



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



March 2019

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Please note that the actions taken by the POST Council are not binding precedent.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 March 19, 2019, POST Council convened and considered 8 cases for discipline.

Case 1

Falsification of application to obtain certification

On December 11, 2018, Officer A was investigated by POST for falsifying an application to obtain certification. Officer A submitted an application to attend dispatcher training in 2014, and was subsequently certified. In 2018 Officer A submitted a second application to attend the law enforcement officer training at POST. Investigators reviewed both applications and found several discrepancies between the two applications. Officer A minimized the number of times she used marijuana and ecstasy and failed to disclose the usage of multiple illicit and prescription drugs on her dispatcher application. During an interview with POST investigators, Officer A admitted she intentionally falsified her dispatcher application but, her law enforcement application was truthful.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived her 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 two years in accordance with the disciplinary guidelines. POST Council discussed suspending Officer A's certification for one year because she was truthful in her second application. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer A's certification for one year.

Case 2

Unlawful taking of protected wildlife

On September 30, 2018, Officer B was legally hunting pronghorn in Wyoming when he laid down approximately ten feet off the road and shot a pronghorn. Officer B tried to verify the pronghorn was within his permitted hunting boundary prior to shooting the animal by looking at a map that depicted the differing

hunting boundaries and also read the proclamation. Officer B was later cited for taking wildlife outside the designated boundary and paid a fine. He was warned for shooting from a roadway.

During a *Garrity* interview with POST, Officer B did not deny shooting the pronghorn, but said he believed, at the time he shot the pronghorn, he had been hunting in accordance with Wyoming law.

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. Considering there was lack of criminal intent, POST recommended a letter of caution be issued to Officer B. Officer B and his attorney were present and spoke to the Council. After hearing POST's findings and hearing from Officer B and his attorney, the Council adopted POST's recommendation and issued a letter of caution.

Case 3 BCI violation

On July 13, 2018, Officer C unlawfully accessed BCI controlled records. The administrative investigation determined Officer C accessed her boyfriend's BCI controlled criminal history record after coworkers expressed their concerns that he might be a gang member. The investigation determined Officer C had violated departmental policy and received 16 days off without pay. An outside agency was contacted to conduct a criminal investigation. The outside agency screened the charge with the County Attorney's Office. The County Attorney's Office declined to file the charge and the outside agency closed their investigation. During a *Garrity* interview with POST, Officer C admitted she accessed her new boyfriend's criminal history record after co-workers brought concerns that he was involved with gangs.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the Notice of Agency Action. Considering the minimal nature of the offense and this may have been a lawful query had she gone through her administration, POST recommended Officer C receive a letter of caution. Officer C was present and spoke to the Council. After hearing POST's findings and from Officer C, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

Case 4 Disorderly conduct

On May 29, 2018, Officer D was intoxicated and had a disagreement with his wife about holding their infant child. Officer D left his home and went to a camper trailer that was parked on the side of his home and fell asleep. Officer D's wife woke him up and told him to come inside the house. Officer D's wife left the trailer, went back inside of their home and, out of habit, locked the front door. Officer D realized the front door was locked and used his foot or shoulder to forcefully open the front door. Officer D realized he had broken his front door, became frustrated with himself and went on a walk to calm down. Officer D and his wife denied any physical or verbal violence occurred between them.

On May 30, 2018, the case was screened with the County Attorney and Officer D was charged with commission of domestic violence in the presence of a child, intoxication and criminal mischief. On September 4, 2018, Officer D entered a plea of abeyance to an amended charge of disorderly conduct, as provided under Utah Code Ann. § 76-9-102, a class C misdemeanor.

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 there was lack of criminal intent, POST recommended Officer D receive a letter of

caution. Officer D was present and spoke to the Council. After hearing POST's findings and from Officer D, the Council ratified POST's recommendation and voted to issue Officer D a letter of caution.

