



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

June 2012

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. 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Please note that the actions taken by the POST Council are not binding precedent.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 June 4, 2012, POST Council convened and considered three cases of officer discipline.

Case #1

Officer A, a law enforcement officer with a city police department, was working at his part time employment and was asked to verify the Vehicle Identification Numbers (VIN) on two motorcycles. The VIN numbers both came back stolen and the officer told his part time employer to "fix it." The Motor Vehicle Enforcement Division (MVED) initiated an investigation and notified the officer's department. The officer's department conducted an internal affairs investigation. No Criminal Charges were filed. The IA investigation determined Officer A, after having been given a *Garrity* warning, was not truthful to investigators. Officer A was not truthful with POST investigators during the administrative interview. A hearing was held before an administrative law judge, who determined POST had met its burden of proof and ruled Officer A had lied to investigators after a *Garrity* warning. POST recommended a three year suspension of Officer A's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer A's peace officer certification for three years.

Case #2

Officer B, a law enforcement officer with a state agency, was investigated for assault, interruption of a communication device, and domestic violence in the presence of a child. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity* warning, he admitted to the allegation of interrupting a communication device, however, denied the assault and domestic violence in the presence of a child. Officer B signed a consent agreement recommending a three year suspension of his peace officer certification. After hearing from Officer B's legal representative, POST Council rejected POST's recommendation and suspended Officer B's peace officer certification for one year.

Case #3

Officer C, a law enforcement officer with a city police department, was investigated for aggravated assault and disorderly conduct. Based on conflicting statements made by victim and witness, the prosecuting jurisdiction amended the charges to disorderly conduct and obstruction of justice. Officer C entered pleas of No Contest to both charges. During the IA investigation Officer C denied the allegations of assault as reported by the victim. During an administrative interview with POST investigators, in which Officer C was issued a *Garrity* warning, he denied the allegations of assault as reported by the victim, but admitted to disorderly conduct and obstruction of justice. Officer C signed a consent agreement recommending a three year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer C's peace officer certification for three years.

For reference we have included below Utah Code 53-6-211. 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