

HOUSE BILL REPORT

E2SSB 5051

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to state oversight and accountability of peace officers and corrections officers.

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, Liias, Lovelett, Mullet, Nguyen, Salomon, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Public Safety: 3/11/21, 3/18/21 [DPA];

Appropriations: 3/31/21, 4/1/21 [DPA(APP w/o PS)].

Brief Summary of Engrossed Second Substitute Bill (As Amended By Committee)

- 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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 8 members: Representatives

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.

Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Do not pass. Signed by 5 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham, Griffey and Young.

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.

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 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 Amended 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 20, and changes are made to its composition, including: reducing the number of law enforcement and corrections positions from eight to six; adding a public defender and a person with civilian oversight or auditing experience over law enforcement agencies; increasing the number of community member positions from two to seven; and eliminating the member from the Federal Bureau of

Investigation. 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. An exception is made to the requirement that an applicant submit to a background investigation following a 24-month lapse in service if the lapse is due to being recalled to military service.

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 the agency and all prior employers harmless 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 agency policy or state law;
- 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 sanctions, such as 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 fails to meet ethical and professional standards, disrupts, diminishes, or jeopardizes 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.

The grounds for denial, revocation, and suspension of certification apply to a reserve officer to the same extent as they apply to a peace officer when the reserve officer holds peace officer certification.

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 complete 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: initiate decertification upon conclusion of any investigation or disciplinary process initiated by the agency; separately pursue action against the officer's 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.

Any suspension or period of probation imposed by the CJTC must run concurrently to any leave or discipline imposed by the employing agency for the same incident. The employing agency may not terminate an officer based solely on the CJTC's actions, though the agency

may terminate the officer if the underlying acts or omissions independently justify termination.

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.

Implementation and Report.

The CJTC must develop policies, procedures, and rules to ensure that the goals of the bill are fully implemented as intended and in a timely manner, and to provide appropriate clarity to affected persons and entities as to how the CJTC will process complaints, investigations, and hearings, and impose sanctions, related to officer certification. The CJTC must work in collaboration with interested parties and entities in developing the policies, procedures, and rules, and must take into account issues regarding when and how it may appropriately exercise authority in relation to simultaneous investigations and disciplinary processes, and how it may exercise available remedies in a manner that is appropriate to case circumstances and consistent with the goals outlined in the bill. The policies, procedures, and rules must be completed by June 30, 2022.

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.

Amended Bill Compared to Engrossed Second Substitute Bill:

The striking amendment retains the provisions of the underlying bill with the following changes:

- The definition of "applicant" is modified to remove the specification that the person is pending certification as a peace or corrections officer.
- The composition of the CJTC is modified in several ways, including: increasing membership to 20 (from 17); reinstating current law including two incumbent chiefs of police (rather than one in the underlying bill); increasing the number of line officers from one to two, and requiring that the officers be from agencies that have at least 15 officers and are different than the agencies the sheriff and police chiefs are associated with; changing "private person" membership to "community member" membership, and additionally increasing the number from five to seven, including two (rather than one) from the east side of the Cascade Mountains and three (rather than two) from historically underrepresented communities; and removing the member representing the Federal Bureau of Investigation.
- A provision is added stating that the CJTC has sole authority to provide basic law enforcement training.
- Changes are made to the officer background investigation requirements: an exception is made to the requirement that an applicant submit to a background investigation following a 24-month lapse in service if the lapse is due to being recalled to military service; and requirements relating to checking impeachment disclosure lists and affiliation with extremist organizations are modified to apply to applicants for peace officer, reserve officer, and corrections officer positions, rather than just peace officer positions, and to specify that "extremist organizations" include those defined as such by the CJTC.
- It is specified that the CJTC must provide for the comprehensive and timely investigation of complaints where necessary to ensure adherence to agency policy (rather than policy) and law.
- In considering whether to investigate following a pattern of complaints or actions, the CJTC must consider the agency's policies and procedures (in addition to the officer's job duties and assignment) in determining what constitutes a pattern.
- Changes are made to certain decertification grounds: the grounds relating to failure to report another officer's use of excessive force are modified to specify that the officer must have failed to report in accordance with agency policy or state law (rather than policy or procedure); and the grounds relating to a pattern of conduct that falls below ethical or professional standards or diminishes public trust are reworded.
- The provision stating that a reserve officer is subject to decertification on the same grounds as a peace officer is narrowed to apply only when the reserve officer holds peace officer certification.
- The CJTC is required to provide written notice (as well as electronic notice) to an

- officer of a decertification hearing.
- Reprimand is removed from the list of available sanctions.
 - The provisions relating to suspension of certification are narrowed: the authority of the CJTC to suspend certification pending a decertification hearing is removed, as is the CJTC's authority to immediately suspend certification pending employing agency proceedings following a required notice by the employing agency to the CJTC.
 - Any suspension or probation imposed by the CJTC must run concurrently to any leave or discipline imposed by the employing agency for the same incident, and a law enforcement agency may not terminate an officer based solely on any CJTC action (though the agency may still terminate an officer based on the underlying conduct if the agency action conforms to rules and procedures as determined through collective bargaining).
 - Employing agencies must complete (rather than only conduct) an investigation when there is indication that an officer was laid off pending a disciplinary investigation or resigned or retired in anticipation of discipline that would likely lead to suspension or discharge.
 - A requirement is added that the CJTC, in collaboration with interested parties, develops a set of policies, procedures, and rules by June 30, 2022, to ensure that the goals of the act are fully implemented, and to provide clarity as to how the CJTC will process complaints, investigations, and hearings, and impose sanctions.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 19, 2021.

