
HOUSE BILL 1262

State of Washington

67th Legislature

2021 Regular Session

By Representatives Klippert and Chase

Read first time 01/18/21. Referred to Committee on Public Safety.

1 AN ACT Relating to background investigations of peace officers,
2 reserve officers, and corrections officers; and amending RCW
3 43.101.010, 43.101.080, 43.101.095, and 43.101.096.

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

5 **Sec. 1.** RCW 43.101.010 and 2020 c 119 s 2 are each amended to
6 read as follows:

7 When used in this chapter:

8 (1) The term "commission" means the Washington state criminal
9 justice training commission.

10 (2) The term "boards" means the education and training standards
11 boards, the establishment of which are authorized by this chapter.

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

16 (4) The term "law enforcement personnel" means any public
17 employee or volunteer having as a primary function the enforcement of
18 criminal laws in general or any employee or volunteer of, or any
19 individual commissioned by, any municipal, county, state, or
20 combination thereof, agency having as its primary function the
21 enforcement of criminal laws in general as distinguished from an

1 agency possessing peace officer powers, the primary function of which
2 is the implementation of specialized subject matter areas. For the
3 purposes of this subsection "primary function" means that function to
4 which the greater allocation of resources is made.

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

11 (6) "Chief for a day program" means a program in which
12 commissioners and staff partner with local, state, and federal law
13 enforcement agencies, hospitals, and the community to provide a day
14 of special attention to chronically ill children. Each child is
15 selected and sponsored by a law enforcement agency. The event, "chief
16 for a day," occurs on one day, annually or every other year and may
17 occur on the grounds and in the facilities of the commission. The
18 program may include any appropriate honoring of the child as a
19 "chief," such as a certificate swearing them in as a chief, a badge,
20 a uniform, and donated gifts such as games, puzzles, and art
21 supplies.

22 (7) A peace officer or corrections officer is "convicted" at the
23 time a plea of guilty has been accepted, or a verdict of guilty or
24 finding of guilt has been filed, notwithstanding the pendency of any
25 future proceedings, including but not limited to sentencing,
26 posttrial or postfact-finding motions and appeals. "Conviction"
27 includes a deferral of sentence and also includes the equivalent
28 disposition by a court in a jurisdiction other than the state of
29 Washington.

30 (8) (a) "Discharged for disqualifying misconduct" has the
31 following meanings:

32 (i) A peace officer terminated from employment for: (A)
33 Conviction of (I) any crime committed under color of authority as a
34 peace officer, (II) any crime involving dishonesty or false statement
35 within the meaning of Evidence Rule 609(a), (III) the unlawful use or
36 possession of a controlled substance, or (IV) any other crime the
37 conviction of which disqualifies a Washington citizen from the legal
38 right to possess a firearm under state or federal law; (B) conduct
39 that would constitute any of the crimes addressed in (a)(i)(A) of
40 this subsection; or (C) knowingly making materially false statements

1 during disciplinary investigations, where the false statements are
2 the sole basis for the termination; or

3 (ii) A corrections officer terminated from employment for: (A)
4 Conviction of (I) any crime committed under color of authority as a
5 corrections officer, (II) any crime involving dishonesty or false
6 statement within the meaning of Evidence Rule 609(a), or (III) the
7 unlawful use or possession of a controlled substance; (B) conduct
8 that would constitute any of the crimes addressed in (a)(ii)(A) of
9 this subsection; or (C) knowingly making materially false statements
10 during disciplinary investigations, where the false statements are
11 the sole basis for the termination.

12 (b) A peace officer or corrections officer is "discharged for
13 disqualifying misconduct" within the meaning of this subsection (8)
14 under the ordinary meaning of the term and when the totality of the
15 circumstances support a finding that the officer resigned in
16 anticipation of discipline, whether or not the misconduct was
17 discovered at the time of resignation, and when such discipline, if
18 carried forward, would more likely than not have led to discharge for
19 disqualifying misconduct within the meaning of this subsection (8).

20 (9) An "eye-based truth verification test" is a test that
21 measures credibility through analysis of the physiological responses
22 of the eye, including, but not limited to, changes in pupil diameter,
23 eye movement, reading behavior, blinks, and fixations.

24 (10) When used in context of proceedings referred to in this
25 chapter, "final" means that the peace officer or corrections officer
26 has exhausted all available civil service appeals, collective
27 bargaining remedies, and all other such direct administrative
28 appeals, and the officer has not been reinstated as the result of the
29 action. Finality is not affected by the pendency or availability of
30 state or federal administrative or court actions for discrimination,
31 or by the pendency or availability of any remedies other than direct
32 civil service and collective bargaining remedies.

