

**(a) An employing agency fails to respond to the reporting requirements found in section (5) of this rule;**

**(b) The complaint is against a certified public safety professional who is not currently employed in a certifiable position; or**

**(c) The complaint is against a public safety professional holding the Office of Sheriff. This is in recognition that the Office of Sheriff is an elected official, and as an elected official the office does not have an employing agency for the Department to defer to for investigation of the complaint.**

**(7) When conducting further review, the Department will:**

**(a) Provide the subject of the complaint with a copy of the complaint and an opportunity to submit written mitigation; and**

**(b) Request records related to the complaint.**

**(8) The Department may close the complaint without any action when the Department finds that there is no substantial evidence to support a finding that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12. Lack of substantial evidence includes incomplete or inconclusive records.**

**(9) The Department may submit a jurisdictional complaint to a Policy Committee for disposition when the Department finds substantial evidence to support a finding that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12.**

**(10) Jurisdictional complaints submitted to a Policy Committee for disposition will be administered following the processes for discretionary professional standards cases under OAR 259-008-0310.**

## 259-008-0005 Definitions

*For ease of review, only the definitions that have been transferred, added, or amended are included below. Omissions are noted with \*\*\*.*

(1) “Aggravating Circumstance” means any condition, factor, or action identified by the Department or a Committee, when reviewing a professional standards case, that may increase the impact a moral fitness violation has on the decision to deny or revoke certification, or on the length of the resulting ineligibility period. Examples of circumstances that may be considered aggravating include, but are not limited to, the degree of the criminal disposition, prior criminal dispositions or misconduct, lack of accountability, the number of persons involved in the underlying conduct, the number of separate incidents, the recentness of the incident or incidents, or any other circumstance the Department or a Committee considers aggravating based on the specific facts and issues of the case.

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(10) “Criminal Disposition” means any of the following outcomes for a violation of a criminal law under the law of the jurisdiction where the disposition occurred:

- (a) a conviction;
- (b) a violation;
- (c) an adjudication;
- (d) a civil compromise;
- (e) an entered plea of guilty or no contest;
- (f) a suspended sentence;
- (g) a deferred prosecution agreement; or
- (h) a finding of guilty except for insanity, or its equivalent.

\*\*\*

(14) "Discharged" means a separation of employment that was initiated by the public safety professional's employer, including separations such as dismissed, fired, terminated, or separated. "Discharged" does not include a separation that occurs in lieu of a discharge, as a result of a settlement agreement, or when employment is reinstated through an arbitration proceeding.

(15) “Discriminatory Conduct” means a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person’s race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.

**Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format**

(16) “Dishonesty” means intentional conduct that is untruthful, including dishonesty by omission, deception, misrepresentation, falsification, or concealment of misconduct.

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(21) “Gross Misconduct” includes:

- (a) Deliberate or reckless conduct that causes or could cause significant harm;
- (b) Conduct including violence against another person;
- (c) Conduct resulting in a criminal disposition for a sex-related offense; or
- (d) Discriminatory Conduct.

(22) “Harm” means:

- (a) Physical injury as defined in ORS 161.015;
- (b) Emotional distress such as anguish, grief, fright, humiliation, or fury resulting from the conduct under review;
- (c) Loss of or damage to a person’s property; or
- (d) Loss of a person’s rights.

\*\*\*

(24) “Ineligibility Period” means the length of time that the public safety professional or applicant is ineligible for public safety certifications and prohibited from performing the duties of a certifiable public safety professional after their training is denied or their certifications are denied, suspended, or revoked.

\*\*\*

(31) “Misconduct” includes:

- (a) Conduct that violates criminal laws;
- (b) Conduct that causes or could cause harm;
- (c) Discriminatory Conduct; or
- (d) Conduct that disrupts and negatively affects the operation of any agency.

(32) “Misuse of Authority” means intentional conduct in which a public safety professional uses or attempts to use the authority or influence of their position as a public safety professional to gain an unfair personal advantage, harm others, or otherwise exploit the position's inherent power.

