

WSR 22-22-079  
PROPOSED RULES  
CRIMINAL JUSTICE  
TRAINING COMMISSION

[Filed November 1, 2022, 7:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-089.

Title of Rule and Other Identifying Information: Updates to certification, basic academies, and other miscellaneous WAC.

Hearing Location(s): On December 14, 2022, at 10:00 a.m., virtual Zoom meeting. Meeting link can be found on the Washington state criminal justice training commission website at <https://cjtc.wa.gov/about/commission-board-and-meetings>.

Date of Intended Adoption: December 14, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email [Derek.Zable@cjtc.wa.gov](mailto:Derek.Zable@cjtc.wa.gov), by December 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify WAC language for stakeholders and the public and to update WAC to use current agency language, policies, and practices.

Reasons Supporting Proposal: Improved clarity allows for easier comprehension and understanding of what stakeholders are required to do.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Chapter 43.101 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, 206-835-7350; Implementation: Henry Gill, Chad Arceneaux, and Kayla Wold, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300; and Enforcement: Mike Devine, Christine Rickert, and Kayla Wold, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

October 26, 2022  
Derek Zable  
Records Manager

OTS-4138.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-01-310 Definitions for Title 139 WAC.** The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, tribal police officer with a recognized certified tribe, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

(4) **Commission** means the Washington state criminal justice training commission.

(5) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(6) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(7) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(8) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(9) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(10) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(11) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(12) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(13) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(14) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(15) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(16) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(17) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services,

the state gambling commission, the state department of corrections, and the office of independent investigations.

(18) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(19) **Petitioner** means the commission's certification division.

(20) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

(21) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

(22) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((22))~~ (23) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

~~((23))~~ (24) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((24))~~ (25) **Revocation** means to cancel a certified officer's certification.

~~((25))~~ (26) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

~~((26))~~ (27) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((27))~~ (28) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((28))~~ (29) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4135.3

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-05-210 Process for equivalency.** (1) An officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to (~~applicants~~) recruits who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(e) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(f) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned officer in Washington state.

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) (~~Applicants~~) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of (~~an applicant's~~) a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve (~~an applicant~~) a recruit for participation in the equivalency process.

(9) The (~~applicant's~~) recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

(a) A statement of the (~~applicant's~~) recruit's health and physical condition including a physician signature;

- (b) A liability release agreement by the (~~(applicant)~~) recruit;
- (c) Previous employment agencies with dates of employment;
- (d) Documentation of completion of the previous training program;
- (e) Written syllabus detailing specific areas of training and hours of training;
- (f) Documentation of current certification status; and
- (g) For peace and tribal officers:
- (i) A record of the (~~(applicant's)~~) recruit's firearms qualification;
- (ii) Verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the (~~(applicant)~~) recruit must complete the commission's current basic law enforcement EVOC, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the (~~(applicant's)~~) recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the (~~(officer)~~) recruit has not met the qualifications to satisfactorily complete (~~(the)~~) an equivalency academy, the commission shall:

- (a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the (~~(officer)~~) recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-220 Backgrounding requirement for admission (~~(to)~~) in the basic law enforcement (~~(academy)~~) academies**. It is the responsibility of each (~~(sponsoring or applying)~~) agency to conduct a (~~(complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual will be granted academy admission or allowed continued participation if the individual is not otherwise eligible for certification or has been convicted of a crime that would make him or her ineligible for certification.~~

Each application for academy attendance must be accompanied by a written attestation by the applying agency that (1) the criminal records check has been completed, and (2) there are no disqualifying

convictions)) background investigation of its applicant, as outlined by RCW 43.101.095, as a precondition of academy admission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-220, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-220, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-220, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-230 Physical requirements for admission to the basic law enforcement academy.** (~~Each successful applicant~~) (1) For admission to ((a)) the basic law enforcement academy, ((sponsored or conducted by the commission)) each recruit must possess good health and physical capability to actively and fully participate in defensive tactics training and other required physical activities.

(2) In order to minimize risk of injury and maximize the benefit of such participation, each recruit in any academy session must, as a precondition of ((his or her)) their academy ((attendance)) admission, demonstrate a requisite level of physical fitness, as established by the commission.

~~((For this purpose, each academy applicant will be assessed in the areas of aerobic capacity, strength, and flexibility,))~~ (3) Each recruit must be evaluated in accordance with the ((requirements)) policies and procedures established by the commission.

(4) Failure to demonstrate a requisite level of fitness will result in ineligibility for academy ((admissions and/or attendance)) admission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-230, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 91-14-011, § 139-05-230, filed 6/24/91, effective 7/25/91; WSR 91-01-043, § 139-05-230, filed 12/12/90, effective 7/1/91; WSR 89-13-023 (Order 12C), § 139-05-230, filed 6/13/89; WSR 86-19-021 (Order 1-B), § 139-05-230, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-240 Completion requirements of basic law enforcement ((academy)) academies.** Each recruit in a basic law enforcement academy will receive a ~~((certificate of completion))~~ diploma only upon full and successful completion of the academy ~~((process))~~ as prescribed by the commission. The performance of each recruit ~~((will))~~ shall be evaluated as follows:

(1) Academic performance.

