

Senator Jani Iwamoto proposes the following substitute bill:

**LAW ENFORCEMENT INTERNAL INVESTIGATION**

**REQUIREMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: Ryan D. Wilcox

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**LONG TITLE**

**General Description:**

This bill adjusts requirements for law enforcement agencies to conduct internal investigations regarding law enforcement officers.

**Highlighted Provisions:**

This bill:

- ▶ requires an employing law enforcement agency or training academy to provide information to a prospective employer upon request;
- ▶ requires law enforcement agencies to report certain investigations to POST; and
- ▶ makes conforming and technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-6-209**, as renumbered and amended by Laws of Utah 1993, Chapter 234

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



26 **53-14-101**, as last amended by Laws of Utah 2004, Chapter 62



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

29 Section 1. Section **53-6-209** is amended to read:

30 **53-6-209. Termination of employment -- Change of status form.**

31 (1) When a peace officer's employment terminates, the employing agency shall submit  
32 a change of status form noting the termination of the peace officer to the division.

33 (2) The change of status form shall:

34 (a) be completed and submitted within [~~seven~~] 30 days of the peace officer's  
35 termination date;

36 (b) identify the circumstances of the peace officer's status change by indicating that the  
37 peace officer has resigned, retired, terminated, transferred, deceased, or that the peace officer's  
38 name has changed;

39 (c) indicate the effective date of action; and

40 (d) indicate the name of the new employer, if the status change is due to a transfer.

41 (3) If a peace officer's employment terminates during an open internal investigation  
42 regarding that peace officer and involving an alleged violation of Subsection 53-6-211(1), the  
43 employing agency shall notify the division of the investigation in accordance with Subsection  
44 53-6-211(6) within 30 days of the peace officer's termination date and provide a reasonable  
45 estimated date of completion for the investigation.

46 (4) If an employing agency receives credible allegations and opens an internal  
47 investigation ~~§~~→ **within two years** ←~~§~~ after a peace officer's employment has been terminated, the  
47a employing agency  
48 shall notify the division within 30 days of the date of the opening of the investigation and  
49 provide a reasonable estimated date of completion for the investigation. If the allegations  
50 involve alleged violations of Subsection 53-6-211(1), the agency shall report the allegations to  
51 the division in accordance with Subsection 53-6-211(6) whether or not the employing agency  
52 opens an internal investigation.

53 [~~3~~] (5) Any person or agency who intentionally falsifies, misrepresents, or fails to  
54 give notice of the change of status of a peace officer is liable to the division for any damages  
55 that may be sustained by the failure to make the notification.

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

57           **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
58 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

64           ~~[(c) is addicted to alcohol or any controlled substance, unless the peace officer reports~~  
65 ~~the addiction to the employer and to the director as part of a departmental early intervention~~  
66 ~~process;]~~

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

69           ~~[(e)]~~ (d) refuses to respond, or fails to respond truthfully, to questions after having been  
70 issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

71           ~~[(f)]~~ (e) engages in sexual conduct while on duty; or

72           ~~[(g)]~~ (f) is certified as a law enforcement peace officer, as defined in Section  
73 [53-13-102](#), and is unable to possess a firearm under state or federal law.

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

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

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

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

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

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

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

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

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

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

101 (4) (a) The council shall:

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

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

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

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

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

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

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

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

118 (b) Employment by another agency, or reinstatement of a peace officer by the original

119 employing agency after termination by that agency, whether the termination was voluntary or  
 120 involuntary, does not preclude suspension or revocation of a peace officer's certification by the  
 121 council if the peace officer was terminated for any of the reasons under Subsection (1).

122 (6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is  
 123 made aware of an allegation against a peace officer employed by that agency that involves  
 124 conduct in violation of Subsection (1) shall ~~[investigate]~~ conduct an administrative or internal  
 125 investigation into the allegation and report the findings of the investigation to the division if the  
 126 allegation is ~~Š→ [found to be true]~~ substantiated ~~←Š~~ .

127 (b) If a peace officer who is the subject of an internal or administrative investigation  
 128 into allegations that include any of the conditions or circumstances outlined in Subsection (1)  
 129 resigns, retires, or otherwise separates from the investigating law enforcement agency before  
 130 the conclusion of the investigation, the chief, sheriff, or administrative officer of that law  
 131 enforcement agency shall complete the investigation and report the ~~[allegations and any~~  
 132 ~~investigation results]~~ findings to the division.

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

136 Section 3. Section **53-14-101** is amended to read:

137 **53-14-101. Law enforcement and training academy applicants -- Employer**  
 138 **background information.**

139 (1) As used in this section:

140 (a) "Director" means the director of a certified law enforcement officer training  
 141 academy.

142 (b) "Employer" includes a public employer and a private employer and includes the  
 143 human resource officer for the employer.

