

Telecommunications Policy Committee
Minutes
August 1, 2012

The Telecommunications Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 1, 2012 at the Oregon Public Safety Academy in Salem, Oregon. Chair Robert Poirier called the meeting to order at 10:05 a.m.

Attendees:

Committee Members:

Robert Poirier, Public Safety Telecommunicators, Chair
Rachel Brudnock, Telecommunicator
Pam Collett, Association of Public Safety Communications Officers
Rick Eisland, Oregon State Sheriffs' Association
Corinna Jacobs, Line-Level Telecommunicator
Elizabeth Morgan, Emergency Medical Services and Trauma Systems
Joe Raade, Emergency Medical Services Section of the Oregon Fire Chiefs Association

Committee Members Absent:

Pamela Brost, Association of Public Safety Communications Officers
Rich Leipfert, Oregon Fire Chiefs Association

DPSST Staff:

Eriks Gabliks, Director
Jan Myers, Telecommunications Class Training Coordinator
Marilyn Lorance, Standards and Certification Supervisor
Leon Colas, Professional Standards Investigator/Coordinator
Linsay Hale, Certification Coordinator
Kristy Witherell, Administrative Support



1. Minutes from May 2, 2012 Meeting

Approve meeting minutes from May 2, 2012.

See Appendix A for details.

Rick Eiesland moved to approve the minutes from the May 2, 2012 Telecommunications Policy Committee meeting. Corrina Jacobs seconded the motion. The motion carried unanimously.

2. OAR 259-008-0005, 259-008-0060 & 259-008-0064 Proposed Rule

Presented by, Linsay Hale

See Appendix B for details.

- *Rick Eiesland moved that the Telecommunications Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0005, 259-008-0060, & 259-008-0064 with the Secretary of State as a proposed rule and make it permanent if no comments are received. Pam Collett seconded the motion. The motion carried unanimously.*
- *It is the consensus of the committee there is no significant impact on small business.*

3. House Bill 2712

Presented by, Leon Colas

See Appendix C for details.

- *DPSST requests the Telecommunications Policy Committee identify two members to participate in a single workgroup meeting to review the recommendations and report back to the Policy Committee in November.*
- *Elizabeth Morgan and Rich Culley volunteered to participate in the workgroup.*
- *Marilyn Lorange will contact everyone involved in the workgroup to set up a meeting. Lorraine Anglemier grouped the crimes by categories so the workgroup can address them efficiently.*
- *The proposal will come back to the committee for formal approval of the proposed rule.*

4. Rebecca A. Hassler - DPSST #49392

Presented by, Leon Colas

See Appendix D for details.

- *Elizabeth Morgan moved that the Policy Committee adopts the staff report as the record upon which its recommendations are based. Joe Raade seconded the motion. The motion carried unanimously.*
 - a. Identify and articulate the **misconduct that is specific to this case.**
HASSLER's 2009 DUII conviction in Washington.
 - b. The identified conduct did not involve **Dishonesty**
 - c. The identified conduct did involve a **Disregard for the Rights of Others**
based on HASSLER putting others in jeopardy while driving under the influence.

- d. The identified conduct did not involve **Misuse of Authority**
 - e. The identified conduct did involve **Gross Misconduct based on the elements in the crime stated in the staff report.**
 - f. The identified conduct did involve **Misconduct based on the same issues stated above under Gross Misconduct.**
 - g. The identified conduct did not involve **Insubordination**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as aggravating circumstances HASSLER's BAC was nearly three times the legal limit. HASSLER mixed narcotics and alcohol.

The committee noted as mitigating circumstances the letter HASSLER wrote to the committee. HASSLER took responsibility for her actions. She had no previous criminal or traffic violations. HASSLER followed through with the terms of her conviction.

- *Rick Eisland moved that the Policy Committee finds HASSLER's conduct does not rise to the level to warrant the revocation of her certification(s), and, therefore, recommends to the Board that these certification(s) not be revoked. Corrina Jacobs seconded the motion. The motion carried unanimously.*

5. Additional Business

Director's Report

Todd Anderson joins DPSST as the new Training Division Director. He was formerly the Sheriff of Tillamook County. He also served as an elected Board member of the Tillamook County Emergency Communications District.

