**R728. Public Safety, Peace Officer Standards and Training.**

**R728-409. Suspension, Revocation, or Relinquishment of Certification.**

**R728-409-1. Authority.**

This rule is authorized by Subsection 53-6-105(1)(k).

**R728-409-2. Purpose.**

This rule establishes procedures for the suspension, revocation, or relinquishment of an individual's peace officer or dispatcher certification.

**R728-409-3. Definitions.**

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "ALJ" means an administrative law judge who conducts administrative hearings as described in Subsections 53-6-211(3) and 53-6-309(3);

(b) "On duty" means that a respondent is:

(i) actively engaged in any of the duties of the respondent's employment as a peace officer or dispatcher;

(ii) receiving compensation for activities related to the respondent's employment as a peace officer or dispatcher;

(iii) on the property of a law enforcement facility, correctional facility or dispatch center;

(iv) in a law enforcement vehicle that is located in a public place; or

(v) in a public place and is wearing a badge or uniform, authorized by the respondent's employer, that readily identifies the wearer as a peace officer or dispatcher;

(c) "Relinquish" means the permanent surrender of the individual's certification, to include each peace officer or dispatcher certification that precludes an individual from:

(i) admission into a training program conducted by the division, or an entity approved by the division; or

(ii) reinstatement or restoration of the individual's certification by the division;

(d) "Respondent" means a peace officer or dispatcher against whom the division has initiated an investigation or adjudicative proceeding under Section 53-6-211 or 53-6-309;

(e) "Revocation" means the permanent deprivation of a respondent's certification, to include each peace officer or dispatcher certification, that precludes a respondent from:

(i) admission into a training program conducted by the division, or an entity approved by the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(f) "Sexual conduct" means:

(i) acts of masturbation, sexual intercourse, or any touching of the anus, buttocks, or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant;

(ii) soliciting, requesting, or directing another individual to engage in any of the acts described in Subsection R728-409-3(2)(f)(i); or

(iii) the sending, transmitting, giving, exchanging, selling, soliciting, or posting, through any means, a sexual image as defined in Subsection R728-409-3(2)(g), by a certified peace officer or dispatcher:

(A) while on duty;

(B) while off duty if the sexual image depicts the certified peace officer or dispatcher in uniform or depicts any official peace officer or dispatcher symbols, insignia, or clothing; or

(C) while off duty, to a certified peace officer or dispatcher while the recipient is on duty and the transmitting peace officer or dispatcher has reason to believe the recipient is on duty at the time of the transmission.

(iv) "Sexual conduct" does not mean any actions performed for a legitimate law enforcement purpose.

(g) "Sexual image" means any visual depiction, photograph, film, video, records, or picture that depicts:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering or any portion of the female breast below the top of the areola;

(iii) an individual engaged in any sexually explicit conduct; or

(iv) a visual depiction of nudity or partial nudity.

(h) "Suspension" means the temporary deprivation of a respondent's certification, to include each peace officer or dispatcher certification; and

(i) "Traffic offense" means an offense named in Title 41, Section 6a, Traffic Code, except for offenses named in:

(i) Title 41, Section 6a, Part 1, General Provisions;

(ii) Title 41, Section 6a, Part 2, Applicability and Obedience to Traffic Laws; and

(iii) Title 41, Section 6a, Part 5, Driving Under the Influence and Reckless Driving.

**R728-409-4. Investigative Procedure.**

(1) The division shall initiate an investigation when it receives information from any reliable source that a violation of Subsections 53-6-211(1) or 53-6-309(1) has occurred, including when:

(a) a respondent is charged with or convicted of a crime;

(b) there is evidence a respondent has engaged in conduct that is a criminal act under law, but that has not been criminally charged or where criminal prosecution is not anticipated;

(c) a respondent's employer notifies the division that the respondent has been investigated, disciplined, terminated, retired or resigned as a result of conduct in violation of Subsection 53-6-211(1) or 53-6-309(1);

(d) a person makes a complaint regarding a violation of Subsection 53-6-211(1) or 53-6-309(1) and there is independent evidence to support the complaint;

(e) violation of Subsection 53-6-211(1) or 53-6-309(1) is reported in the media and there is independent evidence to confirm that the conduct occurred; or

(f) a background investigation indicates that a respondent has engaged in conduct in violation of Subsection 53-6-211(1) or 53-6-309(1).

