

# HOUSE BILL REPORT

## 2SHB 2499

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### As Amended by the Senate

**Title:** An act relating to the certification of corrections officers.

**Brief Description:** Certifying corrections officers.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Appleton, Klippert and Goodman).

#### Brief History:

##### Committee Activity:

Public Safety: 1/28/20, 2/6/20 [DPS];

Appropriations: 2/11/20 [DP2S(w/o sub PS)].

##### Floor Activity:

Passed House: 2/18/20, 98-0.

Senate Amended.

Passed Senate: 3/6/20, 27-22.

#### Brief Summary of Second Substitute Bill

- Requires corrections officers working in adult jail and detention facilities to obtain certification through the Criminal Justice Training Commission, and outlines procedures for the Criminal Justice Training Commission to grant, deny, or revoke corrections officers' certification.
- Requires basic corrections officer training to be at least 10 weeks in length.

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#### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Omeara Harrington (786-7136).

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#### HOUSE COMMITTEE ON APPROPRIATIONS

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 32 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Staff:** Yvonne Walker (786-7841).

**Background:**

Peace Officer Certification.

The Criminal Justice Training Commission (CJTC) provides training and educational programs to law enforcement, corrections officers, and other public safety professionals in Washington. This includes hosting the Basic Law Enforcement Academy as well as advanced training. The CJTC also certifies and, when necessary, decertifies peace officers.

All general authority peace officers, including local law enforcement officers and those employed by the state agencies, are required to obtain and maintain certification. In the certification process, an applicant must submit to a background investigation including a criminal history check, verification of citizenship or lawful permanent resident status, a psychological examination, and a polygraph or similar assessment, the results of which are used to determine the applicant's suitability for employment as a commissioned officer. There is a process for the CJTC to deny or revoke certification following notice and a hearing if a person is or becomes unsuitable for law enforcement, and certification lapses when an officer has a break in service lasting more than 24 months.

There is no certification requirement for corrections officers.

Basic Corrections Officer Training.

Corrections officers are required to engage in basic corrections training that complies with standards adopted by the CJTC. The training must be successfully completed within the first six months of employment, unless otherwise extended or waived by the CJTC. The program is 160 hours, and includes course topics in areas such as: combating manipulation, legal issues, professionalism, emotional survival and peer support, transport, booking, communications, and searches.

**Summary of Second Substitute Bill:**

Certification of Corrections Officers.

Corrections officers must obtain certification from the CJTC. Corrections officers include corrections agency employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails and detention facilities, and who are subject to basic corrections officer training requirements. For purposes of the certification requirement, corrections officers do not include individuals employed by state agencies.

*Certification Requirements.*

As a condition of continuing employment, unless granted an exemption by the CJTC, all corrections officers must obtain and maintain corrections officer certification. As a prerequisite to certification, a corrections officer must authorize the release to the CJTC of his or her personnel files, termination papers, criminal investigation files, and any other documents or information directly related to certification. The CJTC may require corrections agencies that make a conditional offer of employment to an applicant as a corrections officer to administer a background investigation including a criminal history check, verification of citizenship or lawful permanent resident status, a psychological examination, and a polygraph or similar assessment, for use in determining the applicant's suitability for employment as a corrections officer.

A corrections officer may retain his or her certification as long as the officer timely meets basic corrections officer training requirements and any other applicable requirements, is not denied certification, and has not had certification revoked.

The CJTC must grant certification to corrections officers who have satisfied, or obtained an exemption for, basic corrections officer training as of the effective date of the act, subject to the general revocation grounds and processes.

*Grounds for Denial or Revocation of Certification.*

The CJTC may deny or revoke a corrections officer's certification after written notice and a hearing, if requested, based on a finding that the corrections officer:

- failed to timely meet requirements for obtaining a certificate of basic corrections training;
- knowingly falsified or omitted material information on a training or certification application;
- has been convicted at any time of a felony offense, unless the conviction occurred before the corrections officer's employment and the circumstances of the conviction were fully disclosed to the employer before hire, in which case the CJTC may revoke certification only with the agreement of the employing corrections agency;
- was issued certification by administrative error on the part of the CJTC;
- interfered with an investigation or action for denial or revocation of certificate by knowingly making a materially false statement to the CJTC or tampering with evidence or witnesses in any matter under investigation by or otherwise before the CJTC; or
- was discharged for disqualifying misconduct, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2021. Disqualifying misconduct includes: (1) commission of any crime that was committed under color of authority as a corrections officer, that involved dishonesty, or that involved the unlawful use or possession of a controlled substance; and (2) knowingly making materially false statements during disciplinary investigations, where such statements provided the sole basis for termination.

A corrections officer's certification lapses automatically when there is a break of more than 24 consecutive months in the officer's full time service. A break in service due to the pendency of direct review or appeal from a disciplinary discharge, or due to work-related injury, does not cause certification to lapse.

*Process for Revocation of Certification.*

A corrections officer or corrections agency may submit a written complaint to the CJTC charging that a corrections officer's certificate should be denied or revoked, and specifying the grounds for the charge. Additionally, upon termination of a corrections officer for any reason, including resignation, the employing agency must notify the CJTC within 15 days of the termination. The CJTC may request additional documentation from the agency if necessary to determine whether the termination provides grounds for revocation.

