
SUBSTITUTE HOUSE BILL 2559

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Kagi, Darneille, Upthegrove, Miloscia and Lovick)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to the certification of corrections officers;
2 amending RCW 43.101.085, 43.101.010, 43.101.380, and 43.101.400; adding
3 new sections to chapter 43.101 RCW; and providing an effective date.

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

5 **Sec. 1.** RCW 43.101.085 and 2001 c 167 s 7 are each amended to read
6 as follows:

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

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

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

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

16 (4) Appoint members of a hearings board as provided under RCW
17 43.101.380;

18 (5) Enter into contracts for professional services determined by

1 the commission to be necessary for adequate enforcement of this
2 chapter;

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

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

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

9 **Sec. 2.** RCW 43.101.010 and 2003 c 39 s 27 are each amended to read
10 as follows:

11 When used in this chapter:

12 (1) (~~The term~~) "Commission" means the Washington state criminal
13 justice training commission.

14 (2) (~~The term~~) "Boards" means the education and training
15 standards boards, the establishment of which are authorized by this
16 chapter.

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

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

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

36 (6) "State juvenile services personnel" means any employee or
37 volunteer who by state statute has the responsibility for the

1 confinement, care, management, training, treatment, education,
2 supervision, or counseling of those juveniles remanded to state custody
3 whose civil rights have been limited in some way by legal sanction.

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

11 ((+7)) (8) "Discharged for disqualifying misconduct" means:

12 (a) A peace officer is terminated from employment for: ((+a)) (i)
13 Conviction of ((+i)) (A) any crime committed under color of authority
14 as a peace officer, ((+ii)) (B) any crime involving dishonesty or
15 false statement within the meaning of Evidence Rule 609(a), ((+iii))
16 (C) the unlawful use or possession of a controlled substance, or
17 ((+iv)) (D) any other crime the conviction of which disqualifies a
18 Washington citizen from the legal right to possess a firearm under
19 state or federal law; ((+b)) (ii) conduct that would constitute any of
20 the crimes addressed in (a)(i) of this subsection; or ((+e)) (iii)
21 knowingly making materially false statements during disciplinary
22 investigations, where the false statements are the sole basis for the
23 termination.

24 (b) A corrections officer is terminated from employment for: (i)
25 Conviction of (A) any crime committed under color of authority as a
26 corrections officer, (B) any crime involving dishonesty or false
27 statement within the meaning of Evidence Rule 609(a), or (C) the
28 unlawful use or possession of a controlled substance; (ii) conduct that
29 would constitute any of the crimes addressed in (b)(i) of this
30 subsection; or (iii) knowingly making materially false statements
31 during disciplinary investigations, where the false statements are the
32 sole basis for the termination. For purposes of this chapter, a
33 corrections officer acts under "color of authority" when the officer's
34 acts or omissions were, or were purported to be, pursuant to powers
35 granted to a corrections officer performing the officer's assigned
36 responsibilities.

37 ((+8)) (9) A peace officer or corrections officer is "discharged
38 for disqualifying misconduct" within the meaning of subsection ((+7))

1 (8) of this section under the ordinary meaning of the term and when the
2 totality of the circumstances support a finding that the officer
3 resigned in anticipation of discipline, whether or not the misconduct
4 was discovered at the time of resignation, and when such discipline, if
5 carried forward, would more likely than not have led to discharge for
6 disqualifying misconduct within the meaning of subsection ~~((+7+))~~ (8)
7 of this section.

8 ~~((+9+))~~ (10) When used in context of proceedings referred to in
9 this chapter, "final" means that the peace officer or corrections
10 officer has exhausted all available civil service appeals, collective
11 bargaining remedies, and all other such direct administrative appeals,
12 and the officer has not been reinstated as the result of the action.
13 Finality is not affected by the pendency or availability of state or
14 federal administrative or court actions for discrimination, or by the
15 pendency or availability of any remedies other than direct civil
16 service and collective bargaining remedies.

17 ~~((+10+))~~ (11)(a) "Peace officer" means any law enforcement
18 personnel subject to the basic law enforcement training requirement of
19 RCW 43.101.200 and any other requirements of that section,
20 notwithstanding any waiver or exemption granted by the commission, and
21 notwithstanding the statutory exemption based on date of initial hire
22 under RCW 43.101.200. Commissioned officers of the Washington state
23 patrol, whether they have been or may be exempted by rule of the
24 commission from the basic training requirement of RCW 43.101.200, are
25 included as peace officers for purposes of this chapter. Fish and
26 wildlife officers with enforcement powers for all criminal laws under
27 RCW 77.15.075 are peace officers for purposes of this chapter.

28 (b) "Corrections officer" means any corrections personnel or state
29 juvenile services personnel subject to the basic corrections training
30 requirement of RCW 43.101.220 and any other requirements of that
31 section, notwithstanding any waiver or exemption granted by the
32 commission, and notwithstanding the statutory exemption based on date
33 of initial hire under RCW 43.101.220. State juvenile services
34 personnel who are required by agency policy and procedure to adhere to
35 an evidence-based model for service delivery shall be exempted from the
36 certification requirements of this chapter upon request of the
37 employing agency.

