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**SUBSTITUTE HOUSE BILL 1123**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Delvin, Ballasiotes, Sheahan, Lovick, Constantine, Lantz, Conway, McDonald, Stensen and Hurst)

Read first time 02/08/1999.

1 AN ACT Relating to certification of peace officers; amending RCW  
2 43.101.010; adding new sections to chapter 43.101 RCW; creating a new  
3 section; and providing an effective date.

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

5 **Sec. 1.** RCW 43.101.010 and 1981 c 132 s 2 are each amended to read  
6 as follows:

7 When used in this chapter:

8 (1) The term "commission" means the Washington state criminal  
9 justice training commission.

10 (2) The term "boards" means the education and training standards  
11 boards, the establishment of which are authorized by this chapter.

12 (3) The term "criminal justice personnel" means any person who  
13 serves in a county, city, state, or port commission agency engaged in  
14 crime prevention, crime reduction, or enforcement of the criminal law.

15 (4) The term "law enforcement personnel" means any public employee  
16 or volunteer having as a primary function the enforcement of criminal  
17 laws in general or any employee or volunteer of, or any individual  
18 commissioned by, any municipal, county, state, or combination thereof,  
19 agency having as its primary function the enforcement of criminal laws

1 in general as distinguished from an agency possessing peace officer  
2 powers, the primary function of which is the implementation of  
3 specialized subject matter areas. For the purposes of this subsection  
4 "primary function" means that function to which the greater allocation  
5 of resources is made.

6 (5) The term "correctional personnel" means any employee or  
7 volunteer who by state, county, municipal, or combination thereof,  
8 statute has the responsibility for the confinement, care, management,  
9 training, treatment, education, supervision, or counseling of those  
10 individuals whose civil rights have been limited in some way by legal  
11 sanction.

12 (6) A peace officer is "convicted" at the time a plea of guilty has  
13 been accepted, or a verdict of guilty or finding of guilt has been  
14 filed, notwithstanding the pendency of any future proceedings,  
15 including but not limited to sentencing, posttrial or postfact-finding  
16 motions and appeals. "Conviction" includes a deferral of sentence and  
17 also includes the equivalent disposition by a court in a jurisdiction  
18 other than the state of Washington.

19 (7) "Discharged for disqualifying misconduct" means terminated from  
20 employment for: (a) Conviction of (i) any crime committed under color  
21 of authority as a peace officer, (ii) any crime involving dishonesty,  
22 (iii) the unlawful use or possession of a controlled substance, or (iv)  
23 any other crime the conviction of which disqualifies a Washington  
24 citizen from the legal right to possess a firearm under state or  
25 federal law; (b) conduct that would constitute any of the crimes  
26 addressed in (a) of this subsection; or (c) knowingly making materially  
27 false statements during disciplinary investigations.

28 (8) A peace officer is "discharged for disqualifying misconduct"  
29 within the meaning of subsection (7) of this section under the ordinary  
30 meaning of the term and when the totality of the circumstances support  
31 a finding that the officer resigned in anticipation of discipline,  
32 whether or not the misconduct was discovered at the time of  
33 resignation, and when such discipline, if carried forward, would more  
34 likely than not have led to discharge for disqualifying misconduct  
35 within the meaning of subsection (7) of this section.

36 (9) When used in context of proceedings referred to in this  
37 chapter, "final" means that the peace officer has exhausted all  
38 available civil service appeals, collective bargaining remedies, and  
39 all other such direct administrative appeals, and the officer has not

1 been reinstated as the result of the action. Finality is not affected  
2 by the pendency or availability of state or federal administrative or  
3 court actions for discrimination, or by the pendency or availability of  
4 any remedies other than direct civil service and collective bargaining  
5 remedies.

