

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: _____

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



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

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

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

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

(2) The change of status form shall:

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

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

(c) indicate the effective date of action; and

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

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

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

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

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

53-6-211. Suspension or revocation of certification -- Right to a hearing --

57 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (4) (a) The council shall:

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

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

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

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

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

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

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

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

117 (b) Employment by another agency, or reinstatement of a peace officer by the original
118 employing agency after termination by that agency, whether the termination was voluntary or

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

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

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

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