

1 PEACE OFFICER STANDARDS AND
2 TRAINING AMENDMENTS

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Carl Wimmer

6 Senate Sponsor: Jon J. Greiner

8 LONG TITLE

9 General Description:

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

13 Highlighted Provisions:

14 This bill:

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

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

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

- 25 • violation of a state or federal criminal law;

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

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

- 30 ▶ provides procedures and requires the division to initiate all adjudicative
- 31 proceedings as civil actions;
- 32 ▶ specifies that the burden of proof in the adjudicative proceedings is by clear and
- 33 convincing evidence;
- 34 ▶ provides requirements for recusal of council members in hearings regarding a peace
- 35 officer;
- 36 ▶ permits a peace officer to request an appeal hearing conducted by an administrative
- 37 law judge;
- 38 ▶ provides that termination, whether voluntary or involuntary, or employment by an
- 39 agency after termination does not preclude suspension or revocation of peace
- 40 officer certification status by the council if the peace officer was terminated for
- 41 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
66 substance which endangers public health and safety.

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,
72 including:

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

74 (b) a guilty plea;

75 (c) a plea of nolo contendere;

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

77 (i) a probationary period; or

78 (ii) a diversion agreement; or

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

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

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

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

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

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

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

91 [~~6~~] (8) "POST" means the division.

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

93 **53-6-105. Duties of director -- Powers -- Rulemaking.**

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

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

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

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

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

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

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

113 (g) consult and cooperate with other departments, agencies, and local governments

114 concerned with peace officer training;

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

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

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

121 (k) ~~[make rules as provided in this chapter.]~~ in accordance with Title 63G, Chapter 3,
122 Utah Administrative Rulemaking Act, the director shall, with the advice of the council, make
123 rules necessary to administer this chapter.

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

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

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

131 (3) The director may:

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

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

134 (4) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
135 ~~and consistent with Title 53, Chapter 6, Part 3, Dispatcher Training and Certification Act, the]~~
136 The director shall, with the advice of the council, make rules:

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

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

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

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

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

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

149 **53-6-202. Basic training course -- Completion required -- Annual training --**

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

151 (1) (a) The director shall:

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

153 (B) schedule instructors for basic training courses; or

154 (ii) review the material and instructor choices submitted by a certified academy.

155 (b) The subject material, instructors, and schedules shall be approved or disapproved
156 by a majority vote of the council.

157 (2) The materials shall be reviewed and approved by the council on or before July 1st
158 of each year and may from time to time be changed or amended by majority vote of the
159 council.

160 (3) The basic training in a certified academy shall be appropriate for the basic training
161 of peace officers in the techniques of law enforcement in the discretion of the director.

162 (4) (a) All peace officers must satisfactorily complete the basic training course or the
163 waiver process provided for in this chapter as well as annual certified training of not less than
164 40 hours as the director, with the advice and consent of the council, directs.

165 (b) A peace officer who fails to satisfactorily complete the annual training shall
166 automatically be prohibited from exercising peace officer powers until any deficiency is made
167 up.

168 ~~[(5) The director, with the advice of the council, may make rules relating to the~~
169 ~~reinstatement of powers of peace officers who have been prohibited from exercising those~~

170 ~~powers under this part.]~~

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

172 **53-6-203. Applicants for admission to training programs or for certification**
173 **examination -- Requirements.**

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

- 177 (a) be a United States citizen;
- 178 (b) be at least 21 years old at the time of appointment as a peace officer;
- 179 (c) be a high school graduate or furnish evidence of successful completion of an
180 examination indicating an equivalent achievement;

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

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

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

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

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

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

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

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

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

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

210 (5) An applicant shall be considered to be of good moral character under Subsection
211 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection
212 53-6-211(1).

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

214 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
215 **Grounds -- Notice to employer -- Reporting.**

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

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

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

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

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

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

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

229 (g) is dismissed from the armed forces of the Unites States under dishonorable
230 conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

279 **53-6-211.5. Voluntary relinquishment of peace officer certification.**

280 (1) A peace officer may voluntarily relinquish the peace officer's certification to the
281 division at any time when a disciplinary issue regarding the peace officer has been referred to

282 the division.

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

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