

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

**Date:** May 2026

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

**From:** Jennifer Howald  
Administrative Rules Coordinator

**Subject:** **Review of Public Comments for 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 purpose of this memo is to review the comments collected for the proposed rule changes to 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.

The comprehensive rule change package amends the moral fitness standards and denial and revocation processes for criminal justice public safety professionals. It also includes process changes for DPSST review of complaints made against a public safety professional. These rules apply to police officers, corrections officers, parole and probation officers, regulatory specialists, telecommunicators, and emergency medical dispatchers. The changes are based on discussions and recommendations from the DPSST Criminal Justice Moral Fitness Workgroup (a rules advisory committee) and the DPSST Professional Standards Division.

DPSST presented the proposed rule changes to the Policy Committees during the February 2026 meetings. Each Policy Committee provided feedback that DPSST collected as part of the comment process. Following the Policy Committee meetings, DPSST held the public comment period from February 26 – March 31, 2026. DPSST received one written comment.

*Attachment B includes a copy of the February 2026 proposed rule changes.*

**Part 1 - Summary of Policy Committee Comments:**

Part 1 provides a summary of the comments provided by Policy Committee members. This section is informational and does not require any committee action at this time. DPSST staff are in the process of making revisions to the proposed rule changes to incorporate the Policy

Committee feedback. The revisions will be submitted to the Policy Committees in August for review, prior to seeking final approval from the Board on Public Safety Standards and Training.

February 4, 2026, Telecommunications Policy Committee (TPC)

1. OAR 259-008-0005 (31), the definition for Misconduct

The TPC asked if the Workgroup or the Board ever considered including violations of the code of ethics or oath of office as a form of Misconduct.

2. OAR 259-008-0290 (12), waiver of denial for a pre-employment criminal conviction

The TPC expressed concern that allowing a waiver process would result in weakening the current moral fitness standards.

February 10, 2026, Corrections Policy Committee (CPC)

3. OAR 259-008-0005 (22), the definition for Harm

The CPC expressed concern that subsection (b) describing emotional distress was too subjective as written and that if adopted it may have unintended outcomes.

4. OAR 259-008-0290 (5) and OAR 259-008-0310 (4), deletion of staff administrative closures for successfully diverted DUII professional standards cases

The CPC asked if DPSST had an estimate of how many cases this might impact in the future based on past administrative closures. The CPC supported the change but wanted to acknowledge the potential workloads for staff and the committees as these cases would shift to the discretionary review process.

5. OAR 259-008-0300 (6), Emergency Suspension

The CPC expressed concern with the discretionary outcome of the emergency suspension for felony charges and the potential effect on perception and outcomes where similar cases have different outcomes depending on who is reviewing it at the time or based on who is being reviewed. There was also concern about perception or precedent that may occur when employer actions such as administrative leave and DPSST action to emergency suspend are not aligned.

The CPC discussion included support of the emergency suspension concept for felony charges but provided feedback that it may be better to narrow the scope from all felonies to

specific types of felonies or very specific circumstances that must be met so that it can be applied as an automatic process, consistently in all applicable cases.

The CPC asked about public notice and public records related to an emergency suspension process. Staff explained that if the emergency suspension process went through the Executive Committee for review and action, then those are public meetings and would require public meeting notice. In either process, a committee review or an internal DPSST process, the emergency suspension order would be a public record. The suspension would also show in [IRIS](#) (the online database of employment, training and certification records).

Additional feedback identified that there may need to be an adjustment to the language that states “the Emergency Suspension Order will remain in effect until a Final Order to revoke certification is issued or the case is closed without revocation” to be able to withdraw the order if the professional standards case is resolved in a manner other than revocation.

