

POST COUNCIL MEETING

September 14, 2015

Public Safety Education and Training Center – Sandy, Utah

MINUTES

On September 14, 2015, a regularly scheduled POST Council meeting was held at 10:00 a.m. at the Public Safety Education and Training Center in Sandy, Utah. Chairman James O. Tracy conducted and welcomed those in attendance.

The following POST Council members were in attendance:

Sheriff James O. Tracy, Chairman, Utah County Sheriff's Office
Chief Wade Carpenter, Vice-Chairman, Park City Police Department
Chief Spencer Austin, Utah Attorney General
Frank Budd, At Large
Sheriff Cameron Noel, Beaver County Sheriff's Office
Colonel Danny Fuhr, Superintendent, Utah Highway Patrol
Dr. Matthew Checketts, At Large
John Crowley, UPOA Representative
Chief Marlon Stratton, St. George City Police Department
Christie Moren, At Large
Sheriff Robert Dekker, Millard County Sheriff's Office
Mayor Toby Mileski, Pleasant View City
Chief Kim Hawkes, North Park Police Department
Executive Director Rollin Cook, Utah Department of Corrections

The following were excused and/or absent:

Commissioner Kerry Gibson, Weber County Commissioner
Chief Chris Burbank, Salt Lake City Police Department
Bruce Bayley, Weber State University

POST staff present:

Scott Stephenson, Director
Kelly Sparks, Deputy Director
Atty. Kevin Bolander, DPS Legal Counsel representing POST, Asst. Attorney General
Atty. Marcus Yockey, DPS Legal Counsel representing POST, Asst. Attorney General
Shaunna McCleve, Administrative Secretary
Al Acosta, POST Investigations Bureau Chief
Brad Macfarlane, POST Investigations
Robert Bench, POST Investigations
Mary Kaye Lucas, POST Investigations
Wade Breur, POST Basic Training Bureau Chief
Christopher Fielding, POST Media Producer
Taylor Conti, POST Technician

Others present:

Ben Winslow
Jessica Miller
Brian Gwilliam
Bowdy Nielson
Jason Gardiner
Austin Shepherd
Mark Shepherd
Joseph Cote
James Houspeth
Bryan Heyberge

WELCOME AND INTRODUCTIONS

The meeting was called to order at 10:10am. Chairman James Tracy welcomed those in attendance and excused Commissioner Gibson and Dr. Bayley.

APPROVAL OF POST COUNCIL MINUTES

The POST Council minutes of June 22, 2015, were reviewed and the following motion was made:

Motion: *Executive Director Rollin Cook motioned to approve the minutes of June 22, 2015.*

Second: *Chief Kim Hawkes seconded the motion.*

Vote: *The motion passed with all in favor.*

POST POLICY UPDATE

Deputy Director Sparks presented the annual review and revision of the Peace Officer Standards and Training policy manual. Below are highlights of the policy revisions that have been effected since the last annual review completed in June of 2014. All of the revisions listed below have been incorporated into the 2015, version of the policy.

1270 – Travel and Training – New Policy

- In conjunction with State Travel Policy, establishes internal procedures for the approval of travel and training by POST staff members.

2030 - Admittance to POST Sponsored Basic Training Programs – Revision

- Adds additional UCA citations for reference.
- Clarifies that felony convictions which have been expunged may be considered as part of the background information to qualify an applicant for entrance into the academy.
- Adds language indicating restricted persons are not eligible for peace officer training or certification.
- Incorporates changes to the POST Council disciplinary guidelines approved by the Council on June 22, 2015.
- Includes changes to guidelines used to assess applications for individuals who have misused prescription drugs.

2090 – Assessments

- Documents scheduling changes to intermediate and subject specific tests, establishing the courses each test will cover.
- Adds language clarifying the academic requirements which must be attained before a cadet is eligible to take a certification test.
- Clarifies the policy restricting the use of calculators on cell phones and other devices during an assessment.

