

SB0191S02 compared with SB0191S01

~~text~~ shows text that was in SB0191S01 but was deleted in SB0191S02.

text shows text that was not in SB0191S01 but was inserted into SB0191S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

LAW ENFORCEMENT MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to law enforcement.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses disciplinary charges against a peace officer;
- ▶ addresses the regulation and authority of a law enforcement agency established by a private institution of higher education;
- ▶ establishes a process and requirements for certification of a law enforcement agency established by a private institution of higher education (a private law enforcement agency);
- ▶ describes the authority of a private law enforcement agency;

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- ▶ describes policy and procedure requirements for a private law enforcement agency;
- ▶ provides for access to records of, and periodic audits of, a private law enforcement agency;
- ▶ provides for enforcement of the provisions of this bill, including informal and formal action;
- ▶ establishes due process procedures for taking formal action against a private law enforcement agency, including placing the private law enforcement agency on probation or revoking a private law enforcement agency's certification; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-30a-403, as enacted by Laws of Utah 2014, Chapter 366

53-1-102, as last amended by Laws of Utah 2019, Chapter 280

53-13-103, as last amended by Laws of Utah 2019, Chapter 280

ENACTS:

53-19-101, Utah Code Annotated 1953

53-19-102, Utah Code Annotated 1953

53-19-103, Utah Code Annotated 1953

53-19-201, Utah Code Annotated 1953

53-19-202, Utah Code Annotated 1953

53-19-203, Utah Code Annotated 1953

53-19-204, Utah Code Annotated 1953

53-19-301, Utah Code Annotated 1953

53-19-302, Utah Code Annotated 1953

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

Section 1. Section **17-30a-403** is amended to read:

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17-30a-403. Disciplinary charges -- Appeal to commission -- Hearing -- Findings.

(1) The appointing authority:

(a) may impose disciplinary charges in accordance with a rule, policy, ordinance, or law; and

(b) shall serve the merit system officer to be disciplined with a copy of the written charges.

(2) (a) A disciplined merit system officer may file an appeal of the disciplinary charges with the department, which shall conduct the appeal internally.

(b) The department shall conduct an appeal in accordance with rules or policies adopted by the appointing authority.

(3) If the disciplinary charges are sustained on internal appeal, the merit system officer may appeal to the commission in accordance with the provisions of this section and commission rule.

(4) (a) A merit system officer disciplined in accordance with Subsection (1) may, within 10 calendar days after the internal department appeal decision described in Subsection (2), make an appeal in writing to the commission.

(b) If the merit system officer fails to make an internal appeal of the disciplinary action, the officer may not appeal to the commission.

(5) The commission may hear appeals regarding demotion, reduction in pay, suspension, or discharge of a merit system officer for any cause provided in Section 17-30a-402.

~~[(6) In the absence of an appeal, a copy of the charges under Subsection (1) may not be made public without the consent of the officer charged.]~~

~~[(7) (6) (a) The commission shall:~~

~~(i) fix a time and place for a hearing on the appeal; and~~

~~(ii) give notice of the hearing to the parties.~~

~~(b) (i) Except as provided in Subsection [(7) (6)(b)(ii), the commission shall hold a hearing under this Subsection [(7) (6) no less than 10 and no more than 90 days after an appeal is filed.~~

~~(ii) The commission may hold a hearing more than 90 days after an appeal is filed if:~~

~~(A) the parties agree; or~~

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(B) the commission finds that the delay is for good cause.

~~[(8)]~~ (7) (a) The commission shall hold the hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

(b) Notwithstanding Subsection ~~[(8)]~~ (7)(a), if the commission proposes to and is authorized to close the hearing to the public in accordance with Title 52, Chapter 4, Open and Public Meetings Act, the commission shall open the meeting to the public if the aggrieved officer requests that the commission open the hearing.

~~[(9)]~~ (8) The parties may be represented by counsel at the hearing.

~~[(10)]~~ (9) The commission, on its own motion or at the request of the appointing authority, may dismiss an appeal for unjustified delay, removal to a court or other venue, or for other good cause shown.

~~[(11)]~~ (10) In resolving an appeal, the commission may sustain, modify, or vacate a decision of the appointing authority.

~~[(12)]~~ (11) After the hearing, the commission shall publish a written decision, including findings of fact and conclusions of law, and shall notify each party.

Section 2. Section **53-1-102** is amended to read:

53-1-102. Definitions.