6 (10) "Peace officer" means any law enforcement personnel subject to  
7 the basic law enforcement training requirement of RCW 43.101.200 and  
8 any other requirements of that section, notwithstanding any waiver or  
9 exemption granted by the commission, and notwithstanding the statutory  
10 exemption based on date of initial hire under RCW 43.101.200.  
11 Commissioned officers of the Washington state patrol, whether they have  
12 been or may be exempted by rule of the commission from the basic  
13 training requirement of RCW 43.101.200, are included as peace officers  
14 for purposes of this chapter. Fish and wildlife officers with  
15 enforcement powers for all criminal laws under RCW 77.12.055 are peace  
16 officers for purposes of this chapter.

17 NEW SECTION. Sec. 2. (1) As a condition of continuing employment  
18 as peace officers, all Washington peace officers: (a) Shall timely  
19 obtain certification as peace officers, or timely obtain certification  
20 for exemption therefrom, by meeting all requirements of RCW 43.101.200,  
21 as that section is administered under the rules of the commission, as  
22 well by meeting any additional requirements under this chapter; and (b)  
23 shall maintain the basic certification as peace officers under this  
24 chapter. The commission shall certify peace officers who have  
25 satisfied, or have been exempted by statute or by rule from, the basic  
26 training requirements of RCW 43.101.200 on or before the effective date  
27 of this section. Thereafter, the commission may revoke certification  
28 pursuant to this chapter.

29 (2) The commission shall allow a peace officer to retain status as  
30 a certified peace officer as long as the officer: (a) Timely meets the  
31 basic law enforcement training requirements, or is exempted therefrom,  
32 in whole or in part, under RCW 43.101.200 or under rule of the  
33 commission; (b) meets or is exempted from any other requirements under  
34 this chapter as administered under the rules adopted by the commission;  
35 (c) is not denied certification by the commission under this chapter;  
36 and (d) has not had certification revoked by the commission.

37 (3) As a prerequisite to basic law enforcement certification or  
38 basic law enforcement equivalency certification, a peace officer

1 applicant whose initial date of hire with a Washington law enforcement  
2 agency occurs on or after the effective date of this section must  
3 complete an eighteen-month period of qualification as specified in this  
4 section. The period of qualification begins on the date the peace  
5 officer is sworn into office as a peace officer. During the period of  
6 qualification, the peace officer must successfully complete the  
7 employer's probation period and the employer's field training program,  
8 if any. The eighteen-month period of qualification must be completed  
9 in continuous employment with the department of hire, unless the  
10 officer becomes unemployed due to a reduction in force in that  
11 particular agency, in which case, the officer may elect to change  
12 employing law enforcement agencies without restarting the period of  
13 qualification. An officer who transfers or separates from the original  
14 employing agency for any other reason must start and successfully  
15 complete a new eighteen-month period of qualification to obtain  
16 certified status. An officer must successfully complete a continuous  
17 eighteen-month period of qualification with a single employer within  
18 twenty-four months of hire unless the commission extends the twenty-  
19 four month period. This subsection does not apply to a lateral entry  
20 peace officer who is initially hired in a supervisory or management  
21 position.

22 (4) As a prerequisite to certification, a peace officer applicant  
23 for certification must sign a perpetual release to the commission, on  
24 a form devised or adopted by the commission, and must authorize release  
25 to the commission of all personnel files, termination papers, criminal  
26 investigation files, or any other files, papers, or information that  
27 the commission requires.

28 NEW SECTION. **Sec. 3.** Upon request by a peace officer's employer  
29 or on its own initiative, the commission may deny or revoke  
30 certification of any peace officer, after written notice and hearing,  
31 if a hearing is timely requested by the peace officer under section 9  
32 of this act, based upon a finding of one or more of the following  
33 conditions:

34 (1) The peace officer has failed to timely meet all requirements  
35 for obtaining a certificate of basic law enforcement training, a  
36 certificate of basic law enforcement training equivalency, or a  
37 certificate of exemption from the training;

1 (2) The peace officer has knowingly falsified or omitted material  
2 information on an application for training or certification to the  
3 commission;

4 (3) The peace officer has been convicted at any time of a felony  
5 offense under the laws of this state or has been convicted of a federal  
6 or out-of-state offense comparable to a felony under the laws of this  
7 state;

