



Integrity Bulletin

Volume 16

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IDAHO PEACE OFFICER STANDARDS AND TRAINING

Special Points of Interest

- **Page 1**, Council's Code of Ethics
- **Page 3**, IADLEST Model Policy
- **Page 3**, Decertification Statistics
- **Page 3**, Decertification Actions
- **Page 5**, Moral Turpitude: Part III
- **Page 6**, Decertification Types
- **Page 7**, POST Council Guidance
- **Page 8**, Professional Articles
- **Page 8**, What Would It Take

Note From the POST Administrator

This 2013 edition of the POST Integrity Bulletin will focus on the Code of Ethics for law enforcement officers. We have done our research to assist Idaho's law enforcement agencies and officers, alike, in acquiring additional knowledge of professionalism. We hope the information herein will bring attention to your ability to deter official misconduct; improve the public perception of Idaho's patrol, detention, correctional, probation, and juvenile officers; and promote responsible, ethical discourse within your agency or department.



POST Council's Code of Ethics



During 2012, the POST Council filed emergency rulemaking to amend the POST IDAPA rules regarding the Code of Ethics and Code of Conduct. The Code of Ethics and Code of Conduct were repealed from IDAPA 11.11.091, and replaced with a revised POST Council Code of Ethics under IDAPA 11.11.063. The revised rule made slight changes to the wording of the former Code of Ethics; in replacing the word "police" with the words "law enforcement" The POST Council's Code of Ethics was adopted to provide moral and professional guidance to all officers employed by

Idaho law enforcement agencies, and as presented under Section 19-5101 (c), Idaho Code, the definition of law enforcement profession includes "agencies providing any and all activities pertaining to crime prevention or reduction, and law enforcement including police, courts, prosecution, corrections, probation, rehabilitation, and juvenile delinquency."

Under IDAPA Rule 11.11.01.063, "each applicant shall attest that he has read, understands, and will abide by the POST Council's Code of Ethics as standards of professional conduct." Through the passage of Section 19-5101(c) and IDAPA Rule 11.11.01.063 by Idaho's Legislature, the POST Council's Code of Ethics applies to all Idaho POST Academy graduates and all individuals holding POST certifications.

The POST Council's Code of Ethics provides a legal scheme for Idaho's law enforcement profession to maintain solidarity in personal, public and professional expectations, and in conduct and performance as servants to our communities.

Decertification Matters:

Murder	Pg 3
Misuse Public Monies	Pg 3
Conduct With Minor	Pg 4
Credit Card Fraud	Pg 4
Computer Misconduct	Pg 4
Sex & Untruthfulness	Pg 4
Stalking & Theft	Pg 4
Misdemeanor	Pg 4
Sex With Informant	Pg 9
Untruthfulness	Pg 9

(Continued on Page 2)

POST Council's Code of Ethics, *(Continued from page 1)*

The POST Council Code of Ethics evolved from the Law Enforcement Code of Ethics established by the International Association of Chiefs of Police (IACP) in 1957. That Code has a deep and rich tradition in the community state and local law enforcement.

In Idaho, swearing to the POST Council Code of Ethics is a statement of purpose and means. It is to be followed and strived for in our personal and professional responsibilities. For those who choose not to follow the standards outlined within the Code's provisions, POST Council has set forth rules and process to decertify officers violating the Code's provisions, and has included additional associate standards of professional conduct provided in IDAPA 11.11.091.



Fifty years ago, the U.S. Supreme Court wrote opinions that held law enforcement officers to a higher standard of conduct than other professions and the citizens we serve.

Our nations' courts have commented upon the words of the Code of Ethics in many cases. A sampling of some of the dialogue courts of law have provided citing the Code of Ethics include:

"Where the operation of the laws are involved, the mere appearance of impropriety may sufficiently threaten the integrity of our public institutions so as to justify an absolute ban on certain conduct . . . The paramount nature of this interest has been recognized by the legislature which has provided that a peace officer's certification may be revoked . . ."