DPSST will be updating the field training manuals for Telecommunications and EMD. Jan Myers will be enlisting the committee for workgroup members.

We continue to work with APCO/NENA on grants to provide advanced and leadership training for the 9-1-1 community.

We are working on our budget packages for the 2013-2015 biennium. We had our first appearance in front of the new buying team which is a five-person citizen member group who give the governor guidance.

The most important issue DPSST is tracking legislatively is the 9-1-1 telephone tax Sunset which funds our 9-1-1 training program.

All of the 9-1-1 equipment has been replaced on campus. It was beta-tested with the last telecommunications class with no issues.

Marilyn:

There has been a partnership with Clatsop Community College and Standards and Certification to have the basic telecommunications classes evaluated to see if it can be eligible for college credits.

6. Next Telecommunications Policy Committee Meeting Date

November 7, 2012 at 10:00 a.m.

With no further business before the committee, the meeting adjourned at 10:35 a.m.

Appendix A

**Telecommunications Policy Committee
Minutes
May 2, 2012**

The Telecommunications Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 2, 2012 at the Oregon Public Safety Academy in Salem, Oregon. Chair Robert Poirier called the meeting to order at 11:03 a.m.

Attendees:

Committee Members:

Robert Poirier, Public Safety Telecommunicators, Chair
Pamela Brost, Association of Public Safety Communications Officers
Pam Collett, Association of Public Safety Communications Officers
Rick Eisland, Oregon State Sheriffs' Association
Corinna Jacobs, Line- Level Telecommunicator
Rich Leipfert, Oregon Fire Chiefs Association
Elizabeth Morgan, Emergency Medical Services and Trauma Systems

Committee Members Absent

Rachel Brudnock, Telecommunicator
Joe Raade, Emergency Medical Services Section of the Oregon Fire Chiefs Association

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorance, Standards and Certification Supervisor
Leon Colas, Professional Standards Investigator/Coordinator
Linsay Hale, Certification Coordinator
Kristy Witherell, Administrative Support



7. Minutes from November 2, 2011 Meeting

Approve meeting minutes from November 2, 2011.

See Appendix A for details.

Rick Eiesland moved to approve the minutes from the November 2, 2011 Telecommunications Policy Committee meeting. Corrina Jacobs seconded the motion. The motion carried unanimously.

8. Minutes from November 16, 2011 Special Meeting

Approve meeting minutes from November 16, 2011.

See Appendix B for details.

Rich Leipfert moved to approve the minutes from the November 16, 2011 Telecommunications Policy Committee special meeting. Rick Eiesland seconded the motion. The motion carried unanimously.

9. OAR 259-008-0060 Proposed Rule

Presented by Linsay Hale

See Appendix C for details.

- *The committee recognized the great work that was put into creating and updating the certification chart.*
- *Rick Eiesland moved that the Telecommunications Policy Committee recommends to the Board filing the proposed language as amended for OAR 259-008-0060 with the Secretary of State as a permanent rule if no comments are received. Rich Leipfert seconded the motion. The motion carried unanimously.*
- *It is the consensus of the committee there is no significant impact on small business.*

10. Tacy K. Hays, Tillamook Co. Emergency Communications - DPSST #49392

Presented by Leon Colas

See Appendix D for details.

