



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



June 2019

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One of the duties of the Peace Officer Standards and Training (POST) Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these individuals in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the Council makes help to define acceptable and unacceptable conduct for Utah peace officers and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct. This bulletin is intended to be used as a training document; therefore, it is the policy of POST not to use the names of individual officers or agencies, even though that information may be part of the public record.

On June 4, 2019, POST Council convened and considered 8 cases for discipline.

### **Case 1 Unlawful taking of protected wildlife**

Officer A was investigated for shooting an elk on a cooperative wildlife management unit (CWMU). Officer A was hunting elk in a limited area for which he had a valid hunting permit. Officer A saw a bull elk and then shot the animal. Officer A did not observe any signs on the fenced property before he shot the animal. After he shot the elk, Officer A observed a sign on a gate that stated the property was a CWMU. Officer A knew at that moment he was not within his limited area boundary and, therefore, committed a violation. Officer A contacted DWR and requested they respond to his location. The DWR officer conducted an investigation and cited Officer A for a big game wildlife rule violation, which is a non-criminal infraction. Officer A paid a \$180.00 fine over the phone and reported his conduct to his employing agency.

During *Garrity* interviews with his department and POST, Officer A admitted he shot the elk on the CWMU property, which was not covered by his limited entry permit. Officer A said he realized there was an issue with the location of the elk after he saw the CWMU sign posted on the gate. Officer A said he reported his mistake to the DWR immediately. Officer A was given a written letter of reprimand from his department for policy violations and retained his employment.

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 there was lack of criminal intent and Officer A promptly self-reported his conduct, POST recommended a letter of caution be issued. Officer A was present and spoke to the Council. After

hearing POST's findings, and hearing from Officer A, the Council ratified POST's recommendation and voted to issue Officer A a letter of caution.

## **Case 2 Assault**

Officer B was criminally investigated for assault. The investigation disclosed Officer B responded to an unconscious male subject near a sidewalk. Officer B located the unconscious male and performed a sternum rub technique on the individual. After the second sternum rub and a subsequent slap on the individual's cheek, the individual began to kick Officer B in the leg. Officer B stepped back and then re-engaged the individual by saying "Hey asshole" as he delivered one closed fist strike to the individual's face. The individual was found to be 16 years old and was later allowed to leave the area. Officer B was found guilty by a jury of assault, a class B misdemeanor.

During *Garrity* interviews with his agency and with POST, Officer B said the 16-year-old kicked him pretty hard in the lower part of the leg three or four times. Officer B said he had his back to a busy road and he was concerned he may be kicked into traffic. Officer B described the strike to the 16-year-old as a loose, closed fist tap to the skin.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the Notice of Agency Action. POST recommended the suspension of Officer B's certification for a period of two years. 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 ratified POST's recommendation and voted to suspend Officer B's certification for two years.

## **Case 3 Sexual conduct on duty**

Officer C was investigated by his department for an allegation of sexual conduct while on duty. During the department interview, Officer C admitted to having an affair with a court clerk and having relationships with two other deputies from that department. Officer C admitted to kissing the female employees and grabbing their buttocks while on duty. Officer C said he engaged in kissing and a little "grab-assing."

Officer C admitted to texting female employees inappropriate content, which would be considered "sexting." Officer C's department downloaded Officer C's personal cell phone content and verified the sexually explicit text messages and photographs. Officer C's department located two photographs Officer C while partially in uniform and exposing his genitals, which appeared to be taken at the correctional facility. On September 18, 2018, Officer C's employment was terminated with his department.

During a *Garrity* interview with POST, Officer C said his "trademark move" is to grab the buttocks with both hands to pull the individual closer to him while he kisses the individual. Officer C admitted he grabbed one of the deputy's buttocks, more than once, while passionately kissing her at work.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the Notice of Agency Action. POST recommended a three year suspension of Officer C's peace officer certification as prescribed in POST's disciplinary guidelines. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer C's certification for three years.

**Case 4**  
**DUI, open container, alcohol restricted driver**

Officer D was criminally investigated for DUI. The investigation disclosed Officer D was stopped, while operating a motor vehicle, for speeding. During the traffic stop, Officer D was arrested for driving under the influence of alcohol. During the investigation, it was discovered Officer D was an alcohol restricted driver with a suspended driver license. During a subsequent search of Officer D's vehicle, a partially consumed bottle of vodka was located. The investigating officer transported Officer D to the police department and asked Officer D to submit to a chemical blood test. The blood test results were later determined to be 0.08 BAC. Officer D failed to appear for a scheduled court hearing and a warrant was issued for his arrest.

