

SENATE BILL REPORT

SB 5051

As Reported by Senate Committee On:
Law & Justice, January 21, 2021

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: Senators Pedersen, Dhingra, Darneille, Hunt, Kuderer, Liias, Lovelett, Mullet, Nguyen, Salomon, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/18/21, 1/21/21 [DPS, DNP].

Brief Summary of First Substitute Bill

- Modifies the priorities and composition of the Criminal Justice Training Commission (CJTC).
- Expands the background investigation requirements for persons applying for peace officer, reserve officer, and corrections officer positions.
- Expands the conduct for which the certification of a peace officer or a corrections officer may be revoked.
- Requires employing agencies to report all separation and disciplinary matters regarding a certified officer to the CJTC.
- Removes confidentiality of complaints, investigations, and disciplinary actions for certified officers and requires information be maintained on a publicly searchable database.

SENATE COMMITTEE ON LAW & JUSTICE

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.

Majority Report: That Substitute Senate Bill No. 5051 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy and Wagoner.

Staff: Shani Bauer (786-7468)

Background: Prior to 2001, the primary function of the Criminal Justice Training Commission (CJTC) was to provide basic law enforcement training for peace officers and reserve officers. Successful completion of basic law enforcement training was and is, a requisite to the continuation of employment for new officers with a law enforcement agency. In 2001, the Legislature introduced a statewide certification/decertification process for peace officers. In 2005, the Legislature further required employing agencies to conduct background checks, including polygraph and psychological evaluations, for all new hire peace officers and reserve officers. In 2020, the Legislature instituted training and certification requirements for corrections officers, substantially the same as those required for peace officers.

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, and who are subject to basic corrections officer training requirements. For the certification requirement, corrections officers do not include individuals employed by state agencies.

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.

As a prerequisite to certification, the officer must authorize the release to the CJTC of their personnel files, termination papers, criminal investigation files, and any other documents or information directly related to certification. The CJTC may require employing agencies that make a conditional offer of employment to an applicant to administer a background investigation including 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 or corrections officer. A background investigation is required of applicants receiving a conditional offer of employment or seeking reinstatement following a lapse in service.

The CJTC must grant certification to officers who have satisfied, or obtained an exemption

for, basic law enforcement or basic corrections officer training, subject to the general revocation grounds and processes. An officer may retain their certification as long as the officer timely meets 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 officer 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, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after the effective date of the act. Disqualifying misconduct includes: (1) commission of any crime that was committed under color of authority as a peace officer or corrections officer, that involved dishonesty, or that involved the unlawful use or possession of a controlled substance; and (2) knowingly making materially false statements during disciplinary investigations, where such statements provided the sole basis for termination.

A peace officer or corrections officer 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.

Mandatory Reporting by Employing Agencies. Upon termination of an officer for any reason, including resignation, the employing agency must notify the CJTC within 15 days. The CJTC may request additional documentation from the agency if necessary to determine whether the termination provides grounds for revocation.

Complaints and Hearing Process. An officer or law enforcement or corrections agency may submit a written complaint to the CJTC charging that an officer's certificate should be denied or revoked, and specifying the grounds for the charge. If, upon investigation, the CJTC determines 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 request, 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 final administrative decision is subject to judicial review.

Reinstatement of Certification. If certification is denied based upon dismissal or withdrawal from a basic law enforcement or basic corrections academy for any reason not 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.

Personnel Records and Confidentiality. Records obtained and held by the CJTC are confidential and exempt from public disclosure, including the contents of personnel action reports received when an officer is terminated; all files, papers, and other information obtained by the CJTC as part of a certification or decertification matter; and all investigative files compiled in carrying out the duties of the CJTC. The records are reviewable by the officer involved, a duly authorized representative of a hiring or terminating agency, or a representative or investigator for the commission. To the extent records become part of the transcripts, admitted evidence, and written decision of the hearings board, the records are not confidential or exempt from public disclosure.

Summary of Bill (First Substitute): Purpose and Membership of the Criminal Justice Training Commission. The purpose and first priority of the CJTC is to establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers, with the goal of enhancing the integrity, effectiveness, and professionalism of peace officers and corrections officers, and ensuring that law enforcement and correctional services are delivered to the people of Washington in a manner that fully complies with the constitution and laws of this state and the United States.

The membership of the CJTC is adjusted and a member is added for a total of seventeen members. Language is added to ensure broad representation, increasing the number of

civilian members from two to five and specifying the member who is an elected official with local government and the tribal member must have not been employed in the last ten years as a peace officer. In addition to current duties, the CJTC is tasked with issuing public recommendations to the governing body of a law enforcement agency regarding the agency's command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters.

