

# POST COUNCIL MEETING

December 5, 2011

*Public Safety Education and Training Center  
Sandy, UT*

## MINUTES

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On December 5, 2011, a regularly scheduled POST Council meeting was held at 10:10 a.m. at the Public Safety Education and Training Center in Sandy, Utah. Chairman Mike Larsen conducted and welcomed those in attendance.

### **The following POST Council members were in attendance:**

Director Mike Larsen, Chairman, Orem DPS  
Chief Terry Keefe, Vice-Chairman, Layton City P.D.  
Sheriff Lamont Smith, Kane County Sheriff's Office  
Executive Director Tom Patterson, Department of Corrections  
Vice-President Donna Dillingham-Evans, Dixie State College  
Commissioner Kerry Gibson, Weber County Commissioner  
Robert D. Robertson, At Large  
Sheriff James O. Tracy, Utah County Sheriff's Office  
Sheriff David Edmunds, Summit County Sheriff's Office  
SAC Dave Johnson, FBI  
Chief Chris Burbank, Salt Lake City P.D.  
Chief Val Shupe, South Ogden City P.D.  
Chief Ken Wallentine, Attorney General's Office (proxy for Attorney General Mark Shurtleff)

### **The following were excused and/or absent:**

John Crowley, UPOA President  
Attorney General Mark Shurtleff, Attorney General's Office (proxy by Ken Wallentine)  
Colonel Daniel Fuhr, Superintendent, Utah Highway Patrol  
Dr. Sterling R. Provost, At Large  
Mayor Melissa Johnson, West Jordan City

### **POST staff present:**

Scott Stephenson, Director  
Shaunna McCleve, Administrative Secretary  
Al Acosta, Investigations Bureau Chief  
Rich Fordham, Investigator  
Alex Garcia, Investigator  
Brad Zeeman, Investigator  
Bryant Green, Investigator (DOC)  
Rex Dana, Investigator (DOC)  
Wade Breur, Basic Training Bureau Chief  
Lana Taylor, DPS Legal Counsel representing POST, Asst. Attorney General  
Erin Nixon, Investigation Secretary  
Chris Fielding, Media Specialist  
Julie Gomez, Basic Technician  
Heather Coleman, Basic Technician

**Others present:**

Jack Rickards  
Geri Miller-Fox  
Jeff Kearney  
Brett Anderson  
Jason Barker  
Jake Barker  
Mike Morgan  
London Stronberg  
Adam Young  
Andrew Lyday  
Suzanne Lyday  
Billy Hatch  
Rod Peterson

**WELCOME AND INTRODUCTIONS**

The meeting was called to order at 10:10 a.m. Chairman Mike Larsen welcomed those in attendance at POST Council and excused Colonel Fuhr, Dr. Provost and John Crowley.

**APPROVAL OF POST COUNCIL MINUTES**

The POST Council minutes of September 9, 2011, were reviewed and the following motion was made:

**Motion:** *Commissioner Kerry Gibson motioned to approve the minutes of September 9, 2011.*

**Second:** *Executive Director Tom Patterson seconded the motion.*

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

**REPORT ON IN-SERVICE TRAINING AUDIT**

Director Stephenson reported zero officers were deficient in the 40 hour in-service training audit. With the new reporting system implemented by POST, the majority of agencies reported training hours on-line. This reduced the required man hours staffed by POST by 200 hours. He thanked the agencies that reported on-line.

**DISCIPLINARY ACTIONS:**

Director Stephenson presented the following cases to the POST Council and reported one officer relinquished their peace officer certification during the last three months.

**SHAWN RICHINS**

Offence – On-duty Sexual Conduct, Lying Under Garrity  
Category – B  
Recommended Discipline- Revocation  
Status – Still Employed

Shawn Richins' Attorney, Brett Anderson addressed the Council. Atty. Anderson asked the Council to refer to the "Response to Notice of Agency Action and Request for Hearing", which was filed in this case in June. Officer Richins went to great lengths to make sure this was accurate. Atty. Taylor informed the Council the document was inadvertently not submitted to the Council.