6. OAR 259-008-0310 (10)(b)(D), ineligibility time ranges

The CPC discussed whether the reduction to the minimum ineligibility period and resulting shorter time frames would have an adverse impact on employers and what employment actions they take after an officer is denied or revoked. The example discussed was a revocation where the ineligibility period was 90 days. If the employer terminated the officer, would there be cause for an arbitrator to overturn that termination because of the brevity of ineligibility and the potential to address the passage of that time with different employment outcomes.

February 19, 2026. Police Policy Committee (PPC)

7. OAR 259-008-0310 (10)(b)(D), ineligibility time ranges

The PPC discussed the recommendation to reduce the three-year minimum ineligibility period to an open range that begins with zero days. Members expressed concern with not having a minimum amount of time that needs to be served when there is an action to deny or revoke certification, especially when Dishonesty, Misuse of Authority, or Discriminatory Conduct are involved. Discussion recognized both the need to maintain minimum threshold standards and the need to have outcomes that incorporate “time served.”

The PPC recommended amending the proposed rule changes to maintain a minimum ineligibility of one year for cases including Dishonesty, Misuse of Authority, or Discriminatory Conduct. In cases where the only moral fitness violation is Misconduct, the minimum ineligibility period can remain at zero days.

8. OAR 259-008-0400(5), DPSST review of complaints involving public safety officers

The PPC recommended clarifying the employing agency reporting requirements to specify that when there are multiple allegations and not all of the allegations are jurisdictional, that the reporting agency only needs to provide the reporting data for the allegations that were jurisdictional. Additionally, if investigation of the allegations results in other new findings unrelated to the allegations contained in the complaint, those do not need to be reported on through these processes.

The PPC also recommended removing the 90 day reporting timeline in recognition that most investigations and due process opportunities for discipline will automatically exceed 90 days. The PPC recommended that in place of the 90 days, the employing agency would still be required to acknowledge receipt of the complaint and awareness of the reporting requirement and then would be required to provide the reporting data once the review and any employment due process have been completed.

## **Part 2 – Summary of Written Public Comment**

When an agency proposes to amend a rule, it must give interested persons reasonable opportunity to submit data or views. The agency must consider fully any submission. (ORS 183.335(3)(a))

DPSST received one submission by Anita Yandle from the Policing Project at New York University School of Law. *A copy of the complete comment is included as Attachment A.*

Part 2 is intended to facilitate consideration of the written comments. In the following pages, DPSST staff provided a summary of the comment and staff's interpretation or analysis based on current application of the rules and the intent of the proposed rule changes, labeled as sections A-F. DPSST did not recommend any changes to the proposed rules based on the written comments.

**Action Item: By motion, second, and vote, the Policy Committee can either adopt DPSST's recommendations or make its own recommendations.**

Option 1: If the Policy Committee agrees with the DPSST interpretation and analysis, make a motion to adopt DPSST's recommendations as noted in sections A-F.

- This would result in no additional recommended changes to the proposed rules other than the Committee comments outlined under Part 1.

Option 2: If the Policy Committee chooses to recommend making changes based on the written comment, make a motion to include section [insert letter or letters] in the rule revisions for August.

- Any recommended changes based on the written comment will be submitted to the Policy Committees in August for review, prior to seeking final approval from the Board on Public Safety Standards and Training. (Additional public comment may be required.)

## A. Mandatory Grounds for Denial or Revocation

Comment: Amend the proposed definition of “discharged” to include when an officer resigns after a misconduct investigation has commenced for misconduct that could provide a basis for certification revocation under Proposed Rule § 259-008-0300(2)(h). An officer should not be able to avoid mandatory license revocation merely by resigning before the agency completes the misconduct investigation, or before the agency has the opportunity to terminate the officer’s employment, for the egregious misconduct set forth in Proposed Rule § 259-008-0300(2)(h). Indeed, failing to include such resignations in the definition of “discharged” perversely will encourage officers to resign before being terminated for the egregious misconduct set forth in § 259-008-0300(2)(h) to avoid statewide accountability.