- *Corrina Jacobs moved that the Policy Committee adopts the staff report as the record upon which its recommendations are based. Elizabeth Morgan seconded the motion. The motion carried unanimously.*
 - h. *Identify and articulate the **misconduct that is specific to this case.** The committee agreed that misuse of agency data, violation of agency policies, confidentiality, and the Telecommunicators code of ethics are aspects of misconduct in this case.*
 - i. *The identified conduct did involve **Dishonesty based on HAYS' denial of knowing that her boyfriend was not allowed in the dispatch center when HAYS' supervisors repeatedly told her he was not allowed in the building. HAYS used LEDS for personal reasons and when confronted by her supervisor, HAYS denied knowing that it was a violation of LEDS policies.***

- j. The identified conduct did involve a **Disregard for the Rights of Others based on HAYS accessing LEADS on others for personal gain.**
 - k. The identified conduct did involve **Misuse of Authority based on HAYS accessing LEADS on others for personal gain which violated their privacy.**
 - l. The identified conduct did involve **Gross Misconduct based on HAYS' misuse of LEADS and her bringing her boyfriend into the dispatch center unauthorized.**
 - m. The identified conduct did involve **Misconduct based on the same issues as above, HAYS' misuse of LEADS and her bringing her boyfriend into the dispatch center unauthorized.**
 - n. The identified conduct did involve **Insubordination based on HAYS being told numerous times with council not to access LEADS for personal reasons. HAYS' repeat violation of agency policies and procedures.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee did not identify any mitigating or aggravating circumstances in this case.***
 - ***Rich Leipfert moved that the Policy Committee finds HAYS' conduct does rise to the level to warrant the revocation of her certification(s), and, therefore, recommends to the Board that these certification(s) be revoked. Corrina Jacobs seconded the motion. The motion carried unanimously.***
 - ***Rich Leipfert moved that the Telecommunications Policy Committee recommend to the Board that HAYS' misconduct encapsulated the maximum period of ineligibility in all of the categories noted above suggesting a Lifetime disqualification; HAYS may not reapply for certification. Rick Eiesland seconded the motion. The motion carried unanimously.***

11. Additional Business

Director's Report

DPSST took a 5% reduction within the last legislative session. Six positions were lost, all out of the training division. There was no reduction in the 9-1-1 training program. There were no reductions in the training schedule for this year. All of the classes we have budgeted to provide, we will continue to provide.

We are in the process of upgrading the 9-1-1 training equipment at DPSST with Oregon Emergency Management, which will bring the 9-1-1 training simulators up to the same level as the communication centers around the state. The upgrade will be within the next 3 weeks before the next class starts.

In the last class, we had another University of Oregon communications employee. They have sent two people through the telecom class.

We have had some discussions with APCO/NENA a while ago as well as the fire rescue services about the expansion of our alarm operator statute in the 2011 session, which would include other than burglar alarms. Fire alarms are now covered. The people that monitor these alarms will have to be licensed through the state.

12. Next Telecommunications Policy Committee Meeting Date

August 1, 2012 at 10:00 a.m.

Appendix B

**Department of Public Safety Standards and Training
Memo**

Date: August 1, 2012

To: Telecommunications Policy Committee Memo

From: Linsay Hale
Rules & Compliance Coordinator

Subject: OAR 259-008-0005, 259-008-0060 & 259-008-0064 – Proposed Rules
Telecommunicator/Multi-Discipline Maintenance Training

Background: DPSST currently recalls the certification of any law enforcement officer who fails to meet the maintenance training requirements found in administrative rule. The recall is retroactive to the date that the training should have been completed and remains in effect until the required training is completed.

A recent DOJ analysis revealed that DPSST does not have the authority to recall a certification. ORS 181.662(1) states “The Department of Public Safety Standards and Training may deny the application for training, or deny, **suspend** or revoke the certification, of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon finding that: ... (c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).”

This means that the only option available to DPSST when an officer fails to complete the maintenance training is to suspend their certification. DOJ has clarified that our current process for “recall” is in essence a suspension action. Pursuant to statute, a suspension is subject to the contested case proceedings, affording the holder of the certification the right to an administrative hearing prior to suspension of certification. Also, suspensions cannot be retroactive. Any suspension would be effective upon the entry of a final order and would remain in effect until the missing training is completed.

Issue: There will be few substantive process changes making the transition from “certification recalls” to “certification suspensions.” In almost all cases the maintenance deficiencies are promptly resolved by the officer and agency. The contested case process would be available to officers in the event that there was a dispute and the maintenance deficiencies were not addressed. The letters sent to officers who fail to complete

maintenance training will become part of the contested case process and will include formal written notice of DPSST's proposed action and the affected officer's right to request a hearing pursuant to the Attorney General's Model Rules of Procedure adopted by DPSST.

