

Representative Andrew Stoddard proposes the following substitute bill:

POST CERTIFICATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill adds additional grounds for taking action in relation to peace officer misconduct.

Highlighted Provisions:

This bill:

- ▶ adds the following grounds to the council's authority to issue a Letter of Caution or suspend or revoke the certification of a peace officer:
 - conduct involving dishonesty or deception; or
 - the officer is found by a court or by a law enforcement agency to have knowingly engaged in certain biased or prejudicial conduct; and
- ▶ modifies when separations from an employer must be reported to the division.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-211, as last amended by Laws of Utah 2020, Chapter 35



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

28 Section 1. Section 53-6-211 is amended to read:

29 **53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds**
30 **-- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

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

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

44 (g) is certified as a law enforcement peace officer, as defined in Section 53-13-102, and
45 is unable to possess a firearm under state or federal law~~[-]~~;

46 (h) is found by a court or by a law enforcement agency to have knowingly engaged in
47 conduct that involves dishonesty or deception in violation of a policy of the peace officer's
48 employer or in violation of a state or federal law; or

49 (i) is found by a court or by a law enforcement agency to have knowingly engaged in
50 biased or prejudicial conduct against one or more individuals based on the individual's race,
51 color, sex, pregnancy, age, religion, national origin, disability, sexual orientation, or gender
52 identity.

53 (2) The council may not issue a Letter of Caution~~[-]~~ or suspend or revoke the
54 certification of a peace officer for a violation of state or federal law or a violation of a law
55 enforcement agency's policies, general orders, or guidelines of operation that do not amount to a
56 cause of action under Subsection (1).

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

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

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

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

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

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

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

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

81 (4) (a) The council shall:

82 (i) accept the administrative law judge's findings of fact and conclusions of law, and the
83 information concerning the peace officer provided by the officer's employing agency; and

84 (ii) choose whether to issue a Letter of Caution[;] or suspend or revoke the officer's
85 certification.

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

88 (c) A member of the council shall recuse him or herself from consideration of an issue
89 that is before the council if the council member:

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

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

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

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

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

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

106 (b) If a peace officer who is the subject of an internal or administrative investigation
107 into allegations that include any of the conditions or circumstances outlined in Subsection (1)
108 resigns, retires, or otherwise separates from the investigating law enforcement agency before the
109 conclusion of the investigation, the chief, sheriff, or administrative officer of that law
110 enforcement agency shall report the allegations and any investigation results to the division.

111 (7) The council's issuance of a Letter of Caution[;] or suspension or revocation of an
112 officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4,
113 Judicial Review.