2091 – ADA testing Accommodations – New Policy

- Establishes a policy and procedure for evaluating requests for accommodation during written testing as required by the ADA
- Requests must be made in writing prior to the exam
- Requests must be accompanied by an evaluation from a healthcare professional
- Accommodations may include extra time on exams, a separate exam room or a reader to read test questions

2095 – Study Guides

- Prohibits cadets from posting academy study material on public websites, including programs that generate flashcards without prior approval.
- Clarifies that cadets may not use calculators on electronic devices that store data or can be use access the internet such as cell phones or tablets.

2210 – Qualification Requirements (Firearms)

- Clarifies that cadets have one year from the end of their LEO training session to complete the firearms qualification requirements.

2350 – Contents of Individual File

- Updates what items will be maintained in a cadet's individual file to conform with new electronic data systems in use at POST

2390 – Physical Training Requirements

- Adds basic correctional officer fitness standards adopted by the Council in June 2015.
- Clarifies some procedural items in conducting the physical fitness assessment
- Adds specific direction on administration of the alternate fitness test, the job task simulation test.
- Adds specific direction on administration of the alternate to the 1.5 mile run, the Air-Dyne cycle test.

2410 – EVO

- Adds a special note concerning individuals who have attended LEO training and been hired as correctional officers – these individuals must complete EVO in order for their LEO certification to be activated or remain active.

3010 – In-Service Training Requirements

- Adds citations and languages changes to clarify that this policy also applies to certified dispatchers.
- Adds a note indicating that any challenges to action taken by the Utah Retirement System (URS) based on deficient in-service training must be addressed directly with the URS.

3070 – POST Instructor Certification

- Add some minor language changes for clarity.
- Establishes a uniform three year re-certification cycle for all specialty or skill area instructors.
- Adds policy for the certification/recertification of K-9 instructors and judges.

3100 – Career Development

- Changes the physical fitness requirements for advanced officer certification. Candidates will now be required to attain the LEO exit PT standards instead of the higher 50th percentile standards.

3210 through 3250 – Waiver Applicants

- Changes some language to clarify that this policy also applies to certified dispatchers.
- Adds some other language changes for clarity.

QUARTERLY REPORTS

Lt. Acosta reported the following: Since last Council meeting (June), Investigations Bureau received 29 complaints, opened 20 cases, conducted 0 administrative hearings and closed 0 cases with no action. Investigations has received 5 voluntary relinquishments with the following allegations: Misappropriations of government funds, custodial sexual misconduct, fraud and theft. Investigations conducted 327 background investigations for applicants attending a police academy, 19 application reviews for waiver/reactivation and 35 dispatch application reviews. There are currently 75 active investigations and a total of 96 open cases.

Basic Training

314 LEO June 3 – August 13, 2015. The session started with 26 cadets, certified 26 Law Enforcement Officers.

315 SFO July 6 – August 11, 2015. The session started with 28 cadets, certified 26 Special Function Officers. Two cadets did not pass the final certification exam.

315 LEO August 12 – October 22, 2015. The session started with 31 cadets who are scheduled to graduate October 22, 2015.

316 SFO August 10 – September 15, 2015. The session started with 19 cadets, one cadet was dismissed per agency request. They are scheduled to complete September 15, 2015.

316 LEO September 16 – November 25, 2015. Twenty-nine cadets are scheduled to start.

317 SFO August 31 – October 6, 2015. The session started with 21 cadets and is scheduled to complete October 6, 2015.

In-Service Training

From July until the end of September, POST has offered 35 In-service classes training 717 officers, 44 dispatchers for a total of 554 hours of training.

Classes Administered:

- | | |
|----------------------------------|------------------|
| • Basic Dispatch | 1 (30 enrolled) |
| • EVO, not including POST cadets | 4 (75 enrolled) |
| • Field Training Officer (FTO) | 1 (38 enrolled) |
| • Firearms Patrol Rifle | 1 (19 enrolled) |
| • Intoxilyzer Certification | 7 (168 enrolled) |
| • Impact Weapon Instructor | 1 (18 enrolled) |
| • RADAR/LIDAR Certification | 7 (132 enrolled) |
| • Radar/Lidar Instructor | 1 (3 enrolled) |

