
Public Safety Committee

E2SSB 5051

Brief Description: Concerning state oversight and accountability of peace officers and corrections officers.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Pedersen, Dhingra, Darneille, Hunt, Kuderer, Lias, Lovelett, Mullet, Nguyen, Salomon, Stanford, Wellman and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Modifies the priorities and composition of the Criminal Justice Training Commission.
- Expands the background investigation requirements for persons applying for peace officer, reserve officer, and corrections officer positions.
- Makes changes to the certification and decertification processes for peace officers and corrections officers.

Hearing Date: 3/11/21

Staff: Omeara Harrington (786-7136).

Background:

The Criminal Justice Training Commission.

The Criminal Justice Training Commission (CJTC) provides training and educational programs to law enforcement, corrections officers, and other public safety professionals in Washington. This includes hosting the Basic Law Enforcement Academy and the Corrections Officer Academy, as well as advanced training. The CJTC also certifies and, when necessary, decertifies peace officers and corrections officers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The CJTC consists of 16 members serving six-year terms. Membership includes: two incumbent sheriffs and two incumbent chiefs of police; two officers at or below the level of first line supervisor with at least 10 years' experience, one from a county agency and one from a municipal agency; two correctional employees, one at the state level and one at the county level; one incumbent prosecuting attorney; an elected official of a local government; two private citizens, at least one from a historically underrepresented community; a tribal chair, board member, councilmember, or designee; the Attorney General; the special agent in charge of the Seattle office of the Federal Bureau of Investigation; and the Chief of the Washington State Patrol. Seven members constitute a quorum.

Background Investigations of Officer Applicants.

A background investigation is required of all applicants who receive a conditional offer of employment as a peace officer, reserve officer, or corrections officer, or who are seeking reinstatement to such position following a lapse in service. The law enforcement or corrections agency that makes a conditional offer of employment to an applicant must administer the background investigation. The background investigation must include a criminal history check, verification of citizenship or lawful permanent resident status, a psychological examination, and a polygraph or similar assessment, for use in determining the applicant's suitability for employment as a peace officer, reserve officer, or corrections officer.

Certification of Peace Officers and Corrections Officers.

Officer Certification Requirements.

As a condition of continuing employment, unless granted an exemption by the CJTC, all peace officers and corrections officers must obtain and maintain peace officer or corrections officer certification. Peace officers include any law enforcement personnel whose primary function is the enforcement of criminal laws in general. Corrections officers include corrections agency employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails and detention facilities. For purposes of the certification requirement, corrections officers do not include individuals employed by state agencies.

As a prerequisite to certification, in addition to submitting to the background investigation administered by the hiring agency, a peace officer or corrections officer must authorize the release to the CJTC of his or her personnel files, termination papers, criminal investigation files, and any other documents or information directly related to certification.

A peace officer or corrections officer may retain his or her certification as long as the officer timely meets basic training requirements and any other applicable requirements, is not denied certification, and has not had certification revoked.

Grounds for Denial or Revocation of Certification.

The CJTC may deny or revoke a peace or corrections officer's certification after written notice and a hearing, if requested, based on a finding that the officer:

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

- knowingly falsified or omitted material information on a training or certification application;
- has been convicted at any time of a felony offense, unless the conviction occurred before the officer's employment and the circumstances of the conviction were fully disclosed to the employer before hire, in which case the CJTC may revoke certification only with the agreement of the employing agency;
- was issued certification by administrative error on the part of the CJTC;
- interfered with an investigation or action for denial or revocation of certificate by knowingly making a materially false statement to the CJTC or tampering with evidence or witnesses in any matter under investigation by or otherwise before the CJTC; or
- was discharged for disqualifying misconduct. Disqualifying misconduct includes: (1) conviction of any crime that: was committed under color of authority as an officer; involved dishonesty or false statement; involved the unlawful use or possession of a controlled substance; or, in the case of peace officers, disqualifies a Washington citizen from the legal right to possess a firearm; (2) conduct that would constitute any such crime; and (3) knowingly making materially false statements during disciplinary investigations, where such statements provided the sole basis for termination.

An officer's certification lapses automatically when there is a break of more than 24 consecutive months in the officer's full-time service. A break in service due to the pendency of direct review or appeal from a disciplinary discharge, or due to work-related injury, does not cause certification to lapse.

Process for Revocation of Certification.

A peace officer or corrections officer, or a law enforcement or corrections agency, may submit a written complaint to the CJTC charging that a peace or corrections officer's certificate should be denied or revoked, and specifying the grounds for the charge. Additionally, upon termination of an officer for any reason, including resignation, the employing agency must notify the CJTC within 15 days of the termination. The CJTC may request additional documentation from the agency, if necessary, to determine whether the termination provides grounds for revocation.

