

# HOUSE BILL REPORT

## HB 1062

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**As Passed House:**

March 13, 2001

**Title:** An act relating to certification of peace officers.

**Brief Description:** Modifying provisions pertaining to the certification of peace officers.

**Sponsors:** By Representatives O'Brien, Ballasiotes, Delvin, Lovick and Haigh; by request of Criminal Justice Training Commission.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/24/01, 1/31/01 [DP];

Appropriations: 2/15/01, 2/20/01 [DP].

**Floor Activity:**

Passed House: 3/13/01, 93-1.

**Brief Summary of Bill**

- Requires all Washington peace officers, as a condition of continuing employment, to timely obtain and retain certification as peace officers.
- Establishes a five-member hearings panel to hear cases and make final administrative decisions regarding a law enforcement officer's certification.
- Requires that all contents of personnel action reports, files, and other information obtained by the commission, relating to an officer's certification or decertification, remain confidential and exempt from public disclosure.

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**HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS**

**Majority Report:** Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

**Staff:** Yvonne Walker (786-7841).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 29 members: Representatives Sehlin, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; Lisk, Republican Vice Chair; Alexander, Benson, Clements, Cody, Cox, Dunshee, Fromhold, Gombosky, Grant, Kagi, Keiser, Kenney, Kessler, Linville, Mastin, McIntire, Mulliken, Pearson, Pflug, Ruderman, D. Schmidt, Schual-Berke, Talcott and Tokuda.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Boldt and Lambert.

**Staff:** Bernard Dean (786-7130).

### **Background:**

Law enforcement officers (also known as peace officers) initially employed must commence basic training during the first six months of their employment unless the basic training requirement has otherwise been waived or extended by the Criminal Justice Training Commission (CJTC). Successful completion of the basic training requirement is requisite to the continuation of employment of new officers with a law enforcement agency.

Washington does not have a statewide certification or recertification process for peace officers. As a result, law enforcement certification is not required of new officers joining the police force or even returning peace officers who may have left full-time service and have later chosen to return to their law enforcement careers.

### **Summary:**

As a condition of continuing employment as a peace officer, all Washington peace officers must timely obtain and retain certification as peace officers. The CJTC has the authority to issue or revoke all peace officer certifications.

As a prerequisite to certification, a peace officer must release to the CJTC all personnel files, termination papers, criminal investigation files, or any other files, papers, or information that are directly related to the certification or decertification of the officer.

**Denial or Revocation of Certification.** A peace officer's certification may be denied or revoked if the officer has done one of the following actions:

- failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, or an authorized exemption from the training (certification

- lapses when there is a break of more than 24 consecutive months in the officer's service as a full-time law enforcement officer);
- knowingly falsified or omitted information on a training application or certification to the commission;
  - been convicted of a felony;
  - been discharged for misconduct and the discharge was final;
  - obtained a certificate that was previously issued by administrative error on the part of the commission; or
  - interfered with an investigation or action for denial or revocation of a certificate by knowingly making a false statement to the commission or tampering with evidence or intimidating any witness.

Within 15 days of the termination or resignation of any peace officer, the agency of termination must notify the commission and upon the request of the commission, provide any additional personnel documentation.

**Re-application for Certification.** A person denied certification based upon dismissal or withdrawal from a basic law enforcement academy for any reason, except discharge for disqualifying misconduct, is eligible for readmission for certification. A person denied certification for disqualifying misconduct may, five years after the revocation or denial, petition the commission for reinstatement of the certificate. A person whose certification is denied or revoked due solely to a felony criminal conviction is not eligible for certification. However, the officer may petition the commission for reinstatement if the court issues a final judicial reversal of the conviction.

**Procedures for Denying or Revoking Certification.** Any law enforcement officer or duly authorized representative of a law enforcement agency may submit a written complaint to the commission charging that a peace officer's certificate should be denied or revoked, and specifying the grounds for the charge. The commission has sole discretion whether to investigate a complaint, and whether to investigate matters relating to certification, denial of certification, or revocation of certification without restriction as to the source or the existence of a complaint. A person who files a complaint in good faith is immune from suit or any civil action related to the filing or the contents of the complaint.

If the commission determines, upon investigation, that there is probable cause to believe that a peace officer's certification should be denied or revoked, the commission must prepare and serve upon the officer a statement of charges. The statement of charges must be delivered by mail or personal service to the officer. Notice of the charges must also be mailed to or otherwise served upon the officer's agency of termination and any current law enforcement agency employer.

The officer must, within 60 days of communication of the statement of charges, request a hearing before the hearings board. Failure of the officer to request a hearing within the

60 day period constitutes a default whereby the officer will lose the right to an adjudicative proceeding. If a hearing is requested, the date of the hearing must be scheduled no earlier than 90 days nor later than 180 days after communication of the charges to the officer. The 180 day period may be extended on mutual agreement of the parties or for good cause. The commission must give written notice of the hearing at least 20 days prior to the hearing, specifying the date, time, and place of the hearing.