Background Checks of New Officers. When conducting a background investigation of an applicant for the position of peace officer, reserve officer, or corrections officer, an employing agency must check any national decertification index, commission records, and all disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct and the reason for separation from employment. Law enforcement or correctional agencies that previously employed the applicant must disclose employment information within 30 days of receiving a written request from the employing agency conducting the background investigation. Complaints or investigations of misconduct must be disclosed regardless of the result of the investigation. For any applicant who has served as a peace officer, the employing agency must also inquire of the local prosecuting authority as to whether the officer is on any potential impeachment disclosure lists.

An employing agency must inquire as to whether the applicant has any affiliations with extremist organizations and the applicant must consent to or facilitate a review of the officer's social media accounts. At the conclusion of the background check, the employing agency must certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as a peace officer or corrections officer.

The mandatory release of personnel and disciplinary information to the employing agency and commission may not be delayed, limited, or precluded by any agreement or contract between the officer, or the officer's union, and the entity responsible for the records or information.

Grounds for Denial or Revocation of Certification. The CJTC must deny or revoke certification of a peace officer or corrections officer if the applicant or officer:

- has been convicted of a felony, a gross misdemeanor domestic violence offense, a sex offense, or offense with sexual motivation and the offense was not disclosed at the time of the application or the officer was a certified peace officer or corrections officer at the time of the offense and the offense was not one for which the officer was granted a pardon or was adjudicated as a juvenile and the record sealed;
- has been found by a court to have engaged in the use of force which resulted in death or serious injury and the use of force violated the law;
- has been found by a court to have witnessed another officer's use of excessive force and was in a position to intervene and failed to do so or failed to report the excessive

- force in accordance with policy or procedure;
- has been found by a court to have made knowingly misleading, deceptive, untrue or fraudulent representations in the practice of being a peace officer or corrections officer; or
- is prohibited from possessing weapons by state or federal law or by permanent court order entered after a hearing.

The CJTC may deny, suspend, or revoke certification or require remedial training of a peace officer or corrections officer if the applicant or officer:

- failed to timely meet all training requirements;
- was previously issued a certificate through administrative error;
- knowingly falsified or omitted material information on an application to the employer or for training or certification to the commission;
- interfered with an investigation or action for denial or revocation of certification by making false statements, failing to report information as required by law or policy, or tampering with evidence or intimidating a witness;
- engaged in a use of force that could reasonably be expected to cause injury and the use of force violated law or policy;
- committed sexual harassment as defined by state law;
- through fraud or misrepresentation used the position of peace officer or corrections officer for personal gain;
- engaged in conduct involving prejudice or discrimination against a person;
- on or off duty, committed a felony; engaged in a pattern of acts showing an intentional or reckless disregard for the rights of others; engaged in unsafe practices involving firearms, weapons, or vehicles indicating a willful disregard for the safety of persons or property; engaged in conduct indicating an inability to meet the ethical and professional standards required of an officer or undermining public trust in the criminal justice system;
- has been suspended or discharged, or resigned or retired in lieu of discharge, for any conduct listed in the section; or
- has voluntarily surrendered the person's certification as a peace officer or corrections officer.

In addition to the sanctions of denial, suspension, or revocation of certification, the CJTC may reprimand, require mandatory retraining, and place an officer on probation up to two years. In determining the appropriate penalty or sanction, the CJTC must consider the findings and conclusions of any underlying disciplinary proceeding and the employing agency bears any responsibility. A peace officer or corrections officer certification may be suspended pending a decertification hearing. Any of the grounds for denial, suspension, or revocation of certification of a peace officer may be grounds for denial, suspension, or revocation of certification of a reserve officer to the same extent as a peace officer.

A person whose certification is mandatorily denied or revoked is not eligible for recertification at any time.

Mandatory Reporting by Employing Agencies. Time frames and instances in which an employing agency must notify the CJTC as to a peace officer or corrections officer's status and misconduct are specified. An employing agency must notify the CJTC within 15 days of:

- separation of the officer from the employing agency for any reason and must include the reasons for separation if the officer's resignation or retirement was in lieu of termination;
- learning of any occurrence of death or serious injury caused by the use of force by an officer or any time the officer has been charged with a crime; or
- any initial disciplinary decision by the agency for alleged behavior or conduct that might lead to decertification.

When an officer resigns or retires for misconduct prior to an investigation or disciplinary proceedings, the employing agency shall proceed to conduct the investigation and provide all relevant information to the CJTC as if the officer were still employed by the agency. Upon receipt of notification, the CJTC may suspend an officer's certification pending proceedings with the employing agency, initiate decertification upon conclusion of investigation or disciplinary proceedings, separately pursue revocation of certification, or wait until all disciplinary proceedings are final before pursuing decertification.

