



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



September 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Please note that the actions taken by the POST Council are not binding precedent.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 September 20, 2018, POST Council convened and considered 16 cases for discipline.

Case 1

Driving Under the Influence, Carrying a Dangerous Weapon While Under the Influence of Alcohol

Officer A, a correctional officer, was driving to his home when he lost control of his vehicle and hit a fence. Officer A was armed with a loaded firearm at the time of the vehicle crash. Officer A was arrested for DUI and provided a breath sample which measured .17 BrAC.

Officer A resigned from his department and later pled guilty to an amended charge of impaired driving. During *Garrity* interviews with POST and his agency, Officer A admitted he was intoxicated at the time of the traffic accident and was carrying a loaded firearm.

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. Considering that Officer A was carrying a loaded firearm while intoxicated and that his blood alcohol level was over twice the legal limit, POST recommended Officer A's certification be suspended for two years. Officer A and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer A and his attorney, the Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification for two years.

Case 2

Driving Under the Influence

Officer B, a correctional officer, was investigated by an outside agency for driving under the influence. Two witnesses saw Officer B driving a silver pickup, and observed him hit another vehicle as he attempted to back into a parking stall.

Officer B made multiple statements to the investigating officer admitting that he was drunk. When asked to perform the Standardized Field Sobriety Tests (SFST's) Officer B responded with "you don't need to waste your time." When asked a second time, Officer B shook his head no and stated he was drunk. Officer B was arrested and taken to the local detention center, where he provided two breath samples approximately two hours after the initial driving incident. The results were a .227 BrAC and .230 BrAC.

In a *Garrity* interview with POST, Officer B admitted to consuming approximately five alcoholic beverages prior to driving his pickup. Officer B admitted he heard a collision as he was parking his vehicle, but said he was not aware of any damage. The criminal case in this matter has not been adjudicated and a bench warrant has been issued for Officer B for failure to appear.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B 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 B. Considering that Officer B was involved in a vehicle crash, had a high blood alcohol level and has an active warrant for his arrest, POST recommended Officer B's certification be suspended for two years. After hearing POST's findings the Council rejected POST's recommendation and instead voted to suspend Officer B's certification for two and one-half years.

Case 3

Driving Under the Influence, Carrying a Dangerous Weapon While Under the Influence of Alcohol

Officer C was driving to work in his marked patrol vehicle, dressed in full department uniform, including duty belt and firearm, when he ran his vehicle into a raised median. Officer C's vehicle was disabled and was towed to his police department's office. When he arrived at the office Officer C's supervisor smelled the odor of alcohol coming from Officer C.

Officer C submitted to a preliminary breath test which showed positive for alcohol. Later, Officer C submitted to an Intoxilyzer test, which showed a BrAC of .148. Officer C resigned from his agency before the completion of their internal investigation. The case was sent to the county attorney for screening; however, criminal charges have not yet been filed in this case.

Officer C did not cooperate with POST investigators and was not interviewed.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C 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 C. Considering that Officer C was involved in a vehicle crash and that he was driving a marked law enforcement vehicle, POST recommended Officer C'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 C's certification for two and one-half years.

Case 4

Take, Transfer, Sell, Purchase Protected Wildlife

Officer D was hunting elk with a friend. Officer D explained they were set up at opposite ends of a meadow, approximately 500-600 yards apart. Officer D said he was notified by the friend via walkie-talkie of an elk to his left. Officer D said he figured his friend, who was an experienced hunter, had positively identified the animal as an elk. Officer D said, "I just saw kind of a big animal with antlers and I sighted in on it." Officer D fired two rounds killing the animal, and then as he approached the animal, he realized it was not an elk. Officer D and the friend immediately contacted the proper authorities, helped them locate the animal, and cooperated with their investigation.

During *Garrity* interviews with his agency and POST, Officer D stated he relied upon the identification of the animal to be an elk by his friend and had accidentally shot a moose while hunting elk. Officer D entered into a plea in abeyance for the charge of unlawful taking, transporting, selling, or purchasing protected wildlife, under Utah Code Ann. § 23-20-3, a class B misdemeanor. Officer D was placed on six month probation and received a \$6000.00 fine.

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. Considering Officer D reported the incident himself and cooperated with wildlife officials, POST recommended Officer D receive a letter of caution from the Council. 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 ratified POST's recommendation and voted to issue Officer D a letter of caution.

Case 5 Assault

Officer E, a cadet in the POST law enforcement academy, was attending building clearing training. During a training scenario a fellow cadet reminded Officer E that he needed a functioning flashlight for the training. Officer E shoved the cadet into a wall of lockers and asked "are you testing me?" The cadet told POST investigators his head would have been injured if it was not for a face protection mask he was wearing on the back of his head at the time.