If, upon investigation, the CJTC determines that there is probable cause to believe that a corrections officer's certification should be denied or revoked, it must serve the officer and the officer's agency with a statement of charges. The corrections officer may request a hearing to contest the denial or revocation within 60 days. If a hearing is requested, the hearing must be scheduled 90 to 180 days after the statement of charges is communicated to the officer, unless extended by agreement of the parties.

The case must be presented to and decided by a five-member hearings panel appointed by the CJTC. The panel must include: two heads of either a local corrections agency or facility or of a Department of Corrections facility; two corrections officers who are at or below the level of first line supervisor, who have at least 10 years' experience as corrections officers; and one person who is not currently a corrections officer and who represents a community college or four-year college or university. Hearings are governed according to the Administrative Procedures Act, and the standard of proof is clear, cogent, and convincing evidence. The final administrative decision is subject to judicial review.

A corrections officer whose certification is denied or revoked may not be certified as a peace officer, and a peace officer whose certification is denied or revoked may not be certified as a corrections officer, without first satisfying the requirements of eligibility for certification or reinstatement of certification.

*Reinstatement of Certification.*

If a person is denied a certification based upon dismissal or withdrawal from a basic corrections academy for any reason not involving discharge for disqualifying misconduct, or if certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation, the person is eligible for readmission and certification upon meeting standards established by the CJTC. The CJTC rules may provide for a probationary period of certification.

A person whose certification is denied or revoked based upon a felony criminal conviction is not eligible for certification at any time. A corrections officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after the revocation or denial, petition for reinstatement of the certificate or for eligibility for reinstatement. Additionally, a corrections officer whose certification is revoked based solely upon a criminal conviction may petition for reinstatement immediately upon a final judicial reversal of the conviction. In these circumstances, the CJTC must hold a hearing and may allow reinstatement or probationary certification.

If a corrections officer's certification has automatically lapsed due to a break in service, the officer may petition the CJTC for reinstatement. The CJTC must determine whether there are any requirements that must be met prior to reinstatement and may reinstate the certification.

#### Basic Corrections Officer Training.

The standards adopted by the CJTC for basic corrections officer training must provide for a course of training that is at least 10 weeks in length. The 10-week training requirement applies to corrections officers subject to certification who are hired on or after July 1, 2021, or on an earlier date set by the CJTC.

#### **EFFECT OF SENATE AMENDMENT(S):**

The provisions of the underlying bill are retained with the following changes:

- Any applicant who has been given a conditional offer of employment as a corrections officer after July 1, 2021, must submit to a background investigation, including a criminal history check, verification of immigrant or citizenship status as either a citizen of the United States or a lawful permanent resident, a psychological examination, and a polygraph or similar assessment. Provisions of the underlying bill are retained authorizing the Criminal Justice Training Commission to require a hiring agency to administer a background check containing these elements.
- If a hearing is requested to contest a denial or revocation of certification, the hearing must be held between 90 and 180 days after the officer requests a hearing (rather than between 90 and 180 days after the statement of charges is communicated to the officer, in the underlying bill).

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony (Public Safety):**

(In support) This bill has long been needed. If corrections officers are going to carry guns and go into jails, they should have the training that peace officers have. Peace officers have authority over the public and are held to higher standards because of that. They must go through a background check with a polygraph and psychological evaluation. If they pass that, they go through 19 weeks of training, followed by in-service training. There is also a decertification process that applies if they do something terribly wrong, like commit a felony or lie in a substantive manner during their job. The consequence is the loss of certification and no longer being able to be a law enforcement officer. Corrections officers also have a large amount of control; however, they only have four weeks of training, and no background investigation or decertification process. There have been incidents of corrections officers having inappropriate relations with people in custody and going on to be employed by another agency.

The CJTC has been working on this process for three years. Existing corrections officers will be certified on the effective date of the bill, and the authority to decertify corrections officers will begin at that time as well. The current four-week training is inadequate. It takes longer than that to teach things like defensive tactics and turning cells over. There is also not enough wellness training currently, and corrections officers get much less training in this area than peace officers do. Issues that led to peace officers having crisis training are also relevant to corrections officers. The extended training in the bill will include crisis intervention training, which will help corrections officers recognize if something bad is about to happen. Corrections officers are encountering inmates with a lot of mental health, substance abuse, and anger issues. Unlike law enforcement, they are dealing with these circumstances every day in a confined area. This profession deserves recognition for what they do for our communities.

The current definition of "corrections personnel" used in the bill is too broad, and includes facility staff. The bill is intended to apply to the corrections equivalent of peace officers. The timeline for decertification proceedings should run from the time the corrections officer requests a hearing in order to allow more time for the parties to prepare.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Two decades ago, the Legislature created peace officer standards. This means a law enforcement officer must have a background investigation, a psychological examination, a polygraph test, and successfully pass the basic law enforcement academy in order to receive law enforcement certification. A law enforcement officer can also lose their certification for certain violations that are specified in statute. Currently, there is no similar certification process for corrections officers who also have a large amount of responsibility and control over offenders in custody. This bill would mirror the same certification requirements for peace officers.

In addition, the current version of the bill has an effective date of January 2021, but if that date were postponed to July 2021, then the fiscal impact can be reduced by approximately \$400,000.

(Opposed) None.

**Persons Testifying (Public Safety):** Representative Appleton, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Derek Zable, Criminal Justice Training Commission; and John Snaza, Washington State Sheriffs Association.

**Persons Testifying (Appropriations):** James McMahan, Washington Association of Sheriffs and Police Chiefs

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.