

DEPARTMENT OF PUBLIC SAFETY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends provisions concerning the Department of Public Safety.

Highlighted Provisions:

This bill:

- amends provisions concerning certain fees in the Department of Public Safety Restricted

Account;

- amends eligibility requirements for peace officer and dispatcher training and

certification;

- modifies the circumstances under which the Peace Officer Standards and Training

Council may discipline a peace officer or a dispatcher; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-3-106, as last amended by Laws of Utah 2023, Chapter 328

53-6-203, as last amended by Laws of Utah 2022, Chapter 10

53-6-211, as last amended by Laws of Utah 2023, Chapter 452

53-6-302, as last amended by Laws of Utah 2021, First Special Session, Chapter 13

53-6-309, as last amended by Laws of Utah 2020, Chapter 35

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

Section 1. Section 53-3-106 is amended to read:

53-3-106 . Disposition of revenues under this chapter -- Restricted account created -- Uses as provided by appropriation -- Nonlapsing.

- (1) There is created within the Transportation Fund a restricted account known as the "Department of Public Safety Restricted Account."
- (2) The account consists of money generated from the following revenue sources:
 - (a) all money received under this chapter;
 - (b) administrative fees received according to the fee schedule authorized under this chapter and Section 63J-1-504;
 - (c) beginning on January 1, 2013, money received in accordance with Section 41-1a-1201; and
 - (d) any appropriations made to the account by the Legislature.
- (3)
 - (a) The account shall earn interest.
 - (b) All interest earned on account money shall be deposited into the account.
- (4) The expenses of the department in carrying out this chapter shall be provided for by legislative appropriation from this account.
- (5) The amount in excess of \$45 of the fees collected under Subsection [~~53-3-105(25)~~] 53-3-105(27) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117, except that of the amount in excess of \$45, \$100 shall be deposited into the State Laboratory Drug Testing Account created in Section 26B-1-304.
- (6) All money received under Subsection [~~41-6a-1406(6)(c)(ii)~~] 41-6a-1406(6)(b)(ii) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117.
- (7) Beginning in fiscal year 2009-10, the Legislature shall appropriate \$100,000 annually from the account to the state medical examiner appointed under Section 26B-8-202 for use in carrying out duties related to highway crash deaths under Subsection 26B-8-205 (1).
- (8) The division shall remit the fees collected under Subsection 53-3-105(31) to the Bureau of Criminal Identification to cover the costs for the services the Bureau of Criminal Identification provides under Section 53-3-205.5.
- (9)
 - (a) Beginning on January 1, 2013, the Legislature shall appropriate all money received in the account under Section 41-1a-1201 to the Utah Highway Patrol Division for field operations.

(b) The Legislature may appropriate additional money from the account to the Utah Highway Patrol Division for law enforcement purposes.

(10) Appropriations to the department from the account are nonlapsing.

(11) The department shall report to the Department of Health and Human Services, on or before December 31, the amount the department expects to collect under Subsection [53-3-105(25)] 53-3-105(27) in the next fiscal year.

Section 2. Section **53-6-203** is amended to read:

53-6-203 . Applicants for admission to training programs or for certification examination -- Requirements.

(1) Before being accepted for admission to the training programs conducted by a certified academy, and before being allowed to take a certification examination, each applicant for admission or certification examination shall meet the following requirements:

(a) be~~[-either]~~:

(i) a United States citizen; ~~[or]~~

(ii) a United States national; or

~~[(ii)]~~ (iii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States;

(b) be at least:

(i) 19 years old at the time of certification as a special function officer or correctional officer; or

(ii) 21 years old at the time of certification as a law enforcement officer;

(c) be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation;

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duties as a peace officer; and

(g) meet all other standards required by POST.

(2) (a) An application for admission to a training program shall be accompanied by a

criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

(3) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this section.

(b) This provision applies to convictions entered both before and after the effective date of this section.

(4) Any background check or background investigation performed under the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant shall be considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-211(1).

(6) An applicant seeking certification as a law enforcement officer, as defined in Section 53-13-103, shall be qualified to possess a firearm under state and federal law.

Section 3. 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, or is convicted of, 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 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;
- (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 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).

(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 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 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 4. Section **53-6-302** is amended to read:

53-6-302 . Applicants for certification examination -- Requirements.

- (1) Before being allowed to take a dispatcher certification examination, each applicant shall meet the following requirements:

(a) be~~[-either]~~:

(i) a United States citizen;

(ii) a United States national; or

~~[(ii)]~~ (iii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States;

(b) be 18 years old or older at the time of employment as a dispatcher;

(c) be a high school graduate or have a G.E.D. equivalent;

(d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation;

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duty as a dispatcher; and

(g) meet all other standards required by POST.

- (2) (a) An application for certification shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

- (3) (a) Notwithstanding Title 77, Chapter 40a, Expungement, regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this

state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this section.

(b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

(4) Any background check or background investigation performed under the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant is considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-309 (1).

Section 5. Section **53-6-309** is amended to read:

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

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

(a) willfully falsifies any information to obtain certification;

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

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

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

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

(f) engages in sexual conduct while on duty.

(2) The council may not issue a Letter of Caution, or suspend or revoke the certification of a dispatcher for a violation of the employing 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 dispatchers 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 dispatcher involved notice and an opportunity for a hearing before an

- 266 administrative law judge.
- 267 (c) All adjudicative proceedings under this section are civil actions, notwithstanding
268 whether the issue in the adjudicative proceeding is a violation of statute that may be
269 prosecuted criminally.
- 270 (d) (i) The burden of proof on the division in an adjudicative proceeding under this
271 section is by clear and convincing evidence.
- 272 (ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of
273 proof to establish the affirmative defense by a preponderance of the evidence.
- 274 (e) If the administrative law judge issues findings of fact and conclusions of law stating
275 there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that
276 is in violation of Subsection (1), the division shall present the findings and
277 conclusions issued by the administrative law judge to the council.
- 278 (f) The division shall notify the agency that employs the involved dispatcher of the
279 investigation and shall provide any information or comments concerning the
280 dispatcher received from that agency regarding the dispatcher to the council before a
281 Letter of Caution is issued, or a dispatcher's certification may be suspended or
282 revoked.
- 283 (g) If the administrative law judge finds that there is insufficient evidence to
284 demonstrate that the dispatcher is in violation of Subsection (1), the administrative
285 law judge shall dismiss the adjudicative proceeding.
- 286 (4) (a) The council shall:
- 287 (i) accept the administrative law judge's findings of fact and conclusions of law and
288 the information concerning the dispatcher provided by the dispatcher's employing
289 agency; and
- 290 (ii) choose whether to issue a Letter of Caution, or suspend or revoke the dispatcher's
291 certification.
- 292 (b) Before making a decision, the council may consider aggravating and mitigating
293 circumstances.
- 294 (c) A council member shall recuse himself or herself from consideration of an issue that
295 is before the council if the council member:
- 296 (i) has a personal bias for or against the dispatcher;
- 297 (ii) has a substantial pecuniary interest in the outcome of the proceeding and may
298 gain or lose some benefit from the outcome; or
- 299 (iii) employs, supervises, or works for the same agency as the dispatcher whose case

300 is before the council.

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

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

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

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

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

320 Section 6. **Effective date.**

321 This bill takes effect on May 1, 2024.