DPSST Summary: Historically, the discharge for cause standards have always been applied to employer-initiated separations of employment. Prior to 2017, this meant that an officer could quit before being fired and avoid a mandatory discharge for cause decertification. In 2017, there were rule changes to address this disparity and the moral fitness standards and processes were amended to include discretionary review of any separation from employment that included allegations or investigations of misconduct at the time of the separation. DPSST finds that the current discretionary moral fitness definitions for Dishonesty, Misuse of Authority, and Misconduct would encompass the specific types of conduct that are listed as a discharge for cause. The current DPSST rules and processes close the loophole that would allow an officer to quit to avoid revocation under the mandatory discharge for cause standards by capturing those cases under the discretionary process.

DPSST Recommendation: No Change

## B. Discretionary Grounds for Denial or Revocation

Comment: Consider adding the additional discretionary grounds listed in the table below. “We recommend adding greater specificity to certain misconduct categories both to ensure that officers may be disciplined for particularly serious misconduct and so that officers are given better notice of conduct that could result in the suspension or revocation of their certification. We also suggest adding some additional grounds not currently covered by the Proposed Rule that nevertheless bear on the moral fitness required to serve as a peace officer.”

DPSST Summary: There are two ways to interpret the comment’s suggested additions.

- Include a suggested addition as a new moral fitness violation category (the current categories are Dishonesty, Misuse of Authority, and Misconduct) or add the suggested addition to the definition of Misconduct.
- Include the suggested addition as a reason for opening a case. The majority of cases are opened based on a separation from employment or a criminal disposition.

For this summary, DPSST is basing its recommendation and summary on the interpretation to add the suggestion as a new moral fitness violation category. Under current standards and process DPSST would already be opening a case if the officer was separated from employment, was arrested or cited, or received a criminal disposition as a result of the conduct identified in the list.

For ease of review the table below lists the additional discretionary grounds and DPSST’s summary.

	Suggested Addition for Comment	DPSST Summary
B1	“The public safety professional used excessive force, as defined in Or. Rev. Stat. §§ 161.233, 161.237, and 161.242.”	DPSST would review the conduct and the circumstances to identify Dishonesty, Misuse of Authority or Misconduct.
B2	“Tampered with a witness, victim, or an informant, as defined in 18 U.S.C. § 1512, regardless of whether the public safety professionally was criminally prosecuted.”	This conduct would be identified as a violation of the moral fitness category of Dishonesty.
B3	“Committed perjury, as defined in Or. Rev. Stat. § 162.065, regardless of whether the public safety professional was criminal prosecuted.”	This conduct would be identified as a violation of the moral fitness category of Dishonesty.
B4	“Being adjudged as mentally incompetent by a court of competent jurisdiction, within or outside this State, until the public safety professional can demonstrate that they have regained mental competency.”	DPSST interprets this an emotional standard, not a moral fitness standard. If the Policy Committees and the Board wanted to explore this as grounds to deny, suspend, or revoke certification, it would need to be evaluated as a separate rule change. This would need to be treated as a separate standard and not combined with moral fitness.
B5	“Failure to intervene under Or. Rev. Stat. § 181A.681(2), (4).”	DPSST would review the conduct and the circumstances to identify Dishonesty, Misuse of Authority or Misconduct.

