

**2SSB 5051 - S AMD 160**

By Senator Braun

**NOT ADOPTED 02/25/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 43.101.010 and 2020 c 119 s 2 are each amended to  
4 read as follows:

5 When used in this chapter:

6 (1) (~~The term "commission"~~) "Applicant" means an individual who  
7 has received a conditional offer of employment with a law enforcement  
8 or corrections agency.

9 (2) "Commission" means the Washington state criminal justice  
10 training commission.

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

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

19 (4) (~~The term "law"~~) "Law enforcement personnel" means any  
20 (public employee or volunteer having as a primary function the  
21 enforcement of criminal laws in general or any employee or volunteer  
22 of, or any individual commissioned by, any municipal, county, state,  
23 or combination thereof, agency having as its primary function the  
24 enforcement of criminal laws in general as distinguished from an  
25 agency possessing peace officer powers, the primary function of which  
26 is the implementation of specialized subject matter areas. For the  
27 purposes of this subsection "primary function" means that function to  
28 which the greater allocation of resources is made)) person appointed  
29 or employed as a general authority Washington peace officer as  
30 defined in RCW 10.93.020.

31 (5) (~~The term "correctional"~~) "Correctional personnel" means any  
32 employee or volunteer who by state, county, municipal, or combination

1 thereof, statute has the responsibility for the confinement, care,  
2 management, training, treatment, education, supervision, or  
3 counseling of those individuals whose civil rights have been limited  
4 in some way by legal sanction.

5 (6) "Chief for a day program" means a program in which  
6 commissioners and staff partner with local, state, and federal law  
7 enforcement agencies, hospitals, and the community to provide a day  
8 of special attention to chronically ill children. Each child is  
9 selected and sponsored by a law enforcement agency. The event, "chief  
10 for a day," occurs on one day, annually or every other year and may  
11 occur on the grounds and in the facilities of the commission. The  
12 program may include any appropriate honoring of the child as a  
13 "chief," such as a certificate swearing them in as a chief, a badge,  
14 a uniform, and donated gifts such as games, puzzles, and art  
15 supplies.

16 (7) ~~((A peace officer or corrections officer is "convicted"))~~  
17 "Convicted" means at the time a plea of guilty , nolo contendere, or  
18 deferred sentence has been accepted, or a verdict of guilty or  
19 finding of guilt has been filed, notwithstanding the pendency of any  
20 future proceedings, including but not limited to sentencing,  
21 posttrial or postfact-finding motions and appeals. "Conviction"  
22 includes ~~((a deferral of sentence))~~ all instances in which a plea of  
23 guilty or nolo contendere is the basis for conviction, all  
24 proceedings in which there is a case disposition agreement, and  
25 ~~((also includes the))~~ any equivalent disposition by a court in a  
26 jurisdiction other than the state of Washington.

27 (8) ~~((a) "Discharged for disqualifying misconduct" has the~~  
28 ~~following meanings:~~

29 ~~(i) A peace officer terminated from employment for: (A)~~  
30 ~~Conviction of (I) any crime committed under color of authority as a~~  
31 ~~peace officer, (II) any crime involving dishonesty or false statement~~  
32 ~~within the meaning of Evidence Rule 609(a), (III) the unlawful use or~~  
33 ~~possession of a controlled substance, or (IV) any other crime the~~  
34 ~~conviction of which disqualifies a Washington citizen from the legal~~  
35 ~~right to possess a firearm under state or federal law; (B) conduct~~  
36 ~~that would constitute any of the crimes addressed in (a)(i)(A) of~~  
37 ~~this subsection; or (C) knowingly making materially false statements~~  
38 ~~during disciplinary investigations, where the false statements are~~  
39 ~~the sole basis for the termination; or~~

1       ~~(ii) A corrections officer terminated from employment for: (A)~~  
2 ~~Conviction of (I) any crime committed under color of authority as a~~  
3 ~~corrections officer, (II) any crime involving dishonesty or false~~  
4 ~~statement within the meaning of Evidence Rule 609(a), or (III) the~~  
5 ~~unlawful use or possession of a controlled substance; (B) conduct~~  
6 ~~that would constitute any of the crimes addressed in (a)(ii)(A) of~~  
7 ~~this subsection; or (C) knowingly making materially false statements~~  
8 ~~during disciplinary investigations, where the false statements are~~  
9 ~~the sole basis for the termination.~~

10       ~~(b) A peace officer or corrections officer is "discharged for~~  
11 ~~disqualifying misconduct" within the meaning of this subsection (8)~~  
12 ~~under the ordinary meaning of the term and when the totality of the~~  
13 ~~circumstances support a finding that the officer resigned in~~  
14 ~~anticipation of discipline, whether or not the misconduct was~~  
15 ~~discovered at the time of resignation, and when such discipline, if~~  
16 ~~carried forward, would more likely than not have led to discharge for~~  
17 ~~disqualifying misconduct within the meaning of this subsection (8).~~

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

27       ~~(10)) "Peace officer" ((means any law enforcement personnel~~  
28 ~~subject to the basic law enforcement training requirement of RCW~~  
29 ~~43.101.200 and any other requirements of that section,~~  
30 ~~notwithstanding any waiver or exemption granted by the commission,~~  
31 ~~and notwithstanding the statutory exemption based on date of initial~~  
32 ~~hire under RCW 43.101.200)) has the same meaning as a general~~  
33 ~~authority Washington peace officer as defined in RCW 10.93.020.~~  
34 ~~Commissioned officers of the Washington state patrol, whether they~~  
35 ~~have been or may be exempted by rule of the commission from the basic~~  
36 ~~training requirement of RCW 43.101.200, are included as peace~~  
37 ~~officers for purposes of this chapter. Fish and wildlife officers~~  
38 ~~with enforcement powers for all criminal laws under RCW 77.15.075 are~~  
39 ~~peace officers for purposes of this chapter.~~

1       ~~((11))~~ (9) "Corrections officer" means any corrections agency  
2 employee whose primary job function is to provide for the custody,  
3 safety, and security of adult ~~((prisoners))~~ persons in jails and  
4 detention facilities ~~((and who is subject to the basic corrections~~  
5 ~~training requirement of RCW 43.101.220 and any other requirements of~~  
6 ~~that section, notwithstanding any waiver or exemption granted by the~~  
7 ~~commission, and notwithstanding the statutory exemption based on date~~  
8 ~~of initial hire under RCW 43.101.220. For the purpose of RCW~~  
9 ~~43.101.080, 43.101.096, 43.101.106, 43.101.116, 43.101.121,~~  
10 ~~43.101.126, 43.101.136, 43.101.146, 43.101.156, 43.101.380, and~~  
11 ~~43.101.400, "corrections))~~ in the state. "Corrections officer" does  
12 not include individuals employed by state agencies.

13       (10) "Finding" means a determination based on a preponderance of  
14 the evidence whether alleged misconduct occurred; did not occur;  
15 occurred, but was consistent with law and policy; or could neither be  
16 proven or disproven.

17       (11) "Reserve officer" means any person who does not serve as a  
18 peace officer of this state on a full-time basis, but who, when  
19 called by an agency into active service, is fully commissioned on the  
20 same basis as full-time officers to enforce the criminal laws of this  
21 state and includes specially commissioned Washington peace officers  
22 as defined in RCW 10.93.020.

23       (12) "Tribal police officer" means any person employed and  
24 commissioned by a tribal government to enforce the criminal laws of  
25 that government.

26       **Sec. 2.** RCW 43.101.020 and 1974 ex.s. c 94 s 2 are each amended  
27 to read as follows:

28       (1) There is hereby created and established a state commission to  
29 be known and designated as the Washington state criminal justice  
30 training commission.

31       (2) The purpose of ~~((such))~~ the commission shall be to ~~((provide~~  
32 ~~programs and standards for the training of criminal justice~~  
33 ~~personnel))~~ establish and administer standards and processes for  
34 certification and decertification of peace officers and corrections  
35 officers. The commission shall provide programs and training that  
36 enhance the integrity, effectiveness, and professionalism of peace  
37 officers and corrections officers. In carrying out its duties, the  
38 commission shall strive to promote public trust and confidence in  
39 every aspect of the criminal justice system.

1       **Sec. 3.** RCW 43.101.030 and 2020 c 44 s 1 are each amended to  
2 read as follows:

3       The commission shall consist of (~~sixteen~~) 18 members, who shall  
4 be selected as follows:

5       (1) The governor shall appoint two incumbent sheriffs and two  
6 incumbent chiefs of police.

7       (2) The governor shall appoint one officer at or below the level  
8 of first line supervisor from a county law enforcement agency and one  
9 officer at or below the level of first line supervisor from a  
10 municipal law enforcement agency. Each appointee under this  
11 subsection (2) shall have at least ten years experience as a law  
12 enforcement officer.

13       (3) The governor shall appoint one person employed in a county  
14 correctional system and one person employed in the state correctional  
15 system.

16       (4) The governor shall appoint one incumbent county prosecuting  
17 attorney or municipal attorney.

18       (5) The governor shall appoint one elected official of a local  
19 government.