". . . Although law enforcement officers have an obligation to ferret out crime, they also have a duty, shared with all in the administration of justice, to 'respect the constitutional rights of all men to liberty, equality, and justice.'" [Law Enforcement Code of Ethics].

Each new court decision on the code of ethics impacts our law enforcement profession. "The courts have shown the code is a solitary constant that can stabilize all challenges towards improper law enforcement behavior. The POST Council's Code of Ethics has the ability to guide officers to successful careers, while they carry out their responsibilities as public servants and defenders of state and federal constitutions."



Advancing the position of POST Council, the Code of Ethics states:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

Decertification Actions

Incident #1 Felony Conviction Murder

A former Patrol Deputy was arrested and charged with the strangulation murder of his ex-wife. He was subsequently found guilty of First Degree Murder; sentenced to a of 25 years in prison.

Violation: POST IDAPA Rule 11.11.01.055.02(e).

Incident #2 Felony Conviction Misuse of Public Funds by a Public Employee

A former Communication Specialist was arrested for Misuse of Public Monies by a Public Employee, a felony under Idaho Code. He pleaded guilty and was sentenced to 90 days of confinement, with 60 days suspended, fined and placed on supervised probation for 42 months. He was also ordered to pay restitution of \$3,096.

Violation: POST IDAPA Rule 11.11.01.055.02(e).

POST Decertification Statistics CY 2011

Of the forty-six (46) decertification final actions by the POST Council and staff in 2011, the breakdown shows:

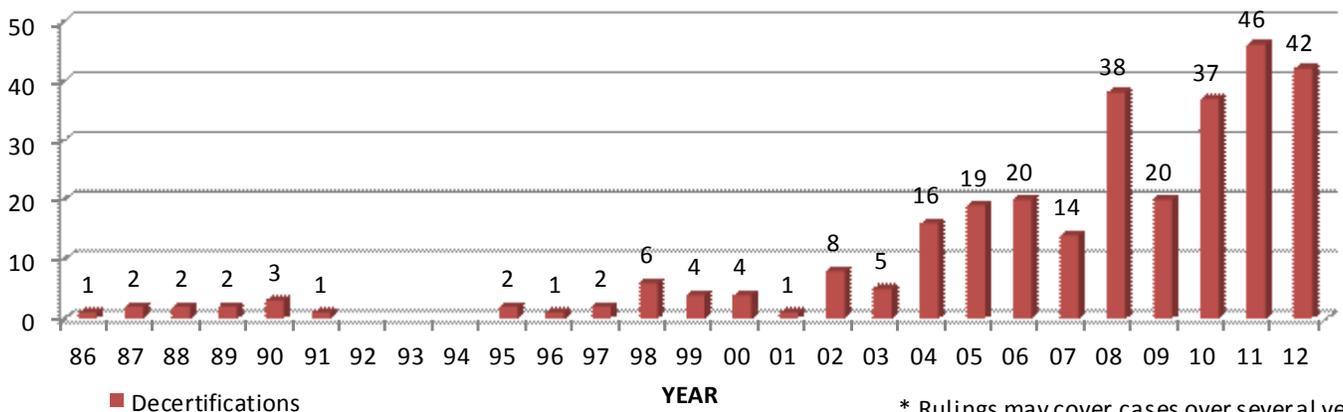
- One (1) case from 2007
- One (1) case from 2008
- One (12) case from 2009
- Eight (22) cases from 2010
- Twenty (10) cases from 2011
- # of felony convictions: 5
- # of cases where officer stipulated: 31
- # of cases where officer defaulted: 7
- # of cases went to Council evidentiary hearing: 4*
- (* 1 hearing led resulted in no-decertification)

POST Decertification Statistics CY 2012

Of the forty-two (42) decertification final actions by the POST Council and staff in 2012, the breakdown shows:

- One (1) case from 2009
- Eight (8) cases from 2010
- Twenty (20) cases from 2011
- Fifteen (15) cases from 2012
- # of felony convictions: 4
- # of cases where officer stipulated: 29
- # of cases where officer defaulted: 6
- # of cases went to Council evidentiary hearing: 3

Decertifications Rulings Per Year*



Decertification Actions (Continued from Page 3)

Incident #3 Felony Convictions Two Counts of Felony Conduct with a Minor Under Sixteen

A former Correction Officer was charged with five counts of Lewd Conduct with a child under 16. Three counts were dismissed after which the officer pled guilty to the remaining two counts: Sexual Abuse of a Child under 16, and Lewd Conduct with a Child under 16; both felony crimes. He was sentenced to a minimum of 10 years and an indeterminate term of 25 years in prison on each count.