During a *Garrity* interview with POST, Officer E admitted he was angry and frustrated when he shoved the cadet into the lockers. Officer E said he thought it was okay because the cadet did not express being in any pain.

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 two years in accordance with the disciplinary guidelines. Officer E and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer E and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer E's certification for one and one-half years.

Case 6 Assault, Domestic Violence in the Presence of a Child

Officer F was investigated for assault and domestic violence in the presence of a child. Officer F was involved in a verbal argument with her husband that became physical. The investigation determined Officer

F had been drinking and in the course of a verbal argument, hit her husband in the face with a glass mug causing a laceration and swelling. The incident occurred outside the bedroom of Officer F's eight-year-old son.

Officer F was charged with domestic violence related assault and domestic violence in the presence of a child. The charges were dismissed after Officer F's husband refused to cooperate with the police or city attorney's office.

In a *Garrity* interview with her agency, Officer F stated she threw the glass mug down the hall toward her husband, but was unaware if it hit her husband. Officer F stated she cut herself with a piece of glass from the broken mug after seeing the laceration on her husband's face. When Officer F was asked if she told officers on scene she had fallen and cut herself, Officer F said she might have.

Officer F's husband refused to cooperate with the POST investigation and Officer F's attorney informed POST Officer F would not cooperate with the POST investigation.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F 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 F. POST recommended Officer F's certification be suspended for two years in accordance with the disciplinary guidelines. Officer F and her attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer F and her attorney, the Council ratified POST's recommendation and voted to suspend Officer F's certification for two years.

Case 7

Willfully Falsifies Any Information to Obtain Certification

Officer G completed an application to attend POST academy training at a satellite police academy. In the application, Officer G failed to disclose a theft he had committed three months earlier. Officer G also failed to disclose a theft he committed two years earlier. Officer G completed the ethics class at the beginning of the academy, and supplied an addendum to his application. The addendum made no mention of the thefts Officer G had committed. Officer G graduated from the special functions officer (SFO) portion of the police academy.

Officer G later submitted a completed background investigation packet to a local police agency as part of a pre-employment screening process. In the background investigation packet, Officer G disclosed his two prior thefts.

After submitting the background investigation packet, Officer G provided POST a written notification which only disclosed the theft that he committed two months before entering the academy. During a *Garrity* interview with POST, Officer G admitted he committed both thefts, but said he did not put them on his original POST application because he had forgotten about them and did not believe they were a big deal.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G 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 G. POST recommended Officer G's certification be suspended for two years in accordance with the disciplinary guidelines. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer G's certification for two years.

Case 8
Driving Under the Influence

Officer H was investigated by an outside police agency for DUI. Officer H was driving his personal vehicle when he was stopped by an officer from an outside agency for speeding and failing to remain in a single lane of travel. The officer could smell a strong odor of alcohol coming from Officer H. Officer H submitted to standardized field sobriety tests and was arrested for DUI. Officer H submitted a breath sample which measured .182 BrAC.

Officer H retired from his department before the initiation of their investigation. Officer H subsequently entered a plea of guilty to impaired driving. Officer H did not cooperate with POST investigators and was not interviewed.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. Considering Officer H had a blood alcohol level that was more than twice the legal limit, POST recommended Officer H's certification be suspended for one and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer H's peace officer certification for one and one-half years.

Case 9
Falsification or Alteration of a Government Record

Officer I was investigated by his agency for falsification or alteration of a government record. The investigation determined that on several occasions Officer I signed on duty with dispatch from his residence, which was located approximately twenty minutes outside the jurisdictional boundaries of his agency. On some of these occasions, Officer I did not leave his residence for more than ninety minutes after he signed on duty with dispatch.

During an administrative interview with his agency Officer I disclosed he had been dealing with back pain that affected him in the morning. Officer I said the back pain would be so intense at times that he would have to sit down and allow the pain to subside before he left for work. The investigation determined Officer I did not contact any of his supervisors regarding his tardiness and determined Officer I did not stay late during his shifts to make up the hours. Officer I claimed the hours he was at his residence as hours worked on his timecard and made no attempts to correct the information.

During a *Garrity* interview with POST, Officer I admitted he signed on duty from his residence, but said he was available for calls if he received them.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I 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 I. POST recommended Officer I's certification be suspended for one year in accordance with the disciplinary guidelines. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer I's certification for one year.

