

Representative Richard A. Greenwood proposes the following substitute bill:

PEACE OFFICER STANDARDS AND TRAINING

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill amends peace officer standards and training.

Highlighted Provisions:

This bill:

- ▶ requires all applicants for admission and certification as a peace officer to be eligible to possess a firearm under state law;
- ▶ allows the Peace Officer Standards and Training Council to suspend or revoke a peace officer's certification if the peace officer is not eligible to possess a firearm;
- ▶ allows federal agencies to exercise law enforcement authority related to misdemeanor offenses under Utah law;
- ▶ requires that federal officers with authority to enforce federal laws and state and local laws complete a 20-hour course on Utah law and process; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **53-6-203**, as last amended by Laws of Utah 2010, Chapter 313

29 **53-6-211**, as repealed and reenacted by Laws of Utah 2010, Chapter 313

30 **53-13-106**, as last amended by Laws of Utah 2010, Chapter 411

31 **53-13-106.5**, as enacted by Laws of Utah 2010, Chapter 411



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

34 Section 1. Section **53-6-203** is amended to read:

35 **53-6-203. Applicants for admission to training programs or for certification**
36 **examination -- Requirements.**

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

40 (a) be a United States citizen;

41 (b) be at least 21 years old at the time of appointment as a peace officer;

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

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

47 (e) have demonstrated good moral character, as determined by a background
48 investigation; ~~H~~→ [f] and [j] ←~~H~~

49 (f) be free of any physical, emotional, or mental condition that might adversely affect
50 the performance of the applicant's duties as a peace officer ~~H~~→ [f] . [j] [~~;~~and

51 ~~(g) be eligible to possess a firearm under state law.] ←~~H~~~~

52 (2) (a) An application for admission to a training program shall be accompanied by a
53 criminal history background check of local, state, and national criminal history files and a
54 background investigation.

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

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

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

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

67 (5) An applicant shall be considered to be of good moral character under Subsection
 68 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection
 69 53-6-211(1).

69a **H→ (6) An applicant seeking certification as a law enforcement officer, as defined in Section**
 69b **53-13-103, shall be qualified to possess a firearm under state and federal law. ←H**

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

71 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
 72 **Grounds -- Notice to employer -- Reporting.**

73 (1) The council has authority to suspend or revoke the certification of a peace officer, if
 74 the peace officer:

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

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

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

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

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

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

86 (g) **H→ is certified as a law enforcement officer, as defined in Section 53-13-103,**
 86a **and ←H is unable to possess a firearm under state H→ or federal ←H law.**

87 [~~g) is dismissed from the armed forces of the United States under dishonorable~~]

88 conditions.]

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

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

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

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

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

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

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

108 (f) The division shall notify the chief, sheriff, or administrative officer of the police
109 agency which employs the involved peace officer of the investigation and shall provide any
110 information or comments concerning the peace officer received from that agency regarding the
111 peace officer to the council before a peace officer's certification may be suspended or revoked.

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

115 (4) (a) The council shall review the findings of fact and conclusions of law and the
116 information concerning the peace officer provided by the officer's employing agency and
117 determine whether to suspend or revoke the officer's certification.

118 (b) A member of the council shall recuse him or herself from consideration of an issue

119 that is before the council if the council member:

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

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

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

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

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

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

136 Section 3. Section **53-13-106** is amended to read:

137 **53-13-106. Federal officers -- State law enforcement authority.**

138 (1) (a) "Federal officer" includes:

139 (i) a special agent of the Federal Bureau of Investigation;

140 (ii) a special agent of the United States Secret Service;

141 (iii) a special agent of the United States Department of Homeland Security, excluding a
142 customs inspector or detention removal officer;

143 (iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

144 (v) a special agent of the Drug Enforcement Administration;

145 (vi) a United States marshal, deputy marshal, and special deputy United States marshal;

146 and

147 (vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

148 (b) (i) Federal officers listed in Subsection (1)(a) have statewide law enforcement

149 authority relating to felony offenses under the laws of this state. This Subsection (1)(b)(i) takes

150 precedence over Subsection (2).

151 (ii) Federal agencies and federal employees as defined in Subsection 53-13-106.5(1)
152 may exercise law enforcement authority related to misdemeanor and felony offenses under
153 Utah law only as established by an agreement under Subsection 53-13-106.5(7). This
154 Subsection (1)(b)(ii) takes precedence over Subsection (2).

