
SUBSTITUTE SENATE BILL 5180

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Costa, McCaslin, Haugen, Sheahan, Roach, Rasmussen and Kline; by request of Criminal Justice Training Commission)

READ FIRST TIME 02/07/01.

1 AN ACT Relating to certification of peace officers; amending RCW
2 43.101.010; adding new sections to chapter 43.101 RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.101.010 and 1981 c 132 s 2 are each amended to read
6 as follows:

7 When used in this chapter:

8 (1) The term "commission" means the Washington state criminal
9 justice training commission.

10 (2) The term "boards" means the education and training standards
11 boards, the establishment of which are authorized by this chapter.

12 (3) The term "criminal justice personnel" means any person who
13 serves in a county, city, state, or port commission agency engaged in
14 crime prevention, crime reduction, or enforcement of the criminal law.

15 (4) The term "law enforcement personnel" means any public employee
16 or volunteer having as a primary function the enforcement of criminal
17 laws in general or any employee or volunteer of, or any individual
18 commissioned by, any municipal, county, state, or combination thereof,
19 agency having as its primary function the enforcement of criminal laws

1 in general as distinguished from an agency possessing peace officer
2 powers, the primary function of which is the implementation of
3 specialized subject matter areas. For the purposes of this subsection
4 "primary function" means that function to which the greater allocation
5 of resources is made.

6 (5) The term "correctional personnel" means any employee or
7 volunteer who by state, county, municipal, or combination thereof,
8 statute has the responsibility for the confinement, care, management,
9 training, treatment, education, supervision, or counseling of those
10 individuals whose civil rights have been limited in some way by legal
11 sanction.

12 (6) A peace officer is "convicted" at the time a plea of guilty has
13 been accepted, or a verdict of guilty or finding of guilt has been
14 filed, notwithstanding the pendency of any future proceedings,
15 including but not limited to sentencing, posttrial or postfact-finding
16 motions and appeals. "Conviction" includes a deferral of sentence and
17 also includes the equivalent disposition by a court in a jurisdiction
18 other than the state of Washington.

19 (7) "Discharged for disqualifying misconduct" means terminated from
20 employment for: (a) Conviction of (i) any crime committed under color
21 of authority as a peace officer, (ii) any crime involving dishonesty or
22 false statement within the meaning of Evidence Rule 609(a), (iii) the
23 unlawful use or possession of a controlled substance, or (iv) any other
24 crime the conviction of which disqualifies a Washington citizen from
25 the legal right to possess a firearm under state or federal law; (b)
26 conduct that would constitute any of the crimes addressed in (a) of
27 this subsection; or (c) knowingly making materially false statements
28 during disciplinary investigations, where the false statements are the
29 sole basis for the termination.

30 (8) A peace officer is "discharged for disqualifying misconduct"
31 within the meaning of subsection (7) of this section under the ordinary
32 meaning of the term and when the totality of the circumstances support
33 a finding that the officer resigned in anticipation of discipline,
34 whether or not the misconduct was discovered at the time of
35 resignation, and when such discipline, if carried forward, would more
36 likely than not have led to discharge for disqualifying misconduct
37 within the meaning of subsection (7) of this section.

38 (9) When used in context of proceedings referred to in this
39 chapter, "final" means that the peace officer has exhausted all

1 available civil service appeals, collective bargaining remedies, and
2 all other such direct administrative appeals, and the officer has not
3 been reinstated as the result of the action. Finality is not affected
4 by the pendency or availability of state or federal administrative or
5 court actions for discrimination, or by the pendency or availability of
6 any remedies other than direct civil service and collective bargaining
7 remedies.

8 (10) "Peace officer" means any law enforcement personnel subject to
9 the basic law enforcement training requirement of RCW 43.101.200 and
10 any other requirements of that section, notwithstanding any waiver or
11 exemption granted by the commission, and notwithstanding the statutory
12 exemption based on date of initial hire under RCW 43.101.200.
13 Commissioned officers of the Washington state patrol, whether they have
14 been or may be exempted by rule of the commission from the basic
15 training requirement of RCW 43.101.200, are included as peace officers
16 for purposes of this chapter. Fish and wildlife officers with
17 enforcement powers for all criminal laws under RCW 77.12.055 are peace
18 officers for purposes of this chapter.