If, upon investigation, the CJTC determines that there is probable cause to believe that an officer's certification should be denied or revoked, it must serve the officer and the officer's agency with a statement of charges. The officer may request a hearing to contest the denial or revocation within 60 days. If a hearing is requested, the hearing must be scheduled 90 to 180 days after the communication of charges (if a peace officer) or after the request (if a corrections officer), unless extended by agreement of the parties.

The case must be presented to and decided by a five-member hearings panel appointed by the CJTC. The panel for a case concerning peace officer certification must include: one police chief; one sheriff; two certified Washington peace officers who are at or below the level of first line supervisor, who have at least 10 years' experience as peace officers; and one person who is not currently a peace officer and who represents a community college or four-year college or university. When the hearing concerns a peace officer of the Washington State Patrol (WSP),

the panel includes an administrator of the WSP in place of either the police chief or sheriff. A hearing panel for a case involving a corrections officer must include two heads of a local correctional agency or Department of Corrections facility and two corrections officers, rather than a police chief, sheriff, and two peace officers. Hearings are governed according to the Administrative Procedures Act, and the standard of proof is clear, cogent, and convincing evidence. The final administrative decision is subject to judicial review.

Reinstatement of Certification.

If an officer's certification is denied based upon dismissal or withdrawal from a basic law enforcement or corrections academy for any reason not also involving discharge for disqualifying misconduct, or if certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation, the officer is eligible for readmission and certification upon meeting standards established by the CJTC. The CJTC rules may provide for a probationary period of certification.

An officer whose certification is denied or revoked based upon a felony criminal conviction is generally not eligible for certification at any time. However, if certification is revoked based solely on a criminal conviction, the officer may petition for reinstatement immediately upon a final judicial reversal of the conviction. Additionally, an officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after the revocation or denial, petition for reinstatement of the certificate or for eligibility for reinstatement. In either circumstance, the CJTC must hold a hearing and may allow reinstatement or probationary certification.

If an officer's certification has automatically lapsed due to a break in service, the officer may petition the CJTC for reinstatement. The CJTC must determine whether there are any requirements that must be met prior to reinstatement and may reinstate the certification.

A peace officer whose certification is denied or revoked may not be certified as a corrections officer, and a corrections officer whose certification is denied or revoked may not be certified as a peace officer, without first satisfying the requirements of eligibility for certification or reinstatement of certification.

Retention and Disclosure of Records.

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information is exempt from disclosure in the PRA or as otherwise provided in law. Certain CJTC records are confidential and are exempt from public disclosure, including the contents of personnel action (termination) reports, all files, papers, and other information obtained by the CJTC for purposes of officer background investigations, and all investigative files. Additionally, the CJTC must purge such records if it determines that a complaint is without merit, or that a matter under investigation does not merit action.

Summary of Engrossed Second Substitute Bill:

The Criminal Justice Training Commission.

Numerous changes are made to the provisions outlining the purpose and authority of the CJTC, including reorganizing provisions, harmonizing provisions with the rest of the bill, and removing outdated references. Additionally, the CJTC is authorized to issue public recommendations to law enforcement agencies regarding command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, and other matters. The CJTC must also strive to promote public trust and confidence in every aspect of the criminal justice system, and its programs and training must enhance the integrity, effectiveness, and professionalism of officers, while helping ensure that services are delivered in a manner that complies with the state and federal constitutions and laws.

The membership of the CJTC is increased from 16 to 17, and changes are made to its composition, including: reducing the number of law enforcement and corrections positions from eight to four; adding a public defender and a person with civilian oversight or auditing experience over law enforcement agencies; and increasing the number of private citizen positions from two to five. Additionally, the tribal member may be any enrolled member, as opposed to only a tribal chair, board member, or councilmember. Neither the elected local government official nor the tribal member may be a sheriff or have been a peace officer or prosecutor within the last 10 years. Initial appointment terms for new members must range between two and six years in order to stagger future appointments. Quorum is increased from seven to nine, and the CJTC must meet at least quarterly.

Background Investigations of Officer Applicants.

Employing agencies may only make a conditional offer of employment to a peace officer, reserve officer, or corrections officer pending completion of the background investigation, and must provide written verification to the CJTC that they have complied with all background check requirements prior to making any nonconditional offer of employment. In addition to existing requirements, the background investigation for new hires and rehires of lapsed officers must include a check of: any national decertification index; CJTC records; all disciplinary records by previous law enforcement or corrections employers, including complaints or investigations of misconduct and the reason for separation from employment; and relevant potential impeachment disclosure lists. The background investigation must also include an inquiry into whether the officer has any past or present affiliations with extremist organizations.

