

1 PEACE OFFICER STANDARDS AND TRAINING

2 AMENDMENTS

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Richard A. Greenwood

6 Senate Sponsor: Daniel W. Thatcher

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8 LONG TITLE

9 General Description:

10 This bill amends peace officer standards and training.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ requires all applicants for admission and certification as a peace officer to be  
14 eligible to possess a firearm under state law;
- 15 ▶ allows the Peace Officer Standards and Training Council to suspend or revoke a  
16 peace officer's certification if the peace officer is not eligible to possess a firearm;
- 17 ▶ allows federal agencies to exercise law enforcement authority related to  
18 misdemeanor offenses under Utah law;
- 19 ▶ requires that federal officers with authority to enforce federal laws and state and  
20 local laws complete a 20-hour course on Utah law and process; and
- 21 ▶ makes technical changes.

22 Money Appropriated in this Bill:

23 None

24 Other Special Clauses:

25 None

26 Utah Code Sections Affected:

27 AMENDS:

28 53-6-203, as last amended by Laws of Utah 2010, Chapter 313

29 53-6-211, as repealed and reenacted by Laws of Utah 2010, Chapter 313

30 **53-13-106**, as last amended by Laws of Utah 2010, Chapter 411

31 **53-13-106.5**, as enacted by Laws of Utah 2010, Chapter 411

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

34 Section 1. Section **53-6-203** is amended to read:

35 **53-6-203. Applicants for admission to training programs or for certification**  
36 **examination -- Requirements.**

37 (1) Before being accepted for admission to the training programs conducted by a  
38 certified academy, and before being allowed to take a certification examination, each applicant  
39 for admission or certification examination shall meet the following requirements:

40 (a) be a United States citizen;

41 (b) be at least 21 years old at the time of appointment as a peace officer;

42 (c) be a high school graduate or furnish evidence of successful completion of an  
43 examination indicating an equivalent achievement;

44 (d) have not been convicted of a crime for which the applicant could have been  
45 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of  
46 this or another state;

47 (e) have demonstrated good moral character, as determined by a background  
48 investigation; and

49 (f) be free of any physical, emotional, or mental condition that might adversely affect  
50 the performance of the applicant's duties as a peace officer.

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

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

56 (3) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any  
57 conviction obtained in this state or other jurisdiction, including a conviction that has been

58 expunged, dismissed, or treated in a similar manner to either of these procedures, may be  
59 considered for purposes of this section.

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

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

66 (5) An applicant shall be considered to be of good moral character under Subsection  
67 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection  
68 53-6-211(1).

69 (6) An applicant seeking certification as a law enforcement officer, as defined in  
70 Section 53-13-103, shall be qualified to possess a firearm under state and federal law.

71 Section 2. Section **53-6-211** is amended to read:

72 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
73 **Grounds -- Notice to employer -- Reporting.**

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

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

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

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

82 (d) engages in conduct which is a state or federal criminal offense, but not including a  
83 traffic offense that is a class C misdemeanor or infraction;

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

86 (f) engages in sexual conduct while on duty; or

87 (g) is certified as a law enforcement officer, as defined in Section 53-13-103, and is  
88 unable to possess a firearm under state or federal law.

89 [~~g) is dismissed from the armed forces of the United States under dishonorable~~  
90 ~~conditions.~~]

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

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

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

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

102 (d) (i) The burden of proof on the division in an adjudicative proceeding under this  
103 section is by clear and convincing evidence.

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

106 (e) If the administrative law judge issues findings of fact and conclusions of law stating  
107 there is sufficient evidence to demonstrate that the officer engaged in conduct that is in  
108 violation of Subsection (1), the division shall present the finding and conclusions issued by the  
109 administrative law judge to the council.

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

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

117 (4) (a) The council shall review the findings of fact and conclusions of law and the  
118 information concerning the peace officer provided by the officer's employing agency and  
119 determine whether to suspend or revoke the officer's certification.

120 (b) A member of the council shall recuse him or herself from consideration of an issue  
121 that is before the council if the council member:

122 (i) has a personal bias for or against the officer;

123 (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain  
124 or lose some benefit from the outcome; or

125 (iii) employs, supervises, or works for the same law enforcement agency as the officer  
126 whose case is before the council.

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

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

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

138 Section 3. Section **53-13-106** is amended to read:

139 **53-13-106. Federal officers -- State law enforcement authority.**

140 (1) (a) "Federal officer" includes:

141 (i) a special agent of the Federal Bureau of Investigation;

142 (ii) a special agent of the United States Secret Service;

143 (iii) a special agent of the United States Department of Homeland Security, excluding a  
144 customs inspector or detention removal officer;

145 (iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

146 (v) a special agent of the Drug Enforcement Administration;

147 (vi) a United States marshal, deputy marshal, and special deputy United States marshal;

148 and

149 (vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

150 (b) (i) Federal officers listed in Subsection (1)(a) have statewide law enforcement  
151 authority relating to felony offenses under the laws of this state. This Subsection (1)(b)(i) takes  
152 precedence over Subsection (2).