(33) “Mitigating Circumstance” means any condition, factor, or action identified by the Department or a Committee, when reviewing a professional standards case, that may reduce the impact a moral fitness violation has on the decision to deny or revoke certification, or on the

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

length of the resulting ineligibility period. Examples of circumstances that may be considered mitigating include, but are not limited to, written letters of support, demonstrated truthfulness, cooperation during the incident or investigation, the passage of time since the date of the incident or incidents, or any other circumstance the Department or a Committee considers mitigating based on the specific facts and issues of the case.

\*\*\* end of rule \*\*\*

### 259-008-0290 Denial of Public Safety Professional Certifications for Pre-employment Criminal Dispositions

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public’s trust in the public safety profession, protecting the public and ensuring that the conduct of a public safety professional or an applicant does not reflect adversely on the public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to the duties performed by a certified public safety professional.

(2) This rule defines the grounds for denial and processes for review of professional standards cases where the public safety professional is an applicant and the professional standards case is based on a pre-employment criminal disposition.

(a) “Applicant” means an employed public safety professional applying for DPSST training or certification; and

(b) “Pre-employment criminal disposition” means a criminal disposition, as defined in OAR 259-008-0005, that occurred prior to any employment in any jurisdiction as a police officer, reserve officer, corrections officer, parole and probation officer, regulatory specialist, telecommunicator, or emergency medical dispatcher as those terms are defined in OAR 259-008-0005.

(3) Mandatory Grounds for Denial. The Department must deny the application for training and deny the certification of an applicant based upon a finding that the applicant has a conviction for an offense constituting mandatory grounds for denial of public safety certification as defined in OAR 259-008-0300 (2), except when the Applicant Review Committee approves a waiver of this requirement under section (12) of this rule.

(4) Discretionary Grounds for Denial. The Department may deny the application for training and deny the certification of an applicant based upon a finding that the applicant has a pre-employment criminal disposition, other than a conviction constituting mandatory grounds for denial as defined in OAR 259-008-0300 (2), in which the criminal disposition or the underlying conduct includes either or both of the following elements:

(a) Dishonesty, as defined in OAR 259-008-0005 (16); or

(b) Gross Misconduct, as defined in OAR 259-008-0005 (21).

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

- (5) Review of discretionary criminal dispositions applies to criminal dispositions that occurred on or after January 1, 2001. The Department will not open a case to review discretionary criminal dispositions that occurred prior to January 1, 2001.
- (6) The Board delegates the review of discretionary professional standards cases and requests for waiver of a mandatory denial for an applicant’s pre-employment criminal dispositions to the Department and the Applicant Review Committee.
- (a) The Department will open a professional standards case to review an applicant’s pre-employment criminal disposition when the criminal disposition or underlying conduct may constitute discretionary grounds for denial as defined in section (4) of this rule.
  - (b) The Applicant Review Committee will review discretionary cases opened by the Department and determine whether the applicant is denied or not denied training and certification for the discretionary grounds defined in section (4) of this rule.
- (7) The Department may close a professional standards case as described in OAR 259-008-0310 (4).
- (8) The Department may recommend administrative closure of a professional standards case to the Applicant Review Committee when the Department determines:
- (a) The conduct being reviewed does not meet the statutory and administrative rule requirements for denial;
  - (b) The conduct being reviewed may meet the statutory and administrative rule requirements for denial but the records are incomplete or inconclusive; or
  - (c) The conduct being reviewed may meet the statutory and administrative rule requirements for denial but the conduct occurred more than 10 years before the date of employment as a public safety professional.
- (9) The Applicant Review Committee must approve or overturn the Department’s recommendation for administrative closure.
- (a) When the Applicant Review Committee approves the recommendation for administrative closure, the Department will administratively close the professional standards case, and no action will be taken to deny the application for training or to deny certification.
  - (b) When the Applicant Review Committee overturns the recommendation for administrative closure, the Department will prepare the case for a complete review by the Committee pursuant to sections (10) and (11) of this rule.
- (10) Prior to submitting a discretionary case to the Applicant Review Committee for disposition under section (11) of this rule, the Department will notify the applicant. The notification will include the deadlines for the applicant to provide evidence of factors that may support mitigation. The applicant may provide mitigation evidence by one or both of the following:

