

**RCW 43.101.380 Hearings—Panel membership—Standard of proof—
Appeals—Judicial review.**

(1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is a preponderance of the evidence.

(2) In all hearings requested under RCW 43.101.155, an administrative law judge appointed under chapter 34.12 RCW shall be the presiding officer, shall make all necessary rulings in the course of the hearing, and shall issue a proposed recommendation, but is not entitled to vote. In addition, a five-member hearings panel shall hear the case and make the commission's final administrative decision.

(3) The commission shall appoint a panel to hear certification actions as follows:

(a) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel: (i) One police chief or sheriff from an agency not a current or past employer of the peace officer; (ii) one certified Washington peace officer who is at or below the level of first line supervisor and who has at least ten years' experience as a peace officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

(b) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel: (i) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility; (ii) one corrections officer who is at or below the level of first line supervisor and who has at least ten years' experience as a corrections officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

(c) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel (i) one tribal police chief; (ii) one tribal police officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

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

(4) In decertification matters where there was a due process hearing or a disciplinary appeals hearing following an investigation

by a law enforcement agency, or a criminal hearing regarding the alleged misconduct, the hearings panel need not redetermine the underlying facts but may make its determination based solely on review of the records and decision relating to those proceedings and any investigative or summary materials from the administrative law judge, legal counsel, and commission staff. However, the hearings panel may, in its discretion, consider additional evidence to determine whether misconduct occurred. The hearings panel shall, upon written request by the subject peace officer or corrections officer, allow the peace officer or corrections officer to present additional evidence of extenuating circumstances.

(5) The commission is authorized to proceed regardless of whether an arbitrator or other appellate decision maker overturns the discipline imposed by the officer's employing agency or whether the agency settles an appeal. No action or failure to act by a law enforcement agency or corrections agency or decision resulting from an appeal of that action precludes action by the commission to suspend or revoke an officer's certificate, to place on probation, or to require remedial training for the officer.

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

(7) Summary records of hearing dispositions must be made available on an annual basis on a public website.

(8) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598. [2021 c 323 s 20; 2020 c 119 s 10; 2010 1st sp.s. c 7 s 14; 2009 c 25 s 1; 2006 c 22 s 3; 2001 c 167 s 10.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—Severability—2006 c 22: See notes following RCW 43.101.085.