B6	“Engaged in sexual harassment, as defined in Or. Admin. R. 839-005-0030(1), in the course of the public safety professional’s duties.”	DPSST would review the conduct and the circumstances to identify Dishonesty, Misuse of Authority or Misconduct.
B7	“Failure to report required information with the Department or failure to file a use-of-force report if the public safety professional knew or should have known a report was required to be filed by law or as a matter of agency policy.”	DPSST would review the conduct and the circumstances to identify Dishonesty, Misuse of Authority or Misconduct. Failure to report information to DPSST or to file use-of-force reports alone would likely be submitted to the Policy Committee as a recommended administrative closure.
B8	“Accessed or misused an electronic database in violation of the employer’s policy, or state or federal law.”	This conduct would be identified as a violation of the moral fitness category of misuse of Authority.
B9	“Committed an act that would constitute a felony or misdemeanor that would serve as a basis for mandatory denial or revocation under Or. Admin. R. 259-008-300(2), whether or not the public safety professional was criminally prosecuted.”	This already occurs based on current rules and processes. DPSST can open the case based on “Conduct related to an arrest, a criminal citation to appear or its equivalent, or a criminal disposition.” If there wasn’t an arrest, there would also be opportunities to open the case based on an employment separation due to the committed act, or under the broad catchall “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.”
B10	“Engaged in the conduct enumerated in Proposed Rule § 259-008-0300(2)(h)(A) through (J) (regardless of whether the public safety professional was discharged from employment).”	This already occurs based on current rules and processes. Any separation from employment involving allegations that the conduct listed under discharge for cause are reviewed as discretionary cases,

DPSST Recommendation: No Change

### C. Emergency Suspension

Comment: The proposed rules would allow, but not require, emergency suspensions when the public safety professional has been charged with a crime that would require certification revocation. “We suggest broadening the proposed rule language to also permit emergency suspensions when a professional is arrested for a crime that would require certification revocation. Days, weeks, or months may elapse between when someone is arrested and when they are charged.”

DPSST Summary: The Policy Committees and the Moral Fitness Workgroup have expressed their intent to preserve as much due process as possible when applying the emergency suspension authority. Concerns have been stated that moving forward with an emergency suspension too early in the process and the associated public records may interfere with the individual’s legal proceedings, impacting innocence until proven guilty.

Based on the February 2026 Policy Committee review of the proposed rule changes, DPSST staff are preparing revisions that place stricter criteria for the emergency suspension authority and process which could result in a “shall” emergency suspend under a specific set of circumstances. The Policy Committee comments suggested reducing discretionary actions to prevent disparate outcomes from one case to another. While developing the revisions to address the Policy Committee comments, DPSST will consider whether the more restrictive criteria for emergency suspension support initiating the suspension at the time of arrest versus the time of charge.

DPSST Recommendation: Consider additional review.

### D. Aggravating and Mitigating Circumstances

Comment: Add specific factors to the rule as potential aggravating or mitigating circumstances. “Enumerating some additional pertinent factors can help guide the Department or Committee in their determinations, standardizing evaluation metrics while still allowing flexibility.” The suggested factors include:

- Whether the certified officer used official authority to facilitate the misconduct;
- The number and severity of prior disciplinary actions taken against the officer by the Board;
- The danger to the public;
- The actual damage, physical or otherwise, caused by the misconduct;
- The pecuniary benefit or self-gain to the officer realized by the misconduct;
- Whether the misconduct was motivated by unlawful discrimination;

- Whether the officer has committed a pattern of unprofessional conduct that the Board believes may escalate;
- The length of time the officer has been certified by the Board;
- Any effort of rehabilitation by the officer, or lack thereof;
- The age of the officer at the time the officer engaged in misconduct;
- The clarity of the standard or law that the officer violated and whether the officer's conduct was intentional; and
- Likelihood that continued service would undermine public trust.

DPSST Summary: Lists of factors have been included in the rule before. When interpreted as factors for optional consideration, they have provided guidance, but without a formal process there was no way to measure whether they supported standardization during case reviews. When interpreted as factors for mandatory consideration in every case, it lengthened the policy committee review and discussion processes during meetings.

The Moral Fitness Workgroup review included consideration of the interpretation and processes related to identification of aggravating and mitigating circumstances. This included considering whether or not to add circumstances into rule that needed to be considered in every case review. The Workgroup found that the current interpretation and process remained appropriate, and did not recommend any changes.

DPSST Recommendation: Neutral

#### E. Ineligibility Period Ranges

Comment: Expand the maximum ineligibility period to include lifetime as an option for all of the moral fitness violation categories.