The current DPSST recall processes are virtually identical for police, telecommunicators/emergency medical dispatchers and multi-discipline maintenance. On June 18, 2012, a workgroup representing all disciplines met to discuss the proposed terminology and process change. The group unanimously recommended moving forward with the changes.

A timeline has been developed to illustrate the current maintenance recall process and the proposed maintenance suspension process (Att. A.)

The following revised language for OAR 259-008-0005 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0005

Definitions

~~(25) "Recall" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.~~

(30) "Suspension" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.

The following revised language for OAR 259-008-0060 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0060

Public Safety Officer Certification

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(C) From the date a public safety professional's certification is ~~recalled~~ **suspended** until it is reinstated by the Department; or

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records ~~and provide notification to the individual and the employing agency.~~ **A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the officer's employing agency.**

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(A B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has ~~Within 30 days of receipt of notification,~~ from the date of mailing or personal service of the notice to the agency must notify the Department of the training status of any law enforcement officer identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period. **or to file a written request for hearing with the Department.**

(B C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

~~(i) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.~~

~~(j) The Department will recall a law enforcement officer's certification for:~~

~~(A) Failure to complete or report any required maintenance training above on or before June 30th of each year; or~~

~~(B) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.~~

~~(k) A law enforcement officer with a recalled **suspended** certification is prohibited from being employed in any position for which the certification has been recalled **suspended**.~~

~~(l) Recertification following a recall **suspension** may be obtained, **subject to** at the approval of the Department **approval**, by submitting the following:~~

~~(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and~~

~~(B) Verification that the missing training was completed.~~

~~(m) Failure to complete the required maintenance training may not result in a recall **suspension** of certification if the law enforcement officer is on leave from a public or private safety agency.~~

~~(19) Certificates and awards are the property of the Department. The Department has the power to revoke or recall **suspend** any certificate or award as provided in the Act.~~

The following revised language for OAR 259-008-0064 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0064

Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(b) On or after July 1 of each year, the Department will identify all telecommunicators and emergency medical dispatchers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency. **A Contested Case Notice of Intent to Suspend will be prepared and served on the telecommunicator or emergency medical dispatcher pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the telecommunicator's or emergency medical dispatcher's employing agency.**

(A) All contested cases notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(e B) A telecommunicator or emergency medical dispatcher who has been served a Contested Case Notice of Intent to Suspend has Within 30 days of receipt of the notification in (3)(b) above, **from the date of mailing or personal service of the notice to the agency or individual must notify the Department of the training status of any telecommunicator or emergency medical dispatcher identified as deficient by submitting a Form F-16 to the Department identifying the maintenance training completed during the previous one (1) year reporting period: or to file a written request for hearing with the Department.**

(d C) Maintenance training hours reported to the Department on an F-16 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(c) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(4) Failure to notify the Department of completion of the required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(5) The Department will recall a telecommunicator's or emergency medical dispatcher's certification for:

(a) Failure to complete or report any required maintenance training identified in sections (1) or (2) above on or before June 30th of each year; or

(b) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.

(6) A telecommunicator or emergency medical dispatcher with a recalled **suspended** certification is prohibited from being employed in a certifiable position as a telecommunicator or emergency medical dispatcher.

(8) Recertification following a recall suspension may be obtained, subject to at the Department approval, of ~~DPSST~~ by submitting the following to ~~DPSST~~:

(a) A written request from the employing agency head, or individual if unemployed, requesting recertification, along with a justification of why the maintenance training was not completed; and

(b) Verification that the missed training was completed.

