



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



June 2015

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 individuals 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 and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent.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 22, 2015, POST Council convened and considered 11 cases of officer discipline.

Case #1

Officer A, a certified peace officer with a county agency, was selected for a random drug test. Officer A, provided a urine sample and then advised his supervisor he had smoked marijuana a few days prior to the drug test. Officer A was investigated by his agency and subsequently resigned. No criminal investigation was conducted. The drug test results were found to be negative. During a *Garrity* interview with his agency and POST, Officer A admitted to illegally using controlled substance (marijuana), as provided in Utah Code Ann. § 53-37-8, a class B misdemeanor. 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 year suspension of Officer A's certification. After hearing POST's findings, the Council voted to ratify POST's recommendation and suspended Officer A's certification for two years.

Case #2

Officer B, a certified peace officer with a county agency, was investigated by his agency for falsification of government records (time cards). The investigation disclosed Officer B submitted several time cards on which he claimed and received pay for approximately 47 hours he did not work. During *Garrity* interviews with Officer B's agency and POST, Officer B claimed only one of the 47 hours he submitted was fraudulent. He did admit the one hour was fraudulent as provided in Utah Code Ann. § 76-8-511 a class B misdemeanor. A Notice of Agency Action filed by POST was mailed to Officer B. Officer B waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer B's certification. After hearing POST's findings the Council voted to ratify POST's recommendation and suspended Officer B's certification for one year.

Case #3

Officer C, a certified peace officer with a state agency, was stopped by a local police agency, for failure to operate in a single lane of travel. The investigating officer detected a strong odor of an alcoholic beverage coming from Officer C's person. Officer C performed the standardized field sobriety tests, during which he displayed signs of impairment. Officer C was subsequently arrested for driving under the influence of alcohol. Officer C submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .139. During a *Garrity* interview with POST, Officer C admitted to driving under the influence of alcohol, as provided in Utah Code Ann. § 41-6a-502, a class B misdemeanor. 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 one year suspension of Officer C's certification. After hearing POST's findings, the Council voted to ratify POST's recommendation and suspended Officer C's certification for one year.

Case #4

Officer D, a certified peace officer with a county agency, was investigated by a local agency for furnishing alcohol to a minor and unlawful transportation of alcohol. Investigation disclosed Officer D drove out of state, purchased alcohol, and subsequently gave the alcohol to an underage person to deliver to other friends. Officer D resigned prior to his agency conducting their administrative investigation. During a POST *Garrity* interview, Officer D admitted to transporting alcoholic beverages from out of state, as provided in Utah Code Ann. § 32B-4-403(1), a class B misdemeanor. Officer D also admitted giving the alcoholic beverages to an underage female, as provided in Utah Code Ann. § 32B-4-602(1), a class B misdemeanor. Officer D pled guilty to providing alcoholic beverages to a minor and the transporting alcoholic beverages was dismissed. 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 an 18 month suspension of Officer D's certification. After hearing from Officer D, his attorney and POST's findings, the Council ratified POST's recommendation and voted to suspend Officer D's certification for 18 months.

Case #5

Officer E, a certified correctional officer with a state agency, was investigated by a local agency for driving under the influence (DUI). Investigation disclosed Officer E had been drinking in his home and became involved in a verbal argument with his spouse. Officer E made the decision to leave the house. Officer E got inside his personal vehicle, started the engine, and turned on the heater to stay warm. Officer E was sitting inside the vehicle (parked in the driveway) when police arrived at the home. Officer E was taken into custody and transported to the police station where Standardized Field Sobriety Tests (SFST's) and an intoxilyzer test were conducted. Officer E displayed signs of impairment and had a BrAC of .216. Officer E pled guilty to an amended charge of impaired driving, as provided in Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. During a POST *Garrity* interview, Officer E admitted he had consumed alcohol, left his home and got into his personal vehicle after an argument with his spouse. Officer E admitted he started his vehicle to stay warm and was planning on sleeping in his vehicle. Officer E did not leave his driveway, but was intoxicated and in actual physical control of his vehicle. 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 one year suspension of Officer E's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer E's certification for six months.

Case #6

Officer F, a certified peace officer with a state agency, was investigated by a local agency for an equipment violation. The officer detected the odor of an alcoholic beverage coming from Officer F's person. Officer F

performed the standardized field sobriety tests, during which he displayed signs of impairment. Officer F was subsequently arrested for driving under the influence of alcohol. Officer F submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .110. During a *Garrity* interview with POST, Officer F admitted to driving under the influence of alcohol, as provided in Utah Code Ann. § 41-6a-502, a class B misdemeanor. 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 one year suspension of Officer F's certification. After hearing POST's findings, the Council voted to ratify POST's recommendation and suspended Officer F's certification for one year.

