

2 **HB 1062** - S AMD 321

3 By Senators Kline, Zarelli and Long

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5 Strike everything after the enacting clause and insert the
6 following:

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

9 When used in this chapter:

10 (1) The term "commission" means the Washington state criminal
11 justice training commission.

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

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

17 (4) The term "law enforcement personnel" means any public employee
18 or volunteer having as a primary function the enforcement of criminal
19 laws in general or any employee or volunteer of, or any individual
20 commissioned by, any municipal, county, state, or combination thereof,
21 agency having as its primary function the enforcement of criminal laws
22 in general as distinguished from an agency possessing peace officer
23 powers, the primary function of which is the implementation of
24 specialized subject matter areas. For the purposes of this subsection
25 "primary function" means that function to which the greater allocation
26 of resources is made.

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

33 (6) A peace officer is "convicted" at the time a plea of guilty has
34 been accepted, or a verdict of guilty or finding of guilt has been
35 filed, notwithstanding the pendency of any future proceedings,
36 including but not limited to sentencing, posttrial or postfact-finding

1 motions and appeals. "Conviction" includes a deferral of sentence and
2 also includes the equivalent disposition by a court in a jurisdiction
3 other than the state of Washington.

4 (7) "Discharged for disqualifying misconduct" means terminated from
5 employment for: (a) Conviction of (i) any crime committed under color
6 of authority as a peace officer, (ii) any crime involving dishonesty or
7 false statement within the meaning of Evidence Rule 609(a), (iii) the
8 unlawful use or possession of a controlled substance, or (iv) any other
9 crime the conviction of which disqualifies a Washington citizen from
10 the legal right to possess a firearm under state or federal law; (b)
11 conduct that would constitute any of the crimes addressed in (a) of
12 this subsection; or (c) knowingly making materially false statements
13 during disciplinary investigations, where the false statements are the
14 sole basis for the termination.

15 (8) A peace officer is "discharged for disqualifying misconduct"
16 within the meaning of subsection (7) of this section under the ordinary
17 meaning of the term and when the totality of the circumstances support
18 a finding that the officer resigned in anticipation of discipline,
19 whether or not the misconduct was discovered at the time of
20 resignation, and when such discipline, if carried forward, would more
21 likely than not have led to discharge for disqualifying misconduct
22 within the meaning of subsection (7) of this section.

23 (9) When used in context of proceedings referred to in this
24 chapter, "final" means that the peace officer has exhausted all
25 available civil service appeals, collective bargaining remedies, and
26 all other such direct administrative appeals, and the officer has not
27 been reinstated as the result of the action. Finality is not affected
28 by the pendency or availability of state or federal administrative or
29 court actions for discrimination, or by the pendency or availability of
30 any remedies other than direct civil service and collective bargaining
31 remedies.

32 (10) "Peace officer" means any law enforcement personnel subject to
33 the basic law enforcement training requirement of RCW 43.101.200 and
34 any other requirements of that section, notwithstanding any waiver or
35 exemption granted by the commission, and notwithstanding the statutory
36 exemption based on date of initial hire under RCW 43.101.200.
37 Commissioned officers of the Washington state patrol, whether they have
38 been or may be exempted by rule of the commission from the basic
39 training requirement of RCW 43.101.200, are included as peace officers

1 for purposes of this chapter. Fish and wildlife officers with
2 enforcement powers for all criminal laws under RCW 77.12.055 are peace
3 officers for purposes of this chapter.

4 NEW SECTION. Sec. 2. (1) As a condition of continuing employment
5 as peace officers, all Washington peace officers: (a) Shall timely
6 obtain certification as peace officers, or timely obtain certification
7 or exemption therefrom, by meeting all requirements of RCW 43.101.200,
8 as that section is administered under the rules of the commission, as
9 well by meeting any additional requirements under this chapter; and (b)
10 shall maintain the basic certification as peace officers under this
11 chapter. The commission shall certify peace officers who have
12 satisfied, or have been exempted by statute or by rule from, the basic
13 training requirements of RCW 43.101.200 on or before the effective date
14 of this section. Thereafter, the commission may revoke certification
15 pursuant to this chapter.

16 (2) The commission shall allow a peace officer to retain status as
17 a certified peace officer as long as the officer: (a) Timely meets the
18 basic law enforcement training requirements, or is exempted therefrom,
19 in whole or in part, under RCW 43.101.200 or under rule of the
20 commission; (b) meets or is exempted from any other requirements under
21 this chapter as administered under the rules adopted by the commission;
22 (c) is not denied certification by the commission under this chapter;
23 and (d) has not had certification revoked by the commission.

24 (3) As a prerequisite to certification, as well as a prerequisite
25 to pursuit of a hearing under section 9 of this act, a peace officer
26 must, on a form devised or adopted by the commission, authorize the
27 release to the commission of his or her personnel files, termination
28 papers, criminal investigation files, or other files, papers, or
29 information that are directly related to a certification matter or
30 decertification matter before the commission.

