

1                   **LAW ENFORCEMENT INTERNAL INVESTIGATION**

2                                   **REQUIREMENTS**

3   2021 GENERAL SESSION

4   STATE OF UTAH

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6   **LONG TITLE**

7   **General Description:**

8           This bill provides direction for investigations into officer misconduct if the officer  
9           leaves the department.

10 **Highlighted Provisions:**

11       This bill:

- 12           ▶ requires that an employing agency notify the Peace Officer Standards and Training  
13           Division if a peace officer separates from the agency while an investigation is in  
14           progress;
- 15           ▶ provides that if an officer separates from an agency while an investigation is in  
16           progress, the agency shall notify the Peace Officer Standards and Training Division  
17           of the investigation; and
- 18           ▶ requires that the agency investigation be turned over to the division under certain  
19           circumstances.

20 **Money Appropriated in this Bill:**

21       None

22 **Other Special Clauses:**

23       None

24 **Utah Code Sections Affected:**

25 AMENDS:

26       **53-6-209**, as renumbered and amended by Laws of Utah 1993, Chapter 234

27       **53-6-211**, as last amended by Laws of Utah 2020, Chapter 35

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

30       Section 1. Section **53-6-209** is amended to read:

31       **53-6-209. Termination of employment -- Change of status form.**

32 (1) When a peace officer's employment terminates, the employing agency shall submit  
33 a change of status form noting the termination of the peace officer to the division.

34 (2) The change of status form shall:

35 (a) be completed and submitted within [~~seven~~] 30 days of the peace officer's  
36 termination date;

37 (b) identify the circumstances of the peace officer's status change by indicating that the  
38 peace officer has resigned, retired, terminated, transferred, deceased, or that the peace officer's  
39 name has changed;

40 (c) indicate the effective date of action; and

41 (d) indicate the name of the new employer, if the status change is due to a transfer.

42 (3) If a peace officer's employment terminates during an open internal investigation  
43 regarding that peace officer, the employing agency shall notify the division of the investigation  
44 within 30 days of the peace officer's termination date and provide a reasonable estimated date  
45 of completion for the investigation.

46 (a) If the internal investigation involves an alleged violation of internal agency policies,  
47 the employing agency shall notify the division within seven days of completion of the  
48 investigation that the investigation has been completed.

49 (b) If the internal investigation involves an alleged violation of Subsection  
50 53-6-211(1), the employing agency shall notify the division in accordance with Subsection  
51 53-6-211(6).

52 [~~(3)~~] (4) Any person or agency who intentionally falsifies, misrepresents, or fails to  
53 give notice of the change of status of a peace officer is liable to the division for any damages  
54 that may be sustained by the failure to make the notification.

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

56 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
57 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

58 (1) The council has the authority to issue a Letter of Caution, or suspend or revoke the  
59 certification of a peace officer, if the peace officer:

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

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

63 ~~[(c) is addicted to alcohol or any controlled substance, unless the peace officer reports~~  
64 ~~the addiction to the employer and to the director as part of a departmental early intervention~~  
65 ~~process;]~~

66 ~~[(d)] (c)~~ engages in conduct constituting a state or federal criminal offense, but not  
67 including a traffic offense that is a class C misdemeanor or infraction;

68 ~~[(e)] (d)~~ refuses to respond, or fails to respond truthfully, to questions after having been  
69 issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

70 ~~[(f)] (e)~~ engages in sexual conduct while on duty; or

71 ~~[(g)] (f)~~ is certified as a law enforcement peace officer, as defined in Section  
72 53-13-102, and is unable to possess a firearm under state or federal law.

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

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

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

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

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

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

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

92 (f) The division shall notify the chief, sheriff, or administrative officer of the police  
93 agency which employs the involved peace officer of the investigation and shall provide any

94 information or comments concerning the peace officer received from that agency regarding the  
95 peace officer to the council before a Letter of Caution is issued, or a peace officer's certification  
96 may be suspended or revoked.

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

100 (4) (a) The council shall:

101 (i) accept the administrative law judge's findings of fact and conclusions of law, and  
102 the information concerning the peace officer provided by the officer's employing agency; and

103 (ii) choose whether to issue a Letter of Caution, or suspend or revoke the officer's  
104 certification.

105 (b) Before making a decision, the council may consider aggravating and mitigating  
106 circumstances.

107 (c) A member of the council shall recuse him or herself from consideration of an issue  
108 that is before the council if the council member:

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

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

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

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

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

121 (6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is  
122 made aware of an allegation against a peace officer employed by that agency that involves  
123 conduct in violation of Subsection (1) shall investigate the allegation and report the allegation  
124 to the division [~~if the allegation is found to be true~~] upon completion of the investigation.

125 unless Subsection (b) applies.

126 (b) If a peace officer who is the subject of an internal or administrative investigation  
127 into allegations that include any of the conditions or circumstances outlined in Subsection (1)  
128 resigns, retires, or otherwise separates from the investigating law enforcement agency before  
129 the conclusion of the investigation, the chief, sheriff, or administrative officer of that law  
130 enforcement agency shall report the allegations and ~~[any]~~ provide all investigation ~~[results]~~  
131 files on the allegations to the division within 30 days of the peace officer's termination date.

132 (7) The council's issuance of a Letter of Caution, or suspension or revocation of an  
133 officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4,  
134 Judicial Review.