DPSST Summary: The different ineligibility period maximums have historically been used to distinguish between the most egregious types of conduct and to allow for opportunity for remediation over time. Dishonesty and Discriminatory Conduct include a maximum lifetime ineligibility period. In the proposed rule change, the maximum ineligibility periods for Misuse of Authority and Misconduct would increase from 10 years to 20 years.

The Workgroup and the Policy Committees have had extensive discussions related to the ineligibility period ranges. Most of those discussions focused on the minimum period. During the initial Workgroup review, the recommendation was to maintain 10 years as the maximum ineligibility period for Misuse of Authority and Misconduct. The Workgroup later adjusted their recommendation on the maximum ineligibility period when asked to reconsider the issue after two Policy Committee cases that included egregious acts of Misuse of Authority

or Misconduct, but did not include any findings of Dishonesty, and the Policy Committees voiced that they would have recommended more than 10 years if they had been able to.

When recommending increasing the maximum ineligibility period the Workgroup discussed ways to ensure that the 20-year maximum was used on a limited basis. The Workgroup recognized that the Committee is responsible for identifying the reasons why they are recommending the specific length of ineligibility and that the recommendation also goes through the Board approval process. The workgroup recognized that in most cases a 20-year ineligibility period would be equivalent to a lifetime ineligibility period.

It has also been frequently acknowledged that even if the ineligibility period allows a person to apply for certification after a set amount of time, that person still has to go through the employment and background process and be hired by an agency.

DPSST Recommendation: Neutral

#### F. Complaints

Comment: Expand the circumstances when DPSST (or another state agency delegated by the Department, such as the Office of the Attorney General) should conduct further investigations of complaints to include:

- when an agency chief is the subject of the investigation,
- there are familial conflicts of interests or allegations concerning a substantial portion of officers employed by the agency, or
- when the investigating agency is otherwise conflicted.

DPSST Summary: Under current practices, when the Chief of Police is the subject of the complaint, the complaint is forwarded to the city manager or city council (or other entity responsible for the Chief of Police employment determinations) for review and follow-up. In the other scenarios outlined by the written comment, DPSST has worked with the agency and recommend consulting an external investigator or escalated the complaint review request to the entity with oversight of the agency such as the city manager, city council, or county commission. DPSST finds that the existing structures allow independent review through established local oversight mechanisms.

DPSST Recommendation: No Change

March 27, 2026

Department of Public Safety Standards and Training  
c/o Jennifer Howald, Rules Coordinator  
4190 Aumsville Hwy SE  
Salem, OR 97317

*Submitted electronically to [jennifer.howald@dpsst.oregon.gov](mailto:jennifer.howald@dpsst.oregon.gov).*

**Re: Proposed Rules Regarding Amending Public Safety Professional Certification Denial and Revocation Standards and Processes**

The Policing Project is a non-partisan center at New York University School of Law dedicated to promoting public safety through transparency, equity, and democratic engagement. We appreciate the opportunity to provide comment to the Oregon Department of Public Safety Standards and Training on the proposed rule changes regarding law enforcement certification standards and processes.<sup>1</sup> This comment draws on the following resources that the Policing Project and its staff members have developed:

- Our co-founders, Professors Barry Friedman and Maria Ponomarenko, served as the Reporter and Associate Reporter for the American Law Institute’s *Principles of the Law, Policing*, which developed high-level principles on all aspects of sound and equitable policing, including officer certification and decertification.<sup>2</sup>
- Drawing on the ALI work and a review of state decertification laws and regulations, we drafted a model statute on officer screening, discipline, and decertification that was vetted by an advisory committee of academic and nonprofit experts, law enforcement leaders, and community organizations.<sup>3</sup> The model statute, among other things, sets forth the best practices for background checks, information sharing, transparency, decertification, lesser discipline grounds, and more.

Making use of these resources, the Policing Project has advised legislatures and peace officer standards and training boards across the country on background checks, and officer certification and decertification. It is with these resources and expertise that we offer the following comments.