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

- (a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for the Applicant Review Committee to consider.
  - (b) Arranging with the Department to attend an Applicant Review Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented by the applicant or their representative.
- (11) The Applicant Review Committee will review the case to:
- (a) Affirm, modify, or negate the Department-identified moral fitness violations;
  - (b) Identify aggravating and mitigating circumstances unique to the case;
  - (c) Consider the following as mitigating circumstances:
    - (A) The applicant was not employed in a certifiable position when the conduct occurred; and
    - (B) The applicant has been hired by a public safety agency that is aware of the applicant’s criminal background;
  - (d) Determine how the moral fitness violations and aggravating or mitigating circumstances impact the applicant’s fitness for certification; and
  - (e) In cases where training and certification are denied, determine the ineligibility period, which may range from zero days to a maximum of ten years.
  - (f) In cases where the Applicant Review Committee negates all moral fitness violations, the Committee’s disposition, that there were no such violations and therefore no basis to deny, is considered an approved administrative closure of the case.
- (12) Waiver of Denial for a Mandatory Conviction.
- (a) An applicant may request a waiver of denial for a conviction that constitutes the mandatory grounds for denial of public safety training and certification as defined in OAR 259-008-0300 (2) only if:
    - (A) The conviction was for a crime constituting OAR 259-008-0300 (2)(a) and the crime was not against a person, or the conviction was for a crime constituting OAR 259-008-0300 (2)(b) and the crime was not for delivery or manufacture of a controlled substance, narcotic or dangerous drug; and
    - (B) At least 10 years must have passed since the final date that the applicant completed all imprisonment, parole, probation, and post-prison supervision for the conviction.
  - (b) An applicant’s request for this waiver will be submitted to the Applicant Review Committee following the processes for a discretionary case under sections (10) and (11)(a) through (11)(d) of this rule.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(A) In cases where the waiver is approved, no action will be taken to deny the application for training or to deny certification.

(B) In cases where the waiver is denied, the Department must deny the applicant’s training and certification and the applicant will be permanently ineligible for certification as a public safety professional in accordance with OAR 259-008-0320 (3).

(13) The moral fitness standards defined in administrative rule in effect on the date the Department or the Applicant Review Committee determined that the applicant was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted, regardless of any subsequent amendment or repeal of the rules.

(14) Any Department action to deny an applicant’s public safety professional certification will be administered in accordance with OAR 259-008-0290 through OAR 259-008-0340 and the applicable provisions of the Attorney General’s Model Rules of Procedure adopted under OAR 259-005-0015.

### 259-008-0300 Grounds for Denial, Revocation or Emergency Suspension of Public Safety Professional Certifications

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public’s trust in the public safety profession, protecting the public and ensuring that the conduct of a public safety professional or an applicant does not reflect adversely on the public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to the duties performed by a certified public safety professional.

(2) Mandatory Denial or Revocation of a Public Safety Professional’s Certifications. The Department must deny the application for training, or deny or revoke the certification, of a public safety professional based upon a finding that:

(a) The public safety professional has a conviction for any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(b) The public safety professional has a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except for offenses involving the use or possession of marijuana:

(A) Subsection (2)(b) above does not apply to convictions for driving under the influence of intoxicants as long as the arrest or citation does not result in any

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

other convictions that involve the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug;

(B) Convictions for the use or possession of marijuana and convictions for driving under the influence of intoxicants are subject to review as discretionary cases under section (3) of this rule;

(c) The public safety professional has a conviction in any jurisdiction for any offense involving domestic violence, as defined in ORS 135.230;

(d) The public safety professional has a conviction in any jurisdiction for any offense involving abuse, as defined in ORS 107.705, of a child who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as, the public safety professional;

(e) The public safety professional has a conviction in any jurisdiction for a bias or hate crime;

(f) The public safety professional is a sex offender as defined in ORS 163A.005;

