



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

December 5, 2011

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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. 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Please note that the actions taken by the POST Council are not binding precedent.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 5, 2011, POST Council convened and considered 13 cases of officer discipline.

### Case #1

Officer A, a law enforcement officer with city police department, was investigated for several allegations of sexual harassment in the workplace while he was a female officer's immediate supervisor. Officer A initially denied any misconduct to his agency. Officer A later admitted to his agency that he had grabbed the buttocks of the female officer while he was on duty. POST conducted an interview with Officer A and, after a *Garrity* warning, he admitted to grabbing the female officer's buttocks while on duty and in uniform. Officer A also admitted to lying to his department after being given a *Garrity* warning during his department's administrative process. Officer A signed a consent agreement recommending revocation of his peace officer certification. The POST Council voted and ratified POST's recommendation to revoke Officer A's peace officer certification.

### Case #2

Officer B, a law enforcement officer with a county sheriff's office, was involved in a verbal altercation with a fellow officer. Officer B's supervisor investigated the incident and, while speaking with Officer B, detected the odor of alcohol on his breath. Officer B was required to submit to a breath test and was found to have a BrAC of 0.15. Officer B, submitted documents to POST indicating he had been diagnosed as having alcohol dependence. Pursuant to Utah Code Ann. § 53-6-211(1)(b)(c), the POST Council has authority to suspend or revoke the certification of any officer who is addicted to alcohol or who has a physical or mental disability affecting the officer's ability to perform his duties. POST recommended Officer B's peace officer certification be suspended for an indefinite period of time until Officer B is able to demonstrate that he is fit for duty. The POST Council voted ratified POST's recommendation for an indefinite suspension.

### **Case #3**

Officer C, a law enforcement officer with a state agency, was investigated for theft and subsequently charged. Officer C, after a *Garrity* warning, lied to the internal affairs investigators, regarding the theft. Officer C was subsequently found guilty of retail theft, a Class B misdemeanor. POST conducted an interview with Officer C, and after a *Garrity* warning, Officer C admitted he had lied to his department's internal affairs investigators. Officer C also admitted to committing the theft to POST investigators. Officer C signed a consent agreement recommending a four year suspension of his peace officer certification. The POST Council voted and ratified POST's recommendation and suspended Officer C's peace officer certification for four years.

### **Case #4**

Officer D, a law enforcement officer with a city police department, was investigated for engaging in sexual conduct while on duty. POST conducted an interview with Officer D and, after a *Garrity* warning, Officer D admitted he engaged in sexual conduct while he was on duty, in uniform and in his assigned marked police vehicle. Officer D signed a consent agreement recommending a three year suspension of his peace officer certification. POST Council voted and ratified POST's recommendation and suspended Officer C's peace officer certification for three years.

### **Case #5**

Officer E, a law enforcement officer for a city police department, was investigated for stalking two females. During an administrative interview with POST investigators, Officer E admitted to engaging in behavior that constituted stalking. Officer E requested a hearing before an Administrative Law Judge (ALJ). The ALJ ruled that POST met its burden of proof in the proceeding. The POST Council voted and ratified POST's recommendation and suspended Officer E's peace officer certification for three years.

### **Case #6**

Officer F, a law enforcement officer with a county sheriff's office, was investigated for assaulting his girlfriend. POST conducted an interview with Officer F and, after a *Garrity* warning, he admitted to pushing his girlfriend, but claimed it was in self defense. Officer F also admitted to taking a cell phone away from his girlfriend and breaking it. Officer F entered a guilty plea to criminal mischief a class B misdemeanor. Officer F signed a consent agreement recommending a two year suspension of his peace officer certification. The POST Council voted and ratified POST's recommendation and suspended Officer F's peace officer certification for two years.

### **Case #7**

Officer G, a reserve law enforcement officer with a city police department, was reported by an agency who was considering him for employment. Officer G was reported to have omitted information from his POST application to obtain certification. The POST investigation concluded Officer G intentionally omitted information concerning previous criminal and traffic violations from his POST application. Officer G signed a consent agreement recommending a two year suspension of his peace officer certification. The POST Council voted and ratified POST's recommendation and suspended Officer G's peace officer certification for two years.