***\*Council tabled the Richins case until the members had an opportunity to review the response.***

**GARY M. FRITZ**

Offence – Addiction to Alcohol  
Category – F  
Recommended Discipline- Indefinite suspension  
Status – Terminated 6/3/11

Director Patterson asked if Mr. Fritz knew the requirements to have this suspension lifted. Director Stephenson's indicated Mr. Fritz is aware of the requirements.

- Motion:** *Chief Ken Wallentine motioned to accept the recommendation for indefinite suspension of Gary Fritz's peace officer certification.*  
**Second:** *Chief Val Shupe seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**TRENTON J. PERCY**

Offence – Theft, Lying under Garrity  
Category – B/D  
Recommended Discipline- 4 year suspension  
Status – Terminated 3/7/2011

Trenton Percy addressed the Council and took responsibility for his actions. Chairman Larsen asked what he was asking from the Council. Mr. Percy stated he was a good officer and was requesting a three year suspension in place of the 4 year.

- Motion:** *Executive Director Tom Patterson motioned to accept the recommended 4 year suspension of Trenton Percy's peace officer certification (3/7/2011-3/7/2015).*  
**Second:** *Sheriff Lamont Smith seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**DARRELL K. BINGHAM**

Offence – Sexual Conduct On-duty  
Category – A  
Recommended Discipline- 3 year suspension  
Status – Resigned 6/10/2011

- Motion:** *Sheriff Dave Edmunds motioned to accept the recommended 3 year suspension of Darrell Bingham's peace officer certification (6/10/2011-6/10/2014).*  
**Second:** *Robbie Robertson seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**ANDREW J. LYDAY**

Offence – Stalking  
Category – B  
Recommended Discipline- 3 year suspension  
Status – Resigned 7/14/2011

Andrew Lyday addressed the Council and apologized for his conduct.

- Motion:** *VP Donna Dillingham-Evans motioned to accept the recommended 3 year suspension of Andrew Lyday's peace officer certification (7/14/2011-7/14/2014).*  
**Second:** *Sheriff Lamont Smith seconded the motion.*

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

**ADAM YOUNG**

Offence – Assault DV, Interference of Electronic Communication Device, Criminal Mischief

Category – C

Recommended Discipline- 2 year suspension

Status – Terminated 7/27/2011

Adam Young addressed the Council and stated he received bad advice from his attorney. The Domestic Violence and Interference of Electronic Communication Device were both dismissed with prejudice. The plea and abeyance was for criminal mischief, Class B Misdemeanor. He asked for consideration from the Council and would like his suspension reduced.

Director Patterson asked if he signed the consent agreement, and asked why he chose to sign it. Young replied it was his understanding there was not much he could do about the circumstances of the event; he cooperated with the investigation and said his ex-girlfriend's statement was not true. Director Patterson asked if he was rescinding his agreement. Young stated he came to the Council to ask for leniency.

Chief Wallentine asked about Young's termination by his agency. Young stated he was terminated because of the accusations and he was still a probationary employee.

Sheriff Edmunds asked if, at the time of the incident, he was cohabitating with his ex-girlfriend. Young stated he was.

Sheriff Tracy asked if Young cooperated with the investigation. Young stated he was never asked to interview with his department; however he did cooperate with the POST investigation.

Director Patterson asked if POST's recommendation would change if Young would have been charged with a Class B Misdemeanor. Director Stephenson stated a baseline for a "category C" offense is two years [the recommendation would remain the same]. Atty. Taylor reminded the Council that a plea in abeyance is the same as a guilty plea, according to statute.

**Motion:** *Chief Ken Wallentine motioned to accept the recommended 2 year suspension of Adam Young's' peace officer certification (7/27/2011-7/27/2013).*

**Second:** *Sheriff Lamont Smith seconded the motion.*

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

**JAKE M. BARKER**

Offence – Willfully Falsifies/Omits information to obtain Certification

Category – C

Recommended Discipline- 2 year suspension

Status – Still Employed

Jake Barker addressed the Council and stated his mistake on the POST application was unintentional rather than deceitful. Nephi City Chief Mike Morgan and Barker's brother, a Provo city officer, came to support him. Barker asked for consideration from the Council and would like a career as a law enforcement officer in the future.

Council members asked Barker why the criminal violations were not listed. Barker stated the criminal violations were listed on the application. Investigator Zeeman stated the Class B Misdemeanors not listed were: insurance violations, reckless driving violations and other traffic violations.

