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SENATE BILL 5740

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators King, Kline, Swecker, and Morton

Read first time 01/30/09. Referred to Committee on Judiciary.

1            AN ACT Relating to mandatory drug testing of peace officers; adding  
2 new sections to chapter 43.101 RCW; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.** LEGISLATIVE INTENT. The purpose of this act  
5 is to recognize the difficulty, challenge, and danger of law  
6 enforcement work, the jeopardy to public safety posed by law  
7 enforcement officers impaired by drugs, and the importance of local  
8 community safety standards.

9            The legislature finds that law enforcement officers face extreme  
10 hazards and life-threatening circumstances while protecting and serving  
11 the public. Law enforcement officers are also granted certain powers  
12 such as the right to arrest, the right to drive at high speeds on  
13 crowded streets, and the right to use deadly force. The legislature  
14 finds that many law enforcement officers are also often exposed to  
15 illegal drugs in the course of performing their duties and that the  
16 state and local communities go to great lengths and expense to hire,  
17 train, and equip law enforcement officers.

18            The legislature recognizes that drug use by law enforcement  
19 officers severely undermines the integrity of law enforcement agencies

1 and undermines the public's trust and confidence in its officers. The  
2 legislature desires to assure that local communities can ensure that  
3 its law enforcement officers are always capable of performing at peak  
4 levels of productivity and health. The legislature finds that due to  
5 the special nature of their work, law enforcement officers are exposed  
6 to higher incidents of stress, danger, hostility, and risk, which can  
7 and does impact their physical and mental well-being. The legislature  
8 recognizes that law enforcement officers are critically important to  
9 public safety, and that their well-being is vital. The legislature  
10 finds that an impaired law enforcement officer creates a direct threat  
11 to the public safety.

12 It is the intent of the legislature that local communities be  
13 allowed to establish local community safety standards ensuring that no  
14 officer is impaired by a chemical dependency or substance addiction  
15 that would adversely affect the officer's ability to do his or her job  
16 safely. Therefore, the legislature establishes this act allowing local  
17 communities to require that all peace officers working in their  
18 jurisdiction submit to mandatory posttraffic collision, postshooting,  
19 and random drug testing.

20 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
21 requires otherwise, the definitions in this section apply throughout  
22 this chapter.

23 (1) "Confirmation test" means a second analytical procedure to  
24 identify the presence of a specific controlled substance or controlled  
25 substance metabolite which is independent of the screen test and which  
26 uses a different technique and chemical principle from that of the  
27 screen test in order to ensure reliability and accuracy.

28 (2) "Drug" means any controlled substance subject to testing  
29 pursuant to drug testing regulations adopted by the United States  
30 department of transportation.

31 (3) "Drug test" means a method for determining the presence of a  
32 drug in a specimen using a scientifically reliable method performed in  
33 accordance with regulations governing drug testing adopted by the  
34 United States department of transportation.

35 (4) "Medical review officer" means a licensed physician who:

36 (a) Has knowledge of substance abuse disorders, laboratory testing  
37 procedures, and chain of custody collection procedures;

1 (b) Verifies positive, confirmed test results; and

2 (c) Has the necessary medical training to interpret and evaluate a  
3 peace officer's positive test result in relation to the peace officer's  
4 medical history and any other relevant biomedical information.

5 (5) "Peace officer" means a general authority Washington peace  
6 officer as defined by RCW 10.93.020(3) and reserve peace officers. For  
7 purposes of this chapter, a reserve peace officer is an individual who  
8 is an officer of a Washington law enforcement agency who does not serve  
9 such agency on a compensated or full-time basis but who, when called by  
10 the agency into active service, is fully commissioned on the same basis  
11 as a general authority Washington peace officer to enforce the criminal  
12 laws of the state.

13 (6) "Random selection method" means a mechanism for the selection  
14 of an individual which results in an equal probability that any person  
15 from the group of individuals subject to the selection mechanism will  
16 be selected.

17 (7) "Shooting" means the discharge of a firearm by a peace officer  
18 in the performance of his or her duties resulting in death or injury to  
19 any human being.