(1) As used in this title:

(a) "Commissioner" means the commissioner of public safety appointed under Section 53-1-107.

(b) "Department" means the Department of Public Safety created in Section 53-1-103.

(c) "Law enforcement agency" means an entity or division of:

(i) (A) the federal government, a state, or a political subdivision of a state;

(B) a state institution of higher education; or

(C) a private institution of higher education, if the entity or division ~~[has been]~~ is certified by the commissioner under Title 53, Chapter 19, Certification of Private Law Enforcement Agency; and

(ii) that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(d) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

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(e) "Motor vehicle" means every self-propelled vehicle and every vehicle propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheel chairs and vehicles moved solely by human power.

(f) "Peace officer" means any officer certified in accordance with Title 53, Chapter 13, Peace Officer Classifications.

(g) "State institution of higher education" means the same as that term is defined in Section 53B-3-102.

(h) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(2) The definitions provided in Subsection (1) are to be applied throughout this title in addition to definitions that are applicable to specific chapters or parts.

Section 3. Section **53-13-103** is amended to read:

53-13-103. Law enforcement officer.

(1) (a) "Law enforcement officer" means a sworn and certified peace officer:

(i) who is an employee of a law enforcement agency; and

(ii) whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" includes the following:

(i) ~~[any]~~ a sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections 23-20-1.5 and 79-4-501;

(iv) ~~[any]~~ a police officer employed by ~~[any college or university]~~ a state institution of higher education;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) investigators for the Department of Insurance, Fraud Division;

(vii) special agents or investigators employed by the attorney general, district attorneys, and county attorneys;

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(viii) employees of the Department of Natural Resources designated as peace officers by law;

(ix) school district police officers as designated by the board of education for the school district;

(x) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(xi) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993;

(xii) members of a law enforcement agency established by a private college or university [~~provided that the college or university has been~~] if the agency is certified by the commissioner [of public safety according to rules of the Department of Public Safety] under Title 53, Chapter 19, Certification of Private Law Enforcement Agency;

(xiii) airport police officers of any airport owned or operated by the state or any of its political subdivisions; and

(xiv) transit police officers designated under Section 17B-2a-822.

(2) Law enforcement officers may serve criminal process and arrest violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections - State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority:

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- (a) (i) have satisfactorily completed the requirements of Section 53-6-205; or
- (ii) have met the waiver requirements in Section 53-6-206; and
- (b) have satisfactorily completed annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

Section 4. Section **53-19-101** is enacted to read:

CHAPTER 19. CERTIFICATION OF PRIVATE LAW ENFORCEMENT AGENCY

Part 1. General Provisions

53-19-101. Title.

This chapter is known as "Certification of Private Law Enforcement Agency."

Section 5. Section **53-19-102** is enacted to read:

53-19-102. Definitions.

As used in this chapter:

- (1) "Division" means the Peace Officer Standards and Training Division created in Section 53-6-103.
- (2) "Formal action" against a private law enforcement agency includes:
 - (a) placing a private law enforcement agency on probation;
 - (b) extending the probation of a private law enforcement agency; or
 - (c) revoking the certification of a private law enforcement agency.
- (3) "Informal action" against a private law enforcement agency includes:
 - (a) an oral or written warning;
 - (b) a written reprimand; or
 - (c) a written order to remedy noncompliance with a provision of this chapter, which may include a deadline for compliance and verification of compliance.
- (4) "Private law enforcement agency" means a law enforcement agency operated by, and at, a private institution of higher education.

Section 6. Section **53-19-103** is enacted to read:

53-19-103. Rulemaking authority.

The commissioner shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~relating to~~ establishing:

- (1) the forms and process to apply for certification of a private law enforcement agency;

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(2) methods for the commissioner, the department, or the division to obtain, review, use, and protect, any and all records of, or directly related to, a private law enforcement agency;

(3) ~~requirements for~~ the conduct of a formal hearing under Part 3, Enforcement, including requirements for proceedings, discovery, subpoenas, and witnesses;

(4) ~~requirements for~~ verifying compliance with the terms of probation;

(5) audit procedures; ~~and~~

(6) requirements for the contents of a ~~policy~~policies and ~~procedure~~procedures manual of a private law enforcement agency~~;~~ and

(7) requirements for the operation of a private law enforcement agency.

Section 7. Section **53-19-201** is enacted to read:

Part 2. Private Law Enforcement Agencies

53-19-201. Certification of private law enforcement agency.