**Motion:** *Sheriff Dave Edmunds motioned to accept the recommended 2 year suspension of Jake Barker's peace officer certification (12/5/2011-12/5/2013).*  
**Second:** *Chief Chris Burbank seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**ROBERT C. DIXON**

Offence – Driving under the Influence  
Category – D  
Recommended Discipline- 2 year suspension  
Status – Terminated 5/15/2011

Executive Director Patterson asked if Dixon informed his employer he was taking prescribed Lortab. Investigator Zeeman stated Dixon had taken several extended leaves of absence, but had not informed his agency he had any type of addiction.

**Motion:** Chief Val Shupe motioned to accept the recommended 2 year suspension of Robert Dixon's peace officer certification.  
**Second:** Sheriff Lamont Smith seconded the motion.

**Discussion:** Chief Wallentine expressed concern about the aggravating factor of the high BrAC and Lortab usage. Therefore, he does not believe 2 years is an adequate suspension. Atty. Taylor replied POST took into consideration the aggravators in the case.

**Motion:** *Chief Ken Wallentine motioned to not accept the POST recommendation and proposed a 2 ½ year suspension of Robert Dixon's peace officer certification (5/15/2011-11/15/2013).*  
**Second:** *Sheriff Dave Edmunds seconded the motion.*  
**Vote:** *The motion passed with 9 in favor and 3 against.*

**ANGELA C. CANO**

Offence – DUI  
Category – D  
Recommended Discipline- 18 month suspension  
Status – Terminated 8/18/2011

Executive Patterson asked about the prior case on Cano that was listed as an aggravator. Investigator Green replied the prior case was a domestic dispute which resulted in Cano being charged with disorderly conduct. Robby Robertson asked if alcohol was involved in the prior case and Green replied, yes.

**Motion:** *Robbie Robertson motioned to accept the recommended 18 month suspension of Angela Cano's peace officer certification (8/18/2011-2/18/2013).*  
**Second:** *Commissioner Kerry Gibson seconded the motion.*

**Discussion:** Council asked if Cano's agency was going rehire her. Investigator Fordham stated Cano says she is going to return to her agency. Atty. Taylor said POST would provide the previous case file if the Council would like to view it. Council asked if Cano receive employee assistance or substance abuse counseling after the first case. Investigator Green replied she went to the VA and received treatment for alcoholism.

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

**BILLY M. HATCH**

Offence – DUI  
Category – D  
Recommended Discipline- 18 months suspension  
Status – Resigned 4/29/2011

Billy Hatch addressed the Council and took responsibility for his action. He gave a description of an incident that occurred while working in the jail and said he had a difficult time dealing with the episode. He asked the Council to reduce the recommendation to a 1 year suspension.

Executive Director Patterson asked why he refused the chemical test. Hatch said he did not remember being asked to take the test and did not have an excuse for refusing.

**Motion:**        ***Sheriff Dave Edmunds motioned to accept the recommended 18 month suspension of Billy Hatch’s peace officer certification (4/29/2011-10/29/2012).***

**Second:**       ***Robby Robertson seconded the motion.***

Sub-Motion: Chief Ken Wallentine motioned to not accept the recommendation and to suspend Billy Hatch’s peace officer certification for 1 year.

Second: Chief Val Shupe seconded the motion.

Vote: The motion failed with 4 in favor and 8 against.

The Council returned to vote on the original motion when the sub-motion failed.

**Vote:**            ***The original motion passed 10 in favor and 2 against.***

**SCOTT BROOK**

Offence – Retail Theft  
Category – D  
Recommended Discipline- 1 year suspension  
Status – Resigned 3/12/2011

Discussion: Council members discussed concerns of dishonesty in this case.

**Motion:**        ***Chief Val Shupe motioned to not accept POST’s recommendation and motioned to suspend Scott Brook’s peace officer certification for 3 years (3/12/2011-3/12/2014).***

**Second:**       ***Chief Ken Wallentine seconded the motion.***

Sub Motion: Commissioner Kerry Gibson motioned to suspend Scott Brook’s peace officer certification for 2 ½ years to be consistent with the category D guidelines.

Second: Sheriff James Tracy seconded the motion.