155 (c) The council may designate other federal peace officers, as necessary, if the officers:

156 (i) are persons employed full-time by the United States government as federally
157 recognized law enforcement officers primarily responsible for the investigation and
158 enforcement of the federal laws;

159 (ii) have successfully completed formal law enforcement training offered by an agency
160 of the federal government consisting of not less than 400 hours; and

161 (iii) maintain in-service training in accordance with the standards set forth in Section
162 53-13-103.

163 (2) Except as otherwise provided under Title 63L, Chapter 1, Federal Jurisdiction, and
164 Title 77, Chapter 9, Uniform Act on Fresh Pursuit, a federal officer may exercise state law
165 enforcement authority only if:

166 (a) the state law enforcement agencies and county sheriffs with jurisdiction enter into
167 an agreement with the federal agency to be given authority; and

168 (b) except as provided in Subsection (3), each federal officer employed by the federal
169 agency meets the waiver requirements set forth in Section 53-6-206.

170 (3) A federal officer working as such in the state on or before July 1, 1995, may
171 exercise state law enforcement authority without meeting the waiver requirement.

172 (4) At any time, consistent with any contract with a federal agency, a state or local law
173 enforcement authority may withdraw state law enforcement authority from any individual
174 federal officer by sending written notice to the federal agency and to the division.

175 (5) The authority of a federal officer under this section is limited to the jurisdiction of
176 the authorizing state or local agency, and may be further limited by the state or local agency to
177 enforcing specific statutes, codes, or ordinances.

178 Section 4. Section **53-13-106.5** is amended to read:

179 **53-13-106.5. State limitations on functions of federal law enforcement officers.**

180 (1) As used in this section:

181 (a) "Federal agency" means a federal agency that manages federally managed land.

182 (b) "Federal employee" means an employee of:

183 (i) the Bureau of Land Management;

184 (ii) the United States Forest Service; or

185 (iii) the National Park Service.

186 (c) "Federally managed land" means land managed by the following federal agencies:

187 (i) Bureau of Land Management;

188 (ii) United States Forest Service; and

189 (iii) the National Park Service.

190 (2) Unless otherwise provided by Utah law, federal employees performing their duties
191 in Utah:

192 (a) may not exercise law enforcement authority solely because the land on which they
193 exercise the authority is federally managed; and

194 (b) may exercise only law enforcement authority:

195 (i) expressly granted by federal statute; and

196 (ii) consistent with the Constitution of the United States.

197 (3) Utah does not authorize federal employees to exercise law enforcement powers to
198 enforce the laws of Utah, either on or off federally managed land except as authorized under
199 this section or other provisions of state statute.

200 (4) (a) Utah does not recognize the authority of employees or agents of the United
201 States Department of Interior to exercise law enforcement powers beyond those powers strictly
202 necessary for the management, use, and protection of federally managed lands, including
203 property located on these lands, as limited by 43 U.S.C. 1733(a) and 1733(c)(2).

204 (b) As required by Congress in 43 U.S.C. 1733(c)(1), when the Secretary of Interior
205 determines that state or local assistance is necessary in enforcing federal laws and regulations
206 relating to federally managed lands or the resources on those lands, the secretary shall offer a
207 contract to appropriate state or local law enforcement agencies of the state with the purpose of
208 achieving maximum feasible reliance upon state or local law enforcement officials in enforcing
209 the federal laws and regulations.

210 (5) Utah does not authorize federal employees to take action based on the Utah Code,
211 Utah Administrative Rules, or county or municipal ordinances as a basis to arrest or cite

212 persons for prosecution in the federal criminal justice system, unless the action:

213 (a) has been expressly granted by federal statute; and

214 (b) is consistent with the Constitution of the United States.

215 (6) State and local government agencies may not allow any federal agency access to or
216 use of the correctional and communication facilities and equipment of any state or local law
217 enforcement agency without the express written consent of the appropriate responsible official
218 of the state or local law enforcement agency.

219 (7) State and local law enforcement agencies may enter into agreements with federal
220 agencies granting concurrent authority to enforce federal laws and state and local laws,
221 provided the agreements are limited to a term not to exceed two years and the officers granted
222 authority have completed a 20-hour course focusing on Utah law and process approved by the
223 director of the Peace Officer Standards and Training Division.

224 (8) (a) County sheriffs shall regularly review the duties and activities of federal
225 agencies that have law enforcement responsibilities and that are acting within the jurisdictional
226 area of the county to ascertain whether the federal agencies are acting consistently with this
227 section.

228 (b) County sheriffs shall annually report to the county attorney or district attorney of
229 their jurisdiction the results of all reviews conducted under this Subsection (8).