(1) A private institution of higher education may operate a private law enforcement agency if the private law enforcement agency is certified by the commissioner.

(2) A private law enforcement agency certified before May 5, 2021:

(a) is not required to apply for an initial certification under Subsection (4); and

(b) retains the private law enforcement agency's certification, unless the commissioner revokes the certification in accordance with this chapter.

(3) A private law enforcement agency that is not certified before May 5, 2021:

(a) is required to apply for initial certification under Subsection (4); and

(b) retains the private law enforcement agency's certification, unless the commissioner revokes the certification in accordance with this chapter.

(4) To receive initial certification for a private law enforcement agency, the private institution of higher education seeking the certification shall submit to the department an application for certification, designed by the department, that includes:

(a) a description of the proposed private law enforcement agency, including the number of officers that the private law enforcement agency intends to initially employ;

(b) the command structure for the proposed private law enforcement agency;

(c) the private law enforcement agency's proposed policies and procedures manual; and

(d) any other information required by the commissioner, by a rule described in Section 53-19-103.

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(5) The department shall, within 90 days after the day on which the department receives a completed application for certification described in Subsection (4), grant or deny the application.

(6) The commissioner shall:

(a) grant an application for certification of a private law enforcement agency, if:

(i) the application is complete;

(ii) the proposed policies and procedures manual complies with Section 53-19-203, including the rules described in Section 53-19-103;

(iii) the proposed private law enforcement agency will be organized and operated in a manner that is consistent with the requirements of law, the requirements of administrative rules, and best practices; and

(iv) the private institution of higher education submitting the application has never had certification of a private law enforcement agency revoked by the commissioner; and

(b) advise and consult with the applicant to cure any barriers to obtaining certification.

(7) The commissioner shall grant an application for certification of a private law enforcement agency whose certification was previously revoked if:

(a) the private institution of higher education applying for certification:

(i) complies with the provisions described in Subsections (6)(a)(i) through (iii); and

(ii) proves, by clear and convincing evidence, that the reasons for the previous revocation will not reoccur; and

(b) the application is filed at least one year after the day on which the certification was revoked.

Section 8. Section **53-19-202** is enacted to read:

53-19-202. Authority of private law enforcement agency -- Requirements -- Delegation of internal investigation.

(1) A certified private law enforcement agency may function as a law enforcement agency under the authority of the state, within the confines of the campus of the private institution of higher education, to:

(a) prevent, detect, and investigate crime; and

(b) enforce traffic laws and criminal statutes and ordinances.

(2) The authority of a private law enforcement agency does not extend beyond the

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confines of the campus of the private institution of higher education, except as provided:

- (a) under Subsection 53-13-103(3); or
- (b) pursuant to an interagency agreement with another law enforcement agency.

(3) A private law enforcement agency shall:

(a) comply with:

- (i) the requirements of this chapter;
- (ii) rules made under Section 53-19-103; and
- (iii) all other requirements of state and federal law;

(b) comply with and enforce the provisions of Sections 53-6-209, 53-6-211, 53-6-307, and 53-6-309;

(c) only employ peace officers and dispatchers who are certified under this title;

(d) if the private law enforcement agency is placed on probation, comply with requirements imposed during the period of probation;

(e) provide any and all records of, or directly related to, the private law enforcement agency that are requested by the commissioner, the department, or the division; and

(f) cooperate with an audit described in Section 53-19-204.

(4) The chief of a private law enforcement agency may, with the consent of the commissioner, delegate the duty to conduct an administrative or internal investigation under Section 53-6-211 to the commissioner or the ~~commissioner~~ commissioner's designee if:

(a) the chief requests the commissioner's consent in writing; and

(b) the request is made to avoid:

- (i) an actual or potential conflict of interest; or
- (ii) an actual or potential allegation of bias.

(5) If the commissioner or the commissioner's designee conducts an administrative or internal investigation under Subsection (4), the commissioner or the commissioner's designee shall report the findings of the investigation to:

(a) the division, in accordance with Section 53-6-211;

(b) the private law enforcement agency; and

(c) the commissioner, if the investigation is conducted by a designee of the commissioner.

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Section 9. Section **53-19-203** is enacted to read:

53-19-203. Policies and procedures -- Approval -- Modification.