20       (6) The governor shall appoint (~~two~~) four private citizens,  
21 (~~one~~) two from east of the crest of the Cascade mountains and  
22 (~~one~~) two from west of the crest of the Cascade mountains. At least  
23 one of the private citizens must be from a historically  
24 underrepresented community or communities.

25       (7) The governor shall appoint one tribal chair, board member,  
26 councilmember, or designee from a federally recognized tribe with an  
27 active certification agreement under RCW 43.101.157.

28       (8) The three remaining members shall be:

29       (a) The attorney general;

30       (b) The special agent in charge of the Seattle office of the  
31 federal bureau of investigation; and

32       (c) The chief of the state patrol.

33       **Sec. 4.** RCW 43.101.040 and 2009 c 549 s 5167 are each amended to  
34 read as follows:

35       All members appointed to the commission by the governor shall be  
36 appointed for terms of six years, such terms to commence on July  
37 first, and expire on June thirtieth(~~(: PROVIDED, That of the)~~).  
38 However, for members first appointed (~~three shall be appointed for~~  
39 ~~two year terms, three shall be appointed for four year terms, and~~

1 ~~three shall be appointed for six year terms: PROVIDED, FURTHER, That~~  
2 ~~the terms of the two members appointed as incumbent police chiefs~~  
3 ~~shall not expire in the same year nor shall the terms of the two~~  
4 ~~members appointed as representing correctional systems expire in the~~  
5 ~~same year nor shall the terms of the two members appointed as~~  
6 ~~incumbent sheriffs expire in the same year)) as a result of~~  
7 ~~chapter . . ., Laws of 2021 (this act), the governor shall appoint~~  
8 ~~members to terms ranging from two years to six years in order to~~  
9 ~~stagger future appointments.~~ Any member chosen to fill a vacancy  
10 created otherwise than by expiration of term shall be appointed for  
11 the unexpired term of the member (~~he or she~~) the appointee is to  
12 succeed. Any member may be reappointed for additional terms.

13 **Sec. 5.** RCW 43.101.060 and 1999 c 97 s 2 are each amended to  
14 read as follows:

15 The commission shall elect a chair and a vice chair from among  
16 its members. (~~Seven~~) Nine members of the commission shall  
17 constitute a quorum. (~~The governor shall summon the commission to~~  
18 ~~its first meeting.~~

19 Meetings)) The commission shall meet at least quarterly.  
20 Additional meetings may be called by the chair and shall be called by  
21 (~~him or her~~) the chair upon the written request of six members.

22 **Sec. 6.** RCW 43.101.080 and 2020 c 119 s 13 are each amended to  
23 read as follows:

24 The commission shall have all of the following powers:

- 25 (1) (~~To meet at such times and places as it may deem proper;~~  
26 ~~(2) To adopt any rules and regulations as it may deem necessary;~~  
27 ~~(3) To contract for services as it deems necessary in order to~~  
28 ~~carry out its duties and responsibilities;~~  
29 ~~(4) To cooperate with and secure the cooperation of any~~  
30 ~~department, agency, or instrumentality in state, county, and city~~  
31 ~~government, and other commissions affected by or concerned with the~~  
32 ~~business of the commission;~~  
33 ~~(5) To do any and all things necessary or convenient to enable it~~  
34 ~~fully and adequately to perform its duties and to exercise the power~~  
35 ~~granted to it;~~  
36 ~~(6) To select and employ an executive director, and to empower~~  
37 ~~him or her to perform such duties and responsibilities as it may deem~~  
38 ~~necessary;~~

1       ~~(7) To~~) Conduct training, including the basic law enforcement  
2 academy and in-service training, and assume legal, fiscal, and  
3 program responsibility for all training conducted by the commission;

4       ~~((8) To establish))~~ (2) Grant, deny, or revoke certification of  
5 peace officers and corrections officers under the provisions of this  
6 chapter;

7       (3) Grant, deny, or revoke certification of tribal police  
8 officers whose tribal governments have agreed to participate in the  
9 tribal police officer certification process;

10       (4) Related to its duties under subsections (2) and (3) of this  
11 section, provide for the comprehensive and timely investigation of  
12 complaints where necessary to ensure adherence to law, strengthen the  
13 integrity and accountability of peace officers and corrections  
14 officers, and maintain public trust and confidence in the criminal  
15 justice system in this state;

16       (5) Establish, by rule and regulation, curricula and standards  
17 for the training of criminal justice personnel where such curricula  
18 and standards are not prescribed by statute;

19       ~~((9) To own))~~ (6) Own, establish, and operate, or ((to))  
20 contract with other qualified institutions or organizations for the  
21 operation of, training and education programs for criminal justice  
22 personnel ((and to purchase, lease, or otherwise acquire, subject to  
23 the approval of the department of enterprise services, a training  
24 facility or facilities necessary to the conducting of such programs;

25       ~~(10) To establish, by rule and regulation, minimum curriculum~~  
26 ~~standards for all training programs conducted for employed criminal~~  
27 ~~justice personnel;~~

28       ~~(11) To review));~~

29       (7) Review and approve or reject standards for instructors of  
30 training programs for criminal justice personnel, and ((to)) employ  
31 personnel from law enforcement agencies on a temporary basis as  
32 instructors without any loss of employee benefits to those  
33 instructors from those agencies;

34       ~~((12) To direct))~~ (8) Direct the development of alternative,  
35 innovative, and interdisciplinary training techniques;

36       ~~((13) To review))~~ (9) Review and approve or reject training  
37 programs conducted for criminal justice personnel and rules  
38 establishing and prescribing minimum training and education standards  
39 ((recommended by the training standards and education boards)),  
40 including continuing education;

1       (~~(14) To allocate~~) (10) Allocate financial resources among  
2 training and education programs conducted by the commission;

3       (~~(15) To~~) (11) Purchase, lease, or otherwise acquire, subject  
4 to the approval of the department of enterprise services, a training  
5 facility or facilities and allocate training facility space among  
6 training and education programs conducted by the commission;

7       (~~(16) To issue~~) (12) Issue diplomas certifying satisfactory  
8 completion of any training or education program conducted or approved  
9 by the commission to any person so completing such a program;

10       (~~(17) To provide~~) (13) Provide for the employment of such  
11 personnel as may be practical to serve as temporary replacements for  
12 any person engaged in a basic training program as defined by the  
13 commission;

14       (~~(18) To establish~~) (14) Establish rules and regulations  
15 (~~recommended by the training standards and education boards~~)  
16 prescribing minimum standards relating to physical, mental, and moral  
17 fitness which shall govern the recruitment of criminal justice  
18 personnel where such standards are not prescribed by statute or  
19 constitutional provision;

20       (~~(19) To require county, city, or state~~) (15) Require all  
21 Washington law enforcement and corrections agencies that make a  
22 conditional offer of employment to an applicant as a fully  
23 commissioned peace officer, a reserve officer, or a corrections  
24 officer to administer a background investigation (~~including a check~~  
25 ~~of criminal history, verification of immigrant or citizenship status~~  
26 ~~as either a citizen of the United States of America or a lawful~~  
27 ~~permanent resident, a psychological examination, and a polygraph test~~  
28 ~~or similar assessment to each applicant, the results of which shall~~  
29 ~~be used by the employer to determine the applicant's suitability for~~  
30 ~~employment as a fully commissioned peace officer, a reserve officer,~~  
31 ~~or a corrections officer. The background investigation, psychological~~  
32 ~~examination, and the polygraph examination shall be administered in~~  
33 ~~accordance with the requirements of RCW 43.101.095(2) for peace~~  
34 ~~officers, and RCW 43.101.096 for corrections officers. The employing~~  
35 ~~county, city, or state law enforcement agency may require that each~~  
36 ~~peace officer, reserve officer, or corrections officer who is~~  
37 ~~required to take a psychological examination and a polygraph or~~  
38 ~~similar test pay a portion of the testing fee based on the actual~~  
39 ~~cost of the test or four hundred dollars, whichever is less. County,~~  
40 ~~city, and state law enforcement agencies may establish a payment plan~~

1 ~~if they determine that the peace officer, reserve officer, or~~  
2 ~~corrections officer does not readily have the means to pay for his or~~  
3 ~~her portion of the testing fee. This subsection does not apply to~~  
4 ~~corrections officers employed by state agencies;~~

5 ~~(20) To promote~~) in accordance with the requirements of RCW  
6 43.101.095 to determine the applicant's suitability for employment as  
7 a fully commissioned peace officer, reserve officer, or corrections  
8 officer;

9 (16) Appoint members of a hearings board as provided under RCW  
10 43.101.380;

11 (17) Promote positive relationships between law enforcement and  
12 the ~~((citizens))~~ residents of the state of Washington ~~((by allowing))~~  
13 through commissioners and staff ~~((to participate))~~ participation in  
14 the "chief for a day program." The executive director shall designate  
15 staff who may participate. In furtherance of this purpose, the  
16 commission may accept grants of funds and gifts and may use its  
17 public facilities for such purpose. At all times, the participation  
18 of commissioners and staff shall comply with chapter 42.52 RCW and  
19 chapter 292-110 WAC ~~((-~~

20 ~~All))~~);

21 (18) Adopt, amend, repeal, and administer rules and regulations  
22 ~~((adopted by the commission shall be adopted and administered))~~  
23 pursuant to the administrative procedure act, chapter 34.05 RCW, and  
24 the open public meetings act, chapter 42.30 RCW.