Violation: POST IDAPA Rule 11.11.01.055.02(e).

Incident #4 Felony Conviction Credit Card Fraud

A former Detention Deputy stole an inmate's credit card and then used it three times to put gas in his personal vehicles. He then disposed of the credit card. On multiple occasions, he had an agency credit card and used it to put gas in his personal vehicles; then returned the card to the jail to avoid being caught. He was charged with one count of credit card fraud and one count of misuse of public money, both felony counts. He pleaded guilty to credit card fraud. He was sentenced to a term of two years fixed and three years indeterminate in the custody of the Department of Corrections.

Incident #5 Misdemeanor Conviction

A former Correction Officer was convicted of Misdemeanor Domestic Violence without Traumatic Injury. During the decertification investigation, the officer did not wish to be interviewed and voluntarily signed a stipulation forfeiting her certification.



Incident #6 Inappropriate Sexual Encounters And Untruthfulness During IA Investigation

A former Patrol Officer was under investigation for allegations of inappropriate sexual encounters with several women and providing alcohol to one female under the age of 21. During the employer's internal affairs investigation, the officer was found to be untruthful and in violation of several of the agency's policies and procedures. He resigned from the agency. During the decertification investigation, he did not contest the internal investigation results and he voluntarily signed a stipulation forfeiting his certification.

Incident #7 Stalking, Theft, and False Information During IA Investigation

A former Patrol Officer was under decertification investigation for allegations that he had been stalking another officer and, thereafter, lied or gave misleading information during an internal affairs investigation. Furthermore, during the IA investigation information surfaced alleging he illegally entered a vehicle and committed theft. The officer voluntarily agreed to his decertification pursuant to POST IDAPA Rules 11.11.01.091.03, 11.11.01.091.04 and 11.11.01.091.05, and signed a stipulation forfeiting his peace officer certification.

Incident #8 On-Duty Misconduct

A former Patrol Officer admitted using a department computer to watch pornography and to conduct personal business. The officer voluntarily agreed to his decertification pursuant to POST IDAPA Rules 11.11.01.091.03 and 11.11.01.091.04, and signed a stipulation forfeiting his peace officer certification.

(Continued on Page 9)

“Moral Turpitude” — Part III: POST Council Action



“No one is compelled to choose the profession of a police officer, but having chosen it, everyone is obliged to live up to the standard of its requirements.”

— *President Calvin Coolidge*

In this third installment on moral turpitude, we are reporting on the POST Council’s action in assigning a subcommittee of the decertification committee to study the issue of moral turpitude. The subcommittee’s goal to present a recommendation to the POST Council, to share with agency administrators, as a proposal to define the POST employment character criteria of “moral turpitude” for the Idaho law enforcement officers. The task has been difficult.

The subcommittee has drafted a proposal that should satisfy the POST Council’s goal and meet with consensus by Idaho agency administrators.

The subcommittee consists of Sheriff Gary Raney (Chair), Chief Greg Moon, Deputy Attorney General Paul Panther, with assistance by Ada County Assistant Attorney Jana Gomez and POST Administrator William Flink.

The following underlined text provides the draft moral turpitude language the subcommittee is proposing:

054. CHARACTER.

The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. “Moral turpitude” is conduct that is contrary to justice, honesty, or morality. BLACK’S LAW DICTIONARY 1030 (8th ed. 2004). The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct that which might endanger the safety and welfare of the public.

An applicant may be rejected who has committed any act involving moral turpitude, even though the applicant has never

been charged by a law enforcement agency for such act. Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution.

