

POST COUNCIL MEETING

December 8, 2014

Public Safety Education and Training Center, Sandy, UT

MINUTES

On December 8, 2014, a regularly scheduled POST Council meeting was held at 10:00 a.m. at the Public Safety Education and Training Center in Sandy, Utah. Chairman Terry Keefe conducted and welcomed those in attendance.

The following POST Council members were in attendance:

Chief Terry Keefe, Chairman, Layton City Police Department
Sheriff Lamont Smith, Vice-Chairman, Kane County Sheriff's Office
Sheriff Dave Edmunds, Summit County Sheriff's Office
Christie Moren, At Large
Dr. Frank Budd, At Large
Executive Director Rollin Cook, Utah Department of Corrections
Colonel Danny Fuhr, Superintendent, Utah Highway Patrol
Sheriff James O. Tracy, Utah County Sheriff's Office
Dr. Bruce Bayley, Weber State University
Commissioner Kerry Gibson, Weber County Commissioner
Dr. Matthew Checketts, At Large
Chief Deputy Spencer E. Austin, Attorney General's Office
Chief Marlon Stratton, St. George City Police Department
John Crowley, UPOA Representative

The following were excused and/or absent:

Chief Wade Carpenter, Park City Police Department
Chief Chris Burbank, Salt Lake City Police Department

POST staff present:

Scott Stephenson, Director
Atty. Kevin Bolander, DPS Legal Counsel representing POST, Asst. Attorney General
Atty. Marcus Yockey, DPS Legal Counsel representing POST, Asst. Attorney General
Shaunna McCleve, Administrative Secretary
Al Acosta, POST Investigations Bureau Chief
Rich Fordham, POST Investigations
Brad Macfarlane, POST Investigations
Robert Bench, POST Investigations
Mary Kaye Lucas, POST Investigations
Wade Breur, POST Basic Training Bureau Chief
Christopher Fielding, POST Media Producer
Julie Gomez, POST Technician

Others present:

Todd Hewitt
Adrian Day
Arden Smith
James Hudspeth
Ben Winslow
Troy Anderson
Bret Rawson
Jacob Boehme
Carolyn Done
Brandon Done
Michael Larsen
Wendy Horlacher
Diane Stratton
Michelle Spencer
Doug Spencer

WELCOME AND INTRODUCTIONS

The meeting was called to order at 10:00am. Chairman Terry Keefe welcomed those in attendance.

APPROVAL OF POST COUNCIL MINUTES

The POST Council minutes of September 24, 2014, were reviewed and the following motion was made:

Motion: *Chief Deputy Spencer Austin motioned to approve the minutes of September 24, 2014.*
Second: *Sheriff James Tracy seconded the motion.*
Vote: *The motion passed with all in favor.*

QUARTERLY REPORT

Lt. Acosta reported the following: Investigations received 22 complaints, opened 23 cases, conducted 1 administrative hearing and closed 5 cases with no action. Investigations has received 5 voluntary relinquishments and conducted 162 background investigations for applicants attending an academy. There are currently 64 active investigations and a total of 109 open cases.

Lt. Wade Breur reported the following: Two basic training classes are currently in session. Session #310 will graduate in December and has 26 cadets. Session #311 started in November with 24 cadets and will graduate in February 2015.

POST held 27 in-service training classes, totaling 444 hours with 473 attendees. Director Stephenson reported work load has increased by 30 percent in basic training, investigations and in-service training since 2010, while the budget has decreased.

SATELLITE AUDITS

Lt. Wade Breur reported POST conducted satellite audits on Dixie State University (DSU) and Utah Valley University (UVU). DSU academy has moved to the applied technology center, but the academy will remain with Dixie State University. There were no exceptions to either audit.

COMMITTEE REPORT FOR URS RETIREMENT ELIGIBILITY

Attorney Kevin Bolander addressed the Council to present the findings from the sub-committee the Council appointed last POST Council meeting. This committee was formed to give a recommendation regarding the dispute between Millard County SO and Utah Retirement System. He stated the issue may become moot because Millard County SO may resubmit the positions with the necessary language to make them eligible for the public safety retirement with URS. However, based upon the current job descriptions, it is the sub-committee's recommendation that neither position qualifies for the public safety retirement. The sub-committee's reasoning is detailed in the memorandum addressed to the Council (see attachment A for details).