8 (4) The peace officer has been discharged for disqualifying  
9 misconduct, the discharge is final, and some or all of the acts or  
10 omissions forming the basis for the discharge proceedings occurred on  
11 or after the effective date of this section;

12 (5) The peace officer's certificate was previously issued by  
13 administrative error on the part of the commission;

14 (6) The peace officer has failed, without good cause, to cooperate  
15 with the commission by: (a) Not furnishing necessary papers or  
16 documents requested by the commission; (b) not furnishing in writing,  
17 on request of the commission, a complete explanation covering the  
18 matter before the commission; or (c) not responding to a subpoena  
19 issued by the commission; or

20 (7) The peace officer has interfered with an investigation or  
21 action for denial or revocation of certificate by: (a) Knowingly  
22 making a materially false statement to the commission; or (b) in any  
23 matter under investigation by or otherwise before the commission,  
24 tampering with evidence or tampering with or intimidating any witness.

25 NEW SECTION. **Sec. 4.** (1) A person denied a certification based  
26 upon dismissal or withdrawal from a basic law enforcement academy for  
27 any reason not also involving discharge for disqualifying misconduct is  
28 eligible for readmission and certification upon meeting standards  
29 established in rules of the commission, which rules may provide for  
30 probationary terms on readmission.

31 (2) A person whose certification is denied or revoked based upon  
32 prior administrative error of issuance, failure to cooperate, or  
33 interference with an investigation is eligible for certification upon  
34 meeting standards established in rules of the commission, rules which  
35 may provide for a probationary period of certification in the event of  
36 reinstatement of eligibility.

1 (3) A person whose certification is denied or revoked based upon a  
2 felony criminal conviction is not eligible for certification at any  
3 time.

4 (4) A peace officer whose certification is denied or revoked based  
5 upon discharge for disqualifying misconduct, but not also based upon a  
6 felony criminal conviction, may, five years after the revocation or  
7 denial, petition the commission for reinstatement of the certificate or  
8 for eligibility for reinstatement. The commission shall hold a hearing  
9 on the petition to consider reinstatement, and the commission may allow  
10 reinstatement based upon standards established in rules of the  
11 commission. If the certificate is reinstated or eligibility for  
12 certification is determined, the commission may establish a  
13 probationary period of certification.

14 (5) A peace officer whose certification is revoked based solely  
15 upon a criminal conviction may petition the commission for  
16 reinstatement immediately upon a final judicial reversal of the  
17 conviction. The commission shall hold a hearing on request to consider  
18 reinstatement, and the commission may allow reinstatement based on  
19 standards established in rules of the commission. If the certificate  
20 is reinstated or if eligibility for certification is determined, the  
21 commission may establish a probationary period of certification.

22 NEW SECTION. **Sec. 5.** A peace officer's certification lapses  
23 automatically when there is a break of more than twenty-four  
24 consecutive months in the officer's service as a full-time law  
25 enforcement officer. The officer may petition the commission for  
26 reinstatement of certification. Upon receipt of a petition for  
27 reinstatement of a lapsed certificate, the commission shall determine  
28 under this chapter and any applicable rules of the commission if the  
29 peace officer's certification status is to be reinstated, and the  
30 commission shall also determine any requirements which the officer must  
31 meet for reinstatement. The commission may adopt rules establishing  
32 requirements for reinstatement.

33 NEW SECTION. **Sec. 6.** Upon termination of a peace officer for any  
34 reason, including resignation, the agency of termination shall, within  
35 fifteen days of the termination, notify the commission on a personnel  
36 action report form provided by the commission. The agency of  
37 termination shall, upon request of the commission, provide such

1 additional documentation or information as the commission deems  
2 necessary to determine whether the termination provides grounds for  
3 revocation under section 3 of this act. The commission shall maintain  
4 these notices in a permanent file, subject to section 12 of this act.