Notes From Gary Raney & Ada Co. Asst. Atty. J. Gomez:

What procedure should be required when an agency head knows or thinks that an applicant has committed an act involving moral turpitude? Should it follow the procedure designated under “Criminal Record”:

If an applicant committed any act involving moral turpitude, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the act, recommends approval. The Division Administrator shall have the discretion to refer the application to POST Council.

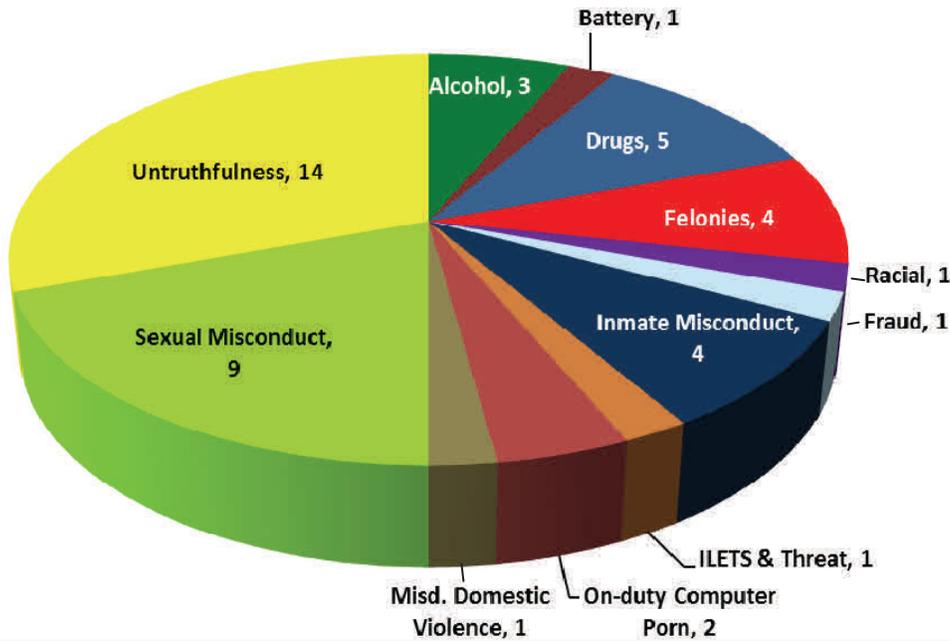
Should any time limits as to when the act occurred be included? For example, if the act occurred fifteen or more years ago, this rule cannot be a basis for rejecting an applicant.

The original IDAPA rule, above, does not appear to require that a person’s act of moral turpitude rise to the level of a crime. Thus, I think this gives POST more leeway in deciding which acts involve moral turpitude and in rejecting an applicant on the basis of moral turpitude, without necessarily needing to resort to analyzing whether the act, if charged, would have constituted a crime involving moral turpitude (CIMT). The categorical and modified categorical approaches only apply when one is analyzing whether a crime was a CIMT. Accordingly, if the act involving moral turpitude does not rise to the level of a crime, then POST would have more discretion in rejecting an applicant on the basis of moral turpitude.