Case #7

Officer G, a certified special function officer and cadet attending a satellite academy, reported to POST he failed to disclose drug use information on his application. During a *Garrity* interview with POST, Officer G admitted to using marijuana as a teenager and said he forgot to document the information on his application. Officer G said he did not remember the drug use while he was completing his POST application or while attending the ethics class in which the POST application process is reviewed in detail. Officer G said he applied for an agency and, as part of the hiring process, was required to submit to a polygraph examination. He said it was during the pre-polygraph interview when he recalled the marijuana use. 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. POST recommended a two year suspension of Officer G's certification. After hearing POST's findings, the Council voted to ratify POST's recommendation and suspended Officer G's certification for two years.

Case #8

Officer H, a certified correctional officer, was investigated by a state agency for wanton destruction of protected wildlife. Investigation disclosed Officer H was training his dogs to track mountain lions and treed a mountain lion. Officer H had a friend stay with his dogs and lion while he left the mountain and called an individual, who had a license and tag, to harvest the mountain lion. The individual with the tag arrived several hours later and Officer H took him to where the lion was treed. The individual shot and killed the lion and they left the mountain. According to Utah Administrative Rule R657-10-2, this would meet the definition of a "canned hunt", which is illegal. Officer H pled guilty to wanton destruction of protected wildlife, as provided in Utah Code Ann. § 23-20-4, a class A misdemeanor. During a *Garrity* interview, conducted by POST, Officer H admitted to the wanton destruction of protected wildlife. A Notice of Agency Action filed by POST was mailed to Officer H. Officer H waived his right to a hearing before an administrative law judge. Officer H's certification had been previously suspended by the POST Council for a similar violation. Because of this previous violation, POST recommended Officer H's certification be suspended for four years. 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 with a county agency, was investigated by a local agency for disorderly conduct and domestic violence in the presence of a child. Investigation disclosed Officer I was involved in a domestic dispute with her husband at their residence. Officer I's husband called the local police and they conducted an investigation. There were significant discrepancies between what Officer I's husband claimed took place and what Officer I reported; however, Officer I was charged with disorderly conduct, as provided in Utah Code Ann. § 76-9-102, an infraction and domestic violence in the presence of a child, as provided in Utah Code Ann. § 76-5-109.1(2)(c), a class B misdemeanor. Officer I subsequently entered into a diversion agreement to both charges. During the agency and POST *Garrity* interviews Officer I denied any criminal conduct. 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 a letter of caution. After hearing POST's findings, the Council voted to ratify POST's recommendation and issued Officer I a letter of caution.

Case #10

Officer J, a certified peace officer with a county agency, was investigated by a local agency for a single vehicle accident. The investigating officer detected the odor of an alcoholic beverage coming from Officer J's person. Officer J performed the standardized field sobriety tests, during which he displayed signs of impairment. Officer J was subsequently arrested for driving under the influence of alcohol. Officer J submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .112. During a *Garrity* interview with POST, Officer J admitted to driving under the influence of alcohol, as provided in Utah Code Ann. § 41-6a-502, a class B misdemeanor. A Notice of Agency Action filed by POST was mailed to Officer J. 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 rejected POST's recommendation and, considering the fact that this case involved an accident, voted to suspended Officer J's certification for two years.

Case #11

Officer K, a certified peace officer with a city agency, was investigated by a local agency for assault. Investigation disclosed Officer K had been involved in an altercation with his teenaged daughter's boyfriend. The boyfriend had been warned by Officer K to stay away from his daughter. When Officer K found the two together, Officer K grabbed the boyfriend by the shirt and pushed him, demanding he stay away from his daughter. When Officer K pushed him, the boyfriend fell to the ground. The boyfriend got up and approached Officer K and Officer K pushed the boyfriend a second time. Officer K stated they both tripped and fell to the ground. Officer K was charged with assault. Officer K entered a plea of no contest to an amended charge of assault with attempt to do bodily injury, as provided in Utah Code Ann. § 76-5-102, a class C misdemeanor. During a *Garrity* interview with Officer K, he admitted to grabbing and pushing his daughter's boyfriend to the ground at least twice which constitutes an assault, as provided in Utah Code Ann. § 76-5-102, a class B misdemeanor. A Notice of Agency Action filed by POST was mailed to Officer K. Officer K waived his right to a hearing before an administrative law judge. POST recommended a nine month suspension of Officer K's certification. After hearing from Officer K and POST's findings, the Council rejected POST's recommendation and voted to issue Officer K a letter of caution.

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. 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.