(1) A private law enforcement agency shall:

(a) develop a ~~{policy}~~ **policies** and procedures manual that:

(i) includes clear definitions and clearly and fully explains the policies and procedures;

(ii) complies with the requirements of law and administrative rules;

(iii) reflects best practices for a private law enforcement agency; and

(iv) includes all policies and procedures of the private law enforcement agency;

(b) review, and revise and update as needed, the ~~{policy}~~ **policies** and procedures **manual** on at least an annual basis; and

(c) maintain, and uniformly apply and enforce, the policies and procedures contained in the manual.

(2) A private law enforcement agency shall:

(a) if the private law enforcement agency was certified before May 5, 2021, submit the private law enforcement agency's policies and procedures manual to the commissioner for approval:

(i) on or before July 1, 2021;

(ii) beginning in 2022, on an annual basis; and

(iii) in addition to the times described in Subsections (2)(a)(i) and (ii), within 14 days after the day on which the commissioner submits a written request for a copy of the manual; or

(b) if the private law enforcement agency is certified on or after May 5, 2021, submit the private law enforcement agency's policies and procedures manual:

(i) for initial approval in accordance with Subsection 53-19-201(4)(c);

(ii) on an annual basis; and

(iii) in addition to the times described in Subsections (2)(b)(i) and (ii), within 14 days after the day on which the commissioner submits a written request for a copy of the manual.

Section 10. Section **53-19-204** is enacted to read:

53-19-204. Audits.

(1) The commissioner or the commissioner's designee may conduct periodic audits of a private law enforcement agency to ensure compliance with the requirements of this chapter.

(2) The legislative auditor general or the state auditor may conduct an audit of a private

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law enforcement agency.

(3) A private law enforcement agency shall fully cooperate with an audit conducted under this section.

Section 11. Section **53-19-301** is enacted to read:

Part 3. Enforcement

53-19-301. Violation by private law enforcement agency -- Action by commissioner.

(1) If a private law enforcement agency is in violation of, or has violated, a provision of this chapter, the commissioner may:

(a) take informal action to remedy the violation;

(b) place the private law enforcement agency on probation if the violation is a material violation; or

(c) revoke the certification of the private law enforcement agency if:

(i) the violation is so egregious that it constitutes a violation of public trust;

(ii) (A) the violation is a material violation;

(B) the private law enforcement agency has committed the same violation on a previous occasion; and

(C) the private law enforcement agency was placed probation or had the certification of the private law enforcement agency revoked for the same violation; or

(iii) after committing a material violation:

(A) the commissioner provides the private law enforcement agency with a written notice described in Subsection (2); and

(B) after the commissioner complies with Subsection (1)(c)(iii)(A), the private law enforcement agency commits the same violation or fails to take the corrective action described in the written notice described in Subsection (2).

(2) The written notice required under Subsection (1)(c)(iii)(A) shall include:

(a) a detailed description of the violation;

(b) a statement that the violation constitutes a material violation;

(c) a detailed description of the action the private law enforcement agency is required to take to remedy the violation; and

(d) a specified, reasonable deadline for taking the action required to remedy the

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violation.

(3) If a private law enforcement agency on probation is in violation of, or has violated, a material provision of probation, the commissioner may:

- (a) take informal action to remedy the violation;
- (b) extend an existing period of probation; or
- (c) revoke the certification of the private law enforcement agency.

(4) If the commissioner takes action to revoke the certification of a private law enforcement agency, the certification remains in effect until all timely challenges or appeals are concluded and the action of the commissioner becomes final.

(5) The certification of a private law enforcement agency remains in effect while the private law enforcement agency is on probation, unless the certification is revoked in accordance with the provisions of this chapter.

Section 12. Section **53-19-302** is enacted to read:

53-19-302. Formal action against a private law enforcement agency.

(1) If the commissioner determines that a private law enforcement agency violated a provision of this chapter or a requirement of probation, the commissioner may take formal action against the private law enforcement agency in accordance with this section.

(2) Before placing a private law enforcement agency on probation or extending the existing probation period, the commissioner shall provide written notice to the private law enforcement agency that the commissioner intends to take formal action against the private law enforcement agency, that includes:

(a) a statement that the commissioner intends to place the private law enforcement agency on probation or extend an existing period of probation;

(b) a description of the material violations upon which the formal action is based;

(c) a description of the probation period or extended probation period;

(d) a description of the terms of probation;

(e) a statement that the private law enforcement agency has the right to request a formal hearing on the action before an administrative law judge selected by the commissioner;

and

(e) information regarding the process and deadline for requesting a hearing.

