

HOUSE BILL REPORT

HB 2559

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to the certification of corrections officers.

Brief Description: Authorizing the certification of corrections officers.

Sponsors: Representatives O'Brien, Kagi, Darneille, Upthegrove, Miloscia and Lovick.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/04, 2/3/04 [DPS].

Brief Summary of Substitute Bill

- Requires all corrections officers, as a condition of continuing employment, to timely obtain and retain certification as corrections officers.
- Establishes a five-member hearings panel to hear cases and make final administrative decisions regarding a corrections officer's decertification.
- Requires that all contents of personnel action reports, files, and other information obtained by the commission, relating to a correction officer's certification or decertification, remain confidential and exempt from public disclosure.
- Exempts corrections officers that are employed by the Juvenile Rehabilitation Administration from the certification requirements.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Pearson.

Staff: Yvonne Walker (786-7841).

Background:

All Washington law enforcement officers must timely obtain and retain certification as peace officers as a condition of continuing employment as a peace officer. The Criminal Justice Training Commission (CJTC) has the authority to issue or revoke all peace officer certifications.

As a prerequisite to certification, a peace officer must release to the CJTC all personnel files, termination papers, criminal investigation files, or any other files, papers, or information that are directly related to the certification or decertification of the officer.

Denial or Revocation of Peace Officer Certification. A peace officer's certification may be denied or revoked for a number of reasons such as:

- failing to timely meet all requirements for obtaining a certificate of basic law enforcement training or an authorized exemption from the training (certification lapses when there is a break of more than 24 consecutive months in the officer's service as a full-time law enforcement officer);
- knowingly falsifying or omitting information on a training application or certification to the commission;
- being convicted of a felony unless the felony conviction was fully disclosed to the employing agency before being hired; or
- being discharged for certain misconduct.

Re-application for Peace Officer Certification. A peace officer denied certification based upon dismissal or withdrawal from a basic law enforcement academy for any reason, except discharge for disqualifying misconduct, is eligible for readmission for certification. A person denied certification for disqualifying misconduct may, five years after the revocation or denial, petition the commission for reinstatement of the certificate. A person whose certification is denied or revoked due solely to a felony criminal conviction is not eligible for certification. However, the officer may petition the commission for reinstatement if the court issues a final judicial reversal of the conviction.

Procedures for Denying or Revoking Peace Officer Certification. Any law enforcement officer or duly authorized representative of a law enforcement agency may submit a written complaint to the commission charging that a peace officer's certificate should be denied or revoked, and specifying the grounds for the charge. The commission has sole discretion whether to investigate a complaint and whether to investigate matters relating to certification, denial of certification, or revocation of certification without restriction as to the source or the existence of the complaint. If the commission determines, upon investigation, that there is probable cause to believe that a peace officer's certification should be denied or revoked, the commission must prepare and serve upon the officer a statement of charges. The affected officer may request a hearing before the hearings board for certification reinstatement.

Hearings Panel for Peace Officers. A five-member hearings panel must both hear the case and make the commission's final administrative decision regarding an officer's re-certification. Persons appointed to a hearings panel by the commission must, in relation to any decertification matter on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of regular commission members.

In cases where there is a charge: (1) upon which revocation or denial of certification is based on a peace officer being discharged for disqualifying misconduct, (2) where the discharge is "final," and (3) where the officer received a hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if it determines that the discharge occurred and was based on disqualifying misconduct.

Where there is a charge where revocation or denial of certification is based upon a peace officer being convicted at any time of a felony offense, the hearings panel must revoke or deny certification, if it determines that the peace officer was convicted of a felony.

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties.

Disclosure of Peace Officer Records. The contents of personnel action reports, all files, papers, and other information obtained by the commission, and all investigative files relating to a peace officer's certification or decertification are confidential and exempt from public disclosure. Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action.

Records that are confidential may be reviewed and copied by the following persons: (1) by the officer involved or the officer's counsel or authorized representative who may review the officer's file and may submit any additional exculpatory or explanatory evidence, statements, or other information, any of which must be included in the file; (2) by a duly authorized representative of the agency of termination or a current employing law enforcement agency; or (3) by a representative of, or investigator for, the commission.

Upon a determination that a complaint is without merit, that a filed personnel action report does not merit action by the commission, or that a matter otherwise investigated by the commission does not merit action, the commission must purge the records.

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

Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability for providing information to the commission in good faith.