Motion: *Sheriff James Tracy motioned to accept the recommendation from the sub-committee.*
Second: *Colonel Daniel Fuhr seconded the motion.*
Vote: *The motion passed with all in favor.*

REPORT ON TRAINING HOURS AUDIT

Director Scott Stephenson addressed the Council and reported on August 1, 2014, 103 officers were deficient in meeting the mandated 40 hour in-service training. Letters were sent to both the agency and officers informing them of the deficiency. On October 1st after giving them a couple of months to make up the deficiency, 23 officers were reported as being deficient to the Utah Retirement System.

LEGISLATIVE ITEMS

Director Scott Stephenson addressed the Council and stated last year, POST worked with Representative Greenwood, on a bill that would add a sanction to a chief administrator who fails to report a violation of 53-6-211. However, the bill was pulled due to a lot of questions and concerns. Director Stephenson solicited guidance from the Council as to whether this should be handled legislatively or through the administrative rule process. The legislative route could make failing to report the violation within 90 days a "Class C Misdemeanor." Another legislative option is a progressive sanction for failing to report to POST.

Director Stephenson would prefer to address failing to report through administrative rule with input from the Council. Chief Keefe asked if it would be a Class C Misdemeanor if it was handled in administrative rule and would the Council be able to impose a sanction. Director Stephenson stated it would not be a Class C Misdemeanor and the Council would not impose a sanction. Director Stephenson feels most administrators report officer misconduct to POST and others will address the Council if compelled. The Council discussed the timeframe agencies would be required to report officer misconduct and possible language for administrative rule.

Motion: *Sheriff Dave Edmunds motioned to move forward with administrative rule.*
Second: *John Crowley seconded the motion.*
Vote: *The motion passed with all in favor.*

STATE ACCREDITATION

Director Scott Stephenson addressed the Council and asked Dr. Frank Budd to explain the Utah Chiefs of Police Association accreditation process. Dr. Frank Budd said there are not many agencies participating in this process because they utilize Lexipol to manage their policies and procedures. Director Stephenson asked about the financial impact on smaller agencies. Sheriff Tracy said the Utah Association of Counties has an insurance pool that has been working with smaller counties to offset part or all of the cost to develop and implement Lexipol. Director Stephenson wanted to discuss this issue to make sure POST is proactive due to a couple of incidents that have drawn national attention.

DISCIPLINARY CASES

Attorney Marcus Yockey presented the following cases to the POST Council:

TROY ANDERSON

Offence – DUI

Category – D

Recommended Discipline – 2 ½ year suspension

Status – N/A

Agency – Not Employed

On May 13, 2013, Troy Anderson was involved in a single vehicle crash and was subsequently arrested for DUI. At the time of his arrest, Anderson's peace officer certification was suspended for a previous DUI, which was scheduled to end on July 8, 2013. Anderson's BAC at the time of his arrest was .22 grams per 100 milliliters of blood.

Anderson entered a guilty plea to an amended charge of impaired driving, a class B misdemeanor. During a POST *Garrity* interview, Anderson stated he could not remember the day of the crash, but said he most likely consumed the alcohol found in his system just prior to the crash.

On November 1, 2014, Anderson waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Anderson addressed the Council and stated the reason he didn't remember the accident was because he sustained a traumatic brain injury from the crash. He takes full responsibility for his actions. Attorney Brett Rawson addressed the Council and stated they do not dispute the POST recommendation.

Motion: Commissioner Kerry Gibson motioned to accept the recommended two and a half years suspension of Troy Anderson's peace officer certification.

Second: Dr. Bruce Bayley seconded the motion.

Vote: The motion passed with all in favor.

TALISA BLACK

Offence – Assault, DV in the Presence of a Child

Category – C

Recommended Discipline – 2 year suspension

Status – Terminated 4/17/14

Agency – Tooele City PD

On April 15, 2014, Talisa Black and her sister were engaged in an argument during which Black punched her sister in the head with a closed fist. Black's three year old son was present during the altercation. Law enforcement responded and conducted an investigation. At the conclusion of the investigation, the case was screened with the city attorney and declined to prosecute. On April 17, 2014 Black's probationary employment with Tooele City was terminated.

On August 5, 2014, POST conducted a *Garrity* interview with Black. During the interview, Black admitted to punching her sister one time after her sister punched her first. Black said her three year old son was present at the time of the altercation.

