



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

March 2014

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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Please note that the actions taken by the POST Council are not binding precedent.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 March 27, 2014, POST Council convened and considered 14 cases of officer discipline.

### Case #1

Officer A, a certified peace officer with a city agency, was investigated for exchanging photographs, videos and text messages of a sexual nature with a 17 year old male. When Officer A discovered a criminal investigation had been initiated he instructed the male to delete their correspondence. At the conclusion of the agency internal investigation, Officer A resigned. Officer A was charged with dealing harmful material to a minor, a 3<sup>rd</sup> degree felony and obstruction of justice, a class A misdemeanor. Officer A pled no contest to one count of obstruction of justice. The charge of dealing harmful material to a minor was dismissed. During a *Garrity* interview, conducted by POST, Officer A admitted to sending explicit photos to the male and later telling him to delete the photos and their text conversations. Officer A waived his right to a hearing before an administrative law judge. POST recommended revocation of Officer A's certification. After hearing POST's findings and Officer A's arguments, the Council ratified POST's recommendation and voted for permanent revocation of Officer A's certification.

### Case #2

Officer B, a certified correctional officer with a county agency, was investigated by his agency concerning allegations of custodial sexual misconduct. Local police conducted a criminal investigation and charges were screened. The local prosecutor declined to file charges. During the department *Garrity* interview Officer B admitted to having a sexual relationship with a female who was on probation. Officer B did not participate in the POST investigative process. A Notice of Agency Action filed by POST was mailed to Officer who 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 city agency, was investigated by his agency concerning allegations of sexual misconduct on duty. During the department internal investigation Officer C admitted to an on-going sexual

relationship lasting two and a half years. Officer C 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 C admitted to having sex on duty on at least one occasion. Officer C waived his right to a hearing before an administrative law judge. POST recommended a three year suspension of Officer C's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer C's certification for three years.

#### **Case #4**

Officer D, a certified correctional officer with a county agency, submitted a POST application to attend the law enforcement officer block of training at a satellite academy. POST reviewed and compared Officer D's application to a previous application he had submitted. The first application made no mention of any drug usage. The second application mentioned several uses of illicit drugs. During a *Garrity* interview, conducted by POST, Officer D acknowledged his first application was incorrect and should have contained his drug usage. Officer D stated his current application contained all his correct information. Of particular concern was the last date of drug use. Officer D could not recall the specific time period he stopped using drugs. Officer D requested a hearing before an administrative law judge (ALJ). After hearing from all witnesses involved and reviewing the evidence the ALJ ruled POST had met its burden of proof that Officer D had provided false information on his application. POST recommended a two year suspension of Officer D's peace officer certification. After hearing POST's findings and reviewing the ALJ's decision, the Council ratified POST's recommendation and voted to suspend Officer D's certification for two years.

#### **Case #5**

Officer E, a certified correctional officer with a county agency, was investigated for domestic violence assault and domestic violence in the presence of a child. Prior to an internal investigation, Officer E resigned his employment. The criminal investigator screened the case and charges were filed. Officer E entered a guilty plea, to be held in abeyance, to assault, a class B misdemeanor. During a *Garrity* interview, conducted by POST, Officer E admitted hitting his wife in the arm several times during an argument. 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, a certified peace officer with a county agency, was involved in a single vehicle accident. The investigating officer detected the odor of alcohol and believed Officer F was possibly under the influence. Officer F performed the standardized field sobriety tests and submitted to an intoxilyzer test. Officer F had a breath alcohol content (BrAC) of .178. Officer F pled guilty to an amended charge of impaired driving, a class B misdemeanor. During a *Garrity* interview, conducted by POST, Officer F admitted to driving while under the influence of alcohol. Officer F waived his right to a hearing before an administrative law judge. Considering the high breath alcohol content, POST recommended an 18 month suspension of Officer F's peace officer certification. After hearing POST's findings and Officer F, the Council ratified POST's recommendation and voted to suspend Officer F's certification for 18 months.

#### **Case #7**

Officer G, a certified correctional officer with a state agency, was providing security for a party in connection with his secondary employment. During the party, Officer G broke into a locked storage room. Officer G, along with the three other officers, each removed a bottle of alcohol for themselves. The theft was discovered after a routine inventory and confirmed via security cameras. When confronted about the missing alcohol, Officer G and the other officers each admitted to the theft and returned the unopened bottles. During the course of this investigation it was discovered Officer G had previously been charged with, and pled guilty to, disorderly conduct, a class C misdemeanor. The disorderly conduct occurred in 2009, while Officer G was employed as a correctional officer. During a *Garrity* interview, conducted by POST, Officer G admitted to taking the alcohol and admitted he had pled guilty to disorderly conduct, in 2009. Officer G waived his right to a hearing before an administrative law judge. POST recommended a

15 month suspension of Officer G's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer G's certification for 15 months.

