

**LAW ENFORCEMENT AGENCY AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Michael K. McKell

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to law enforcement agencies.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "law enforcement agency" to include a private institution of higher education whose law enforcement entity or division is certified by the Commission of Public Safety and modifies the definition of "law enforcement officer;"
- ▶ includes law enforcement agencies in the definition of governmental entities that are subject to government records provisions;
- ▶ includes law enforcement agencies in the definition of governmental entities that are subject to governmental immunity provisions; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-1-102**, as last amended by Laws of Utah 1998, Chapter 282

**53-13-103**, as last amended by Laws of Utah 2015, Chapter 436

**63G-2-103**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

**63G-7-102**, as last amended by Laws of Utah 2018, Chapters 22, 106, and 415

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

Section 1. Section **53-1-102** is amended to read:

**53-1-102. Definitions.**

(1) As used in this title:

(a) "Commissioner" means the commissioner of public safety appointed under Section **53-1-107**.

(b) "Department" means the Department of Public Safety created in Section **53-1-103**.

(c) "Law enforcement agency" means an entity ~~[of]~~ or division of:

(i) (A) the federal government, a state, or a political subdivision of a state~~[-including];~~

(B) a state institution of higher education~~[-];~~ or

(C) a private institution of higher education, if the entity or division has been certified by the commissioner; and

(ii) that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(d) "Law enforcement officer" ~~[has]~~ means the same ~~[meaning as provided]~~ as that term is defined in Section **53-13-103**.

(e) "Motor vehicle" means every self-propelled vehicle and every vehicle propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheel chairs and vehicles moved solely by human power.

(f) "Peace officer" means any officer certified in accordance with Title 53, Chapter 13, Peace Officer Classifications.

(g) "State institution of higher education" ~~[has]~~ means the same ~~[meaning as provided]~~ as that term is defined in Section **53B-3-102**.

(h) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(2) The definitions provided in Subsection (1) are to be applied throughout this title in addition to definitions that are applicable to specific chapters or parts.

Section 2. Section **53-13-103** is amended to read:

**53-13-103. Law enforcement officer.**

(1) (a) "Law enforcement officer" means a sworn and certified peace officer;

(i) who is an employee of a law enforcement agency [that is part of or administered by the state or any of its political subdivisions, and]; and

(ii) whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" includes the following:

(i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections 23-20-1.5 and 79-4-501;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) investigators for the Department of Insurance, Fraud Division;

(vii) special agents or investigators employed by the attorney general, district attorneys, and county attorneys;

(viii) employees of the Department of Natural Resources designated as peace officers by law;

(ix) school district police officers as designated by the board of education for the school district;

(x) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(xi) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993;

(xii) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety;

(xiii) airport police officers of any airport owned or operated by the state or any of its political subdivisions; and

(xiv) transit police officers designated under Section 17B-2a-822.

(2) Law enforcement officers may serve criminal process and arrest violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections - State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority:

(a) (i) have satisfactorily completed the requirements of Section 53-6-205; or

(ii) have met the waiver requirements in Section 53-6-206; and

(b) have satisfactorily completed annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

Section 3. Section 63G-2-103 is amended to read:

**63G-2-103. Definitions.**

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical

algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section [63G-2-304](#).

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking;

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

(iv) an association as defined in Section 53G-7-1101; ~~and~~

(v) the Utah Independent Redistricting Commission~~[-]; and~~

(vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;



- (c) a partnership;
- (d) a sole proprietorship;
- (e) other type of business organization; or
- (f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section [63G-2-302](#).

(20) "Protected record" means a record that is classified protected as provided by Section [63G-2-305](#).