An employing agency may not enter into any agreement or contract, with an officer or union, not to report conduct, delay reporting, or preclude disclosure in exchange for allowing an officer to resign or retire or that allows the agency to destroy or remove any personnel record for ten years after the officer ceases to be employed with the agency.

The CJTC may impose a civil penalty not to exceed \$10,000 for the failure by an officer or employing agency to timely and accurately report information as required.

Complaints and Hearing Process. Any individual, including commission staff, member of the commission, peace officer, or duly authorized representative of a law enforcement agency may submit a written complaint to the commission stating that an officer's certificate should be denied, suspended, or revoked, and specifying the grounds for the complaint. The CJTC has sole discretion whether to investigate a complaint, but all complaints must be resolved with a written determination.

Consistent with the procedure for disciplinary hearings for the Washington State Patrol, the chief administrative law judge shall designate an administrative law judge with subject matter expertise to serve as the presiding officer over a three member panel in any decertification hearing. The panel for peace officer certification shall consist of a police chief or sheriff from a law enforcement agency, a civilian member, and person with expertise in police accountability. The panel for corrections officer certification shall consist of the head of a city or county correctional agency, a civilian member, and person with expertise in police accountability. The judge shall make all necessary rulings in the

course of the hearing and shall issue a recommendation, but is not entitled to vote. The standard of proof in any action before the commission is a preponderance of the evidence. The hearings, but not the deliberations of the hearings panel, are open to the public. Summary records of hearing dispositions must be made available on an annual basis on a public website.

Personnel Records and Confidentiality. Personnel records for any peace officer or corrections officer must be retained for the duration of the officer's employment and a minimum of 10 years thereafter. Such records include all misconduct and equal employment opportunity complaints, progressive discipline imposed, and any other disciplinary appeals and litigation records.

All files, papers, and other information obtained by the CJTC as part of an initial background investigation are confidential and exempt from public disclosure unless those records become part of the record in a suspension or decertification matter.

The CJTC must maintain a publicly searchable database including the names of officers, employing agencies, conduct investigated, certification denied, notices from law enforcement or correctional agencies as to the reasons for separation or disciplinary action, decertification or suspension actions pursued, and final disposition. Such records must be maintained in the database 30 years after final disposition of each incident. Any decertification must be reported to the national decertification index.

Report to the Legislature. No later than December 1, 2022, the CJTC must submit a written report to the Governor and the appropriate committees of the Legislature detailing progress of implementation of this act.

Definitions and Statutory Cleanup. Definitions of criminal justice personnel, law enforcement personnel, peace officer, and corrections officer are streamlined. Definitions of reserve officer and tribal officer are adopted. To the extent that the processes are parallel, provisions addressing peace officers and corrections officers are consolidated. Individual provisions addressing corrections officers are repealed.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

As part of a background check, an employing agency must inquire as to whether the applicant has any affiliations with extremist organizations and the peace or corrections officer must consent to and facilitate a review of the officer's social media accounts. An employing agency must certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as a peace officer or corrections officer. An offense will not act as a bar to certification if the offense is one for which the officer was granted a full and unconditional pardon or the offense was adjudicated as a

juvenile and the record sealed. The CJTC must deny or revoke certification when the officer has been terminated by the employing agency for various conduct. The CJTC must deny or revoke certification for an officer that has engaged in discriminatory conduct regardless of whether action has been taken by the employing agency. When considering appropriate penalties or sanctions against an officer, the CJTC must consider the findings and conclusions of any disciplinary proceeding and whether the employing agency bears any responsibility for the situation. When deciding whether to investigate an officer for a pattern of complaints, the commission must consider an officer's job duties and assignment in determining what constitutes a pattern. The time period for an officer to request a hearing on a certification matter is restored to 60 days. Cross-references are inserted in the collective bargaining statutes to clarify that the provisions of Chapter 43.101 RCW control.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a lack of meaningful internal review when incidents happen. Police are often responsible for escalating the situation. After shooting Carlos Hunter, they let him fall to the ground and handcuffed him. They made no attempt to call for medical assistance. The final investigative report did not address the officer's behavior. In other incidents, the scene was not appropriately preserved. The community loses faith in the criminal justice system when these types of incidents occur. There needs to be more accountability and oversight.

This bill will help to restore trust in the criminal justice system and law enforcement. Important aspects are expanding the CJTC to be more community based, allowing the public to file complaints so misconduct can come to light, and increased transparency of information and data.