153 (ii) Federal agencies and federal employees as defined in Subsection 53-13-106.5(1)  
154 may exercise law enforcement authority related to misdemeanor and felony offenses under  
155 Utah law only as established by an agreement under Subsection 53-13-106.5(7). This  
156 Subsection (1)(b)(ii) takes precedence over Subsection (2).

157 (c) The council may designate other federal peace officers, as necessary, if the officers:

158 (i) are persons employed full-time by the United States government as federally  
159 recognized law enforcement officers primarily responsible for the investigation and  
160 enforcement of the federal laws;

161 (ii) have successfully completed formal law enforcement training offered by an agency  
162 of the federal government consisting of not less than 400 hours; and

163 (iii) maintain in-service training in accordance with the standards set forth in Section  
164 53-13-103.

165 (2) Except as otherwise provided under Title 63L, Chapter 1, Federal Jurisdiction, and  
166 Title 77, Chapter 9, Uniform Act on Fresh Pursuit, a federal officer may exercise state law  
167 enforcement authority only if:

168 (a) the state law enforcement agencies and county sheriffs with jurisdiction enter into  
169 an agreement with the federal agency to be given authority; and

170 (b) except as provided in Subsection (3), each federal officer employed by the federal  
171 agency meets the waiver requirements set forth in Section 53-6-206.

172 (3) A federal officer working as such in the state on or before July 1, 1995, may  
173 exercise state law enforcement authority without meeting the waiver requirement.

174 (4) At any time, consistent with any contract with a federal agency, a state or local law  
175 enforcement authority may withdraw state law enforcement authority from any individual  
176 federal officer by sending written notice to the federal agency and to the division.

177 (5) The authority of a federal officer under this section is limited to the jurisdiction of  
178 the authorizing state or local agency, and may be further limited by the state or local agency to  
179 enforcing specific statutes, codes, or ordinances.

180 Section 4. Section **53-13-106.5** is amended to read:

181 **53-13-106.5. State limitations on functions of federal law enforcement officers.**

182 (1) As used in this section:

183 (a) "Federal agency" means a federal agency that manages federally managed land.

184 (b) "Federal employee" means an employee of:

185 (i) the Bureau of Land Management;

186 (ii) the United States Forest Service; or

187 (iii) the National Park Service.

188 (c) "Federally managed land" means land managed by the following federal agencies:

189 (i) Bureau of Land Management;

190 (ii) United States Forest Service; and

191 (iii) the National Park Service.

192 (2) Unless otherwise provided by Utah law, federal employees performing their duties  
193 in Utah:

194 (a) may not exercise law enforcement authority solely because the land on which they  
195 exercise the authority is federally managed; and

196 (b) may exercise only law enforcement authority:

197 (i) expressly granted by federal statute; and

198 (ii) consistent with the Constitution of the United States.

199 (3) Utah does not authorize federal employees to exercise law enforcement powers to  
200 enforce the laws of Utah, either on or off federally managed land except as authorized under  
201 this section or other provisions of state statute.

202 (4) (a) Utah does not recognize the authority of employees or agents of the United  
203 States Department of Interior to exercise law enforcement powers beyond those powers strictly  
204 necessary for the management, use, and protection of federally managed lands, including  
205 property located on these lands, as limited by 43 U.S.C. 1733(a) and 1733(c)(2).

206 (b) As required by Congress in 43 U.S.C. 1733(c)(1), when the Secretary of Interior  
207 determines that state or local assistance is necessary in enforcing federal laws and regulations  
208 relating to federally managed lands or the resources on those lands, the secretary shall offer a  
209 contract to appropriate state or local law enforcement agencies of the state with the purpose of  
210 achieving maximum feasible reliance upon state or local law enforcement officials in enforcing  
211 the federal laws and regulations.

212 (5) Utah does not authorize federal employees to take action based on the Utah Code,  
213 Utah Administrative Rules, or county or municipal ordinances as a basis to arrest or cite  
214 persons for prosecution in the federal criminal justice system, unless the action:

- 215 (a) has been expressly granted by federal statute; and
- 216 (b) is consistent with the Constitution of the United States.

217 (6) State and local government agencies may not allow any federal agency access to or  
218 use of the correctional and communication facilities and equipment of any state or local law  
219 enforcement agency without the express written consent of the appropriate responsible official  
220 of the state or local law enforcement agency.

221 (7) State and local law enforcement agencies may enter into agreements with federal  
222 agencies granting concurrent authority to enforce federal laws and state and local laws,  
223 provided the agreements are limited to a term not to exceed two years and the officers granted  
224 authority have completed a 20-hour course focusing on Utah law and process approved by the  
225 director of the Peace Officer Standards and Training Division.



226           (8) (a) County sheriffs shall regularly review the duties and activities of federal  
227 agencies that have law enforcement responsibilities and that are acting within the jurisdictional  
228 area of the county to ascertain whether the federal agencies are acting consistently with this  
229 section.

230           (b) County sheriffs shall annually report to the county attorney or district attorney of  
231 their jurisdiction the results of all reviews conducted under this Subsection (8).