



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

September 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Please note that the actions taken by the POST Council are not binding precedent.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 September 25, 2013, POST Council convened and considered 17 cases of officer discipline.

Case #1

Officer A, a certified correctional officer with a county agency, displayed poor performance in his duties and displayed a lack of good judgment in his daily decisions. As a result of the continuing poor performance and lack of improvement in his behavior, Officer A was scheduled for a fitness for duty evaluation. Based on the evaluation, it was determined Officer A was not fit to return to duty or perform the duties of a correctional officer. Officer A was terminated and POST was notified. During an administrative interview, POST investigators explained the investigative process and what would be required for Officer A to retain his certification. Officer A waived his right to a hearing before an Administrative Law Judge. POST recommended an indefinite suspension of Officer A's peace officer certification until such time as Officer A is again found to be fit for duty. After hearing from POST, the Council ratified POST's recommendation and voted to impose an indefinite suspension of Officer A's certification.

Case #2

Officer B, a certified correctional officer with a state agency, was fishing within the State of Utah. While fishing, Officer B was contacted by a police officer who asked to see Officer B's fishing license. Officer B gave the officer his license. The officer found Officer B's fishing license had expired approximately two months prior. Officer B was issued a citation for fishing without a valid license, a class B misdemeanor. Officer B pled guilty to fishing without a valid license. POST conducted a *Garrity* interview with Officer B where he admitted to the offense. Officer B waived his right to a hearing before an Administrative Law Judge. POST recommended Officer B receive a letter of caution. After hearing from POST, the Council ratified POST's recommendation and voted to issue Officer B a letter of caution.

Case #3

Officer C, a certified peace officer with a city agency, accessed the Bureau of Criminal Identification (BCI) records to check criminal history on a man he believed to be a danger to his family. The BCI Terminal Access Coordinator (TAC) conducted an audit and discovered Officer C checked criminal history on an individual without a case number. When Officer C was questioned about the incident, he admitted his error to his supervisor. Officer C was issued a letter of reprimand by his department. No criminal charges were filed in relation to this case. POST was notified of the incident and an investigation was opened. POST conducted a *Garrity* interview with Officer C where he admitted to using the BCI information for personal reasons, which constitutes a class B misdemeanor. Officer C waived his right to a hearing before an Administrative Law Judge. POST recommended Officer C receive a letter of caution. After hearing from POST and Officer C, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

Case #4

Officer D, a certified peace officer with a state agency, accessed the Bureau of Criminal Identification (BCI) to check driver license information on his ex-wife for personal reasons. The BCI Terminal Access Coordinator (TAC) conducted an audit and discovered Officer D checked his ex-wife's driver license information illegally. During a department internal investigation, Officer D admitted he accessed the BCI system to acquire information about his ex-wife's location. Officer D was charged criminally with unlawful, access or use of criminal investigations and technical services division records, a class B misdemeanor. Officer D pled guilty to a reduced charge, a class C misdemeanor. POST was notified of the incident and an investigation was opened. POST contacted Officer D to arrange an interview. Officer D stated he did not wish to interview and admitted to using the BCI information for personal reasons. Officer D waived his right to a hearing before an Administrative Law Judge. POST recommended a six month suspension of Officer D's peace officer certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer D's certification for six months.

Case #5

Officer E, a certified correctional officer with a state agency, was stopped for speeding. The investigating officer detected the odor of alcohol and believed Officer E was possibly under the influence. Officer E performed the standardized field sobriety tests and submitted to an intoxilyzer test. Officer E had a breath alcohol content of .10. Officer E declined to participate in the POST investigative process. Officer E failed to respond to the Notice of Agency Action submitted by POST. POST, therefore, sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended a one year suspension of Officer E's peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer E's certification for one year.

Case #6

Officer F, a certified correctional officer with a state agency, was investigated for electronic communications harassment and disorderly conduct. Officer F went to his wife's place of employment where he engaged in an argument in the parking lot of the business. Officer F also sent a threatening text message to a male individual that he suspected his wife was having an affair with. Officer F was not charged for the electronic communications harassment; however, he was charged with disorderly conduct. Officer F entered into a plea in abeyance to disorderly conduct, an infraction. POST conducted a *Garrity* interview with Officer F where he admitted to electronic communications harassment and disorderly conduct. Officer F waived his right to a hearing before an Administrative Law Judge. POST recommended

a one year suspension of Officer F's peace officer certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer F's certification for one year.