(9) ~~Notwithstanding paragraph (6) of this subsection, the f~~Failure of a telecommunicator or Emergency Medical Dispatcher to complete required maintenance training will not result in recall suspension of certification if the telecommunicator or Emergency Medical Dispatcher is on leave from a public or private safety agency;

(10) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

ATTACHMENT A – Timeline – Current Maintenance Recall Process v. Proposed Maintenance Suspension Process

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0005, 259-008-0060 & 259-008-0064 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0005, 259-008-0060 & 259-008-0064 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

Appendix C

**Department of Public Safety Standards and Training
Memorandum**

DATE: August 1, 2012
TO: Telecommunicator Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator
SUBJECT: House Bill 2712

ISSUE:

House Bill 2712, 2011 Oregon Laws, Chapter 597, updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments, and other financial penalties imposed on conviction for felonies, misdemeanors, and violations other than parking infractions.

House Bill 2712 brought to our attention a large, previously unknown universe of primarily “regulatory” misdemeanor and felony crimes, and classified or reclassified a number of crimes as well. DPSST’s legal services coordinator has identified the crimes and made recommendations about possible presumptive categories for each of them, based on the reasoning of the earlier criminal justice workgroup that developed the current list.

ACTION ITEM I:

DPSST staff requests the TPC identify two members to participate in a single workgroup meeting to review the recommendations and report back to the TPC in November.

Appendix D

**Department of Public Safety Standards and Training
Memorandum**

DATE: August 1, 2012

TO: Telecommunications Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: REBECCA A. HASSLER DPSST #06505

ISSUE:

Should Rebecca Hassler's Basic Telecommunicator and Basic Emergency Medical Dispatcher certifications be revoked, based on discretionary disqualifying conduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0011?

The issue in this case involves Hassler's discretionary disqualifying misconduct, including but not limited to her 2009 conviction for DUII in Washington State.

BACKGROUND and OVERVIEW:

1. *On May 20, 1974, HASSLER was hired by the Linn County Sheriff's Office as a deputy sheriff, and resigned from that agency on January 10, 1976. She was employed with the Port of Portland Police Department from January 19, 1976 until she resigned August 26, 1978.¹ HASSLER states that she was employed by CRESA from May 1979 until September 1996.² She obtained her Basic Emergency Medical Dispatcher and her Basic Telecommunicator certifications on March 30, 1995. On October 10, 1996, HASSLER was hired by the Tillamook County 911 as a manager.³ She signed her Telecommunicator's Code of Ethics on October 22, 1996.⁴ HASSLER was discharged from Tillamook County 911 on November 19, 1997 on a probationary discharge. On August 12, 2003 HASSLER*

¹ Ex A1

² Ex A6

³ Ex A1

⁴ Ex A2

- was hired by the Tri-County Communications center in Condon, Oregon as a manager, and resigned from that agency on August 21, 2008.*⁵
2. *In April 2012, DPSST received an e-mail message from HASSLER inquiring about the effect of a DUII conviction on prospective employment. DPSST advised HASSLER that her conviction would have to be reviewed by the Telecommunications Policy Committee (TPC).*⁶ *DPSST sought and obtained information relating to the conviction.*⁷
 3. *In May 2012, DPSST notified HASSLER via certified mail that her case would be heard before the Telecommunications Policy Committee (TPC) and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration. Due to the documents being returned because of a bad address, I notified HASSLER of the proceeding via e-mail.*⁸
 4. *HASSLER provided a response.*⁹

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

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

⁵ Ex A1

⁶ Ex A3

⁷ Ex A4

⁸ Ex A5

⁹ Ex A6

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

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

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

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

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

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

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

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as a Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration of certification of five to ten years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-008-0070(9)(d) requires the Policy Committee and

the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

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

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

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

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

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

(E) Whether the misconduct involved domestic violence;

(F) Whether the public safety professional or instructor self reported the misconduct;

(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;

(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;

(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke HASSLER's certifications based on her discretionary disqualifying conviction:

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

- 3. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case.**

- _____
 - _____
 - _____
 - _____

- b. The identified conduct *did/did not* involve **Dishonesty.**

- _____
 - _____
 - _____
 - _____

- c. The identified conduct *did/did not* involve **Disregard for the Rights of Others.**

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

4. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

5. By vote, the Policy Committee finds HASSLER's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachment

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.