



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

June 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Please note that the actions taken by the POST Council are not binding precedent.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 June 11, 2014, POST Council convened and considered 14 cases of officer discipline.

### Case #1

Cadet A, a certified special functions officer, still attending a satellite academy, was investigated for assaulting his wife. Investigation disclosed that during an argument, Cadet A's wife locked herself in the master bathroom. Cadet A forced his way into the bathroom where he continued the argument. Investigation further disclosed Cadet A grabbed his wife's foot and pulled her from the bathroom. Cadet A's wife sustained some minor trauma to her right foot. No criminal charges were filed. During a *Garrity* interview at POST, Cadet A adamantly denied ever assaulting his wife. Cadet A submitted to a polygraph examination where he showed deceptive to specific questions. Cadet A admitted, to the polygraph examiner, that he did hit his wife in the arm. During a second *Garrity* interview Cadet A admitted hitting his wife in the arm during a previous argument and to grabbing his wife's foot when she attempted to kick him during the most recent argument. Cadet A denied causing any injury to his wife's foot. A Notice of Agency Action filed by POST was mailed to Cadet A. Cadet A failed to respond. An Order of Default was issued and signed by an administrative law judge. POST recommended revocation of Cadet A's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted for permanent revocation of Cadet A's certification.

### Case #2

Officer B, a certified peace officer with a county agency, was investigated by his agency concerning allegations of improper accessing of Bureau of Criminal Identification records. Officer B resigned from his agency. During the POST investigation it was discovered Officer B was being investigated by several different agencies for numerous criminal acts to include, impersonating a police officer, possession of controlled substance, falsely obtaining/dispensing prescription drugs, theft and retail theft. Officer B was charged with three third degree felonies, two class A misdemeanors, and one class B misdemeanor. Officer B entered a plea of guilty to reduced charges in all of the cases where he was charged. Officer B did not participate in the POST investigative process. A Notice of Agency Action filed by POST was mailed to Officer B. Officer B failed to respond. An Order of Default was issued and signed by an administrative law judge. POST recommended revocation of Officer B's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted for permanent revocation of Officer B's certification.

### **Case #3**

Officer C, a certified peace officer with a county agency, was investigated for Attempted Homicide, Aggravated Assault, Assault, Assault on a Peace Officer, Domestic Violence in presence of a child, and Disorderly Conduct. Officer C discovered his wife and his father engaged in sexual conduct. Officer C, struck his father several times causing substantial bodily injury. Officer C retrieved a handgun, returned to the bedroom brandished the handgun and began striking his father with the gun. Officer C's father was later taken to the hospital. Officer C went to the hospital and caused a disturbance demanding access to where his father was being treated. The hospital staff contacted the local police. When the police arrived, Officer C was escorted to his house a short distance away. While at his house, Officer C attempted to walk back to the hospital. One of the responding officers stood in front of Officer C to prevent Officer C from going back to the hospital. Officer C pushed through the officer's position, making contact with the officer. According to the officer, he received a broken tooth as a result of the contact. Officer C plead guilty to assault (class A misdemeanor) and assault against a peace officer (class A misdemeanor). During a *Garrity* interview, conducted by POST, Officer C admitted committing both assaults as well as the other violations he was investigated for and charged with. Officer C waived his right to a hearing before an administrative law judge. POST recommended revocation of Officer C's certification. After hearing POST's findings, and hearing from Officer C's legal counsel, the Council rejected POST's recommendation and voted to suspend Officer C's certification for four years.

### **Case #4**

Officer D, a certified peace officer with a county agency, was investigated by his agency concerning allegations of sexual misconduct on duty. During the department *Garrity* interview, Officer D admitted to an on-going sexual relationship lasting about eight months. Officer D admitted to engaging in sexual conduct while on duty, during duty hours, and while being compensated by his department. During a *Garrity* interview, conducted by POST, Officer D admitted to having sex on duty on at least one occasion. 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**

Officer E, a certified correctional officer with a county agency, was investigated for assault. Investigation disclosed Officer E was working part time as an emergency medical technician (EMT), and while engaged in the capacity of an EMT, slapped a verbally abusive patient who was restrained on a gurney. Officer E's department conducted an internal investigation and at the conclusion, terminated Officer E. The criminal investigator screened the case and charges were filed. Officer E entered a guilty plea to assault, a class B misdemeanor. During a *Garrity* interview conducted by POST, Officer E admitted slapping the female in the face while she was restrained on a gurney. Officer E waived his right to a hearing before an administrative law judge. POST, recommended a two year suspension of Officer E's peace officer 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**

Officer F, an unemployed certified correctional officer, was investigated for assault. Investigation disclosed Officer F, while intoxicated, hit a man in the head with his right arm. Officer F's right arm was in a cast when he struck the man. The criminal investigator screened the case and charges were filed. Officer F entered a guilty plea, to be held in abeyance, to assault, a class B misdemeanor and to public intoxication, a class C misdemeanor. Officer F did not participate in the POST investigative process. A Notice of Agency Action filed by POST was mailed to Officer F. Officer F failed to respond. An Order of Default was issued and signed by 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 peace officer with a city agency, was investigated by his department for unlawful use of prescription drugs and filing a fraudulent worker's compensation claim. Officer G resigned prior to being interviewed by department investigators. A local agency conducted a criminal investigation. The criminal investigator screened the case and charges were filed. Officer G entered a guilty plea, to falsification or alteration of a government record, a class B misdemeanor. During a *Garrity* interview conducted by POST, Officer G admitted to submitting a worker's compensation claim form with misleading information. POST recommended an 18 month suspension of Officer G's peace officer certification. After hearing POST's findings and reviewing a letter submitted to the Council by Officer G's chief of police, the Council rejected POST's recommendation and voted to suspend Officer G's certification for two years.

