

Representative Carl Wimmer proposes the following substitute bill:

PEACE OFFICER STANDARDS AND

TRAINING AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

This bill modifies the Public Safety Code relating to peace officer certification and the procedures and grounds for the denial, relinquishment, suspension, or revocation of certification.

Highlighted Provisions:

This bill:

▶ provides that a peace officer who voluntarily relinquishes the peace officer's certification to the division may not thereafter reapply to the division to be certified as a peace officer in Utah;

▶ provides authority to the Peace Officer Standards and Training (POST) Council to suspend or revoke certification of a peace officer for any of the following:

- willful falsification of any information to obtain certified status;
- physical or mental disability affecting the peace officer's ability to perform duties;
- addiction to alcohol or controlled substances unless the peace officer reports the addiction to the employer and the director; and

• violation of a state or federal ~~§~~→ **criminal** ←~~§~~ law ~~§~~→ [~~regardless of whether the conduct results in~~] ←~~§~~

1st Sub. H.B. 187



26 **§→ [the filing of criminal charges] ←§ ;**

27 ▶ amends provisions referring to the POST director's rulemaking authority with the
28 advice of the POST council;

29 ▶ amends directives regarding specific rulemaking for dispatcher training and
30 certification;

31 ▶ provides procedures and requires the division to initiate all adjudicative proceedings
32 as civil actions;

33 ▶ specifies that the burden of proof in the adjudicative proceedings is by **Ĥ→ [a**

34 **preponderance of the] clear and convincing ←Ĥ** evidence;

34a **Ĥ→ ▶ provides requirements for recusal of council members in hearings regarding a peace**
34b **officer; ←Ĥ**

35 ▶ permits a peace officer to request an appeal hearing conducted by an administrative
36 law judge;

37 ▶ provides that termination, whether voluntary or involuntary, or employment by an
38 agency after termination does not preclude suspension or revocation of peace officer
39 certification status by the council if the peace officer was terminated for cause; and

40 ▶ requires a chief, sheriff, or administrative officer of a law enforcement agency who
41 is made aware of alleged conduct of a peace officer that would be grounds for
42 suspension or revocation to investigate and report the conduct to the division, if the
43 agency finds the allegation to be true.

44 **Monies Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **53-6-102**, as last amended by Laws of Utah 1995, Chapter 134

51 **53-6-105**, as last amended by Laws of Utah 2008, Chapter 382

52 **53-6-202**, as renumbered and amended by Laws of Utah 1993, Chapter 234

53 **53-6-203**, as last amended by Laws of Utah 1998, Chapter 282

54 ENACTS:

55 **53-6-211.5**, Utah Code Annotated 1953

56 REPEALS AND REENACTS:

57 **53-6-211**, as last amended by Laws of Utah 1998, Chapters 13 and 282

58

59 *Be it enacted by the Legislature of the state of Utah:*

60 Section 1. Section **53-6-102** is amended to read:

61 **53-6-102. Definitions.**

62 As used in this chapter:

63 (1) "Addiction" means the unlawful or habitual use of alcohol or a controlled substance

64 which endangers ~~the~~ public health ~~and~~ safety ~~or welfare~~.

65 ~~(1)~~ (2) "Certified academy" means a peace officer training institution certified in
66 accordance with the standards developed under Section 53-6-105.

67 ~~(2)~~ (3) "Council" means the Peace Officer Standards and Training Council created in
68 Section 53-6-106.

69 (4) "Conviction" means an adjudication of guilt regarding criminal conduct, including:

70 (a) a finding of guilt by a court or a jury;

71 (b) a guilty plea;

72 (c) a plea of nolo contendere;

73 (d) a plea which is held in abeyance pending the successful completion of:

74 (i) a probationary period; or

75 (ii) a diversion agreement; or

76 (e) a conviction which has been expunged or dismissed.

77 ~~(3)~~ (5) "Director" means the director of the Peace Officer Standards and Training
78 Division appointed under Section 53-6-104.