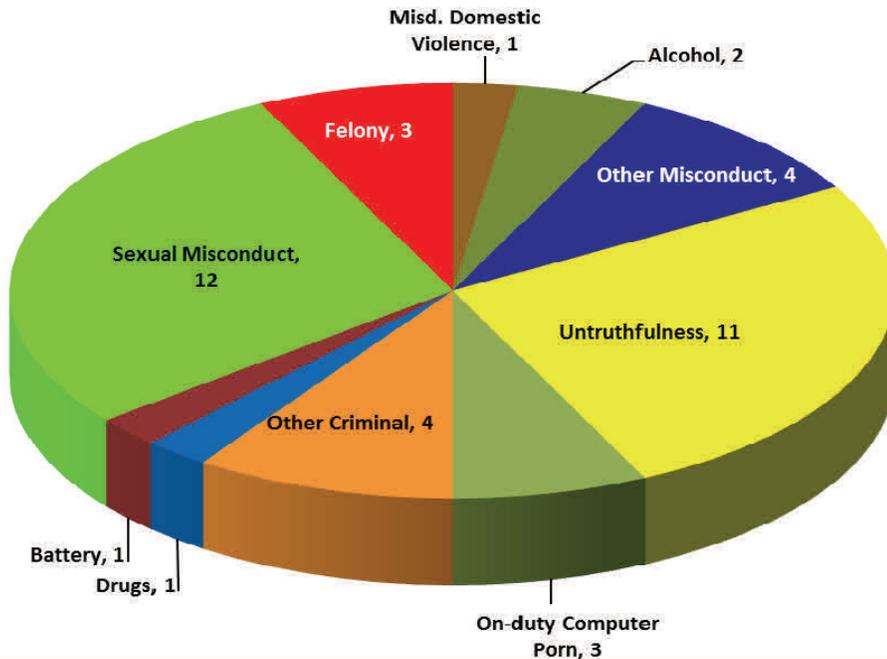
POST Council and the administrators of the various Idaho law enforcement agencies will be provided the opportunity to consider the conduct or crimes that courts have found constitute moral turpitude, and give their opinion about which acts best define “moral turpitude” for Idaho’s law enforcement profession.



2011 POST Decertification Actions



2012 POST Decertification Actions



Survey: Idaho Decertification Cases

POST recently conducted a study of the 271 POST Council decertification case actions taken since 1986, and the cause of actions in decertification cases filed since 2000. The findings of the study provide the reader with an interesting comparison of employer and POST Council actions. The average number of years as an officer when decertifica-

Types of POST Decertification Actions

2006—2012.

Since 2006, the following is a preliminary synopsis of the data revealed as cause of decertification cases:

1. (10) Felonies
2. (10) Misdemeanors
3. (48) False statements by officers or false information was number one leading cause leading to decertification.
4. (44) Sexual misconduct accounted for the second leading acts of officer decertification actions
5. (8) Drugs
6. (8) DUI
7. (3) Other Alcohol
8. (2) Murder
9. (3) Excessive Force
10. (4) Assault
11. (9) Domestic Violence
12. (3) Inmate Sex
13. (2) Inmate Battery
14. (5) Inmate Misconduct
15. (3) Hunting Violations
16. (2) Conduct Unbecoming
17. (5) Insubordination
18. (21) Other Misconduct



POST Council Meets To Provide Guidance On Decertification Cases

At the October 2012 meeting, the POST Council, established a Standards Committee to be the focus group to review issues with the review of current POST standards and the development of new proposals for standards.

The Committee held its first meeting on December 17, 2012, to discuss the updated information on the initiation of decertification actions that Sheriff Gary Raney brought before the Council at the Council's Special Meeting in November. During the meeting, the committee members acted to develop a new process to include agency leaders in the initial decision-making whether or not to open a decertification investigation. This process would be included if the employing agency contested the POST investigative action into an employed officer's alleged violation of the POST Council's Code of Ethics or other standards of professional conduct. The process would allow an independent review panel, consisting of law enforcement agency heads, to consider the allegation against the officer and the employing agency's argument against POST initiating an investigation into the matter. The review panel would be the final arbiter in the matter.

Also included in the Committee's deliberations, was a suggested process, where the case was contested by the employer, that would allow the agency head to review the POST investigative findings and provide input regarding the conclusion of the POST investigation. This provision would allow the employing agency to comment on the accuracy of the findings of the POST investigation, and provide the POST Administrator with any conclusions that would clarify, nullify, add to, or correct the POST investigative record. After the employing agency's review, if the investigation findings are still contested, the employing agency head would have an opportunity to have the matter reviewed by an independent review panel for a decision on whether or not POST should take the investigation to a hearing.

The Standards Committee is expected to meet again prior to the February 7, 2013 POST Council meeting to review proposed language modifying POST's investigative process.