19 NEW SECTION. Sec. 2. (1) As a condition of continuing employment
20 as peace officers, all Washington peace officers: (a) Shall timely
21 obtain certification as peace officers, or timely obtain certification
22 for exemption therefrom, by meeting all requirements of RCW 43.101.200,
23 as that section is administered under the rules of the commission, as
24 well by meeting any additional requirements under this chapter; and (b)
25 shall maintain the basic certification as peace officers under this
26 chapter. The commission shall certify peace officers who have
27 satisfied, or have been exempted by statute or by rule from, the basic
28 training requirements of RCW 43.101.200 on or before the effective date
29 of this section. Thereafter, the commission may revoke certification
30 pursuant to this chapter.

31 (2) The commission shall allow a peace officer to retain status as
32 a certified peace officer as long as the officer: (a) Timely meets the
33 basic law enforcement training requirements, or is exempted therefrom,
34 in whole or in part, under RCW 43.101.200 or under rule of the
35 commission; (b) meets or is exempted from any other requirements under
36 this chapter as administered under the rules adopted by the commission;
37 (c) is not denied certification by the commission under this chapter;
38 and (d) has not had certification revoked by the commission.

1 (3) As a prerequisite to certification, as well as a prerequisite
2 to pursuit of a hearing under section 9 of this act, a peace officer
3 must, on a form devised or adopted by the commission, authorize the
4 release to the commission of his or her personnel files, termination
5 papers, criminal investigation files, or other files, papers, or
6 information that are directly related to a certification matter or
7 decertification matter before the commission.

8 NEW SECTION. **Sec. 3.** Upon request by a peace officer's employer
9 or on its own initiative, the commission may deny or revoke
10 certification of any peace officer, after written notice and hearing,
11 if a hearing is timely requested by the peace officer under section 9
12 of this act, based upon a finding of one or more of the following
13 conditions:

14 (1) The peace officer has failed to timely meet all requirements
15 for obtaining a certificate of basic law enforcement training, a
16 certificate of basic law enforcement training equivalency, or a
17 certificate of exemption from the training;

18 (2) The peace officer has knowingly falsified or omitted material
19 information on an application for training or certification to the
20 commission;

21 (3) The peace officer has been convicted at any time of a felony
22 offense under the laws of this state or has been convicted of a federal
23 or out-of-state offense comparable to a felony under the laws of this
24 state; except that if a certified peace officer was convicted of a
25 felony before being employed as a peace officer, and the circumstances
26 of the prior felony conviction were fully disclosed to his or her
27 employer before being hired, the commission may revoke certification
28 only with the agreement of the employing law enforcement agency;

29 (4) The peace officer has been discharged for disqualifying
30 misconduct, the discharge is final, and some or all of the acts or
31 omissions forming the basis for the discharge proceedings occurred on
32 or after the effective date of this section;

33 (5) The peace officer's certificate was previously issued by
34 administrative error on the part of the commission; or

35 (6) The peace officer has interfered with an investigation or
36 action for denial or revocation of certificate by: (a) Knowingly
37 making a materially false statement to the commission; or (b) in any

1 matter under investigation by or otherwise before the commission,
2 tampering with evidence or tampering with or intimidating any witness.

3 NEW SECTION. **Sec. 4.** (1) A person denied a certification based
4 upon dismissal or withdrawal from a basic law enforcement academy for
5 any reason not also involving discharge for disqualifying misconduct is
6 eligible for readmission and certification upon meeting standards
7 established in rules of the commission, which rules may provide for
8 probationary terms on readmission.

