



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

December 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Please note that the actions taken by the POST Council are not binding precedent.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 December 8, 2014, POST Council convened and considered 10 cases of officer discipline.

Case #1

Officer A, a certified unemployed peace officer, was involved in a single vehicle crash and was subsequently arrested for driving under the influence (DUI). At the time of his arrest, Officer A's peace officer certification was suspended for a previous DUI offense. Officer A's blood alcohol content at the time of his arrest was .22. Officer A entered a guilty plea to an amended charge of impaired driving, a class B misdemeanor. During a *Garrity* interview conducted by POST, Officer A 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. A Notice of Agency Action filed by POST was mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge. POST recommended a two and a half year suspension of Officer A's certification. After hearing POST's findings, and hearing from Officer A and his attorney, the Council accepted POST's recommendation and voted to suspend Officer A's certification for two and a half years.

Case #2

Officer B, a certified peace officer with a city police agency, was investigated by a local law enforcement agency concerning allegations of assault and domestic violence in the presence of a child. At the conclusion of the investigation, the case was screened with the city attorney who declined to prosecute. Officer B's employment was terminated from her agency. During a *Garrity* interview conducted by POST, Officer B admitted to hitting a sibling only after her sibling struck her first. Officer B admitted that her three year old son was present at the time of the altercation. A Notice of Agency Action filed by POST was mailed to Officer B. Officer B waived her right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer B's certification. After hearing POST's findings, the Council accepted POST's recommendation and voted to suspend Officer B's certification for two years.

Case #3

Officer C, a certified peace officer with a city police agency, was investigated by a local police agency for disorderly conduct. Officer C and his estranged wife were involved in a verbal argument in the front yard of a residence.

Officer C's wife contacted the local police and asked them to respond to the residence. Officer C admitted to the investigating officer that the verbal argument was loud and involved both he and his wife screaming obscenities. Officer C was charged with disorderly conduct, a class C misdemeanor. A department internal investigation discovered Officer C had also accessed BCI information for personal reasons. During a *Garrity* interview conducted by POST, Officer C admitted to being involved in an argument with his estranged wife which resulted in him being charged with disorderly conduct. Officer C also admitted to accessing BCI records for personal reasons. A Notice of Agency Action filed by POST was mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge. POST recommended a nine month suspension of Officer C's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer C's certification for six months.

Case #4

Officer D, a certified peace officer with a city police agency, was administratively investigated by his agency for engaging in sexual conduct while on duty. During the department *Garrity* interview, Officer D admitted to having sexual intercourse with a female while he was on-duty. During a *Garrity* interview conducted by POST, Officer D admitted to engaging in sexual intercourse while he was on-duty and in uniform. A Notice of Agency Action filed by POST was mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge. POST recommended a three year suspension of Officer D's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer D's certification for three years.

Case #5

Cadet E, a certified special functions officer, still attending 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 Officer E's POST application, nor was it included when Officer E signed a form verifying the information on his application. During a *Garrity* interview, conducted by POST, Officer E admitted he intentionally omitted his illegal use of prescription medication because he was concerned the information would keep him from being admitted into the academy. A Notice of Agency Action filed by POST was mailed to Officer E. Officer E waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer E's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer E's certification for two years.

Case #6

Shortly after graduating from a satellite academy, Officer F submitted an application for employment to a police agency in which he disclosed he had used marijuana just before he entered the academy. Officer F used marijuana after he submitted his application to attend training and before the training actually started. During the academy, Officer F attended an ethics class during which he was made aware that recent drug use would disqualify an individual from attending police training and may result in dismissal. During this ethics class, students were given the opportunity to submit an addendum to their application and were instructed to disclose any additional information that was required on their application. Officer F did not disclose his use of marijuana and he signed a Verification of Application Information form. After disclosing the information as part of a hiring process with a local agency, Officer F contacted POST and reported his use of marijuana. During a *Garrity* interview conducted by POST, Officer F admitted to using marijuana just prior to starting the academy and to intentionally failing to disclose his marijuana use. A Notice of Agency Action filed by POST was mailed to Officer F. Officer F waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer F's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer F's certification for two years.

Case #7

Officer G, a certified special functions officer, attending POST and employed with a city police agency, was stopped for improper lane travel. The investigating officer suspected Officer G was impaired and requested Officer G to perform field sobriety tests. Officer G performed the standardized field sobriety tests, which indicated he was impaired. Officer G submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .211. During a

Garrity interview conducted by POST, Officer G admitted to driving while under the influence of alcohol. A Notice of Agency Action filed by POST was mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge. Considering the high breath alcohol content in this case, POST recommended an 18 month suspension of Officer G's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer G's certification for 18 months.

Case #8

Officer H, a certified peace officer with a city police agency, was investigated for leaving the scene of an accident. During the investigation it was determined Officer H was impaired at the time of the accident, and also had a minor in the vehicle while he was driving impaired. Officer H submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .342. Officer H did not participate in the POST investigative process. A Notice of Agency Action filed by POST was mailed to Officer H. Officer H failed to respond. An Order of Default was issued and signed by an administrative law judge. Considering the multiple violations and the high breath alcohol content in this case, POST recommended a four year suspension of Officer H's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer H's certification for four years.

Case #9

Officer I, a certified peace officer was investigated for gambling. During the investigation, it was disclosed Officer I organized a Super Bowl betting pool with a one dollar buy-in and used her State email account to facilitate organizing the betting pool. Officer I received information that a department employee alleged she was abusing her State email account for the betting pool. Officer I reported the allegation to her supervisor and made a full disclosure of her conduct. An internal investigation was subsequently conducted and resulted in Officer I receiving a day off without pay. During a *Garrity* interview conducted by POST, Officer I admitted to organizing and participating in the betting pool as well as using her State email account to distribute the information. A Notice of Agency Action filed by POST was mailed to Officer I. Officer I waived her right to a hearing before an administrative law judge. POST recommended Officer I receive a letter of caution. After hearing POST's findings, and hearing from Officer I, the Council rejected POST's recommendation and voted to take no action regarding Officer I's certification.

Case #10

Officer J, a correctional officer, was investigated for aiding or assisting in the wanton destruction of wildlife. The investigation disclosed that Officer J and a friend treed a mountain lion using trained dogs. Officer J waited with the mountain lion while his friend left to pick up another male who wanted to see the mountain lion. When Officer J'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. Officer J was charged with a class A misdemeanor and pled no contest to an amended charge of criminal mischief, a class B misdemeanor. During a *Garrity* interview conducted by POST, Officer J admitted he was with a friend whose dogs treed a mountain lion, he waited for his friend to pick up another male, and was present when the male shot and killed the mountain lion. A Notice of Agency Action filed by POST was mailed to Officer J. POST recommended Officer J's certification be suspended for six months. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for six months.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. The POST Council Disciplinary Guidelines can be found online at <http://publicsafety.utah.gov/post/>. 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.

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