

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2367

59th Legislature
2006 Regular Session

Passed by the House January 28, 2006
Yeas 78 Nays 20

Speaker of the House of Representatives

Passed by the Senate February 28, 2006
Yeas 44 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2367** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2367

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Representatives O'Brien, Kirby, Strow, McCoy and B. Sullivan; by request of Criminal Justice Training Commission

Prefiled 12/22/2005. Read first time 01/09/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the certification of tribal police officers;
2 amending RCW 43.101.085 and 43.101.380; adding a new section to chapter
3 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 under
4 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; and

9 (9) To grant, deny, or revoke certification of tribal police
10 officers whose tribal governments have agreed to participate in the
11 tribal police officer certification process.

12 NEW SECTION. Sec. 2. A new section is added to chapter 43.101 RCW
13 to read as follows:

14 (1) Tribal governments may voluntarily request certification for
15 their police officers. Tribal governments requesting certification for
16 their police officers must enter into a written agreement with the
17 commission. The agreement must require the tribal law enforcement
18 agency and its officers to comply with all of the requirements for
19 granting, denying, and revoking certification as those requirements are
20 applied to peace officers certified under this chapter and the rules of
21 the commission.

22 (2) Officers making application for certification as tribal police
23 officers shall meet the requirements of this chapter and the rules of
24 the commission as those requirements are applied to certification of
25 peace officers. Application for certification as a tribal police
26 officer shall be accepted and processed in the same manner as those for
27 certification of peace officers.

28 (3) For purposes of certification, "tribal police officer" means
29 any person employed and commissioned by a tribal government to enforce
30 the criminal laws of that government.

31 **Sec. 3.** RCW 43.101.380 and 2001 c 167 s 10 are each amended to
32 read as follows:

33 (1) The procedures governing adjudicative proceedings before
34 agencies under chapter 34.05 RCW, the administrative procedure act,
35 govern hearings before the commission and govern all other actions

1 before the commission unless otherwise provided in this chapter. The
2 standard of proof in actions before the commission is clear, cogent,
3 and convincing evidence.

4 (2) (~~On all appeals brought~~) In all hearings requested under RCW
5 43.101.155, a five-member hearings panel shall both hear the case and
6 make the commission's final administrative decision. Members of the
7 commission or the board on law enforcement training standards and
8 education may but need not be appointed to the hearings panels. The
9 commission shall appoint as follows two or more panels to hear appeals
10 from decertification actions:

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

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

31 (c) When a hearing is requested in relation to decertification of
32 a tribal police officer, the commission shall appoint to the panel (i)
33 either one chief or one sheriff; (ii) one tribal police chief; (iii)
34 one peace officer who is at or below the level of first line
35 supervisor, who is from a city or county law enforcement agency, and
36 who has at least ten years' experience as a peace officer; (iv) one
37 tribal police officer who is at or below the level of first line

1 supervisor, and who has at least ten years' experience as a peace
2 officer; and (v) one person who is not currently a peace officer and
3 who represents a community college or four-year college or university.

4 (d) Persons appointed to hearings panels by the commission shall,
5 in relation to any decertification matter on which they sit, have the
6 powers, duties, and immunities, and are entitled to the emoluments,
7 including travel expenses in accordance with RCW 43.03.050 and
8 43.03.060, of regular commission members.

9 (3) Where the charge upon which revocation or denial is based is
10 that a peace officer was "discharged for disqualifying misconduct," and
11 the discharge is "final," within the meaning of RCW 43.101.105(~~(+4)~~)
12 (1)(d), and the officer received a civil service hearing or arbitration
13 hearing culminating in an affirming decision following separation from
14 service by the employer, the hearings panel may revoke or deny
15 certification if the hearings panel determines that the discharge
16 occurred and was based on disqualifying misconduct; the hearings panel
17 need not redetermine the underlying facts but may make this
18 determination based solely on review of the records and decision
19 relating to the employment separation proceeding. However, the
20 hearings panel may, in its discretion, consider additional evidence to
21 determine whether such a discharge occurred and was based on such
22 disqualifying misconduct. The hearings panel shall, upon written
23 request by the subject peace officer, allow the peace officer to
24 present additional evidence of extenuating circumstances.

25 Where the charge upon which revocation or denial of certification
26 is based is that a peace officer "has been convicted at any time of a
27 felony offense" within the meaning of RCW 43.101.105(~~(+3)~~) (1)(c), the
28 hearings panel shall revoke or deny certification if it determines that
29 the peace officer was convicted of a felony. The hearings panel need
30 not redetermine the underlying facts but may make this determination
31 based solely on review of the records and decision relating to the
32 criminal proceeding. However, the hearings panel shall, upon the
33 panel's determination of relevancy, consider additional evidence to
34 determine whether the peace officer was convicted of a felony.

35 Where the charge upon which revocation or denial is based is under
36 RCW 43.101.105 (1)(~~(, (2), (5), or (6)~~) (a), (b), (e), or (f), the
37 hearings panel shall determine the underlying facts relating to the
38 charge upon which revocation or denial of certification is based.

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

3 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2007.

4 NEW SECTION. **Sec. 5.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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