(a) A standardized ((examination)) evaluation process will be utilized ((by)) in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of scholastic achievement of each recruit.

(b) Such process ~~((will))~~ shall include the application of a designated minimum passing score ~~((to each subject area))~~ for written examinations and the availability of a retesting procedure.

(c) Failure to achieve the required minimum passing score will result in termination of academy ~~((assignment))~~ enrollment.

(2) Practical skills.

(a) A standardized evaluation process will be utilized ~~((by))~~ in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of ~~((practical performance))~~ skill proficiency of each recruit.

(b) Such process ~~((will))~~ shall include the application of ~~((pass/fail grading to))~~ a designated ~~((instructional objectives for physical performance))~~ minimum passing score of all skill proficiencies identified by the commission and the availability of a retesting procedure.

(c) Failure to achieve a final passing grade in each practical skills dimension will ~~((preclude a certificate of completion))~~ result in termination of academy enrollment.

(3) Conduct and participation.

(a) Each recruit will be required to participate fully in all academy classes and adhere to all rules, regulations, and policies of the commission.

(b) Failure to ~~((maintain an exemplary standard of conduct or to))~~ adhere to all rules, regulations, and policies of ~~((a basic law enforcement academy sponsored or conducted by))~~ the commission ~~((may))~~ will result in termination of academy ~~((assignment))~~ enrollment.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-240, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-240, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-098, § 139-05-240, filed 6/21/93, effective 7/22/93; WSR 86-19-021 (Order 1-B), § 139-05-240, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-242 Readmission to the basic law enforcement academy.**

No person may be readmitted to ~~((the))~~ any basic law enforcement ~~((training))~~ academy except as provided in this section.

(1) Any request for readmission ~~((to any academy))~~ must be made and submitted by the individual's employing ~~((or sponsoring))~~ agency head, or designee, in accordance with commission policies and procedures.

(2) Any individual whose academy enrollment was terminated ~~((from any academy))~~ for academic failure, ~~((for))~~ skills deficiency, disciplinary reasons other than those specified ~~((by))~~ in subsection (3) of this section, or who ~~((has))~~ had voluntarily withdrawn ~~((from any academy))~~ for any reason, may be readmitted to a subsequent academy session only if:

(a) The ~~((head of the))~~ individual's current employing agency head, or their designee, submits to the commission a written request for readmission of the individual to the academy ~~((program));~~ and

(b) The executive director of the commission, or designee, is satisfied that any conditions to the individual's readmission specified by the executive director, or designee, have been met.



(3) Any person (~~(dismissed from any academy)~~) whose academy enrollment was terminated for an integrity violation(~~(r)~~) including, but not limited to: Cheating, the making of materially false statements, the commission of a crime, or other violation (~~(not constituting disqualifying misconduct as defined in RCW 43.101.010(7), will not be eligible)~~) contained in RCW 43.101.105 will be ineligible for readmission to any subsequent academy within (~~(twenty-four)~~) 24 months from the date of dismissal (~~(. Such ineligibility will not be affected by any new employment or reemployment during the period of ineligibility specified in the preceding sentence of this subsection)~~) regardless of employer or employment status.

(4) An exception to the ineligibility period specified in subsection (3) of this section may be granted at the sole discretion of the commission executive director, or designee, based upon mitigating circumstances.

(a) No person may be considered for such early readmission after an integrity violation dismissal unless a written request is made by the head of the agency employing the individual at the time of the request.

(b) Requests for early readmission must follow applicable commission policies and procedures to be considered.

(c) The executive director's, or designee's, decision under this subsection shall be subject to review only for abuse of discretion.

(5) After the ineligibility period specified in subsection (3) of this section has passed, or after an exception has been granted by the commission under subsection (4) of this section, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only (~~(if he or she satisfies)~~) the conditions of subsection (2) of this section are satisfactorily met.

(~~(+5)~~) (6) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-242, filed 9/28/05, effective 10/29/05; WSR 04-19-050, § 139-05-242, filed 9/14/04, effective 10/15/04; WSR 00-17-017, § 139-05-242, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-103, § 139-05-242, filed 6/21/93, effective 7/22/93.]

AMENDATORY SECTION (Amending WSR 19-07-037, filed 3/13/19, effective 4/13/19)

**WAC 139-05-250 Basic law enforcement curriculum.** The basic law enforcement and reserve academy curriculum of the commission may include, but not be limited to, the following core subject areas with common threads of communications, community policing, and professional ethics throughout:

- (1) Orientation and history of policing;
- (2) Criminal law;
- (3) Criminal procedures;
- (4) Patrol procedures;
- (5) Crisis intervention per RCW 43.101.427;
- (6) Emergency vehicle operations (~~(course)~~);
- (7) Report writing;
- (8) Traffic law;