(3) Within 30 days after the day on which the commissioner provides the notice

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described in Subsection (2), the private law enforcement agency may request a formal hearing before an administrative law judge selected by the commissioner by submitting the request, in writing, to the commissioner.

(4) If the private law enforcement agency fails to timely request a formal hearing under Subsection (3):

(a) the commissioner may take the action described in Subsection (2)(a); and

(b) the action of the commissioner is final.

(5) If a private law enforcement agency timely requests a formal hearing under Subsection (3), an administrative law judge shall conduct a formal hearing on the action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(6) The formal hearing shall be recorded and shall address the issue of whether the private law enforcement agency committed the violations included in the notice described in Subsection (2)(b).

(7) If, after the hearing, the administrative law judge issues findings of fact and conclusions of law stating that there is sufficient evidence to demonstrate that the private law enforcement agency committed one or more of the material violations included in the notice described in Subsection (2)(b), the commissioner shall review the findings and may:

(a) place the private law enforcement agency on probation; or

(c) extend an existing period of probation.

(8) If the administrative law judge finds that there is insufficient evidence to demonstrate that the private law enforcement agency committed any of the violations included in the notice described in Subsection (2)(b), the administrative law judge shall dismiss the formal action sought by the commissioner.

(9) A private law enforcement agency may appeal the decision of the administrative law judge and the action taken by the commissioner under Subsection (7), under Title 63G, Chapter 4, Part 4, Judicial Review.

(10) The commissioner may appeal the decision of the administrative law judge under Title 63G, Chapter 4, Part 4, Judicial Review.

(11) Before revoking the certification of a private law enforcement agency, the commissioner shall provide written notice to the private law enforcement agency that the commissioner intends to take formal action against the private law enforcement agency, that

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includes:

(a) a statement that the commissioner intends to revoke the certification of the private law enforcement agency;

(b) the date that the revocation is scheduled to occur, which date may not be sooner than 180 days after the day on which the commissioner provides the notice described in this Subsection (11);

(c) a detailed description of the violations upon which the formal action is based;

(d) a description of the basis, described in Subsection 53-19-301(1)(c), for seeking revocation of the private law enforcement agency's certification; and

(e) a statement that the private law enforcement agency has the right to ~~challenge~~ demand a judicial determination on the issue of revocation by filing an action in the third district court within 30 days after the day on which the commissioner provides the notice described in this Subsection (11).

(12) If the private law enforcement agency fails to ~~challenge the revocation by filing~~ file an action described in Subsection (11)(a) in the third district court within 30 days after the day on which the commissioner provides the notice described in Subsection (11);

~~— (a) the action of the commissioner is final; and~~

~~— (b) },~~ the private law enforcement agency's certification is revoked on the date described in Subsection (11)(b).

(13) If the private law enforcement agency timely files an action described in Subsection (11)(e), the district court:

(a) shall allow discovery, and otherwise conduct the proceedings, in accordance with the Utah Rules of Civil Procedure;

(b) shall conduct the proceedings as a new action and not as an appellate review;

(c) shall require that the commissioner prove, by a preponderance of the evidence, that the violations described in Subsection (11)(c) occurred;

(d) shall require that, if the court finds that one or more the violations described in Subsection (11)(c) occurred, the commissioner prove, by a preponderance of the evidence, that the violations proven constitute sufficient grounds, under Subsection 53-19-301(1)(c), to revoke certification; and

(e) may not grant any deference to the decisions or findings of the commissioner.

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(14) The court shall ~~conduct a de novo proceeding to determine:~~

~~(a) whether;~~ ~~order revocation of the certification of the private law enforcement agency~~
~~if the court finds that:~~

(a) ~~one or more~~ the violations described in Subsection (11)(c) occurred; and

(b) ~~if the court finds that one or more violations described in Subsection (11)(c)~~
~~occurred, whether }~~ the violations ~~that occurred~~ constitute sufficient grounds, under Subsection
53-19-301(1)(c), to revoke certification.

~~(14);~~ 15) The court may order that the commissioner may place the private law
enforcement agency on probation or extend an existing period of probation, if the court finds
that:

(a) ~~one or more~~ violations described in Subsection (11)(c) occurred; and

(b) ~~the violations do not constitute sufficient grounds, under Subsection~~
~~53-19-301(1)(c), to revoke certification.~~