TOTAL

23

SATELLITE AUDITS

Lt. Wade Breur reported POST conducted two satellite audits, the first was on Utah State University Eastern which started their first class last year with 8 cadets and all have been hired in the area. This year he started SFO with 11 cadets and will increase to 15 enrolled in LEO. There were no exceptions to the audit. The second audit was on Salt Lake County Sheriff's office (SLCSO). They train special function and basic correction officer only. Unified PD asked if SLCSO could conduct a LEO block of training for them, and Lt. Breur asked if POST was not meeting their training needs. SLCSO replied that POST was meeting their needs, but Unified PD wanted to have their own in house academy. There were no exceptions to the audit. Director Stephenson said additional academies would be very difficult to manage; POST staff is at the end of their resources with the nine academies currently running.

Council member asked if POST had any statistical data on satellite cadets being disciplined by the Council and how many have graduated and are still actively employed. Lt. Breur stated we could pull data on that to find out who is hired from the satellite classes, but some take a while to get jobs and there are those that will never be employed in law enforcement. Director Stephenson's stated it would take a lot of manual labor to find out the percentage of satellite cadets that have been disciplined by the Council.

DISCUSSION ON USE OF A PRESCRIPTION DRUG NOT PRESCRIBED TO THE APPLICANT OR CERTIFIED OFFICER

Chairman Tracy stated after the Council discussion in June on this topic he started comparing the sanctions and the matrix used by the Council when looking into violations regarding this law. He asked to have this subject added to the agenda today to discuss this topic concerning whether the Council is missing the legislative intent of this law. He believes the legislative intent was to keep people from obtaining family members prescription to hide an addiction or to use the drug for an illegal purpose.

Dr. Budd agreed with the chairman but these action still need to be looked into and the Council cannot just turn their heads to these cases. The nature of the drug needs to be considered. Director Stephenson stated this matter has been a difficult one to manage and because of the inconsistencies in sanctions, he needs something solid in writing to determine a recommended sanction. Colonel Fuhr stated he supported the document presented by POST in the June Council meeting and felt it gave leniency to the Council and direction to POST. This subject needs to be presented to the officers to educate them.

After more discussion by the Council the following motion was made.

Motion: *Colonel Fuhr motioned to create a committee to review this matter and present a recommendation to the POST Council next meeting.*

Second: *John Crowley seconded the motion.*

Vote: *Motion passed with all in favor.*

Committee Members: Executive Director Rollin Cook, Dr. Matt Checketts, John Crowley, Mayor Toby Mileski, Colonel Daniel Fuhr, Christie Moren, Sheriff James Tracy, Director Scott Stephenson, Deputy Director Kelly Sparks

DISCIPLINARY CASES

Attorney Marcus Yockey presented the following cases to the POST Council:

JOSEPH C. COTE

Offence – Willfully falsify information to obtain certification

Category – C

Recommended Discipline – 2 year suspension

Status – N/A

Agency – Sevier Co SO

On February 25, 2011, Joseph Cote completed a POST application to attend a POST sponsored special function officer (SFO) academy in Richfield, Utah. Cote did not disclose any illegal drug use on his application. Cote completed the SFO academy and worked as a part-time reserve officer for the Sevier County Sheriff's Office (SCSO). In 2013, Cote was hired as a part-time jail deputy.

On December 3, 2014, Cote completed a POST application to attend the basic correctional officer (BCO) academy. Cote, again, did not disclose any illegal drug use on his POST application. Cote completed the BCO academy on March 16, 2015. After completing the academy, Cote applied for a full-time correctional officer position with the SCSO. As part of the hiring process, Cote submitted to a voice stress analysis. During the analysis, Cote disclosed he had used drugs in 1994. On May 14, 2015, Cote contacted POST and informed them he did not disclose his illegal drug use on his POST application.

On June 25, 2015, during a POST *Garrity* interview, Cote admitted to intentionally omitting his drug use so his 2014 POST application to match his 2011 POST application.

On September 1, 2015, Joseph Cote waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Cote's addressed the Council and explained his situation, he self reported to POST.