79 ~~(4)~~ (6) "Dispatcher" means an employee of a public safety agency of the state or any
80 of its political subdivisions and whose primary duties are to:

81 (a) (i) receive calls for one or a combination of, emergency police, fire, and medical
82 services, and to dispatch the appropriate personnel and equipment in response to the calls; and

83 (ii) in response to emergency calls, make urgent decisions affecting the life, health, and
84 welfare of the public and public safety employees; or

85 (b) supervise dispatchers or direct a dispatch communication center.

86 ~~(5)~~ (7) "Division" means the Peace Officer Standards and Training Division created
87 in Section 53-6-103.

88 [~~(6)~~] (8) "POST" means the division.

89 Section 2. Section **53-6-105** is amended to read:

90 **53-6-105. Duties of director -- Powers -- Rulemaking.**

91 (1) The director, with the advice of the council, shall:

92 (a) prescribe standards for the certification of a peace officer training academy, certify
93 an academy that meets the prescribed standards, and prescribe standards for revocation of
94 certification for cause;

95 (b) prescribe minimum qualifications for certification of peace officers appointed or
96 elected to enforce the laws of this state and its subdivisions and prescribe standards for
97 revocation of certification for cause;

98 (c) establish minimum requirements for the certification of training instructors and
99 establish standards for revocation of certification;

100 (d) provide for the issuance of appropriate certificates to those peace officers
101 completing the basic training programs offered by a certified academy or those persons who
102 pass a certification examination as provided for in this chapter;

103 (e) consult and cooperate with certified academy administrators and instructors for the
104 continued development and improvement of the basic training programs provided by the
105 certified academy and for the further development and implementation of advanced in-service
106 training programs;

107 (f) consult and cooperate with state institutions of higher education to develop
108 specialized courses of study for peace officers in the areas of criminal justice, police
109 administration, criminology, social sciences, and other related disciplines;

110 (g) consult and cooperate with other departments, agencies, and local governments
111 concerned with peace officer training;

112 (h) perform any other acts necessary to develop peace officer training programs within
113 the state;

114 (i) report to the council at regular meetings of the council and when the council
115 requires;

116 (j) recommend peace officer standards and training requirements to the commissioner,
117 governor, and the Legislature; and

118 (k) [~~make rules as provided in this chapter.~~] in accordance with Title 63G, Chapter 3,

119 Utah Administrative Rulemaking Act, the director shall, with the advice of the council, make
 120 rules necessary to administer this chapter.

121 (2) With the permission of the commissioner, the director may execute contracts on
 122 behalf of the division with criminal justice agencies to provide training for employees of those
 123 agencies if:

124 (a) the employees or the employing agency pay a registration fee equivalent to the cost
 125 of the training; and

126 (b) the contract does not reduce the effectiveness of the division in its primary
 127 responsibility of providing training for peace officers of the state.

128 (3) The director may:

129 (a) revoke certification of a certified academy for cause; and

130 (b) make training aids and materials available to local law enforcement agencies.

131 (4) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
 132 ~~and consistent with Title 53, Chapter 6, Part 3, Dispatcher Training and Certification Act, the]~~

133 The director shall, with the advice of the council, make rules:

134 (a) establishing minimum requirements for the certification of dispatcher training
 135 instructors in a certified academy or interagency program and standards for revocation of this
 136 certification;

137 (b) establishing approved curriculum and a basic schedule for the basic dispatcher
 138 training course and the content of the dispatcher certification examination;

139 (c) providing for the issuance of appropriate certificates to a person who completes the
 140 basic dispatcher course or who passes a dispatcher certification examination as provided for in
 141 this chapter;

142 (d) establishing approved courses for certified dispatchers' annual training; and

143 (e) establishing a reinstatement procedure for a certified dispatcher who has not
 144 obtained the required annual training hours.

