

SB0124S01 compared with SB0124

~~text~~ shows text that was in SB0124 but was deleted in SB0124S01.

text shows text that was not in SB0124 but was inserted into SB0124S01.

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Senator Luz Escamilla proposes the following substitute bill:

LAW ENFORCEMENT OFFICER AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses provisions related to law enforcement officers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the Peace Officer Standards and Training Division to discipline a chief executive who fails to report misconduct;
- ▶ addresses law enforcement officer employment and background checks;
- ▶ requires a law enforcement agency to use an early intervention system to determine law enforcement officer performance under certain circumstances;
- ▶ creates the Early Intervention System Grant Program; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

This bill appropriates for fiscal year 2024:

- ▶ To the Department of Public Safety - Programs and Operations, as a one-time appropriation:
 - from the General Fund, One-time, \$3,000,000.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-211, as last amended by Laws of Utah 2021, Chapters 96, 311

53-14-101, as last amended by Laws of Utah 2021, Chapter 311

63G-7-201, as last amended by Laws of Utah 2021, Chapter 352

ENACTS:

53-14-102, Utah Code Annotated 1953

53-14-103, Utah Code Annotated 1953

53-14-201, Utah Code Annotated 1953

53-14-202, Utah Code Annotated 1953

53-14-203, Utah Code Annotated 1953

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

Section 1. 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) engages in conduct constituting a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;

(d) refuses to respond, or fails to respond truthfully, to questions after having been

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issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

(e) engages in sexual conduct while on duty;

(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;

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

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

(i) is a chief, sheriff, or administrative officer of a law enforcement agency and fails to comply with Subsection (6).

(2) The council may not issue a Letter of Caution or suspend or revoke the certification of a peace officer for a violation of state or federal law or 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

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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 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).

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(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)]~~ Subsections (1)(a) through (h) shall conduct an administrative or internal investigation into the allegation and report the findings of the investigation to the division if the allegation is substantiated.

(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)]~~ Subsections (1)(a) through (h) resigns, retires, or otherwise separates from the investigating law enforcement agency before the conclusion of the investigation, the chief, sheriff, or administrative officer of that law enforcement agency shall complete the investigation and report the findings to the division.

(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.

Section 2. Section **53-14-101** is amended to read:

CHAPTER 14. PEACE OFFICER INFORMATION

Part 1. Peace Officer Background Checks

53-14-101. Definitions.

~~[(1)]~~ As used in this ~~[section]~~ part:

~~[(a)]~~ (1) "Director" means the director of a ~~[certified law enforcement officer]~~ training academy.

~~[(b)]~~ (2) "Employer" ~~[includes]~~ means a public employer ~~[and a]~~ or private employer ~~[and includes the human resource officer for the employer].~~

(3) "POST" means the Peace Officer Standards and Training Division created in Section 53-6-103.

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

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

~~[(e)]~~ (4) "Training academy" means a peace officer training institution certified in accordance with the standards developed under Section 53-6-105.

~~[(2)]~~ A current or former employer and the director of any training academy an

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

~~[(a) a law enforcement agency regarding an applicant for an employment position; or]~~

~~[(b) the director of a law enforcement training academy for which the applicant requests admission under Section 53-6-203.]~~

~~[(3) The request for information pursuant to Subsection (2) shall be:]~~

~~[(a) in writing;]~~

~~[(b) accompanied by an authorization signed by the applicant and notarized by a notary public, in which the applicant consents to the release of the requested information and releases the employer or training academy providing the information from liability; and]~~

~~[(c) addressed to the employer or director and signed by a sworn officer or other authorized representative of the requesting law enforcement agency or the academy.]~~

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

~~[(a) the date on which the applicant's employment commenced and, if applicable, the date on which applicant's employment was terminated;]~~

~~[(b) a list of the compensation that the employer provided to the applicant during the course of the employment;]~~

~~[(c) a copy of the application for a position of employment that the applicant submitted to the employer;]~~

~~[(d) a written evaluation of the performance of the applicant;]~~

~~[(e) a record of the attendance of the applicant;]~~

~~[(f) a record of disciplinary action taken against the applicant;]~~

~~[(g) a statement regarding whether the employer would rehire the applicant and, if the employer would not rehire the applicant, the reasons why;]~~