Community safety is of the utmost importance. This bill is not about rearranging the furniture, but about cleaning house. There are people in all professions that are not necessarily fit for those professions. There should be a way to remove an officer if they are not fit to serve. One of the key provisions in this bill is the requirement that complete information be made available to the CJTC in making determinations. Data retention is extremely important in that endeavor. Information must continue to be available as the officer moves from job to job. The CJTC is the appropriate entity to have responsibility for decertification. They need to know where training is failing so it can be addressed.

Latino communities are highly impacted by the lack of accountability in the criminal justice

system. Regardless of local jurisdiction, there needs to be an end to falsifying records and there should be consequences when law enforcement officers are found to be involved with hate groups. Corrections officers need this oversight as well.

This is an accountability structure that works well with other types of employment and is transferable here. Health care workers, accountants, and other professionals are all subject to this type of governing structure and public oversight.

Public trust of law enforcement requires strong accountability. This bill provides meaningful reform in achieving that goal. Under the bill's provisions, an officer may not simply move agencies in order to avoid accountability. It addresses a wide variety of behavior that may lead to decertification. The state is no longer prevented from decertifying when an arbitrator has ordered the officer reinstated. When an officer resigns or retires to avoid discipline, the agency must complete the investigation and forward info to the CJTC so it will go on officer's record. Records related to an investigation will be public and maintained on a website.

This bill incorporates many recommendations on AWC's agenda for improvement including: expansion of the reasons for decertification; enhanced background checks, requiring an investigation be completed even after an officer has separated; improved transparency of records; and the duty of fellow officers to intervene.

We want to honor law enforcement's contribution, but incorporate measures that enhance accountability and improve public trust. The failure to adhere to professional conduct should result in decertification. This will level the playing field for all localities and ensure that information is shared when the officer is dismissed in another jurisdiction. Currently we do not have the tools available to hire the best candidates and keep communities safe. The CJTC is nationally recognized and the best entity to take up this work.

CON: Law enforcement groups support strong accountability and oversight as well as public participation on the CJTC. We do not agree, however, to the lack of balance. Under the structure of this bill, 70 percent of the members would not have a law enforcement or corrections background. The CJTC should not have the ability to suspend the certification of an officer. Under this structure, the CJTC could suspend an officer's certification from an anonymous complaint or video. Hiring, supervision, training, and certification all contribute to successful policing. Some of the reasons for decertification are overly vague.

There needs to be more due process for law enforcement officers. There needs to be a balance in the number of subject matter experts that serve on the commission and the hearings panel. The decertification process needs to be fair and ensure that cause actually exists. This should not replace the arbitration process. The internal grievance process should be complete before decertification is pursued. The law should require heightened scrutiny when taking away an officer's livelihood.

In June of this year, the Washington Association of Sheriffs and Police Chiefs sent the committee 13 priority recommendations for improvement to the delivery of law enforcement services, including increased reasons for decertification. There are a number of challenges with this bill. The notion of suspending a peace officer creates a second employer. Washington has the fewest number of officers per capita. The jurisdiction must pay that officer even while suspended. Most of the reasons for decertification should be discretionary.

OTHER: The number of situations an officer must use force will vary depending on the community and environment in which the officer works. The bill should take that into consideration in the number of complaints that require an investigation.

The standard of proof for decertification should be clear and convincing evidence. The standard of proof for attorney licensing is a clear preponderance of the evidence. Arbitration matters usually require clear and convincing evidence. The requirement to look at Brady list information should be eliminated. The level of due process is all over the map depending on the locality.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Anne Levinson, Retired Judge; Beth Reis, Seattle First Baptist Church; Doug Wagoner, Commissioner, Seattle Community Police Commission; Sharon Swanson, Association of Washington Cities; Keith Blocker, Deputy Mayor, City of Tacoma; Dan Strauss, Council Member, City of Seattle; Nickeia Hunter, family survivor, Washington Coalition for Police Accountability; Danielle Bargala, family survivor, Washington Coalition for Police Accountability; Noel Parrish, family survivor, Washington Coalition for Police Accountability; Carlos Bratcher, former law enforcement, Washington Coalition for Police Accountability; Monisha Harrell, Equal Rights Washington; Nina Martinez, Latino Civic Alliance; Lindsey Grad, SEIU Healthcare 1199NW.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs; Jeff DeVere, Washington Council of Police and Sheriffs; Spike Unruh, Washington State Patrol Troopers Association.

OTHER: Chris Coker, Washington Federation of State Employees; Brenda Wiest, Teamsters Local 117.

Persons Signed In To Testify But Not Testifying: No one.