



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

March 2012

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One of the duties of the Peace Officer Standards and Training Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these peace officers in accordance with Utah Code 53-6-211. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On March 22, 2012, POST Council convened and considered 11 cases of officer discipline.

### Case #1

Officer A, a correctional officer, was off duty and driving his personal vehicle when another vehicle passed him at a high rate of speed in a no passing zone. Both vehicles stopped and Officer A approached the driver of the other vehicle and engaged in a verbal confrontation. Officer A kicked the side of the vehicle when the other driver attempted to leave. After an investigation by a local police department, both parties involved signed citations as complaints against one another. Officer A pled guilty to disorderly conduct, an infraction. During an administrative interview with POST investigators, in which Officer A was issued a *Garrity* warning, he admitted to being involved in a verbal altercation and kicking the side of the other vehicle. Officer A signed a consent agreement recommending a letter of caution. The POST Council voted to issue a letter of caution.

### Case #2

Officer B, a correctional officer, was issued a citation for allowing a vicious animal to go at large, a class B misdemeanor. Officer B's three dogs left her yard and attacked a neighbor's dog. As a result of the dog fight, the neighbor's dog had to be euthanized. Officer B entered a plea in abeyance to a class B misdemeanor which was reduced to a class C misdemeanor. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity* warning, she admitted the dogs had gotten out of her property and attacked the neighbor's dog, resulting in the dog having to be euthanized. Officer B signed a consent agreement recommending a letter of caution. The POST Council voted to issue a letter of caution.

### **Case #3**

Officer C, a law enforcement officer with a state agency, was investigated by a local police department and issued a citation for disorderly conduct. Officer C went to a female acquaintance's house where a verbal argument ensued, resulting in notification to the local police department. The female acquaintance told Officer C to leave and when he attempted to do so, she prevented him from leaving until the local police arrived. Officer C was issued a citation for disorderly conduct, an infraction, and subsequently paid a fine for the citation. During an administrative interview with POST investigators, in which Officer C was issued a *Garrity* warning, he admitted he contacted the female at her home and engaged in a verbal altercation. Officer C signed a consent agreement recommending a letter of caution. The POST Council voted to issue a letter of caution.

### **Case #4**

Officer D, a law enforcement officer with a state agency, was hunting with friends and family when he killed a deer. Officer D's father tagged the animal (Officer D had already filled his deer tag). Officer D reported this violation during a pre-employment interview with another law enforcement agency. The party hunting and improper tagging violations were never investigated criminally and no charges were filed. During an administrative interview with POST investigators, in which Officer D was issued a *Garrity* warning, he admitted he killed a deer for his father and his father tagged the deer. Officer D signed a consent agreement recommending a three month suspension of his peace officer certification. POST Council ratified Post's recommendation and suspended Officer D's peace officer certification for three months.

### **Case #5**

Officer E, a correctional officer, was arrested for driving under the influence by a local police agency. Officer E's breath alcohol content was .097 and blood alcohol content was .10. During an administrative interview with POST investigators, in which Officer E was issued a *Garrity* warning, he admitted to drinking prior to driving and did not dispute the chemical test results. Officer E signed a consent agreement recommending a one year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer E's peace officer certification for one year.

### **Case #6**

Officer F, a law enforcement officer with a city police department, was arrested for driving under the influence by a local police agency. Officer F's breath alcohol content was .155. Officer F entered a plea of guilty to an amended charge of impaired driving. During an administrative interview with POST investigators, in which Officer F was issued a *Garrity* warning, he admitted to drinking and driving. Officer F signed a consent agreement recommending a one year suspension of her peace officer certification. The POST Council ratified POST's recommendation and suspended Officer F's peace officer certification for one year.

### **Case #7**

Officer G, a law enforcement officer with a city police department, was involved in a physical altercation with his wife. While struggling over her cell phone, Officer G attempted to pry a cell phone from her grasp and, in the process, broke one of her fingers. During an administrative interview with POST investigators, in which Officer G was issued a *Garrity* warning, he admitted to breaking his wife's finger during the altercation concerning the cell phone. Officer G signed a consent agreement recommending a two year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer G's peace officer certification for two years.

### Case #8

Officer H, a law enforcement officer with a police department, was arrested for driving under the influence by a local police agency. Officer H's blood alcohol content was .16. Officer H entered a plea of guilty to an amended charge of impaired driving. During an administrative interview with POST investigators, in which Officer H was issued a *Garrity* warning, he admitted to drinking and driving. Officer H did not respond to POST's Notice of Agency Action and an Order of Default was issued. Post recommended a two year suspension of Officer H's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer H's peace officer certification for two years.

### Case #9

Officer I, a police officer with a police department, was investigated and cited by the Division of Wildlife Resources for wanton destruction of protected wildlife. Officer I allowed his son to shoot a deer on CWMU property without possessing a permit to hunt on the private hunting area. Officer I entered a guilty plea (held in abeyance) to the charge of wanton destruction of protected wildlife. During an administrative interview with POST investigators, in which Officer I was issued a *Garrity* warning, he admitted to wanton destruction of protected wildlife. Officer I signed a consent agreement recommending a three year suspension of his peace officer certification. POST Council rejected POST's recommendation and voted to suspend Officer I's peace officer certification for one and a half years.

### Case #10

Officer J, a police officer with a police department, was investigated for shoplifting. The case was screened with a local prosecutor, but charges were not filed. During an administrative interview with POST investigators, in which Officer J was issued a *Garrity* warning, he denied the allegation he was shoplifting. Officer J was not truthful with POST investigators during the administrative interview. A hearing was held before an administrative law judge, who determined POST had met its burden of proof and ruled Officer J had committed retail theft and had lied to investigators after a *Garrity* warning. POST recommended a four year suspension of Officer J's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer J's peace officer certification for four years.

### Case # 11

Officer K, a correctional officer, was investigated and arrested for assault, domestic violence in the presence of a child, criminal mischief and unlawful detention. During an administrative interview with POST investigators, in which Officer K was issued a *Garrity* warning, he admitted to the allegations. Officer K did not respond to POST's Notice of Agency Action and an Order of Default was issued. POST recommended a three and a half year suspension of Officer K's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer K's peace officer certification for three and a half years.

For reference we have included below Utah Code 53-6-211. Please direct any questions regarding the statute or the POST investigation process to [support@utahpost.org](mailto:support@utahpost.org)

**53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.**

(1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:

- (a) willfully falsifies any information to obtain certification;
  - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
  - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
  - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
  - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
  - (f) engages in sexual conduct while on duty; or
  - (g) is dismissed from the armed forces of the United States under dishonorable conditions.
- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).
- (3) (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
- (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
- (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
- (d) (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
- (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
- (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
- (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
- (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.
- (4) (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
- (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
- (i) has a personal bias for or against the officer;
  - (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
  - (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.
- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does

not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Repealed and Re-enacted by Chapter 313, 2010 General Session