9 (2) A person whose certification is denied or revoked based upon
10 prior administrative error of issuance, failure to cooperate, or
11 interference with an investigation is eligible for certification upon
12 meeting standards established in rules of the commission, rules which
13 may provide for a probationary period of certification in the event of
14 reinstatement of eligibility.

15 (3) A person whose certification is denied or revoked based upon a
16 felony criminal conviction is not eligible for certification at any
17 time.

18 (4) A peace officer whose certification is denied or revoked based
19 upon discharge for disqualifying misconduct, but not also based upon a
20 felony criminal conviction, may, five years after the revocation or
21 denial, petition the commission for reinstatement of the certificate or
22 for eligibility for reinstatement. The commission shall hold a hearing
23 on the petition to consider reinstatement, and the commission may allow
24 reinstatement based upon standards established in rules of the
25 commission. If the certificate is reinstated or eligibility for
26 certification is determined, the commission may establish a
27 probationary period of certification.

28 (5) A peace officer whose certification is revoked based solely
29 upon a criminal conviction may petition the commission for
30 reinstatement immediately upon a final judicial reversal of the
31 conviction. The commission shall hold a hearing on request to consider
32 reinstatement, and the commission may allow reinstatement based on
33 standards established in rules of the commission. If the certificate
34 is reinstated or if eligibility for certification is determined, the
35 commission may establish a probationary period of certification.

36 NEW SECTION. **Sec. 5.** A peace officer's certification lapses
37 automatically when there is a break of more than twenty-four

1 consecutive months in the officer's service as a full-time law
2 enforcement officer. A break in full-time law enforcement service
3 which is due solely to the pendency of direct review or appeal from a
4 disciplinary discharge, or to the pendency of a work-related injury,
5 does not cause a lapse in certification. The officer may petition the
6 commission for reinstatement of certification. Upon receipt of a
7 petition for reinstatement of a lapsed certificate, the commission
8 shall determine under this chapter and any applicable rules of the
9 commission if the peace officer's certification status is to be
10 reinstated, and the commission shall also determine any requirements
11 which the officer must meet for reinstatement. The commission may adopt
12 rules establishing requirements for reinstatement.

13 NEW SECTION. **Sec. 6.** Upon termination of a peace officer for any
14 reason, including resignation, the agency of termination shall, within
15 fifteen days of the termination, notify the commission on a personnel
16 action report form provided by the commission. The agency of
17 termination shall, upon request of the commission, provide such
18 additional documentation or information as the commission deems
19 necessary to determine whether the termination provides grounds for
20 revocation under section 3 of this act. The commission shall maintain
21 these notices in a permanent file, subject to section 12 of this act.

22 NEW SECTION. **Sec. 7.** In addition to its other powers granted
23 under this chapter, the commission has authority and power to:

24 (1) Adopt, amend, or repeal rules as necessary to carry out this
25 chapter;

26 (2) Issue subpoenas and administer oaths in connection with
27 investigations, hearings, or other proceedings held under this chapter;

28 (3) Take or cause to be taken depositions and other discovery
29 procedures as needed in investigations, hearings, and other proceedings
30 held under this chapter;

31 (4) Appoint members of a hearings board as provided under section
32 10 of this act;

33 (5) Enter into contracts for professional services determined by
34 the commission to be necessary for adequate enforcement of this
35 chapter;

36 (6) Grant, deny, or revoke certification of peace officers under
37 the provisions of this chapter;

1 (7) Designate individuals authorized to sign subpoenas and
2 statements of charges under the provisions of this chapter; and

3 (8) Employ such investigative, administrative, and clerical staff
4 as necessary for the enforcement of this chapter.

5 NEW SECTION. **Sec. 8.** A law enforcement officer or duly authorized
6 representative of a law enforcement agency may submit a written
7 complaint to the commission charging that a peace officer's certificate
8 should be denied or revoked, and specifying the grounds for the charge.
9 Filing a complaint does not make a complainant a party to the
10 commission's action. The commission has sole discretion whether to
11 investigate a complaint, and the commission has sole discretion whether
12 to investigate matters relating to certification, denial of
13 certification, or revocation of certification on any other basis,
14 without restriction as to the source or the existence of a complaint.
15 A person who files a complaint in good faith under this section is
16 immune from suit or any civil action related to the filing or the
17 contents of the complaint.