MORE TRAINING ON PROFESSIONALISM

POST is developing a new series of distance learning programs dedicated towards enhancing information and knowledge on law enforcement ethics, state decertification actions and the national database on decertified officers. The programs are being developed in thirty (30) minute episodes. Each episode will address a separate concept on ethical conduct or professionalism in law enforcement. The first of these 30-minute POST on-line ethics presentations, *Ethics 1-Character*, has been installed on our distance learning portal. When completed, the training attained will be automatically recorded in the POST training records system and the user will be able to print out his/her certificate of completion for a personal training record.

In addition, POST is developing additional basic training scenarios to be provided within our academies to emphasize common ethical dilemmas that officers face during their careers. The scenarios will be written or role-played, and are being prepared to provide officers a stronger foundation for the future.

POST Website:

Since our last edition of the Integrity Bulletin, the POST website has included three new areas devoted to law enforcement ethics and professionalism.

In the [Professional Standards portal](#), we have included: (1) a portal for the POST Basic Training Curriculum Committee on Ethics and Professionalism; (2) statistics regarding historical data about all of our decertification investigations and; (3) IDAPA rule amendments passed in the 2012 Idaho Legislature; and POST Council's emergency rulemaking to the decertification cause of action and due process, in part, to correct the 2012 rulemaking process. Additionally, the POST website has included a PATC webinar "*Brady & Giglio: - Liability In Law Enforcement*" presented free of cost to all Idaho law enforcement officers. Soon, POST will open a new features that will allow Idaho officers to share their recommendations for ethics training enhancements for officers in Idaho.

These initiatives are made to generate better communications between POST and our Idaho law enforcement community.



Articles/Books Advocating Law Enforcement Professionalism

“Research In Brief: Misconduct by Experienced Officers,” By Philip M. Stinson, JD, PhD Assistant Professor, Criminal Justice Program, Bowling Green State University; and John Liederbach, PhD, Associate Professor, Criminal Justice Program, Bowling Green State Univ., *International Association of Chiefs of Police*, November 2012

“The Power of Police Civility ,” Lt. Andrew Borrello, *FBI Bulletin*, August 2012, <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/august-2012/focus-on-ethics>

“Law Enforcement—Do It J-U-S-T-I-C-E,” G.B. Jones, M.A.P.A., M.A., *FBI Bulletin*, October 2012, <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2012/notable-speech>

What would it take to persuade you to abandon your values?

Alabama A former Alabama Police Sergeant charged with a five-count Civil Rights indictment with offenses in connection with the aggravated sexual assault of a Tuscaloosa woman in 2011. The Sergeant is charged with violating the constitutional rights of the woman by sexually assaulting her in March 2011. The indictment also charges the Sergeant with obstruction of justice based upon misleading statements that he provided to law enforcement officers during the investigation of the sexual assault allegations. The Sergeant faces a possible maximum sentence of life in prison and a fine in excess of \$1 million.

California A former California police officer was arrested on charges of deprivation of civil rights for sexually assaulting a woman while transporting her to jail and of trying to conceal his criminal conduct. He was charged with a 3-count indictment alleging he sexually assaulted the woman, resulting in bodily injury, aggravated sexual assault and kidnapping. The indictment also alleges he obstructed justice by warning the woman not to report the crime, and that he caused a police dispatcher to falsely

record his location in the dispatch logs in an effort to conceal his offense. If convicted, the officer could face life in prison and a fine of \$250,000 on the deprivation of civil rights charge, and 20 years in prison and a fine of \$250,000 on the obstruction and false-entry charges.

Miami U.S. Customs and Border Patrol Officer was arrested after having been indicted by a federal grand jury on charges of deprivation of civil rights and abusive sexual contact. The six-count indictment charges Morales with three felony counts of abusive sexual contact and three misdemeanor counts of deprivation of civil rights. The indictment alleges that on various dates in January 2011, the officer, while working as an officer with U.S. Customs and Border Patrol at the Miami International Airport, committed civil rights offenses and abusive sexual contact by the non-consensual groping of the breasts of three separate women, who were in the custody of Customs and Border Patrol. If convicted, the officer faces a maximum sentence of 2 years in prison for each count of abusive sexual contact and 1 year in prison for each count of deprivation of civil rights.