Case 10
False Emergency Reporting, Obstruction of Justice

Officer J called 911 and falsely reported a residential burglary in progress. Officer J did not provide his name to the dispatcher and stated he wanted to remain anonymous. After responding officers determined a burglary had not occurred, an officer called Officer J and asked if he was a neighbor, he replied, "yes." A few days later, an investigator called Officer J to get more details about his report of a burglary. Officer J admitted he was not a neighbor and stated an unknown neighbor called him and asked him to report the burglary to dispatch. The next day, Officer J met the investigator at Officer J's request, and admitted he falsely reported a burglary in an attempt to get police to respond and prevent his wife from engaging in an extra-marital affair. Officer J admitted he did not receive a call from a neighbor like he had originally reported to the investigator. Officer J retired from his agency.

Charges were filed and Officer J entered a plea of guilty to one count of emergency reporting – interference – false report as provided in Utah Code Ann. § 76-9-202(2)(c), a class B misdemeanor. An obstruction of justice charge which had also been filed was dismissed with prejudice.

During *Garrity* interviews with his agency and POST, Officer J admitted he called 911 to report the burglary in an attempt to have officers respond to the house and stop his wife from engaging in sexual conduct with another man. Officer J said he and his wife were divorcing and he had recently found out she was having an extra-marital affair.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J 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 J's certification be suspended for three years in accordance with the disciplinary guidelines. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer J's peace officer certification for three years.

Case 11 Criminal Trespassing

Officer K, a correctional officer, was investigated by an outside agency for criminal trespassing. The investigation determined Officer K had entered a restricted area of a hospital without authorization and refused to leave or identify himself when asked by security. Hospital security called the local police. Officer K initially would not identify himself to the responding officer. Officer K stated he was a sheriff's deputy, but did not have any identification or police credentials.

As the officer continued to try and determine how Officer K gained entry into a restricted area, Officer K admitted his wife worked at the hospital. Officer K was asked for his wife's ID badge. Officer K produced the ID badge from a front pocket, showed it briefly to the officer, but put the ID badge back into his pocket when the officer reached for it. The officer asked for the badge again and Officer K refused to take it out of his pocket. The officer was eventually able to get Officer K to remove the ID badge from his pocket. The officer reached out and grabbed the badge; however, Officer K continued to hold on to the retractable string the badge was attached to. The officer then detached the badge from the string and took possession of it.

Based on Officer K's passive aggressive behavior, the officer determined to detain Officer K until they finished their investigation. While handcuffs were being applied, Officer K rotated his wrists in a manner that would prevent the proper fitting. When the officer attempted to straighten his wrists, Officer K stood and said they were hurting him. Officer K was taken to the ground and handcuffs were applied. Officer K

was taken to a county jail for impersonating an officer and criminal trespassing. The jail was able to confirm Officer K was a correctional officer and the impersonating an officer charge was dropped.

During a phone *Garrity* interview with POST, Officer K admitted he used his wife's employee ID badge to gain access to a restricted area of the hospital on multiple occasions to use an employee gym. Officer K later pled guilty to criminal trespass, a class B misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer K. Officer K 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 K. POST recommended Officer K's certification be suspended for six months in accordance with the disciplinary guidelines. After hearing POST's findings the Council rejected POST's recommendation and instead voted to suspend Officer K's certification for one-and-one-half years.

Case 12 Falsification or Alteration of a Government Record

Officer L was investigated for altering or modifying his own record in the O-Track database. The investigation disclosed Officer L altered his own O-Track record by putting a photograph of a dog on his record instead of a photograph of himself. Officer L also deleted his legal status within the database.

During *Garrity* interviews with his agency and POST, Officer L admitted to altering his record without authorization. A Notice of Agency Action was filed by POST and mailed to Officer L. Officer L elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer L violated UCA 53-6-211 as outlined in the notice of agency action.

Considering the minimal nature of the records Officer L modified, POST recommended Officer L's certification be suspended for three months. After hearing POST's findings and reviewing the ALJ's ruling, the Council rejected POST's recommendation and instead voted to suspend Officer L's certification for one year.

Case 13 False Evidence of Title and Registration

Officer M was investigated by his agency for false evidences of title and registration. An outside agency conducted a criminal investigation on Officer M. The investigations disclosed Officer M purchased a diesel truck that would not pass the emission testing in his county. Officer M used the address of another officer from his agency, who lived in a neighboring county, to register his truck in order to avoid complying with the emission testing requirements. The neighboring county does not require emission testing on diesel vehicles.

The POST investigation disclosed that Officer M knowingly made a false statement or knowingly concealed a material fact in an application for registration of his vehicle in order to avoid complying with emission testing requirements. The investigation concluded Officer M violated Utah Code Ann. § 41-1a-1315, false evidences of title and registration a third degree felony. Officer M resigned from his agency and entered a guilty plea to be held in abeyance to a charge of false evidences of title and registration, amended to a class A misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer M. Officer M waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. Considering the relative minimal nature of the felony conduct, POST recommended Officer M's certification be suspended for three years. Officer M and his attorney were present at the Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer M and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer M's peace officer certification for one and one-half years.