5 NEW SECTION. **Sec. 7.** In addition to its other powers granted  
6 under this chapter, the commission has authority and power to:

7 (1) Adopt, amend, or repeal rules as necessary to carry out this  
8 chapter;

9 (2) Issue subpoenas and administer oaths in connection with  
10 investigations, hearings, or other proceedings held under this chapter;

11 (3) Take or cause to be taken depositions and other discovery  
12 procedures as needed in investigations, hearings, and other proceedings  
13 held under this chapter;

14 (4) Appoint members of a hearings board as provided under section  
15 10 of this act;

16 (5) Enter into contracts for professional services determined by  
17 the commission to be necessary for adequate enforcement of this  
18 chapter;

19 (6) Grant, deny, or revoke certification of peace officers under  
20 the provisions of this chapter;

21 (7) Designate individuals authorized to sign subpoenas and  
22 statements of charges under the provisions of this chapter; and

23 (8) Employ such investigative, administrative, and clerical staff  
24 as necessary for the enforcement of this chapter.

25 NEW SECTION. **Sec. 8.** A law enforcement officer or duly authorized  
26 representative of a law enforcement agency may submit a written  
27 complaint to the commission charging that a peace officer's certificate  
28 should be denied or revoked, and specifying the grounds for the charge.  
29 Filing a complaint does not make a complainant a party to the  
30 commission's action. The commission has sole discretion whether to  
31 investigate a complaint, and the commission has sole discretion whether  
32 to investigate matters relating to certification, denial of  
33 certification, or revocation of certification on any other basis,  
34 without restriction as to the source or the existence of a complaint.  
35 A person who files a complaint in good faith under this section is  
36 immune from suit or any civil action related to the filing or the  
37 contents of the complaint.

1        NEW SECTION.    **Sec. 9.**    (1) If the commission determines, upon  
2 investigation, that there is probable cause to believe that a peace  
3 officer's certification should be denied or revoked under section 3 of  
4 this act, the commission must prepare and serve upon the officer a  
5 statement of charges. Service on the officer must be by mail or by  
6 personal service on the officer. Notice of the charges must also be  
7 mailed to or otherwise served upon the officer's agency of termination  
8 and any current law enforcement agency employer. The statement of  
9 charges must be accompanied by a notice that to receive a hearing on  
10 the denial or revocation, the officer must, within sixty days of  
11 communication of the statement of charges, request a hearing before the  
12 hearings board appointed under section 10 of this act. Failure of the  
13 officer to request a hearing within the sixty-day period constitutes a  
14 default, whereupon the commission may enter an order under RCW  
15 34.05.440.

16        (2) If a hearing is requested, the date of the hearing must be  
17 scheduled not earlier than ninety days after communication of the  
18 statement of charges to the officer. The commission shall give written  
19 notice of hearing at least twenty days prior to the hearing, specifying  
20 the time, date, and place of hearing.

21        NEW SECTION.    **Sec. 10.**    (1) The procedures governing adjudicative  
22 proceedings before agencies under chapter 34.05 RCW, the administrative  
23 procedure act, govern hearings before the commission and govern all  
24 other actions before the commission unless otherwise provided in this  
25 chapter. The standard of proof in actions before the commission is  
26 preponderance of the evidence.

27        (2) On all appeals brought under section 9 of this act, a five-  
28 member hearings board shall both hear the case and make the  
29 commission's final administrative decision. Except as otherwise  
30 specified in this subsection, the commission shall empanel the hearings  
31 board from members of the law enforcement training standards and  
32 education board as follows: One must be a police chief appointed by  
33 the commission; one must be a sheriff appointed by the commission; two  
34 must be chosen by the president of the Washington council of police  
35 officers from officer members of the law enforcement training standards  
36 and education board; and one must represent either the community  
37 colleges or the four-year colleges and universities and be appointed by  
38 the commission. When the appeal is filed in relation to employment as



1 a peace officer of the Washington state patrol, the police chief member  
2 of the hearings board must be replaced by an administrator of the state  
3 patrol chosen by the chief of the state patrol, and one of the officer  
4 members of the hearings board, as designated by the commission, must be  
5 replaced by a member of the Washington state patrol troopers  
6 association, chosen by the president of the Washington state patrol  
7 troopers association.