Motion: *Dr. Checkett's motioned to not accept the recommendation and recommended a 9 month suspension of Joseph Cote's peace officer certification.*

Second: *Mayor Mileski seconded the motion.*

Vote: *The motion passed with 12 in favor 1 against.*

JENNIFER FITZGERALD

Offence – Retail Theft (Shoplifting)

Category – D

Recommended Discipline – 1year suspension

Status – Terminated

Agency – Utah Department of Corrections

On November 6, 2014, Jennifer Fitzgerald went to a local department store. Fitzgerald placed several items in her shopping cart and then left the store without paying for the items. Police were contacted and Fitzgerald was located at her home. Fitzgerald told police she had paid for the items, but could not locate a receipt. Police issued Fitzgerald a citation for retail theft.

During *Garrity* interviews with both her agency and POST, Fitzgerald admitted to taking the items without paying, but stated it was unintentional. Fitzgerald was terminated by her agency and later entered a guilty plea to be held in abeyance, to the charge of retail theft, a class B misdemeanor.

Fitzgerald failed to respond to the notice of agency action. On July 7, 2015, an order of default was signed by the administrative law judge and mailed to Fitzgerald. However, on August 14, 2015, Fitzgerald waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Mayor Mileski motioned to accept the recommended 1 year suspension of Jennifer Fitzgerald's peace officer certification.*

Second: *Chief Austin seconded the motion.*

Vote: *The motion passed with all in favor.* (Executive Director Cook recused himself)

JASON GARDINER

Offence – Use or possession of a controlled substance (Schedule IV) w/o a prescription

Category – D

Recommended Discipline – 3 month suspension

Status – Retained employment/Hired

Agency – Ogden City PD, Salt Lake City PD

In September 2012, Jason Gardiner was working the graveyard shift for Ogden PD and having a hard time regulating his sleep schedule. During this time, Gardiner was provided half an Ambien by a co-worker to help him with his sleeping difficulties. After finding the Ambien effective, Gardiner contacted his doctor and obtained his own prescription for Ambien. On February 3, 2015, Gardiner disclosed his one-time use of his coworker's prescription Ambien during a pre-employment screening for another police agency. After speaking with POST, the hiring agency agreed to employ Gardiner, but instructed him to contact POST to report his prescription drug use. During a POST *Garrity* interview, Gardiner admitted to taking the Ambien and admitted knowing it was wrong.

On August 27, 2015, Gardiner waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Gardiner addressed the Council and explained the situation when he took the prescription drug. He apologized for his actions.

Motion: *Sherriff Noel motioned to not accept the recommendation and recommended a letter of caution.*

Second: *Chief Carpenter seconded the motion.*

Vote: *The motion passed with all in favor.*

LLOYD ED MICHAUD

Offence – Disorderly conduct

Category – F

Recommended Discipline – Letter of Caution

Status – Letter of Counsel

Agency – Utah Highway Patrol

On June 7, 2013, Lloyd Michaud was involved in a road rage incident. Michaud followed a car with four juveniles into a parking lot and confronted them, because one of them had flipped off Michaud's wife. Michaud eventually made physical contact with one of the occupants by grabbing the juvenile's arm and then throwing his hand upward. The juveniles called the police to report the incident. Michaud left the scene before the police arrived. Following the complaint from the juvenile, a charge was filed in the local justice court for assault, which was amended to disorderly conduct. The case was eventually dismissed and Michaud received a letter of counsel from his agency.

On August 26, 2015, Lloyd Michaud waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Dr. Budd motioned to accept the recommended letter of caution.*

Second: *Sheriff Dekker seconded the motion.*

Vote: *The motion passed with 11 in favor and 1 oppose. (Colonel Daniel Fuhr recused himself)*

*Sheriff James Tracy recused himself as Chairman and turned the next case over to Chief Wade Carpenter to Chair due to the case being one of his employee's.

BOWDY NIELSON

Offence – Unlawful use or possession of a controlled substance & Lying on POST Application

Category – A

Recommended Discipline – 3 year suspension

Status – Still Employed

Agency – Utah Co SO

Sometime between January and March of 2014, Bowdy Nielson, a special functions officer with the Utah State Hospital, became sick and used three doses of his wife's left over prescription cough medicine. The cough medicine was a schedule II controlled substance. On March 23, 2015, POST reviewed Nielson's application for correctional officer training and became aware of Nielson's unlawful use of the prescription drug which he disclosed in his application.