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<sup>1</sup> *Notice of Proposed Rulemaking*, Department of Public Safety Standards and Training, (February 25, 2026), <https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/15204068> (hereinafter “Proposed Rule”).

<sup>2</sup> See *Principles of Policing*, American Law Institute, Ch. 14.13 Certification and Decertification of Law-Enforcement Officers, (2025), <https://www.policingprinciples.org/> (available on Westlaw).

<sup>3</sup> *Officer Discipline and Decertification*, Policing Project (2025), <https://www.policingproject.org/officer-discipline>.

The Proposed Rule is a significant and necessary step toward ensuring sound and equitable policing in Oregon. For example, establishing clear, consistent standards for law enforcement background investigations is crucial to the integrity and professionalism of the force, allowing agencies to make informed hiring decisions and promoting accountability across the state.

Nonetheless, based on our model statute and best practices, we recommend bolstering the proposed rule by making the changes discussed below.

#### Expand the List of Mandatory and Discretionary Certification Revocation or Suspension Grounds

The Proposed Rule adds new grounds for certification revocation or suspension, exercising the Department’s statutory authority to do so.<sup>4</sup> We recommend adding greater specificity to certain misconduct categories both to ensure that officers may be disciplined for particularly serious misconduct and so that officers are given better notice of conduct that could result in the suspension or revocation of their certification. We also suggest adding some additional grounds not currently covered by the Proposed Rule that nevertheless bear on the moral fitness required to serve as a peace officer. On that note, we suggest revising the proposed rule to make the following modifications to the grounds for certification revocation and suspension:

##### *Mandatory Revocation Grounds*

- Amend the proposed definition of “[d]ischarged” to include when an officer resigns after a misconduct investigation has commenced for misconduct could provide a basis for certification revocation under Proposed Rule § 259-008-0300(2)(h). An officer should not be able to avoid mandatory license revocation merely by resigning before the agency completes the misconduct investigation, or before the agency has the opportunity to terminate the officer’s employment, for the egregious misconduct set forth in Proposed Rule § 259-008-0300(2)(h). Indeed, failing to include such resignations in the definition of “discharged” perversely will encourage officers to resign before being terminated for the egregious misconduct set forth in § 259-008-0300(2)(h) to avoid statewide accountability.

##### *Discretionary Grounds*

- Add “The public safety professional used excessive force, as defined in Or. Rev. Stat. §§ 161.233, 161.237, and 161.242.”
- Add “Tampered with a witness, victim, or an informant, as defined in 18 U.S.C. § 1512, regardless of whether the public safety professional was criminally prosecuted.”

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<sup>4</sup> Proposed Rule § 259-008-0300(2)–(3).

- Add “Committed perjury, as defined in Or. Rev. Stat. § 162.065, regardless of whether the public safety professional was criminal prosecuted.”
- Add “Being adjudged as mentally incompetent by a court of competent jurisdiction, within or outside this State, until the public safety professional can demonstrate that they have regained mental competency.”
- Add “Failure to intervene under Or. Rev. Stat. § 181A.681(2), (4).”
- Add “Engaged in sexual harassment, as defined in Or. Admin. R. 839-005-0030(1), in the course of the public safety professional’s duties.”
- Add “Failure to report required information with the Department or failure to file a use-of-force report if the public safety professional knew or should have known a report was required to be filed by law or as a matter of agency policy.”
- Add “Accessed or misused an electronic database in violation of the employer’s policy, or state or federal law.”
- Add “Committed an act that would constitute a felony or misdemeanor that would serve as a basis for mandatory denial or revocation under Or. Admin. R. 259-008-300(2), whether or not the public safety professional was criminally prosecuted.”
- Add “Engaged in the conduct enumerated in Proposed Rule § 259-008-0300(2)(h)(A) through (J) (regardless of whether the public safety professional was discharged from employment).”

