

PEACE OFFICER STANDARDS AND TRAINING

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: \_\_\_\_\_

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 9 voting for 0 voting against 7 absent

General Description:

This bill amends the responsibilities of the Peace Officer Standards and Training Council regarding disciplinary action against peace officers and dispatchers.

Highlighted Provisions:

This bill:

- requires the POST Council to decide on sanctions to be imposed upon peace officers and dispatchers;
allows for the issuance of a Letter of Caution as a disciplinary measure;
requires the POST Council to accept an administrative law judge's findings and conclusions; and
requires the division to be notified upon the separation of a peace officer or dispatcher who is under investigation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53-6-107**, as last amended by Laws of Utah 2002, Chapter 250

31 **53-6-211**, as last amended by Laws of Utah 2013, Chapters 115 and 269

32 **53-6-309**, as repealed and reenacted by Laws of Utah 2011, Chapter 258



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

35 Section 1. Section **53-6-107** is amended to read:

36 **53-6-107. General duties of council.**

37 (1) The council shall:

38 (a) advise the director regarding:

39 (i) the approval, certification, or revocation of certification of any certified academy  
40 established in the state;

41 [~~(ii) the refusal, suspension, or revocation of certification of a peace officer;~~]

42 [~~(iii)~~] (ii) minimum courses of study, attendance requirements, and the equipment and  
43 facilities to be required at a certified academy;

44 [~~(iv)~~] (iii) minimum qualifications for instructors at a certified academy;

45 [~~(v)~~] (iv) the minimum basic training requirements that peace officers shall complete  
46 before receiving certification;

47 [~~(vi)~~] (v) the minimum basic training requirements that dispatchers shall complete  
48 before receiving certification; and

49 [~~(vii)~~] (vi) categories or classifications of advanced in-service training programs and  
50 minimum courses of study and attendance requirements for the categories or classifications;

51 (b) recommend that studies, surveys, or reports, or all of them be made by the director  
52 concerning the implementation of the objectives and purposes of this chapter;

53 (c) make recommendations and reports to the commissioner and governor from time to  
54 time; [~~and~~]

55 (d) perform other acts as necessary to carry out the duties of the council in this  
56 chapter[-]; and

57 (e) choose from the sanctions to be imposed against certified peace officers as provided  
58 in Section 53-6-211, and dispatchers as provided in Section 53-6-309.

59 (2) The council may approve special function officers for membership in the Public  
60 Safety Retirement System in accordance with Sections [49-14-201](#) and [49-15-201](#).

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

62 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
63 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

69 (c) is addicted to alcohol or any controlled substance, unless the peace officer reports  
70 the addiction to the employer and to the director as part of a departmental early intervention  
71 process;

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

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

76 (f) engages in sexual conduct while on duty; or

77 (g) is certified as a law enforcement peace officer, as defined in Section [~~53-13-103~~]  
78 [53-13-102](#), and is unable to possess a firearm under state or federal law.

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

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

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

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

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

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

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

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

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

106 (4) (a) The council shall ~~[review]~~:

107 (i) accept the administrative law judge's findings of fact and conclusions of law, and  
108 the information concerning the peace officer provided by the officer's employing agency; and  
109 ~~[determine]~~

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

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

114 ~~[(b)]~~ (c) A member of the council shall recuse him or herself from consideration of an  
115 issue that is before the council if the council member:

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

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

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

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

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

128 (6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is  
 129 made aware of an allegation against a peace officer employed by that agency that involves  
 130 conduct in violation of Subsection (1) shall investigate the allegation and report to the division  
 131 if the allegation is found to be true.

132 (b) If a peace officer who is the subject of an internal or administrative investigation  
 133 ~~H→ [that involves conduct in violation of]~~ **into allegations that include any of the conditions or**  
 133a **circumstances outlined in** ←H Subsection (1) resigns, retires, or otherwise separates from  
 134 the investigating law enforcement agency before the conclusion of the investigation, the chief,  
 135 sheriff, or administrative officer of that law enforcement agency shall report the allegations and  
 136 any investigation results to the division.

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

140 Section 3. Section **53-6-309** is amended to read:

141 **53-6-309. Suspension or revocation of certification -- Right to a hearing --**  
 142 **Grounds -- Notice to employer -- Reporting.**

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

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

146 (b) has any physical or mental disability affecting the dispatcher's ability to perform  
 147 duties;

148 (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the  
 149 addiction to the employer and to the director as part of a departmental early intervention  
 150 process;

151 (d) engages in conduct [~~that is~~] constituting a state or federal criminal offense, but not

152 including a traffic offense that is a class C misdemeanor or infraction;

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

155 (f) engages in sexual conduct while on duty.

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

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

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

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

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

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

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

175 (f) The division shall notify the agency that employs the involved dispatcher of the  
176 investigation and shall provide any information or comments concerning the dispatcher  
177 received from that agency regarding the dispatcher to the council before a Letter of Caution is  
178 issued, or a dispatcher's certification may be suspended or revoked.

179 (g) If the administrative law judge finds that there is insufficient evidence to  
180 demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge  
181 shall dismiss the adjudicative proceeding.

182 (4) (a) The council shall ~~review~~:

183 (i) accept the administrative law judge's findings of fact and conclusions of law and the  
 184 information concerning the dispatcher provided by the dispatcher's employing agency; and  
 185 [determine]

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

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

190 ~~(b)~~ (c) A council member shall recuse himself or herself from consideration of an  
 191 issue that is before the council if the council member:

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

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

195 (iii) employs, supervises, or works for the same agency as the dispatcher whose case is  
 196 before the council.

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

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

204 (6) (a) An agency that is made aware of an allegation against a dispatcher employed by  
 205 that agency that involves conduct in violation of Subsection (1) shall investigate the allegation  
 206 and report to the division if the allegation is found to be true.

207 (b) If a dispatcher who is the subject of an internal or administrative investigation ~~H~~→ **[that**  
 208 **involves conduct in violation of] **into allegations that include any of the conditions or**  
 208a **circumstances outlined in** ~~H~~← Subsection (1) resigns, retires, or otherwise separates from the  
 209 investigating law enforcement agency before the conclusion of the investigation, the agency  
 210 shall report the allegations and any investigation results to the division.**

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