



Gypsy Cops in Utah—Your Department’s Legal Right to Speak Up

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The national problem of “gypsy cops” is not a new one. Toxic officers engage in misconduct in one agency after another over the course of a career and, in the meantime, cost thousands in lawsuits and inflict damage to agency reputation and morale along the way. These officers leave one agency where they are widely known to be a serious problem only to find a new home with another agency where the behavior continues until it is time to move again.

Agencies across Utah and across the nation are struggling to recruit qualified applicants to serve as law enforcement officers. This presents an opportunity for unqualified men and women to gain employment because agencies need “warm bodies”. This is particularly true when the applicant happens to already be a certified officer.

One of the most significant factors aiding gypsy cops in finding employment in a new agency is the unwillingness of past agency representatives to divulge facts that would disqualify the officer in the eyes of any reasonable background investigator or agency leader. Serious problems—in the form of frequent citizen complaints, disciplinary write-ups and suspensions—are often documented but not shared with new agencies considering hiring these officers.

So, why are agencies failing to cooperate with other departments engaged in background investigations on these officers? One of the most common refrains is that sworn personnel refuse to cooperate based on the advice of Human Resources or attorneys. **There is an overwhelming, though often vague, fear that any cooperation whatsoever will result in costly lawsuits filed by the toxic officer in question.**

However, **in the state of Utah, there is an employer immunity statute that protects agencies from being held liable for communicating past performance issues to a potential employer *so long as* those statements are truthful and made in good faith.**

The simple purpose of this legal article is to bring to the attention of agency leaders—and those who advise them—that this employer immunity statute is currently in place in the State of Utah. This article will briefly explain what this Utah statute means for law enforcement leaders throughout the state who

would like to speak up in an effort to prevent gypsy cops from finding new law enforcement positions but are hampered by often-misplaced concerns regarding legal liability.

A Right to “Speak Up” Under Utah Law

Employer immunity statutes at the state level vary dramatically. In Utah, the immunity is fairly straightforward in that truthful statements given in good faith are legally protected.

Under Utah law:

(1) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

(2) There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee.

(3) The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with intent to mislead.

(4) For purposes of this section “actual malice” means knowledge that the information was false or reckless disregard of whether the information was false.[1]

The other sections of the code referenced in Section 2 relate to discrimination based on gender, race, etc., unlawful practices pertaining to credit checks and rules that apply only to educational institutions. Therefore, the immunity granted to law enforcement agencies as employers is *not* fundamentally affected by this section.

Knowing Utah Law and Addressing the Problem of Gypsy Cops

Utah Code Ann. § 34-42-1 is a statute that agency leaders, city and county attorneys, HR professionals and background investigators should become familiar with as they look to hire officers from outside agencies. Background investigators should consider informing representatives from other agencies about these statutes when inquiries regarding past employment only result in “he worked here from 2009 until 2019, and that’s all I can tell you”. Furthermore, agency leaders should keep these statutes in mind when making the crucial decisions as to whether or not to divulge to another agency facts illustrating that the officer they are considering hiring is not fit to serve.

Law enforcement is a high liability profession. Any thoughts of eliminating all liability are misguided. Managing reasonable liability should be the goal rather than eliminating all liability in light of the fact that liability can never be eliminated—especially if law enforcement professionals are actively engaged in activities which simultaneously serve to improve the safety of the community while increasing the risks that lawsuits (founded or unfounded) may result.

As agency leaders in Utah consider their options and their ethical obligations when contacted by other departments that are considering hiring toxic officers, they should take time to consider what Utah state law actually says when it comes to honest, fact-based disclosures of past misconduct and poor performance.

Refusing to cooperate in these background investigations may mean less work and, in some instances, less risk of a baseless lawsuit filed by a toxic officer that once worked for the department. But it may also mean that a bad apple who has no business serving as a law enforcement officer finds a new home, a new badge and a new opportunity to disgrace the profession.

About the Author

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

His training courses include [*Recruiting and Hiring for Law Enforcement*](#), [*Confronting the Toxic Officer*](#), [*Performance Evaluations for Public Safety*](#), [*Making Discipline Stick®*](#), and [*Supervisor Liability for Public Safety*](#).

[1] Utah Code Ann. § 34-42-1