
SUBSTITUTE HOUSE BILL 1340

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Darneille and Kagi; by request of Criminal Justice Training Commission)

READ FIRST TIME 02/14/05.

1 AN ACT Relating to the certification of corrections officers;
2 amending RCW 43.101.085, 43.101.010, 43.101.380, 43.101.400,
3 43.101.030, and 43.101.060; adding new sections to chapter 43.101 RCW;
4 and providing an effective date.

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

6 **Sec. 1.** RCW 43.101.085 and 2001 c 167 s 7 are each amended to read
7 as follows:

8 In addition to its other powers granted under this chapter, the
9 commission has authority and power to:

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

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

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

17 (4) Appoint members of a hearings board as provided under RCW
18 43.101.380;

1 (5) Enter into contracts for professional services determined by
2 the commission to be necessary for adequate enforcement of this
3 chapter;

4 (6) Grant, deny, or revoke certification of peace officers and
5 corrections officers under the provisions of this chapter;

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

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

10 **Sec. 2.** RCW 43.101.010 and 2003 c 39 s 27 are each amended to read
11 as follows:

12 When used in this chapter:

13 (1) The term "commission" means the Washington state criminal
14 justice training commission.

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

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

20 (4) The term "law enforcement personnel" means any public employee
21 or volunteer having as a primary function the enforcement of criminal
22 laws in general or any employee or volunteer of, or any individual
23 commissioned by, any municipal, county, state, or combination thereof,
24 agency having as its primary function the enforcement of criminal laws
25 in general as distinguished from an agency possessing peace officer
26 powers, the primary function of which is the implementation of
27 specialized subject matter areas. For the purposes of this subsection
28 "primary function" means that function to which the greater allocation
29 of resources is made.

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

36 (6) The term "state juvenile services personnel" means any employee
37 or volunteer who by state statute has the responsibility for the

1 confinement, care, management, training, treatment, education,
2 supervision, or counseling of those juveniles remanded to state custody
3 whose civil rights have been limited in some way by legal sanction.

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

11 ~~((+7))~~ (8) "Discharged for disqualifying misconduct" means:

12 (a) A peace officer is terminated from employment for: ~~((+a))~~ (i)
13 Conviction of ~~((+i))~~ (A) any crime committed under color of authority
14 as a peace officer, ~~((+ii))~~ (B) any crime involving dishonesty or
15 false statement within the meaning of Evidence Rule 609(a), ~~((+iii))~~
16 (C) the unlawful use or possession of a controlled substance, or
17 ~~((+iv))~~ (D) any other crime the conviction of which disqualifies a
18 Washington citizen from the legal right to possess a firearm under
19 state or federal law; ~~((+b))~~ (ii) conduct that would constitute any of
20 the crimes addressed in (a)(i) of this subsection; or ~~((+e))~~ (iii)
21 knowingly making materially false statements during disciplinary
22 investigations, where the false statements are the sole basis for the
23 termination.

24 ~~((+8))~~ (b) A corrections officer is terminated from employment
25 for: (i) Conviction of (A) any crime committed under color of
26 authority as a corrections officer, (B) any crime involving dishonesty
27 or false statement within the meaning of Evidence Rule 609(a), or (C)
28 the unlawful use or possession of a controlled substance; (ii) conduct
29 that would constitute any of the crimes addressed in (b)(i) of this
30 subsection; or (iii) knowingly making materially false statements
31 during disciplinary investigations, where the false statements are the
32 sole basis for the termination.

33 (9) A peace officer or corrections officer is "discharged for
34 disqualifying misconduct" within the meaning of subsection ~~((+7))~~ (8)
35 of this section under the ordinary meaning of the term and when the
36 totality of the circumstances support a finding that the officer
37 resigned in anticipation of discipline, whether or not the misconduct
38 was discovered at the time of resignation, and when such discipline, if

1 carried forward, would more likely than not have led to discharge for
2 disqualifying misconduct within the meaning of subsection ~~((+7))~~ (8)
3 of this section.

