

PEACE OFFICER STANDARDS AND TRAINING

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: Keith Grover

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 9 voting for 0 voting against 7 absent

General Description:

This bill amends the responsibilities of the Peace Officer Standards and Training Council regarding disciplinary action against peace officers and dispatchers.

Highlighted Provisions:

This bill:

- requires the POST Council to decide on sanctions to be imposed upon peace officers and dispatchers;
allows for the issuance of a Letter of Caution as a disciplinary measure;
requires the POST Council to accept an administrative law judge's findings and conclusions; and
requires the division to be notified upon the separation of a peace officer or dispatcher who is under investigation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53-6-107**, as last amended by Laws of Utah 2002, Chapter 250

31 **53-6-211**, as last amended by Laws of Utah 2013, Chapters 115 and 269

32 **53-6-309**, as repealed and reenacted by Laws of Utah 2011, Chapter 258



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

35 Section 1. Section **53-6-107** is amended to read:

36 **53-6-107. General duties of council.**

37 (1) The council shall:

38 (a) advise the director regarding:

39 (i) the approval, certification, or revocation of certification of any certified academy
40 established in the state;

41 [~~(ii) the refusal, suspension, or revocation of certification of a peace officer;~~]

42 [~~(iii)~~] (ii) minimum courses of study, attendance requirements, and the equipment and
43 facilities to be required at a certified academy;

44 [~~(iv)~~] (iii) minimum qualifications for instructors at a certified academy;

45 [~~(v)~~] (iv) the minimum basic training requirements that peace officers shall complete
46 before receiving certification;

47 [~~(vi)~~] (v) the minimum basic training requirements that dispatchers shall complete
48 before receiving certification; and

49 [~~(vii)~~] (vi) categories or classifications of advanced in-service training programs and
50 minimum courses of study and attendance requirements for the categories or classifications;

51 (b) recommend that studies, surveys, or reports, or all of them be made by the director
52 concerning the implementation of the objectives and purposes of this chapter;

53 (c) make recommendations and reports to the commissioner and governor from time to
54 time; [~~and~~]

55 (d) perform other acts as necessary to carry out the duties of the council in this
56 chapter[-]; and

57 (e) choose from the sanctions to be imposed against certified peace officers as provided
58 in Section 53-6-211, and dispatchers as provided in Section 53-6-309.

59 (2) The council may approve special function officers for membership in the Public
60 Safety Retirement System in accordance with Sections [49-14-201](#) and [49-15-201](#).

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

62 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
63 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

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

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

77 (g) is certified as a law enforcement peace officer, as defined in Section [~~53-13-103~~]
78 [53-13-102](#), and is unable to possess a firearm under state or federal law.

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

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

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

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

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

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

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

98 (f) The division shall notify the chief, sheriff, or administrative officer of the police
99 agency which employs the involved peace officer of the investigation and shall provide any
100 information or comments concerning the peace officer received from that agency regarding the
101 peace officer to the council before a Letter of Caution is issued, or a peace officer's certification
102 may be suspended or revoked.

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

106 (4) (a) The council shall ~~[review]~~:

107 (i) accept the administrative law judge's findings of fact and conclusions of law, and
108 the information concerning the peace officer provided by the officer's employing agency; and
109 ~~[determine]~~

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

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

114 ~~[(b)]~~ (c) A member of the council shall recuse him or herself from consideration of an
115 issue that is before the council if the council member:

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

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

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

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

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

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

132 (b) If a peace officer who is the subject of an internal or administrative investigation
133 that involves conduct in violation of Subsection (1) resigns, retires, or otherwise separates from
134 the investigating law enforcement agency before the conclusion of the investigation, the chief,
135 sheriff, or administrative officer of that law enforcement agency shall report the allegations and
136 any investigation results to the division.

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

140 Section 3. Section **53-6-309** is amended to read:

141 **53-6-309. Suspension or revocation of certification -- Right to a hearing --**
142 **Grounds -- Notice to employer -- Reporting.**

143 (1) The council has the authority to issue a Letter of Caution, or suspend or revoke the
144 certification of a dispatcher, if the dispatcher:

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

146 (b) has any physical or mental disability affecting the dispatcher's ability to perform
147 duties;

148 (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the
149 addiction to the employer and to the director as part of a departmental early intervention
150 process;

151 (d) engages in conduct [~~that is~~] constituting a state or federal criminal offense, but not

152 including a traffic offense that is a class C misdemeanor or infraction;

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

155 (f) engages in sexual conduct while on duty.

156 (2) The council may not issue a Letter of Caution, or suspend or revoke the
157 certification of a dispatcher for a violation of the employing agency's policies, general orders,
158 or guidelines of operation that do not amount to a cause of action under Subsection (1).

159 (3) (a) The division is responsible for investigating dispatchers who are alleged to have
160 engaged in conduct in violation of Subsection (1).

161 (b) The division shall initiate all adjudicative proceedings under this section by
162 providing to the dispatcher involved notice and an opportunity for a hearing before an
163 administrative law judge.

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

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

169 (ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof
170 to establish the affirmative defense by a preponderance of the evidence.

171 (e) If the administrative law judge issues findings of fact and conclusions of law stating
172 there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in
173 violation of Subsection (1), the division shall present the findings and conclusions issued by
174 the administrative law judge to the council.

175 (f) The division shall notify the agency that employs the involved dispatcher of the
176 investigation and shall provide any information or comments concerning the dispatcher
177 received from that agency regarding the dispatcher to the council before a Letter of Caution is
178 issued, or a dispatcher's certification may be suspended or revoked.

179 (g) If the administrative law judge finds that there is insufficient evidence to
180 demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge
181 shall dismiss the adjudicative proceeding.

182 (4) (a) The council shall ~~review~~:

183 (i) accept the administrative law judge's findings of fact and conclusions of law and the
184 information concerning the dispatcher provided by the dispatcher's employing agency; and
185 [~~determine~~]

186 (ii) choose whether to issue a Letter of Caution, or suspend or revoke the dispatcher's
187 certification.

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

190 [~~(b)~~] (c) A council member shall recuse himself or herself from consideration of an
191 issue that is before the council if the council member:

192 (i) has a personal bias for or against the dispatcher;

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

195 (iii) employs, supervises, or works for the same agency as the dispatcher whose case is
196 before the council.

197 (5) (a) Termination of a dispatcher, whether voluntary or involuntary, does not
198 preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher
199 was terminated for any of the reasons under Subsection (1).

200 (b) Employment by another agency, or reinstatement of a dispatcher by the original
201 employing agency after termination by that agency, whether the termination was voluntary or
202 involuntary, does not preclude suspension or revocation of a dispatcher's certification by the
203 council if the dispatcher was terminated for any of the reasons under Subsection (1).

204 (6) (a) An agency that is made aware of an allegation against a dispatcher employed by
205 that agency that involves conduct in violation of Subsection (1) shall investigate the allegation
206 and report to the division if the allegation is found to be true.

207 (b) If a dispatcher who is the subject of an internal or administrative investigation that
208 involves conduct in violation of Subsection (1) resigns, retires, or otherwise separates from the
209 investigating law enforcement agency before the conclusion of the investigation, the agency
210 shall report the allegations and any investigation results to the division.

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