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

Staff Summary of Public Testimony:

(In support) This bill will provide an enforcement mechanism for other legislative efforts relating to police reform and accountability. There has been frustration at the local level with arbitration and investigations. This state certification for officers, much like the state certification that exists for other professions, will be a mechanism for the state to take action in the hopefully rare situations in which law enforcement officers are not upholding the high standards ethically and legally expected of them. This will ensure that these officers are not passed around to other agencies where they can do more harm to the community and to the reputation of law enforcement.

This bill creates a process to decertify problem officers, and creates a more robust process of accountability. It is imperative for the state to have a system where officers' certification is revoked in cases of repeated misconduct. Families have had loved ones killed by officers with misconduct histories, only to have those officers not face consequences or move from

agency to agency to avoid discipline. Officers should not be able to stay in the profession if they have history that will erode public trust; an officer that abuses trust undermines the entire system. Racial inequities in policing must be dismantled. Black people and people of color experience disproportionate use of excessive force, and prior reform efforts have failed. Officers are critical to the community and most do an excellent, honest job. There should be an expectation of excellence in policing, but there is currently more control over licensing of plumbers than police. There should be a floor for the job, and communities are entitled to constitutional policing. There is an urgent need to bring accountability to officers who use excessive force. Non-law enforcement seats on the CJTC, enhanced background checks, and reviews of misconduct for possible decertification are good changes. The public deserves to have a record of misconduct. Use of force violations and other patterns of behavior are addressed through this bill, and it includes safeguards and reporting to address officer misconduct. Officers are less safe when an officer violates the law. This bill will help rebuild trust with communities. Communities are already asking city councils for the changes in this bill. Some police accountability measures are important enough they should be made at a systemic, statewide level.

A majority of officers are rehired because of a broken appeals process. The legislation could be strengthened by adjusting the arbitration process in regard to police discipline. Arbitration reform can lead to enhanced public confidence in policing. We need to create uniform legal standards for arbitration, limit the ability to offer new evidence, and allow more transparency. Discipline hearings should be recorded and available to the public through the PRA. The additional proposed changes would not undermine labor rights or affect other state employees. There can be strong unions and constitutional policing through enacting this measure.

The bill provides uniformity in a high-risk profession, which will make society safer and is good for police in the long run. The bill will help unions explain to their members what is expected of them. Many professions that unionized also have separate licensing and accountability measures. The bill does not undermine collective bargaining, though there are concerns with some disciplinary issues being handled by the CJTC instead of the employer.

(Opposed) Though this bill is problematic, the Legislature should change the certification and decertification laws. With respect to the composition of the CJTC, the bill flips the composition so that the majority of commissioners will be nonexperts. Only five of 17 commissioners would be members of the profession. There should be non-law enforcement representatives; however, there needs to be balanced representation on the CJTC due to the important and complex issues it handles. The CJTC should be expanded to 20 members and include three law enforcement officers. Subject matter experts are critically valuable.

The language related to suspension needs to be clarified and narrowed, and there should be no suspension before a finding of misconduct. Officers have important rights that must be considered when building this framework. There also need to be some reasonable limits on

when the CJTC can move to decertify an officer, and the CJTC should not displace the collective bargaining and grievance process. The grievance process should be completed before the decertification starts. Additionally, there need to be reasonable limits to the grounds for decertification. Many of the grounds for decertification involve criminal activity, which makes sense, but there are insufficient boundaries and no clear delineation of who does what and when.

(Other) The current bill does not recognize the importance of the employer-employee relationship. Agencies and officers should be held accountable when they do not meet standards, but the CJTC should not be able to issue suspensions or probation. This is the role of the employer. Structuring the bill in this way could negatively impact an officer's ability to keep his or her position. It is concerning that components of other legislation are being considered in addition to this bill that would make changes to the arbitration process. There are also concerns about the bill leading to erosion of the collective bargaining process that may put employees in a vulnerable position.

The bill would expand the CJTC's authority far beyond the training and policy group that was intended, will undermine the ability of officers to defend themselves, and erode due process rights. An officer's reputation tarnished by accusation is impossible to restore. The CJTC should not receive direct complaints from the public; complaints should only be received on referral from the agency, otherwise it will make it easy for an officer to be harassed by anonymous complaints. The bill lowers the standard of proof to a preponderance of the evidence, which is the same as a traffic ticket. The bill could be amended to improve accountability without motivating good officers to leave the profession.