Case #7

Officer G, a certified peace officer with a city agency, was stopped for making an illegal turn. The investigating officer detected the odor of alcohol and believed Officer G was possibly under the influence. Officer G performed the standardized field sobriety tests and submitted to an intoxilyzer test. Officer G had a breath alcohol content of .178. Officer G entered into a plea in abeyance to the amended charge of impaired driving, a class B misdemeanor. POST conducted a *Garrity* interview with Officer G where he admitted to driving under the influence of alcohol. Officer G waived his right to a hearing before an Administrative Law Judge. Due to the high breath alcohol content, POST recommended an 18 month suspension of Officer G's peace officer certification. After hearing from POST and Officer G's attorney, the Council rejected POST's recommendation and voted to suspend Officer G's certification for one year.

Case #8

Officer H, a certified peace officer, was stopped for speeding. The investigating officer detected the odor of alcohol and believed Officer H was possibly under the influence. Officer H performed the standardized field sobriety tests and a warrant was obtained to draw his blood. The blood test results indicated a blood alcohol content of .09. Officer H was charged with driving under the influence of alcohol and open container. Officer H entered a guilty plea to an amended charge of reckless driving. POST conducted a *Garrity* interview with Officer H where he admitted he had been driving while under the influence of alcohol. Officer H failed to respond to the Notice of Agency Action submitted by POST. POST, therefore, sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended an 18 month suspension of Officer H's peace officer certification. POST Council ratified POST's recommendation and voted to suspend Officer H's certification for 18 months.

Case #9

Cadet I, was attending a satellite police academy and had completed the special function officer (SFO) portion of the academy and became SFO certifiable. Cadet I had submitted an application to a city agency. During a background investigation the city agency discovered Cadet I had been arrested previously and had failed to disclose the arrest on his POST application. POST was notified and an investigation was opened. POST conducted a *Garrity* interview with Cadet I where he admitted to omitting information from his POST application to obtain certification. Cadet I withdrew from the academy prior to the POST interview. Cadet I waived his right to a hearing before an Administrative Law Judge. POST recommended a two year suspension of Cadet I's certification. After hearing from POST and Cadet I, the Council ratified POST's recommendation and voted to suspend Cadet I's certification for two years.

Case #10

Officer J, a certified correctional officer with a county agency, unlawfully entered the home of a female co-worker when she was not home. Officer J used a credit card to unlock a side door and gain entry into the home where he remained until the next morning. The co-worker reported the break in by Officer J to the local jurisdiction and Officer J was cited for criminal trespass in a dwelling, a class B misdemeanor. Officer J entered a guilty plea for criminal trespass in a dwelling and resigned from his agency. POST conducted a *Garrity* interview with Officer J where he admitted to unlawfully entering his co-workers home. Officer J waived his right to a hearing before an Administrative Law Judge. POST recommended a three year suspension of Officer J's certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer J's certification for three years.

Case #11

Officer K, a certified peace officer with a county agency, ingested several prescription tablets which were not prescribed to him. After ingesting the pills, Officer K called 911 and asked for medical personnel to respond and transport him to a hospital. Officer K was admitted to a medical care facility and was later released. Officer K received treatment and a mental health provider determined he was not a danger to himself and he was fit for duty. Officer K resigned from his agency. No criminal charges were filed in relation to this case. POST received information regarding the incident and opened an investigation. POST conducted a *Garrity* interview with Officer K where he admitted to unlawfully taking prescription medications that were not prescribed to him. Officer K waived his right to a hearing before an Administrative Law Judge. POST recommended a three year suspension of Officer K's certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer K's certification for three years.

Case #12

Officer L, a certified peace officer with a city agency reported to his administration he had been involved in sexual conduct while on duty. Officer L, while being interviewed for an unrelated matter, reported to his administration he had been involved in an extramarital affair while on duty. Officer L admitted he had been involved in a sexual relationship for over a year and had engaged in sexual activity while in uniform and in his police vehicle. Officer L was terminated from his agency. The sexual misconduct was reported to POST and an investigation was opened. POST conducted a *Garrity* interview with Officer L where he admitted to engaging in sexual conduct on numerous occasions while in uniform and in his police vehicle. Officer L waived his right to a hearing before an Administrative Law Judge. POST recommended a three year suspension of Officer L's certification. After hearing from POST, the Council ratified POST's recommendation and voted to suspend Officer L's certification for three years.

