



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



September 2014

One of the duties of the Peace Officer Standards and Training Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these peace officers in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On September 24, 2014, POST Council convened and considered 16 cases of officer discipline.

Case #1

Officer A, a law enforcement officer with a county agency, and his wife got into an argument at their residence. During the altercation, Officer A pushed his wife, hit her in the face with an open hand, pulled her by her hair and lay on top of her until she said she could not breathe. The ten-year-old daughter of Officer A's wife was in the home at the time of the incident and heard the altercation. Officer A and his wife were investigated by local police and domestic violence charges were filed on both individuals. Officer A plead guilty to an amended charge of disorderly conduct. Officer A waived his right to a hearing before an administrative law judge. POST recommended a three and one-half year suspension of Officer A's peace officer certification. Officer A appeared before the POST Council. After hearing POST's findings and hearing from Officer A the Council ratified POST's recommendation and voted to suspend Officer A's certification for three and one-half years.

Case #2

Officer B, a law enforcement officer with a city police agency, received a phone text message from a female acquaintance who works at a local restaurant, informing him that she was being issued a citation from another officer in his agency. Officer B sent a text message to the citing officer (Officer C) telling her to "get rid of" the citation if it had not been submitted. Officer C had served the citation on the female, but had not transmitted the electronic copy to the court. Officer C informed Officer B she would be cancelling the citation. After learning the citation would be cancelled by Officer C, Officer B sent a text to the female violator telling her she did not need to appear on the citation. During a *Garrity* interview, conducted by POST, Officer B admitted to instructing another officer to dispose of a traffic citation after it had been signed by the violator. Officer B waived his right to a hearing before an administrative law judge. POST recommended Officer B receive a letter of caution. Officer B and his attorney appeared before the POST Council. After hearing POST's findings, and hearing from Officer B and his attorney, the Council ratified POST's recommendation and voted to issue a letter of caution to Officer B.

Case #3

Officer C, a law enforcement officer with a city agency, issued a written citation to a female driver for speeding. After the traffic stop was concluded, Officer C received a phone text message from another officer with her agency,

telling her to “get rid of” the citation if she had not submitted it to the court. Officer C disposed of her copies of the citation and deleted the citation from her computer. The other officer informed the female driver she would not have to appear in court. During a *Garrity* interview, conducted by POST, Officer C admitted to disposing of a traffic citation after it had been signed by the violator. Officer C waived her right to a hearing before an administrative law judge. POST recommended Officer C receive a letter of caution. Officer C appeared before the POST Council with her attorney. After hearing POST’s findings, and hearing from Officer C’s attorney, the Council ratified POST’s recommendation and voted to issue a letter of caution to Officer C.

Case #4

Officer D, a law enforcement officer with a county agency, his wife, and two police service dogs stopped at a parking area near a river to allow the dogs to run and cool off in the river. Officer D noticed a zipline amusement ride in the area that appeared to be open to the public, so he and his wife began to walk to that location. A female driver, later identified as the property owner, rapidly approached them on the dirt road and began yelling they were trespassing. The local sheriff’s office was contacted. Two deputies arrived at the location and took the complaint. The property owner signed a criminal complaint against Officer D and his wife. Officer D entered a plea of no contest to a charge of criminal trespassing, a class B misdemeanor. Officer D waived his right to a hearing before an administrative law judge. POST recommended Officer D receive a letter of caution. Officer D appeared before the POST Council with his attorney. After hearing POST’s findings, and hearing from Officer D and his attorney, the Council rejected POST’s recommendation and voted to take no action regarding Officer D’s certification.

Case #5

Officer E, a correctional officer, and a group of friends traveled to Idaho for a weekend fishing trip. The group stopped at a store in Idaho to purchase fishing licenses. Officer E requested a three day non-resident license for Steelhead and Salmon. Officer E was a former resident of Idaho and when the store clerk found Officer E was already in the Idaho computer system he mistakenly issued an Idaho resident adult fishing permit and an Idaho resident permit for Steelhead. Idaho’s computer system later performed a routine audit and discovered Officer E had purchased a resident one year permit, but was not in Idaho’s driver license data base as having a current Idaho address. At the conclusion of the investigation, Idaho Fish and Game contacted Utah Division of Wildlife Resources and requested they serve Officer E a citation for purchasing the wrong class of license. Officer E pled not guilty; the charge was dismissed, with the condition that Officer E pay \$85 in restitution. Officer E waived his right to a hearing before an administrative law judge. POST recommended Officer E to receive a letter of caution. After hearing POST’s findings, the Council ratified POST’s recommendation and voted to issue a letter of caution to Officer E.

