

Michael K. McKell proposes the following substitute bill:

Law Enforcement Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill addresses due process rights for peace officers in certain circumstances.

Highlighted Provisions:

This bill:

- addresses the procedures a prosecution agency is required to follow when the prosecution agency creates a system for tracking past peace officer misconduct that the agency has to disclose to a defendant in certain circumstances;

- enacts provisions related to procedures that are required to be undertaken by a law enforcement agency before the law enforcement agency may take an adverse decision regarding a law enforcement officer's employment; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-2-253, as last amended by Laws of Utah 2024, Third Special Session, Chapters 5, 5

ENACTS:

53-25-601, Utah Code Annotated 1953

53-25-602, Utah Code Annotated 1953

53-25-603, Utah Code Annotated 1953

53-25-701, Utah Code Annotated 1953

53-25-702, Utah Code Annotated 1953

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

Section 1. Section **53-25-601** is enacted to read:

Part 6. Requirements Related to Brady Material

53-25-601 . Definitions.

As used in this part:

- (1) "Brady identification system" means any type of system used by a prosecution agency to assist in tracking and disclosing Brady material to defendants being prosecuted by the prosecution agency.
- (2) "Brady material" means potential impeachment information that a prosecutor has disclosed or may disclose to a defendant being prosecuted for a criminal offense relating to conduct of a peace officer who was involved in the arrest or investigation of the defendant.
- (3) "Law enforcement agency" means a public agency having general police power and charged with making arrests in connection with enforcement of the criminal laws, statutes, or ordinances of this state or political subdivisions of this state.
- (4)(a) "Peace officer" means any officer certified in accordance with Chapter 13, Peace Officer Classifications.
- (b) "Peace officer" includes any employee of a law enforcement agency whose job duties include providing courtroom testimony in support of the enforcement of criminal laws, statutes, or ordinances.
- (5) "POST" means the Peace Officer Standards and Training Division created in Section 53-6-103.
- (6) "Prosecution agency" means a city attorney, county attorney, district attorney, the attorney general, or other prosecution agency.

Section 2. Section **53-25-602** is enacted to read:

53-25-602 . Prosecution agency's requirements related to Brady material.

- (1)(a) A prosecution agency may use a Brady identification system to fulfill the prosecution agency's discovery obligations regarding Brady material under federal law, state law, court order, or court rule.
- (b) A prosecution agency is not required to maintain a Brady identification system and may determine that the prosecution agency's discovery obligations regarding Brady material can be met through another procedure.
- (2) A prosecution agency that uses a Brady identification system may make disclosures of Brady material to a defendant in a prosecution even if the prosecution agency has not made a final decision regarding whether the peace officer who is the subject of the

64 Brady material will be placed onto the prosecution agency's Brady identification system.

65 (3)(a) Except as provided in Subsection (3)(b), before a prosecution agency may initially
66 place a peace officer on the prosecution agency's Brady identification system, or add
67 additional information to the prosecution agency's Brady identification system
68 regarding a peace officer already on the prosecution agency's Brady identification
69 system for a reason unrelated to the initial placement, the prosecution agency shall:

70 (i) provide the peace officer with written notice that the prosecution agency intends
71 to:

72 (A) place the peace officer onto the prosecution agency's Brady identification
73 system; or

74 (B) if the peace officer is already on the prosecution agency's Brady identification
75 system, add additional information about the peace officer onto the prosecution
76 agency's Brady identification system;

77 (ii) provide the peace officer with copies of any documents, records, and other
78 evidence relied upon by the prosecution agency that is seeking to place the peace
79 officer, or add additional information regarding the peace officer, onto the Brady
80 identification system; and

81 (iii) provide the peace officer with an opportunity to dispute the peace officer's
82 placement, or addition of information regarding the peace officer, onto the Brady
83 identification system.

84 (b) A prosecution agency is not required to provide the procedures described in
85 Subsection (3)(a) if the Brady material underlying the peace officer's placement onto
86 the Brady identification system relates to a criminal conviction or a finalized POST
87 decision related to Brady material.

88 (4)(a) If a peace officer is employed by a law enforcement agency and is placed onto a
89 prosecution agency's Brady identification system in accordance with this section, the
90 prosecution agency shall notify the peace officer's employer regarding the placement.

