

**Representative Carl Wimmer** proposes the following substitute bill:

**PEACE OFFICER STANDARDS AND  
TRAINING AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: Jon J. Greiner

---

---

**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
  - violation of a state or federal law, regardless of whether the conduct results in



26 the filing of criminal charges;

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

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

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

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

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

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

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

44 **Monies Appropriated in this Bill:**

45       None

46 **Other Special Clauses:**

47       None

48 **Utah Code Sections Affected:**

49 AMENDS:

50       **53-6-102**, as last amended by Laws of Utah 1995, Chapter 134

51       **53-6-105**, as last amended by Laws of Utah 2008, Chapter 382

52       **53-6-202**, as renumbered and amended by Laws of Utah 1993, Chapter 234

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

54 ENACTS:

55       **53-6-211.5**, Utah Code Annotated 1953

56 REPEALS AND REENACTS:

57 **53-6-211**, as last amended by Laws of Utah 1998, Chapters 13 and 282

58 

---

---

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

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

61 **53-6-102. Definitions.**

62 As used in this chapter:

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

65 [~~(1)~~] (2) "Certified academy" means a peace officer training institution certified in  
66 accordance with the standards developed under Section 53-6-105.

67 [~~(2)~~] (3) "Council" means the Peace Officer Standards and Training Council created in  
68 Section 53-6-106.

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

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

71 (b) a guilty plea;

72 (c) a plea of nolo contendere;

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

74 (i) a probationary period; or

75 (ii) a diversion agreement; or

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

77 [~~(3)~~] (5) "Director" means the director of the Peace Officer Standards and Training  
78 Division appointed under Section 53-6-104.

79 [~~(4)~~] (6) "Dispatcher" means an employee of a public safety agency of the state or any  
80 of its political subdivisions and whose primary duties are to:

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

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

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

86 [~~(5)~~] (7) "Division" means the Peace Officer Standards and Training Division created  
87 in Section 53-6-103.

88 [~~(6)~~] (8) "POST" means the division.

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

90 **53-6-105. Duties of director -- Powers -- Rulemaking.**

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

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

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

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

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

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

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

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

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

114 (i) report to the council at regular meetings of the council and when the council  
115 requires;

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

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

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

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

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

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

128 (3) The director may:

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

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

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

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

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

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

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

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

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

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

146 **53-6-202. Basic training course -- Completion required -- Annual training --**

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

148 (1) (a) The director shall:

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

- 150 (B) schedule instructors for basic training courses; or  
151 (ii) review the material and instructor choices submitted by a certified academy.  
152 (b) The subject material, instructors, and schedules shall be approved or disapproved  
153 by a majority vote of the council.  
154 (2) The materials shall be reviewed and approved by the council on or before July 1st  
155 of each year and may from time to time be changed or amended by majority vote of the council.  
156 (3) The basic training in a certified academy shall be appropriate for the basic training  
157 of peace officers in the techniques of law enforcement in the discretion of the director.  
158 (4) (a) All peace officers must satisfactorily complete the basic training course or the  
159 waiver process provided for in this chapter as well as annual certified training of not less than  
160 40 hours as the director, with the advice and consent of the council, directs.  
161 (b) A peace officer who fails to satisfactorily complete the annual training shall  
162 automatically be prohibited from exercising peace officer powers until any deficiency is made  
163 up.  
164 ~~[(5) The director, with the advice of the council, may make rules relating to the~~  
165 ~~reinstatement of powers of peace officers who have been prohibited from exercising those~~  
166 ~~powers under this part.]~~  
167 Section 4. Section **53-6-203** is amended to read:  
168 **53-6-203. Applicants for admission to training programs or for certification**  
169 **examination -- Requirements.**  
170 (1) Before being accepted for admission to the training programs conducted by a  
171 certified academy, and before being allowed to take a certification examination, each applicant  
172 for admission or certification examination shall meet the following requirements:  
173 (a) be a United States citizen;  
174 (b) be at least 21 years old at the time of appointment as a peace officer;  
175 (c) be a high school graduate or furnish evidence of successful completion of an  
176 examination indicating an equivalent achievement;  
177 (d) have not been convicted of a crime for which the applicant could have been  
178 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of  
179 this or another state;  
180 (e) have demonstrated good moral character, as determined by a background

181 investigation; and

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

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

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

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

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

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

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

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

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

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

210 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
211 **Grounds -- Notice to employer -- Reporting.**

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

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

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

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

220 (d) engages in conduct which is a violation of any state or federal law, but not  
221 including a traffic offense that is a class C misdemeanor or infraction, regardless of whether the  
222 conduct results in the filing of criminal charges against the officer;

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

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

227 (g) is dismissed from military service with a bad conduct discharge or a dishonorable  
228 discharge.

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

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

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

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

240 (d) (i) The burden of proof on the division in an adjudicative proceeding under this  
241 section is by a preponderance of the evidence.

242 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of



243 proof to establish the affirmative defense by a preponderance of the evidence.

244 (e) If the administrative law judge finds there is sufficient evidence to demonstrate that  
245 the officer engaged in conduct that is in violation of Subsection (1), the division shall present  
246 the case to the council.

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

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

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

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

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

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

266 **53-6-211.5. Voluntary relinquishment of peace officer certification.**

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

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

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

---

---

**H.B. 187 1st Sub. (Buff) - 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.

---