

DEPARTMENT OF PUBLIC SAFETY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: _____

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.

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

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

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

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

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

130 (e) engages in sexual conduct while on duty;

131 (f) is certified as a law enforcement peace officer, as defined in Section 53-13-102, and
132 is unable to possess a firearm under state or federal law;

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

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

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

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

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

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

151 (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.

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

247 (a) willfully falsifies any information to obtain certification;
248 (b) has any physical or mental disability affecting the dispatcher's ability to perform
249 duties;
250 (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the
251 addiction to the employer and to the director as part of a departmental early intervention
252 process;

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

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

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

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

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

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

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

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

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

273 (e) If the administrative law judge issues findings of fact and conclusions of law stating
274 there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in
275 violation of Subsection (1), the division shall present the findings and conclusions issued by

the administrative law judge to the council.

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

(g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the dispatcher 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 dispatcher provided by the dispatcher's employing agency; and

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

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

(c) A council member shall recuse himself 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 dispatcher;

(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 agency as the dispatcher whose case is before the council.

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

(b) Employment by another agency, or reinstatement of a dispatcher 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 dispatcher's certification by the council if the dispatcher was terminated for any of the reasons under Subsection (1).

(6) (a) An agency that is made aware of an allegation against a dispatcher employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation

and report to the division if the allegation is found to be true.

(b) If a dispatcher who is the subject of an internal or administrative investigation into allegations that include any of the conditions or circumstances outlined in Subsection (1) resigns, retires, or otherwise separates from the investigating law enforcement agency before the conclusion of the investigation, the agency shall report the allegations and any investigation results 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 6. **Effective date.**

This bill takes effect on May 1, 2024.