20 (8) "Specimen" means tissue, fluid, or a product of the human body  
21 capable of revealing the presence of drugs or their metabolites.

22 (9) "Traffic collision" means an occurrence associated with the  
23 operation of a motor vehicle if, as a result, any individual suffers or  
24 complains of bodily injury.

25 NEW SECTION. **Sec. 3.** SUBMISSION TO VOTERS. (1) A city, county,  
26 town, port district, or any other taxing district may institute  
27 mandatory drug testing after a traffic collision or shooting and random  
28 drug testing for all peace officers employed by it, after approval by  
29 the voters, pursuant to the terms of this section.

30 (2) The drug testing proposition must be submitted at a general or  
31 special election.

32 (3) The proposition may be imposed only when specifically  
33 authorized by a majority of registered voters voting on the  
34 proposition.

35 (4) Ballot propositions shall conform with chapter 29A.36 RCW.

36 (5) Mandatory drug testing imposed under this section shall conform

1 to all sections of this act and shall commence no later than twelve  
2 months after the date of the election.

3 NEW SECTION. **Sec. 4.** RANDOM PEACE OFFICER DRUG TESTING. Random  
4 peace officer drug testing imposed pursuant to section 3 of this act  
5 shall conform to the following:

6 (1) At least thirty percent of the average number of peace officers  
7 employed by the taxing district's law enforcement agency shall undergo  
8 random drug testing by the agency each calendar year;

9 (2) Peace officers who are notified of selection for random drug  
10 testing shall proceed to the test site immediately;

11 (3) Random drug testing shall occur during, or immediately before  
12 or after, a regular work period;

13 (4) The selection of peace officers for random drug testing shall  
14 be made by a random selection method; and

15 (5) Random drug testing shall be unannounced and the dates for  
16 administering the tests shall be spread reasonably throughout the  
17 calendar year.

18 NEW SECTION. **Sec. 5.** POSTSHOOTING PEACE OFFICER DRUG TESTING.  
19 Peace officer drug testing after a shooting imposed pursuant to section  
20 3 of this act shall require that a peace officer who discharges a  
21 firearm in the performance of his or her duties resulting in death or  
22 injury to any human being shall submit to a drug test as soon as  
23 practicable following the discharge.

24 NEW SECTION. **Sec. 6.** POSTTRAFFIC COLLISION PEACE OFFICER DRUG  
25 TESTING. Posttraffic collision drug testing imposed pursuant to  
26 section 3 of this act shall require that a peace officer who is  
27 operating a motor vehicle involved in a traffic collision shall submit  
28 to a drug test as soon as practicable following the traffic collision.

29 NEW SECTION. **Sec. 7.** TESTING POLICY. Drug testing pursuant to  
30 this act shall be carried out within the terms of a written policy that  
31 has been distributed to all peace officers subject to the policy. The  
32 written policy shall include at least the following:

33 (1) A description of those persons who are subject to testing;

34 (2) The circumstances under which testing will be required;

1 (3) A description of the testing methods and collection procedures  
2 to be used;

3 (4) The consequences of a refusal to participate in the testing;

4 (5) The right of a peace officer, on request, to obtain the written  
5 test results;

6 (6) The right of a peace officer, on request, to explain in a  
7 confidential setting a positive test result; and

8 (7) A statement of the law enforcement agency's policy regarding  
9 the confidentiality of the test results.

10 NEW SECTION. **Sec. 8.** PROCEDURES FOR SPECIMEN COLLECTION AND  
11 TESTING. All specimen collection and testing pursuant to this act  
12 shall be performed in accordance with the following:

13 (1) A specimen shall be collected with due regard to the privacy of  
14 the individual providing the specimen, and in a manner reasonably  
15 calculated to prevent substitution or contamination of the specimen;

16 (2) Specimen collection shall be documented, and the documentation  
17 procedures shall include labeling of specimen containers so as to  
18 reasonably preclude the likelihood of erroneous identification of test  
19 results;