(g) The public safety professional has a conviction for stalking, as defined in ORS 163.732, or its statutory counterpart in another jurisdiction; or

(h) The public safety professional has been discharged for cause from employment as a public safety professional as a result of intentional conduct performed under the color of office to:

(A) Obtain false confessions;

(B) Make false arrests;

(C) Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression;

(D) Compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing;

(E) Deprive, or attempt to deprive, another person or persons of their legal rights;

(F) Gain advantage for a public or private safety agency or for personal gain;

(G) Use force that was determined to be excessive or without justification;

(H) Engage in the abuse of lawful authority;

(I) Engage in policing indicative of bias or discriminatory intent against an individual based on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability; or

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(J) Engage in Discriminatory Conduct, as defined in OAR 259-008-0005 (15).

(3) Discretionary Denial or Revocation of a Public Safety Professional’s Certifications.

(a) The Department may deny the application for training, or deny or revoke the certification, of a public safety professional based upon a finding that the public safety professional engaged in conduct that includes any or all of the following elements:

(A) Dishonesty, as defined in OAR 259-008-0005 (16);

(B) Misconduct, as defined in OAR 259-008-0005 (31); or

(C) Misuse of Authority, as defined in OAR 259-008-0005 (32).

(b) For the purposes of this rule, conduct subject to discretionary review includes, but is not limited to:

(A) A criminal disposition when the criminal disposition is not a conviction constituting mandatory grounds as defined in section (2) of this rule;

(B) Conduct related to an arrest, a criminal citation to appear or its equivalent, or a criminal disposition;

(C) Conduct related to a finding of contempt of court, violation of an extreme risk protection order, violation of a restraining order, or violation of a stalking protective order;

(D) Conduct related to circumstances concurrent to a separation of employment from a certifiable position such as, but not limited to, investigation, settlement agreement or allegations of misconduct;

(E) Conduct that violates the standards of student conduct defined in OAR 259-012-0010;

(F) Falsification of any information on any documents submitted to the Board or the Department. This does not apply to information that the Department determines was submitted incorrectly or in error; or

(G) Conduct identified through receipt or discovery of information that would lead an objectively reasonable person to conclude that the public safety professional violated Board established employment, training, or certification standards for public safety professionals.

(c) Review of discretionary criminal dispositions applies to criminal dispositions that occurred on or after January 1, 2001. The Department will not open a case to review discretionary criminal dispositions that occurred prior to January 1, 2001.

(4) The Department will not open a case for a criminal disposition or conduct that was previously reviewed by the Department, a Policy Committee or the Board and determined not to violate

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

standards for public safety professional certification or resulted in no action to deny training, or deny or revoke certification, using the administrative rules in effect at the time of the review.

(a) Nothing in this rule precludes the Department from opening a case upon discovery of additional mandatory or discretionary grounds for denial or revocation.

(b) Nothing in this rule precludes the Department, a Policy Committee or the Board from considering previous criminal dispositions or conduct as an aggravating circumstance in a separate discretionary case review.

(5) The moral fitness standards defined in administrative rule in effect on the date the Department or the Board determined that the applicant or public safety professional was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the moral fitness standards have been subsequently amended or repealed.

(6) Emergency Suspension.

(a) The Department may issue an Emergency Suspension Order immediately suspending a public safety professional’s certifications, regardless of their employment status, when the individual has been charged with a crime that, if convicted, requires revocation under section (2)(a) of this rule.

(A) After receiving notification of the charge, the Department will submit any supporting documentation available at the time to the Board’s Executive Committee.

(B) The Executive Committee will review the information to determine if there is a serious danger to public safety by allowing the public safety professional to retain certification and the ability to perform the duties of a public safety professional while such egregious charges are pending.

(C) In recognition that the charges may result in a conviction or other criminal disposition subject to the mandatory or discretionary grounds for revoking certification under sections (2) and (3) of this rule, the Emergency Suspension Order will remain in effect until a Final Order to revoke certification is issued or the case is closed without revocation.