145 Section 3. Section **53-6-202** is amended to read:

146 **53-6-202. Basic training course -- Completion required -- Annual training --**

147 **Prohibition from exercising powers -- Reinstatement.**

148 (1) (a) The director shall:

149 (i) (A) suggest and prepare subject material; and

- 150 (B) schedule instructors for basic training courses; or
151 (ii) review the material and instructor choices submitted by a certified academy.
152 (b) The subject material, instructors, and schedules shall be approved or disapproved
153 by a majority vote of the council.
154 (2) The materials shall be reviewed and approved by the council on or before July 1st
155 of each year and may from time to time be changed or amended by majority vote of the council.
156 (3) The basic training in a certified academy shall be appropriate for the basic training
157 of peace officers in the techniques of law enforcement in the discretion of the director.
158 (4) (a) All peace officers must satisfactorily complete the basic training course or the
159 waiver process provided for in this chapter as well as annual certified training of not less than
160 40 hours as the director, with the advice and consent of the council, directs.
161 (b) A peace officer who fails to satisfactorily complete the annual training shall
162 automatically be prohibited from exercising peace officer powers until any deficiency is made
163 up.
164 ~~[(5) The director, with the advice of the council, may make rules relating to the~~
165 ~~reinstatement of powers of peace officers who have been prohibited from exercising those~~
166 ~~powers under this part.]~~
167 Section 4. Section **53-6-203** is amended to read:
168 **53-6-203. Applicants for admission to training programs or for certification**
169 **examination -- Requirements.**
170 (1) Before being accepted for admission to the training programs conducted by a
171 certified academy, and before being allowed to take a certification examination, each applicant
172 for admission or certification examination shall meet the following requirements:
173 (a) be a United States citizen;
174 (b) be at least 21 years old at the time of appointment as a peace officer;
175 (c) be a high school graduate or furnish evidence of successful completion of an
176 examination indicating an equivalent achievement;
177 (d) have not been convicted of a crime for which the applicant could have been
178 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of
179 this or another state;
180 (e) have demonstrated good moral character, as determined by a background

181 investigation; and

182 (f) be free of any physical, emotional, or mental condition that might adversely affect
183 the performance ~~[of his duty]~~ of the applicant's duties as a peace officer.

184 (2) (a) An application for admission to a training program shall be accompanied by a
185 criminal history background check of local, state, and national criminal history files and a
186 background investigation.

187 (b) The costs of the background check and investigation shall be borne by the applicant
188 or the applicant's employing agency.

189 ~~[(i) Conviction of any offense not serious enough to be covered under Subsection
190 (1)(d), involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use,
191 sale, or possession for sale of a controlled substance is an indication that an applicant may not
192 be of good moral character and may be grounds for denial of admission to a training program
193 or refusal to take a certification examination.]~~

194 ~~[(ii) An applicant may be admitted to a training program provisionally, pending
195 completion of any background check or investigation required by this subsection.]~~

196 (3) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any
197 conviction obtained in this state or other jurisdiction, including a conviction that has been
198 expunged, dismissed, or treated in a similar manner to either of these procedures, may be
199 considered for purposes of this section.

200 (b) This provision applies to convictions entered both before and after the effective
201 date of this section.

202 (4) Any background check or background investigation performed pursuant to the
203 requirements of this section shall be to determine eligibility for admission to training programs
204 or qualification for certification examinations and may not be used as a replacement for any
205 background investigations that may be required of an employing agency.

206 (5) An applicant shall be considered to be of good moral character under Subsection
207 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection
208 53-6-211(1).

209 Section 5. Section **53-6-211** is repealed and reenacted to read:

210 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
211 **Grounds -- Notice to employer -- Reporting.**

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

214 (a) willfully falsifies any information to obtain certification;

215 (b) has any physical or mental disability affecting the peace officer's ability to perform
 216 duties;

217 (c) is addicted to alcohol or any controlled substance, unless the peace officer reports
 218 the addiction to the employer and to the director as part of a departmental early intervention
 219 process;

220 (d) engages in conduct which is a ~~§~~ [violation of any] ~~←§~~ state or federal ~~§~~ [law]
 220a criminal offense ~~←§~~ , but not
 221 including a traffic offense that is a class C misdemeanor or infraction ~~§~~ [, regardless of whether the
 222 conduct results in the filing of criminal charges against the officer] ~~←§~~ ;

223 (e) refuses to respond, or fails to respond truthfully, to questions after having been
 224 issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

225 (f) engages in sexual conduct ~~§~~ [which impairs the ability of the peace officer to
 226 objectively and diligently perform the duties and functions of a peace officer] while on duty ~~←§~~ ; or

227 (g) is dismissed from ~~§~~ [military service with a bad conduct discharge or a] the armed
 227a forces of the United States under ~~←§~~ dishonorable
 228 ~~§~~ [discharge] conditions ~~←§~~ .

