

# **Corrections Policy Committee Minutes February 14, 2006**

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 14, 2006 on the campus of Western Oregon University in Monmouth, Oregon. Chair Bob Wolfe called the meeting to order at 1:30 p.m.

## **Attendees**

### Committee Members:

Bob Wolfe, Oregon State Sheriffs' Association, Chair  
Paula Allen, Department of Corrections Security Manager  
Brian Belleque, Designee for Director of Department of Corrections  
Chris Hoy, Oregon Jail Managers' Association  
Greg Morton, Department of Corrections Training Division Director  
Theresa L. Smith, Department of Corrections, Women's Correctional Facility  
Timothy Woolery, Non-Management Corrections Officer  
Thomas Wright, DOC Bargaining Unit Representative

### Committee Members Absent:

Holly Russell, Oregon Jail Managers' Association  
Martin Silbernagel, Oregon Community Corrections Directors' Association  
Mitchell Southwick, Oregon State Sheriffs' Association

### DPSST Staff:

Lorraine Anglemier, Legal Services Coordinator  
Eriks Gabliks, Deputy Director  
Theresa King, Denial and Revocation Coordinator  
Marilyn Lorange, Records and Certification Supervisor  
Bonnie Salle, Rules and Certification Coordinator  
Rosemary Neal, Executive Assistant

### Guests:

Nicole Braman, Portland State University  
Sharron Noone, Portland State University



1. Minutes (November 15, 2005)

*Brian Belleque moved to approve the minutes of the November 15, 2005 Corrections Policy Committee meeting. Tom Wright seconded the motion. The motion carried in a unanimous vote.*

2. Proposed Rule Change: OAR 259-008-0070 – Denial/Revocation

Paula Allen provided the Committee with an overview of the Discretionary Disqualifying Workgroup's efforts and insights.

Early in 2005, the Police Policy Committee, Corrections Policy Committee and Telecommunications Policy Committee appointed representatives to serve on a Disqualifying Convictions Workgroup. After a thorough review and much discussion, the workgroup prepared a list of amendments that included the removal and addition of many mandatory disqualifying crimes. That list was disseminated to all Oregon public safety constituents for review and consideration. In addition to evaluating and incorporating all comments received from constituents, staff made further housekeeping amendments to the rules to improve formatting, readability and consistency.

Staff's revisions were submitted to the workgroup in December 2005 for final review and comment.

On January 11, 2006, the workgroup approved forwarding the following proposed rule language to all Policy Committees.

The following revised language contains recommended deletions (~~striketrough text~~) and additions (**bold and underlined text**):

**259-008-0070**

**Denial/Revocation**

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, ~~in such a way~~ to insure the highest levels of professionalism and discipline. ~~(a) These standards shall be upheld at all times unless there is a specific finding of substantial and compelling reason that demonstrates~~ **the Board determines** that neither the safety of the public or respect of the profession ~~will be is~~ **is** compromised ~~by a waiver~~.

~~(b) In the event that a waiver of denial or revocation is granted the decision shall be made in writing.~~

**(2) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:**

~~(a)~~ The Department shall **must** deny or revoke the certification of any ~~police officer, corrections officer, parole and probation officer, telecommunicator, emergency medical dispatcher~~ **public safety professional** or instructor after written notice and hearing, based upon a finding that:

~~(a)~~ **(A)** The **public safety professional** ~~officer, telecommunicator, or emergency medical dispatcher~~ has been discharged for cause from employment as a **public safety professional** ~~police officer, corrections officer, parole and probation officer, telecommunicator, or emergency medical dispatcher.~~ **(b)** For purposes of ~~(a) above,~~ **this rule,** "discharged for cause," means an employer-initiated termination of employment for any of the following reasons:

~~(A)~~ **(i)** Gross Negligence: means ~~where~~ the public safety professional's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;

~~(B)~~ **(ii)** Insubordination: means a refusal by a public safety professional to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the public or private safety agency and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties; or

~~(C)~~ **(iii)** Incompetence or Gross Misconduct: in determining what constitutes "incompetence or gross misconduct," sources the Department may take into account include but are not limited to practices generally followed in the profession, current teaching at public safety training facilities, and technical reports and literature relevant to the fields of law enforcement, telecommunications, or emergency medical dispatch.