Case 14

Falsification or Alteration of a Government Record

Officer N was investigated by his agency for providing false entries on his timecards. Officer N's agency received information that Officer N, who was assigned as a school resource officer at an area high school, was signing on duty at his assigned time; however, he did not show up to his duty location until long after. The chief of police assigned two of his sergeants to watch Officer N's residence to see when he was signing on duty and when he left his residence.

On some occasions, Officer N signed on duty at around 0700 hours; however, he did not leave until at least an hour had passed. Officer N's residence was outside of the school district boundaries and not located in the same jurisdiction as the high school where he was assigned.

As part of the investigation, the agency's chief requested an audit of Officer N's dispatch logs for the school year. The logs showed Officer N consistently signed on duty at around 0700 hours, but did not arrive at the high school where he was assigned until a significant amount of time later. Officer N resigned from his agency.

During a *Garrity* interview with POST, Officer N said he experienced family problems which prevented him from getting to his place of assignment on time. Officer N failed to inform any of his supervisors of the personal difficulties he experienced and did not make any attempts to change the timecards to reflect the actual hours he spent at his place of assignment.

A Notice of Agency Action was filed by POST and mailed to Officer N. Officer N elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer N violated UCA 53-6-211 (1)(d) as outlined in the notice of agency action.

POST recommended Officer N's certification be suspended for one year in accordance with the disciplinary guidelines. Officer N and his attorney were present at the Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer N and his attorney, the Council ratified POST's recommendation and voted to suspend Officer N's certification for one year.

Case 15

Animal Cruelty, Criminal Trespassing, Unlawful Trapping

Officer O, was investigated for aggravated animal cruelty. The investigation disclosed Officer O left his department issued K-9 in his patrol vehicle with the windows rolled up and engine turned off for several hours. A necropsy later determined the K-9 died of heat exhaustion. During a *Garrity* interview with his agency, Officer O admitted he accidentally left the K-9 in the vehicle after training, and then left with his

family for several hours. The investigation sustained the allegations of animal cruelty and not taking proper care of department issued equipment. Officer O's employment was terminated.

Officer O did not cooperate with the criminal investigation. Charges were screened with the county attorney and Officer O entered a plea of guilty to aggravated cruelty to an animal, a class B misdemeanor.

POST initiated an investigation into this matter. POST discovered Officer O had two previous criminal convictions which had not been reported to POST. Several years earlier Officer O was charged with criminal trespass, a class C misdemeanor. Officer O entered a plea of no contest to that charge. Officer O was also charged several years earlier with unlawful methods of trapping, a class B misdemeanor. Officer O paid the bail forfeiture for that charge. Officer O did not cooperate with the POST investigation.

A Notice of Agency Action was filed by POST and mailed to Officer O. Officer O 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 O. Considering Officer O had committed multiple violations, POST recommended Officer O's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer O's certification for one year.

Case 16 Reckless Endangerment

Officer P was investigated by an outside police agency for intoxication and disorderly conduct. During the investigation, officers determined a previous domestic violence incident had taken place where Officer P was audio recorded by his wife during an argument. Officer P's wife reported that during the argument Officer P pointed his department issued handgun at his head, pointed it at her, then pointed it at his head a second time and pulled the trigger. The gun was not loaded. Officer P admitted he pointed the gun at his head and pulled the trigger, knowing it was unloaded. Officer P denied that he pointed the gun at his wife.

The case was screened with the county attorney and aggravated assault charges were filed on Officer P. Officer P resigned from his agency and entered a plea of no contest to the amended charge of reckless endangerment, under Utah Code Ann. § 76-5-112, a class A misdemeanor.

During the POST investigation, Officer P's wife disclosed that on previous occasions, Officer P hit her in the face causing a black eye and dragged her by her hair, pulling it out from her head. During *Garrity* interviews with POST, Officer P admitted he pointed his department issued handgun at his head, and pulled the trigger, in an effort to prove to his wife that he was serious about wanting his cell phone back. Officer P denied assaulting his wife during their marriage. Officer P denied causing any injuries to his wife during their marriage.

A Notice of Agency Action was filed by POST and mailed to Officer P. Officer P elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer P committed reckless endangerment as provided in Utah Code Ann 76-5-111 a class A misdemeanor, as outlined in count three of the notice of agency action. Counts one and two were not sustained.

POST recommended Officer P's certification be revoked in accordance with the disciplinary guidelines. Officer P and his attorney were present at the Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer P and his attorney, the Council ratified POST's recommendation and voted to revoke Officer P's certification.

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.