Nielson also disclosed he took two doses of his father's prescribed Lidocaine patches before he started the SFO academy in 2012 and two doses of his mother's prescribed testosterone gel, while he was attending the LEO academy in 2013. Nielson did not disclose the Lidocaine use on his POST application in 2012 and did not notify POST of the testosterone use while he was attending the academy.

On March 24, 2015, during a *Garrity* interview with POST, Nielson admitted using his father's Lidocaine patches and omitting the information on his 2012 application. He also admitted using his mother's Testosterone gel while he was attending the academy and admitted not notifying POST. Nielson also admitted to using his wife's prescription cough medicine. Nielson said he was aware he could not use another person's prescription, but didn't really think it was "that big of a deal" and he wanted to save a trip to the doctor.

On August 24, 2015, Bowdy Nielson waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Nelson addressed the Council and stated he did not intentionally lie and explained his case. Sheriff Tracy asked to address the Council and was informed by Chief Wade Carpenter, according to code the only person allowed to speak during the Council meeting is the officer or their assigned counsel. Agency administrators are allowed to submit a letter and this case could be tabled until next Council meeting if he would like to submit a letter. The following motion was then made.

Motion: *Colonel Fuhr motioned to table this case until the next POST Council meeting.*
Second: *John Crowley seconded the motion.*
Vote: *The motion passed with all in favor.*

*Sheriff James Tracy returned as Chairman.

TREVOR PIERSON

Offence – BCI Violation
Category – E
Recommended Discipline – 6 month suspension
Status – Resigned Pending an IA
Agency – Utah Highway Patrol

On December 30, 2013, Trevor Pierson accessed vehicle registration information through the Bureau of Criminal Identification (BCI) while he was off duty. UHP initiated an internal investigation and a local police agency conducted a criminal investigation. Pierson resigned from the UHP on June 22, 2014. Charges were screened with a local prosecutor, but were declined. POST conducted a *Garrity* interview with Pierson. Pierson admitted he accessed BCI records to check a vehicle registration at the request of a friend and it was not for a legitimate law enforcement purpose.

On August 24, 2015, Trevor Pierson waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Christie Moren motioned to not accept recommendation and recommended 3 month suspension of Trevor Pierson's peace officer certification.*
Second: *Chief Marlon Stratton seconded the motion.*
Vote: *The motion passed with all in favor. (Colonel Daniel Fuhr recused himself)*

AUSTIN SHEPHERD

Offence – Falsifying POST Application
Category – C
Recommended Discipline – 2 year suspension
Status – N/A
Agency – N/A

On July 25, 2014, Austin Shepherd furnished alcohol to his 18 year old girlfriend at his residence. On July 28, 2014, Shepherd started attending a satellite police academy. On July 29, 2014, Shepherd submitted a verification of information form with an addendum to his POST application--there was no disclosure of the furnishing alcohol to a minor. Sometime in August 2014, Shepherd again furnished alcohol to his underage girlfriend at his residence--there was no disclosure of this incident to POST.

In October of 2014, a local police agency was conducting a pre-employment background investigation on Shepherd and discovered the furnishing of alcohol and POST application issues. POST was notified and a *Garrity* interview was conducted with Shepherd. During the interview, Shepherd admitted to furnishing alcohol to his 18 year old girlfriend on two occasions and also failing to disclose this information to POST.

On August 24, 2015, Austin Shepherd waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mr. Shepherd addressed the Council and explained his situation. When Mr. Shepherd was under investigation by POST he was concerned with the length of time the investigation was taken and the changes in the charges and recommended suspension recommendation. He has always owned up to his actions and requested a reduction in the suspension.

Motion: Executive Director Cook motioned to accept the recommended 2 year suspension of Austin Shepherd's peace officer certification.
Second: Sheriff Dekker seconded the motion.

Discussion: Director Stephenson told the Council this case did take an unusually long time and apologized to Mr. Shepherd.