8 (3) The commission's final administrative decision is subject to  
9 judicial review under RCW 34.05.510 through 34.05.598.

10 NEW SECTION. **Sec. 11.** The commission, its boards, and individuals  
11 acting on behalf of the commission and its boards are immune from suit  
12 in any civil or criminal action contesting or based upon proceedings or  
13 other official acts performed in the course of their duties in the  
14 administration and enforcement of this chapter.

15 NEW SECTION. **Sec. 12.** (1) Except as provided under subsection (2)  
16 of this section, the following records of the commission are  
17 confidential and exempt from public disclosure: (a) The contents of  
18 personnel action reports filed under section 6 of this act; (b) all  
19 files, papers, and other information obtained by the commission  
20 pursuant to section 2(4) of this act; and (c) all investigative files  
21 of the commission compiled in carrying out the responsibilities of the  
22 commission under this chapter. Such records are not subject to public  
23 disclosure, subpoena, or discovery proceedings in any civil action,  
24 except as provided in subsection (5) of this section.

25 (2) Records which are otherwise confidential and exempt under  
26 subsection (1) of this section may be reviewed and copied: (a) By the  
27 officer involved or the officer's counsel or authorized representative,  
28 who may review the officer's file and may submit any additional  
29 exculpatory or explanatory evidence, statements, or other information,  
30 any of which must be included in the file; (b) by a duly authorized  
31 representative of (i) the agency of termination, or (ii) a current  
32 employing law enforcement agency, which may review and copy its  
33 employee-officer's file; or (c) by a representative of or investigator  
34 for the commission.

35 (3) Records which are otherwise confidential and exempt under  
36 subsection (1) of this section may also be inspected at the offices of  
37 the commission by a duly authorized representative of a law enforcement

1 agency considering an application for employment by a person who is the  
2 subject of a record. A copy of records which are otherwise  
3 confidential and exempt under subsection (1) of this section may later  
4 be obtained by an agency after it hires the applicant. In all other  
5 cases under this subsection, the agency may not obtain a copy of the  
6 record.

7 (4) Upon a determination that a complaint is without merit, that a  
8 personnel action report filed under section 6 of this act does not  
9 merit action by the commission, or that a matter otherwise investigated  
10 by the commission does not merit action, the commission shall purge  
11 records addressed in subsection (1) of this section.

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

17 (6) Every individual, legal entity, and agency of federal, state,  
18 or local government is immune from civil liability, whether direct or  
19 derivative, for providing information to the commission in good faith.

20 NEW SECTION. **Sec. 13.** The commission shall direct the board on  
21 law enforcement training standards and education to assemble a study  
22 group to evaluate and make recommendations regarding the possible  
23 expansion of the certification and decertification provisions of  
24 chapter . . . , Laws of 1999 (this act) to include additional categories  
25 of criminal justice personnel with law enforcement powers, including  
26 but not limited to specially commissioned Washington peace officers and  
27 limited authority Washington peace officers, as those terms are defined  
28 in RCW 10.93.020. The study group shall present its recommendations to  
29 the commission by July 1, 2000. The commission shall consider the  
30 study group recommendations, modify them if it deems appropriate, and,  
31 by January 1, 2001, deliver a final report of the commission on the  
32 desirability and feasibility of expanded certification and  
33 decertification.

34 NEW SECTION. **Sec. 14.** If specific funding for section 13 of this  
35 act, referencing section 13 of this act by bill and section number or  
36 chapter and section number, is not provided by June 30, 1999, in the  
37 omnibus appropriations act, section 13 of this act is null and void.

1        NEW SECTION.   **Sec. 15.**   Sections 2 through 13 of this act are each  
2   added to chapter 43.101 RCW.

3        NEW SECTION.   **Sec. 16.**   Sections 1 through 12 and 15 of this act  
4   take effect January 1, 2000.

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