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**SUBSTITUTE HOUSE BILL 2768**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House Public Safety & Emergency Preparedness (originally sponsored by Representatives Ross, O'Brien, Hurst, Ericks, Wallace, Kelley, Upthegrove, and Simpson; by request of Criminal Justice Training Commission)

READ FIRST TIME 02/02/10.

1       AN ACT Relating to background investigations for peace officers and  
2 reserve officers; and amending RCW 43.101.080, 43.101.095, and  
3 43.101.105.

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

5       **Sec. 1.** RCW 43.101.080 and 2008 c 69 s 3 are each amended to read  
6 as follows:

7       The commission shall have all of the following powers:

8       (1) To meet at such times and places as it may deem proper;

9       (2) To adopt any rules and regulations as it may deem necessary;

10       (3) To contract for services as it deems necessary in order to  
11 carry out its duties and responsibilities;

12       (4) To cooperate with and secure the cooperation of any department,  
13 agency, or instrumentality in state, county, and city government, and  
14 other commissions affected by or concerned with the business of the  
15 commission;

16       (5) To do any and all things necessary or convenient to enable it  
17 fully and adequately to perform its duties and to exercise the power  
18 granted to it;

- 1           (6) To select and employ an executive director, and to empower him  
2 to perform such duties and responsibilities as it may deem necessary;
- 3           (7) To assume legal, fiscal, and program responsibility for all  
4 training conducted by the commission;
- 5           (8) To establish, by rule and regulation, standards for the  
6 training of criminal justice personnel where such standards are not  
7 prescribed by statute;
- 8           (9) To own, establish, and operate, or to contract with other  
9 qualified institutions or organizations for the operation of, training  
10 and education programs for criminal justice personnel and to purchase,  
11 lease, or otherwise acquire, subject to the approval of the department  
12 of general administration, a training facility or facilities necessary  
13 to the conducting of such programs;
- 14           (10) To establish, by rule and regulation, minimum curriculum  
15 standards for all training programs conducted for employed criminal  
16 justice personnel;
- 17           (11) To review and approve or reject standards for instructors of  
18 training programs for criminal justice personnel, and to employ  
19 personnel on a temporary basis as instructors without any loss of  
20 employee benefits to those instructors;
- 21           (12) To direct the development of alternative, innovate, and  
22 interdisciplinary training techniques;
- 23           (13) To review and approve or reject training programs conducted  
24 for criminal justice personnel and rules establishing and prescribing  
25 minimum training and education standards recommended by the training  
26 standards and education boards;
- 27           (14) To allocate financial resources among training and education  
28 programs conducted by the commission;
- 29           (15) To allocate training facility space among training and  
30 education programs conducted by the commission;
- 31           (16) To issue diplomas certifying satisfactory completion of any  
32 training or education program conducted or approved by the commission  
33 to any person so completing such a program;
- 34           (17) To provide for the employment of such personnel as may be  
35 practical to serve as temporary replacements for any person engaged in  
36 a basic training program as defined by the commission;
- 37           (18) To establish rules and regulations recommended by the training  
38 standards and education boards prescribing minimum standards relating

1 to physical, mental and moral fitness which shall govern the  
2 recruitment of criminal justice personnel where such standards are not  
3 prescribed by statute or constitutional provision;

4 (19) To require (~~that each applicant that has been offered a~~  
5 ~~conditional offer of employment as a fully commissioned peace officer~~  
6 ~~or a fully commissioned reserve officer take and successfully pass a~~  
7 ~~psychological examination~~) county, city, or state law enforcement  
8 agencies that make a conditional offer of employment to an applicant as  
9 a fully commissioned peace officer or a reserve officer to administer  
10 a background investigation including a check of criminal history, a  
11 psychological examination, and a polygraph test or similar assessment  
12 (~~procedure as administered by county, city, or state law enforcement~~  
13 ~~agencies as a condition of employment as a peace officer~~) to each  
14 applicant, the results of which shall be used by the employer to  
15 determine the applicant's suitability for employment as a fully  
16 commissioned peace officer or a reserve officer. The background  
17 investigation, psychological examination, and the polygraph examination  
18 shall be administered in accordance with the requirements of RCW  
19 43.101.095(2). The employing county, city, or state law enforcement  
20 agency may require that each peace officer or reserve officer who is  
21 required to take a psychological examination and a polygraph or similar  
22 test pay a portion of the testing fee based on the actual cost of the  
23 test or four hundred dollars, whichever is less. County, city, and  
24 state law enforcement agencies may establish a payment plan if they  
25 determine that the peace officer or reserve officer does not readily  
26 have the means to pay for his or her portion of the testing fee;

27 (20) To promote positive relationships between law enforcement and  
28 the citizens of the state of Washington by allowing commissioners and  
29 staff to participate in the "chief for a day program." The executive  
30 director shall designate staff who may participate. In furtherance of  
31 this purpose, the commission may accept grants of funds and gifts and  
32 may use its public facilities for such purpose. At all times, the  
33 participation of commissioners and staff shall comply with chapter  
34 42.52 RCW and chapter 292-110 WAC.

35 All rules and regulations adopted by the commission shall be  
36 adopted and administered pursuant to the administrative procedure act,  
37 chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

1       **Sec. 2.** RCW 43.101.095 and 2009 c 139 s 1 are each amended to read  
2 as follows:

3       (1) As a condition of continuing employment as peace officers, all  
4 Washington peace officers: (a) Shall timely obtain certification as  
5 peace officers, or timely obtain certification or exemption therefrom,  
6 by meeting all requirements of RCW 43.101.200, as that section is  
7 administered under the rules of the commission, as well by meeting any  
8 additional requirements under this chapter; and (b) shall maintain the  
9 basic certification as peace officers under this chapter.