1 NEW SECTION. **Sec. 3.** (1) As a condition of continuing employment
2 as corrections officers, all Washington state corrections officers
3 shall: (a) Timely obtain certification as corrections officers, or
4 timely obtain exemption therefrom, by meeting all requirements of RCW
5 43.101.220, as that section is administered under the rules of the
6 commission, as well as by meeting any additional requirements under
7 this chapter; and (b) maintain the basic certification as corrections
8 officers under this chapter. The commission shall certify corrections
9 officers who have satisfied, or have been exempted by statute or by
10 rule from, the basic training requirements of RCW 43.101.220 on or
11 before January 1, 2005. Thereafter, the commission may revoke
12 certification pursuant to this chapter.

13 (2) The commission shall allow a corrections officer to retain
14 status as a certified corrections officer as long as the officer: (a)
15 Timely meets the basic corrections officer training requirements, or is
16 exempted therefrom, in whole or in part, under RCW 43.101.220 or under
17 rule of the commission; (b) meets or is exempted from any other
18 requirements under this chapter as administered under the rules adopted
19 by the commission; (c) is not denied certification by the commission
20 under this chapter; and (d) has not had certification revoked by the
21 commission.

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

29 NEW SECTION. **Sec. 4.** Upon request by a corrections officer's
30 employer or on its own initiative, the commission may deny or revoke
31 certification of any corrections officer after written notice and
32 hearing, if a hearing is timely requested by the corrections officer
33 under section 9 of this act, based upon a finding of one or more of the
34 following conditions:

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

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

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

13 (4) The corrections officer has been discharged for disqualifying
14 misconduct, the discharge is final, and some or all of the acts or
15 omissions forming the basis for the discharge proceedings occurred on
16 or after January 1, 2005;

17 (5) The corrections officer's certificate was previously issued by
18 administrative error on the part of the commission; or

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

24 NEW SECTION. **Sec. 5.** (1) A person denied a certification based
25 upon dismissal or withdrawal from a basic corrections academy for any
26 reason not also involving discharge for disqualifying misconduct is
27 eligible for readmission and certification upon meeting standards
28 established in rules of the commission, which rules may provide for
29 probationary terms on readmission.

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

36 (3) A person whose certification is denied or revoked based upon a

1 felony criminal conviction is not eligible for certification at any
2 time.

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

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

21 NEW SECTION. **Sec. 6.** A corrections officer's certification lapses
22 automatically when there is a break of more than twenty-four
23 consecutive months in the officer's service as a full-time corrections
24 officer. A break in full-time corrections service which is due solely
25 to the pendency of direct review or appeal from a disciplinary
26 discharge, or to the pendency of a work-related injury, does not cause
27 a lapse in certification. The officer may petition the commission for
28 reinstatement of certification. Upon receipt of a petition for
29 reinstatement of a lapsed certificate, the commission shall determine
30 under this chapter and any applicable rules of the commission if the
31 corrections officer's certification status is to be reinstated, and the
32 commission shall also determine any requirements which the officer must
33 meet for reinstatement. The commission may adopt rules establishing
34 requirements for reinstatement.

35 NEW SECTION. **Sec. 7.** Upon termination of a corrections officer
36 for any reason, including resignation, the agency of termination shall,

1 within fifteen days of the termination, notify the commission on a
2 personnel action report form provided by the commission. The agency of
3 termination shall, upon request of the commission, provide such
4 additional documentation or information as the commission deems
5 necessary to determine whether the termination provides grounds for
6 revocation under section 4 of this act. The commission shall maintain
7 these notices in a permanent file, subject to RCW 43.101.400.

8 Agencies employing state juvenile services personnel who are exempt
9 from the certification requirements of this chapter shall provide the
10 same termination information to assist the commission in oversight of
11 certified corrections officers.

12 NEW SECTION. **Sec. 8.** A corrections officer or duly authorized
13 representative of a corrections agency may submit a written complaint
14 to the commission charging that a corrections officer's certificate
15 should be denied or revoked, and specifying the grounds for the charge.
16 Filing a complaint does not make a complainant a party to the
17 commission's action. The commission has sole discretion whether to
18 investigate a complaint, and the commission has sole discretion whether
19 to 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 A person who files a complaint in good faith under this section is
23 immune from suit or any civil action related to the filing or the
24 contents of the complaint.

25 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
26 investigation, that there is probable cause to believe that a
27 corrections officer's certification should be denied or revoked under
28 section 4 of this act, the commission must prepare and serve upon the
29 officer a statement of charges. Service on the officer must be by mail
30 or by personal service on the officer. Notice of the charges must also
31 be mailed to or otherwise served upon the officer's agency of
32 termination and any current corrections employer. The statement of
33 charges must be accompanied by a notice that to receive a hearing on
34 the denial or revocation, the officer must, within sixty days of
35 communication of the statement of charges, request a hearing before the

1 hearings board appointed under RCW 43.101.380. Failure of the officer
2 to request a hearing within the sixty-day period constitutes a default,
3 whereupon the commission may enter an order under RCW 34.05.440.