**Hearings Panel.** A five-member hearings panel must both hear the case and make the commission's final administrative decision. When an appeal is filed in relation to decertification of a peace officer, who is not a peace officer of the Washington State Patrol, the hearings board must consist of the following persons: (1) a police chief, (2) a sheriff, (3) two police officers who are at or below the level of first line supervisor, who are from city or county law enforcement agencies and who have at least 10 years of experience, and (4) one person who is not currently a peace officer and who represents a community college or a four-year college or university.

When an appeal is filed in relation to decertification of a peace officer of the Washington State Patrol, the commission must appoint to the hearings panel: (1) either one police chief or one sheriff, (2) one administrator of the state patrol, (3) one peace officer who is at or below the level of first line supervisor, who is from a city or county law enforcement agency, and who has at least 10 years of experience as a peace officer, (4) one state patrol officer who is at or below the level of first line supervisor, and who has at least 10 years of experience as a peace officer, and (5) one person who is not currently a peace officer and who represents a community college or four-year college or university.

Persons appointed to a hearings panel by the commission must, in relation to any decertification matter on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of regular commission members.

When there is a charge where revocation or denial is based due to a peace officer being discharged for disqualifying misconduct, and the discharge is "final," and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge occurred and was based on disqualifying misconduct. The hearings panel need not redetermine the underlying facts, but may make this determination based solely on review of the records and decision relating to the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether such a discharge occurred and was based on such disqualifying misconduct. The hearings panel shall, upon written request by the subject peace officer, allow the peace officer to present additional evidence of extenuating circumstances.

Where there is a charge where revocation or denial of certification is based upon a peace

officer being convicted at any time of a felony offense, the hearings panel shall revoke or deny certification, if it determines that the peace officer was convicted of a felony. The hearings panel need not redetermine the underlying facts, but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer was convicted of a felony.

The commission, its boards, and individuals acting on behalf of the commission boards are immune from suit in any civil or criminal action performed in the course of their duties.

**Disclosure of Records.** The contents of personnel action reports, all files, papers, and other information obtained by the commission, and all investigative files relating to an officer's certification or decertification are confidential and exempt from public disclosure. Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action.

Records which are confidential may be reviewed and copied by the following persons: (1) by the officer involved or the officer's counsel or authorized representative, who may review the officer's file and may submit any additional exculpatory or explanatory evidence, statements, or other information, any of which must be included in the file; (2) by a duly authorized representative of the agency of termination, or a current employing law enforcement agency, which may review and copy its employee officer's file; or (3) by a representative of or investigator for the commission.

Records which are otherwise confidential and exempt may also be inspected at the offices of the commission by a duly authorized representative of a law enforcement agency considering an application for employment by a person who is the subject of a record. A copy of records may later be obtained by an agency after it hires the applicant. Upon a determination that a complaint is without merit, that a personnel action report filed does not merit action by the commission, or that a matter otherwise investigated by the commission does not merit action, the commission shall purge the records.

The hearings, but not the deliberations, of the hearings board are open to the public. The transcripts, admitted evidence, and written decisions of the hearings board on behalf of the commission are not confidential or exempt from public disclosure, and are subject to subpoena and discovery proceedings in civil actions.

Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability, for providing information to the commission in good faith.

**Authority of the Criminal Justice Training Commission.** The commission has the authority to:

- adopt, amend, or repeal rules as necessary;
  - issue subpoenas and administer oaths in connection with investigations and hearings;
  - take depositions and other procedures as needed in investigations and hearings;
  - appoint members of a hearings board;
  - grant, deny, or revoke certification of peace officers;
  - designate individuals authorized to sign subpoenas and statements of charges; and
- hire investigative, administrative, and clerical staff or enter into contracts for professional services necessary to carry out its duties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2002.

**Testimony For:** (Criminal Justice & Corrections) Washington is only one of five states in the country and one of two states west of the Mississippi River that does not have a certification or decertification process for law enforcement officers. In fact, there have been cases where a bad officer– has been fired or forced to resigned from one position in one county but in turn has been able to get rehired in another small agency that does not have the personnel or facilities to run employment checks on every new officer that is hired within its agency. It is a good bill to be able to keep the bad officers– out of Washington. There is no opposition to this bill and all the unions, law enforcement officers, and the administrators of law enforcement agencies support this bill. In addition, this bill is supported by both the Washington State Patrol as well as the Washington Association of Sheriffs and Police Chiefs.

**Testimony For:** (Appropriations) Washington is one of five states in the United States and one of two states west of the Mississippi River that does not have a certification or decertification process for law enforcement officers. This bill provides a mechanism to get rid of bad cops.– There have been recent cases where an officer has been terminated for misconduct and then is rehired in another small agency that does not have the resources to be able to thoroughly check the officer’s prior employment record. This bill weeds out– bad cops.

**Testimony Against:** (Criminal Justice & Corrections) None.

**Testimony Against:** (Appropriations) None.

**Testified:** (Criminal Justice & Corrections) (In support) Larry Erickson, Washington Association of Sheriffs and Police Chiefs; and Michael Parsons, Criminal Justice Training Commission.

(With concerns) Greg R. John and Ike Ikard, Washington Public Employees Association.

**Testified:** (Appropriations) Dan LaRoche, Washington Association of Sheriffs and Police Chiefs; and Michael Parsons, Criminal Justice Training Commission.