On November 17, 2014, Black waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Sheriff James Tracy motioned to accept the recommended two year suspension of Talisa Black's peace officer certification.*
Second: *Executive Director Rollin Cook seconded the motion.*
Vote: *The motion passed with all in favor.*

JACOB BOEHME

Offence – Disorderly Conduct, BCI Violation
Category – E & F
Recommended Discipline – 9 month suspension
Status – 3 day suspension
Agency – Logan City PD

On September 23, 2012, Jacob R. Boehme was investigated by a local police agency for disorderly conduct. Boehme and his estranged wife were involved in a verbal argument in the front yard of a residence. Boehme's wife contacted the local police and asked them to respond to the residence. Boehme admitted to the investigating officer the verbal argument was loud and involved both he and his wife screaming obscenities. Both Boehme and his wife were charged with disorderly conduct, a class C misdemeanor. During an internal investigation, it was discovered Boehme also accessed BCI information for personal reasons.

On October 11, 2014, Jacob Boehme waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Attorney Brett Rawson addressed the Council and requested the charges run concurrent and a six month suspension be imposed.

Attorney Yockey stated a nine month suspension is consistent; the incidents did not occur at the same time and should not run concurrent.

Motion: *Christy Moren motioned not accept POST recommendation and recommended a six month suspension of Jacob Boehme's peace officer certification.*
Second: *Dr. Matthew Checketts seconded the motion.*
Vote: *The motion passed with 12 for and 1 against.*

CHARLES CROSBY

Offence – Sexual Conduct On-duty
Category – B
Recommended Discipline – 3 year suspension
Status – Resigned 4/15/14
Agency – Cedar City PD

On March 27, 2014, Charles S. Crosby was administratively investigated by the Cedar City Police Department for engaging in sexual conduct while on duty.

On April 4, 2014, during an administrative interview, Crosby admitted to having sexual intercourse with a female while he was on-duty.

On July 29, 2014, during a POST *Garrity* interview, Crosby admitted to engaging in sexual intercourse while he was on-duty and in uniform.

On October 24, 2014, Charles Crosby waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: Colonel Daniel Fuhr motioned to accept the recommended three year suspension of Charles Crosby's peace officer certification.
Second: Chief Marlon Straton seconded the motion.
Vote: The motion passed with all in favor.

JUSTIN L. CURTIS - Case vacated by POST Council in emergency meeting held December 11, 2014.

Offence—Theft by Deception
Category—D
Recommended Discipline—1 year suspension
Status—Terminated 11/8/2013
Agency—Cache County SO

~~Motion: Sheriff Lamont Smith motioned to accept the recommended one year suspension of Justin Curtis' peace officer certification.
Second: Commissioner Kerry Gibson seconded the motion.
Vote: The motion failed with 5 in favor and 8 opposed.~~

~~2nd Motion: Chief Deputy Spencer Austin motioned for a two year suspension of Justin Curtis' peace officer certification.
Second: Executive Director Rollin Cook.
Vote: The motion passed with all in favor.~~

BRANDON DONE

Offence – Falsifying POST Application
Category – C
Recommended Discipline – 2 year suspension
Status – N/A
Agency – Weber State University Academy

On June 9, 2014, Brandon Done, a cadet at a satellite academy, submitted an email to POST disclosing his previous illegal use of prescription medication which occurred in 2007. This information was not on Done's POST application dated September 18, 2013, nor was it included with his Verification of Information on Application Form dated October 16, 2013. On June 10, 2014, POST conducted a *Garrity* interview with Done where he admitted he intentionally omitted his illegal use of prescription medication. Done was concerned the information would keep him from being admitted into the academy.

On October 22, 2014, Done waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Done addressed the Council and gave details of the prescription medication use. He didn't feel the use was illegal until he applied with Salt Lake City PD. During the background investigation it became apparent the use was illegal. Mr. Done then notified POST of his actions.

Mr. Done asked the Council to suspend only his LEO certification, so he could still seek employment. Attorney Yockey replied the suspension would apply to all certifications. A Council member asked Mr. Done if he completed the academy and Mr. Done stated he did.

Motion: Executive Director Rollin Cook motioned to accept the recommended two year suspension of Brandon Done's peace officer certification.
Second: Sheriff Dave Edmunds seconded the motion.
Vote: The motion passed with all in favor.

SHAWN HARTLEY

Offence – Falsifying POST Application
Category – C
Recommended Discipline – 2 year suspension
Status – Not Employed
Agency – N/A

On November 10, 2013, Shawn Hartley submitted an application for training and certification with POST. On January 8, 2014, Hartley signed a Verification of Application Information form and failed to disclose he used marijuana in December 2013. After graduating from the academy, Hartley contacted POST and reported his use of marijuana. During a POST *Garrity* interview, Hartley admitted to using marijuana in December 2013 and omitting the usage from his application addendum in January 2014.