4 ~~((+9))~~ (10) When used in context of proceedings referred to in
5 this chapter, "final" means that the peace officer or corrections
6 officer has exhausted all available civil service appeals, collective
7 bargaining remedies, and all other such direct administrative appeals,
8 and the officer has not been reinstated as the result of the action.
9 Finality is not affected by the pendency or availability of state or
10 federal administrative or court actions for discrimination, or by the
11 pendency or availability of any remedies other than direct civil
12 service and collective bargaining remedies.

13 ~~((+10))~~ (11) "Peace officer" means any law enforcement personnel
14 subject to the basic law enforcement training requirement of RCW
15 43.101.200 and any other requirements of that section, notwithstanding
16 any waiver or exemption granted by the commission, and notwithstanding
17 the statutory exemption based on date of initial hire under RCW
18 43.101.200. Commissioned officers of the Washington state patrol,
19 whether they have been or may be exempted by rule of the commission
20 from the basic training requirement of RCW 43.101.200, are included as
21 peace officers for purposes of this chapter. Fish and wildlife
22 officers with enforcement powers for all criminal laws under RCW
23 77.15.075 are peace officers for purposes of this chapter.

24 (12) "Corrections officer" means any corrections personnel or state
25 juvenile services personnel subject to the basic corrections training
26 requirement of RCW 43.101.220 and any other requirements of that
27 section, notwithstanding any waiver or exemption granted by the
28 commission, and notwithstanding the statutory exemption based on date
29 of initial hire under RCW 43.101.220. State juvenile services
30 personnel who are required by agency policy and procedure to adhere to
31 an evidence-based model for service delivery shall be exempted from the
32 certification requirements of this chapter upon request of the
33 employing agency.

34 NEW SECTION. Sec. 3. (1) As a condition of continuing employment
35 as corrections officers, all Washington state corrections officers
36 shall: (a) Timely obtain certification as corrections officers, or
37 timely obtain exemption therefrom, by meeting all requirements of RCW

1 43.101.220, as that section is administered under the rules of the
2 commission, as well as by meeting any additional requirements under
3 this chapter; and (b) maintain the basic certification as corrections
4 officers under this chapter. The commission shall certify corrections
5 officers who have satisfied, or have been exempted by statute or by
6 rule from, the basic training requirements of RCW 43.101.220 on or
7 before January 1, 2006. Thereafter, the commission may revoke
8 certification pursuant to this chapter.

9 (2) The commission shall allow a corrections officer to retain
10 status as a certified corrections officer as long as the officer: (a)
11 Timely meets the basic corrections officer training requirements, or is
12 exempted therefrom, in whole or in part, under RCW 43.101.220 or under
13 rule of the commission; (b) meets or is exempted from any other
14 requirements under this chapter as administered under the rules adopted
15 by the commission; (c) is not denied certification by the commission
16 under this chapter; and (d) has not had certification revoked by the
17 commission.

18 (3) As a prerequisite to certification, as well as a prerequisite
19 to pursuit of a hearing under section 9 of this act, a corrections
20 officer must, on a form devised or adopted by the commission, authorize
21 the release to the commission of his or her personnel files,
22 termination papers, criminal investigation files, or other files,
23 papers, or information that are directly related to a certification
24 matter or decertification matter before the commission.

25 NEW SECTION. **Sec. 4.** Upon request by a corrections officer's
26 employer or on its own initiative, the commission may deny or revoke
27 certification of any corrections officer after written notice and
28 hearing, if a hearing is timely requested by the corrections officer
29 under section 9 of this act, based upon a finding of one or more of the
30 following conditions:

31 (1) The corrections officer has failed to timely meet all
32 requirements for obtaining a certificate of basic corrections training,
33 or a certificate of exemption from the training;

34 (2) The corrections officer has knowingly falsified or omitted
35 material information on an application for training or certification to
36 the commission;

1 (3) The corrections officer has been convicted at any time of a
2 felony offense under the laws of this state or has been convicted of a
3 federal or out-of-state offense comparable to a felony under the laws
4 of this state; except that if a certified corrections officer was
5 convicted of a felony before being employed as a corrections officer,
6 and the circumstances of the prior felony conviction were fully
7 disclosed to his or her employer before being hired, the commission may
8 revoke certification only with the agreement of the employing
9 corrections agency;

10 (4) The corrections officer has been discharged for disqualifying
11 misconduct, the discharge is final, and some or all of the acts or
12 omissions forming the basis for the discharge proceedings occurred on
13 or after January 1, 2006;

14 (5) The corrections officer's certificate was previously issued by
15 administrative error on the part of the commission; or

16 (6) The corrections officer has interfered with an investigation or
17 action for denial or revocation of certificate by: (a) Knowingly
18 making a materially false statement to the commission; or (b) in any
19 matter under investigation by or otherwise before the commission,
20 tampering with evidence or tampering with or intimidating any witness.

