



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

June 2013

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Please note that the actions taken by the POST Council are not binding precedent.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 3, 2012, POST Council convened and considered nine cases of officer discipline.

Case #1

Officer A, a certified law enforcement officer, completed an application to attend a satellite academy. Officer A had also submitted two previous applications to attend a satellite academy. In all three applications, when asked if he had ever been involved in a crime of unlawful sexual conduct, or a crime of dishonesty, Officer A marked "No." While attending a satellite academy, after attending the ethics class presentation, Officer A submitted an addendum to his POST application. Officer A reported he solicited a prostitute on three separate occasions and had stolen money from a family business. As a result of his disclosure, POST conducted a review of Officer A's POST applications and an investigation was opened. During an administrative interview with POST investigators, in which Officer A was issued a *Garrity* warning, he admitted he solicited prostitutes on at least three occasions and had stolen money from his family's business. Officer A willfully falsified his POST applications to obtain certification when he failed to disclose his solicitation of prostitution and the theft. Officer A waived his right to a hearing before an Administrative Law Judge. POST recommended a two year suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer A's certification for two years.

Case #2

Officer B, a law enforcement officer with a county agency, was involved in an on-duty sexual relationship with an area dispatcher. Officer B and the dispatcher engaged in sexual intercourse behind an industrial complex-Officer B drove his patrol vehicle to the rendezvous and was wearing his department uniform. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity*

warning, he admitted driving his patrol vehicle to the rendezvous, admitted being in uniform when he arrived, partially disrobing, and having sex with the dispatcher in a public area. Officer B requested a hearing before an Administrative Law Judge (ALJ). After hearing from POST and from Officer B and his counsel, the ALJ ruled POST had met its burden of proof and determined Officer B was in violation of state law. POST recommended a three year suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer B's certification for three years. (Please see addendum below for the administrative rule definition of sexual conduct on-duty)

Case #3

Officer C, a certified correctional officer, was offered employment with a local agency and was required to submit a POST application to attend the law enforcement officer (LEO) block of the academy. Officer C indicated on his application he illegally used a prescription narcotic analgesic, not prescribed to him, in January of 2010. POST conducted a *Garrity* interview with Officer C where he admitted to using a prescription drug not prescribed to him. After the interview, Officer C contacted POST and advised he had actually used the prescription in January 2012 and not 2010 as originally reported. Officer C was employed with a state agency at the time he illegally used the prescription drug. Officer C waived his right to a hearing before an Administrative Law Judge. POST recommended a one year suspension of his peace officer certification. POST Council rejected POST's recommendation and voted to suspend Officer B's certification for six months.

Case #4

Officer D, a correctional officer with a county agency, was stopped for improper lane travel. The investigating officer detected the odor of alcohol and believed Officer D was possibly under the influence. Officer D failed the Standardized Field Sobriety Tests (SFST's) and submitted to an intoxilyzer test. Officer D had a breath alcohol content of .17. During an administrative interview with POST investigators, in which Officer D was issued a *Garrity* warning, he admitted to driving his vehicle after consuming alcoholic beverages. Officer D waived his right to a hearing before an Administrative Law Judge. POST recommended an 18 month suspension of his peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer D's certification for 18 months.

Case #5

Officer E, a correctional officer with a county agency, was investigated for assault, criminal mischief, and domestic violence in the presence of a child. Officer E assaulted his wife on three separate documented occasions with the child present. Officer E was charged with assault and domestic violence in the presence of a child, however, charges were later dismissed. During an administrative interview with POST investigators, in which Officer E was issued a *Garrity* warning, he admitted to assaulting his wife in the presence of a child. He also admitted to committing criminal mischief. Officer E failed to respond to the Notice of Agency Action. POST sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended a three and one half year suspension of Officer E's peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer E's certification for three and one half years.

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