

**LAW ENFORCEMENT OFFICER INVESTIGATION**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Investigations and Technical Services Act of the Public Safety Code by creating a new part entitled, "Utah Peace Officer Due Process and Accountability."

**Highlighted Provisions:**

This bill:

- ▶ enacts a procedure for investigation of allegations of a peace officer's misconduct;
- ▶ specifies separation of administrative action from action under Garrity v. New Jersey, 385 U.S. 493 (1967), a U.S. Supreme Court ruling;
- ▶ enacts provisions relating to records and recording of interrogations; and
- ▶ allows a peace officer to have counsel or a representative.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**53-10-701**, Utah Code Annotated 1953

**53-10-702**, Utah Code Annotated 1953

**53-10-703**, Utah Code Annotated 1953



28 53-10-704, Utah Code Annotated 1953



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

31 Section 1. Section 53-10-701 is enacted to read:

32 **Part 7. Utah Peace Officer Due Process and Accountability.**

33 **53-10-701. Title.**

34 This part is known as "Utah Peace Officer Due Process and Accountability."

35 Section 2. Section 53-10-702 is enacted to read:

36 **53-10-702. Definitions.**

37 As used in this part:

38 (1) "Garrity v. New Jersey" refers to the U.S. Supreme Court ruling Garrity v. New  
39 Jersey, 385 U.S. 493 (1967).

40 (2) "Investigator" means a law enforcement agency's internal affairs officer or other  
41 certified peace officer having the task of investigating the actions of another peace officer.

42 (3) "Officer" means a peace officer.

43 (4) "Peace officer" has the same definition as in Section 53-13-102.

44 Section 3. Section 53-10-703 is enacted to read:

45 **53-10-703. Investigation procedure.**

46 (1) This part applies to administrative action regarding a peace officer by the officer's  
47 direct employer. This part does not apply to:

48 (a) administrative action under Section 53-6-211 regarding suspension or revocation of  
49 certification;

50 (b) any conversations between a peace officer and the officer's supervisor in the normal  
51 course of duty, counseling, instruction, informal verbal admonishment, or other routine or  
52 unplanned contact where the potential penalty is anything less severe than time off without pay;  
53 or

54 (c) an investigation concerned solely and directly with any alleged criminal activities.

55 (2) Investigations shall be initiated within one year of the agency's discovery of the  
56 allegation and shall be conducted by a person authorized to initiate an investigation of the  
57 allegation of an act, omission, or other misconduct.

58 (3) The peace officer under investigation shall be issued a warning as provided in

59 Garrity v. New Jersey if:

60 (a) the possibility exists that a criminal investigation will occur; or

61 (b) new information becomes available requiring a separate line of questioning for  
62 which an additional warning is required.

63 (4) The nature and scope of questioning shall be narrowly focused on the allegations  
64 presented, as required under Garrity v. New Jersey.

65 (5) A peace officer who is under investigation shall be informed before the questioning  
66 or interrogation of:

67 (a) the time and location of the questioning;

68 (b) the allegations; and

69 (c) the scope of questioning.

70 (6) Investigators may not ask questions pertaining to an action:

71 (a) regarding which the investigator has no facts or information to sustain the  
72 allegation; or

73 (b) that refer to conduct that is not a violation of any law, policy, or procedure.

74 (7) An offer of any reward or benefit may not be made to induce the answering of any  
75 question.

76 (8) (a) There shall be a clear break between the interrogation of a peace officer under  
77 administrative action and under Garrity v. New Jersey and any subsequent criminal  
78 investigation.

79 (b) Investigators performing the administrative action against the officer may not  
80 participate in the criminal investigation of the officer.

81 (9) The officer may, upon request, be represented by a representative or an attorney of  
82 the officer's choice, who may be present at all times during the interrogation. The  
83 representative may not be a person subject to the same investigation.

84 (10) An interrogation session shall be conducted:

85 (a) at a time when the peace officer is on duty or during the normal waking hours for  
86 the peace officer, unless the seriousness of the investigation requires otherwise; and

87 (b) in a manner that allows the officer under interrogation to attend to the officer's  
88 reasonable personal physical needs for a reasonable period of time and at a reasonable  
89 frequency.

90           (11) A peace officer may not be compelled to submit to a polygraph examination  
91 against the officer's will, until all other investigative leads and techniques have been exhausted.  
92 Notice of refusal by an officer to submit to a polygraph examination may not be allowed in  
93 court hearings, unless agreed upon by the officer and the agency.

94           (12) (a) A peace officer who is not a probationary employee has the right to an  
95 administrative appeal of administrative actions.

96           (b) The appeal process shall be determined by the local law enforcement agency  
97 according to current policy or ordinance.

98           (c) The burden of proof during an administrative appeal is on the employer.

99           (d) An officer who is not on probation may not be discharged without cause after  
100 receiving an administrative hearing.

101           Section 4. Section **53-10-704** is enacted to read:

102           **53-10-704. Records of complaints and investigations -- Recording.**

103           (1) The interrogation of a peace officer may be recorded by written or electronic  
104 means.

105           (2) If a recording is made of the interrogation, the peace officer or the peace officer's  
106 attorney may have access to the recording before any further proceedings.

107           (3) (a) The peace officer may, at the officer's own expense, obtain a transcribed copy of  
108 any notes made by a stenographer, or any reports or complaints made by investigators or other  
109 persons, except those determined by the investigating agency to be confidential.

110           (b) The officer may appeal a determination of confidentiality to an administrative law  
111 judge.

112           (4) The peace officer being interrogated has the right to bring a recording device and  
113 record the interrogation in its entirety.

114           (5) Notes and reports considered to be confidential and unavailable to the officer may  
115 not be entered into the officer's personnel file.

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**Legislative Review Note**  
as of 2-15-11 11:20 AM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 383

SHORT TITLE: Law Enforcement Officer Investigation

SPONSOR: Wimmer, C.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.