25 **Sec. 7.** RCW 43.101.085 and 2020 c 119 s 1 are each amended to  
26 read as follows:

27 In addition to its other powers granted under this chapter, the  
28 commission has authority and power to:

29 ~~(1) ((Adopt, amend, or repeal rules as necessary to carry out~~  
30 ~~this chapter;~~

31 ~~(2))~~) Contract for services as it deems necessary in order to  
32 carry out its duties and responsibilities;

33 (2) Cooperate with and secure the cooperation of any department,  
34 agency, or instrumentality in state, county, and city government, and  
35 other commissions affected by or concerned with the business of the  
36 commission;

37 (3) Select and employ an executive director, and empower the  
38 director to perform such duties and responsibilities as the  
39 commission may deem necessary;

1 (4) Issue subpoenas and statements of charges, and administer  
2 oaths in connection with investigations, hearings, or other  
3 proceedings held under this chapter, or designate individuals to do  
4 so;

5 ~~((3))~~ (5) Employ such staff as necessary for the implementation  
6 and enforcement of this chapter;

7 (6) Take or cause to be taken depositions and other discovery  
8 procedures as needed in investigations, hearings, and other  
9 proceedings held under this chapter;

10 ~~((4) Appoint members of a hearings board as provided under RCW~~  
11 ~~43.101.380;~~

12 ~~(5))~~ (7) Enter into contracts for professional services  
13 determined by the commission to be necessary for adequate enforcement  
14 of this chapter;

15 ~~((6) Grant, deny, or revoke certification of peace officers and~~  
16 ~~corrections officers under the provisions of this chapter;~~

17 ~~(7) Designate individuals authorized to sign subpoenas and~~  
18 ~~statements of charges under the provisions of this chapter;~~

19 ~~(8) Employ such investigative, administrative, and clerical staff~~  
20 ~~as necessary for the enforcement of this chapter; and~~

21 ~~(9) Grant, deny, or revoke certification of tribal police~~  
22 ~~officers whose tribal governments have agreed to participate in the~~  
23 ~~tribal police officer certification process)) and~~

24 (8) Do any and all things necessary or convenient to enable it  
25 fully and adequately to perform its duties and to exercise the power  
26 granted to it.

27 **Sec. 8.** RCW 43.101.095 and 2018 c 32 s 5 are each amended to  
28 read as follows:

29 (1) As a condition of continuing employment ~~((as peace~~  
30 ~~officers)), all Washington peace officers~~~~((: (a) Shall timely obtain~~  
31 ~~certification as peace officers, or timely obtain certification or~~  
32 ~~exemption therefrom, by meeting all requirements of RCW 43.101.200,~~  
33 ~~as that section is administered under the rules of the commission, as~~  
34 ~~well by meeting any additional requirements under this chapter; and~~  
35 ~~(b) shall maintain the basic certification as peace officers under~~  
36 ~~this chapter)) and corrections officers are required to obtain~~  
37 certification as a peace officer or corrections officer or exemption  
38 therefrom and maintain certification as required by this chapter and  
39 the rules of the commission.

1           (2) (a) ~~((As a condition of continuing employment for any))~~ Any  
2 applicant who has been offered a conditional offer of employment as a  
3 ~~((fully commissioned))~~ peace officer or ~~((a))~~ reserve officer ~~((after~~  
4 ~~July 24, 2005))~~ or offered a conditional offer of employment as a  
5 corrections officer after July 1, 2021, including any person whose  
6 certification has lapsed as a result of a break of more than  
7 ((twenty-four)) 24 consecutive months in the officer's service ~~((as a~~  
8 ~~fully commissioned peace officer or reserve officer, the applicant~~  
9 ~~shall))~~ must submit to a background investigation ~~((including a))~~ to  
10 determine the applicant's suitability for employment. Employing  
11 agencies may only make a conditional offer of employment pending  
12 completion of the background check and shall verify in writing to the  
13 commission that they have complied with all background check  
14 requirements prior to making any nonconditional offer of employment.

15           (b) The background check must include:

16           (i) A check of criminal history, ~~((verification))~~ any national  
17 decertification index, commission records, and all disciplinary  
18 records by any previous law enforcement or correctional employer,  
19 including complaints or investigations of misconduct and the reason  
20 for separation from employment. Law enforcement or correctional  
21 agencies that previously employed the applicant shall disclose  
22 employment information within 30 days of receiving a written request  
23 from the employing agency conducting the background investigation,  
24 including the reason for the officer's separation from the agency.  
25 Complaints or investigations of misconduct must be disclosed  
26 regardless of the result of the investigation or whether the  
27 complaint was unfounded;

28           (ii) Inquiry into whether the peace officer has any past or  
29 present affiliations with extremist organizations;

30           (iii) Verification of immigrant or citizenship status as either a  
31 citizen of the United States of America or a lawful permanent  
32 resident ~~((, a))~~;

33           (iv) A psychological examination ~~((, and a))~~ administered by a  
34 psychiatrist licensed in the state of Washington pursuant to chapter  
35 18.71 RCW or a psychologist licensed in the state of Washington  
36 pursuant to chapter 18.83 RCW, in compliance with standards  
37 established in rules of the commission;

38           (v) A polygraph or similar assessment ~~((as))~~ administered by  
39 ~~((the county, city, or state law enforcement agency, the results of~~  
40 which shall be used to determine the applicant's suitability for

1 employment as a fully commissioned peace officer or a reserve  
2 officer.

3 ~~(i) The background investigation including a check of criminal~~  
4 ~~history shall be administered by the county, city, or state law~~  
5 ~~enforcement agency that made the conditional offer of employment in~~  
6 ~~compliance with standards established in the rules of the commission.~~

7 ~~(ii) The psychological examination shall be administered by a~~  
8 ~~psychiatrist licensed in the state of Washington pursuant to chapter~~  
9 ~~18.71 RCW or a psychologist licensed in the state of Washington~~  
10 ~~pursuant to chapter 18.83 RCW, in compliance with standards~~  
11 ~~established in rules of the commission.~~

12 ~~(iii) The polygraph test shall be administered by an experienced~~  
13 ~~polygrapher who is a graduate of a polygraph school accredited by the~~  
14 ~~American polygraph association and in compliance with standards~~  
15 ~~established in rules of the commission.~~

16 ~~(iv))~~ an experienced professional with appropriate training and  
17 in compliance with standards established in rules of the commission;  
18 and

19 (vi) Any other test or assessment to be administered as part of  
20 the background investigation shall be administered in compliance with  
21 standards established in rules of the commission.

22 ~~((b))~~ (c) The employing ~~((county, city, or state))~~ Washington  
23 law enforcement agency may require that each ~~((peace officer or~~  
24 ~~reserve officer))~~ person who is required to take a psychological  
25 examination and a polygraph or similar test pay a portion of the  
26 testing fee based on the actual cost of the test or ~~((four hundred~~  
27 ~~dollars))~~ \$400, whichever is less. ~~((County, city, and state law~~  
28 ~~enforcement))~~ Employing agencies may establish a payment plan if they  
29 determine that the ~~((peace officer or reserve officer))~~ person does  
30 not readily have the means to pay ~~((for his or her portion of))~~ the  
31 testing fee.

32 (3) ~~((The commission shall certify peace officers who have~~  
33 ~~satisfied, or have been exempted by statute or by rule from, the~~  
34 ~~basic training requirements of RCW 43.101.200 on or before January 1,~~  
35 ~~2002. Thereafter, the commission may revoke certification pursuant to~~  
36 ~~this chapter.~~

37 ~~(4))~~ The commission shall allow a peace officer or corrections  
38 officer to retain status as a certified peace officer or corrections  
39 officer as long as the officer: (a) Timely meets the basic ~~((law~~  
40 ~~enforcement))~~ training requirements, or is exempted therefrom, in

1 whole or in part, under RCW 43.101.200 or under rule of the  
2 commission; (b) timely meets or is exempted from any other  
3 requirements under this chapter as administered under the rules  
4 adopted by the commission; (c) is not denied certification by the  
5 commission under this chapter; and (d) has not had certification  
6 revoked by the commission.

7 ~~((5))~~ (4) As a ~~((prerequisite to))~~ condition of certification,  
8 ~~((as well as a prerequisite to pursuit of a hearing under RCW~~  
9 ~~43.101.155,))~~ a peace officer or corrections officer must, on a form  
10 devised or adopted by the commission, authorize the release to the  
11 employing agency and commission of ~~((his or her))~~ the officer's  
12 personnel files, including disciplinary, termination ~~((papers)),~~  
13 civil or criminal investigation ~~((files)),~~ or other ~~((files,~~  
14 ~~papers,))~~ records or information that are directly related to a  
15 certification matter or decertification matter before the commission.  
16 The peace officer or corrections officer must also consent to and  
17 facilitate a review of the officer's social media accounts, however,  
18 consistent with RCW 49.44.200, the officer is not required to provide  
19 login information. The release of information may not be delayed,  
20 limited, or precluded by any agreement or contract between the  
21 officer, or the officer's union, and the entity responsible for the  
22 records or information.