(b) The Department may issue an Emergency Suspension Order immediately suspending a public safety professional’s certifications, regardless of their employment status, when a Policy Committee, the Board, or the Board’s Executive Committee takes action to revoke a public safety professional’s certification and finds that there is a serious danger to public health or safety by allowing the public safety professional to continue to perform the duties of a public safety professional while the Department completes the administrative procedures for revoking certification. The Emergency Suspension will remain in effect until a Final Order revoking certification is issued or the case is closed without revocation.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(7) Any Department action to deny, revoke or emergency suspend a public safety professional’s certifications will be administered in accordance with OAR 259-008-0300 through OAR 259-008-0340 and the applicable provisions of the Attorney General’s Model Rules of Procedure adopted under OAR 259-005-0015.

### 259-008-0310 Denial/Revocation - Initiation and Review of a Professional Standards Case

(1) When the Department receives information from any source that a certifiable public safety professional or an applicant may not meet the established standards for public safety professionals, the Department will review the information to determine if substantial evidence exists to support denial, revocation or emergency suspension of certifications under the statutory and administrative rule requirements for public safety professional certification.

(2) In professional standards cases where the Department has determined that the conduct being reviewed violates the moral fitness standards established by the Board as mandatory grounds for denial or revocation as defined in OAR 259-008-0300 (2), the Department will administratively process the denial or revocation.

(3) The Department will defer review of professional standards cases for individuals who have not been certified and are not currently employed as a public safety professional until the individual is re-employed as a certifiable public safety professional except when the Department has the authority to proceed pursuant to ORS 181A.640 (10).

(4) The Department may close a professional standards case if it determines the case was opened in error, or upon receiving notice that the public safety professional is deceased.

(5) The Department may recommend administrative closure of a discretionary professional standards case to a Policy Committee when the Department determines that the conduct being reviewed:

(a) Does not meet the statutory and administrative rule requirements for denial or revocation; or

(b) May meet the statutory and administrative rule requirements for denial or revocation but the records are incomplete or inconclusive.

(6) When the Department recommends administrative closure of a discretionary professional standards case to a Policy Committee, the Policy Committee must either approve or overturn the Department’s recommendation.

(a) When the Policy Committee approves the recommendation for administrative closure, the Department will administratively close the professional standards case, and no action will be taken to deny the application for training, or to deny or revoke certification.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(b) When the Policy Committee overturns the recommendation for administrative closure, the Department will prepare the case for a complete review by the Policy Committee pursuant to sections (9) and (10) of this rule.

(7) In professional standards cases where the Department has determined that the conduct being reviewed may meet the statutory and administrative rule requirements for denial or revocation but is not supported by adequate factual information, the Department may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation of the matter.

(8) In professional standards cases where there has been an arbitrator’s opinion related to the public safety professional’s employment, the Department will proceed as follows:

(a) If the arbitrator’s opinion finds that underlying facts supported the allegations of misconduct, the Department will proceed with review of the professional standards case pursuant to this rule.

(b) If the arbitrator has ordered employment reinstatement after a separation of employment without a finding related to whether the misconduct occurred, the Department will proceed with review of the professional standards case pursuant to this rule.

(c) If the arbitrator’s opinion finds that underlying facts did not support the allegations of misconduct, the Department will recommend administrative closure of the professional standards case to a Policy Committee, unless the Department receives or discovers additional information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals.

(9) Before submitting a discretionary professional standards case to a Policy Committee for disposition under section (10) of this rule, the Department will notify the public safety professional. The notification will include the deadlines for the public safety professional to provide evidence of factors that may support mitigation. A public safety professional may provide mitigation evidence by one or both of the following:

(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for the Policy Committee to consider.

(b) Arranging with the Department to attend a Policy Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented by the public safety professional or their representative.

(10) Policy Committee Review of Discretionary Professional Standards Cases.