(2) The division may not investigate conduct that is limited to:

(a) a violation of an employer's policy or procedure, expect for violations of Subsections 53-6-211(1)(g) and (h); or

(b) sexual activity protected under the right of privacy recognized by the United States Supreme Court in Lawrence v. Texas, 539 U.S. 558 (2003).

(3) A person seeking to file a complaint against a respondent may be asked to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

(4) An investigator from the division shall be assigned to investigate the complaint and ensure that the investigation is fully documented in the investigative case file.

(5)(a) If a respondent under investigation is employed as peace officer or dispatcher, the division shall notify the respondent's employer concerning the complaint or investigation, unless the nature of the complaint would make such a course of action impractical.

(b) The division shall keep a record of the date the employer and the respondent are notified.

(6) The division shall refer any complaints of a criminal nature against a respondent to the appropriate law enforcement agency having jurisdiction over the crime for investigation and prosecution if such a referral has not already been made.

(7) If the respondent's employer has an open and active investigation, the division may wait until the employer has completed its investigation before taking action unless the division determines it is not in the public's best interest to delay the investigation.

(8) The division may use the information gathered by the respondent's employer in its investigation.

(9) The division shall take action based on the actual conduct of the respondent as determined by the division's own independent investigation, not on any findings or sanctions issued by the respondent's employer or the court.

(10) Witnesses and other evidence may be subpoenaed during an investigation pursuant to Sections 53-6-210 and 53-6-308.

(11) If ordinary investigative procedures cannot resolve the facts at issue, a respondent may be requested to submit to a polygraph examination.

(12) The director may immediately suspend a respondent's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

(13) Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

(14) If the division determines there is insufficient evidence to find that a respondent engaged in conduct in violation of Subsection 53-6-211(1) or 53-6-309(1), the director shall issue a letter to the respondent indicating that the investigation has been concluded and that the division shall take no action.

**R728-409-5. Purpose of Adjudicative Proceedings.**

(1) The purpose of an adjudicative proceeding is to determine whether there is sufficient evidence to find that the respondent engaged in the conduct alleged in the Notice of Agency Action by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1) or 53-6-309(1).

(2) All adjudicative proceedings initiated by the division to suspend or revoke a respondent's certification shall be formal proceedings as provided by Section 63G-4-202.

**R728-409-6. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.**

(1) Except as provided by Section 63G-4-502, all adjudicative proceedings initiated by the division to suspend or revoke a respondent's certification shall be commenced by the filing of a Notice of Agency Action.

(2) The Notice of Agency Action shall be signed by the director and comply with the requirements of Section 63G-4-201.

(3) The Notice of Agency Action shall be filed with the division and a copy sent to the respondent by certified mail.

**R728-409-7. Responsive Pleadings.**

(1) The respondent shall file a written response with the division, signed by the respondent or the respondent's attorney, within 30 days of the mailing date of the Notice of Agency Action.

(2) The written response shall comply with the requirements in Section 63G-4-204.

**R728-409-8. Hearing Waivers.**

(1) Once a Notice of Agency Action has been issued, the division shall send a hearing waiver form to the respondent.

(2) The respondent shall have 30 days from the mailing date of the Notice of Agency Action to sign a hearing waiver.

(3)(a) If the respondent does not waive the right to a hearing before the ALJ, the adjudicative proceeding will continue.

(b) The period in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the respondent does not sign a hearing waiver.

(4) If the respondent signs a hearing waiver and files it with the division, the matter shall be heard at the next regularly scheduled council meeting.

**R728-409-9. Default.**

(1) The ALJ may enter an order of default against a respondent if:

(a) the respondent fails to file the response required in Section R728-409-7; or

(b) the respondent fails to attend or participate in the hearing.

(2) The order of default shall include a statement of the grounds for default and shall state that the matter will be heard at the next regularly scheduled council meeting.

(3) The order of default shall be filed with the division and a copy sent to the respondent by certified mail.

(4)(a) The respondent may seek to set aside the default order by filing a motion within 90 days from the date of the order of default as provided in Section 63G-4-209.

(b) The ALJ may set aside an order of default for good cause shown.

**R728-409-10. Scheduling a Hearing Before the ALJ.**

(1)(a) If the division receives a responsive pleading from the respondent, a notice containing the location, date and time for the hearing shall be issued by the division.

(b) The notice of hearing shall be filed with the division and a copy sent to the respondent by certified mail.

(2) The hearing shall be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

**R728-409-11. Discovery and Subpoenas.**

(1)(a) In formal POST adjudicative proceedings parties may conduct only limited discovery.