Case #6

Officer F, a special functions officer for a county agency, was arrested for driving under the influence of drugs. Officer F entered a no contest plea in criminal court to the amended charge of reckless driving, a class B misdemeanor. Officer F requested a hearing before an administrative law judge (ALJ). The ALJ found there was not clear and convincing evidence that Officer F was driving under the influence; however, the ALJ found there was clear and convincing evidence that Officer F was guilty of reckless driving. POST recommended a six month suspension of Officer F’s peace officer certification. Officer F appeared before the POST Council with his attorney. After hearing POST’s findings, and hearing from Officer F and his attorney, the Council rejected POST’s recommendation and voted to issue a letter of caution to Officer F.

Case #7

Officer G, a recent graduate of a satellite police academy, contacted a local prostitute and arranged to meet her at a local motel where he paid her to engage in sexual activity. Officer G was interviewed by a local police agency and he admitted to patronizing a prostitute. Officer G was charged and entered a guilty plea, to be held in abeyance, to patronizing a prostitute, a class B misdemeanor. During a POST *Garrity* interview, Officer G admitted to paying a prostitute for sex. Officer G waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer G’s peace officer certification. Officer G appeared before the POST Council. After hearing POST’s findings, and hearing from Officer G, the Council ratified POST’s recommendation and voted to suspend Officer G’s certification for one year.

Case #8

Officer H, a sergeant with a law enforcement agency, was investigated by local police for theft. The investigation disclosed that Officer H provided an officer from another agency with a Lidar and a broken Taser which belonged to Officer H's employing agency. Shortly after giving the equipment away, Officer H retired from his agency without making any attempt to retrieve the equipment. The investigation also determined Officer H did not have authority to give his agency's property to an officer from another agency. Charges were filed on Officer H for theft. The charges were later amended to wrongful appropriation. The district attorney had the case dismissed and the city attorney declined to prosecute. POST conducted a Garrity interview with Officer H who admitted to giving an officer from another agency a Taser and Lidar. The POST investigation determined Officer H did not get authorization, complete any paper work to document he gave equipment to an officer from another agency, or make any attempt to get the equipment back before retiring. Officer H waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer H's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer H's certification for one year.

Case #9

Officer J, who had recently graduated from a satellite police academy, but was not a sworn peace officer, initiated a traffic stop using a siren he had installed in his personal vehicle. The driver of the stopped vehicle believed Officer J to be an undercover officer and pulled over when he heard the siren. When uniformed officers arrived, Officer J told officers he was "soon to be a deputy" for a county sheriff's office. It was later discovered Officer J was employed with a sheriff's office in a non-sworn position. The sheriff's office conducted an internal investigation into the incident and decided to terminate Officer J's civilian employment. Charges were filed on Officer J for unlawful detention and having a siren in his personal vehicle. Officer J entered a guilty plea for the siren violation and the unlawful detention was dismissed. Following a POST investigation, POST filed a Notice of Agency Action for impersonating a peace officer. Officer J waived his right to a hearing before an administrative law judge. POST recommended an 18 month suspension of Officer J's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for 18 months.

Case #10

Officer K, a law enforcement officer for a city police agency, was working a security detail at a city owned golf course. Officer K was relieved by another officer so Officer K could take a dinner break. Officer K drove his patrol vehicle to the residence of a female acquaintance and engaged in sexual intercourse. Officer K then returned to his shift at the golf course. Officer K was being compensated by his agency during his dinner break, but was not required to respond to regular law enforcement calls. During a POST *Garrity* interview, Officer K admitted to engaging in sexual conduct, in a private residence, during a dinner break for which he was being compensated by his agency. Officer K waived his right to a hearing before an administrative law judge. POST, recommended an 18 month suspension of Officer K's peace officer certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to issue a letter of caution to Officer K.

Case #11

Officer L became certified as a special functions officer and was attending law enforcement officer training at a satellite academy. During a pre-employment interview for a local police agency, Officer L disclosed she had used marijuana as recently as one year prior to entering the police academy. POST was notified of Officer L's disclosure of drug use and conducted a review of Officer L's POST application. POST discovered Officer L had not disclosed this marijuana use on her original POST application. During the first few weeks of the academy, Officer L attended an ethics class which stresses the importance of including all relevant information on the POST application. At the end of the ethics class, Officer L had an opportunity to amend her application; again Officer L did not reveal her recent marijuana use, but signed a form indicating her application was complete and accurate. As a result of the POST investigation, POST concluded Officer L willfully falsified her POST application by not disclosing her recent drug use. Officer L requested a hearing before an administrative law judge (ALJ). The ALJ found there was clear and convincing evidence to show Officer L had violated UCA 53-6-211 by willfully falsifying information on her POST application. POST recommended a two year suspension of Officer L's peace officer certification. After hearing

POST's findings, the Council ratified POST's recommendation and voted to suspend Officer L's certification for two years.