33 ((+10)) (11) "Peace officer" means any law enforcement personnel
34 subject to the basic law enforcement training requirement of RCW
35 43.101.200 and any other requirements of that section,
36 notwithstanding any waiver or exemption granted by the commission,
37 and notwithstanding the statutory exemption based on date of initial
38 hire under RCW 43.101.200. Commissioned officers of the Washington
39 state patrol, whether they have been or may be exempted by rule of
40 the commission from the basic training requirement of RCW 43.101.200,

1 are included as peace officers for purposes of this chapter. Fish and
2 wildlife officers with enforcement powers for all criminal laws under
3 RCW 77.15.075 are peace officers for purposes of this chapter.

4 (~~((11))~~) (12) "Corrections officer" means any corrections agency
5 employee whose primary job function is to provide for the custody,
6 safety, and security of adult prisoners in jails and detention
7 facilities and who is subject to the basic corrections training
8 requirement of RCW 43.101.220 and any other requirements of that
9 section, notwithstanding any waiver or exemption granted by the
10 commission, and notwithstanding the statutory exemption based on date
11 of initial hire under RCW 43.101.220. For the purpose of RCW
12 43.101.080, 43.101.096, 43.101.106, 43.101.116, 43.101.121,
13 43.101.126, 43.101.136, 43.101.146, 43.101.156, 43.101.380, and
14 43.101.400, "corrections officer" does not include individuals
15 employed by state agencies.

16 **Sec. 2.** RCW 43.101.080 and 2020 c 119 s 13 are each amended to
17 read as follows:

18 The commission shall have all of the following powers:

- 19 (1) To meet at such times and places as it may deem proper;
- 20 (2) To adopt any rules and regulations as it may deem necessary;
- 21 (3) To contract for services as it deems necessary in order to
22 carry out its duties and responsibilities;
- 23 (4) To cooperate with and secure the cooperation of any
24 department, agency, or instrumentality in state, county, and city
25 government, and other commissions affected by or concerned with the
26 business of the commission;
- 27 (5) To do any and all things necessary or convenient to enable it
28 fully and adequately to perform its duties and to exercise the power
29 granted to it;
- 30 (6) To select and employ an executive director, and to empower
31 him or her to perform such duties and responsibilities as it may deem
32 necessary;
- 33 (7) To assume legal, fiscal, and program responsibility for all
34 training conducted by the commission;
- 35 (8) To establish, by rule and regulation, standards for the
36 training of criminal justice personnel where such standards are not
37 prescribed by statute;
- 38 (9) To own, establish, and operate, or to contract with other
39 qualified institutions or organizations for the operation of,

1 training and education programs for criminal justice personnel and to
2 purchase, lease, or otherwise acquire, subject to the approval of the
3 department of enterprise services, a training facility or facilities
4 necessary to the conducting of such programs;

5 (10) To establish, by rule and regulation, minimum curriculum
6 standards for all training programs conducted for employed criminal
7 justice personnel;

8 (11) To review and approve or reject standards for instructors of
9 training programs for criminal justice personnel, and to employ
10 personnel on a temporary basis as instructors without any loss of
11 employee benefits to those instructors;

12 (12) To direct the development of alternative, innovative, and
13 interdisciplinary training techniques;

14 (13) To review and approve or reject training programs conducted
15 for criminal justice personnel and rules establishing and prescribing
16 minimum training and education standards recommended by the training
17 standards and education boards;

18 (14) To allocate financial resources among training and education
19 programs conducted by the commission;

20 (15) To allocate training facility space among training and
21 education programs conducted by the commission;

22 (16) To issue diplomas certifying satisfactory completion of any
23 training or education program conducted or approved by the commission
24 to any person so completing such a program;

25 (17) To provide for the employment of such personnel as may be
26 practical to serve as temporary replacements for any person engaged
27 in a basic training program as defined by the commission;

28 (18) To establish rules and regulations recommended by the
29 training standards and education boards prescribing minimum standards
30 relating to physical, mental and moral fitness which shall govern the
31 recruitment of criminal justice personnel where such standards are
32 not prescribed by statute or constitutional provision;

33 (19) To require county, city, or state law enforcement and
34 corrections agencies that make a conditional offer of employment to
35 an applicant as a fully commissioned peace officer, a reserve
36 officer, or a corrections officer to administer a background
37 investigation (~~(including a)~~) to each applicant, the results of which
38 shall be used by the employer to determine the applicant's
39 suitability for employment as a fully commissioned peace officer, a
40 reserve officer, or a corrections officer. The background