23 ~~((6))~~ (5) The employing agency and commission ~~((is))~~ are  
24 authorized to receive criminal history record information that  
25 includes nonconviction data for any purpose associated with  
26 employment ~~((by the commission))~~ or ~~((peace officer))~~ certification  
27 under this chapter. Dissemination or use of nonconviction data for  
28 purposes other than that authorized in this section is prohibited.

29 ~~((7))~~ (6) For a national criminal history records check, the  
30 commission shall require fingerprints be submitted and searched  
31 through the Washington state patrol identification and criminal  
32 history section. The Washington state patrol shall forward the  
33 fingerprints to the federal bureau of investigation.

34 (7) Prior to certification, the employing agency shall certify to  
35 the commission that the agency has completed the background check, no  
36 information has been found that would disqualify the applicant from  
37 certification, and the applicant is suitable for employment as a  
38 peace officer or corrections officer.

1       **Sec. 9.** RCW 43.101.105 and 2011 c 234 s 3 are each amended to  
2 read as follows:

3       (1) ~~((Upon))~~ To help prevent misconduct, enhance peace officer  
4 and corrections officer accountability, and enhance public trust and  
5 confidence in the criminal justice system, upon request by ((a  
6 peace)) an officer's employer or on its own initiative, the  
7 commission may deny or revoke certification of ((any peace)) an  
8 officer((, after)) as provided in this section. The commission shall  
9 provide the officer with written notice and a hearing, if a hearing  
10 is timely requested by the ((peace)) officer under RCW 43.101.155(~~(~~  
11 ~~based upon a finding of one or more of the following conditions:~~

12       ~~(a) The peace officer has failed to timely meet all requirements~~  
13 ~~for obtaining a certificate of basic law enforcement training, a~~  
14 ~~certificate of basic law enforcement training equivalency, or a~~  
15 ~~certificate of exemption from the training;~~

16       ~~(b) The peace officer has knowingly falsified or omitted material~~  
17 ~~information on an application for training or certification to the~~  
18 ~~commission;~~

19       ~~(c) The peace officer has been convicted at any time of a felony~~  
20 ~~offense under the laws of this state or has been convicted of a~~  
21 ~~federal or out-of-state offense comparable to a felony under the laws~~  
22 ~~of this state; except that if a certified peace officer was convicted~~  
23 ~~of a felony before being employed as a peace officer, and the~~  
24 ~~circumstances of the prior felony conviction were fully disclosed to~~  
25 ~~his or her employer before being hired, the commission may revoke~~  
26 ~~certification only with the agreement of the employing law~~  
27 ~~enforcement agency;~~

28       ~~(d) The peace officer has been discharged for disqualifying~~  
29 ~~misconduct, the discharge is final, and some or all of the acts or~~  
30 ~~omissions forming the basis for the discharge proceedings occurred on~~  
31 ~~or after January 1, 2002;~~

32       ~~(e) The peace officer's certificate was previously issued by~~  
33 ~~administrative error on the part of the commission; or~~

34       ~~(f) The peace officer has interfered with an investigation or~~  
35 ~~action for denial or revocation of certificate by: (i) Knowingly~~  
36 ~~making a materially false statement to the commission; or (ii) in any~~  
37 ~~matter under investigation by or otherwise before the commission,~~  
38 ~~tampering with evidence or tampering with or intimidating any~~  
39 ~~witness)). Notice and hearing are not required when a peace officer~~  
40 voluntarily surrenders certification.

1       (2) ~~((After July 24, 2005, the))~~ The commission may deny or  
2 revoke certification of a peace officer or corrections officer if the  
3 applicant or officer:

4       (a) (i) Has been convicted of:

5       (A) A felony offense;

6       (B) A gross misdemeanor domestic violence offense;

7       (C) An offense with sexual motivation as defined in RCW  
8 9.94A.030;

9       (D) An offense under chapter 9A.44 RCW; or

10       (E) A federal or out-of-state offense comparable to an offense  
11 listed in (a) (i) (A) through (D) of this subsection (2); and

12       (ii) (A) The offense was not disclosed at the time of application  
13 for initial certification; or

14       (B) The officer was a certified peace officer or corrections  
15 officer at the time of the offense; and

16       (iii) The offense is not one for which the officer was granted a  
17 full and unconditional pardon; and

18       (iv) The offense was not adjudicated as a juvenile and the record  
19 sealed;

20       (b) Has been found by the employing agency to have used excessive  
21 force that was so egregious as to cause irreparable harm to the trust  
22 required to continue serving as a law enforcement officer;

23       (c) Has been found by his or her employing agency to have, while  
24 uniformed, on duty, present, and observing another Washington law  
25 enforcement officer using force that is clearly beyond that which is  
26 objectively reasonable under the circumstances, failed to intervene  
27 to prevent, mitigate, and stop the use of unreasonable force;

28       (d) Has been terminated by the employing agency or found by a  
29 court to have knowingly made misleading, deceptive, untrue, or  
30 fraudulent representations in the practice of being a peace officer  
31 or corrections officer including, but not limited to, committing  
32 perjury, filing false reports, hiding evidence, or failing to report  
33 exonerating information. This subsection (2) (d) does not apply to  
34 representations made in the course and for the purposes of an  
35 undercover investigation; or

36       (e) Is prohibited from possessing weapons by state or federal law  
37 or by a permanent court order entered after a hearing.

38       (3) The commission shall deny certification to any applicant who  
39 ((has)) lost ((his or her)) certification as a result of a break in  
40 service of more than ((twenty-four)) 24 consecutive months if that

1 applicant failed to comply with the requirements set forth in RCW  
2 43.101.080(~~((19))~~) (15) and 43.101.095(2).

3 (4) Any of the misconduct listed in subsection (2) of this  
4 section is grounds for denial or revocation of certification of a  
5 reserve officer to the same extent as applied to a peace officer.

6 **Sec. 10.** RCW 43.101.115 and 2001 c 167 s 4 are each amended to  
7 read as follows:

8 (1) A person denied a certification based upon dismissal or  
9 withdrawal from a basic law enforcement academy (~~((for any reason not~~  
10 ~~also involving discharge for disqualifying misconduct))~~) is eligible  
11 for readmission and certification upon meeting standards established  
12 in rules of the commission, which rules may provide for probationary  
13 terms on readmission.

14 (2) A person whose certification is denied or revoked based upon  
15 prior administrative error of issuance, failure to cooperate, or  
16 interference with an investigation is eligible for certification upon  
17 meeting standards established in rules of the commission, (~~rules~~  
18 ~~which may~~) which rules shall provide for a probationary period of  
19 certification in the event of reinstatement of eligibility.

20 (3) A person whose certification is denied or revoked based upon  
21 a felony criminal conviction or based upon conduct that constitutes a  
22 felony offense, or who voluntarily surrenders his or her  
23 certification, is not eligible for certification at any time.

24 (4) A (~~peace officer~~) person whose certification is denied or  
25 revoked (~~(based upon discharge for disqualifying misconduct, but not~~  
26 ~~also based upon a felony criminal conviction,~~) for reasons other  
27 than provided in subsections (1) through (3) of this section may,  
28 five years after the revocation or denial, petition the commission  
29 for reinstatement of the certificate or for eligibility for  
30 reinstatement. The commission (~~shall~~) may hold a hearing on the  
31 petition to consider reinstatement, and the commission may allow  
32 reinstatement based upon standards established in rules of the  
33 commission. If the certificate is reinstated or eligibility for  
34 certification is determined, the commission (~~may~~) shall establish a  
35 probationary period of certification.

36 (5) A (~~peace officer~~) person whose certification is revoked  
37 based solely upon a criminal conviction may petition the commission  
38 for reinstatement immediately upon a final judicial reversal of the  
39 conviction. The commission shall hold a hearing on request to

1 consider reinstatement, and the commission may allow reinstatement  
2 based on standards established in rules of the commission. If the  
3 certificate is reinstated or if eligibility for certification is  
4 determined, the commission may establish a probationary period of  
5 certification.

6 (6) The commission's rules and decisions regarding reinstatement  
7 shall align with its responsibilities to enhance public trust and  
8 confidence in the law enforcement profession and correctional system.

9 **Sec. 11.** RCW 43.101.135 and 2001 c 167 s 6 are each amended to  
10 read as follows:

11 (1)(a) Upon ((termination)) separation of a peace officer or  
12 corrections officer from an employing agency for any reason,  
13 including termination, resignation, or retirement, the agency ((of  
14 termination)) shall((, within fifteen days of the termination,))  
15 notify the commission within 15 days of the separation date on a  
16 personnel action report form provided by the commission. ((The agency  
17 of termination shall, upon))

18 (b) If the employer accepts an officer's resignation or  
19 retirement in lieu of termination, the employing agency shall report  
20 the reasons and rationale in the information provided to the  
21 commission, including the findings from any internal or external  
22 investigations into alleged misconduct.