(a) In professional standards cases where the Department has determined that the conduct being reviewed violates the moral fitness standards established by the Board as discretionary grounds for denial or revocation as defined in OAR 259-008-0300 (3), the Department will submit its findings to the Policy Committee in the relevant discipline for

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

disposition. The Policy Committee’s disposition will be submitted as a recommendation to the Board for approval. The relevant discipline is determined in the following order:

- (A) If the conduct occurred while the person was employed as a public safety professional, the discipline in which they were employed at the time of the conduct.
- (B) If the conduct occurred after employment as a public safety professional, the discipline in which they were previously employed.
- (C) If the conduct occurred before employment as a public safety professional and is not subject to OAR 259-008-0290, and the person has not been previously employed as a public safety professional, the discipline in which they are currently employed.
- (D) If multi-discipline employment or certification applies, use the agency-designated primary discipline as defined in OAR 259-008-0005 (28). In cases where the conduct occurred during employment in one discipline, use the discipline active at the time of the conduct.

(b) The Policy Committee will review the professional standards case to:

- (A) Affirm, modify, or negate the Department-identified moral fitness violations;
- (B) Identify aggravating and mitigating circumstances unique to the professional standards case;
- (C) Determine how the moral fitness violations and aggravating or mitigating circumstances impact the public safety professional’s fitness for certification; and
- (D) In cases where an application for training is denied, or certification is denied or revoked, determine the ineligibility period based on the moral fitness violations and the following ranges:

- (i) Dishonesty: Zero days to a maximum of lifetime.
- (ii) Misuse of Authority: Zero days to a maximum of 20 years.
- (iii) Misconduct that does not include Discriminatory Conduct: Zero days to a maximum of 20 years.
- (iv) Misconduct that includes Discriminatory Conduct: Zero days to a maximum of lifetime.

(c) In cases where a Policy Committee negates all moral fitness violations, the Committee’s disposition, that there were no such violations and therefore no basis to deny or revoke, will be the recommendation submitted to the Board for approval.

(11) Board Review of a Professional Standards Case. The Board will review the professional standards case, the mitigation submitted by the public safety professional to the Policy

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

Committee, and the Policy Committee’s recommendations to determine whether or not to approve all or part of the Policy Committee’s recommendations.

- (a) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the Policy Committee.
- (b) The Board may approve the Policy Committee recommendation by a majority vote of the members present.
- (c) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the Policy Committee. The Board may return a recommendation only once.
  - (A) The Policy Committee must reconsider its recommendation, along with the Board’s instructions and any new information the Department submits to the Policy Committee.
  - (B) The Policy Committee will submit a revised or renewed recommendation to the Board.
- (d) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.
  - (A) When the Board disapproves a recommendation that proposes no action be taken to deny training, or deny or revoke certification, the Board must make its own determination as to whether the public safety professional has engaged in conduct that violates the discretionary grounds for denial or revocation of certifications. The Board’s review of the case must follow the process for Policy Committee review as outlined in section (10) of this rule.
  - (B) The Board may identify their own findings or adopt all or any part of the Policy Committee’s findings as the basis for the determination.
  - (C) If the Board review results in a determination to deny training, or deny or revoke certification, the Department will issue a Notice of Intent pursuant to OAR 259-008-0340. Where the Board review results in no action to deny training, or deny or revoke certification, the issued Notice of Intent will be withdrawn and the professional standards case will be closed.

## 259-008-0320 Scope of Denial/Revocation/Emergency Suspension and Eligibility for Certification Following Denial/Revocation