On November 17, 2014, Hartley waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Chief Marlon Stratton motioned to accept recommended of a two year suspension of Shawn Hartley's peace officer certification.*

Second: *John Crowley seconded the motion.*

Vote: *The motion passed with all in favor.*

WENDY HORLACHER

Offence – Gambling
Category – E
Recommended Discipline – Letter of Caution
Status – 1 day off without pay
Agency – Utah Dept of Corrections

On or about January 21, 2014, through February 2, 2014, Wendy Horlacher organized a betting pool for the Super Bowl. Horlacher used her state email account to distribute information about the pool to those participating. On March 7, 2014, Horlacher received information from a third party that a department employee alleged Horlacher was abusing her state email account for the betting pool. Horlacher reported the allegation to her supervisor and made a full disclosure of her conduct. An internal investigation was subsequently conducted and resulted in Horlacher receiving a day off without pay. In *Garrity* interviews with both her department and POST, Horlacher admitted to organizing and participating in the betting pool as well as using her state email account to distribute the information.

On November 18, 2014, Horlacher waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Ms. Horlacher addressed the Council and admitted to participating in the gambling pool. Later she received information a staff member had received a copy of the email and stated he would use it against her if she ever tried to hold him accountable. She reported this to her supervisor and took full responsibility.

Mr. Yockey stated there is a letter in support from the chief administrator.

Motion: Colonel Daniel Fuhr motioned to accept the recommended letter of caution.

Second: Dr. Bruce Bayley seconded the motion.

Sub-Motion: *Chief Deputy Spencer Austin motioned to take no action.*

Second: *Sheriff Dave Edmunds seconded the motion.*

Vote: *The sub-motion passed with all in favor. (Executive Director Cook recused himself)*

JARED HUGHES

Offence – DUI
Category – D
Recommended Discipline – 18 month suspension
Status – Terminated 7/25/2014
Agency – Sandy PD

On July 24, 2014, Jared Hughes was stopped by a local police agency for improper lane travel. The officer suspected Hughes was impaired and had Hughes perform the Standardized Field Sobriety Tests. Hughes showed several signs during the tests, which indicated he was impaired and was subsequently arrested for driving under the influence. Hughes submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .211.

On November 18, 2014, Jared Hughes waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

- Motion:** *Chief Deputy Spencer Austin motioned to accept the recommended 18 month suspension of Jared Hughes’ peace officer certification.*
- Second:** *Executive Director Rollin Cook seconded the motion.*
- Vote:** *The motion passed with all in favor.*

~~**ZACHARY HUNT – Case vacated by POST Council in emergency meeting held December 11, 2014.**~~

~~Offence – Falsifying POST Application
Category – C
Recommended Discipline – 2-year suspension
Status – Resigned 9/4/13
Agency – Department of Public Safety~~

- ~~**Motion:** *Sheriff Dave Edmunds motioned to accept the recommended 2-year suspension of Zachary Hunt’s peace officer certification.*~~
- ~~**Second:** *Sheriff James Tracy seconded the motion.*~~
- ~~**Vote:** *The motion passed with all in favor. (Colonel Daniel Fuhr recused himself)*~~

MARK PUETT

Offence – Criminal Mischief
Category – E
Recommended Discipline – 6 month suspension
Status – Resigned 2/5/14
Agency – Utah Department of Corrections

On April 17, 2012, Mark Puett and a friend treed a mountain lion using trained dogs. Puett waited with the mountain lion while his friend left to pick up another male who wanted to see the mountain lion. When Puett’s friend returned with the male, the male shot and tagged the mountain lion. According to Utah Administrative Rule R657-10-2, this meets the definition of a “canned hunt”, which is illegal.

A law enforcement agency learned of the incident a year later and opened an investigation. On October 18, 2013, Puett was charged with aiding or assisting in the wanton destruction of protected wildlife. Puett later pled no contest to an amended charge of criminal mischief.

During a POST *Garrity* interview, Puett said he was unaware the male intended to kill the mountain lion. In the past, Puett's friend had brought others to see mountain lions and most took a picture and left. In addition, Puett thought the kill was legal because the male had a valid hunting permit for the mountain lion.