### **Case #8**

Officer H, a corrections officer with a county sheriff's office, was investigated by a local agency for involvement in a property damage traffic crash. As a result of that investigation, it was determined Officer H was driving under the influence of alcohol and prescription drugs. Officer H submitted to a blood test which showed a BrAC of .27. There was no report of prescription medication in his blood. Officer H pled guilty to an amended charge of reckless driving, a class B misdemeanor. POST conducted an interview with Officer H and, after a *Garrity* warning, he admitted to taking multiple prescription medications (Lortab) and drinking alcohol. Officer H signed a consent agreement recommending a two year suspension of his peace officer certification. The POST Council voted and rejected POST's recommendation for two years and, citing aggravating circumstances, voted to suspend Officer H's peace officer certification for two years and six months.

### **Case #9**

Officer I, a corrections officer with a county sheriff's office, was stopped by a city police officer in another state for a tail light violation. As a result of an on scene investigation, it was determined Officer I was driving under the influence of alcohol. Officer I provided a breath sample which showed a BrAC of .093. Officer I entered a plea of guilty to amended charges of inattentive/careless driving. POST conducted an interview with Officer I and, prior to a *Garrity* warning, she admitted to driving under the influence of alcohol. Officer I signed a consent agreement recommending a one and a half year suspension of her peace officer certification. POST Council voted and ratified POST's recommendation and suspend Officer I's peace officer certification for one and a half years.

### **Case #10**

Officer J, a corrections officer with a county sheriff's office, was stopped by a local agency for driving erratically. As a result of that investigation, it was determined Officer J was driving under the influence of alcohol. It was also discovered Officer J had left the scene of an earlier crash involving property damage. Officer J provided a breath sample which showed a BrAC of .28. Officer J entered a plea of guilty to the charge of DUI and all other charges were dismissed. POST conducted an interview with Officer J and, after a *Garrity* warning, he stated he did not want to contest the allegations for which he was being investigated. Officer J signed a consent agreement recommending a one and a half year suspension of his peace officer certification. The POST Council voted and ratified POST's recommendation and suspended Officer J's peace officer certification for one and a half years.

### **Case #11**

Officer K, a correctional officer, was investigated by a local agency for theft (shoplifting). As a result of that investigation, it was determined Officer K exchanged the UPC labels from expensive items and replaced them with the UPC from less expensive items. Additionally, Officer K failed to scan several items and then attempted to leave the store. Security detained Officer K and reported him to local law enforcement. Officer K entered a plea of guilty to a charge of retail theft, a class B misdemeanor. POST conducted an interview with Officer K and, after a *Garrity* warning, he admitted to switching several UPC labels in order to pay a lower price on the items he purchased. However, Officer K said it was an oversight that some items were not scanned. Officer K signed a consent agreement recommending a one year suspension of his peace officer certification. The POST Council voted and rejected POST's recommendation and, citing the aggravating circumstances of premeditation and dishonesty, suspended Officer K's peace officer certification for three years.

## Case #12

Officer L, a correctional officer, was investigated by a local agency for leaving the scene of an accident. Officer L was issued a citation for leaving the scene of a crash with property damage. Officer L entered a plea to be held in abeyance to leaving the scene of a crash involving property damage, a class B misdemeanor. POST conducted an interview with Officer L and, after a *Garrity* warning, he admitted to hitting a parked vehicle and failed to report the crash to the owner or the police. Officer L failed to respond to the "Notice of Agency Action" and did not submit a signed consent agreement. An order of default was signed by an Administrative Law Judge. The POST Council voted and ratified POST's recommendation and suspended Officer L's peace officer certification for one year.

## Case #13

Officer M, a peace officer with a state agency, was investigated by a local agency for assault. Charges were screened with the local city attorney, however, the city attorney declined to file any charges. POST conducted an interview with Officer M and, after a *Garrity* warning, he admitted hitting his son, but claimed it was in self defense. Officer M signed a consent agreement recommending a six month suspension of his peace officer certification. The POST Council voted and rejected POST's recommendation and voted to take no action against Officer M's peace officer certification.

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](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