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

- 254 (iv) material to which access is limited by the laws of copyright or patent unless the  
255 copyright or patent is owned by a governmental entity or political subdivision;
- 256 (v) proprietary software;
- 257 (vi) junk mail or a commercial publication received by a governmental entity or an  
258 official or employee of a governmental entity;
- 259 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections  
260 of a library open to the public;
- 261 (viii) material that is cataloged, indexed, or inventoried and contained in the collections  
262 of a library open to the public, regardless of physical form or characteristics of the material;
- 263 (ix) a daily calendar or other personal note prepared by the originator for the  
264 originator's personal use or for the personal use of an individual for whom the originator is  
265 working;
- 266 (x) a computer program that is developed or purchased by or for any governmental  
267 entity for its own use;
- 268 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 269 (A) a member of the judiciary;
- 270 (B) an administrative law judge;
- 271 (C) a member of the Board of Pardons and Parole; or
- 272 (D) a member of any other body, other than an association or appeals panel as defined  
273 in Section 53G-7-1101, charged by law with performing a quasi-judicial function;
- 274 (xii) a telephone number or similar code used to access a mobile communication  
275 device that is used by an employee or officer of a governmental entity, provided that the  
276 employee or officer of the governmental entity has designated at least one business telephone  
277 number that is a public record as provided in Section 63G-2-301;
- 278 (xiii) information provided by the Public Employees' Benefit and Insurance Program,  
279 created in Section 49-20-103, to a county to enable the county to calculate the amount to be  
280 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);
- 281 (xiv) information that an owner of unimproved property provides to a local entity as

provided in Section 11-42-205;

(xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

(xvi) child pornography, as defined by Section 76-5b-103; or

(xvii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:

(A) a Senate or House Ethics Committee;

(B) the Independent Legislative Ethics Commission;

(C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or

(D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section

53B-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(29) "State archivist" means the director of the state archives.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 4. Section 63G-7-102 is amended to read:

**63G-7-102. Definitions.**

As used in this chapter:

(1) "Arises out of or in connection with, or results from," when used to describe the relationship between conduct or a condition and an injury, means that:

(a) there is some causal relationship between the conduct or condition and the injury;

(b) the causal relationship is more than any causal connection but less than proximate cause; and

(c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is incident to the conduct or condition.

(2) "Claim" means any asserted demand for or cause of action for money or damages, whether arising under the common law, under state constitutional provisions, or under state statutes, against a governmental entity or against an employee in the employee's personal capacity.

(3) (a) "Employee" includes:

(i) a governmental entity's officers, employees, servants, trustees, or commissioners;

- 338 (ii) members of a governing body;
- 339 (iii) members of a government entity board;
- 340 (iv) members of a government entity commission;
- 341 (v) members of an advisory body, officers, and employees of a Children's Justice
- 342 Center created in accordance with Section [67-5b-102](#);
- 343 (vi) student teachers holding a license issued by the State Board of Education;
- 344 (vii) educational aides;
- 345 (viii) students engaged in internships under Section [53B-16-402](#) or [53G-7-902](#);
- 346 (ix) volunteers as defined by Subsection [67-20-2\(3\)](#); and
- 347 (x) tutors.
- 348 (b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or
- 349 not the individual holding that position receives compensation.
- 350 (c) "Employee" does not include an independent contractor.
- 351 (4) "Governmental entity" means:
- 352 (a) the state and its political subdivisions [~~as both are defined in this section~~]; and
- 353 (b) a law enforcement agency, as defined in Section [53-1-102](#), that employs one or
- 354 more law enforcement officers, as defined in Section [53-13-103](#).
- 355 (5) (a) "Governmental function" means each activity, undertaking, or operation of a
- 356 governmental entity.
- 357 (b) "Governmental function" includes each activity, undertaking, or operation
- 358 performed by a department, agency, employee, agent, or officer of a governmental entity.
- 359 (c) "Governmental function" includes a governmental entity's failure to act.
- 360 (6) "Injury" means death, injury to a person, damage to or loss of property, or any other
- 361 injury that a person may suffer to the person or estate, that would be actionable if inflicted by a
- 362 private person or the private person's agent.
- 363 (7) "Personal injury" means an injury of any kind other than property damage.
- 364 (8) "Political subdivision" means any county, city, town, school district, community
- 365 reinvestment agency, special improvement or taxing district, local district, special service

366 district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,  
367 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

368 (9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in  
369 real or personal property.

370 (10) "State" means the state of Utah, and includes each office, department, division,  
371 agency, authority, commission, board, institution, hospital, college, university, Children's  
372 Justice Center, or other instrumentality of the state.

373 (11) "Willful misconduct" means the intentional doing of a wrongful act, or the  
374 wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's  
375 conduct will probably result in injury.