Authority of the Criminal Justice Training Commission. The commission has the authority to:

- adopt, amend, or repeal rules as necessary;
- issue subpoenas and administer oaths in connection with investigations and hearings;
- take depositions and other procedures as needed in investigations and hearings;
- appoint members of a hearings board;
- grant, deny, or revoke the certification of peace officers;
- designate individuals authorized to sign subpoenas and statements of charges; and
- hire investigative, administrative, and clerical staff or enter into contracts for professional services necessary to carry out its duties.

Correctional personnel. Correctional personnel means a state, county, or municipal employee or volunteer who has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of individuals whose civil rights have been limited in some way by legal sanction.

Washington does not have a statewide certification or re-certification process for correctional officers. As a result, correctional officer certification is not required of new corrections officers joining a corrections agency or even returning corrections officers who may have left full-time service and have later chosen to return to their careers in corrections.

Summary of Substitute Bill:

Similar to law enforcement certification, all corrections officers (with the exception of those employed as state juvenile services personnel) must timely obtain and retain certification as corrections officers as a condition of continuing employment as a corrections officer. The CJTC has the authority to issue or revoke all correctional officer certifications.

As a prerequisite to certification, a corrections officer must release to the CJTC all personnel files, termination papers, criminal investigation files, or any other files, papers, or information that are directly related to the certification or decertification of the officer.

Denial or Revocation of Corrections Officer Certification. Upon request by a corrections officer's employer or by the CJTC's own initiative, the commission may deny or revoke a corrections officer's certification (after issuing a written notice and hearing) if the officer has done one of the following actions:

- failed to timely meet all requirements for obtaining a certificate of basic

- corrections training, or an authorized exemption from the training (certification lapses when there is a break of more than 24 consecutive months in the officer's service as a full-time corrections officer);
- knowingly falsified or omitted information on a training application or certification to the commission;
 - been convicted of a felony unless the felony conviction was fully disclosed to the employing agency before being hired (in this instance, the commission may only revoke certification with the agreement of the officer's employer);
 - been discharged for misconduct, the discharge was final, and at least some of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2005;
 - obtained a certificate that was previously issued by administrative error on the part of the commission; or
 - interfered with an investigation or action for denial or revocation of a certificate by knowingly making a false statement to the commission, tampering with evidence, or intimidating any witness.

An officer may petition the commission for certification reinstatement when there is a break in service of two years or more when it is due solely to the pendency of direct review or appeal from a disciplinary discharge, or due to the pendency of a work-related injury, as this will not cause a lapse in certification. Once the commission receives a petition for reinstatement of a lapsed certification, the commission must determine whether the officer's certification status is to be reinstated and whether there are any requirements for the officer's reinstatement. The commission may adopt rules establishing requirements for reinstatement.

Within 15 days of the termination or resignation of any corrections officer, the agency of termination must notify the commission and, upon the request of the commission, provide any additional personnel documentation. The commission must maintain these notices in a permanent file.

Re-application for Corrections Officer Certification. A person denied certification based upon dismissal or withdrawal from a basic corrections academy for any reason, except discharge for disqualifying misconduct, is eligible for readmission for certification, upon meeting the required commission rules and a possible probationary period. A person denied certification, due to an administrative error of issuance, the corrections officer's failure to cooperate, or the officer's interference with an investigation, may be eligible for certification upon meeting the commission's standards as established in rules. The rules may require a probationary period of certification in the event of reinstatement of eligibility.

A corrections officer that has been denied certification for disqualifying misconduct may, five years after the revocation or denial, petition the commission for reinstatement of the certificate. A corrections officer whose certification is denied or revoked due solely to a

felony criminal conviction is not eligible for certification. However, the officer may petition the commission for reinstatement if the court issues a final judicial reversal of the conviction. In either case, where a person was denied certification for misconduct or for a felony conviction that was judicially reversed, the commission must hold a hearing on the petition to consider reinstatement, and may authorize reinstatement based upon standards established in rules by the commission. If a certificate is reinstated or eligibility for certification is determined, the commission may establish a probationary period of certification.

Procedures for Denying or Revoking Corrections Officer Certification. Any corrections officer or duly authorized representative of a corrections agency may submit a written complaint to the commission charging that a corrections officer's certificate should be denied or revoked, and specifying the grounds for the charge. Filing the complaint does not make the complainant a party to the commission's action. The commission has sole discretion whether to investigate a complaint and whether to investigate matters relating to certification, denial of certification, or revocation of certification without restriction as to the source or the existence of a complaint. A person who files a complaint in good faith is immune from suit or any civil action related to the filing or the contents of the complaint.