Discussion: Council discussed the case further and the fact there was premeditation and multiple items were stolen. Atty. Taylor reminded the Council of the processes POST has been through in the last two years to ensure officer’s due process rights are protected. The Council discussed the situation further.

Vote: The motion failed with 4 in favor and 10 against.

The Council returned to the original motion.

**Vote:** *The original motion passed with all in favor. Executive Director Patterson recused himself.*

**ROBERT D. HOLT**

Offence – Leaving the scene of an accident involving property damage

Category – D

Recommended Discipline- 1 year suspension

Status – Retired, 1 day suspension

**Motion:** *Chief Terry Keefe motioned to accept the recommended 1year suspension of Robert Holt's peace officer certification (8/31/2011-8/30/2012).*

**Second:** *Chief Ken Wallentine seconded the motion.*

**Vote:** *The motion passed with all in favor. Executive Director Patterson recused himself.*

**JEFFERY O. KEARNEY**

Offence – Assault

Category – D

Recommended Discipline- 6 month suspension

Status – Terminated 3/30/2010

Jeffery Kearney addressed the Council and took accountability for his actions. Chief Shupe asked if his son was arrested and Kearney stated he was not. Chairman Larsen asked if his son started the altercation. Kearney stated his son started the altercation and provided the Council with a brief description of the incident.

**Motion:** Chief Val Shupe motioned to accept the recommended 6 month suspension.

**Second:** Executive Director Tom Patterson seconded the motion.

**Discussion:** Council expressed concerns as to why this case took so long to be presented. Director Stephenson stated this case slipped through the cracks. Chairman Larsen asked if Kearney was terminated by Utah Highway Patrol because of this incident. Dir. Stephenson stated he was.

**Sub Motion:** *Sheriff Dave Edmunds motioned to reject the recommended suspension and take no action against Jeffery Kearney's peace officer certification.*

**Second:** *Vice President Donna Dillingham-Evans seconded the motion.*

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

**\*The Council returned the Richens case which was previously tabled.**

Atty. Brett Anderson stated Richens was honest to what he admitted to and his story remained the same. Richens denies the allegations of sexual impropriety and the admissions he made under Garrity were related to a separate issue. It was pointed out a stalking injunction was sought against Richens and the Judge found insufficient evidence in the case. Council members discussed the case and asked Richens questions. Chief Shupe asked who reported the case to POST. Investigator Fordham said the allegations were reported to POST by the victim. The Council questioned investigator Fordham and Mr. Richens about the Garrity interview tapes. Investigator Fordham clarified that Richens lied under Garrity.

**Motion:** *Sheriff Dave Edmunds motioned to accept the recommended revocation of Shawn Richins' peace officer certification.*

**Second:** *Executive Director Tom Patterson seconded the motion.*

**Vote:** *The motion passed with 10 in favor 2 against.*

***Director Stephenson gave the following synopsis of the cases presented to the Council.***

Cases presented – 13  
Number of Law Enforcement Officers – 9  
Number of Correctional Officers – 4  
Average years of service – 11  
Longest years of service – 20  
Shortest years of service - .33  
Male – 12  
Female – 1  
Alcohol – 5  
Alcohol primary contributor - 4  
Drug - 1  
Consent agreement – 11  
Administrative Law hearing – 1  
Default – 1  
Agency action suspension – 1  
Resigned – 4  
Terminated – 6  
Still employed – 2  
Letters of Caution – 0  
6 month suspension – 1  
1 year suspension – 2  
18 month suspension – 2  
2 year suspension – 3  
3 year suspension – 2  
4 year suspension 4  
Revocation – 1  
Indefinite suspension – 1  
Class B Misdemeanors – 7  
Pending charges in a case – 1  
No criminal action taken – 4  
Charges dismissed – 1  
Voluntary relinquishment – 1

Chief Keefe recommended starting the process to reclassify “Lying under Garrity” to a category A. Council members discussed POST offering training on Garrity and asked POST to review this matter. Director Stephenson stated it will be added to the March agenda for discussion and informed the Council POST is in the process of developing Garrity training for administrators that will be presented for the first time in the Sheriff’s meeting in January.

**NEXT POST COUNCIL MEETING**

**The next POST Council meeting will be at Dixie State College, March 21, at 1:00pm.**

**ADJOURNMENT**

POST Council adjourned at 12:05pm.