



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



June 2018

One of the duties of the Peace Officer Standards and Training (POST) 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Please note that the actions taken by the POST Council are not binding precedent.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. This bulletin is intended to be used as a training document; therefore, it is the policy of POST not to use the names of individual officers or agencies, even though that information may be part of the public record.

On June 14, 2018, POST Council convened and considered nine cases for discipline.

Case 1

Officer A, a certified law enforcement officer who is not employed by a law enforcement agency, was investigated by a local police department for assault with a Domestic Violence (DV) enhancement, and two counts of DV in the presence of a child. The local police department concluded that during an argument with his wife, Officer A committed an act, with unlawful force that resulted in bodily injury to his wife. The local police agency also determined the act was committed in the presence of their six year-old daughter and five-year-old son.

During a *Garrity* interview with POST, Officer A admitted to grabbing his wife by the wrists and pulling her from the bed and across the room during an argument. Officer A stated his wife told him to let go and resisted by leaning back as she tried to pull away. Officer A said when he reached the bedroom door, he let go of his wife's wrists and she fell backwards. Officer A's wife struck her head on the bed frame briefly knocking her unconscious and causing a gash that required seven staples to close. Their six-year-old daughter watched the incident from her bedroom across the hall. Their five-year-old son was watching television in the front room down the hall. The local police department cited Officer A on scene for DV related assault and two counts of DV in the presence of a child. The city attorney's office dismissed the charges due to witness unavailability.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer A's certification be suspended for three years. Officer A was present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from

Officer A, the Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification for three years.

Case 2

Officer B was stopped for failing to wear his seat belt. During the traffic stop, it was determined the vehicle Officer B was driving, was not insured and did not have a current registration. During a subsequent vehicle inventory, an empty bottle of beer and a partially consumed bottle of alcohol were located inside the vehicle.

Officer B was charged with a seat belt violation, an infraction, expired registration, an infraction, not having insurance, a class C misdemeanor, and having an open container of alcohol inside a vehicle, a class C misdemeanor. Officer B entered a plea in abeyance for the charges.

During a *Garrity* interview with POST, Officer B admitted he had the open bottles of alcohol in his vehicle at the time of the traffic stop. During the POST investigation, it was discovered Officer B had a previous three year suspension from the POST Council for engaging in sexual conduct while on duty.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer B's certification be suspended for three months. After hearing POST's findings the Council rejected POST's recommendation, and citing the previous suspension from the Council, voted instead to suspend Officer B's peace officer certification for one year.

Case 3

Officer C, a law enforcement officer, was investigated by his agency for accessing Bureau of Criminal Identification (BCI) records for prohibited or not permitted purposes. The investigation disclosed that Officer C unlawfully accessed six BCI records.

During a *Garrity* interview with POST, Officer C admitted to accessing his own records and records belonging to his daughter in-law and son to obtain Vehicle Identification Number (VIN) information. Officer C disseminated the records to his son. Officer C stated his son and daughter-in-law needed the information for an insurance policy. Criminal charges were not screened in relation to this case. Officer C received a letter of caution from his agency and retained his employment.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer C receive a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

Case 4

Officer D was investigated by an outside police agency for disorderly conduct and domestic violence in the presence of a child. The investigation disclosed that Officer D met his ex-wife at a local gas station to pick up his two children. During the exchange, Officer D was yelling, using profanity, and slapped his truck out

of frustration. Officer D's behavior was upsetting to his children. Both children began to cry and one of them told Officer D he was scaring her. Officer D's ex-wife was video recording the incident because she knew he was upset with her prior to arriving. Officer D's ex-wife repeatedly told Officer D to stop and that people were watching. Officer D and his wife both left the gas station.

Charges were filed on Officer D and he subsequently paid the bail forfeiture for the charge of disorderly conduct, a class C misdemeanor. During *Garrity* interviews with his agency and with POST, Officer D admitted to his conduct at the gas station.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer D's certification be suspended for three months. Officer D and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer D and his attorney, the Council rejected POST's recommendation and voted to issue Officer D a letter of caution.

Case 5

Officer E submitted an application to attend a correctional officer academy. On the application, Officer E indicated he was not and had never been a member or associated with a group, gang, or organization that advocated or encouraged violence or criminal activities.

Officer E was present in class for the Ethics 1050 presentation administered by the POST staff. After the presentation, Officer E submitted a Verification of Application form and indicated there was no additional information to be added to his original POST application for training.

About a month later, the director of the academy was contacted by an outside police agency and informed that Officer E had a social media account where he was associated with members of a known street gang. There were photographs on his social media account where he posed with the members of the street gang and made gestures and signs with his hands which were known symbols for the gang. Officer E was also observed in the photographs wearing clothing which indicated an association with the gang.