Case #13

Officer M, a certified peace officer with a city agency, was investigated for theft of city property. Witnesses reported seeing Officer M loading several large metal backhoe cutting blades, owned by the city, onto a trailer. The criminal investigation disclosed Officer M sold 1,798 pounds of scrap metal he could not account for. During the agency's administrative investigation, Officer M lied to investigators after having been given a *Garrity* warning. Officer M was terminated from his agency. No criminal charges were filed. The incident was reported to POST and an investigation was opened. Officer M declined to participate in the POST investigative process. Officer M failed to respond to the Notice of Agency Action submitted by POST. POST, therefore, sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended revocation of Officer M's certification. After hearing from POST, the Council ratified POST's recommendation and voted to revoke Officer M's certification.

Case #14

Officer N, a certified correctional officer with a county agency was investigated for child abuse. During the criminal investigation, Officer N admitted to physically abusing a child in his care, by grabbing the child around the throat and choking him. Officer N was terminated from his agency. Officer N was charged with second degree felony child abuse. Officer N entered a plea of guilty to an amended charge of child abuse, a class A misdemeanor. The incident was reported to POST and an investigation was opened. Officer N declined to be interviewed through his attorney. Officer N responded to the Notice of Agency Action through his attorney, stating he was not contesting the allegations. Neither Officer N nor his attorney

submitted a hearing waiver. POST, therefore, sought an order of default. An Order of Default was signed by the Administrative Law Judge. POST recommended revocation of Officer N's certification. After hearing from POST, the Council ratified POST's recommendation and voted to revoke Officer M's certification.

Case #15

Officer O, a certified correctional officer with a state agency was investigated for assault. During the criminal investigation, Officer O admitted he was intoxicated and assaulted an individual, while at a party. Officer O alleged the male he assaulted had kissed Officer O's wife without her permission. The victim Officer O assaulted suffered several facial fractures and a broken nose. Officer O was convicted of assault, a class B misdemeanor. The department internal investigation sustained the allegation and Officer O was suspended without pay for 48 hours (6 working days). Officer O remained employed with his agency. The incident was reported to POST and an investigation was opened. POST conducted a *Garrity* interview with Officer O where he admitted to assaulting the individual at a party. Officer O waived his right to a hearing before an Administrative Law Judge. POST recommended revocation of Officer O's certification. After hearing from POST and Officer O, the Council ratified POST's recommendation and voted to revoke Officer O's certification.

Case #16

Officer P, a certified correctional officer with a county agency, was investigated for aggravated assault. The investigation disclosed that Officer P and a woman with whom he cohabitates, were involved in an argument. The argument continued as Officer P was attempting to leave the residence in the couple's car. As the woman walked past the front of the vehicle, Officer P put the vehicle in drive, spinning the tires as he jerked the vehicle forward. The woman jumped onto a step at the door of the home as the vehicle struck an item at the rear of the garage. Officer P then backed out of the garage and left the home. The incident was reported to local authorities. Officer P was arrested on felony aggravated assault charges and was subsequently terminated from his department. Officer P entered into a plea in abeyance to an amended charge of attempted aggravated assault, a class A misdemeanor. The incident was reported to POST and an investigation was opened. POST conducted a *Garrity* interview with Officer P. Officer P admitted he was involved in an argument with the woman and admitted to driving his vehicle in her direction in an attempt to scare her. Officer P waived his right to a hearing before an Administrative Law Judge. POST recommended revocation of Officer P's certification. After hearing from POST, the Council ratified POST's recommendation and voted to revoke Officer P's certification.

Case #17

Officer Q, a certified peace officer with a county agency was investigated after failing two different drug tests. Officer Q was ordered to take a drug test after he was involved in an on-duty traffic accident. Officer Q failed to appear for the drug test at the scheduled time, however, did arrive later in the evening for the drug test. A month later Officer Q was randomly chosen for a department drug test. Both drug tests indicated positive results for opiates and amphetamine. Officer Q was placed on administrative leave following the two positive drug tests. Several days later it was discovered Officer Q was entering his agency's evidence storage room after normal business hours. A video surveillance camera was set up in the evidence storage room and it recorded Officer Q tampering with drug evidence envelopes. During an agency internal investigation *Garrity* interview, Officer Q admitted to taking methamphetamine from the evidence room and ingesting it. Officer Q was terminated and subsequently charged with burglary, possession of controlled substance and tampering with evidence. Criminal charges have not been adjudicated. The incident was reported to POST and an investigation was opened. Several appointments were scheduled with Officer Q. Officer Q did not appear for any of his scheduled interviews. POST moved

forward with its investigation and mailed a Notice of Agency Action to Officer Q. Officer Q waived his right to a hearing before an Administrative Law Judge. POST recommended revocation of Officer Q's certification. After hearing from POST, the Council ratified POST's recommendation and voted to revoke Officer Q's certification.

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