23 (2) In addition to those circumstances under subsection (1) of  
24 this section and whether or not disciplinary proceedings have been  
25 concluded, the employing agency shall:

26 (a) Notify the commission within 15 days of learning of the  
27 occurrence of any death or serious injury caused by the use of force  
28 by an officer or any time an officer has been charged with a crime.  
29 Employing agencies must have a policy requiring officers to report  
30 any pending criminal charges and any conviction, plea, or other case  
31 disposition immediately to their agency; and

32 (b) Notify the commission within 15 days of an initial  
33 disciplinary decision by an employing agency for alleged behavior or  
34 conduct by an officer that is noncriminal and may result in  
35 revocation of certification pursuant to RCW 43.101.105.

36 (3) To better enable the commission to act swiftly and  
37 comprehensively when misconduct has occurred that may undermine  
38 public trust and confidence in law enforcement or the correctional  
39 system, if the totality of the circumstances support a conclusion

1 that the officer resigned or retired in anticipation of discipline,  
2 whether or not the misconduct was discovered at the time, and when  
3 such discipline, if carried forward, would more likely than not have  
4 led to discharge, or if the officer was laid off when disciplinary  
5 investigation or action was imminent or pending which could have  
6 resulted in the officer's suspension or discharge, the employing  
7 agency shall conduct and complete the investigation and provide all  
8 relevant information to the commission as if the officer were still  
9 employed by the agency.

10 (4) Upon request of the commission, the employing agency shall  
11 provide such additional documentation or information as the  
12 commission deems necessary to determine whether the ((~~termination~~))  
13 separation or event provides grounds for revocation ((~~under RCW~~  
14 43.101.105)).

15 (5) At its discretion, the commission may:

16 (a) Initiate decertification proceedings upon conclusion of any  
17 investigation or disciplinary proceedings initiated by the employing  
18 agency; or

19 (b) Wait to proceed until any investigation, disciplinary  
20 proceedings, or appeals through the employing agency are final before  
21 taking action. Where a decertification decision requires a finding by  
22 the employing agency, the commission shall await notification of a  
23 finding by the employing agency before beginning the decertification  
24 process.

25 (6) An employing agency may not enter into any agreement or  
26 contract with an officer, or union:

27 (a) Not to report conduct, delay reporting, or preclude  
28 disclosure of any relevant information, including a promise not to  
29 check the box on a commission notice that indicates the officer may  
30 have committed misconduct, in exchange for allowing an officer to  
31 resign or retire or for any other reason; or

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

1        (7) The commission shall maintain ((these—notices)) all  
2 information provided pursuant to this section in a permanent file((7  
3 subject to RCW 43.101.400)).

4        (8) The commission may impose a civil penalty not to exceed  
5 \$10,000 for the failure by an officer or an employing agency to  
6 timely and accurately report information pursuant to this section.

7        **Sec. 12.** RCW 43.101.145 and 2001 c 167 s 8 are each amended to  
8 read as follows:

9        ~~((A law enforcement officer or duly authorized representative of~~  
10 ~~a law enforcement agency)) (1) Any commission staff, commission~~  
11 ~~member, or a duly authorized representative of a law enforcement~~  
12 ~~agency may submit a written complaint to the commission ((charging))~~  
13 ~~stating that ((a peace)) an officer's certificate should be denied or~~  
14 ~~revoked, and specifying the grounds for the ((charge)) complaint.~~  
15 Filing a complaint does not make a complainant a party to the  
16 commission's action.

17        (2) The commission has sole discretion whether to investigate a  
18 complaint, and the commission has sole discretion whether to  
19 investigate matters relating to certification, denial of  
20 certification, or revocation of certification on any other basis,  
21 without restriction as to the source or the existence of a complaint.  
22 All complaints must be resolved with a written determination,  
23 regardless of the decision to investigate.

24        (3) The commission may initiate an investigation in any instance  
25 where there is a pattern of complaints or other actions that may not  
26 have resulted in a formal adjudication of wrongdoing, but when  
27 considered together demonstrate conduct that would constitute a  
28 violation of RCW 43.101.105. The commission must consider an  
29 officer's job duties and assignment in determining what constitutes a  
30 pattern.

31        (4) A person who files a complaint in good faith under this  
32 section is immune from suit or any civil action related to the filing  
33 or the contents of the complaint.

34        **Sec. 13.** RCW 43.101.155 and 2001 c 167 s 9 are each amended to  
35 read as follows:

36        (1) If the commission determines, upon investigation, that there  
37 is ((probable)) cause to believe that a peace officer's or  
38 corrections officer's certification should be denied or revoked under

1 RCW 43.101.105, the commission must prepare and serve upon the  
2 officer a statement of charges. Service on the officer must be by  
3 mail or by personal service on the officer unless the officer has  
4 consented to service in some other manner, including electronic  
5 notification. Notice of the charges must also be mailed to or  
6 otherwise served upon the officer's agency of (~~termination~~)  
7 separation and any current (~~law enforcement~~) agency employer. The  
8 statement of charges must be accompanied by a notice that to receive  
9 a hearing on the denial or revocation, the officer must, within  
10 (~~sixty~~) 60 days of (~~communication of~~) the statement of charges,  
11 request a hearing before the hearings (~~board~~) panel appointed under  
12 RCW 43.101.380. Failure of the officer to request a hearing within  
13 the (~~sixty-day~~) 60-day period constitutes a default, whereupon the  
14 commission may enter an order under RCW 34.05.440.

15 (2) If a hearing is requested, the officer is required to provide  
16 an email address that constitutes the officer's legal address for  
17 purposes of any subsequent communication from the commission. Unless  
18 otherwise agreed to by the mutual agreement of the parties or for  
19 good cause, within two weeks of receipt of the officer's request for  
20 a hearing, the commission shall set a date (~~of~~) for the hearing,  
21 which must be (~~scheduled not earlier than ninety days nor later than~~  
22 ~~one hundred eighty days after communication of the statement of~~  
23 ~~charges to the officer; the one hundred eighty-day period may be~~  
24 ~~extended on mutual agreement of the parties or for good cause~~) held  
25 within 90 days thereafter. (~~The~~) On the date the hearing is set,  
26 the commission shall (~~give written~~) transmit electronic notice of  
27 the hearing (~~at least twenty days prior to the hearing~~) to the  
28 officer, and provide public notice on the commission website,  
29 specifying the time, date, and place of hearing.

30 **Sec. 14.** RCW 43.101.157 and 2006 c 22 s 2 are each amended to  
31 read as follows:

32 (1) Tribal governments may voluntarily request certification for  
33 their police officers. Tribal governments requesting certification  
34 for their police officers must enter into a written agreement with  
35 the commission. The agreement must require the tribal law enforcement  
36 agency and its officers to comply with all of the requirements for  
37 granting, denying, and revoking certification as those requirements  
38 are applied to peace officers certified under this chapter and the  
39 rules of the commission.

1 (2) Officers making application for certification as tribal  
2 police officers shall meet the requirements of this chapter and the  
3 rules of the commission as those requirements are applied to  
4 certification of peace officers. Application for certification as a  
5 tribal police officer shall be accepted and processed in the same  
6 manner as those for certification of peace officers.

7 ~~((3) For purposes of certification, "tribal police officer"~~  
8 ~~means any person employed and commissioned by a tribal government to~~  
9 ~~enforce the criminal laws of that government.))~~

10 **Sec. 15.** RCW 43.101.230 and 1981 c 134 s 1 are each amended to  
11 read as follows:

12 ~~((Indian tribe))~~ Tribal police officers and employees who are  
13 engaged in law enforcement activities and who do not qualify as  
14 "criminal justice personnel" or "law enforcement personnel" under RCW  
15 43.101.010(~~(, as now law or hereafter amended,)~~) may be provided  
16 training under this chapter if: (a) The tribe is recognized by the  
17 federal government, and (b) the tribe pays to the commission the full  
18 cost of providing such training. The commission shall place all money  
19 received under this section into the criminal justice training  
20 account.

21 **Sec. 16.** RCW 43.101.390 and 2001 c 167 s 11 are each amended to  
22 read as follows:

23 (1) The commission(~~(, its boards,)~~) and individuals acting on  
24 behalf of the commission (~~(and its boards)~~) are immune from suit in  
25 any civil or criminal action contesting or based upon proceedings or  
26 other official acts performed in the course of their duties in the  
27 administration and enforcement of this chapter.

28 (2) Without limiting the generality of the foregoing, the  
29 commission and individuals acting on behalf of the commission are  
30 immune from suit in any civil action based on the certification,  
31 denial of certification, or decertification of peace officers,  
32 reserve officers, or corrections officers.

33 **Sec. 17.** RCW 43.101.420 and 2009 c 19 s 1 are each amended to  
34 read as follows:

35 (1) The commission shall offer a training session on personal  
36 crisis recognition and crisis intervention services to criminal  
37 justice, (~~(correctional personnel))~~ corrections, and other public

1 safety employees. The training shall be implemented by the commission  
2 in consultation with appropriate public and private organizations  
3 that have expertise in crisis referral services and in the underlying  
4 conditions leading to the need for crisis referral.

