

1 PEACE OFFICER STANDARDS AND TRAINING

2 AMENDMENTS

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Lee B. Perry

6 Senate Sponsor: Keith Grover

8 LONG TITLE

9 General Description:

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

12 Highlighted Provisions:

13 This bill:

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

21 Money Appropriated in this Bill:

22 None

23 Other Special Clauses:

24 None

25 Utah Code Sections Affected:

26 AMENDS:

27 [53-6-107](#), as last amended by Laws of Utah 2002, Chapter 250

28 [53-6-211](#), as last amended by Laws of Utah 2013, Chapters 115 and 269

29 [53-6-309](#), as repealed and reenacted by Laws of Utah 2011, Chapter 258

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **53-6-107** is amended to read:33 **53-6-107. General duties of council.**

34 (1) The council shall:

35 (a) advise the director regarding:

36 (i) the approval, certification, or revocation of certification of any certified academy
37 established in the state;38 [~~(ii) the refusal, suspension, or revocation of certification of a peace officer;~~]39 [~~(iii)~~] (ii) minimum courses of study, attendance requirements, and the equipment and
40 facilities to be required at a certified academy;41 [~~(iv)~~] (iii) minimum qualifications for instructors at a certified academy;42 [~~(v)~~] (iv) the minimum basic training requirements that peace officers shall complete
43 before receiving certification;44 [~~(vi)~~] (v) the minimum basic training requirements that dispatchers shall complete
45 before receiving certification; and46 [~~(vii)~~] (vi) categories or classifications of advanced in-service training programs and
47 minimum courses of study and attendance requirements for the categories or classifications;48 (b) recommend that studies, surveys, or reports, or all of them be made by the director
49 concerning the implementation of the objectives and purposes of this chapter;50 (c) make recommendations and reports to the commissioner and governor from time to
51 time; [~~and~~]52 (d) perform other acts as necessary to carry out the duties of the council in this
53 chapter[-]; and54 (e) choose from the sanctions to be imposed against certified peace officers as provided
55 in Section 53-6-211, and dispatchers as provided in Section 53-6-309.56 (2) The council may approve special function officers for membership in the Public
57 Safety Retirement System in accordance with Sections [49-14-201](#) and [49-15-201](#).

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

59 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
60 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

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

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

74 (g) is certified as a law enforcement peace officer, as defined in Section [~~53-13-103~~]
75 53-13-102, and is unable to possess a firearm under state or federal law.

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

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

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

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

86 criminally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

129 (b) If a peace officer who is the subject of an internal or administrative investigation
130 into allegations that include any of the conditions or circumstances outlined in Subsection (1)
131 resigns, retires, or otherwise separates from the investigating law enforcement agency before
132 the conclusion of the investigation, the chief, sheriff, or administrative officer of that law
133 enforcement agency shall report the allegations and any investigation results to the division.

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

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

138 **53-6-309. Suspension or revocation of certification -- Right to a hearing --**
139 **Grounds -- Notice to employer -- Reporting.**

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

- 142 (a) willfully falsifies any information to obtain certification;
- 143 (b) has any physical or mental disability affecting the dispatcher's ability to perform
144 duties;
- 145 (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the
146 addiction to the employer and to the director as part of a departmental early intervention
147 process;
- 148 (d) engages in conduct [~~that is~~] constituting a state or federal criminal offense, but not
149 including a traffic offense that is a class C misdemeanor or infraction;
- 150 (e) refuses to respond, or fails to respond truthfully, to questions after having been
151 issued a warning based on Garrity v. New Jersey, 385 U.S. 493 (1967); or
- 152 (f) engages in sexual conduct while on duty.
- 153 (2) The council may not issue a Letter of Caution, or suspend or revoke the
154 certification of a dispatcher for a violation of the employing agency's policies, general orders,
155 or guidelines of operation that do not amount to a cause of action under Subsection (1).
- 156 (3) (a) The division is responsible for investigating dispatchers who are alleged to have
157 engaged in conduct in violation of Subsection (1).
- 158 (b) The division shall initiate all adjudicative proceedings under this section by
159 providing to the dispatcher involved notice and an opportunity for a hearing before an
160 administrative law judge.
- 161 (c) All adjudicative proceedings under this section are civil actions, notwithstanding
162 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted
163 criminally.
- 164 (d) (i) The burden of proof on the division in an adjudicative proceeding under this
165 section is by clear and convincing evidence.
- 166 (ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof
167 to establish the affirmative defense by a preponderance of the evidence.
- 168 (e) If the administrative law judge issues findings of fact and conclusions of law stating
169 there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in

170 violation of Subsection (1), the division shall present the findings and conclusions issued by
171 the administrative law judge to the council.

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

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

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

180 (i) accept the administrative law judge's findings of fact and conclusions of law and the
181 information concerning the dispatcher provided by the dispatcher's employing agency; and
182 ~~[determine]~~

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

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

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

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

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

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

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

197 (b) Employment by another agency, or reinstatement of a dispatcher by the original

198 employing agency after termination by that agency, whether the termination was voluntary or
199 involuntary, does not preclude suspension or revocation of a dispatcher's certification by the
200 council if the dispatcher was terminated for any of the reasons under Subsection (1).

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

204 (b) If a dispatcher who is the subject of an internal or administrative investigation into
205 allegations that include any of the conditions or circumstances outlined in Subsection (1)
206 resigns, retires, or otherwise separates from the investigating law enforcement agency before
207 the conclusion of the investigation, the agency shall report the allegations and any investigation
208 results to the division.

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