~~(e)~~ **(B)** The ~~officer, telecommunicator, emergency medical dispatcher~~ **public safety professional** or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law 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;

~~(d)~~ **(C)** The ~~officer, telecommunicator, emergency medical dispatcher,~~ **public safety professional** or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

~~(e)~~ **(D)** The ~~officer, telecommunicator, emergency medical dispatcher,~~ **public safety professional** or instructor has been convicted in this state ~~of violating~~ **of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:**

162.075 (False swearing),

162.085 (Unsworn falsification),

162.145 (Escape in the ~~T~~third Degree),

**162.175 (Unauthorized departure),**

**162.195 (Failure to appear in the second degree),**

162.235 (Obstructing governmental al or judicial administration),

**162.247 (Interfering with a peace officer),**

**162.257 (Interfering with a firefighter or emergency medical technician),**

**162.295 (Tampering with physical evidence),**

**162.305 (Tampering with public records),**

162.315 (Resisting arrest),

162.335 (Compounding a ~~felony~~),

~~162.355 (Simulating legal processes)~~

162.365 (Criminal impersonation),

162.369 (Possession of false law enforcement identification ID-card),

162.375 (Initiating a false report),

162.385 (Giving false information to a police peace officer **for a citation or arrest warrant**),

~~162.405 (Official misconduct 2nd degree),~~

162.415 (Official misconduct **in the first degree**~~1st degree~~),

163.200 (Criminal mistreatment **in the second degree** ~~2nd degree~~),

~~163.207 (Female genital mutilation),~~

~~163.208 (Assaulting public safety officer),~~

~~163.212 (Unlawful use stun gun/tear gas/mace 2nd degree),~~

~~163.415 (Sexual abuse 3rd degree),~~

~~163.435 (Contributing to sexual delinquency of minor),~~

~~163.445 (Sexual misconduct),~~

~~163.465 (Public indecency),~~

~~163.545 (Child neglect 2nd degree),~~

~~163.575 (Endangering welfare of a minor),~~

~~163.675 (sale or exhibition of visual reproduction of sexual conduct by a child),~~  
~~163.687 (Encouraging child sexual abuse in the third degree 3rd degree),~~  
~~163.693 (Failure to report child pornography),~~  
**163.732 (Stalking),**  
~~164.045 (Theft in the second degree 2nd degree),~~  
**164.085 (Theft by deception),**  
**164.095 (Theft by receiving),**  
**164.125 (Theft of services),**  
~~164.170 (Laundering a monetary instrument),~~  
~~164.172 (Engaging in financial transaction in property derived from unlawful activity),~~  
~~164.235 (Possession of a burglary's tools or theft device),~~  
**164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment)**  
~~165.007 (Forgery in the second degree 2nd degree),~~  
~~165.017 (Criminal possession of a forged instruments in the second degree 2nd degree),~~  
~~165.037 (Criminal simulation),~~  
~~165.042 (Fraudulently obtaining a signature),~~  
**165.047 (Unlawfully using slugs),**  
**165.055 (Fraudulent use of a credit card),**  
**165.065 (Negotiating a bad check),**  
~~165.080 (Falsifying business records),~~  
~~165.095 (Misapplication of entrusted property),~~  
~~165.100 (Issuing a false financial statement),~~  
~~165.102 (Obtain execution of documents by deception),~~  
~~165.577 (Cellular counterfeiting 3rd degree),~~  
~~165.800 (Identity theft),~~  
**165.825 (Sale of drugged horse),**  
**166.065(1)(b) (Harassment),**

166.155 (Intimidation in the second degree 2nd-degree),

**166.270 (Possession of weapons by certain felons),**

166.350 (Unlawful possession of armor-piercing ammunition),

166.416 (Providing false information in connection with a transfer of a firearm regarding gun transfer),