Rescinded Motion: Executive Dir. Cook rescinded his motion.

Motion: Colonel Fuhr motioned to not accept the 2 year suspension and recommended a 1 year suspension of Austin Shepherd's peace officer certification.
Second: Chief Stratton seconded the motion.
Vote: The sub-motion passed with 10 in favor 1 opposed.

MICHAEL SMITH

Offence – DUI x2, Open Container
Category – D
Recommended Discipline – 2 ½ year suspension
Status – Resigned
Agency – Salt Lake Co SO

On December 25, 2012, Michael Smith was stopped by a local law enforcement agency for a red light violation and speeding. During the stop, the officer noticed that Smith was showing signs of being intoxicated. The officer and his supervisor notified three supervisors from Smith's agency who responded and took Smith and his vehicle to a hotel for the night. The next day, Smith drove to the home of his girlfriend whom he had been arguing with the previous night. Smith's girlfriend contacted the local police, who responded and met with Smith. The responding officers observed Smith showing signs of impairment and had Smith submit to a portable breath test. The result of the portable breath test was a .156 breath alcohol content. Smith was not arrested and subsequently transported by officers to a friend's home.

On January 8, 2013, Salt Lake County Sheriff's Office internal affairs conducted a *Garrity* interview with Smith. Smith admitted to driving while impaired on December 25 and 26, 2012, as well as driving with open alcohol containers. Smith was terminated from the Salt Lake County Sheriff's Office on May 15, 2013.

On February 20, 2014, Smith was arrested for driving under the influence in Michigan. Smith submitted to a breath test, which indicated he had a breath alcohol content of .240. On March 17, 2014, Smith pled guilty in a Michigan court, to an amended charge of driving while impaired.

On May 29, 2014, POST conducted a *Garrity* interview with Smith, over the phone. Smith admitted to driving with open alcohol containers on December 25 and 26, 2012, as well as driving while impaired. Smith also admitted he had been arrested in Michigan for DUI in February 2014 and had been too intoxicated to drive on that occasion as well.

Michael Smith failed to respond to the notice of agency action. On July 7, 2015, an order of default was signed by the administrative law judge and mailed to Smith.

Motion: *Chief Stratton motioned to accept the recommended 2 ½ year suspension of Michael Smith's peace officer certification.*

Second: *John Crowley seconded the motion.*

Vote: *The motion passed with all in favor.*

LAUNA J. WILLIS

Offence – Disorderly Conduct

Category – F

Recommended Discipline – Letter of Caution

Status – Still Employed

Agency – Salt Lake Co SO

On January 23, 2014, Officer Launa Willis was admitted to a local hospital after a suicide attempt involving the ingestion of prescription drugs which had been prescribed to her. Willis was “involuntarily committed” by doctors for a mental health evaluation. Willis became upset when she was informed she would have to be transported to another medical facility by ambulance. Hospital security was called to assist in the matter. A verbal exchange commenced between Willis’ family and hospital security and an on-duty uniformed officer was summoned by hospital security to assist with the situation.

While the officer was speaking with Willis’ mother, Willis interrupted and began speaking over the officer. The officer asked Willis to stop, but Willis refused. Willis then walked toward the uniformed officer and bumped into him. Willis was held back by hospital security and struggled to free herself. Willis was then taken to the ground, placed in handcuffs, and transported to another medical facility.

The officer filed charges and Willis later pled guilty to disorderly conduct, an infraction. Willis’ plea was held in abeyance until court fees were paid. In *Garrity* interviews, Willis claimed she was not in her “right mind” and said her decisions on the day of the incident were not rational.

On August 26, 2015, Willis waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *John Crowley motioned to accept the recommended Letter of Caution.*

Second: *Christie Moren seconded the motion.*

Vote: *The motion passed with all in favor.*

SCHEDULE NEXT MEETING

Next meeting will be held January 4, 2016, at 10:00 a.m. Location will be at the PSET building in Sandy.

ADJOURN

Chief Spencer Austin motioned to adjourn.

Colonel Daniel Fuhr seconded the motion.

Meeting adjourned at 11:42am.