

**PEACE OFFICER STANDARDS AND
TRAINING AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

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 temporarily surrenders certification until the employer certifies that the peace officer has been medically cleared to return to active duty; and
 - violation of a state or federal law, regardless of whether the conduct results in



28 the filing of criminal charges;

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

31 ▶ amends directives regarding specific rulemaking for dispatcher training and
32 certification;

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

35 ▶ specifies that the burden of proof in the adjudicative proceedings is by a
36 preponderance of the evidence;

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

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

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

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **53-6-102**, as last amended by Laws of Utah 1995, Chapter 134

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

54 **53-6-202**, as renumbered and amended by Laws of Utah 1993, Chapter 234

55 **53-6-203**, as last amended by Laws of Utah 1998, Chapter 282

56 ENACTS:

57 **53-6-211.5**, Utah Code Annotated 1953

58 REPEALS AND REENACTS:

59 **53-6-211**, as last amended by Laws of Utah 1998, Chapters 13 and 282



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

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

63 **53-6-102. Definitions.**

64 As used in this chapter:

65 (1) "Addiction" means the unlawful or habitual use of alcohol or a controlled substance
66 which endangers the public health, safety, or welfare.

67 [~~1~~] (2) "Certified academy" means a peace officer training institution certified in
68 accordance with the standards developed under Section 53-6-105.

69 [~~2~~] (3) "Council" means the Peace Officer Standards and Training Council created in
70 Section 53-6-106.

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

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

73 (b) a guilty plea;

74 (c) a plea of nolo contendere;

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

76 (i) a probationary period; or

77 (ii) a diversion agreement; or

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

79 [~~3~~] (5) "Director" means the director of the Peace Officer Standards and Training
80 Division appointed under Section 53-6-104.

81 [~~4~~] (6) "Dispatcher" means an employee of a public safety agency of the state or any
82 of its political subdivisions and whose primary duties are to:

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

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

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

88 [~~5~~] (7) "Division" means the Peace Officer Standards and Training Division created
89 in Section 53-6-103.

90 [~~(6)~~] (8) "POST" means the division.

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

92 **53-6-105. Duties of director -- Powers -- Rulemaking.**

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

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

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

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

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

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

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

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

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

116 (i) report to the council at regular meetings of the council and when the council
117 requires;

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

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

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

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

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

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

130 (3) The director may:

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

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

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

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

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

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

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

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

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

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

148 **53-6-202. Basic training course -- Completion required -- Annual training --**

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

150 (1) (a) The director shall:

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

- 152 (B) schedule instructors for basic training courses; or
- 153 (ii) review the material and instructor choices submitted by a certified academy.
- 154 (b) The subject material, instructors, and schedules shall be approved or disapproved
- 155 by a majority vote of the council.
- 156 (2) The materials shall be reviewed and approved by the council on or before July 1st
- 157 of each year and may from time to time be changed or amended by majority vote of the council.
- 158 (3) The basic training in a certified academy shall be appropriate for the basic training
- 159 of peace officers in the techniques of law enforcement in the discretion of the director.
- 160 (4) (a) All peace officers must satisfactorily complete the basic training course or the
- 161 waiver process provided for in this chapter as well as annual certified training of not less than
- 162 40 hours as the director, with the advice and consent of the council, directs.
- 163 (b) A peace officer who fails to satisfactorily complete the annual training shall
- 164 automatically be prohibited from exercising peace officer powers until any deficiency is made
- 165 up.

166 ~~[(5) The director, with the advice of the council, may make rules relating to the~~

167 ~~reinstatement of powers of peace officers who have been prohibited from exercising those~~

168 ~~powers under this part.]~~

169 Section 4. Section **53-6-203** is amended to read:

170 **53-6-203. Applicants for admission to training programs or for certification**

171 **examination -- Requirements.**

- 172 (1) Before being accepted for admission to the training programs conducted by a
- 173 certified academy, and before being allowed to take a certification examination, each applicant
- 174 for admission or certification examination shall meet the following requirements:
- 175 (a) be a United States citizen;
- 176 (b) be at least 21 years old at the time of appointment as a peace officer;
- 177 (c) be a high school graduate or furnish evidence of successful completion of an
- 178 examination indicating an equivalent achievement;
- 179 (d) have not been convicted of a crime for which the applicant could have been
- 180 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of
- 181 this or another state;
- 182 (e) have demonstrated good moral character, as determined by a background

183 investigation; and

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

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

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

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

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

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

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

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

208 (5) An applicant shall be considered to be of good moral character under Subsection
209 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection
210 53-6-211(1).

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

212 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
213 **Grounds -- Notice to employer -- Reporting.**

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

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

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

219 (c) is addicted to alcohol or any controlled substance, unless:

220 (i) the peace officer reports the addiction to the employer and to the director as part of a
221 departmental early intervention process; and

222 (ii) the peace officer temporarily surrenders the peace officer's certification as part of a
223 departmental early intervention process until the employer certifies that the peace officer has
224 been medically cleared to return to active duty;

225 (d) engages in conduct which is a violation of any state or federal law or regulation,
226 regardless of whether the conduct results in the filing of criminal charges against the officer;

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

229 (f) engages in sexual conduct which impairs the ability of the peace officer to
230 objectively and diligently perform the duties and functions of a peace officer; or

231 (g) is dismissed from military service for any reason other than an honorable discharge,
232 including:

233 (i) a bad conduct discharge;

234 (ii) a dishonorable discharge;

235 (iii) any type of administrative discharge; or

236 (iv) a less than honorable discharge.

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

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

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

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

248 (d) (i) The division has the burden of proof in an adjudicative proceeding under this
249 section and the burden is by a preponderance of the evidence.

250 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of
251 proof to establish the affirmative defense by a preponderance of the evidence.

252 (e) If the adjudicative proceeding determines there is evidence that the officer engaged
253 in conduct in violation of Subsection (1), the division shall present the case to the council.

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

258 (4) (a) Termination of a peace officer, whether voluntary or involuntary, does not
259 preclude suspension or revocation of a peace officer's certification by the council if the peace
260 officer was terminated for any of the reasons under Subsection (1).

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

265 (5) A chief, sheriff, or administrative officer of a law enforcement agency who is made
266 aware of an allegation against a peace officer employed by that agency that involves conduct in
267 violation of Subsection (1) shall investigate the allegation and report to the division if the
268 allegation is found to be true.

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

270 **53-6-211.5. Voluntary relinquishment of peace officer certification.**

271 (1) A peace officer may voluntarily relinquish the peace officer's certification to the
272 division at any time, regardless of whether an investigation has been instituted or an
273 adjudicative proceeding has been initiated under this chapter.

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

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

Legislative Review Note
as of 1-26-10 10:18 AM

Office of Legislative Research and General Counsel

H.B. 187 - 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.