20 (3) Specimen storage and transportation to the place of testing  
21 shall be performed in a manner that reasonably precludes the  
22 probability of sample misidentification, contamination, and  
23 adulteration;

24 (4) Specimen testing shall conform to scientifically accepted  
25 analytical methods and procedures;

26 (5) Specimen testing shall be conducted at a laboratory approved or  
27 certified by the United States department of health and human services;

28 (6) Before the result of a positive initial screening may be used  
29 as a basis for any action by a law enforcement agency, the law  
30 enforcement agency shall verify or confirm the positive initial  
31 screening test by a confirmation test;

32 (7) Laboratory analyses required by this act shall be restricted to  
33 those tests required by this act to detect drugs. They shall not be  
34 used for other purposes such as the analysis of physiological states or  
35 diseases;

36 (8) Prior to reporting a positive test result, the medical review  
37 officer shall give the peace officer an opportunity to discuss the test

1 result, including providing verification of any prescription  
2 medications. If the peace officer meets with the medical review  
3 officer and fails to present information affecting the test result or  
4 if the peace officer refuses to meet with the medical review officer,  
5 the medical review officer will verify a positive test result and will  
6 inform the law enforcement agency on a confidential basis that the  
7 peace officer tested positive;

8 (9) Within five working days after its receipt of a positive  
9 confirmed test result from the laboratory, the law enforcement agency  
10 shall inform the peace officer in writing of the positive test result.  
11 The law enforcement agency shall provide to the peace officer, upon  
12 request, a copy of the test results; and

13 (10) If the peace officer meets with the medical review officer and  
14 fails to present information affecting a positive test result, the  
15 medical review officer will inform the peace officer that he or she may  
16 request split specimen testing. For purposes of this section, "split  
17 specimen testing" means that a peace officer who wishes to challenge a  
18 positive drug test must notify the medical review officer that he or  
19 she wishes split specimen testing within seventy-two hours after he or  
20 she is notified of a positive test result, and the test of the second  
21 specimen must be processed at a different laboratory than the  
22 laboratory that tested the primary specimen.

23 NEW SECTION. **Sec. 9.** PROTECTION FROM LITIGATION. (1) No cause of  
24 action is or may be established against a law enforcement agency that  
25 has established a program of drug testing in accordance with this act  
26 unless the law enforcement agency's action was based on a false  
27 positive drug test result and the law enforcement agency knew or  
28 clearly should have known that the result was in error and ignored the  
29 true test result because of reckless or malicious disregard for the  
30 truth.

31 (2) In any claim, including a claim under this act, if it is  
32 alleged that a law enforcement agency's action was based on a false  
33 positive test result, there is a rebuttable presumption that the test  
34 result was valid if the law enforcement agency complied with the  
35 provisions of this act; and the law enforcement agency is not liable  
36 for monetary damages if its reliance on a false positive test result  
37 was reasonable and in good faith.

1        NEW SECTION.    **Sec. 10.**    CONFIDENTIALITY.    The drug test results  
2    obtained pursuant to this act shall be treated as sensitive information  
3    and shall be released only to persons within the agency who have senior  
4    administrative personnel authority and to their immediate staff.    All  
5    drug test results shall be maintained by the law enforcement agency in  
6    a secure location with controlled access and separate from other files  
7    containing personnel information.    No evidence derived from a positive  
8    test result pursuant to this act shall be admissible in a criminal  
9    prosecution concerning unlawful possession, sale, or distribution of  
10   controlled substances.

11       NEW SECTION.    **Sec. 11.**    OTHER LAWFUL TESTING.    Nothing in this act  
12   shall prohibit law enforcement agencies from conducting any lawful  
13   testing of peace officers that is in addition to the minimum testing in  
14   this act.

15       NEW SECTION.    **Sec. 12.**    Sections 1 through 11 of this act are each  
16   added to chapter 43.101 RCW under the new subchapter heading "Mandatory  
17   drug testing of peace officers."

18       NEW SECTION.    **Sec. 13.**    Captions used in this act are not any part  
19   of the law.

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