5 (2) The training shall consist of a minimum of one hour of  
6 classroom or internet instruction, and shall include instruction on  
7 the following subjects:

8 (a) The description and underlying causes of problems that may  
9 have an impact on the personal and professional lives of public  
10 safety employees, including mental health issues, chemical  
11 dependency, domestic violence, financial problems, and other personal  
12 crises;

13 (b) Techniques by which public safety employees may recognize the  
14 conditions listed in (a) of this subsection and understand the need  
15 to seek assistance and obtain a referral for consultation and  
16 possible treatment; and

17 (c) A listing of examples of public and private crisis referral  
18 agencies available to public safety employees.

19 (3) The training developed by the commission shall be made  
20 available by the commission to all employees of state and local  
21 agencies that perform public safety duties. The commission may charge  
22 a reasonable fee to defer the cost of making the training available.

23 **Sec. 18.** RCW 34.12.035 and 1984 c 141 s 6 are each amended to  
24 read as follows:

25 The chief administrative law judge shall designate an  
26 administrative law judge with subject matter expertise to serve, as  
27 the need arises, as presiding officer in (~~state~~):

28 (1) State patrol disciplinary hearings conducted under RCW  
29 43.43.090; and

30 (2) Decertification hearings conducted under RCW 43.101.380.

31 **Sec. 19.** RCW 40.14.070 and 2011 c 60 s 18 are each amended to  
32 read as follows:

33 (1) (a) (~~County~~) Other than those records detailed in subsection  
34 (4) of this section, county, municipal, and other local government  
35 agencies may request authority to destroy noncurrent public records  
36 having no further administrative or legal value by submitting to the  
37 division of archives and records management lists of such records on  
38 forms prepared by the division. The archivist, a representative

1 appointed by the state auditor, and a representative appointed by the  
2 attorney general shall constitute a committee, known as the local  
3 records committee, which shall review such lists and which may veto  
4 the destruction of any or all items contained therein.

5 (b) A local government agency, as an alternative to submitting  
6 lists, may elect to establish a records control program based on  
7 recurring disposition schedules recommended by the agency to the  
8 local records committee. The schedules are to be submitted on forms  
9 provided by the division of archives and records management to the  
10 local records committee, which may either veto, approve, or amend the  
11 schedule. Approval of such schedule or amended schedule shall be by  
12 unanimous vote of the local records committee. Upon such approval,  
13 the schedule shall constitute authority for the local government  
14 agency to destroy the records listed thereon, after the required  
15 retention period, on a recurring basis until the schedule is either  
16 amended or revised by the committee.

17 (2) (a) Except as otherwise provided by law, and other than the  
18 law enforcement records detailed in subsection (4) of this section,  
19 no public records shall be destroyed until approved for destruction  
20 by the local records committee. Official public records shall not be  
21 destroyed unless:

22 (i) The records are six or more years old;

23 (ii) The department of origin of the records has made a  
24 satisfactory showing to the state records committee that the  
25 retention of the records for a minimum of six years is both  
26 unnecessary and uneconomical, particularly where lesser federal  
27 retention periods for records generated by the state under federal  
28 programs have been established; or

29 (iii) The originals of official public records less than six  
30 years old have been copied or reproduced by any photographic,  
31 photostatic, microfilm, miniature photographic, or other process  
32 approved by the state archivist which accurately reproduces or forms  
33 a durable medium for so reproducing the original.

34 An automatic reduction of retention periods from seven to six  
35 years for official public records on record retention schedules  
36 existing on June 10, 1982, shall not be made, but the same shall be  
37 reviewed individually by the local records committee for approval or  
38 disapproval of the change to a retention period of six years.

39 The state archivist may furnish appropriate information,  
40 suggestions, and guidelines to local government agencies for their

1 assistance in the preparation of lists and schedules or any other  
2 matter relating to the retention, preservation, or destruction of  
3 records under this chapter. The local records committee may adopt  
4 appropriate regulations establishing procedures to be followed in  
5 such matters.

6 Records of county, municipal, or other local government agencies,  
7 designated by the archivist as of primarily historical interest, may  
8 be transferred to a recognized depository agency.

9 (b) (i) Records of investigative reports prepared by any state,  
10 county, municipal, or other law enforcement agency pertaining to sex  
11 offenders contained in chapter 9A.44 RCW or sexually violent offenses  
12 as defined in RCW 71.09.020 that are not required in the current  
13 operation of the law enforcement agency or for pending judicial  
14 proceedings shall, following the expiration of the applicable  
15 schedule of the law enforcement agency's retention of the records, be  
16 transferred to the Washington association of sheriffs and police  
17 chiefs for permanent electronic retention and retrieval. Upon  
18 electronic retention of any document, the association shall be  
19 permitted to destroy the paper copy of the document.

20 (ii) Any sealed record transferred to the Washington association  
21 of sheriffs and police chiefs for permanent electronic retention and  
22 retrieval, including records sealed after transfer, shall be  
23 electronically retained in such a way that the record is clearly  
24 marked as sealed.

25 (iii) The Washington association of sheriffs and police chiefs  
26 shall be permitted to destroy both the paper copy and electronic  
27 record of any offender verified as deceased.

28 (c) Any record transferred to the Washington association of  
29 sheriffs and police chiefs pursuant to (b) of this subsection shall  
30 be deemed to no longer constitute a public record pursuant to RCW  
31 42.56.010 and shall be exempt from public disclosure. Such records  
32 shall be disseminated only to criminal justice agencies as defined in  
33 RCW 10.97.030 for the purpose of determining if a sex offender met  
34 the criteria of a sexually violent predator as defined in chapter  
35 71.09 RCW and the end-of-sentence review committee as defined by RCW  
36 72.09.345 for the purpose of fulfilling its duties under RCW  
37 71.09.025 and 9.95.420.

38 Electronic records marked as sealed shall only be accessible by  
39 criminal justice agencies as defined in RCW 10.97.030 who would  
40 otherwise have access to a sealed paper copy of the document, the

1 end-of-sentence review committee as defined by RCW 72.09.345 for the  
2 purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420,  
3 and the system administrator for the purposes of system  
4 administration and maintenance.

5 (3) Except as otherwise provided by law, county, municipal, and  
6 other local government agencies may, as an alternative to destroying  
7 noncurrent public records having no further administrative or legal  
8 value, donate the public records to the state library, local library,  
9 historical society, genealogical society, or similar society or  
10 organization.

11 Public records may not be donated under this subsection unless:

12 (a) The records are seventy years old or more;

13 (b) The local records committee has approved the destruction of  
14 the public records; and

15 (c) The state archivist has determined that the public records  
16 have no historic interest.

17 (4) Personnel records for any peace officer or corrections  
18 officer must be retained for the duration of the officer's employment  
19 and a minimum of 10 years thereafter. Such records include all  
20 misconduct and equal employment opportunity complaints, progressive  
21 discipline imposed including written reprimands, supervisor coaching,  
22 suspensions, involuntary transfers, other disciplinary appeals and  
23 litigation records, and any other records needed to comply with the  
24 requirements set forth in RCW 43.101.095 and 43.101.135.

25 **Sec. 20.** RCW 43.101.380 and 2020 c 119 s 10 are each amended to  
26 read as follows:

27 (1) The procedures governing adjudicative proceedings before  
28 agencies under chapter 34.05 RCW, the administrative procedure act,  
29 govern hearings before the commission and govern all other actions  
30 before the commission unless otherwise provided in this chapter. The  
31 standard of proof in actions before the commission is (~~clear,~~  
32 ~~eogent, and convincing~~) a preponderance of the evidence.

33 (2) In all hearings requested under RCW 43.101.155 (~~or~~  
34 ~~43.101.156~~), an administrative law judge appointed under chapter  
35 34.12 RCW shall be the presiding officer, shall make all necessary  
36 rulings in the course of the hearing, and shall issue a proposed  
37 recommendation, but is not entitled to vote. In addition, a five-  
38 member hearings panel shall (~~both~~) hear the case and make the

1 commission's final administrative decision. (~~Members of the~~  
2 ~~commission may, but need not, be appointed to the hearings panels.~~)

3 (3) The commission shall appoint (~~as follows two or more~~  
4 ~~panels~~) a panel to hear certification actions as follows:

5 (a) When a hearing is requested in relation to a certification  
6 action of a Washington peace officer (~~who is not a peace officer of~~  
7 ~~the Washington state patrol~~), the commission shall appoint to the  
8 panel: (i) One police chief(~~;~~ ~~(ii) one~~) or sheriff from an agency  
9 not a current or past employer of the peace officer; (~~(iii) two~~)  
10 (ii) one certified Washington peace officer(~~(s)~~) who (~~(are)~~) is at or  
11 below the level of first line supervisor(~~(, one of whom is from a~~  
12 ~~city or county law enforcement agency,~~) and who (~~(have)~~) has at  
13 least ten years' experience as a peace officer(~~(s)~~); (~~(and (iv) one~~  
14 ~~person who is not currently a peace officer and who represents a~~  
15 ~~community college or four-year college or university)~~) (iii) one  
16 member of the commission as appointed under RCW 43.101.030 (1)  
17 through (5); (iv) one member of the public who is not a prosecutor,  
18 defense attorney, judge, or law enforcement officer; and (v) one  
19 person with expertise and background in police accountability who is  
20 not a current or former peace officer or corrections officer.