91 (b) A peace officer who is placed onto a prosecution agency's Brady identification
92 system before May 7, 2025, may request within 180 calendar days after May 7, 2025,
93 a review by the prosecution agency regarding the peace officer's placement and, if the
94 prosecution agency receives the request, the prosecution agency shall undertake the
95 review.

96 (5) A prosecution agency that uses a Brady identification system shall adopt a policy,
97 accessible to any peace officer in the prosecution agency's jurisdiction, that includes:

- (a) the criteria used by the prosecution agency to place an officer on the prosecution agency's Brady identification system including:
- (i) a description of what conduct qualifies as Brady material; and
- (ii) a description of other conduct not defined in this part that the prosecution agency determines will get a peace officer placed on the prosecution agency's Brady identification system; and
- (b) the rights, procedures, and limitations described in Subsection (3).
- (6) If a peace officer is placed onto a prosecution agency's Brady identification system and then is placed on another prosecution agency's Brady identification system, the other prosecution agency:
- (a) does not have to provide the peace officer with the rights and procedures described in Subsection (3)(a), if the peace officer's placement is based on the same conduct that led to the peace officer being placed on the initial prosecution agency's Brady identification system and the peace officer was provided the rights and procedures described in Subsection (3)(a) by the initial prosecution agency; and
- (b) shall:
- (i) provide the peace officer with written notice that the prosecution agency has added the peace officer to the prosecution agency's Brady identification system;
- (ii) provide the peace officer with an opportunity to respond in writing to the peace officer's placement on the prosecution agency's Brady identification system; and
- (iii) review the peace officer's response described in Subsection (6)(b)(ii).
- (7) A peace officer may not seek judicial review of a prosecution agency's determination to place an officer on a Brady identification system in accordance with this section.
- (8) Any information or record maintained by a prosecution agency in a Brady identification system is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.
- (9) This section does not:
- (a) create a private cause of action by a peace officer or by a law enforcement agency against a prosecution agency or the prosecution agency's employees for the procedures and determination related to the placement of a peace officer onto a Brady identification system; or
- (b) restrict or limit a prosecution agency from fulfilling the prosecution agency's discovery obligations.

Section 3. Section **53-25-603** is enacted to read:

53-25-603 . Peace officer and employing law enforcement agency requirements related to Brady material.

- (1)(a) If a peace officer has been placed onto a prosecution agency's Brady identification system after being provided the rights and procedures described in Subsection 53-25-603(3) and the peace officer is subpoenaed by a different prosecution agency to testify in court, the peace officer shall disclose that placement to the prosecution agency that issued the subpoena as soon as practicable after receiving the subpoena.
- (b) If a peace officer fails to disclose the peace officer's placement on a Brady identification system as described in Subsection (1)(a), the peace officer's employing law enforcement agency may take disciplinary action against the peace officer.
- (2)(a) A law enforcement agency may not use the placement of a peace officer onto a Brady identification system as described in Section 53-25-603 as the sole reason for taking or denying any of the following employment actions against the peace officer:
- (i) demotion;
 - (ii) suspension;
 - (iii) termination; or
 - (iv) any other disciplinary action.
- (b) Notwithstanding Subsection (2)(a), a law enforcement agency may use the underlying facts of the Brady material that were the basis for the peace officer's placement onto a Brady identification system for taking a disciplinary action against the peace officer in accordance with the law enforcement agency's adopted policies and procedures and governing law.
- (3) A chief, sheriff, or administrative officer of a law enforcement agency who knows of an allegation against a peace officer employed by the chief's, sheriff's, or administrative officer's law enforcement agency involving Brady material shall conduct an administrative or internal investigation into the allegation and, if after the law enforcement agency's adopted policies and procedures are followed and the allegation is substantiated, report the findings of the investigation to:
- (a) if the law enforcement agency is a private law enforcement agency or a city, county, or other local law enforcement agency, the county attorney of the jurisdiction where the law enforcement agency is located; or
 - (b) if the law enforcement agency is a state law enforcement agency, to the attorney general.
- Section 4. Section **53-25-701** is enacted to read:

Part 7. Law Enforcement Officer Employment Due Process**53-25-701 . Definitions.**

As used in this part:

- (1) "Adverse employment decision" means a decision affecting a law enforcement officer's employment that could result in:
- (a) reduction of rank;
- (b) suspension without pay exceeding three days; or
- (c) termination of employment.
- (2) "Legal representative" means an attorney, who is licensed to practice law in this state.
- (3) "Non-attorney advocate" means an individual who is not licensed to practice law in this state and whom a law enforcement officer selects to assist the law enforcement officer in any hearings related to the law enforcement officer's employment.