### **Case #8**

Officer H, an unemployed certified peace officer, was stopped for a window tint violation. The investigating officer detected the odor of alcohol and believed Officer H was possibly under the influence. The investigating officer also found an open bottle of liquor in the passenger compartment of the vehicle. Officer H performed the standardized field sobriety tests and submitted to an intoxilyzer test. Officer H had breath alcohol content (BrAC) of .082. Officer H was arrested for the open container violation. Charges were screened with the county attorney who charged Officer H with DUI in addition to the open container. Officer H entered a plea of no contest to DUI, a class B misdemeanor and the open container charge was dismissed. Several weeks after his DUI case was adjudicated, Officer H was stopped for speeding and issued a citation for speeding and driving on a suspended driver license. Officer H also entered a guilty plea to driving on a suspended driver license, a class B misdemeanor. During a *Garrity* interview, conducted by POST, Officer H admitted to driving while under the influence of alcohol and being in possession of an open container in the passenger area of his vehicle. Officer H also admitted to driving on a suspended driver license. Officer H waived his right to a hearing before an administrative law judge. POST, recommended an 18 month 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 18 months.

### **Case #9**

Officer J, a certified peace officer with a city agency, was investigated for misuse of the Bureau of Criminal Information (BCI) system. The investigation disclosed Officer J accessed BCI records multiple times in an attempt to determine the marital status of two females. During the department *Garrity* interviews, Officer J admitted to accessing the BCI information for personal reasons. Officer J was terminated from his agency. During the *Garrity* interview, conducted by POST, Officer J admitted to accessing the BCI information for personal reasons. Officer J waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer J's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for one year.

### **Case #10**

Officer K, a certified peace officer with a state agency, was investigated for electronic communications harassment and disorderly conduct. The investigation disclosed Officer K used his cell phone to text threatening statements to his wife's ex husband. The criminal investigator screened the case and charges were filed. Officer K entered a guilty plea to disorderly conduct, a class C misdemeanor, to be held in abeyance. The electronic communications harassment charge was dismissed. During the department *Garrity* interview, and the *Garrity* interview conducted by POST, Officer K admitted to texting threatening messages to another person. Officer K waived his right to a hearing before an administrative law judge. POST, recommended a one year suspension of Officer K's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer K's certification for one year.

### **Case #11**

Officer L, a certified peace officer with a state agency, was investigated for unlawful taking of protected wildlife. The investigation disclosed Officer L was fishing and kept five fish, exceeding the legal limit of four fish. Officer L

was issued a citation for exceeding the daily bag and possession limit for fish, a class B misdemeanor. Officer K entered a plea of guilty to an amended charge of disorderly conduct, an infraction. During the department *Garrity* interview and another *Garrity* interview conducted by POST, Officer L admitted to unlawfully taking protected wildlife, specifically, exceeding the daily bag and possession limit for fish. Officer L waived his right to a hearing before an administrative law judge. POST recommended Officer L receive a letter of caution. After hearing POST's findings, and hearing from Officer L, the Council ratified POST's recommendation and voted to issue Officer L a letter of caution.

### Case #12

Officer M, a certified peace officer with a state agency, was investigated for electronic communications harassment. The investigation disclosed Officer M telephoned his former mother-in-law, and uttered a derogatory statement which was recorded on her voice mail. The criminal investigator screened the case and charges were filed. Officer M entered a plea of no contest to electronic communications harassment, a class B misdemeanor. During the *Garrity* interview and another *Garrity* interview conducted by POST, Officer M admitted to uttering the derogatory statement, but stated it was not his intent to leave a message. Officer M waived his right to a hearing before an administrative law judge. POST recommended Officer M receive a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer M a letter of caution.

### Case #13

Officer N, a certified peace officer with a state agency, was investigated for unlawful taking of protected wildlife. The investigation disclosed Officer N was hunting deer and accidentally shot and killed a doe after mistaking it for a buck. Officer N, after discovering his mistake, immediately notified his supervisor. The case was screened with a local prosecutor and Officer N was charged with unlawful taking of protected wildlife, a class B misdemeanor. Officer N entered a plea of guilty to unlawful taking of protected wildlife. During the *Garrity* interview conducted by POST, Officer N admitted to the unlawful taking of protected wildlife. Officer N waived his right to a hearing before an administrative law judge. POST recommended Officer N receive a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer N a letter of caution.

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](mailto: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. 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