

SB0013S01 compared with SB0013

~~{deleted text}~~ shows text that was in SB0013 but was deleted in SB0013S01.

inserted text shows text that was not in SB0013 but was inserted into SB0013S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

~~{Committee Note:~~

~~_____The Law Enforcement and Criminal Justice Interim Committee recommended this bill.~~

~~_____Legislative Vote: 15 voting for 0 voting against 1 absent~~

~~{General Description:~~

This bill ~~{provides direction}~~adjusts requirements for law enforcement agencies to conduct internal investigations ~~{into officer misconduct if the officer leaves the department}~~regarding law enforcement officers.

Highlighted Provisions:

This bill:

- ▶ requires ~~{that}~~ an employing law enforcement agency ~~{notify the Peace Officer~~

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~~Standards and Training Division if a peace officer separates from the agency while an investigation is in progress;~~

~~— provides that if an officer separates from an agency while an investigation is in progress, the agency shall notify the Peace Officer Standards and Training Division of the investigation; and~~

~~— requires that the agency investigation be turned over to the division under certain circumstances; 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

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

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(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.

~~{a}4~~ If ~~the~~ an employing agency receives credible allegations and opens an internal investigation ~~involves an alleged violation of internal agency policies~~ after a peace officer's employment has been terminated, the employing agency shall notify the division within ~~seven~~30 days of ~~completion~~the date of the opening of the investigation ~~that~~and provide a reasonable estimated date of completion for the investigation ~~has been completed~~.

~~(b)~~ If the ~~internal investigation involves an~~allegations involve alleged ~~violation~~violations of Subsection 53-6-211(1), the ~~employing~~ agency shall ~~notify~~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)~~ ~~{4}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 -- Grounds -- Notice to employer -- Reporting -- Judicial appeal.

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

(a) willfully falsifies any information to obtain certification;

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

~~{c} is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;~~

~~{d}~~ {c} engages in conduct constituting a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;

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

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

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

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

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

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

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

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

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

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

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

(g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall

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dismiss the adjudicative proceeding.

(4) (a) The council shall:

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

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

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

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

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

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

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

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

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

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

(b) If a peace officer who is the subject of an internal or administrative investigation into allegations that include any of the conditions or circumstances outlined in Subsection (1) resigns, retires, or otherwise separates from the investigating law enforcement agency before

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the conclusion of the investigation, the chief, sheriff, or administrative officer of that law enforcement agency shall complete the investigation and report the allegations and ~~any~~ provide all investigation ~~results~~ files on the allegations findings to the division ~~within 30 days of the peace officer's termination date~~.

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