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HOUSE BILL 1340

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State of Washington

59th Legislature

2005 Regular Session

By Representatives O'Brien, Darneille and Kagi; by request of  
Criminal Justice Training Commission

Read first time 01/20/2005. Referred to Committee on Criminal  
Justice & Corrections.

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

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

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

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

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

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

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

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

18 (5) Enter into contracts for professional services determined by

1 the commission to be necessary for adequate enforcement of this  
2 chapter;

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

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

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

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

11 When used in this chapter:

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

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

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

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

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

35 (6) The term "state juvenile services personnel" means any employee  
36 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        NEW SECTION.   **Sec. 13.**  If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.   **Sec. 14.**  Sections 3 through 9 and 11 of this act are  
6 each added to chapter 43.101 RCW.

7        NEW SECTION.   **Sec. 15.**  This act takes effect January 1, 2006.

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