A general or limited law enforcement agency may not consider an application from an applicant unless the applicant has executed a signed document authorizing each prior employer to release all employment information, and holding harmless the agency and all prior employers from any associated liability.

Reserve officers, to whom the background investigation requirements apply (along with peace officers and corrections officers) are defined to include those who do not serve as full-time peace officers, but who may be called into active service and fully commissioned on the same basis as full-time officers. Reserve officers include specially commissioned and limited authority

Washington peace officers, persons employed as security by public higher education institutions, and persons employed as security in public K-12 schools who are authorized to use force in fulfilling their responsibilities.

Certification of Peace Officers and Corrections Officers.

Officer Certification Requirements.

As a condition of certification, a peace officer or corrections officer seeking employment must authorize the release of personnel files and other information to the employing agency in addition to the CJTC. The releases to the employing agency and the CJTC must include disciplinary files and civil investigation files in addition to other required files and information. The officer must also consent to and facilitate a review of the officer's social media accounts. Previous employing agencies must disclose employment information within 30 days of receiving a written request, and misconduct complaints and investigations must be disclosed regardless of the result or whether the complaint was founded. Release of this information may not be delayed, limited, or precluded by agreement or contract between the officer or the officer's union and the entity responsible for the records or information.

Prior to certification, the employing agency must certify to the CJTC that the agency completed the background investigation and found no disqualifying information, and that the applicant is suitable for employment as an officer. The CJTC is immune from suit in any civil action regarding an officer's certification, denial, suspension, or decertification.

Grounds for Denial, Revocation, or Suspension of Certification.

The grounds upon which the CJTC may revoke or deny certification are revised, denial or revocation of certification is made mandatory on certain grounds, and the CJTC's options for responsive action are expanded.

The CJTC must deny or revoke certification when the applicant or officer:

- has been convicted of a felony, a gross misdemeanor domestic violence offense, a sex offense, or an offense committed with sexual motivation, and the offense: (1) was either not disclosed at the time of application for certification, or was committed while the officer was a certified peace or corrections officer; and (2) was not an offense for which the officer was granted a pardon or a juvenile offense that has been sealed. Convictions include pleas of nolo contendere and deferred sentences, in addition to guilty pleas or findings;
- has been terminated by the employing agency or found by a court to have engaged in a use of force resulting in death or serious injury and the use of force violated the law;
- has been terminated by the employing agency or found by a court to have witnessed another officer's use of excessive force and: was in a position to intervene and end the force and failed to do so; or failed to report the excessive force in accordance with policy or procedure;
- was terminated by the employing agency or found by a court to have knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being an

officer, for example, by committing perjury, filing false reports, hiding evidence, or failing to report exonerating information; or

- is prohibited from possessing weapons by federal or state law or by a permanent court order entered after a hearing.

The CJTC may, but is not required to, deny, revoke, or suspend certification, require remedial training, or issue other intermediate sanctions, such as reprimand, mandatory retraining, or placement on probation, when an applicant or officer:

- failed to timely meet requirements for obtaining a certificate of basic training;
- was previously issued a certificate through administrative error;
- knowingly falsified or omitted material information on an application to the officer's employer or to the CJTC;
- interfered with an investigation or action for denial or revocation of certification by: knowingly making a materially false statement to the CJTC; failing to accurately report information to the CJTC as required by law or policy; or tampering with evidence or witnesses in any matter under investigation by or otherwise before the CJTC;
- engaged in a use of force that could reasonably be expected to cause physical injury, and the use of force violated the law or employer policy;
- committed sexual harassment;
- used his or her position as an officer for personal gain through fraud or misrepresentation;
- engaged in discriminatory conduct, for example, by making verbal statements, writings, online posts, recordings, or gestures involving prejudice or discrimination based on race, religion, creed, color, national origin, immigration status, disability, genetic information, marital status, sex, gender, gender identity or expression, age, sexual orientation, or military and veteran status;
- whether on or off duty, has: been found to have committed a felony, regardless of conviction; engaged in a pattern of acts showing intentional or reckless disregard for the rights of others; engaged in unsafe practices involving firearms, weapons, or vehicles; or engaged in conduct that indicates an inability to meet ethical and professional standards, undermines public trust or confidence in the profession, or demonstrates an inability or unwillingness to uphold the officer's oath to enforce the laws;
- has been suspended or discharged, or has resigned or retired in lieu of discharge, for any of the foregoing conduct; or
- has voluntarily surrendered certification.