21 NEW SECTION. **Sec. 5.** (1) A person denied a certification based
22 upon dismissal or withdrawal from a basic corrections academy for any
23 reason not also involving discharge for disqualifying misconduct is
24 eligible for readmission and certification upon meeting standards
25 established in rules of the commission, which rules may provide for
26 probationary terms on readmission.

27 (2) A person whose certification is denied or revoked based upon
28 prior administrative error of issuance, failure to cooperate, or
29 interference with an investigation is eligible for certification upon
30 meeting standards established in rules of the commission, rules which
31 may provide for a probationary period of certification in the event of
32 reinstatement of eligibility.

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

36 (4) A corrections officer whose certification is denied or revoked
37 based upon discharge for disqualifying misconduct, but not also based

1 upon a felony criminal conviction, may, five years after the revocation
2 or denial, petition the commission for reinstatement of the certificate
3 or for eligibility for reinstatement. The commission shall hold a
4 hearing on the petition to consider reinstatement, and the commission
5 may allow reinstatement based upon standards established in rules of
6 the commission. If the certificate is reinstated or eligibility for
7 certification is determined, the commission may establish a
8 probationary period of certification.

9 (5) A corrections officer whose certification is revoked based
10 solely upon a criminal conviction may petition the commission for
11 reinstatement immediately upon a final judicial reversal of the
12 conviction. The commission shall hold a hearing on request to consider
13 reinstatement, and the commission may allow reinstatement based on
14 standards established in rules of the commission. If the certificate
15 is reinstated or if eligibility for certification is determined, the
16 commission may establish a probationary period of certification.

17 NEW SECTION. **Sec. 6.** A corrections officer's certification lapses
18 automatically when there is a break of more than twenty-four
19 consecutive months in the officer's service as a full-time corrections
20 officer. A break in full-time corrections service which is due solely
21 to the pendency of direct review or appeal from a disciplinary
22 discharge, or to the pendency of a work-related injury, does not cause
23 a lapse in certification. The officer may petition the commission for
24 reinstatement of certification. Upon receipt of a petition for
25 reinstatement of a lapsed certificate, the commission shall determine
26 under this chapter and any applicable rules of the commission if the
27 corrections officer's certification status is to be reinstated, and the
28 commission shall also determine any requirements which the officer must
29 meet for reinstatement. The commission may adopt rules establishing
30 requirements for reinstatement.

31 NEW SECTION. **Sec. 7.** Upon termination of a corrections officer
32 for any reason, including resignation, the agency of termination shall,
33 within fifteen days of the termination, notify the commission on a
34 personnel action report form provided by the commission. The agency of
35 termination shall, upon request of the commission, provide such
36 additional documentation or information as the commission deems

1 necessary to determine whether the termination provides grounds for
2 revocation under section 4 of this act. The commission shall maintain
3 these notices in a permanent file, subject to RCW 43.101.400.

4 Agencies employing state juvenile services personnel who are exempt
5 from the certification requirements of this chapter shall provide the
6 same termination information to assist the commission in oversight of
7 certified corrections officers.

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

21 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
22 investigation, that there is probable cause to believe that a
23 corrections officer's certification should be denied or revoked under
24 section 4 of this act, the commission must prepare and serve upon the
25 officer a statement of charges. Service on the officer must be by mail
26 or by personal service on the officer. Notice of the charges must also
27 be mailed to or otherwise served upon the officer's agency of
28 termination and any current corrections employer. The statement of
29 charges must be accompanied by a notice that to receive a hearing on
30 the denial or revocation, the officer must, within sixty days of
31 communication of the statement of charges, request a hearing before the
32 hearings board appointed under RCW 43.101.380. Failure of the officer
33 to request a hearing within the sixty-day period constitutes a default,
34 whereupon the commission may enter an order under RCW 34.05.440.

