
HOUSE BILL 2559

State of Washington

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By Representatives O'Brien, Kagi, Darneille, Upthegrove, Miloscia and Lovick

Read first time 01/16/2004. Referred to Committee on Criminal Justice & Corrections.

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 standards
15 boards, the establishment of which are authorized by this chapter.

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

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

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

35 (6) A peace officer or corrections officer is "convicted" at the
36 time a plea of guilty has been accepted, or a verdict of guilty or
37 finding of guilt has been filed, notwithstanding the pendency of any

1 future proceedings, including but not limited to sentencing, posttrial
2 or postfact-finding motions and appeals. "Conviction" includes a
3 deferral of sentence and also includes the equivalent disposition by a
4 court in a jurisdiction other than the state of Washington.

5 (7) "Discharged for disqualifying misconduct" means:

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

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

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

1 disqualifying misconduct within the meaning of subsection (7) of this
2 section.

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

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

23 (b) "Corrections officer" means any corrections personnel subject
24 to the basic corrections training requirement of RCW 43.101.220 and any
25 other requirements of that section, notwithstanding any waiver or
26 exemption granted by the commission, and notwithstanding the statutory
27 exemption based on date of initial hire under RCW 43.101.220.

28 NEW SECTION. Sec. 3. (1) As a condition of continuing employment
29 as corrections officers, all Washington state corrections officers
30 shall: (a) Timely obtain certification as corrections officers, or
31 timely obtain exemption therefrom, by meeting all requirements of RCW
32 43.101.220, as that section is administered under the rules of the
33 commission, as well as by meeting any additional requirements under
34 this chapter; and (b) maintain the basic certification as corrections
35 officers under this chapter. The commission shall certify corrections
36 officers who have satisfied, or have been exempted by statute or by

1 rule from, the basic training requirements of RCW 43.101.220 on or
2 before January 1, 2005. Thereafter, the commission may revoke
3 certification pursuant to this chapter.

4 (2) The commission shall allow a corrections officer to retain
5 status as a certified corrections officer as long as the officer: (a)
6 Timely meets the basic corrections officer training requirements, or is
7 exempted therefrom, in whole or in part, under RCW 43.101.220 or under
8 rule of the commission; (b) meets or is exempted from any other
9 requirements under this chapter as administered under the rules adopted
10 by the commission; (c) is not denied certification by the commission
11 under this chapter; and (d) has not had certification revoked by the
12 commission.

13 (3) As a prerequisite to certification, as well as a prerequisite
14 to pursuit of a hearing under section 9 of this act, a corrections
15 officer must, on a form devised or adopted by the commission, authorize
16 the release to the commission of his or her personnel files,
17 termination papers, criminal investigation files, or other files,
18 papers, or information that are directly related to a certification
19 matter or decertification matter before the commission.

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

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

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

32 (3) The corrections officer has been convicted at any time of a
33 felony offense under the laws of this state or has been convicted of a
34 federal or out-of-state offense comparable to a felony under the laws
35 of this state; except that if a certified corrections officer was
36 convicted of a felony before being employed as a corrections officer,
37 and the circumstances of the prior felony conviction were fully

1 disclosed to his or her employer before being hired, the commission may
2 revoke certification only with the agreement of the employing
3 corrections agency;

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

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

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

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

21 (2) A person whose certification is denied or revoked based upon
22 prior administrative error of issuance, failure to cooperate, or
23 interference with an investigation is eligible for certification upon
24 meeting standards established in rules of the commission, rules which
25 may provide for a probationary period of certification in the event of
26 reinstatement of eligibility.

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

30 (4) A corrections officer whose certification is denied or revoked
31 based upon discharge for disqualifying misconduct, but not also based
32 upon a felony criminal conviction, may, five years after the revocation
33 or denial, petition the commission for reinstatement of the certificate
34 or for eligibility for reinstatement. The commission shall hold a
35 hearing on the petition to consider reinstatement, and the commission
36 may allow reinstatement based upon standards established in rules of

1 the commission. If the certificate is reinstated or eligibility for
2 certification is determined, the commission may establish a
3 probationary period of certification.

4 (5) A corrections officer whose certification is revoked based
5 solely upon a criminal conviction may petition the commission for
6 reinstatement immediately upon a final judicial reversal of the
7 conviction. The commission shall hold a hearing on request to consider
8 reinstatement, and the commission may allow reinstatement based on
9 standards established in rules of the commission. If the certificate
10 is reinstated or if eligibility for certification is determined, the
11 commission may establish a probationary period of certification.

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

26 NEW SECTION. **Sec. 7.** Upon termination of a corrections officer
27 for any reason, including resignation, the agency of termination shall,
28 within fifteen days of the termination, notify the commission on a
29 personnel action report form provided by the commission. The agency of
30 termination shall, upon request of the commission, provide such
31 additional documentation or information as the commission deems
32 necessary to determine whether the termination provides grounds for
33 revocation under section 4 of this act. The commission shall maintain
34 these notices in a permanent file, subject to RCW 43.101.400.

1 NEW SECTION. **Sec. 8.** A corrections officer or duly authorized
2 representative of a corrections agency may submit a written complaint
3 to the commission charging that a corrections officer's certificate
4 should be denied or revoked, and specifying the grounds for the charge.
5 Filing a complaint does not make a complainant a party to the
6 commission's action. The commission has sole discretion whether to
7 investigate a complaint, and the commission has sole discretion whether
8 to investigate matters relating to certification, denial of
9 certification, or revocation of certification on any other basis,
10 without restriction as to the source or the existence of a complaint.
11 A person who files a complaint in good faith under this section is
12 immune from suit or any civil action related to the filing or the
13 contents of the complaint.