On November 19, 2014, Puett waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Dr. Frank Budd motioned to accept the recommended six month suspension of Mark Puett's peace officer certification.*

Second: *John Crowley seconded the motion.*

Vote: *The motion passed with all in favor.* (Executive Director Cook recused himself)

JED IMLAY

Offence – DUI w/ Minor in Vehicle, Leaving the Scene of an Accident

Category – B

Recommended Discipline – 4 year suspension

Status – Resigned 6/9/14

Agency – Cedar City PD

On June 2, 2014, Jed Imlay drove his Cedar City Police Department patrol vehicle to a local baseball park with his minor son in the vehicle. Imlay struck a retaining wall at the baseball park with his patrol vehicle before his son exited the vehicle. Witnesses observed Imlay get out of the patrol vehicle and exhibit behaviors of intoxication. Shortly after Imlay struck the wall, he got back into his patrol vehicle and left the scene. The Cedar City Police Department was notified of the accident and an investigation ensued. The criminal and department administrative investigations determined Imlay was under the influence of alcohol at the time of the accident. Imlay was arrested for DUI with a minor in the vehicle and leaving the scene of an accident. Criminal charges are pending adjudication.

Jed Imlay failed to respond to the notice of agency action. On November 6, 2014, an order of default was signed by the administrative law judge and mailed to Imlay.

Motion: *John Crowley motioned to accept the recommended four year suspension of Jed Imlay's peace officer certification.*

Second: *Asst. AG Austin Spencer seconded the motion.*

Vote: *The motion passed with all in favor.*

~~ROBERT RANDELL-Case vacated by POST Council in emergency meeting held December 11, 2014.~~

~~Offence – Assault, Lying under Garrity~~

~~Category – A~~

~~Recommended Discipline – Revocation~~

~~Status – Resigned 9/27/13, Currently with Tooele Co. SO~~

~~Agency – Salt Lake City PD~~

~~**Motion:** *Sheriff Lamont Smith motioned to accept the recommendation for revocation of Robert Randell's peace officer certification.*~~

~~**Second:** *Executive Director Rollin Cook seconded the motion.*~~

~~**Vote:** *The motion passed with all in favor.*~~

RECOGNITION

Director Stephenson recognized three members of the Council who are retiring from the profession. Sheriff Lamont Smith, Sheriff Dave Edmunds and Chief Terry Keefe and expressed appreciation for their service to the Council.

ELECTION OF CHAIR AND VICE-CHAIR

Chairman Keefe opened to nominations of POST Council Chairman.

Nomination: Executive Director Rollin Cook nominated Sheriff James Tracy for Chairman.

Second: Seconded by Colonel Daniel Fuhr.

Chairman Keefe called for nominations for Vice-Chairman

Nomination: Chief Marlon Stratton nominated Chief Wade Carpenter for Vice-Chairman.

Second: Chief Deputy Spencer Austin seconded the nomination.

Close: Commissioner Kerry Gibson motioned to close nomination.

Second: Chief Deputy Spencer Austin seconded the motion.

Vote: Both nominations passed with all in favor.

SCHEDULE NEXT MEETING

Next meeting will be held in conjunction with the Utah Chiefs Conference in St. George, March 26, 2015 at 1:00pm. (Date and location subsequently changed to, March 16, 2015 at 10:00am in Sandy)

ADJOURN FOR LUNCH

Sheriff Lamont Smith motioned to adjourn.

Sheriff James Tracy seconded the motion.

Meeting adjourned at 11:28pm.

ATTACHMENT A

To: POST Council
From: Kevin Bolander, Assistant Attorney General
Date: December 2, 2014
Subject: Subcommittee Recommendation for Millard County Sworn Dispatch Supervisor/Corrections and Correction Culinary Supervisor Job Descriptions

MEMORANDUM

In its meeting on September 24, 2014, the POST Council formed a subcommittee to review two job positions from Millard County Sheriff's Office and recommend whether these positions should be granted coverage in the Public Safety Retirement System. The two positions are Sworn Dispatch Supervisor/Corrections and Correction Culinary Supervisor.

The Subcommittee met on November 10, 2014 to review the appeal from the Millard County Sheriff's Office. Based on the job position descriptions and the applicable law found in Utah Code Ann. §§ 49-14-201(9) and 49-15-201(10), the Subcommittee recommends neither position should be granted coverage.

Sections 49-14-201(9) and 49-15-201(10) provide that in order for a position to be eligible for coverage, it must meet the following criteria:

- (i) place the employee's life or personal safety at risk; and
 - (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.
- (b) If a position satisfies the requirements of Subsection (10)(a), the office and Peace Officer Standards and Training Council shall consider whether the position requires the employee to:
- (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
 - (ii) perform duties that consist primarily of providing community protection; and
 - (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

Specially, the Subcommittee finds neither of these positions are eligible for coverage because both fail to meet the requirements in subsections (b)(i) and (ii). However, the Subcommittee notes that if the Millard County modifies the position descriptions, then both positions could be eligible for coverage.