21 (b) (~~When a hearing is requested in relation to a certification~~  
22 ~~action of a peace officer of the Washington state patrol, the~~  
23 ~~commission shall appoint to the panel: (i) Either one police chief or~~  
24 ~~one sheriff; (ii) one administrator of the state patrol; (iii) one~~  
25 ~~certified Washington peace officer who is at or below the level of~~  
26 ~~first line supervisor, who is not a state patrol officer, and who has~~  
27 ~~at least ten years' experience as a peace officer; (iv) one state~~  
28 ~~patrol officer who is at or below the level of first line supervisor,~~  
29 ~~and who has at least ten years' experience as a peace officer; and~~  
30 ~~(v) one person who is not currently a peace officer and who~~  
31 ~~represents a community college or four-year college or university.~~

32 ~~(c))~~ When a hearing is requested in relation to a certification  
33 action of a Washington corrections officer, the commission shall  
34 appoint to the panel: (i) (~~Two heads of~~) A person who heads either  
35 a city or county corrections agency or facility or of a Washington  
36 state department of corrections facility; (ii) (~~two~~) one  
37 corrections officer(~~(s)~~) who (~~(are)~~) is at or below the level of  
38 first line supervisor(~~(, who are from city, county, or state~~  
39 ~~corrections agencies,~~) and who (~~(have)~~) has at least ten years'  
40 experience as a corrections officer(~~(s)~~); (iii) one member of the

1 commission as appointed under RCW 43.101.030 (1) through (5); (iv)  
2 one member of the public who is not a prosecutor, defense attorney,  
3 judge, or law enforcement officer; and ((-iii-)) (v) one person with  
4 expertise and background in police accountability who is not  
5 ((currently)) a current or former peace officer or corrections  
6 officer ((and who represents a community college or four-year college  
7 or university)).

8 ~~((d))~~ (c) When a hearing is requested in relation to a  
9 certification action of a tribal police officer, the commission shall  
10 appoint to the panel (i) ~~((either one police chief or one sheriff;~~  
11 ~~(-ii-))~~ one tribal police chief; ((-iii-)) (ii) one certified  
12 Washington peace officer who is at or below the level of first line  
13 supervisor, and who has at least ten years' experience as a peace  
14 officer; ~~((-iv-))~~ (iii) one tribal police officer who is at or below  
15 the level of first line supervisor, and who has at least ten years'  
16 experience as a peace officer; ~~((and (v) one person who is not~~  
17 ~~currently a peace officer and who represents a community college or~~  
18 ~~four-year college or university))~~ (iv) one member of the commission  
19 as appointed under RCW 43.101.030 (1) through (5); and (v) one person  
20 with expertise and background in police accountability who is not a  
21 current or former peace officer or corrections officer.

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

27 ~~((3) Where the charge upon which revocation or denial is based~~  
28 ~~is that a peace officer or corrections officer was "discharged for~~  
29 ~~disqualifying misconduct," and the discharge is "final," within the~~  
30 ~~meaning of RCW 43.101.105(1)(d) or 43.101.106(4), and the officer~~  
31 ~~received a civil service hearing or arbitration hearing culminating~~  
32 ~~in an affirming decision following separation from service by the~~  
33 ~~employer, the hearings panel may revoke or deny certification if the~~  
34 ~~hearings panel determines that the discharge occurred and was based~~  
35 ~~on disqualifying misconduct;))~~ (4) In decertification matters where  
36 there was a due process hearing or a disciplinary appeals hearing  
37 following an investigation by a law enforcement agency, or a criminal  
38 hearing regarding the alleged misconduct, the hearings panel need not  
39 redetermine the underlying facts but may make ((this)) its  
40 determination based solely on review of the records and decision

1 relating to ~~((the employment separation))~~ those proceedings and any  
2 investigative or summary materials from the administrative law judge,  
3 legal counsel, and commission staff. However, the hearings panel may,  
4 in its discretion, consider additional evidence to determine whether  
5 ~~((such a discharge))~~ misconduct occurred ~~((and was based on such~~  
6 ~~disqualifying misconduct))~~. The hearings panel shall, upon written  
7 request by the subject peace officer or corrections officer, allow  
8 the peace officer or corrections officer to present additional  
9 evidence of extenuating circumstances.

10 ~~((Where the charge upon which revocation or denial of~~  
11 ~~certification is based is that a peace officer or corrections officer~~  
12 ~~"has been convicted at any time of a felony offense" within the~~  
13 ~~meaning of RCW 43.101.105(1)(c) or 43.101.106(3), the hearings panel~~  
14 ~~shall revoke or deny certification if it determines that the peace~~  
15 ~~officer or corrections officer was convicted of a felony. The~~  
16 ~~hearings panel need not redetermine the underlying facts but may make~~  
17 ~~this determination based solely on review of the records and decision~~  
18 ~~relating to the criminal proceeding. However, the hearings panel~~  
19 ~~shall, upon the panel's determination of relevancy, consider~~  
20 ~~additional evidence to determine whether the peace officer or~~  
21 ~~corrections officer was convicted of a felony.~~

22 ~~Where the charge upon which revocation or denial is based is~~  
23 ~~under RCW 43.101.105(1) (a), (b), (c), or (f) or 43.101.106 (1), (2),~~  
24 ~~(5), or (6), the hearings panel shall determine the underlying facts~~  
25 ~~relating to the charge upon which revocation or denial of~~  
26 ~~certification is based.~~

27 ~~(4))~~ (5) The commission is authorized to proceed regardless of  
28 whether an arbitrator or other appellate decision maker overturns the  
29 discipline imposed by the officer's employing agency or whether the  
30 agency settles an appeal. No action or failure to act by a law  
31 enforcement agency or corrections agency or decision resulting from  
32 an appeal of that action precludes action by the commission to revoke  
33 an officer's certificate.

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

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

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

3       **Sec. 21.** RCW 43.101.400 and 2020 c 119 s 12 are each amended to  
4 read as follows:

5       (1) Except as provided under subsection (2) of this section, the  
6 following records of the commission are confidential and exempt from  
7 public disclosure: (a) The contents of personnel action reports filed  
8 under RCW 43.101.135 or 43.101.136; (b) all files, papers, and other  
9 information obtained by the commission pursuant to RCW  
10 43.101.095(~~((5) or 43.101.096)~~) (2) and (4); and (c) all  
11 investigative files of the commission compiled in carrying out the  
12 responsibilities of the commission under this chapter. Such records  
13 are not subject to public disclosure, subpoena, or discovery  
14 proceedings in any civil action, except as provided in (~~subsection~~  
15 ~~(5) of this section~~) RCW 43.101.380(6) or which become part of the  
16 record in a decertification matter.

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

27       (3) Records which are otherwise confidential and exempt under  
28 subsection (1) of this section may also be inspected at the offices  
29 of the commission by a duly authorized representative of a law  
30 enforcement or corrections agency considering an application for  
31 employment by a person who is the subject of a record. A copy of  
32 records which are otherwise confidential and exempt under subsection  
33 (1) of this section may later be obtained by an agency after it hires  
34 the applicant. In all other cases under this subsection, the agency  
35 may not obtain a copy of the record.

36       (4) Upon a determination that a complaint is without merit, that  
37 a personnel action report filed under RCW 43.101.135 does not merit  
38 action by the commission, or that a matter otherwise investigated by

1 the commission does not merit action, the commission shall purge  
2 records addressed in subsection (1) of this section.

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

8 ~~(6))~~ Any decertification must be reported to the national  
9 decertification index.

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

14 **Sec. 22.** RCW 41.56.905 and 1983 c 287 s 5 are each amended to  
15 read as follows:

16 The provisions of this chapter are intended to be additional to  
17 other remedies and shall be liberally construed to accomplish their  
18 purpose. Except as provided in RCW 53.18.015, 43.101.095, and  
19 43.101.135, if any provision of this chapter conflicts with any other  
20 statute, ordinance, rule or regulation of any public employer, the  
21 provisions of this chapter shall control.

22 **Sec. 23.** RCW 49.44.200 and 2013 c 330 s 1 are each amended to  
23 read as follows:

24 (1) An employer may not:

25 (a) Request, require, or otherwise coerce an employee or  
26 applicant to disclose login information for the employee's or  
27 applicant's personal social networking account;

28 (b) Request, require, or otherwise coerce an employee or  
29 applicant to access his or her personal social networking account in  
30 the employer's presence in a manner that enables the employer to  
31 observe the contents of the account;

32 (c) Compel or coerce an employee or applicant to add a person,  
33 including the employer, to the list of contacts associated with the  
34 employee's or applicant's personal social networking account;

35 (d) Request, require, or cause an employee or applicant to alter  
36 the settings on his or her personal social networking account that  
37 affect a third party's ability to view the contents of the account;  
38 or

1 (e) Take adverse action against an employee or applicant because  
2 the employee or applicant refuses to disclose his or her login  
3 information, access his or her personal social networking account in  
4 the employer's presence, add a person to the list of contacts  
5 associated with his or her personal social networking account, or  
6 alter the settings on his or her personal social networking account  
7 that affect a third party's ability to view the contents of the  
8 account.