(b) A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

(2) Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding. The respondent is only entitled to those materials after filing a written response with the division as required by Section R728-409-7.

(3)(a) The disclosure of all discovery materials is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The division may charge a fee for discovery in accordance with Section 63G-2-203.

(4) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Sections 53-6-210 and 53-6-308, by the ALJ when requested by any party, or by the ALJ on the ALJ's own motion pursuant to Section 63G-4-205.

**R728-409-12. Hearing Procedures.**

(1) All hearings shall be conducted by the ALJ in accordance with Section 63G-4-206.

(2)(a) At the hearing, the respondent may be represented by an attorney.

(b) Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

**R728-409-13. ALJ Decision.**

(1) Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision that includes a statement of:

(a) the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

(b) the ALJ's conclusions of law; and

(c) the reasons for the ALJ's decision.

(2) If the ALJ determines there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1) or 53-6-309(1), the ALJ's decision shall state that the matter will be heard at the next regularly scheduled council meeting.

(3) If the ALJ determines there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1) or 53-6-309(1), the matter shall be dismissed.

(4) The ALJ's decision shall be filed with the division and a copy sent to the respondent by certified mail.

**R728-409-14. Action by the Council.**

(1) If the respondent waives the right to a hearing with an ALJ, there has been an order of default, or a findings of fact is issued by the ALJ, the division shall present the matter to the council at its next regularly scheduled meeting.

(2) The division shall notify the respondent of the date, time, and location of the council meeting.

(3)(a) The division shall provide the council with the Notice of Agency Action, order of default, signed hearing waiver, and ALJ's findings of fact and conclusions of law contained in the administrative file.

(b) The division shall also provide the council with any written information or comments provided by the respondent's employer.

(c) Any written comments from the respondent's employer should include discipline administered by the respondent's employer as a result of any violation of Section 56-6-211.

(4) At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent should receive a letter of caution or the respondent's certification should be suspended or revoked.

(5) The council does not have appellate review authority of the ALJ's findings of fact and conclusions of law.

**R728-409-15. Final Order.**

(1) After the council has decided the matter, the council chair shall issue a final order within 30 days of the council meeting.

(2) The final order shall state the action taken by the council with regards to the respondent's certification and shall include information on the appeal process outlined in Section R728-409-16.

(3) The council's action shall be effective on the date that the final order is signed by the chair.

(4)(a) The final order shall be filed with the division.

(b) A copy of the final order shall be sent to:

(i) the respondent by certified mail; and

(ii) the respondent's employer by regular mail, if the respondent is employed as peace officer or dispatcher.

(c) The action taken by the council shall be entered into the International Association of Directors of Law Enforcement Standards and Training National Peace Officer De-Certification database, if the respondent is a peace officer.

**R728-409-16. Judicial Review.**

(1) A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chair.

(2) The petition must meet requirements specified in Sections 63G-4-401 and 63G-4-403.

**R728-409-17. Relinquishment Procedures.**

(1) A certified officer or dispatcher may voluntarily relinquish their certification by submitting a Relinquishment of Certification form to the division.

(2) The Relinquishment of Certification form must be signed by the certified officer or dispatcher and notarized.

(3) As soon as the division receives a properly executed Relinquishment of Certification form, the individual's certification shall be terminated and the individual will no longer be a certified peace officer or dispatcher.

(4) Upon the termination of the individual's certification, the division's investigation into any complaint and any adjudicative proceedings will cease.

(5) Notice of the termination of the individual's certification shall be provided to:

(a) the individual;

(b) the individual's employer if the respondent is employed as a peace officer or dispatcher; and

(c) the National Peace Officer De-Certification database administered by the International Association of Directors of Law Enforcement Standards and Training, if the individual is a peace officer.

**R728-409-18. Reporting Violations of Subsection 53-6-211(1) or 53-6-309(1).**

(1) A chief, sheriff, or administrative officer of an agency who is made aware of an allegation against a certified peace officer or dispatcher employed by that agency shall report the allegation to the division within 30 days if the allegation is substantiated pursuant to Subsections 53-6-211(6) and 53-6-309(6).

(2) If a peace officer or certified dispatcher resigns, retires, or otherwise separates from the agency while an investigation is pending, a chief, sheriff, or administrative officer of the agency shall report all findings within 30 days of the completion of the investigation pursuant to Subsections 53-6-211(6)(b) and 53-6-309(6)(b).

**KEY: certifications, investigations, revocations, relinquishments**

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