Case 5 **Electronic communication harassment**

During September 2017 and October 2017, Officer E used his department issued laptop to obtain unidentified temporary telephone numbers. Officer E used the telephone numbers to send more than 100 harassing text messages to his wife and her friend. A subsequent criminal investigation disclosed Officer E used his department issued laptop to create the telephone numbers which he used to send the harassing messages. Investigators were able to link the internet protocol (IP) address from Officer E's laptop directly to the telephone numbers used to send the harassing messages.

On July 30, 2018, Officer E entered a plea of guilty to two counts of electronic communication harassment, as provided by Utah Code Ann. § 76-9-201, which were amended to class C misdemeanors.

During a *Garrity* interview with POST, Officer E said he did not remember sending the harassing text messages, but after reading the text messages, he believed he must have sent them. Officer E admitted that he has used unidentified temporary telephone numbers in the past to prevent suspects from knowing it was him calling.

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. Considering there were multiple violations, POST recommended an 18 month suspension of Officer E's. 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 issue Officer E a two and one half years suspension.

Case 6 **DUI**

On May 20, 2018, Officer F, a POST certified dispatcher, was stopped by a law enforcement officer for failing to stop before entering a roadway. During the traffic stop, the law enforcement officer observed several clues of impairment. Officer F was detained for suspicion of driving under the influence (DUI) of alcohol. The investigating officer transported Officer F to the police department and asked Officer F to submit to a chemical breath test. Officer F's breath sample measured at 0.141 breath alcohol content. Officer F was transported to the county jail and booked for DUI. On August 28, 2018, Officer F entered a plea of not guilty for the DUI charge. Officer F failed to appear for a scheduled hearing and a warrant was issued for his arrest. Officer F did not participate in the POST investigation.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F did not respond and an order of default was signed by the administrative law judge and mailed to Officer F. Considering Officer F's active warrant for this offense, POST recommended Officer F's certification be suspended for 18 months. Officer F was not present at the POST Council meeting. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer F's certification for two and one half years.

Case 7 **Retail theft**

On January 27, 2018, Officer G, an unemployed certified special functions officer, under-rang multiple items with the intention of depriving the merchant of the retail value of the merchandise. The investigating officer cited Officer G for retail theft.

On January 25, 2019, during a *Garrity* interview with POST, Officer G admitted that on three different occasions he entered a retail store and collected items he had no intention to pay full price for. Officer G took the collected items to the self-check-out and would scan one item, but put an item of greater value in the bag. Officer G explained on the first two occasions he did this with only one item, but the third time the total was just under a hundred dollars difference between what he paid and attempted to remove from the store.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G 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 there were multiple offenses, POST recommended suspending Officer G's certification for 18 months. Officer G was not present at the Council meeting. After hearing POST's findings, the Council rejected POST's recommendation and instead voted to suspend Officer G's certification for two and one half years.

Case 8 DUI and intoxication

On June 8, 2018, Officer H was stopped by the police for a traffic violation. During the traffic stop, the investigating officer determined Officer H was unsafe to operate a motor vehicle and arrested him for suspicion of driving under the influence of alcohol. The investigating officer transported Officer H to the police station and asked Officer H to submit to a chemical breath test. Officer H's breath sample measured 0.140 breath alcohol content. Officer H was issued a citation for DUI and then released to a responsible party.

On June 19, 2018, Officer H was contacted by police. A county constable attempted to evict Officer H from his residence and Officer H refused to comply with the constable's court order. The constable contacted local police for assistance. When the officer arrived, he observed Officer H to be extremely intoxicated. The officer asked Officer H several times who he could contact for a ride from the location, but Officer H would not cooperate. Officer H exited the residence, went to his vehicle and was arrested after starting his vehicle with a remote starter. A charge of intoxication was filed on Officer H with the County Attorney's Office.

On October 1, 2018, Officer H pled guilty to one count of impaired driving under Utah Code Ann. 41-6a-502.5, a class B misdemeanor. On October 17, 2018, Officer H's bail money was surrendered in lieu of paying a fine after he was arrested for a warrant that was issued because he failed to appear for the original intoxication charge.

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. Considering the multiple incidents, POST recommended Officer H's certification be suspended for two years. Officer H was not present at the Council meeting. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer H's peace officer certification for two and one half years.

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.