18 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
19 investigation, that there is probable cause to believe that a peace
20 officer's certification should be denied or revoked under section 3 of
21 this act, the commission must prepare and serve upon the officer a
22 statement of charges. Service on the officer must be by mail or by
23 personal service on the officer. Notice of the charges must also be
24 mailed to or otherwise served upon the officer's agency of termination
25 and any current law enforcement agency employer. The statement of
26 charges must be accompanied by a notice that to receive a hearing on
27 the denial or revocation, the officer must, within sixty days of
28 communication of the statement of charges, request a hearing before the
29 hearings board appointed under section 10 of this act. Failure of the
30 officer to request a hearing within the sixty-day period constitutes a
31 default, whereupon the commission may enter an order under RCW
32 34.05.440.

33 (2) If a hearing is requested, the date of the hearing must be
34 scheduled not earlier than ninety days nor later than one hundred
35 eighty days after communication of the statement of charges to the
36 officer; the one hundred eighty day period may be extended on mutual
37 agreement of the parties or for good cause. The commission shall give

1 written notice of hearing at least twenty days prior to the hearing,
2 specifying the time, date, and place of hearing.

3 NEW SECTION. **Sec. 10.** (1) The procedures governing adjudicative
4 proceedings before agencies under chapter 34.05 RCW, the administrative
5 procedure act, govern hearings before the commission and govern all
6 other actions before the commission unless otherwise provided in this
7 chapter. The standard of proof in actions before the commission is
8 clear, cogent, and convincing evidence.

9 (2) On all appeals brought under section 9 of this act, a five-
10 member hearings panel shall both hear the case and make the
11 commission's final administrative decision. Members of the commission
12 or the board on law enforcement training standards and education may
13 but need not be appointed to the hearings panels. The commission shall
14 appoint as follows two or more panels to hear appeals from
15 decertification actions:

16 (a) When an appeal is filed in relation to decertification of a
17 Washington peace officer who is not a peace officer of the Washington
18 state patrol, the commission shall appoint to the panel: (i) One
19 police chief; (ii) one sheriff; (iii) two peace officers who are at or
20 below the level of first line supervisor, who are from city or county
21 law enforcement agencies, and who have at least ten years' experience
22 as peace officers; and (iv) one person who is not currently a peace
23 officer and who represents a community college or four-year college or
24 university.

25 (b) When an appeal is filed in relation to decertification of a
26 peace officer of the Washington state patrol, the commission shall
27 appoint to the panel: (i) Either one police chief or one sheriff; (ii)
28 one administrator of the state patrol; (iii) one peace officer who is
29 at or below the level of first line supervisor, who is from a city or
30 county law enforcement agency, and who has at least ten years'
31 experience as a peace officer; (iv) one state patrol officer who is at
32 or below the level of first line supervisor, and who has at least ten
33 years' experience as a peace officer; and (v) one person who is not
34 currently a peace officer and who represents a community college or
35 four-year college or university.

36 (c) Persons appointed to hearings panels by the commission shall,
37 in relation to any decertification matter on which they sit, have the
38 powers, duties, and immunities, and are entitled to the emoluments,

1 including travel expenses in accordance with RCW 43.03.050 and
2 43.03.060, of regular commission members.

3 (3) Where the charge upon which revocation or denial is based is
4 that a peace officer was "discharged for disqualifying misconduct," and
5 the discharge is "final," within the meaning of section 3(4) of this
6 act, and the officer received a civil service hearing or arbitration
7 hearing culminating in an affirming decision following separation from
8 service by the employer, the hearings panel may revoke or deny
9 certification if the hearings panel determines that the discharge
10 occurred and was based on disqualifying misconduct; the hearings panel
11 need not redetermine the underlying facts but may make this
12 determination based solely on review of the records and decision
13 relating to the employment separation proceeding. However, the
14 hearings panel may, in its discretion, consider additional evidence to
15 determine whether such a discharge occurred and was based on such
16 disqualifying misconduct. The hearings panel shall, upon written
17 request by the subject peace officer, allow the peace officer to
18 present additional evidence of extenuating circumstances.