35 (2) If a hearing is requested, the date of the hearing must be
36 scheduled not earlier than ninety days nor later than one hundred

1 eighty days after communication of the statement of charges to the
2 officer; the one hundred eighty-day period may be extended on mutual
3 agreement of the parties or for good cause. The commission shall give
4 written notice of hearing at least twenty days prior to the hearing,
5 specifying the time, date, and place of hearing.

6 **Sec. 10.** RCW 43.101.380 and 2001 c 167 s 10 are each amended to
7 read as follows:

8 (1) The procedures governing adjudicative proceedings before
9 agencies under chapter 34.05 RCW, the administrative procedure act,
10 govern hearings before the commission and govern all other actions
11 before the commission unless otherwise provided in this chapter. The
12 standard of proof in actions before the commission is clear, cogent,
13 and convincing evidence.

14 (2) (~~On all appeals brought~~) In all hearings requested under RCW
15 43.101.155 or section 9 of this act, a five-member hearings panel shall
16 both hear the case and make the commission's final administrative
17 decision. Members of the commission (~~or~~), the board on law
18 enforcement training standards and education, or the board on
19 corrections training standards and education, may but need not be
20 appointed to the hearings panels. The commission shall appoint as
21 follows two or more panels to hear (~~appeals from~~) decertification
22 actions:

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

32 (b) When (~~an appeal~~) a hearing is (~~filed~~) requested in relation
33 to decertification of a peace officer of the Washington state patrol,
34 the commission shall appoint to the panel: (i) Either one police chief
35 or one sheriff; (ii) one administrator of the state patrol; (iii) one
36 peace officer who is at or below the level of first line supervisor,
37 who is from a city or county law enforcement agency, and who has at

1 least ten years' experience as a peace officer; (iv) one state patrol
2 officer who is at or below the level of first line supervisor, and who
3 has at least ten years' experience as a peace officer; and (v) one
4 person who is not currently a peace officer and who represents a
5 community college or four-year college or university.

6 (c) When a hearing is requested in relation to decertification of
7 a Washington corrections officer, the commission shall appoint to the
8 panel: (i) Two heads of either a city or county corrections agency or
9 facility or of a Washington state department of corrections facility;
10 (ii) two corrections officers who are at or below the level of first
11 line supervisor, who are from city, county, or state corrections
12 agencies, and who have at least ten years' experience as corrections
13 officers; and (iii) one person who is not currently a corrections
14 officer and who represents a community college or four-year college or
15 university.

16 (d) Persons appointed to hearings panels by the commission shall,
17 in relation to any decertification matter on which they sit, have the
18 powers, duties, and immunities, and are entitled to the emoluments,
19 including travel expenses in accordance with RCW 43.03.050 and
20 43.03.060, of regular commission members.

21 (3) Where the charge upon which revocation or denial is based is
22 that a peace officer or corrections officer was "discharged for
23 disqualifying misconduct," and the discharge is "final," within the
24 meaning of RCW 43.101.105(4) or section 4(4) of this act, and the
25 officer received a civil service hearing or arbitration hearing
26 culminating in an affirming decision following separation from service
27 by the employer, the hearings panel may revoke or deny certification if
28 the hearings panel determines that the discharge occurred and was based
29 on disqualifying misconduct; the hearings panel need not redetermine
30 the underlying facts but may make this determination based solely on
31 review of the records and decision relating to the employment
32 separation proceeding. However, the hearings panel may, in its
33 discretion, consider additional evidence to determine whether such a
34 discharge occurred and was based on such disqualifying misconduct. The
35 hearings panel shall, upon written request by the subject peace officer
36 or corrections officer, allow the peace officer or corrections officer
37 to present additional evidence of extenuating circumstances.

1 Where the charge upon which revocation or denial of certification
2 is based is that a peace officer or corrections officer "has been
3 convicted at any time of a felony offense" within the meaning of RCW
4 43.101.105(3) or section 4(3) of this act, the hearings panel shall
5 revoke or deny certification if it determines that the peace officer or
6 corrections officer was convicted of a felony. The hearings panel need
7 not redetermine the underlying facts but may make this determination
8 based solely on review of the records and decision relating to the
9 criminal proceeding. However, the hearings panel shall, upon the
10 panel's determination of relevancy, consider additional evidence to
11 determine whether the peace officer or corrections officer was
12 convicted of a felony.