During a *Garrity* interview with POST, Officer E denied being a gang member and denied being associated with a gang, but claimed being part of a group that used the same symbols and identifiers as the more commonly known street gang. Officer E admitted he should have included the information on his application.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer E's certification be suspended for three and a-half years. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer E's certification. As a result of the revocation Officer E will not be eligible for POST certification at any time in the future.

Case 6

Officer F, a certified correctional officer, was investigated by his agency for theft of property. The investigation disclosed Officer F had an inmate make two cutting boards for him without authorization.

Officer F took the cutting boards home without paying for them. Officer F was charged with theft of services, a class B misdemeanor and his employment was terminated. Officer F entered a plea in abeyance to wrongful appropriation, a class C misdemeanor and was placed on probation for twelve months.

During a *Garrity* interview with POST, Officer F admitted he did not follow department policy and had an inmate fabricate two cutting boards for him, which he took home without paying for.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer F's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer F's certification for one year.

Case 7

Officer G was investigated by an outside police agency for stalking. The investigation disclosed that within a three month period, Officer G sent multiple text messages to a friend, knowing that the text messages were unwelcome. Officer G also attempted to contact the friend using a phone number unknown to her and repeatedly attempted to make contact with the friend in person and through others, knowing the contact was unwanted. Officer G was served with a civil stalking injunction, which is valid for three years. The stalking injunction restricts Officer G from contacting the victim and from having or possessing a firearm while the injunction is in effect.

The criminal case was screened with the county attorney and a stalking charge was filed on Officer G. Officer G entered a plea of guilty to stalking, to be held in abeyance for six months, under Utah Code Ann. § 76-5-106.5, a class A misdemeanor. Officer G subsequently completed the requirements of the plea in abeyance; the charge was dismissed with prejudice.

During a *Garrity* interview with POST, Officer G denied the intent to stalk the friend, but admitted to the conduct. Officer G stated he was desperate to keep the friend in his life, but admitted he knew his attempts to contact her were unwelcome.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer G violated UCA 53-6-211 by engaging in conduct which is a state or federal criminal offense, to wit: stalking as provided in Utah Code Ann. § 76-5-106.5, a class A misdemeanor.

POST recommended Officer G's certification be suspended for four years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer G's certification for four years.

Case 8

Officer H submitted an application for peace officer training to POST and failed to disclose a hit and run accident he had been involved in. Officer H successfully completed the academy and became certified as a law enforcement officer. A few weeks before graduating from the academy, Officer H applied to be a police officer with a local police department. The local police department background investigator determined Officer H had not disclosed his hit and run accident in the POST application or the local police department application.

During a *Garrity* interview with POST, Officer H admitted to not including the hit and run accident in his applications because he believed it was off his record. Officer H admitted, while in the academy, he remembered that he had not put the hit and run accident on his application and did not report it to the academy director because he thought POST would catch it.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H failed to respond to the notice of agency action. An order of default was subsequently signed by the administrative law judge and mailed to Officer H. POST recommended Officer H's certification be suspended for two and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer H's certification for two and one-half years.

Case 9

Officer I completed a timecard and claimed 40 hours of pay during the first week of the pay period. Officer I's supervisor used shift logs to verify the hours claimed by Officer I and located discrepancies; specifically that Officer I may not have worked on two specific dates, even though Officer I reported he had. Officer I was questioned by his supervisor over the phone, and again in person regarding the discrepancies. Officer I claimed he worked the hours as he had reported them.

Officer I's supervisor conducted an investigation into the matter and called Officer I in for an interview with the Assistant Chief of Police. During the interview, Officer I admitted he had lied. Officer I disclosed he did not work on the days in question, as he had originally reported on his timecard.

During a *Garrity* interview with POST, Officer I admitted he did not work on the days in question. Officer I said he did not believe anyone would notice the timecard was false.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer I's certification be suspended for one year. Officer I was present at the POST Council but elected not to address the Council. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer I's peace officer certification for one year.

Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.

For reference we have included below Utah Code 53-6-211 and Utah Code 53-6-208. 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 certified as a law enforcement officer, as defined in Section 53-13-103 and is unable to possess a firearm under state or federal law.

- (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 Dispatcher 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.

53-6-208. Inactive certificates – Lapse of certificate – Reinstatement.

- (1) (a) The certificate of a peace officer who has not been actively engaged in performing the duties as a certified and sworn peace officer for 18 consecutive months or more, but less than four consecutive years, is designated "inactive."
- (b) A peace officer whose certificate is inactive shall pass the certification examination and a physical fitness test before the certificate may be reissued or reinstated.
- (2) (a) The certificate of a peace officer who has not been actively engaged in performing the duties as a certified and sworn peace officer for four continuous years or more is designated as "lapsed."
- (b) A peace officer whose certificate is lapsed shall pass the basic training course at a certified academy, the certification examination, and a physical fitness test before the certificate may be reissued or reinstated.