~~[(h) if applicable, a record setting forth the reason that the employment of the applicant was terminated and whether the termination was voluntary or involuntary;]~~

~~[(i) the record of any final action regarding an applicant's peace officer certification that is based on an investigation concerning the applicant's qualification for certification; and]~~

~~[(j) notice of any pending or ongoing investigation regarding the applicant's]~~

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~~certification as a peace officer.]~~

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

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

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

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

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

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

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

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

~~[(A) the information is requested by the other law enforcement agency in accordance with this section;]~~

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

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

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

~~[(A) the information is requested by the other training academy in accordance with this section;]~~

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

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

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

~~[(A) the information is requested by the law enforcement agency in accordance with this section;]~~

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

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

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

Section 3. Section **53-14-102** is enacted to read:

53-14-102. Background check for peace officer applicants.

A law enforcement agency may not employ a peace officer who is currently working, or has previously worked, for another law enforcement agency unless the hiring law enforcement agency:

(1) confirms that the peace officer is certified by POST or another comparable certifying agency if the peace officer is currently employed, or has previously been employed, by a law enforcement agency in a different state; and

(2) completes a background check that contains the information outlined in Subsection 53-14-103(3).

Section 4. Section **53-14-103** is enacted to read:

53-14-103. Law enforcement and training academy applicants -- Employer background information -- Information required upon request.

(1) Except as provided in Subsection (4), an employer or director shall provide available information regarding an individual in accordance with this section if the request for the information:

(a) complies with Subsection (2); and

(b) is submitted by:

(i) if the individual is applying for employment, a law enforcement agency; or

(ii) if the individual is applying for admission under Section 53-6-203 to a training academy, the director.

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(2) A law enforcement agency or director requesting information under Subsection (1) shall:

(a) make the request in writing;

(b) include with the request:

(i) an authorization signed by the applicant and notarized by a notary public, in which the applicant consents to the release of the requested information and releases the employer or training academy providing the information from liability; and

(ii) a signature by a sworn officer or other authorized representative of the requesting law enforcement agency or the academy; and

(c) address the request to the employer or director.

(3) A law enforcement agency or director requesting information under Subsection (1) shall request:

(a) the date on which the applicant's employment commenced and, if applicable, the date on which the applicant's employment was terminated;

(b) a list of the compensation that the employer provided to the applicant during the course of the employment;

(c) a copy of the application for a position of employment that the applicant submitted to the employer;

(d) a written evaluation of the performance of the applicant;

(e) an attendance record of the applicant noting disciplinary action taken due to the applicant being late or absent without permission;

(f) a record of disciplinary action taken against the applicant;

(g) a statement regarding whether the employer would rehire the applicant and, if the employer would not rehire the applicant, the reasons why;

(h) if applicable, a record setting forth the reason that the employment of the applicant was terminated and whether the termination was voluntary or involuntary;

(i) the record of any final action regarding an applicant's peace officer certification that is based on an investigation concerning the applicant's qualification for certification; and

(j) notice of any pending or ongoing investigation regarding the applicant's certification as a peace officer.

(4) (a) In the absence of fraud or malice, an employer or training academy is not

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subject to any civil liability for any relevant cause of action by releasing employment information requested under this section.

(b) This section does not abrogate or lessen the existing common law or statutory privileges and immunities of an employer.

(c) An employer or training academy may not provide information under this section if the disclosure of the information is prohibited under federal or state law.

(5) An employer's refusal to make available information to a law enforcement agency in accordance with this section is grounds for a civil action by the requesting agency for injunctive relief requiring disclosure on the part of the employer.

(6) (a) (i) A law enforcement agency may use the information received under this section to determine the suitability of an applicant for employment.

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

(b) Except as provided in Subsection (6)(c), the recipient law enforcement agency and director shall maintain the confidentiality of information received under this section.

(c) (i) A law enforcement agency shall share information regarding an applicant that the law enforcement agency is in possession of with another law enforcement agency if:

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

(B) the applicant is also an applicant for any employment position with the other law enforcement agency; and

(C) the confidentiality of the information is otherwise maintained.

(ii) A director shall share information regarding an applicant that is received under this section with another training academy if:

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

(B) the applicant is an applicant for acceptance at the other training academy; and

(C) the confidentiality of the information is otherwise maintained.