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

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

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

8 (3) The peace officer has been convicted at any time of a felony
9 offense under the laws of this state or has been convicted of a federal
10 or out-of-state offense comparable to a felony under the laws of this
11 state; except that if a certified peace officer was convicted of a
12 felony before being employed as a peace officer, and the circumstances
13 of the prior felony conviction were fully disclosed to his or her
14 employer before being hired, the commission may revoke certification
15 only with the agreement of the employing law enforcement agency;

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

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

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

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

33 (2) A person whose certification is denied or revoked based upon
34 prior administrative error of issuance, failure to cooperate, or
35 interference with an investigation is eligible for certification upon
36 meeting standards established in rules of the commission, rules which
37 may provide for a probationary period of certification in the event of
38 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. A break in full-time law enforcement service
26 which is due solely to the pendency of direct review or appeal from a
27 disciplinary discharge, or to the pendency of a work-related injury,
28 does not cause a lapse in certification. The officer may petition the
29 commission for reinstatement of certification. Upon receipt of a
30 petition for reinstatement of a lapsed certificate, the commission
31 shall determine under this chapter and any applicable rules of the
32 commission if the peace officer's certification status is to be
33 reinstated, and the commission shall also determine any requirements
34 which the officer must meet for reinstatement. The commission may adopt
35 rules establishing requirements for reinstatement.

36 NEW SECTION. **Sec. 6.** Upon termination of a peace officer for any
37 reason, including resignation, the agency of termination shall, within

1 fifteen days of the termination, notify the commission on a personnel
2 action report form provided by the commission. The agency of
3 termination shall, upon request of the commission, provide such
4 additional documentation or information as the commission deems
5 necessary to determine whether the termination provides grounds for
6 revocation under section 3 of this act. The commission shall maintain
7 these notices in a permanent file, subject to section 12 of this act.

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

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

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

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

17 (4) Appoint members of a hearings board as provided under section
18 10 of this act;

19 (5) Enter into contracts for professional services determined by
20 the commission to be necessary for adequate enforcement of this
21 chapter;

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

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

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

28 NEW SECTION. **Sec. 8.** A law enforcement officer or duly authorized
29 representative of a law enforcement agency may submit a written
30 complaint to the commission charging that a peace officer's certificate
31 should be denied or revoked, and specifying the grounds for the charge.
32 Filing a complaint does not make a complainant a party to the
33 commission's action. The commission has sole discretion whether to
34 investigate a complaint, and the commission has sole discretion whether
35 to investigate matters relating to certification, denial of
36 certification, or revocation of certification on any other basis,
37 without restriction as to the source or the existence of a complaint.

1 A person who files a complaint in good faith under this section is
2 immune from suit or any civil action related to the filing or the
3 contents of the complaint.

4 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
5 investigation, that there is probable cause to believe that a peace
6 officer's certification should be denied or revoked under section 3 of
7 this act, the commission must prepare and serve upon the officer a
8 statement of charges. Service on the officer must be by mail or by
9 personal service on the officer. Notice of the charges must also be
10 mailed to or otherwise served upon the officer's agency of termination
11 and any current law enforcement agency employer. The statement of
12 charges must be accompanied by a notice that to receive a hearing on
13 the denial or revocation, the officer must, within sixty days of
14 communication of the statement of charges, request a hearing before the
15 hearings board appointed under section 10 of this act. Failure of the
16 officer to request a hearing within the sixty-day period constitutes a
17 default, whereupon the commission may enter an order under RCW
18 34.05.440.

19 (2) If a hearing is requested, the date of the hearing must be
20 scheduled not earlier than ninety days nor later than one hundred
21 eighty days after communication of the statement of charges to the
22 officer; the one hundred eighty day period may be extended on mutual
23 agreement of the parties or for good cause. The commission shall give
24 written notice of hearing at least twenty days prior to the hearing,
25 specifying the time, date, and place of hearing.

26 NEW SECTION. **Sec. 10.** (1) The procedures governing adjudicative
27 proceedings before agencies under chapter 34.05 RCW, the administrative
28 procedure act, govern hearings before the commission and govern all
29 other actions before the commission unless otherwise provided in this
30 chapter. The standard of proof in actions before the commission is
31 clear, cogent, and convincing evidence.

32 (2) On all appeals brought under section 9 of this act, a five-
33 member hearings panel shall both hear the case and make the
34 commission's final administrative decision. Members of the commission
35 or the board on law enforcement training standards and education may
36 but need not be appointed to the hearings panels. The commission shall

1 appoint as follows two or more panels to hear appeals from
2 decertification actions:

3 (a) When an appeal is filed in relation to decertification of a
4 Washington peace officer who is not a peace officer of the Washington
5 state patrol, the commission shall appoint to the panel: (i) One
6 police chief; (ii) one sheriff; (iii) two peace officers who are at or
7 below the level of first line supervisor, who are from city or county
8 law enforcement agencies, and who have at least ten years' experience
9 as peace officers; and (iv) one person who is not currently a peace
10 officer and who represents a community college or four-year college or
11 university.