#### Allow for Emergency Suspensions for Certain Arrests

The Proposed Rule would change the Department’s authority to issue emergency certification suspensions.<sup>5</sup> Instead of requiring emergency suspensions upon a finding that “there is a serious danger to public health and safety,” the proposed rules would allow, but not require, emergency suspensions when (1) the public safety professional has been charged with a crime that would require certification revocation under the Department’s rules or (2) the Policy Committee, Board, or Executive Committee takes action to revoke a professional’s certification “and finds that there is a serious danger to public safety by allowing” the professional to continue to serve “while the Department complete the administrative procedures for revoking the certification.”<sup>6</sup> And for (1), the proposed rules suggest the Department will only issue an emergency suspension following

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<sup>5</sup> Proposed Rule § 259-008-0300(6).

<sup>6</sup> *Id.*

criminal charges when it determines the professional would pose “a serious danger to public safety” if allowed to keep their certification while the charges are pending.<sup>7</sup>

We suggest broadening the proposed rule language to also permit emergency suspensions when a professional is arrested for a crime that would require certification revocation. Days, weeks, or months may elapse between when someone is arrested and when they are charged. Indeed, when a law enforcement officer is arrested, the case may even be transferred to a special prosecutor or the Oregon Department of Justice given conflict of interest concerns, potentially further extending the time between arrest and indictment. If there is indeed probable cause that a professional committed a crime sufficiently egregious that it would result in mandatory revocation of their license, as there would be if a professional were arrested, it is quite possible they would pose “a serious danger to public safety” if allowed to keep their license following an arrest until they are charged.

Authorizing emergency suspensions in these circumstances will empower the Department to mitigate the harms an arrested officer may cause to the public following their potentially criminal misconduct.

#### Consider Enumerating Additional Aggravating and Mitigating Factors

The Proposed Rule provides that the Department or Committee should consider “any condition, factor, or action” that “may increase” (an aggravating circumstance) or “may reduce” (a mitigating circumstance) “the impact a moral fitness violation has on the decision to deny or revoke certification” or on the length of the resulting ineligibility period.”<sup>8</sup> Helpfully, the Proposed Rule includes various examples of circumstances that may be considered aggravating or mitigating.<sup>9</sup> Enumerating some additional pertinent factors can help guide the Department or Committee in their determinations, standardizing evaluation metrics while still allowing flexibility.

We suggest adding at least some of the following factors as potential aggravating or mitigating circumstances:

1. Whether the certified officer used official authority to facilitate the misconduct;
2. The number and severity of prior disciplinary actions taken against the officer by the Board;
3. The danger to the public;
4. The actual damage, physical or otherwise, caused by the misconduct;
5. The pecuniary benefit or self-gain to the officer realized by the misconduct;
6. Whether the misconduct was motivated by unlawful discrimination;
7. Whether the officer has committed a pattern of unprofessional conduct that the Board believes may escalate;

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<sup>7</sup> *Id.* § (6)(a)(B).

<sup>8</sup> Proposed Rule § 259-008-0005(1), (33).

<sup>9</sup> *Id.*

8. The length of time the officer has been certified by the Board;
9. Any effort of rehabilitation by the officer, or lack thereof;
10. The age of the officer at the time the officer engaged in misconduct;
11. The clarity of the standard or law that the officer violated and whether the officer's conduct was intentional; and
12. Likelihood that continued service would undermine public trust.

The addition of these factors should provide greater guidance for the Department or Committee without limiting other, non-enumerated factors.

#### Expand the Maximum Discipline Permitted for Certain Misconduct

The Proposed Rule provides for a range of ineligibility periods when an application for training is denied, or certification is denied or revoked, for a discretionary ground.<sup>10</sup> For instance, the ineligibility period for violations involving “Dishonesty,” meaning “intentional conduct that is untruthful, including dishonesty by omission, deception, misrepresentation, falsification, or concealment of misconduct,”<sup>11</sup> can range from a zero-day suspension to lifetime decertification.<sup>12</sup> Meanwhile, the maximum ineligibility period for violations involving “Misuse of Authority” and “Misconduct that does not include Discriminatory Conduct,” is twenty years.