Grounds for denial, revocation, and suspension of certification apply to reserve officers to the same extent as they apply to peace officers.

Process for Revocation of Certification.

An employing law enforcement or corrections agency must notify the CJTC of an officer's separation from the agency for any reason, rather than only upon the officer's termination. If the officer resigns or retires in lieu of termination, or is laid off pending disciplinary action that could lead to suspension or discharge, the agency must conduct an investigation and report relevant information to the CJTC. Additionally, regardless of whether disciplinary proceedings

have concluded, an employing agency must notify the CJTC within 15 days of learning of any death or serious injury caused by an officer's use of force, or any time an officer has been charged with a crime. Agencies must have a policy requiring officers to report any pending criminal charges to the agency immediately. Agencies must also report to the CJTC within 15 days of any initial disciplinary decision by the agency for an officer's alleged behavior or conduct that is noncriminal but may result in revocation of certification.

In response to notification from an employing agency, the CJTC may: immediately suspend certification; initiate decertification upon conclusion of any investigation or disciplinary process initiated by the agency; separately pursue revocation of certification; or wait to proceed until agency investigation, disciplinary proceedings, or appeals are complete before taking action. The CJTC may act to suspend or revoke certification regardless of the employing agency's action or inaction or any decision resulting from an appeal of agency action.

Law enforcement and corrections agencies are prohibited from entering into an agreement or contract with an officer or union not to disclose relevant information in exchange for resignation, retirement, or any other reason, or that allows the agency to destroy or remove any personnel record while the officer is employed or for 10 years thereafter. The CJTC may impose a civil penalty of up to \$10,000 for failure by an officer or agency to timely and accurately report required information.

Any individual may submit a written complaint to the CJTC charging that an officer's certificate should be denied, suspended, or revoked. In addition to its existing authority, the CJTC may initiate an investigation when there is a pattern of complaints or other actions that individually do not merit formal adjudication of wrongdoing, but when taken together demonstrate conduct that would constitute grounds for denial, suspension, or revocation. All complaints must be resolved with a written determination, regardless of the decision to investigate.

Notice of charges and communications regarding charges and hearings may be provided through electronic means. The CJTC must respond to an officer's request for a hearing within two weeks and must set a hearing within 90 days, rather than on a date between 90 and 180 days in the future. Public notice of the hearing must be posted on the CJTC website.

Decertification hearings must be presided over by an administrative law judge (ALJ) with subject matter expertise, and heard by a hearings panel. The ALJ must make rulings and issue a proposed recommendation, but does not vote. The final decision is made by the panel. The number of law enforcement or corrections personnel on the panel is reduced from four to two, and the representative of a college or university is removed. The open positions are filled with one civilian member of the CJTC, one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer, and one person with expertise on police accountability who is not a current or former officer. The burden of proof is lowered from clear and convincing evidence to a preponderance of the evidence. Summary records of dispositions must be made available on a public website.

Reinstatement of Certification.

The CJTC must align its rules and decisions regarding reinstatement of certification with its responsibilities to enhance public trust and confidence in the law enforcement profession and correctional system.

An officer whose certification was mandatorily denied or revoked is not eligible for reinstatement of certification at any time. When denial or revocation is based on discretionary grounds other than withdrawal from basic training, administrative error of issuance, failure to cooperate, or interference with an investigation, the CJTC may, but is not required to, proceed with a reinstatement hearing upon petition filed after the five-year waiting period. In the event of reinstatement, the CJTC must, rather than may, impose a probationary period of certification.

Retention and Disclosure of Records.

Agencies must retain personnel records for peace officers and corrections officers for the duration of the officer's employment and a minimum of 10 years thereafter. Current law provisions are removed that: (1) require the CJTC to purge background information and other records upon determination that a complaint is without merit or that a matter investigated by the CJTC does not merit action; and (2) designate personnel action reports provided to the CJTC and the CJTC's investigation files as confidential and exempt from public disclosure.

The CJTC must maintain a public database containing: the names of officers and employing agencies; all conduct investigated; certifications denied; notices and accompanying information provided by law enforcement or correctional agencies, including the reasons for officers' separation from the agency; decertification or suspension actions pursued; and final dispositions for at least 30 years following disposition of each incident. All decertifications must be reported to the National Decertification Index.

Report.

No later than December 1, 2022, the CJTC must submit a written report to the Governor and the Legislature detailing its progress in implementing the requirements of the bill.

Appropriation: None.

Fiscal Note: Requested on March 3, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.