4 (2) If a hearing is requested, the date of the hearing must be
5 scheduled not earlier than ninety days nor later than one hundred
6 eighty days after communication of the statement of charges to the
7 officer; the one hundred eighty-day period may be extended on mutual
8 agreement of the parties or for good cause. The commission shall give
9 written notice of hearing at least twenty days prior to the hearing,
10 specifying the time, date, and place of hearing.

11 **Sec. 10.** RCW 43.101.380 and 2001 c 167 s 10 are each amended to
12 read as follows:

13 (1) The procedures governing adjudicative proceedings before
14 agencies under chapter 34.05 RCW, the administrative procedure act,
15 govern hearings before the commission and govern all other actions
16 before the commission unless otherwise provided in this chapter. The
17 standard of proof in actions before the commission is clear, cogent,
18 and convincing evidence.

19 (2) (~~On all appeals brought~~) In all hearings requested under RCW
20 43.101.155 or section 9 of this act, a five-member hearings panel shall
21 both hear the case and make the commission's final administrative
22 decision. Members of the commission (~~or~~), the board on law
23 enforcement training standards and education, or the board on
24 corrections training standards and education, may but need not be
25 appointed to the hearings panels. The commission shall appoint as
26 follows two or more panels to hear (~~appeals from~~) decertification
27 actions:

28 (a) When (~~an appeal~~) a hearing is (~~filed~~) requested in relation
29 to decertification of a Washington peace officer who is not a peace
30 officer of the Washington state patrol, the commission shall appoint to
31 the panel: (i) One police chief; (ii) one sheriff; (iii) two peace
32 officers who are at or below the level of first line supervisor, who
33 are from city or county law enforcement agencies, and who have at least
34 ten years' experience as peace officers; and (iv) one person who is not
35 currently a peace officer and who represents a community college or
36 four-year college or university.

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

12 (c) When a hearing is requested in relation to decertification of
13 a Washington corrections officer, the commission shall appoint to the
14 panel: (i) Two heads of either a city or county corrections agency or
15 facility or of a Washington state department of corrections facility;
16 (ii) two corrections officers who are at or below the level of first
17 line supervisor, who are from city, county, or state corrections
18 agencies, and who have at least ten years' experience as corrections
19 officers; and (iii) one person who is not currently a corrections
20 officer and who represents a community college or four-year college or
21 university.

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

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

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

6 Where the charge upon which revocation or denial of certification
7 is based is that a peace officer or corrections officer "has been
8 convicted at any time of a felony offense" within the meaning of RCW
9 43.101.105(3) or section 4(3) of this act, the hearings panel shall
10 revoke or deny certification if it determines that the peace officer or
11 corrections officer was convicted of a felony. The hearings panel need
12 not redetermine the underlying facts but may make this determination
13 based solely on review of the records and decision relating to the
14 criminal proceeding. However, the hearings panel shall, upon the
15 panel's determination of relevancy, consider additional evidence to
16 determine whether the peace officer or corrections officer was
17 convicted of a felony.

18 Where the charge upon which revocation or denial is based is under
19 RCW 43.101.105 (1), (2), (5), or (6) or section 4(1), (2), (5), or (6)
20 of this act, the hearings panel shall determine the underlying facts
21 relating to the charge upon which revocation or denial of certification
22 is based.

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

25 **Sec. 11.** RCW 43.101.400 and 2001 c 167 s 12 are each amended to
26 read as follows:

27 (1) Except as provided under subsection (2) of this section, the
28 following records of the commission are confidential and exempt from
29 public disclosure: (a) The contents of personnel action reports filed
30 under RCW 43.101.135 or section 7 of this act; (b) all files, papers,
31 and other information obtained by the commission pursuant to RCW
32 43.101.095(3) or section 3 of this act; and (c) all investigative files
33 of the commission compiled in carrying out the responsibilities of the
34 commission under this chapter. Such records are not subject to public
35 disclosure, subpoena, or discovery proceedings in any civil action,
36 except as provided in subsection (5) of this section.

1 (2) Records which are otherwise confidential and exempt under
2 subsection (1) of this section may be reviewed and copied: (a) By the
3 officer involved or the officer's counsel or authorized representative,
4 who may review the officer's file and may submit any additional
5 exculpatory or explanatory evidence, statements, or other information,
6 any of which must be included in the file; (b) by a duly authorized
7 representative of (i) the agency of termination, or (ii) a current
8 employing law enforcement or corrections agency, which may review and
9 copy its employee-officer's file; or (c) by a representative of or
10 investigator for the commission.

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

20 (4) Upon a determination that a complaint is without merit, that a
21 personnel action report filed under RCW 43.101.135 does not merit
22 action by the commission, or that a matter otherwise investigated by
23 the commission does not merit action, the commission shall purge
24 records addressed in subsection (1) of this section.

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

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

33 NEW SECTION. **Sec. 12.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 13.** Sections 3 through 9 of this act are each
2 added to chapter 43.101 RCW.

3 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2005.

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