The Proposed Rule defines “Misuse of Authority” as “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.” Meanwhile, “Misconduct not including Discriminatory Conduct” covers conduct that violates criminal laws, causes or could cause harm, or that disrupts and negatively affects the operation of any agency.<sup>13</sup>

Given the breadth of these definitions, particularly egregious misconduct that is *not* covered by the mandatory grounds could fall into these categories; we thus recommend extending the maximum ineligibility period to lifetime decertification for both categories of misconduct. This includes when officers engage in criminal conduct, even if the officer is not criminally prosecuted or terminated from their employment. Indeed, the Department should serve as a backstop, ensuring officers who have engaged in egregious misconduct cannot hold a license and endanger the public, even if they are not disciplined by their employing agency or criminally prosecuted. For example, an officer who stalked and intimidated a witness but did not face criminal charges likely should still face lifetime decertification, even though the act did not involve dishonesty or discrimination. So, too, would an officer who installed agency cameras to unlawfully surveil private individuals, repeatedly and recklessly used excessive force, or solicited romantic relationships with individuals

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<sup>10</sup> Proposed Rule § 259-008-0310(10)(D).

<sup>11</sup> *Id.* § 259-008-0005(16).

<sup>12</sup> *Id.* § 259-008-0310(10)(b)(D)(i).

<sup>13</sup> *Id.* § 259-008-0005(15), (32).

in custody, even if those officers are not criminally prosecuted or terminated by their employing agencies.

The Department and the public at large would benefit from affording the Department discretion to permanently revoke the certification of all officers who engage in particularly egregious misconduct, even if the misconduct does not involve dishonesty or discrimination.

#### Clarify Board Investigatory Powers and Role

The Proposed Rule generally defers to employing agencies to investigate their own officers after the Department determines a complaint falls within the Department's jurisdiction. The Department, under the Proposed Rule, may conduct further review of a complaint in specified circumstances, including when the employing agency fails to report on its investigation, the complaint is against someone holding the Office of Sheriff, or the complaint is against a public safety professional who is not currently employed in a certifiable position.<sup>14</sup>

But there are additional circumstances in which the Department itself or another state agency should conduct the further investigations instead of the employing agencies. These circumstances include when an agency chief is the subject of the investigation, there are familial conflicts of interests or allegations concerning a substantial portion of officers employed by the agency, or when the investigating agency is otherwise conflicted.

We recommend that the Department add language providing that it (or another state agency the delegated by the Department, such as the Office of the Attorney General) should conduct the further investigations in such situations. This not only ensures a fairer process but also provides greater protections for internal complainants, who can rest assured that an independent third party is reviewing the complained-of conduct.

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Thank you for the opportunity to provide comments on the Proposed Rule amending public safety professional certification denial and revocation standards and processes.

Respectfully submitted,

Anita Yandle

Counsel

Policing Project at NYU School of Law

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<sup>14</sup> *Id.* § 259-008-0400(6)–(10).

## Attachment B – Copy of Proposed Rule Changes

Attachment B provides a copy of the rule changes as reviewed by the Policy Committees during the February 2026 meetings and filed as proposed rule changes for comment.

The proposed rule changes include revision marks showing recommended additions noted with **bold and underlined text** and deletions noted with ~~strikethrough text~~.

### 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.

(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,

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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.

(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:**

**(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;

(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;

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- (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.**

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(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:

(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

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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.

(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.

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(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;~~

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~~(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:**

(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:

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

~~(f) (e) 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) 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;

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- (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.~~

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~~(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**

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**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:**

**(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:

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(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 ~~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.

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~~(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.

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(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.**

**(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.

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- (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~~

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~~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.~~

~~(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.**