- (9) Firearms;
- (10) Defensive tactics; ((and))
- (11) Criminal investigation;
- (12) Use of force training consistent with permissible uses of force per RCW 43.101.490;
- (13) Substance use disorders per RCW 43.101.205;
- (14) Vehicular pursuits per RCW 43.101.225;
- (15) Victim centered and trauma-informed approach to policing per RCW 43.101.274;
- (16) Ethnic and cultural diversity per RCW 43.101.280;
- (17) Hate crimes per RCW 43.101.290;
- (18) Child abuse and neglect per RCW 43.101.365;
- (19) Motorcycle profiling per RCW 43.101.419;
- (20) Violence de-escalation training as prescribed in WAC 139-11-020 per RCW 43.101.450;
- (21) Mental health training as prescribed in WAC 139-11-020 per RCW 43.101.452; and
- (22) Domestic violence reports and situations per RCW 10.99.030 and 10.99.033.

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-037, § 139-05-250, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-250, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-250, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.010(2). WSR 93-13-097, § 139-05-250, filed 6/21/93, effective 7/22/93. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-250, filed 9/10/86.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-911 Tribal certification.

#### **OTS-4136.2**

#### NEW SECTION

**WAC 139-06-015 Tribal certification.** Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the trib-

al government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[ ]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-030 Investigative authority and duty to cooperate.**

(1) Except when otherwise required by RCW 43.101.105 (2) or (3), the commission has authority to undertake an investigation regardless of the status of any administrative or criminal investigations into the matter by other agencies.

(2) An agency shall cooperate in any investigation conducted by the commission regarding a certified officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, then the ~~((employing agency shall))~~ agency who employed the officer at the time of the misconduct shall timely conduct and complete an investigation and provide all relevant information to the commission in accordance with WAC 139-06-020(4) and as if the certified officer were still employed by the agency ~~((under RCW 43.101.135))~~.

(3) A certified officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(4) Requests from the commission for records under chapter 43.101 RCW are not subject to any exemptions, redactions, waiting periods, or timelines associated with the Public Records Act, chapter 42.56 RCW.

(5) A certified officer must also consent to and facilitate a review of the certified officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The certified officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the certified officer or the certified officer's union and the entity responsible for the records and information.

(6) An employing agency may not enter into any agreement or contract with a certified officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the certified officer may have committed misconduct in exchange for allow-

ing a certified officer to resign or retire or for any other reason;  
or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-030, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-100 Outcomes for determinations of misconduct—Suspension, probation, retraining or dismissal of the statement of charges.**

(1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension, probation, ~~((or))~~ revocation of certification, ~~((or))~~ remedial training, or dismissal of the statement of charges. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

- (a) Information provided by the complainant(s), if any;
- (b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;
- (c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;
- (d) Any information obtained by the commission through its own investigation or research;
- (e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and
- (f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

### OTS-4137.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-07-020 Background information.** (1) Hiring agency background checks must include the following records and information for new applicants:

- (a) Criminal history;
- (b) National decertification indices or data banks;
- (c) Commission records including employment history and certification status;
- (d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;
- (e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;
- (f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;
- (g) A review of the applicant's social media accounts;
- (h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;
- (i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;
- (j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and
- (k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant, including new hires and in-state laterals, may be offered employment by more than one agency. The background results

may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

(4) Backgrounds, older than six months, of an officer shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-020, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-07-040 Polygraph examination or other truth verification assessment.** (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph assessments:

(a) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;

(c) Model questions shall be adopted in commission policy; and

(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

(10) Polygraph reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-040, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW

43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

## OTS-4156.1

AMENDATORY SECTION (Amending WSR 22-19-038, filed 9/14/22, effective 10/15/22)

**WAC 139-10-230 Corrections officers academy eligibility and curriculum.** (1) All employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails and detention facilities must complete the corrections officers academy. Representative job classifications include, but are not limited to, custody and corrections officers.

(2) The corrections officers academy curriculum shall be at least (~~(400 instructional hours)~~) 10 weeks in length and may include, but not be limited to, the following subject matter areas:

- (a) Core skills
  - (i) Observation skills
  - (ii) Communication skills
  - (iii) Security management
  - (iv) Supervision of inmates
  - (v) Discipline of inmates
  - (vi) Proper use of physical force
  - (vii) Writing skills
- (b) Key skills
  - (i) Legal issues
  - (ii) Dealing with aggressive behavior
  - (iii) Dealing with medical problems
  - (iv) Dealing with mental illness problems
  - (v) Problem solving
  - (vi) Report writing
  - (vii) Avoiding inmate manipulation
  - (viii) Booking and classification
  - (ix) Fingerprinting
- (c) Related skills
  - (i) Stress management
  - (ii) Physical fitness
  - (iii) Professionalism
  - (iv) Human relations/cultural awareness
  - (v) Historical intersection of race and corrections.

[Statutory Authority: RCW 43.101.080. WSR 22-19-038, § 139-10-230, filed 9/14/22, effective 10/15/22; WSR 00-17-017, § 139-10-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 87-19-105 (Order 15-D), § 139-10-230, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-10-230, filed 9/10/86. Formerly WAC 139-36-031.]