Section 5. Section **53-25-702** is enacted to read:

53-25-702 . Notice of internal investigation -- Discovery -- Right to counsel.

- (1) If a law enforcement officer is the subject of an internal investigation by the law enforcement agency that employs the law enforcement officer that could result in an adverse employment decision against the law enforcement officer, the law enforcement agency shall, at least 48 hours before any interview of the law enforcement officer related to the internal investigation:
- (a) notify the law enforcement officer that the law enforcement officer is the subject of the internal investigation;
- (b) provide the time and location for the interview; and
- (c) notify the law enforcement officer that the law enforcement officer may bring a legal representative or non-attorney advocate to the interview to assist the law enforcement officer in the interview.
- (2) During an internal investigation conducted regarding a law enforcement officer that could result in an adverse employment decision against the law enforcement officer, the law enforcement officer has the right to have a legal representative or a non-attorney advocate, paid for at the law enforcement officer's expense, who may be present during any interview of the law enforcement officer conducted during an internal investigation.
- (3)(a) Before any disciplinary hearing may be held that could result in an adverse employment decision against a law enforcement officer, the law enforcement agency employing the law enforcement officer shall:
- (i) provide any information and evidence to the law enforcement officer or, if

- 200 applicable, the law enforcement officer's legal representative or non-attorney
201 advocate; and
- 202 (ii) allow a reasonable time for the law enforcement officer and, if applicable, the law
203 enforcement officer's legal representative or non-attorney advocate, to review the
204 information and evidence.
- 205 (b) If a law enforcement agency fails to provide the required information and evidence
206 described in Subsection (3)(a), the information or evidence may not be used against
207 the law enforcement officer in the disciplinary hearing.
- 208 (4) At any disciplinary hearing that could result in an adverse employment decision against
209 a law enforcement officer, the law enforcement officer or, if applicable, a legal
210 representative or a non-attorney advocate of the law enforcement officer, paid for at the
211 law enforcement officer's expense, has the right to:
- 212 (a) make opening and closing statements;
213 (b) if applicable, examine and cross-examine any witness; and
214 (c) introduce relevant evidence.
- 215 (5) For a law enforcement officer who has completed any employment probationary period,
216 a law enforcement agency may only terminate the law enforcement officer's
217 employment if the law enforcement agency has complied with the requirements of this
218 section.
- 219 (6) This section does not:
- 220 (a) apply to the termination of employment of a law enforcement officer due to budget
221 constraints of the government entity that oversees the law enforcement agency that
222 employs the law enforcement officer; or
- 223 (b) limit the rights of a law enforcement officer under Title 17, Chapter 30 Deputy
224 Sheriffs - Merit System, Title 10, Chapter 3, Part 11, Personnel Rules and Benefits,
225 or Title 63A, Chapter 17, Part 3, Classification and Career Service or any other
226 section of code.
- 227 Section 6. Section **63I-2-253** is amended to read:
- 228 **63I-2-253 . Repeal dates: Titles 53 through 53G.**
- 229 (1) Subsection 53-1-104(1)(b), regarding the Air Ambulance Committee, is repealed July 1,
230 2024.
- 231 (2) Section 53-1-118, Public Safety Honoring Heroes Restricted Account -- Creation --
232 Funding -- Distribution of funds by the commissioner, is repealed July 1, 2024.
- 233 (3) Section 53-1-120, Utah Law Enforcement Memorial Support Restricted Account --