Florida Former Alabama Police Officer was arrested on charges of stealing money from motorists on Interstate 65 and subsequently trying to conceal his criminal activity. The officer was charged in an 8-count indictment returned by a federal grand. He is charged with one count of conspiracy against rights, four counts of deprivation of rights under color of law, and three counts of obstruction of justice. The indictment alleges between April - July 2009, he conspired with a fellow officer to stop vehicles under the guise of legitimate law enforcement activity and to steal cash from drivers and passengers in violation of their constitutional right to be free from unreasonable seizures of property. The indictment further alleges four specific thefts in which he aided and abetted by the other officer, stole between \$100 and \$200 per victim. In addition, the officer is charged with obstructing justice on three separate occasions. According to the indictment, he provided a fabricated story to a law enforcement official and sought to prevent the communication of information relating to these offenses to law enforcement officers.

If convicted, the officer could face 10 years in prison and a fine of \$250,000 on the conspiracy charge; one year in prison and a fine of \$100,000 on each of the deprivation of rights charges; and 20 years in prison and a fine of \$250,000 on each of the obstruction charges.



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INTEGRITY BULLETIN
A PUBLICATION OF POST'S
OFFICE OF PROFESSIONAL RESPONSIBILITY

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The Idaho Legislature formally established the Idaho Peace Officers Standards and Training Council (POST Council) for the purpose, among others, of setting requirements for employment, retention, and training of peace officers, including formulating standards of moral character, and other such matters as relate to the competence and reliability of peace officers. The POST Council also has the power to decertify peace officers upon findings that a peace officer is in violation of certain specified standards, including criminal offenses, or violation of any of the standards of conduct as established by the Council's Code of Ethics. Idaho Code also requires that when a peace officer resigns his employment or is terminated as a result of any disciplinary action, the employing law enforcement agency shall report the employment action to the POST Council within 30 days.

IDAPA 11, Title 11, Chapter 01

POST's Office of Professional Responsibility

The Office of Professional Responsibility (OPR) is one of three bureaus within the Idaho Division of Peace Officer Standards and Training. OPR is staffed by OPR Manager Mike Dillon, former FBI Supervisory Special Agent, and twelve contract investigators from throughout the State of Idaho. All of the investigators are former federal, state and local law enforcement officers. POST investigators endeavor to complete thorough, competent investigations to ensure the entire story is presented during the reporting of allegations against peace officers and others we certify. It is a mainstay of POST's mission to maintain an ethical and lawful law enforcement profession for the people of Idaho.



Decertification Actions

(Continued from Page 4)

Incident #9 **Sexual Misconduct with Confidential Informant During Drug Investigation**

A former Patrol Officer was alleged to have engaged in a romantic relationship with a documented, female confidential informant (CI) who was involved in an active high-profile drug investigation. During his department's internal investigation and disciplinary board hearing, the officer admitted to having the affair with the CI while the drug investigation was ongoing. The officer resigned in lieu of termination. During the POST decertification investigation, the officer voluntarily agreed to his decertification pursuant to POST IDAPA Rules 11.11.01.091.03 and 11.11.01.091.04, and signed a stipulation forfeiting his peace officer certification.

Incident #10 **False Statements Regarding Fellow Officers and Untruthfulness**

A former Patrol Deputy engaged in spreading false and malicious rumors against two fellow deputies, indicating they were having an adulterous sexual affair. When interviewed during an agency internal investigation, the former deputy was less than forthcoming, however, later in the interview, he admitted to spreading falsehoods. During the decertification investigation, additional falsehoods by the former deputy surfaced, defaming another member of the agency as a "pill popper, an alcoholic, and cheating on his wife." The former deputy told the POST investigator that he really did believe that two deputies were having an adulterous affair. This assertion contradicted his previous IA investigation interview that he did not have any reasonable suspicion that an affair was going on. During the legal process of the decertification, the former deputy voluntarily agreed to his decertification pursuant to POST IDAPA Rules 11.11.01.091.03 and 11.11.01.091.04, and signed a stipulation forfeiting his peace officer certification.