166.418 (Improperly transferring a firearm handgun),

~~166.425 (Unlawful purchase of firearm);~~

~~166.427 (Register of transfers of used firearms);~~

**166.470 (Limitations and conditions for sales of firearms),**

~~166.480 (Sale/gift of explosives to children);~~

167.007 (Prostitution),

~~167.062 (Sadomasochistic abuse or sexual conduct/ in live show);~~

167.065 (Furnishing obscene materials to minors),

167.070 (Sending obscene materials to minors),

167.075 (Exhibiting an obscene performance to a minor),

167.080 (Displaying obscene materials to minors),

~~167.087 (Disseminating obscene materials);~~

~~167.090 (Public display of nudity/sex for advertising);~~

~~167.122 (Promoting gambling 2nd degree);~~

167.132 (Possession of gambling records in the second degree 2nd-degree),

167.147 (Possession of a gambling device),

167.222 (Frequenting a place where controlled substances are is used),

167.262 (Adult using minor in commission of controlled substance offense),

167.320 (Animal abuse in the first degree 1st-degree),

**167.330 (Animal neglect in the first degree),**

**167.332 (Prohibition against possession of domestic animal),**

**167.333 (Sexual assault of animal),**

**167.337 (Interfering with law enforcement animal),**

167.352 (Interfere with assisted search or rescue of animal),

167.355 (Involvement in animal fighting),

**167.370 (Participation in dogfighting),**

**167.431 (Participation in cockfighting),**

167.820 (Concealing **the** birth of **an** infant),

**475.525 (Sale of drug paraphernalia),**

**475.950 (Failure to report precursor substances transaction),**

**475.955 (Failure to report missing precursor substances),**

475.960 (Illegally selling drug equipment), ~~any misdemeanor involving any acts of domestic violence as defined in ORS 135.230, or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.~~

**475.965 (Providing false information on precursor substances report or record),**

**475.969 (Unlawful possession of phosphorus),**

**475.971 (Unlawful possession of anhydrous ammonia),**

**475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution),**

**475.975 (Unlawful possession of iodine in its elemental form),**

**475.976 (Unlawful possession of iodine matrix),**

**475.981 (Falsifying drug test results),**

**475.982 (Providing drug test falsification equipment),**

**475.986 (Application of controlled substance to the body of another person),**

**475.991 (Unlawful delivery of imitation controlled substance),**

**475.992 (Manufacture or deliver a controlled substance),**

**475.993 (Unlawful acts, registrant delivering or dispensing controlled substance),**

**475.994 (Prohibited acts involving records and fraud),**

**475.995 (Distribution of controlled substance to minors),**

**475.999 (Manufacture or delivery of controlled substance within 1,000 feet of school),**

**807.520 (False swearing to receive license),**

**807.620 (Giving false information to police officer),**

**Any offense involving any acts of domestic violence as defined in ORS 135.230.**

**(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.**

~~(A) There is not an option of waiver for the crimes listed above.~~

(3) **Discretionary** Grounds for Denying or Revoking Certification of a Public Safety Professional **or Instructor**: ~~(a)~~ The Department may deny or revoke the certification of any **public safety professional** officer, telecommunicator, emergency medical dispatcher or instructor, after written notice, and a hearing, if requested, based upon a finding that:

~~(A)~~ **(a)** The **public safety professional** officer, telecommunicator, emergency medical dispatcher or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

~~(B)~~ **(b)** The **public safety professional** officer, telecommunicator, emergency medical dispatcher or instructor has been convicted of **an offense, punishable as a** crime, other than a mandatory **disqualifying crime listed in subsection (2)** denial or revocation as listed above, in this state or any other jurisdiction. **In determining whether to take action on a conviction, the Department must use the following guidelines:**

~~(i)~~ **(A)** In making a decision on a discretionary denial or revocation, **the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.** ~~the policy committees may use the criminal disqualifier and decision matrix approved by the Board. (Exhibit A)~~

**(B) The Department will not take action on a discretionary conviction that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.**

**(C) The Department may take action on any discretionary disqualifying conviction that occurred after January 1, 2001.**

**(D) The Board may reconsider any mandatory conviction which subsequently becomes a discretionary conviction, upon the request of the public safety professional or instructor.**

