

LAW ENFORCEMENT OFFICER INVESTIGATION

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Investigations and Technical Services Act of the Public Safety Code by creating a new part entitled, "Utah Peace Officer Due Process and Accountability."

Highlighted Provisions:

This bill:

- ▶ enacts a procedure for investigation of allegations of a peace officer's misconduct;
- ▶ specifies separation of administrative action from action under Garrity v. New Jersey, 385 U.S. 493 (1967), a U.S. Supreme Court ruling;
- ▶ enacts provisions relating to records and recording of interrogations; and
- ▶ allows a peace officer to have counsel or a representative.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53-10-701, Utah Code Annotated 1953

53-10-702, Utah Code Annotated 1953

53-10-703, Utah Code Annotated 1953



28 **53-10-704**, Utah Code Annotated 1953



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

31 Section 1. Section **53-10-701** is enacted to read:

32 **Part 7. Utah Peace Officer Due Process and Accountability.**

33 **53-10-701. Title.**

34 This part is known as "Utah Peace Officer Due Process and Accountability."

35 Section 2. Section **53-10-702** is enacted to read:

36 **53-10-702. Definitions.**

37 As used in this part:

38 (1) "Garrity v. New Jersey" refers to the U.S. Supreme Court ruling Garrity v. New
39 Jersey, 385 U.S. 493 (1967).

40 (2) "Investigator" means a law enforcement agency's internal affairs officer or other
41 certified peace officer having the task of investigating the actions of another peace officer.

42 (3) "Officer" means a peace officer.

43 (4) "Peace officer" has the same definition as in Section 53-13-102.

44 Section 3. Section **53-10-703** is enacted to read:

45 **53-10-703. Investigation procedure.**

46 (1) This part applies to administrative action regarding a peace officer by the officer's
47 direct employer. This part does not apply to:

48 (a) administrative action under Section 53-6-211 regarding suspension or revocation of
49 certification;

50 (b) any conversations between a peace officer and the officer's supervisor in the normal
51 course of duty, counseling, instruction, informal verbal admonishment, or other routine or
52 unplanned contact where the potential penalty is anything less severe than time off without pay;
53 or

54 (c) an investigation concerned solely and directly with any alleged criminal activities.

55 (2) Investigations shall be initiated within one year of the agency's discovery of the
56 allegation and shall be conducted by a person authorized to initiate an investigation of the
57 allegation of an act, omission, or other misconduct.

58 (3) The peace officer under investigation shall be issued a warning as provided in

59 Garrity v. New Jersey if:

60 (a) the possibility exists that a criminal investigation will occur; or

61 (b) new information becomes available requiring a separate line of questioning for
62 which an additional warning is required.

63 (4) The nature and scope of questioning shall be narrowly focused on the allegations
64 presented, as required under Garrity v. New Jersey.

65 (5) A peace officer who is under investigation shall be informed before the questioning
66 or interrogation of:

67 (a) the time and location of the questioning;

68 (b) the allegations; and

69 (c) the scope of questioning.

70 (6) Investigators may not ask questions pertaining to an action:

71 (a) regarding which the investigator has no facts or information to sustain the
72 allegation; or

73 (b) that refer to conduct that is not a violation of any law, policy, or procedure.

74 (7) An offer of any reward or benefit may not be made to induce the answering of any
75 question.

76 (8) (a) There shall be a clear break between the interrogation of a peace officer under
77 administrative action and under Garrity v. New Jersey and any subsequent criminal
78 investigation.

79 (b) Investigators performing the administrative action against the officer may not
80 participate in the criminal investigation of the officer.

81 (9) The officer may, upon request, be represented by a representative or an attorney of
82 the officer's choice, who may be present at all times during the interrogation. The
83 representative may not be a person subject to the same investigation.

84 (10) An interrogation session shall be conducted:

85 (a) at a time when the peace officer is on duty or during the normal waking hours for
86 the peace officer, unless the seriousness of the investigation requires otherwise; and

87 (b) in a manner that allows the officer under interrogation to attend to the officer's
88 reasonable personal physical needs for a reasonable period of time and at a reasonable
89 frequency.

90 (11) A peace officer may not be compelled to submit to a polygraph examination
91 against the officer's will, until all other investigative leads and techniques have been exhausted.
92 Notice of refusal by an officer to submit to a polygraph examination may not be allowed in
93 court hearings, unless agreed upon by the officer and the agency.

94 (12) (a) A peace officer who is not a probationary employee has the right to an
95 administrative appeal of administrative actions.

96 (b) The appeal process shall be determined by the local law enforcement agency
97 according to current policy or ordinance.

98 (c) The burden of proof during an administrative appeal is on the employer.

99 (d) An officer who is not on probation may not be discharged without cause after
100 receiving an administrative hearing.

101 Section 4. Section **53-10-704** is enacted to read:

102 **53-10-704. Records of complaints and investigations -- Recording.**

103 (1) The interrogation of a peace officer may be recorded by written or electronic
104 means.

105 (2) If a recording is made of the interrogation, the peace officer or the peace officer's
106 attorney may have access to the recording before any further proceedings.

107 (3) (a) The peace officer may, at the officer's own expense, obtain a transcribed copy of
108 any notes made by a stenographer, or any reports or complaints made by investigators or other
109 persons, except those determined by the investigating agency to be confidential.

110 (b) The officer may appeal a determination of confidentiality to an administrative law
111 judge.

112 (4) The peace officer being interrogated has the right to bring a recording device and
113 record the interrogation in its entirety.

114 (5) Notes and reports considered to be confidential and unavailable to the officer may
115 not be entered into the officer's personnel file.

Legislative Review Note
as of 2-15-11 11:20 AM

Office of Legislative Research and General Counsel