12 (b) When an appeal is filed in relation to decertification of a
13 peace officer of the Washington state patrol, the commission shall
14 appoint to the panel: (i) Either one police chief or one sheriff; (ii)
15 one administrator of the state patrol; (iii) one peace officer who is
16 at or below the level of first line supervisor, who is from a city or
17 county law enforcement agency, and who has at least ten years'
18 experience as a peace officer; (iv) one state patrol officer who is at
19 or below the level of first line supervisor, and who has at least ten
20 years' experience as a peace officer; and (v) one person who is not
21 currently a peace officer and who represents a community college or
22 four-year college or university.

23 (c) Persons appointed to hearings panels by the commission shall,
24 in relation to any decertification matter on which they sit, have the
25 powers, duties, and immunities, and are entitled to the emoluments,
26 including travel expenses in accordance with RCW 43.03.050 and
27 43.03.060, of regular commission members.

28 (3) Where the charge upon which revocation or denial is based is
29 that a peace officer was "discharged for disqualifying misconduct," and
30 the discharge is "final," within the meaning of section 3(4) of this
31 act, and the officer received a civil service hearing or arbitration
32 hearing culminating in an affirming decision following separation from
33 service by the employer, the hearings panel may revoke or deny
34 certification if the hearings panel determines that the discharge
35 occurred and was based on disqualifying misconduct; the hearings panel
36 need not redetermine the underlying facts but may make this
37 determination based solely on review of the records and decision
38 relating to the employment separation proceeding. However, the
39 hearings panel may, in its discretion, consider additional evidence to

1 determine whether such a discharge occurred and was based on such
2 disqualifying misconduct. The hearings panel shall, upon written
3 request by the subject peace officer, allow the peace officer to
4 present additional evidence of extenuating circumstances.

5 Where the charge upon which revocation or denial of certification
6 is based is that a peace officer "has been convicted at any time of a
7 felony offense" within the meaning of section 3(3) of this act, the
8 hearings panel shall revoke or deny certification if it determines that
9 the peace officer was convicted of a felony. The hearings panel need
10 not redetermine the underlying facts but may make this determination
11 based solely on review of the records and decision relating to the
12 criminal proceeding. However, the hearings panel shall, upon the
13 panel's determination of relevancy, consider additional evidence to
14 determine whether the peace officer was convicted of a felony.

15 Where the charge upon which revocation or denial is based is under
16 section 3(1), (2), (5), or (6) of this act, the hearings panel shall
17 determine the underlying facts relating to the charge upon which
18 revocation or denial of certification is based.

19 (4) The commission's final administrative decision is subject to
20 judicial review under RCW 34.05.510 through 34.05.598.

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

26 NEW SECTION. **Sec. 12.** (1) Except as provided under subsection (2)
27 of this section, the following records of the commission are
28 confidential and exempt from public disclosure: (a) The contents of
29 personnel action reports filed under section 6 of this act; (b) all
30 files, papers, and other information obtained by the commission
31 pursuant to section 2(3) of this act; and (c) all investigative files
32 of the commission compiled in carrying out the responsibilities of the
33 commission under this chapter. Such records are not subject to public
34 disclosure, subpoena, or discovery proceedings in any civil action,
35 except as provided in subsection (5) of this section.

36 (2) Records which are otherwise confidential and exempt under
37 subsection (1) of this section may be reviewed and copied: (a) By the

1 officer involved or the officer's counsel or authorized representative,
2 who may review the officer's file and may submit any additional
3 exculpatory or explanatory evidence, statements, or other information,
4 any of which must be included in the file; (b) by a duly authorized
5 representative of (i) the agency of termination, or (ii) a current
6 employing law enforcement agency, which may review and copy its
7 employee-officer's file; or (c) by a representative of or investigator
8 for the commission.

9 (3) Records which are otherwise confidential and exempt under
10 subsection (1) of this section may also be inspected at the offices of
11 the commission by a duly authorized representative of a law enforcement
12 agency considering an application for employment by a person who is the
13 subject of a record. A copy of records which are otherwise
14 confidential and exempt under subsection (1) of this section may later
15 be obtained by an agency after it hires the applicant. In all other
16 cases under this subsection, the agency may not obtain a copy of the
17 record.

18 (4) Upon a determination that a complaint is without merit, that a
19 personnel action report filed under section 6 of this act does not
20 merit action by the commission, or that a matter otherwise investigated
21 by the commission does not merit action, the commission shall purge
22 records addressed in subsection (1) of this section.

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

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

31 NEW SECTION. **Sec. 13.** Sections 2 through 12 and 14 of this act
32 are each added to chapter 43.101 RCW.

33 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2002."

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4 On page 1, line 1 of the title, after "officers;" strike the
5 remainder of the title and insert "amending RCW 43.101.010; adding new
6 sections to chapter 43.101 RCW; and providing an effective date."

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