229 (2) The council may not suspend or revoke the certification of a peace officer for a
 230 violation of a law enforcement agency's policies, general orders, or guidelines of operation that
 231 do not amount to a cause of action under Subsection (1).

232 (3) (a) The division is responsible for investigating officers who are alleged to have
 233 engaged in conduct in violation of Subsection (1).

234 (b) The division shall initiate all adjudicative proceedings under this section by
 235 providing to the peace officer involved notice and an opportunity for a hearing before an
 236 administrative law judge.

237 (c) All adjudicative proceedings under this section are civil actions, notwithstanding
 238 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted
 239 criminally.

240 (d) (i) The burden of proof on the division in an adjudicative proceeding under this
 241 section is by ~~H~~ [a preponderance of the] clear and convincing ~~←H~~ evidence.

242 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of

243 proof to establish the affirmative defense by a preponderance of the evidence.

244 (e) If the administrative law judge ~~H~~→ **[finds] issues findings of fact and conclusions of**
 244a **law stating** ~~←H~~ there is sufficient evidence to demonstrate that
 245 the officer engaged in conduct that is in violation of Subsection (1), the division shall present
 246 the ~~H~~→ **[case] findings and conclusions issued by the administrative law judge** ~~←H~~ to the
 246a council.

247 (f) The division shall notify the chief, sheriff, or administrative officer of the police
 248 agency which employs the involved peace officer of the investigation and shall provide any
 249 information or comments concerning the peace officer received from that agency regarding the
 250 peace officer to the council before a peace officer's certification may be suspended or revoked.

251 (g) If the administrative law judge finds that there is insufficient evidence to
 252 demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall
 253 dismiss the adjudicative proceeding.

253a ~~H~~→ **(4)(a) The council shall review the findings of fact and conclusions of law and the**
 253b **information concerning the peace officer provided by the officer's employing agency and**
 253c **determine whether to suspend or revoke the officer's certification.**

253d **(b) A member of the council shall recuse him or herself from consideration of an issue**
 253e **that is before the council if the council member:**

253f **(i) has a personal bias for or against the officer;**

253g **(ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain**
 253h **or lose some benefit from the outcome; or**

253i **(iii) employs, supervises, or works for the same law enforcement agency as the officer**
 253j **whose case is before the council.**

254 ~~(4)~~ **(5)** ~~←H~~ (a) Termination of a peace officer, whether voluntary or involuntary, does not
 255 preclude suspension or revocation of a peace officer's certification by the council if the peace
 256 officer was terminated for any of the reasons under Subsection (1).

257 (b) Employment by another agency, or reinstatement of a peace officer by the original
 258 employing agency after termination by that agency, whether the termination was voluntary or
 259 involuntary, does not preclude suspension or revocation of a peace officer's certification by the
 260 council if the peace officer was terminated for any of the reasons under Subsection (1).

261 ~~H~~→ ~~(5)~~ **(6)** ~~←H~~ A chief, sheriff, or administrative officer of a law enforcement agency
 261a who is made
 262 aware of an allegation against a peace officer employed by that agency that involves conduct in
 263 violation of Subsection (1) shall investigate the allegation and report to the division if the

264 allegation is found to be true.

265 Section 6. Section **53-6-211.5** is enacted to read:

266 **53-6-211.5. Voluntary relinquishment of peace officer certification.**

267 (1) A peace officer may voluntarily relinquish the peace officer's certification to the
268 division at any time ~~It~~ ~~→~~ [~~regardless of whether an investigation has been instituted or an~~
269 adjudicative proceeding has been initiated under this chapter] **when a disciplinary issue regarding**
269a **the peace officer has been referred to the division** ~~←It~~ .

270 (2) (a) A peace officer who voluntarily relinquishes certification under this section may
271 not subsequently be certified as a peace officer in this state.

272 (b) This section does not apply to a peace officer whose certification has become
273 inactive as provided in Section 53-6-208.

H.B. 187 1st Sub. (Buff) - Peace Officer Standards and Training Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