- 234 Creation -- Funding -- Distribution of funds by the commissioner, is repealed July 1,
235 2024.
- 236 (4) Section 53-2a-303, Statewide mutual aid committee, is repealed October 1, 2024.
- 237 (5) Title 53, Chapter 2c, COVID-19 Health and Economic Response Act, is repealed July 1,
238 2026.
- 239 (6) Section 53-2d-101.1, Contracting authority -- Rulemaking authority, is repealed July 1,
240 2024.
- 241 (7) Section 53-2d-107, Air Ambulance Committee -- Membership -- Duties, is repealed
242 July 1, 2024.
- 243 (8) Section 53-2d-302, Trauma system advisory committee, is repealed October 1, 2024.
- 244 (9) Section 53-7-109, Firefighter Support Restricted Account, is repealed July 1, 2024.
- 245 (10) Section 53-9-104, Board -- Creation-- Qualifications -- Appointments -- Terms --
246 Immunity, is repealed October 1, 2024.
- 247 (11) Section 53-9-105, Powers and duties of the board, is repealed October 1, 2024.
- 248 (12) Section 53-9-106, Meetings -- Hearings, is repealed October 1, 2024.
- 249 (13) Section 53-22-104.1, School Security Task Force -- Membership -- Duties -- Per diem
250 -- Report -- Expiration, is repealed December 31, 2025.
- 251 (14) Section 53-22-104.2, The School Security Task Force -- Education Advisory Board, is
252 repealed December 31, 2025.
- 253 (15) Section 53-25-103, Airport dangerous weapon possession reporting requirements, is
254 repealed December 31, 2031.
- 255 (16) Subsection 53-25-602(4)(b), regarding the rights of a peace officer placed onto a
256 prosecution agency's Brady identification system before May 7, 2025, is repealed
257 December 1, 2025.
- 258 ~~[(16)]~~ (17) Section 53B-8-114, Continuation of previously authorized scholarships, is
259 repealed July 1, 2024.
- 260 ~~[(17)]~~ (18) Section 53B-10-101, Terrel H. Bell Teaching Incentive Loans program --
261 Eligible students -- Cancellation of incentive loans -- Repayment by recipient who fails
262 to meet requirements -- Duration of incentive loans, is repealed July 1, 2027.
- 263 ~~[(18)]~~ (19) Subsection 53F-2-504(6), regarding a report on the Salary Supplement for
264 Highly Needed Educators, is repealed July 1, 2026.
- 265 ~~[(19)]~~ (20) Section 53F-2-524, Teacher bonuses for extra assignments, is repealed July 1,
266 2024.
- 267 ~~[(20)]~~ (21) Section 53F-5-221, Management of energy and water use pilot program, is

268 repealed July 1, 2028.

269 [(21)] (22) Section 53F-5-222, Mentoring and Supporting Teacher Excellence and
270 Refinement Pilot Program, is repealed July 1, 2028.

271 [(22)] (23) Section 53F-5-223, Stipends for Future Educators Grant Program, is repealed
272 July 1, 2028.

273 [(23)] (24) Section 53F-9-401, Autism Awareness Restricted Account, is repealed July 1,
274 2024.

275 [(24)] (25) Section 53F-9-403, Kiwanis Education Support Fund, is repealed July 1, 2024.

276 [(25)] (26) Subsection 53G-11-502(1), regarding implementation of the educator evaluation
277 process, is repealed July 1, 2029.

278 [(26)] (27) Section 53G-11-506, Establishment of educator evaluation program -- Joint
279 committee, is repealed July 1, 2029.

280 [(27)] (28) Section 53G-11-507, Components of educator evaluation program, is repealed
281 July 1, 2029.

282 [(28)] (29) Section 53G-11-508, Summative evaluation timelines -- Review of summative
283 evaluations, is repealed July 1, 2029.

284 [(29)] (30) Section 53G-11-509, Mentor for provisional educator, is repealed July 1, 2029.

285 [(30)] (31) Section 53G-11-510, State board to describe a framework for the evaluation of
286 educators, is repealed July 1, 2029.

287 [(31)] (32) Section 53G-11-511, Rulemaking for privacy protection, is repealed July 1, 2029.

288 [(32)] (33) Subsection 53G-11-520(1), regarding optional alternative educator evaluation
289 processes, is repealed July 1, 2029.

290 [(33)] (34) Subsection 53G-11-520(2), regarding an exception from educator evaluation
291 process requirements, is repealed July 1, 2029.

292 Section 7. **Effective Date.**

293 This bill takes effect on May 7, 2025.