- (1) When the Department denies, revokes, or immediately suspends a public safety professional’s certifications pursuant to OAR 259-008-0290 through OAR 259-008-0340, the denial, revocation, or emergency suspension will encompass all of the public safety professional certifications subject to OAR chapter 259 division 8.
- (2) An individual who is issued an Emergency Suspension Order is prohibited from performing the duties of a certifiable public safety professional until the Department withdraws the Emergency Suspension Order.
- (3) An individual denied or revoked for mandatory grounds is prohibited from performing the duties of a certifiable public safety professional and the individual is permanently ineligible for certification as a public safety professional.
- (4) An individual denied or revoked for discretionary grounds is prohibited from performing the duties of a certifiable public safety professional and ineligible for public safety professional certifications until the prescribed ineligibility period has been satisfied.
- (5) The first day of a discretionary denial or revocation ineligibility period is determined by the following circumstances:
  - (a) For moral fitness violations that occurred before employment, or after separation from employment, as a public safety professional, the first date of the ineligibility period is that date of the criminal disposition.
    - (A) When there is more than one criminal disposition determined to be a moral fitness violation, the most recent disposition will be used to determine the first day of the ineligibility period.
    - (B) For cases without a criminal disposition, the first day of the ineligibility period is the date the Department opened the professional standards case.
  - (b) For moral fitness violations that occur while employed and concurrent to a separation from employment as a public safety professional, the first day of the ineligibility period is the date of the separation from the certifiable position as reported to the Department pursuant to OAR 259-008-0020.
  - (c) For moral fitness violations that occur while employed as a public safety professional and the public safety professional is employed in a certifiable position at the time of the Board’s review, or for any moral fitness violations that do not fit the circumstances of paragraphs (a) or (b) above, the first day of the ineligibility period is the date that the Board makes the final determination to deny or revoke.
    - (A) Periods of separation from a certifiable position as a result of the moral fitness violation will be applied to the satisfaction of the ineligibility period.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(B) A period of separation includes the number of days that have passed beginning from the date of separation from a certifiable position to the date of Board approval, or if the person was hired in a certifiable position before the Board approval, from the date of separation to the date of hire.

(C) To apply the period of separation toward the satisfaction of the ineligibility period, the Department will subtract the period of separation from the ineligibility period to determine when the individual may reapply for training or certification.

(6) Reapplication for Certification. After the end of the ineligibility period, an individual may apply for training or certification. To be approved for training or issued certification the individual must meet all of the minimum requirements for employment, training, and certification as defined in OAR chapter 259 division 008.

(7) Any application for training or certification submitted by an individual whose ineligibility period has not been satisfied will be denied pursuant to OAR 259-008-0340.

### 259-008-0330 Surrendering Certifications

(1) A public safety professional may request that the Department accept the surrender of their public safety certifications.

(2) In considering whether to accept the request to surrender public safety certifications, the Department may request further information from the present or prior employer pursuant to ORS 181A.670 or conduct its own investigation to determine if any minimum standards for certification have been violated and proceed with initiation and review of a professional standards case pursuant to OAR 259-008-0290 through 259-008-0340.

(3) If an administrative proceeding has commenced pursuant to OAR 259-008-0340, the Department may, in its discretion, withdraw its Notice of Intent and accept the individual's surrender of the public safety certifications.

(4) The public safety professional will remain certified until the Department accepts the surrender.

(5) Once the surrender has been accepted by the Department, the individual may no longer perform the duties of a certifiable public safety professional.

(6) The Department will enter a Final Order permanently revoking the certifications of a public safety professional.

(7) An individual with public safety professional certifications revoked pursuant to this rule is permanently ineligible for certification as a public safety professional.

## 259-008-0340 Issuance of Notice of Intent/Request for Hearing and Contested Case Procedures

(1) Upon a determination to proceed with an emergency suspension or a denial or revocation, the Department will prepare and serve a Notice of Intent on the individual or public safety professional.

(2) Response Time:

(a) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order to file a written request for a hearing with the Department.

(b) A party who has been served with a Notice of Intent to Deny Training or a Notice of Intent to Deny Certification has 60 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department. The Department may combine these Notices when both training and certification are denied.

(c) A party who has been served with a Notice of Intent to Revoke Certification has 20 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department.

(3) Default Orders. If the Department does not receive a timely request for a hearing, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672.

(4) Hearing Request. If the Department receives a timely request for a hearing, it will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(5) Proposed and Final Orders. When a hearing is requested, Proposed Orders, Exceptions, and Final Orders will be issued pursuant to the applicable provisions of the Attorney General’s Model Rules of Procedures adopted under OAR 259-005-0015.

(6) Notice and Hearing Procedures Specific to Professional Standards Cases.

(a) When a Policy Committee recommends denial or revocation of public safety professional certifications, the Department will serve the Notice of Intent on the individual or public safety professional prior to the Board’s review.