**(E) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.**

**(F) Notwithstanding subsection (2)(b) of this section, all denial and revocation standards must apply to public safety professionals and instructors.**

**(G) A public safety professional or agency will not be held accountable for failing to report a discretionary conviction that occurred prior to January 1, 2003.**

**(c) 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.**

~~(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.~~

~~(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:~~

~~(I) Was the conviction a felony, misdemeanor, or violation?~~

~~(II) How long ago did the conviction occur? (refer to the matrix)~~

~~(III) Was the person a minor at the time and tried as an adult?~~

~~(IV) Did it occur before, during, after, or in between employment in law enforcement?~~

~~(V) Did the individual serve time in prison/jail? If so, how long?~~

~~(VI) If restitution was involved, has the person met all obligations?~~

~~(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?~~

~~(VIII) Are there any aggravating or mitigating circumstances that should be considered?~~

~~(IX) Do the actions violate the rule definition of moral fitness (OAR 259-008-0010(5)), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?~~

~~(X) How many other convictions does this person have? Over what period of time?~~

~~(XI) Has this person been convicted of this same crime more than once?~~

~~(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten year period)?)~~

~~(XIII) Does this conviction involve any domestic violence situation?~~

~~(C) The officer, telecommunicator, emergency medical dispatcher 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).~~

(4) Scope of Revocation. Whenever the Department **denies or** revokes the certification of any public safety professional, the **denial or** revocation shall embrace **will encompass** all certificates the Department has issued to that person.

(5) **Denial and** Revocation and Denial Procedure.

(a) Agency **Employer** Request: When the hiring authority having employed the **a** public safety professional's **employer** requests that the person's **a public safety professional's** certification be revoked or denied **or revoked**, it shall submit in writing to the Department **the employer must submit** the reason for the requested revocation or denial **or revocation** and all factual information supporting the request, **in writing, to the Department**.

(b) ~~DPSST~~ **Department** Initiated Request: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the person's **public safety professional's** certification be revoked or denied **or revoked**.

(c) Department Staff Review: **When the Department receives information, from any source, that a public safety professional may not meet the established standards for Oregon public safety professionals, the** The Department shall **will** review the request and the supporting factual information to determine if the request for revocation or denial **or revocation** meets statutory and administrative rule requirements.

**(A)** If the reason for the request does not meet the statutory and administrative rule requirements for revocation or denial **or revocation** the Department shall so **will** notify the requestor.

**(B)** If the reason for the revocation or denial **request does** meets statutory and administrative rule requirements but is not supported by adequate factual information, the Department shall **will** request further information from the requesting hiring authority **employer** or conduct its own investigation of the matter.

**(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.**

**(D)** If the Department makes a determination that a **public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.** person's certification should be revoked or denied, as a result of a conviction deemed to be discretionary, the request must be presented to the Board, through a Policy Committee, for review. If the Board should consider a request for waiver of the denial or revocation action, it is the responsibility of the applicant to present to the Board all information relative to the request for waiver, not less than fifteen days prior to the next scheduled Board meeting. The Board may consider a request for waiver under unique circumstances, and only if substantial and compelling reasons have been clearly demonstrated by the applicant.

**(d) Policy Committee and Board Review: The Policy Committees and Board may consider mitigating and aggravating circumstances in making a decision to deny or**

**revoke certification based on discretionary disqualifying conduct, including the following:**

**(A) Was a conviction a felony, misdemeanor, or violation?**

**(B) How long ago did a conviction occur?**

**(C) Was the public safety professional a minor at the time and tried as an adult?**

**(D) When did the conduct occur in relation to the public safety professional's employment in law enforcement (i.e., before, during, after)?**

**(E) Did the public safety professional serve time in prison/jail? If so, how long?**

**(F) If restitution was involved, has the public safety professional met all obligations?**

**(G) Was the public safety professional on parole or probation? If so, when did the parole or probation end? Is the public safety professional still on parole or probation?**

**(H) Do the actions violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(5), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation?**

**(I) How many other convictions does this public safety professional have? Over what period of time?**

**(J) Has the public safety professional been convicted of the same conduct more than once? Is this a repeated violation or a single occurrence?**

**(K) Does the conduct involve domestic violence?**

**(L) Did the public safety professional self report the conduct?**

~~(d)~~ **(e)** Initiation of Proceedings: Upon determination that the reason for ~~revocation or denial~~ **or revocation** is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice shall **will** be prepared.