If the commission determines, upon investigation, that there is probable cause to believe that a corrections officer's certification should be denied or revoked, the commission must prepare and serve upon the officer a statement of charges. The statement of charges must be delivered by mail or personal service to the officer. Notice of the charges must also be mailed to or otherwise served upon the officer's agency of termination and any current corrections employer. The statement of charges must be accompanied by a notice that in order for the corrections officer to receive a hearing on the denial or revocation, he or she must within 60 days of communication of the statement of charges, request a hearing before the hearings board. Failure of the officer to request a hearing within the 60-day period constitutes a default whereby the officer will lose the right to an adjudicative proceeding. If a hearing is requested, the date of the hearing must be scheduled no earlier than 90 days nor later than 180 days after communication of the charges to the officer. The 180-day period may be extended on mutual agreement of the parties or for good cause. The commission must give written notice of the hearing at least 20 days prior to the hearing specifying the date, time, and place of the hearing.

Hearings Panel for Corrections Officers. A five-member hearings panel must both hear the case and make the commission's final administrative decision. When an appeal is filed in relation to decertification of a corrections officer, the hearings board must consist of the following five persons: (1) two heads of either a city or county corrections agency or facility, or a Department of Corrections facility; (2) two corrections officers who are at or below the level of first line supervisor, who are from city, county, or state corrections agencies, and who have at least 10 years of experience as corrections officers; and (3) one person who is not currently a corrections officer and who represents a

community college or four-year college or university.

In cases where there is a charge: (1) upon which revocation or denial of certification is based on a corrections officer being discharged for disqualifying misconduct, (2) where the discharge is "final," and (3) where the corrections officer received a hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if it determines that the discharge occurred and was based on disqualifying misconduct. The hearings panel does not need to redetermine the underlying facts, but may make a determination based solely on review of the records and the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether a discharge actually occurred and whether it was based on disqualifying misconduct. The hearings panel must, upon written request by the subject corrections officer, allow the officer to present additional evidence of extenuating circumstances.

Where there is a charge where revocation or denial of certification is based upon a corrections officer being convicted at any time of a felony offense, the hearings panel must revoke or deny certification, if it determines that the corrections officer was convicted of a felony. The hearings panel need not redetermine the underlying facts, but may make this determination based solely on review of the records and the decision relating to the criminal proceeding. However, the hearings panel must, upon the panel's determination of relevancy, consider additional evidence to determine whether the corrections officer was convicted of a felony.

Disclosure of Corrections Officers Records. The same statutes that apply to the disclosure of action reports, files, papers, and other information for peace officers also applies to corrections officers.

Authority of the Criminal Justice Training Commission. The authority of the CJTC is expanded to include granting, denying, or revoking the certification of corrections officers.

Corrections officer. A corrections officer is any corrections personnel subject to the basic corrections training at the CJTC. State juvenile services personnel is defined as any employee or volunteer who has responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of juveniles remanded to state custody and whose civil rights have been limited in some way by legal action.

Substitute Bill Compared to Original Bill:

Provisions are added to exempt the Juvenile Rehabilitation Administration (JRA) corrections officers from the CJTC certification requirements.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2005.

Testimony For: Corrections officers should be held at the same ethical standards as police officers, and as a result, the same certification requirements should be applied to both entities. This bill will help contribute to the professional stature of both institutional and community corrections officers. It will also assist in developing the professionalism of corrections officers around the state of Washington. This will be done by authorizing the CJTC to do the certifying and decertifying which will generate consistency in the certification process. There are approximately 8,600 people around Washington that will be affected by this bill.

In a recent survey, 15 of the 43 states around the U. S. that responded, stated that they certify their corrections officers.

Union members have been involved in the discussion and the drafting of this bill.

(In support with amendments) The JRA, jointly with the CJTC, would like to exclude the JRA corrections officers from the bill. The JRA requires a bachelor of arts degree along with specific training on how to directly deal with children. This is quite different than most other corrections officers that deal with mostly an adult offender population. As of last year, all of the JRA officers had to go through an extensive background check and no officers were grandfathered in. The JRA also has in place expedited tools to remove officers from their positions who are not suited to work with vulnerable populations. The JRA does share all its termination information with the CJTC so the information is available for other employers. (This issue is addressed in the substitute bill).

The Washington Federation of State Employees support the bill and suggest that current corrections officers should be grandfathered in the bill. In addition, it is recommended that a union representative be represented on the disciplinary hearings board.

Testimony Against: None.

Persons Testifying: (In support) Gary Lucas, Clark County Sheriff; Lynne DeLano, Department of Corrections; Michael Parsons, Criminal Justice Training Commission; and Dan Erker, Washington Association of Juvenile Court Administration.

(In support with amendments) Cheryl Stephani, Juvenile Rehabilitation Administration and Department of Social and Health Services; and Dennis Eagle, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.