1 investigation must include: A check of criminal history((~~r~~));
2 verification of immigrant or citizenship status as either a citizen
3 of the United States of America or a lawful permanent resident((~~r~~));
4 a psychological examination((~~r~~ and)); and either an eye-based truth
5 verification test or a polygraph test or similar assessment ((~~to each~~
6 ~~applicant, the results of which shall be used by the employer to~~
7 ~~determine the applicant's suitability for employment as a fully~~
8 ~~commissioned peace officer, a reserve officer, or a corrections~~
9 ~~officer)), or both. The background investigation, psychological
10 examination, eye-based truth verification test, and the polygraph
11 examination shall be administered in accordance with the requirements
12 of RCW 43.101.095(2) for peace officers, and RCW 43.101.096 for
13 corrections officers. The employing county, city, or state law
14 enforcement agency may require that each peace officer, reserve
15 officer, or corrections officer who is required to take a
16 psychological examination, an eye-based truth verification test, and
17 a polygraph or similar test, or any combination of these tests, pay a
18 portion of the testing fee based on the actual cost of the test or
19 four hundred dollars, whichever is less. County, city, and state law
20 enforcement agencies may establish a payment plan if they determine
21 that the peace officer, reserve officer, or corrections officer does
22 not readily have the means to pay for his or her portion of the
23 testing fee. This subsection does not apply to corrections officers
24 employed by state agencies;~~

25 (20) To promote positive relationships between law enforcement
26 and the citizens of the state of Washington by allowing commissioners
27 and staff to participate in the "chief for a day program." The
28 executive director shall designate staff who may participate. In
29 furtherance of this purpose, the commission may accept grants of
30 funds and gifts and may use its public facilities for such purpose.
31 At all times, the participation of commissioners and staff shall
32 comply with chapter 42.52 RCW and chapter 292-110 WAC.

33 All rules and regulations adopted by the commission shall be
34 adopted and administered pursuant to the administrative procedure
35 act, chapter 34.05 RCW, and the open public meetings act, chapter
36 42.30 RCW.

37 **Sec. 3.** RCW 43.101.095 and 2018 c 32 s 5 are each amended to
38 read as follows:

1 (1) As a condition of continuing employment as peace officers,
2 all Washington peace officers: (a) Shall timely obtain certification
3 as peace officers, or timely obtain certification or exemption
4 therefrom, by meeting all requirements of RCW 43.101.200, as that
5 section is administered under the rules of the commission, as well by
6 meeting any additional requirements under this chapter; and (b) shall
7 maintain the basic certification as peace officers under this
8 chapter.

9 (2) (a) As a condition of continuing employment for any applicant
10 who has been offered a conditional offer of employment as a fully
11 commissioned peace officer or a reserve officer after July 24, 2005,
12 including any person whose certification has lapsed as a result of a
13 break of more than twenty-four consecutive months in the officer's
14 service as a fully commissioned peace officer or reserve officer, the
15 applicant shall submit to a background investigation (~~(including a)~~)
16 as administered by the county, city, or state law enforcement agency,
17 the results of which shall be used to determine the applicant's
18 suitability for employment as a fully commissioned peace officer or a
19 reserve officer. The background investigation must include: A check
20 of criminal history((~~r~~)); verification of immigrant or citizenship
21 status as either a citizen of the United States of America or a
22 lawful permanent resident((~~r~~)); a psychological examination((~~r~~ and));
23 and either an eye-based truth verification test or a polygraph or
24 similar assessment ((as administered by the county, city, or state
25 law enforcement agency, the results of which shall be used to
26 determine the applicant's suitability for employment as a fully
27 commissioned peace officer or a reserve officer)), or both.

28 (i) The background investigation including a check of criminal
29 history shall be administered by the county, city, or state law
30 enforcement agency that made the conditional offer of employment in
31 compliance with standards established in the rules of the commission.

32 (ii) The psychological examination shall be administered by a
33 psychiatrist licensed in the state of Washington pursuant to chapter
34 18.71 RCW or a psychologist licensed in the state of Washington
35 pursuant to chapter 18.83 RCW, in compliance with standards
36 established in rules of the commission.

37 (iii) The polygraph test shall be administered by an experienced
38 polygrapher who is a graduate of a polygraph school accredited by the
39 American polygraph association and in compliance with standards
40 established in rules of the commission.

1 (iv) Any other test or assessment to be administered as part of
2 the background investigation shall be administered in compliance with
3 standards established in rules of the commission.