~~(e)~~ **(f)** Contested Case Notice: The ~~Department shall prepare, or the Board shall cause the Department to prepare a "Contested Case Notice"~~ **will be prepared** in accordance with ~~OAR 137-003-0001~~ of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department shall **will** have a copy of the notice served on the public safety professional.

~~(f)~~ **(g)** Response Time:

(A) A party who has been served with the a "Contested Case Notice of Intent to ~~Revoke~~ **Deny Certification**" shall have ~~has 20~~ **60** days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) A party who has been served with the "Contested Case Notice of Intent to ~~Deny~~ **Revoke Certification**" shall have ~~has 60~~ **20** days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.

~~(g)~~ **(h) Default Order:** ~~In the absence of a timely request for a hearing,~~ **If a timely request for a hearing is not received,** the Contested Case Notice will become a final order ~~revoking~~ **or denying** certification pursuant to OAR 137-003-0075(5).

~~(h)~~ **(i) Hearing Request:** When a request for a hearing is received in a timely manner, the Department shall **will** refer the matter to the ~~Hearings Officer Panel~~ **Office of Administrative Hearings** in accordance with OAR 137-003-0515.

~~(i)~~ **(j) Findings of Fact, Conclusions of Law and Proposed Final Order:** The ~~presiding officer of the Hearings Officer Panel~~ shall **assigned Administrative Law Judge will** prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

~~(j)~~ **(k) Exceptions and Arguments:** and Arguments to the Findings of Fact, Conclusions of Law and Proposed Final Order. A party **must file specific written exceptions and arguments with the Department no later than** shall have 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order ~~to file specific written exceptions and arguments with the Department.~~

(A) The Department may extend the time within which the exceptions and arguments shall **must** be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments shall **must** serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

**(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a public safety professional fails to file exceptions and arguments in a timely manner.**

**(m) Stipulated Order Revoking Certification: Any public safety professional who wishes to voluntarily terminate an administrative proceeding to revoke a certification, or voluntarily relinquish a certification, may enter a stipulated order with the Department, at any time, revoking his or her certification under the terms and conditions outlined in the stipulated order.**

~~(k)~~ **(6) Appeal and Reapplication.**

**(a)** ~~An officer, telecommunicator, emergency medical dispatcher,~~ **public safety professional** or instructor, aggrieved by the findings and order of the Department may, as provided in

ORS 183.480, file an appeal with the Court of Appeals from the final order of the department.

~~(b)~~ Any officer, telecommunicator, emergency medical dispatcher, **public safety professional** or instructor who has had **a** certification revoked pursuant to ORS 181.661, **and** 181.662 **or subsection (a) of this section**, may reapply for certification but not sooner than four years after the date on which the Order of the Department revoking certification became final.

*Paula Allen moved to recommend to the Committee to file proposed language for OAR 359-008-0070 as a proposed rule with the Secretary of State. Brian Belleque seconded the motion. The motion carried in a unanimous vote.*

*Paula Allen moved to recommend to the Committee to file proposed language in OAR 259-008-0070 as a permanent rule with the Secretary of State if no public comment is received and no hearing is held. Brian Belleque seconded the motion. The motion carried in a unanimous vote.*

*Timothy Woolery moved that the Corrections Policy Committee has not identified any significant fiscal impact on small businesses pertaining to HB 3238 at this time. Paula Allen seconded the motion. The motion carried in a unanimous vote.*

### **3. Strategic Planning**

Representatives of the Hatfield School of Government at Portland State University provided an overview of the strategic planning process for DPSST/BPSST and began an initial work session with committee members. Committee members were tasked with an assignment for their respective organizations and were asked to provide their expectations of DPSST, BPSST, and the various policy committees.

There being no further issues to come before the Committee the meeting adjourned at 2:05 p.m.