Some tribal officers are cross-deputized with local law enforcement, and the bill could negatively affect these arrangements. These officers must be certified through the CJTC in order to enter into agreements with local law enforcement agencies. Tribes conduct oversight of their own officers, including decertification, and would like the respect of the state government in recognizing tribal sovereignty. Tribal records should remain confidential.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; Sharon Swanson, Association of Washington Cities; Elizabeth Reis, Seattle First Baptist Church; Sakara Remmu, Washington Black Lives Matter Alliance; Douglas Wagoner, Seattle Community Police Commission; Elaine Simons, Po Leapai, and Fred Thomas, Washington Coalition for Police Accountability; Jenny Durkan, City of Seattle Office of the Mayor; Victoria Woodards, City of Tacoma Office of the Mayor; Lisa Herbold, Seattle City Council; Peter Holmes, Seattle City Attorney's Office; Monisha Harrell, Deputy Consent Decree Monitor; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Arthur Rizer, Lincoln Network, Law Enforcement Action Partnership.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Davor Gjurasic, Washington State Patrol Troopers Association; Jeff DeVere, Washington Council of Police and Sheriffs; Sheriff Brian Burnett, Chelan County Sheriff's Office; and Bill Elfo, Whatcom County Sheriff's Office.

(Other) Matt Zuvich, Washington Federation of State Employees; Laura Wells, Criminal Justice Training Commission; Chairman Shawn Yanity, Stillaguamish Tribe of Indians; Michael Transue, Washington Fraternal Order of Police; Jim Glover, Teamsters Local 690; David Simmons, Teamsters 760; Brenda Wiest, Teamsters Local 117; and Dennis Lawson, Washington State Council of Fire Fighters.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff and Jacobsen.

Minority Report: Without recommendation. Signed by 4 members: Representatives Harris, Rude, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

All changes made by the Public Safety Committee are maintained, with the following additional changes:

Changes are made to the provisions outlining the composition of the CJTC. The underlying bill's reduction to one chief of police position is reinstated, and an alternate must be appointed for the position. The line officers must be from different agencies and must be affiliated with different labor organizations. A tribal police officer is added, as is a licensed attorney with relevant background in matters related to enhancing law enforcement practices and accountability.

The background investigation requirements are modified to include a review of the applicant's social media accounts, and the CJTC may establish standards for background investigation requirements.

Provisions related to the grounds for decertification are modified. The list of triggering events for certain grounds are expanded to include separation from the employing agency following the relevant conduct (in addition to termination or a court finding). The exception to the grounds related to knowingly making misleading, deceptive, untrue, or fraudulent representations is expanded to include instances in which such conduct is for a lawful law enforcement purpose (in addition to an undercover investigation). Affiliation with one or more extremist organizations is added to the list of non-mandatory decertification grounds.

The provisions are modified that describe the factors the CJTC must take into consideration in determining appropriate sanctions in a decertification matter, and the CJTC must consider sanctions or training ordered by the employing agency regarding the alleged misconduct. A law enforcement agency may not terminate an officer based solely on the officer being suspended or placed on probation by the CJTC (rather than prohibiting termination based solely on any CJTC action, as in the Public Safety Committee amendment).

The CJTC is required, rather than authorized as in current law, to train tribal police officers when the tribal government has requested and paid for training.

Other minor wording changes are made for internal consistency.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) Unchecked law enforcement misconduct destroys community trust and erodes the character of the profession itself. In one case, a man was killed by law enforcement while holding his child. Even though a judge described the involved officers' conduct as reckless, reprehensible, and involving malice, all three officers were promoted. This bill is good because of its strong provisions addressing misconduct and changes to the composition of the CJTC that provide meaningful community representation. This bill is a good investment for the state.

(Opposed) There are several challenges with the bill. The bill prohibits a law enforcement

agency from terminating an officer based on an action taken by the CJTC. For example, if an officer is decertified, the agency would be required to continue to employ that officer even though they were prohibited from performing their job. The definition of "reserve officer" will dramatically increase enrollment in the Basic Law Enforcement Academy. The bill additionally contains decertification grounds for making false or misleading statements. The only exception to this is if the officer is undercover, though courts recognize the use of ruses and other legitimate law enforcement functions. This does not serve the public interest.

(Other) Additional revisions should be considered. This bill would significantly change provisions related to the oversight and accountability of officers. It would greatly expand the CJTC's decision-making authority related to officer certification and revocation and setting statewide policy for law enforcement training. The bill preempts local decision-making and goes beyond the CJTC's original training purpose and should be curtailed.

Persons Testifying: (In support) Fred Thomas, Washington Coalition for Police Accountability.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Michael Transue, Washington Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying: None.