(iii) A director shall share information regarding an applicant, attendee, or graduate of a training academy that is received under this section with a law enforcement agency if:

(A) the information is requested by the law enforcement agency in accordance with this

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section:

(B) the applicant is applying for a position as a peace officer with the law enforcement agency; and

(C) the confidentiality of the information is otherwise maintained.

Section 5. Section **53-14-201** is enacted to read:

Part 2. Law Enforcement Early Intervention

53-14-201. Definitions.

As used in this part:

(1) "Early intervention system" means an electronic data-based police management tool designed to track behaviors of a law enforcement officer based on performance factors.

(2) "Grant" means a grant awarded under this section.

(3) "Program" means the Early Intervention Grant Program created in section 53-14-203.

Section 6. Section **53-14-202** is enacted to read:

53-14-202. Early intervention system implementation.

(1) On or before January 1, 2025, a law enforcement agency shall use an early intervention system.

(2) Information contained in an early intervention system is part of a law enforcement officer's internal personnel file and may only be shared in accordance with Section 53-14-103.

(3) The department shall establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the minimum standards that an early intervention system is required to meet in order for a law enforcement agency to comply with Subsection (1).

Section 7. Section **53-14-203** is enacted to read:

53-14-203. Early Intervention System Grant Program.

(1) (a) There is created within the department the Early Intervention System Grant Program.

(b) The purpose of the program is to award grants to law enforcement agencies to initially establish an early intervention system.

(2) (a) A law enforcement agency that submits a proposal for a grant to the department shall include in the proposal:

(i) the plan for establishing and cost of an early intervention system;

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(ii) a statement that the early intervention system to be established complies with the standards under Subsection 53-14-202(3);

(iii) any funding sources in addition to the grant for the proposal; and

(iv) other information the department determines necessary to evaluate the proposal.

(b) When evaluating a proposal for a grant, the department shall consider:

(i) whether the proposed early intervention system meets the standards under Subsection 53-14-202(3);

(ii) the cost of the proposal;

(iii) the extent to which additional funding sources may benefit the proposal; and

(iv) the viability and sustainability of the proposal.

(3) Subject to Subsection (2), the department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish:

(a) eligibility criteria for a grant;

(b) the form and process for submitting a proposal to the department for a grant;

(c) the method and formula for determining a grant amount; and

(d) reporting requirements for a grant recipient.

Section 8. Section **63G-7-201** is amended to read:

63G-7-201. Immunity of governmental entities and employees from suit.

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:

(a) as provided in Section 78B-4-517; and

(b) for any injury or damage resulting from the implementation of or the failure to implement measures to:

(i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(ii) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

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(iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

- (A) an emergency shelter;
- (B) housing;
- (C) a staging place; or
- (D) a medical facility; and

(iv) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:

(a) a latent dangerous or latent defective condition of:

(i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

(ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

(b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,

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deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;

(g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

(j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

(k) a natural condition on publicly owned or controlled land;

(l) a condition existing in connection with an abandoned mine or mining operation;

(m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:

(i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:

(A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and

(B) the municipality or county where the trail is located; and

(iii) the written agreement:

(A) contains a plan for operation and maintenance of the trail; and

(B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;

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- (o) research or implementation of cloud management or seeding for the clearing of fog;
- (p) the management of flood waters, earthquakes, or natural disasters;
- (q) the construction, repair, or operation of flood or storm systems;
- (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- (s) the activity of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - (iv) an emergency evacuation;
 - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
 - (vi) intervening during a dam emergency;
- (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- (u) an unauthorized access to government records, data, or electronic information systems by any person or entity;
- (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road; or
- (w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section ~~[53-14-101]~~ 53-14-103.

Section 9. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

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ITEM 1

To Department of Public Safety - Programs and Operations

From General Fund, One-time 3,000,000

Schedule of Programs:

~~{Highway Patrol}~~ Department of Public Safety - ~~{Special Services}~~

~~{Commissioner's Office}~~ 3,000,000

The Legislature intends that:

(1) the appropriation under this item be used to award grants over a three-year period under Title 53, Chapter 14, Part 2, Law Enforcement Early Intervention; and

(2) under Section 63J-1-603, the appropriation under this item not lapse at the close of fiscal year 2024 and the use of any nonlapsing funds is limited to the purposes described in ~~{Subsection}~~ Section (1) of this item.