19 Where the charge upon which revocation or denial of certification
20 is based is that a peace officer "has been convicted at any time of a
21 felony offense" within the meaning of section 3(3) of this act, the
22 hearings panel shall revoke or deny certification if it determines that
23 the peace officer was convicted of a felony. The hearings panel need
24 not redetermine the underlying facts but may make this determination
25 based solely on review of the records and decision relating to the
26 criminal proceeding. However, the hearings panel shall, upon the
27 panel's determination of relevancy, consider additional evidence to
28 determine whether the peace officer was convicted of a felony.

29 Where the charge upon which revocation or denial is based is under
30 section 3(1), (2), (5), or (6) of this act, the hearings panel shall
31 determine the underlying facts relating to the charge upon which
32 revocation or denial of certification is based.

33 (4) The commission's final administrative decision is subject to
34 judicial review under RCW 34.05.510 through 34.05.598.

35 NEW SECTION. **Sec. 11.** The commission, its boards, and individuals
36 acting on behalf of the commission and its boards are immune from suit
37 in any civil or criminal action contesting or based upon proceedings or

1 other official acts performed in the course of their duties in the
2 administration and enforcement of this chapter.

3 NEW SECTION. **Sec. 12.** (1) Except as provided under subsection (2)
4 of this section, the following records of the commission are
5 confidential and exempt from public disclosure: (a) The contents of
6 personnel action reports filed under section 6 of this act; (b) all
7 files, papers, and other information obtained by the commission
8 pursuant to section 2(3) of this act; and (c) all investigative files
9 of the commission compiled in carrying out the responsibilities of the
10 commission under this chapter. Such records are not subject to public
11 disclosure, subpoena, or discovery proceedings in any civil action,
12 except as provided in subsection (5) of this section.

13 (2) Records which are otherwise confidential and exempt under
14 subsection (1) of this section may be reviewed and copied: (a) By the
15 officer involved or the officer's counsel or authorized representative,
16 who may review the officer's file and may submit any additional
17 exculpatory or explanatory evidence, statements, or other information,
18 any of which must be included in the file; (b) by a duly authorized
19 representative of (i) the agency of termination, or (ii) a current
20 employing law enforcement agency, which may review and copy its
21 employee-officer's file; or (c) by a representative of or investigator
22 for the commission.

23 (3) Records which are otherwise confidential and exempt under
24 subsection (1) of this section may also be inspected at the offices of
25 the commission by a duly authorized representative of a law enforcement
26 agency considering an application for employment by a person who is the
27 subject of a record. A copy of records which are otherwise
28 confidential and exempt under subsection (1) of this section may later
29 be obtained by an agency after it hires the applicant. In all other
30 cases under this subsection, the agency may not obtain a copy of the
31 record.

32 (4) Upon a determination that a complaint is without merit, that a
33 personnel action report filed under section 6 of this act does not
34 merit action by the commission, or that a matter otherwise investigated
35 by the commission does not merit action, the commission shall purge
36 records addressed in subsection (1) of this section.

37 (5) The hearings, but not the deliberations, of the hearings board
38 are open to the public. The transcripts, admitted evidence, and

1 written decisions of the hearings board on behalf of the commission are
2 not confidential or exempt from public disclosure, and are subject to
3 subpoena and discovery proceedings in civil actions.

4 (6) Every individual, legal entity, and agency of federal, state,
5 or local government is immune from civil liability, whether direct or
6 derivative, for providing information to the commission in good faith.

7 NEW SECTION. **Sec. 13.** Sections 2 through 12 and 14 of this act
8 are each added to chapter 43.101 RCW.

9 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2002.

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