Officer D did not participate in the POST investigation. POST discovered Officer D had a previous suspension of his certification from the POST Council.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D failed to respond to the Notice of Agency Action and an Order of Default was signed by the administrative law judge and mailed to Officer D. Considering Officer D's certification was previously suspended by the POST Council, he had a suspended driver license at the time he was driving, he had an active arrest warrant during the POST investigation for this incident, and multiple violations, POST recommended Officer D receive a maximum suspension for this category—a 2 ½ year suspension of his certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer D's certification.

**Case 5**  
**Reckless endangerment**

Officer E was seated in the passenger seat of a golf cart at the correctional facility where he was assigned to work when he and another officer witnessed an inmate walking between two buildings during a non-movement time. The inmate was approximately 50 feet away when the officers started driving toward the inmate. The other officer steered the golf cart toward the inmate while Officer E pressed on the accelerator. As the officers neared the inmate, Officer E let off of the accelerator and the other officer applied the brakes, but did not come to a complete stop before striking the inmate with the golf cart. A criminal investigation determined the golf cart skidded for approximately eight feet before colliding with the inmate. The investigation also found that Officer E's conduct was reckless and charges were filed against him for reckless endangerment. The reckless endangerment charge was later dismissed; however, Officer E was charged with reckless driving, a class B misdemeanor, and unlawful motor vehicle use on a public or private roadway, a class C misdemeanor, in the local justice court. Officer E entered a plea in abeyance to both charges.

During *Garrity* interviews with his agency and POST, Officer E admitted to pressing the accelerator on the golf cart during the incident. He also admitted his conduct was unprofessional and endangered the safety of the inmate, but said he did not intentionally hit the inmate and said it was an accident.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E failed to respond to the the Notice of Agency Action and an Order of Default was signed by the administrative law judge and mailed to Officer E. POST recommended revocation of Officer E's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer E's certification.

**Case 6**  
**Willful falsification of any information to obtain certification**

Officer F was investigated for falsifying information to obtain a POST certification. Officer F documented on his POST application he used marijuana twice with the last date of use listed as August 2, 2012. While attending the academy, Officer F filled out a pre-employment background packet for a local agency on November 5, 2018. Officer F disclosed on the pre-employment background packet he used marijuana four times with the last date of use listed as May of 2016. Officer F graduated from the academy on December 6, 2018. POST was made aware of the discrepancy and initiated an investigation.

During a *Garrity* interview with POST, Officer F admitted to using marijuana four times. Officer F said his last date of use of marijuana was May of 2016. Officer F admitted he did not include on his POST application that he smoked marijuana one additional time and transported a marijuana edible brownie out of state and then shared and ate the brownie with a friend. Officer F said he did not recall the two most recent instances of marijuana use until he filled out the pre-employment background packet on November 5, 2018.

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

### **Case 7 Disorderly conduct**

Officer G was moving her property out of the home she shared with her husband. Officer G had taken most of the property out of the home including a PlayStation. Officer G was backing her vehicle out of the drive way when her husband got upset and took the PlayStation out of the vehicle. Officer G stopped the vehicle and struggled with her husband for possession of the PlayStation. During the struggle, Officer G and her husband fell to the ground breaking the PlayStation and ripping the shirt her husband was wearing. A witness called police to report the disturbance. Officer G was issued a citation for disorderly conduct. Officer G entered a plea of abeyance to a charge of disorderly conduct, an infraction.

On March 13, 2019, during a POST *Garrity* interview with Officer G, she admitted she struggled with her husband to gain possession of the PlayStation. Officer G said her husband's shirt was torn and a piece of the PlayStation was broken during the struggle.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G 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 suspending Officer G's certification for three months. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer G's certification for three months.

### **Case 8 Criminal mischief**

Officer H was criminally investigated for criminal mischief. The investigation disclosed Officer H legally entered the residence of his fiancée. While inside the residence, Officer H accessed a tablet belonging to his fiancée and read electronic messages between her and another male. Officer H became angry and destroyed property valued just under \$500. Officer H immediately felt remorse for what he had done and contacted dispatch to make them aware of what he had done.

On December 12, 2018, during a POST *Garrity* interview, Officer H said he became angry after reading text messages between his fiancée and another male and admitted he broke multiple items in his fiancée's residence by hitting them with a hammer. The fiancée declined to press charges; therefore, no charges were filed.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H failed to respond to the Notice of Agency Action. An order of default was subsequently signed by the administrative law judge and mailed to Officer H. POST recommended Officer H's certification be suspended for two years. Officer H was present at the Council meeting and spoke to the Council. After hearing POST's findings, and hearing from Officer H, the Council rejected POST's recommendation and voted to issue Officer H a letter of caution.

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*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](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 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.