9 (2) This section does not apply to an employer's request or  
10 requirement that an employee share content from his or her personal  
11 social networking account if the following conditions are met:

12 (a) The employer requests or requires the content to make a  
13 factual determination in the course of conducting an investigation;

14 (b) The employer undertakes the investigation in response to  
15 receipt of information about the employee's activity on his or her  
16 personal social networking account;

17 (c) The purpose of the investigation is to: (i) Ensure compliance  
18 with applicable laws, regulatory requirements, or prohibitions  
19 against work-related employee misconduct; or (ii) investigate an  
20 allegation of unauthorized transfer of an employer's proprietary  
21 information, confidential information, or financial data to the  
22 employee's personal social networking account; and

23 (d) The employer does not request or require the employee to  
24 provide his or her login information.

25 (3) This section does not:

26 (a) Apply to a social network, intranet, or other technology  
27 platform that is intended primarily to facilitate work-related  
28 information exchange, collaboration, or communication by employees or  
29 other workers;

30 (b) Prohibit an employer from requesting or requiring an employee  
31 to disclose login information for access to: (i) An account or  
32 service provided by virtue of the employee's employment relationship  
33 with the employer; or (ii) an electronic communications device or  
34 online account paid for or supplied by the employer;

35 (c) Prohibit an employer from enforcing existing personnel  
36 policies that do not conflict with this section; (~~(e)~~)

37 (d) Prevent an employer from complying with the requirements of  
38 state or federal statutes, rules or regulations, case law, or rules  
39 of self-regulatory organizations; or

1 (e) Apply to a background investigation in accordance with RCW  
2 43.101.095. However, the officer must not be required to provide  
3 login information.

4 (4) If, through the use of an employer-provided electronic  
5 communications device or an electronic device or program that  
6 monitors an employer's network, an employer inadvertently receives an  
7 employee's login information, the employer is not liable for  
8 possessing the information but may not use the login information to  
9 access the employee's personal social networking account.

10 (5) For the purposes of this section and RCW 49.44.205:

11 (a) "Adverse action" means: Discharging, disciplining, or  
12 otherwise penalizing an employee; threatening to discharge,  
13 discipline, or otherwise penalize an employee; and failing or  
14 refusing to hire an applicant.

15 (b) "Applicant" means an applicant for employment.

16 (c) "Electronic communications device" means a device that uses  
17 electronic signals to create, transmit, and receive information,  
18 including computers, telephones, personal digital assistants, and  
19 other similar devices.

20 (d) "Employer" means any person, firm, corporation, partnership,  
21 business trust, legal representative, or other business entity which  
22 engages in any business, industry, profession, or other activity in  
23 this state and employs one or more employees, and includes the state,  
24 any state institution, state agency, political subdivisions of the  
25 state, and any municipal corporation or quasi-municipal corporation.  
26 "Employer" includes an agent, a representative, or a designee of the  
27 employer.

28 (e) "Login information" means a user name and password, a  
29 password, or other means of authentication that protects access to a  
30 personal social networking account.

31 **Sec. 24.** RCW 41.06.040 and 1969 ex.s. c 36 s 22 are each amended  
32 to read as follows:

33 The provisions of this chapter apply to:

34 (1) Each board, commission or other multimember body, including,  
35 but not limited to, those consisting in whole or in part of elective  
36 officers;

37 (2) Each agency, and each employee and position therein, not  
38 expressly excluded or exempted under the provisions of RCW 41.06.070  
39 or otherwise excluded or exempted in this chapter.

1        NEW SECTION.    **Sec. 25.**    A new section is added to chapter 41.06  
2 RCW to read as follows:

3        In addition to the exemptions set forth in RCW 41.06.070, the  
4 provisions of this chapter do not apply in the Washington state  
5 criminal justice training commission to two confidential secretaries  
6 involved in managing the confidential records under RCW 43.101.135  
7 and 43.101.400.

8        NEW SECTION.    **Sec. 26.**    A new section is added to chapter 10.93  
9 RCW to read as follows:

10       A law enforcement or corrections agency is prohibited from  
11 considering the application for any office, place, position, or  
12 employment within the agency if the applicant has not provided the  
13 agency a document, voluntarily and knowingly signed by the applicant,  
14 that authorizes each prior employer to release any and all  
15 information relating to the applicant's employment, and further  
16 releasing and holding harmless the agency and each prior employer  
17 from any and all liability that may potentially result from the  
18 release and use of such information provided.

19       NEW SECTION.    **Sec. 27.**    A new section is added to chapter 10.93  
20 RCW to read as follows:

21       Prior to hiring any peace officer with previous law enforcement  
22 experience, a law enforcement agency must inquire as to whether the  
23 officer has ever been subject to potential impeachment disclosure.  
24 The agency shall verify the officer's response with the prosecuting  
25 authorities in the jurisdictions of the officer's previous  
26 employment. The fact that an officer has been subject to impeachment  
27 disclosure is not, in and of itself, a bar to employment. Any  
28 prehiring process or hiring decision by an agency does not constitute  
29 a personnel action under RCW 10.93.150.

30       NEW SECTION.    **Sec. 28.**    No later than December 1, 2022, the  
31 criminal justice training commission shall submit a written report to  
32 the governor and the appropriate committees of the legislature  
33 detailing progress of implementation of this act.

34       NEW SECTION.    **Sec. 29.**    The following acts or parts of acts are  
35 each repealed:

- 1 (1) RCW 43.101.096 (Corrections officer certification) and 2020 c  
2 119 s 3;
- 3 (2) RCW 43.101.106 (Denial or revocation of corrections officer  
4 certification) and 2020 c 119 s 4;
- 5 (3) RCW 43.101.116 (Denial or revocation of corrections officer  
6 certification—Readmission to academy—Reinstatement) and 2020 c 119 s  
7 5;
- 8 (4) RCW 43.101.136 (Termination of corrections officer—  
9 Notification to commission) and 2020 c 119 s 7;
- 10 (5) RCW 43.101.146 (Written complaint by corrections officer or  
11 corrections agency to deny or revoke corrections officer  
12 certification—Immunity of complainant) and 2020 c 119 s 8; and
- 13 (6) RCW 43.101.156 (Denial or revocation of corrections officer  
14 certification—Statement of charges—Notice—Hearing) and 2020 c 119 s  
15 9.

16 NEW SECTION. **Sec. 30.** A new section is added to chapter 41.56  
17 RCW to read as follows:

18 Notwithstanding any provisions of this chapter, the provisions of  
19 chapter . . ., Laws of 2021 (this act) and the implementation thereof  
20 do not constitute personnel matters, working conditions, or any other  
21 change that require collective bargaining.

22 NEW SECTION. **Sec. 31.** To the extent that any provision of this  
23 act conflicts with any local regulation, ordinance, collective  
24 bargaining agreement, memorandum of understanding, policy, or  
25 practice, the provisions of this act shall prevail and the  
26 conflicting provision shall be null and void. If the application of  
27 this section to a collective bargaining agreement in effect on the  
28 effective date of this section would result in impairing contractual  
29 obligations under that agreement, then the existing collective  
30 bargaining agreement prevails until such time as the agreement  
31 expires, renews, or is amended."

**2SSB 5051** - S AMD 160  
By Senator Braun

**NOT ADOPTED 02/25/2021**

1 On page 1, line 2 of the title, after "corrections officers;"  
2 strike the remainder of the title and insert "amending RCW  
3 43.101.010, 43.101.020, 43.101.030, 43.101.040, 43.101.060,  
4 43.101.080, 43.101.085, 43.101.095, 43.101.105, 43.101.115,  
5 43.101.135, 43.101.145, 43.101.155, 43.101.157, 43.101.230,  
6 43.101.390, 43.101.420, 34.12.035, 40.14.070, 43.101.380, 43.101.400,  
7 41.56.905, 49.44.200, and 41.06.040; adding a new section to chapter  
8 41.06 RCW; adding new sections to chapter 10.93 RCW; adding a new  
9 section to chapter 41.56 RCW; creating new sections; repealing RCW  
10 43.101.096, 43.101.106, 43.101.116, 43.101.136, 43.101.146, and  
11 43.101.156; and prescribing penalties."

EFFECT: (1) Removes certain responsibilities from the CJTC.  
(2) Changes commission membership.  
(3) Removes ability to suspend certification.  
(4) Changes the background check process.  
(5) Clarifies circumstances requiring decertification.  
(6) Restores current law regarding public disclosure of  
investigative files.  
(7) Clarifies duty to report decertification actions to the  
national index.

--- END ---