10       (2)(a) As a condition of continuing employment for any applicant  
11 ~~((that))~~ who has been offered a conditional offer of employment as a  
12 fully commissioned peace officer or a reserve officer after July 24,  
13 2005, including any person whose certification has lapsed as a result  
14 of a break of more than twenty-four consecutive months in the officer's  
15 service as a fully commissioned peace officer or reserve officer, the  
16 applicant shall ~~((successfully pass))~~ submit to a background  
17 investigation including a check of criminal history, a psychological  
18 examination, and a polygraph or similar ~~((test))~~ assessment as  
19 administered by the county, city, or state law enforcement agency  
20 ~~((that complies with the following requirements:~~

21       ~~(i) The psychological examination shall be administered by a~~  
22 ~~psychiatrist licensed in the state of Washington pursuant to chapter~~  
23 ~~18.71 RCW or a psychologist licensed in the state of Washington~~  
24 ~~pursuant to chapter 18.83 RCW in compliance with standards established~~  
25 ~~in rules of the commission.~~

26       ~~(ii))~~, the results of which shall be used to determine the  
27 applicant's suitability for employment as a fully commissioned peace  
28 officer or a reserve officer.

29       (i) The background investigation including a check of criminal  
30 history shall be administered by the county, city, or state law  
31 enforcement agency that made the conditional offer of employment in  
32 compliance with standards established in the rules of the commission.

33       (ii) The psychological examination shall be administered by a  
34 psychiatrist licensed in the state of Washington pursuant to chapter  
35 18.71 RCW or a psychologist licensed in the state of Washington  
36 pursuant to chapter 18.83 RCW, in compliance with standards established  
37 in rules of the commission.

1        (iii) The polygraph ((~~examination~~) test or similar assessment  
2 shall be administered by an experienced ((~~polygrapher~~) polygraph

3 examiner who is a graduate of a polygraph school accredited by the

4 American polygraph association and in compliance with standards

5 established in rules of the commission.

6        (b) The employing county, city, or state law enforcement agency may

7 require that each peace officer or reserve officer who is required to

8 take a psychological examination and a polygraph or similar test pay a

9 portion of the testing fee based on the actual cost of the test or four

10 hundred dollars, whichever is less. County, city, and state law

11 enforcement agencies may establish a payment plan if they determine

12 that the peace officer or reserve officer does not readily have the

13 means to pay for his or her portion of the testing fee.

14        (3) The commission shall certify peace officers who have satisfied,

15 or have been exempted by statute or by rule from, the basic training

16 requirements of RCW 43.101.200 on or before January 1, 2002.

17 Thereafter, the commission may revoke certification pursuant to this

18 chapter.

19        (4) The commission shall allow a peace officer to retain status as

20 a certified peace officer as long as the officer: (a) Timely meets the

21 basic law enforcement training requirements, or is exempted therefrom,

22 in whole or in part, under RCW 43.101.200 or under rule of the

23 commission; (b) meets or is exempted from any other requirements under

24 this chapter as administered under the rules adopted by the commission;

25 (c) is not denied certification by the commission under this chapter;

26 and (d) has not had certification revoked by the commission.

27        (5) As a prerequisite to certification, as well as a prerequisite

28 to pursuit of a hearing under RCW 43.101.155, a peace officer must, on

29 a form devised or adopted by the commission, authorize the release to

30 the commission of his or her personnel files, termination papers,

31 criminal investigation files, or other files, papers, or information

32 that are directly related to a certification matter or decertification

33 matter before the commission.

34        (6) The commission is authorized to receive criminal history record

35 information that includes nonconviction data for any purpose associated

36 with employment by the commission or peace officer certification under

37 this chapter. Dissemination or use of nonconviction data for purposes

38 other than that authorized in this section is prohibited.

1 (7) For a national criminal history records check, the commission  
2 shall require fingerprints be submitted and searched through the  
3 Washington state patrol identification and criminal history section.  
4 The Washington state patrol shall forward the fingerprints to the  
5 federal bureau of investigation.

6 **Sec. 3.** RCW 43.101.105 and 2005 c 434 s 3 are each amended to read  
7 as follows:

8 (1) Upon request by a peace officer's employer or on its own  
9 initiative, the commission may deny or revoke certification of any  
10 peace officer, after written notice and hearing, if a hearing is timely  
11 requested by the peace officer under RCW 43.101.155, based upon a  
12 finding of one or more of the following conditions:

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

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

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

28 (d) The peace officer has been discharged for disqualifying  
29 misconduct, the discharge is final, and some or all of the acts or  
30 omissions forming the basis for the discharge proceedings occurred on  
31 or after January 1, 2002;

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

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

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

3 (2) After July 24, 2005, the commission shall deny certification to  
4 any applicant (~~(that)~~) who has lost his or her certification as a  
5 result of a break in service of more than twenty-four consecutive  
6 months if that applicant failed to (~~(successfully pass the~~  
7 ~~psychological examination and the polygraph test or similar assessment~~  
8 ~~procedure required in)~~) comply with the requirements set forth in RCW  
9 43.101.080(19) and 43.101.095(2) (~~(, as administered by county, city, or~~  
10 ~~state law enforcement agencies)~~).

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