#### **Case #8**

Officer H, a certified peace officer with a city agency, was investigated for falsifying government records. Officer H was dispatched to investigate a hit and run traffic accident involving a possibly impaired driver. Officer H located the driver, arrested him for a warrant, and booked him into jail. Officer H was asked by a supervisor why the driver had not been charged with driving under the influence (DUI). Officer H said he conducted standardized field sobriety tests (SFST's) at the jail, but did not notice any signs of impairment. This information was not documented in Officer H's initial report so the supervisor instructed Officer H to prepare and submit a supplemental report. Officer H submitted a supplemental report indicating he had performed the SFST's at the jail and had not noticed any signs of impairment. An internal investigation discovered Officer H had not conducted any SFST's and had falsified his supplemental report. Officer H resigned from his agency. Charges were screened with the city prosecutor who declined to file charges. During a *Garrity* interview, conducted by POST, Officer H admitted he did not conduct SFST's and had falsified his supplemental police report. Officer H waived his right to a hearing before an administrative law judge. POST, recommended a one year 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 one year.

#### **Case #9**

Officer I, a certified peace officer with a state agency, was out of state and was stopped for speeding. The investigating officer detected the odor of alcohol and believed Officer I was possibly under the influence. Officer I performed the standardized field sobriety tests and was given a portable breath test which indicated alcohol was present in his system. Officer I was arrested and taken to a local hospital where he voluntarily provided a blood sample for analysis. The results of the blood alcohol test showed a BAC of .067. Officer I pled guilty to reckless driving, a class B misdemeanor. Officer I's department conducted a *Garrity* interview during which he explained he had consumed alcohol the night before he was stopped for speeding. Officer I denied drinking the day of the incident. POST contacted Officer I who admitted he consumed multiple drinks the day and night before he was stopped, but denied drinking the morning of the traffic stop. Officer I did not respond to the Notice of Agency Action filed by POST and an order of default was signed by an administrative law judge. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer I's certification for one year.

#### **Case #10**

Dispatcher J, a POST certified dispatcher with a state agency, was investigated for assaulting her spouse. The investigation disclosed Dispatcher J was engaged in a verbal argument with her spouse during which her spouse continued provoking the argument and calling her names. When the spouse threatened Dispatcher J that she may not see her children again, she slapped him across the face. The local police agency cited Dispatcher J for domestic violence assault. The local county attorney reviewed the incident and filed charges for disorderly conduct, an infraction. Dispatcher J pled guilty to the disorderly conduct charge. During a *Garrity* interview, conducted by POST, Dispatcher J admitted to slapping her husband after continued provocation. Dispatcher J waived her right to a hearing before an administrative law judge. POST, recommended a nine month suspension of Dispatcher J's dispatcher certification. After hearing POST's findings and from Dispatcher J, the Council rejected POST's recommendation and voted to issue Dispatcher J a letter of caution.

#### **Case #11**

Officer K, a certified peace officer with a city agency, was investigated for trespassing. The investigation disclosed Officer K was at his ex-wife's residence, with his children, to retrieve boating equipment which was stored in her garage. The ex-wife confronted Officer K and after a brief verbal exchange, she called the police. Officer K was later contacted and issued a citation for contributing to the delinquency of a minor. The case was screened with a local prosecutor and Officer K was charged with criminal trespass. Officer K entered a guilty plea to be held in abeyance to criminal trespass, a class C misdemeanor. During a *Garrity* interview, conducted by POST, Officer K admitted to taking boating equipment from his ex-wife's residence. Officer K waived his right to a hearing before an

administrative law judge. POST recommended a three month 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 three months.

### Case #12 and 13

Officer's L and M, both certified peace officer's with the same city agency, were investigated for misuse of the Bureau of Criminal Information (BCI) system. The investigation disclosed both officers were checking the driver license information of a fictitious person for non-law enforcement purposes. During the department *Garrity* interviews, both officers admitted to accessing the BCI information for personal reasons. Both BCI and the local city prosecutor declined to file charges. During *Garrity* interview's, conducted by POST, Officers L and M both admitted to accessing the BCI information for personal reasons. Both Officer L and Officer M waived their right to a hearing before an administrative law judge. POST recommended a letter of caution for both officers. After hearing POST's findings and from both Officers, the Council ratified POST's recommendation and voted to issue both officers a letter of caution.

### Case #14

Dispatcher N, a POST certified dispatcher with a county agency, was stopped for speeding. The investigating officer detected the odor of alcohol and believed Dispatcher N was possibly under the influence. Dispatcher N performed the standardized field sobriety tests and submitted to an intoxilyzer test. Dispatcher N had a breath alcohol content (BrAC) of .151. Dispatcher N was arrested for driving under the influence (DUI) and open container. Dispatcher N was found guilty of DUI, a class B misdemeanor and the open container charge was dismissed. During a *Garrity* interview, conducted by POST, Dispatcher N admitted to driving while under the influence of alcohol. Dispatcher N requested a hearing before an administrative law judge (ALJ). After hearing from all witnesses involved and reviewing the evidence the ALJ ruled POST had met its burden of proof. Due to the fact there were multiple violations in this case, POST, recommended an 18 month suspension of Dispatcher N's dispatcher certification. After hearing POST's findings and Dispatcher N's arguments, the Council ratified POST's recommendation and voted to suspend Dispatcher N's POST dispatcher certification for 18 months.

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