144 (c) "Law enforcement agency" has the same definition as in Section [53-1-102](#).

145 (d) "Law enforcement officer" has the same definition as in Section [53-13-103](#), and  
 146 includes those officers in administrative positions.

147 (e) "Training academy" means a peace officer training institution certified in  
 148 accordance with the standards developed under Section [53-6-105](#).

149 (2) A current or former employer and the director of any training academy an applicant

150 has attended or graduated from shall provide all available information in accordance with this  
151 section regarding an applicant if the request complies with Subsection (3) and is submitted by:

- 152 (a) a law enforcement agency regarding an applicant for an employment position; or
- 153 (b) the director of a law enforcement training academy for which the applicant requests  
154 admission under Section [53-6-203](#).

155 (3) The request for information pursuant to Subsection (2) shall be:

- 156 (a) in writing;
- 157 (b) accompanied by an authorization signed by the applicant and notarized by a notary  
158 public, in which the applicant consents to the release of the requested information and releases  
159 the employer or training academy providing the information from liability; and
- 160 (c) addressed to the employer or director and signed by a sworn officer or other  
161 authorized representative of the requesting law enforcement agency or the academy.

162 (4) The information that a law enforcement agency or the director of an academy [~~may~~]  
163 shall request pursuant to Subsection (2) includes:

- 164 (a) the date on which the [~~applicant began his~~] applicant's employment commenced  
165 and, if applicable, the date on which [~~the employment of the applicant~~] applicant's employment  
166 was terminated;
- 167 (b) a list of the compensation that the employer provided to the applicant during the  
168 course of the employment;
- 169 (c) a copy of the application for a position of employment that the applicant submitted  
170 to the employer;
- 171 (d) a written evaluation of the performance of the applicant;
- 172 (e) a record of the attendance of the applicant;
- 173 (f) a record of disciplinary action taken against the applicant;
- 174 (g) a statement regarding whether the employer would rehire the applicant and, if the  
175 employer would not rehire the applicant, the reasons why;
- 176 (h) if applicable, a record setting forth the reason that the employment of the applicant  
177 was terminated and whether the termination was voluntary or involuntary;
- 178 (i) the record of any final action regarding an applicant's peace officer certification that  
179 is based on an investigation concerning the applicant's qualification for certification; and
- 180 (j) notice of any pending or ongoing investigation regarding the applicant's certification

181 as a peace officer.

182 (5) (a) In the absence of fraud or malice, an employer or training academy is not  
183 subject to any civil liability for any relevant cause of action by releasing employment  
184 information requested under this section.

185 (b) This section does not in any way or manner abrogate or lessen the existing common  
186 law or statutory privileges and immunities of an employer.

187 (c) An employer or training academy may not provide information pursuant to  
188 Subsection (2) if the disclosure of the information is prohibited pursuant to federal or state law.

189 (6) An employer's refusal to disclose information to a law enforcement agency in  
190 accordance with this section constitutes grounds for a civil action by the requesting agency for  
191 injunctive relief requiring disclosure on the part of an employer.

192 (7) (a) (i) A law enforcement agency may use the information received pursuant to this  
193 section only to determine the suitability of an applicant for employment.

194 (ii) A director may use the information received pursuant to this section only to  
195 determine the suitability of an applicant for acceptance at the training academy.

196 (b) Except as otherwise provided in Subsection (7)(c), [~~a~~] the recipient law  
197 enforcement agency and [~~a~~] director shall maintain the confidentiality of information received  
198 pursuant to this section.

199 (c) (i) A law enforcement agency [~~may~~] shall share information regarding an applicant  
200 that it receives pursuant to this section with another law enforcement agency if:

201 (A) the information is requested by the other law enforcement agency in accordance  
202 with this section;

203 [~~(A)] (B) the applicant is also an applicant for any employment position with the other  
204 law enforcement agency; and~~

205 [~~(B)] (C) the confidentiality of the information is otherwise maintained.~~

206 (ii) A director [~~may~~] shall share information regarding an applicant that is received  
207 pursuant to this section with another training academy if:

208 (A) the information is requested by the other training academy in accordance with this  
209 section;

210 [~~(A)] (B) the applicant is an applicant for acceptance at the other training academy; and~~

211 [~~(B)] (C) the confidentiality of the information is otherwise maintained.~~

212 (iii) A director [~~may~~] shall share information regarding an applicant, attendee, or  
213 graduate of a training academy that is received pursuant to this section with a law enforcement  
214 agency if:

215 (A) the information is requested by the law enforcement agency in accordance with this  
216 section;

217 [~~(A)~~] (B) the applicant is applying for a position as a peace officer with the law  
218 enforcement agency; and

219 [~~(B)~~] (C) the confidentiality of the information is otherwise maintained.

220 (8) This section applies to requests submitted to employers on and after July 1, [~~2003~~]  
221 2020 for employment information under this section.