Case #12

Officer M was a recent graduate of a satellite police academy. In his original POST application to attend the police academy, Officer M made no mention of misusing prescription drugs. During the first few weeks of the academy Officer M attended an ethics class which stresses the importance of including all relevant information on the POST application. At the end of the ethics class, Officer M had an opportunity to amend his application; again Officer M made no mention of misusing prescription drugs, but signed a form indicating his application was complete and accurate. Shortly before graduating from the academy, Officer M submitted a memorandum to POST which included a history of prescription drug misuse. POST conducted a *Garrity* interview with Officer M. During the interview, Officer M admitted to intentionally omitting his prescription drug misuse in an attempt to deceive POST and future employers. Officer M waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer M's peace officer certification. Officer M appeared before the POST Council. After hearing POST's findings, and hearing from Officer M, the Council ratified POST's recommendation and voted to suspend Officer M's certification for two years.

Case #13

Officer N, a correctional officer, was involved in an argument with his brother-in-law inside the home in which they cohabitated. During the argument, Officer N pushed the chair, on which his brother-in-law was seated, causing the chair to fall over. The brother-in-law sustained a minor injury to his hand and the altercation was witnessed by Officer N's young niece and nephews. Local police arrived and arrested Officer N. Officer N was charged with domestic violence assault and three counts of commission of domestic violence in the presence of a child. Officer N entered a guilty plea, to be held in abeyance, to the amended charge of disorderly conduct, a class C misdemeanor. Officer N waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer N's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer N's certification for two years.

Case #14

Officer O, a law enforcement officer with a county agency, engaged in a sexual relationship with a local female dispatcher lasting for several months. During a *Garrity* interview conducted by POST, Officer O admitted he and the dispatcher engaged in sexual conduct in Officer O's department vehicle while parked in a public place on three separate occasions. The sexual conduct included touching of the breasts, genitals and buttocks on top of the clothing as well as under the clothing. Officer O waived his right to a hearing before an administrative law judge. POST recommended a two and one-half year suspension of Officer O's peace officer certification. Officer O appeared before the POST Council. After hearing POST's findings and hearing from Officer O, the Council ratified POST's recommendation and voted to suspend Officer O's certification for two and one-half years.

Case #15

Officer P, a law enforcement officer with a county agency, and her husband got into an argument at their residence. During the altercation, Officer P broke a picture, slapped her husband, spit on him, kicked him in the groin, and threw a book and jar at him. Officer P's ten-year-old daughter was in the home at the time of the incident and heard the altercation. Officer P and her husband were investigated by local police and domestic violence charges were filed on both of them. Officer P plead guilty to an amended charge of disorderly conduct. Officer P waived her right to a hearing before an administrative law judge. POST recommended a three year suspension of Officer P's peace officer certification. Officer P appeared before the POST Council. After hearing POST's findings and hearing from Officer P, the Council ratified POST's recommendation and voted to suspend Officer P's certification for three years.

Case #16

Officer Q, a law enforcement officer with a city police agency, was investigated by his agency regarding a complaint of sexual misconduct at a police substation. During the first of two *Garrity* interviews with his agency, Officer Q

denied having any sexual activity at the substation. In a second *Garrity* interview, Officer Q admitted to several incidents of sexual activity with his girlfriend at the substation as well as incidents of sexual activity in his patrol vehicle in a public place. POST conducted a *Garrity* interview with Officer Q and he admitted to having sexual intercourse at the police substation. Officer Q did not respond to the notice of agency action filed by POST and POST sought an order of default. An order of default was signed by an administrative law judge. POST recommended the revocation of Officer Q's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer Q's certification.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. Please direct any questions regarding the statute or the POST investigation process to support@utahpost.org

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
 - (f) engages in sexual conduct while on duty; or
 - (g) is dismissed from the armed forces of the United States under dishonorable conditions.

- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

- (3)
 - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
 - (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

- (4)
 - (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
 - (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
 - (i) has a personal bias for or against the officer;

- (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
- (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Repealed and Re-enacted by Chapter 313, 2010 General Session

R728-409-3. Definitions.

- A. Terms used in this rule are defined in Section 53-6-102.
- B. B. In addition:

3. "on duty" means that a peace officer is:

- a. actively engaged in any of the duties of his employment as a peace officer;
- b. receiving compensation for activities related to his employment as a peace officer;
- c. on the property of a law enforcement facility;
- d. in a law enforcement vehicle which is located in a public place; or
- e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;

6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and