(b) Department-proposed amendments to a Proposed Order issued by an Administrative Law Judge in a case that was originally reviewed by a Policy Committee and the Board must be considered by the Policy Committee and the Board before a Final Order can be issued.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(c) The administrative law judge presiding at a contested case hearing may not adjust the ineligibility period approved by the Board under OAR 259-008-0310 or the Applicant Review Committee under OAR 259-008-0290.

(d) If the Department does not receive a timely request for a hearing in cases heard by a Policy Committee, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672 upon final approval by the Board.

### 259-008-0400 DPSST Review of Complaints Involving Public Safety Professionals

(1) Definitions. In addition to the terms defined in OAR 259-008-0005, the following terms apply to this rule.

(a) “Disciplinary action” means a personnel action against a public safety professional such as a written reprimand, suspension without pay, reduction in salary, demotion, or termination of employment.

(b) “Employing Agency” means:

(A) The public or private safety agency that is the current employer of the public safety professional who is the subject of a complaint; or

(B) When the subject of the complaint is the department head of the public or private safety agency, the person or persons directly responsible for hiring or appointing the department head. This does not apply to the Office of Sheriff.

(c) “Jurisdictional Complaint” means allegations that, if proven, would lead an objectively reasonable person to determine that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12.

(d) “Non-jurisdictional Complaint” means allegations that, whether proven or not, are:

(A) Outside the scope of the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12; or

(B) Against someone who is not employed or certified as a public safety professional.

(2) When the Department receives a complaint against a public safety professional, the Department will review the complaint to determine if the allegations contained in the complaint, if proven, are jurisdictional or non-jurisdictional.

## Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format

(3) When the Department determines that a complaint is non-jurisdictional, the complaint will be closed.

(a) The Department will notify the complainant of the determination.

(b) If the public safety professional is currently employed, the Department will notify their employing agency of the complaint and the Department’s determination.

(4) When the Department determines that a complaint is jurisdictional, the Department will forward the complaint to the public safety professional’s employing agency. The Department defers investigation of the complaint to the employing agency.

(5) When the Department forwards a jurisdictional complaint to the employing agency, the employing agency must submit a written response to the Department.

(a) The written response must be submitted to the Department within 90 days of receiving the forwarded complaint, unless the employing agency notifies the Department that additional time is needed to review the complaint or to satisfy employment due process requirements.

(b) The written response must state whether the allegations made in the complaint have been reviewed, whether the complaint resulted in an investigation, whether any of the allegations in the complaint were substantiated by a finding, and whether any of the findings resulted in disciplinary action. The written response is not required to identify what form of disciplinary action was taken.

(6) The Department may conduct further review of a jurisdictional complaint when:

(a) An employing agency fails to respond to the reporting requirements found in section (5) of this rule;

(b) The complaint is against a certified public safety professional who is not currently employed in a certifiable position; or

(c) The complaint is against a public safety professional holding the Office of Sheriff. This is in recognition that the Office of Sheriff is an elected official, and as an elected official the office does not have an employing agency for the Department to defer to for investigation of the complaint.

(7) When conducting further review, the Department will:

(a) Provide the subject of the complaint with a copy of the complaint and an opportunity to submit written mitigation; and

(b) Request records related to the complaint.

(8) The Department may close the complaint without any action when the Department finds that there is no substantial evidence to support a finding that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS

## **Attachment C – Proposed Rule Changes in Plain Text “Final Draft” Format**

Chapter 181A and OAR Chapter 259 Divisions 8 and 12. Lack of substantial evidence includes incomplete or inconclusive records.

(9) The Department may submit a jurisdictional complaint to a Policy Committee for disposition when the Department finds substantial evidence to support a finding that the public safety professional violated the employment, training, or certification standards for public safety professionals found in ORS Chapter 181A and OAR Chapter 259 Divisions 8 and 12.

(10) Jurisdictional complaints submitted to a Policy Committee for disposition will be administered following the processes for discretionary professional standards cases under OAR 259-008-0310.