

Representative Andrew Stoddard proposes the following substitute bill:

POST CERTIFICATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill modifies the authority of the Peace Officer Standards and Training Council (council) in relation to certain peace officer misconduct.

Highlighted Provisions:

This bill:

- ▶ allows the council to take certain action if a peace officer is found by the peace officer's employer to have violated minimum use of force standards; and
- ▶ makes technical changes.

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 2021, Chapters 96 and 311

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

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



26 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
27 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

37 (e) engages in sexual conduct while on duty;

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

40 (g) is found by a court or ~~[by a]~~ law enforcement agency to have knowingly engaged in
41 conduct that involves dishonesty or deception in violation of a policy of the peace officer's
42 employer or in violation of a state or federal law; ~~[or]~~

43 (h) is found by a court or ~~[by a]~~ law enforcement agency to have knowingly engaged in
44 biased or prejudicial conduct against one or more individuals based on the individual's race,
45 color, sex, pregnancy, age, religion, national origin, disability, sexual orientation, or gender
46 identity~~[-];~~ or

47 (i) is notified by the peace officer's employer that the peace officer's employer found
48 the peace officer to have knowingly engaged in conduct in violation of the minimum use of
49 force standards created under Subsection [53-6-107\(1\)\(e\)](#) and mandated under Section
50 [53-6-109](#).

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

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

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

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

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

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

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

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

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

79 (4) (a) The council shall:

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

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

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

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

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

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

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

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

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

100 (6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is
101 made aware of an allegation against a peace officer employed by that agency that involves
102 conduct in violation of Subsection (1) shall conduct an administrative or internal investigation
103 into the allegation and report the findings of the investigation to the division if the allegation is
104 substantiated.

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

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