14 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
15 investigation, that there is probable cause to believe that a
16 corrections officer's certification should be denied or revoked under
17 section 4 of this act, the commission must prepare and serve upon the
18 officer a statement of charges. Service on the officer must be by mail
19 or by personal service on the officer. Notice of the charges must also
20 be mailed to or otherwise served upon the officer's agency of
21 termination and any current corrections employer. The statement of
22 charges must be accompanied by a notice that to receive a hearing on
23 the denial or revocation, the officer must, within sixty days of
24 communication of the statement of charges, request a hearing before the
25 hearings board appointed under RCW 43.101.380. Failure of the officer
26 to request a hearing within the sixty-day period constitutes a default,
27 whereupon the commission may enter an order under RCW 34.05.440.

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

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

1 (1) The procedures governing adjudicative proceedings before
2 agencies under chapter 34.05 RCW, the administrative procedure act,
3 govern hearings before the commission and govern all other actions
4 before the commission unless otherwise provided in this chapter. The
5 standard of proof in actions before the commission is clear, cogent,
6 and convincing evidence.

7 (2) (~~On all appeals brought~~) In all hearings requested under RCW
8 43.101.155 or section 9 of this act, a five-member hearings panel shall
9 both hear the case and make the commission's final administrative
10 decision. Members of the commission (~~or~~), the board on law
11 enforcement training standards and education, or the board on
12 corrections training standards and education, may but need not be
13 appointed to the hearings panels. The commission shall appoint as
14 follows two or more panels to hear (~~appeals from~~) decertification
15 actions:

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

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

36 (c) When a hearing is requested in relation to decertification of
37 a Washington corrections officer, the commission shall appoint to the
38 panel: (i) Two heads of either a city or county corrections agency or

1 facility or of a Washington state department of corrections facility;
2 (ii) two corrections officers who are at or below the level of first
3 line supervisor, who are from city, county, or state corrections
4 agencies, and who have at least ten years' experience as corrections
5 officers; and (iii) one person who is not currently a corrections
6 officer and who represents a community college or four-year college or
7 university.

8 (d) Persons appointed to hearings panels by the commission shall,
9 in relation to any decertification matter on which they sit, have the
10 powers, duties, and immunities, and are entitled to the emoluments,
11 including travel expenses in accordance with RCW 43.03.050 and
12 43.03.060, of regular commission members.

13 (3) Where the charge upon which revocation or denial is based is
14 that a peace officer or corrections officer was "discharged for
15 disqualifying misconduct," and the discharge is "final," within the
16 meaning of RCW 43.101.105(4) or section 4(4) of this act, and the
17 officer received a civil service hearing or arbitration hearing
18 culminating in an affirming decision following separation from service
19 by the employer, the hearings panel may revoke or deny certification if
20 the hearings panel determines that the discharge occurred and was based
21 on disqualifying misconduct; the hearings panel need not redetermine
22 the underlying facts but may make this determination based solely on
23 review of the records and decision relating to the employment
24 separation proceeding. However, the hearings panel may, in its
25 discretion, consider additional evidence to determine whether such a
26 discharge occurred and was based on such disqualifying misconduct. The
27 hearings panel shall, upon written request by the subject peace officer
28 or corrections officer, allow the peace officer or corrections officer
29 to present additional evidence of extenuating circumstances.

30 Where the charge upon which revocation or denial of certification
31 is based is that a peace officer or corrections officer "has been
32 convicted at any time of a felony offense" within the meaning of RCW
33 43.101.105(3) or section 4(3) of this act, the hearings panel shall
34 revoke or deny certification if it determines that the peace officer or
35 corrections officer was convicted of a felony. The hearings panel need
36 not redetermine the underlying facts but may make this determination
37 based solely on review of the records and decision relating to the
38 criminal proceeding. However, the hearings panel shall, upon the

1 panel's determination of relevancy, consider additional evidence to
2 determine whether the peace officer or corrections officer was
3 convicted of a felony.

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

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

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

13 (1) Except as provided under subsection (2) of this section, the
14 following records of the commission are confidential and exempt from
15 public disclosure: (a) The contents of personnel action reports filed
16 under RCW 43.101.135 or section 7 of this act; (b) all files, papers,
17 and other information obtained by the commission pursuant to RCW
18 43.101.095(3) or section 3 of this act; and (c) all investigative files
19 of the commission compiled in carrying out the responsibilities of the
20 commission under this chapter. Such records are not subject to public
21 disclosure, subpoena, or discovery proceedings in any civil action,
22 except as provided in subsection (5) of this section.

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

33 (3) Records which are otherwise confidential and exempt under
34 subsection (1) of this section may also be inspected at the offices of
35 the commission by a duly authorized representative of a law enforcement
36 or corrections agency considering an application for employment by a
37 person who is the subject of a record. A copy of records which are

1 otherwise confidential and exempt under subsection (1) of this section
2 may later be obtained by an agency after it hires the applicant. In
3 all other cases under this subsection, the agency may not obtain a copy
4 of the record.

5 (4) Upon a determination that a complaint is without merit, that a
6 personnel action report filed under RCW 43.101.135 does not merit
7 action by the commission, or that a matter otherwise investigated by
8 the commission does not merit action, the commission shall purge
9 records addressed in subsection (1) of this section.

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

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

18 NEW SECTION. **Sec. 12.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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

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

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