13 Where the charge upon which revocation or denial is based is under
14 RCW 43.101.105 (1), (2), (5), or (6) or section 4(1), (2), (5), or (6)
15 of this act, the hearings panel shall determine the underlying facts
16 relating to the charge upon which revocation or denial of certification
17 is based.

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

20 NEW SECTION. **Sec. 11.** An individual whose peace officer
21 certification is denied or revoked pursuant to this chapter may not
22 thereafter be certified as a corrections officer without first
23 satisfying the requirements of eligibility for certification or
24 reinstatement of certification. A corrections officer whose
25 corrections officer certification is denied or revoked pursuant to this
26 chapter may not thereafter be certified as a peace officer without
27 first satisfying the requirements of eligibility for certification or
28 reinstatement of certification.

29 **Sec. 12.** RCW 43.101.400 and 2001 c 167 s 12 are each amended to
30 read as follows:

31 (1) Except as provided under subsection (2) of this section, the
32 following records of the commission are confidential and exempt from
33 public disclosure: (a) The contents of personnel action reports filed
34 under RCW 43.101.135 or section 7 of this act; (b) all files, papers,
35 and other information obtained by the commission pursuant to RCW
36 43.101.095(3) or section 3 of this act; and (c) all investigative files

1 of the commission compiled in carrying out the responsibilities of the
2 commission under this chapter. Such records are not subject to public
3 disclosure, subpoena, or discovery proceedings in any civil action,
4 except as provided in subsection (5) of this section.

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

15 (3) Records which are otherwise confidential and exempt under
16 subsection (1) of this section may also be inspected at the offices of
17 the commission by a duly authorized representative of a law enforcement
18 or corrections agency considering an application for employment by a
19 person who is the subject of a record. A copy of records which are
20 otherwise confidential and exempt under subsection (1) of this section
21 may later be obtained by an agency after it hires the applicant. In
22 all other cases under this subsection, the agency may not obtain a copy
23 of the record.

24 (4) Upon a determination that a complaint is without merit, that a
25 personnel action report filed under RCW 43.101.135 does not merit
26 action by the commission, or that a matter otherwise investigated by
27 the commission does not merit action, the commission shall purge
28 records addressed in subsection (1) of this section.

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

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

1 **Sec. 13.** RCW 43.101.030 and 1999 c 97 s 1 are each amended to read
2 as follows:

3 The commission shall consist of (~~fourteen~~) fifteen members, who
4 shall be selected as follows:

5 (1) The governor shall appoint two incumbent sheriffs and two
6 incumbent chiefs of police.

7 (2) The governor shall appoint one officer at or below the level of
8 first line supervisor from a county law enforcement agency (~~and~~), one
9 officer at or below the level of first line supervisor from a municipal
10 law enforcement agency, and one corrections officer at or below the
11 level of first line supervisor. Each appointee under this subsection
12 (2) shall have at least ten years experience as a law enforcement
13 officer.

14 (3) The governor shall appoint one person employed in a county
15 correctional system and one person employed in the state correctional
16 system.

17 (4) The governor shall appoint one incumbent county prosecuting
18 attorney or municipal attorney.

19 (5) The governor shall appoint one elected official of a local
20 government.

21 (6) The governor shall appoint one private citizen.

22 (7) The three remaining members shall be:

23 (a) The attorney general;

24 (b) The special agent in charge of the Seattle office of the
25 federal bureau of investigation; and

26 (c) The chief of the state patrol.

27 **Sec. 14.** RCW 43.101.060 and 1999 c 97 s 2 are each amended to read
28 as follows:

29 The commission shall elect a chair and a vice chair from among its
30 members. (~~Seven~~) Eight members of the commission shall constitute a
31 quorum. The governor shall summon the commission to its first meeting.

32 Meetings may be called by the chair and shall be called by him or
33 her upon the written request of six members.

34 NEW SECTION. **Sec. 15.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 16.** Sections 3 through 9 and 11 of this act are
4 each added to chapter 43.101 RCW.

5 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2006.

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