4 (b) The employing county, city, or state law enforcement agency
5 may require that each peace officer or reserve officer who is
6 required to take a psychological examination, an eye-based truth
7 verification test, and a polygraph or similar test, or any
8 combination of these tests, pay a portion of the testing fee based on
9 the actual cost of the test or four hundred dollars, whichever is
10 less. County, city, and state law enforcement agencies may establish
11 a payment plan if they determine that the peace officer or reserve
12 officer does not readily have the means to pay for his or her portion
13 of the testing fee.

14 (3) The commission shall certify peace officers who have
15 satisfied, or have been exempted by statute or by rule from, the
16 basic training requirements of RCW 43.101.200 on or before January 1,
17 2002. Thereafter, the commission may revoke certification pursuant to
18 this chapter.

19 (4) The commission shall allow a peace officer to retain status
20 as a certified peace officer as long as the officer: (a) Timely meets
21 the basic law enforcement training requirements, or is exempted
22 therefrom, in whole or in part, under RCW 43.101.200 or under rule of
23 the commission; (b) meets or is exempted from any other requirements
24 under this chapter as administered under the rules adopted by the
25 commission; (c) is not denied certification by the commission under
26 this chapter; and (d) has not had certification revoked by the
27 commission.

28 (5) As a prerequisite to certification, as well as a prerequisite
29 to pursuit of a hearing under RCW 43.101.155, a peace officer must,
30 on a form devised or adopted by the commission, authorize the release
31 to the commission of his or her personnel files, termination papers,
32 criminal investigation files, or other files, papers, or information
33 that are directly related to a certification matter or
34 decertification matter before the commission.

35 (6) The commission is authorized to receive criminal history
36 record information that includes nonconviction data for any purpose
37 associated with employment by the commission or peace officer
38 certification under this chapter. Dissemination or use of
39 nonconviction data for purposes other than that authorized in this
40 section is prohibited.

1 (7) For a national criminal history records check, the commission
2 shall require fingerprints be submitted and searched through the
3 Washington state patrol identification and criminal history section.
4 The Washington state patrol shall forward the fingerprints to the
5 federal bureau of investigation.

6 **Sec. 4.** RCW 43.101.096 and 2020 c 119 s 3 are each amended to
7 read as follows:

8 (1) As a condition of continuing employment as corrections
9 officers, all Washington state corrections officers shall: (a) Timely
10 obtain certification as corrections officers, or timely obtain
11 exemption therefrom, by meeting all requirements of RCW 43.101.220,
12 as that section is administered under the rules of the commission, as
13 well as by meeting any additional requirements under this chapter;
14 and (b) maintain the basic certification as corrections officers
15 under this chapter. The commission shall certify corrections officers
16 who have satisfied, or have been exempted by statute or by rule from,
17 the basic training requirements of RCW 43.101.220 on or before June
18 11, 2020. Thereafter, the commission may revoke certification
19 pursuant to this chapter.

20 (2) As a condition of continuing employment for any applicant who
21 has been offered a conditional offer of employment as a corrections
22 officer after July 1, 2021, including any person whose certification
23 has lapsed as a result of a break of more than twenty-four
24 consecutive months in the officer's service as a corrections officer,
25 the applicant shall submit to a background investigation (~~including~~
26 a)) as administered by the corrections agency, the results of which
27 shall be used to determine the applicant's suitability for employment
28 as a corrections officer. The background investigation must include:
29 A check of criminal history((~~τ~~)); verification of immigrant or
30 citizenship status as either a citizen of the United States or a
31 lawful permanent resident((~~τ~~)); a psychological examination((~~τ~~ and));
32 and either an eye-based truth verification test or a polygraph or
33 similar assessment ((as administered by the corrections agency, the
34 results of which shall be used to determine the applicant's
35 suitability for employment as a corrections officer)), or both.

36 (3) The commission shall allow a corrections officer to retain
37 status as a certified corrections officer as long as the officer: (a)
38 Timely meets the basic corrections officer training requirements, or
39 is exempted therefrom, in whole or in part, under RCW 43.101.220 or

1 under rule of the commission; (b) meets or is exempted from any other
2 requirements under this chapter as administered under the rules
3 adopted by the commission; (c) is not denied certification by the
4 commission under this chapter; and (d) has not had certification
5 revoked by the commission.

6 (4) As a prerequisite to certification, as well as a prerequisite
7 to pursuit of a hearing under RCW 43.101.156, a corrections officer
8 must, on a form devised or adopted by the commission, authorize the
9 release to the commission of his or her personnel files, termination
10 papers, criminal investigation files, or other files, papers, or
11 information that are directly related to a certification matter or
12 decertification matter before the commission.

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