

WSR 22-07-073
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed March 18, 2022, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-053.

Title of Rule and Other Identifying Information: Peace, tribal police, and correction officer certification WAC changes. These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW.

Hearing Location(s): On April 27, 2022, at 10:00 a.m., at 19010 1st Avenue South, Burien, WA 98148; or virtually. Notice of the location of the meeting will be provided on the website at cjtc.wa.gov/about/commission-board-and-meetings.

Date of Intended Adoption: April 26, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email dzable@cjtc.wa.gov, by April 24, 2022.

Assistance for Persons with Disabilities: Contact Derek Zable, phone 206-835-7350, email dzable@cjtc.wa.gov, by April 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW. WAC changes also include rule changes to the administrative hearing process, a definition section that is chapter wide, clarifies the background check requirements for hiring agencies, and provides general clean-up and WAC style compliance within the modified sections.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.030, 43.101.080, 43.101.085, 43.101.095, 43.101.105, 43.101.115, 43.101.121, 43.101.126, 43.101.135, 43.101.145, 43.101.155, 43.101.157, 43.101.380, 43.101.400, and 43.101.460.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Devine, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 18, 2022
Derek Zable
Records Manager

OTS-3681.2

Chapter 139-01 WAC
GENERAL ADMINISTRATION AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 04-07-146, filed 3/23/04, effective 4/23/04)

WAC 139-01-100 Description of central and field organization.

The ~~((Washington state criminal justice training))~~ commission consists of the executive director, staff, and ~~((fourteen))~~ 21 commissioners. The executive director will approve recommendations for training ~~((pursuant to commission))~~ consistent with adopted goals and standards ~~((may be approved by the executive director of the commission. Other recommendations will be reviewed by the commissioners for approval or rejection. Approved))~~. The executive director will approve recommendations and other matters of the commission ~~((necessitating implementation or))~~ that require staff involvement ~~((will be assigned by the executive director))~~ to implement and will direct such assignments to appropriate personnel. The commissioners will review other recommendations for approval or rejection.

The business office of the commission is located at 3060 Willamette Drive N.E., Lacey, Washington 98516. The mailing address is Post Office Box 40905, Olympia, Washington 98504. It is maintained by the commission's executive director and staff from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and the days the commission is closed, and serves as a central repository for the commission's records of administration and operation.

The Criminal Justice Training Center, 19010 1st Avenue, Burien, Washington 98148, serves as the commission's primary training site. Other training is conducted locally, regionally, or at centralized locations statewide, as determined by staff.

[Statutory Authority: RCW 43.101.080. WSR 04-07-146, § 139-01-100, filed 3/23/04, effective 4/23/04; WSR 00-17-017, § 139-01-100, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-100, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 86-19-021, filed 9/10/86)

WAC 139-01-310 (~~"Commission" defined.~~) Definitions. ~~((As used in this chapter "commission" means the Washington state criminal jus-~~

~~tee training commission.))~~ (1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Commission** means the Washington state criminal justice training commission.

(3) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(4) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(5) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(6) **Expired certification** means that an officer has had a break in service of over 60 months and their certification is no longer valid.

(7) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h); or

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim,

white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief.

(8) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(9) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(10) **Lapsed certification** means that an officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(11) **Officers** unless otherwise specified, means full-time, general authority peace officers, tribal police officers with a recognized certified tribe, and corrections officers as defined in RCW 43.101.010 (6), (10), and (12).

(12) **Petitioner** means the commission's certification division.

(13) **Probationary periods or probationary terms** means conditions set by the commission for reinstatement of a suspended certification.

(14) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

(15) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as an officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(16) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

(17) **Suspension** means the suspension of certification imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(18) **Use of force** means any incident in which an officer's actions resulted in serious injury or death.

[Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-2600.3

AMENDATORY SECTION (Amending WSR 05-07-049, filed 3/11/05, effective 4/11/05)

WAC 139-03-010 Adoption of model rules of procedure. Practice and procedure before the commission shall ~~((be in accordance))~~ comport with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

~~((Peace))~~ Officer certification proceedings before the commission are governed by chapter 139-06 WAC.

[Statutory Authority: RCW 43.101.080. WSR 05-07-049, § 139-03-010, filed 3/11/05, effective 4/11/05; WSR 00-17-017, § 139-03-010, filed 8/4/00, effective 9/4/00.]

OTS-2597.3

AMENDATORY SECTION (Amending WSR 19-07-036, filed 3/13/19, effective 4/13/19)

WAC 139-05-200 Requirement of basic law enforcement training for ((general authority peace)) officers. (1) ~~((Unless certification eligibility has been reinstated,))~~ A peace officer or tribal police officer whose certification ~~((, commission and/or licensing))~~ has been revoked ~~((, sanctioned,))~~ or suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy ~~((certificate, regardless of the officer's prior years of law enforcement service))~~ diploma.

(2) ~~((All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, and officers of the Washington state patrol, unless otherwise exempted by the commission must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.))~~ As a condition of continued employment, unless exempted by the commission, all peace and tribal officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and successfully complete the training.

(3) Law enforcement personnel exempted from the requirement of subsection (2) of this section include commissioned personnel:

(a) ~~((Individuals holding the office of sheriff of any county on September 1, 1979; and~~

~~(b) Commissioned personnel:~~

~~(i) Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978;~~

~~(ii) Who have received a certificate of completion in accordance with the requirement of subsection (2) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or~~

~~(iii) Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage in regular and commissioned law enforcement employment with that agen-~~

~~ey without break or interruption in excess of twenty-four months duration.~~

~~(4) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.~~

~~(5) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:~~

~~(a) The individual in noncompliance;~~

~~(b) The head of his/her agency; and~~

~~(c) Any other agency or individual, as determined by the commission.) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.~~

~~(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer with a general authority law enforcement agency. This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.~~

~~(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer begins ongoing regular employment with the agency.~~

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-044, filed 12/11/13, effective 1/11/14)

WAC 139-05-210 ((Basic law enforcement)) Certificate of equivalency. (1) ~~((A peace))~~ An officer whose certification, commission, ~~((and/or))~~ or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of completion of equivalent basic law enforcement ~~((training))~~ academy or corrections officers academy is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection ~~((6))~~ (8) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Fully commissioned ~~((peace officers of a city, county, or political subdivision of the state of))~~ officers of any Washington ~~((r))~~

state agency as defined in RCW 10.93.020 who otherwise are eligible to attend the basic law enforcement academy; ((or))

~~(b) Fully commissioned ((peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission;~~

~~or~~
~~(e)) officers who have been certified by completing a basic training program in Washington or another state;~~

~~(c) Corrections officers who are regular, full-time custody and case management employees of publicly funded agencies within Washington who otherwise are eligible to attend the corrections officers academy;~~

~~(d) Corrections officers who have attained certification through successful completion of an accepted corrections officers academy in Washington or another state;~~

~~(e) Persons who have not attained commissioned ((peace)) officer status but have successfully completed a basic law enforcement academy recognized as ((a full)) fully equivalent to ((the)) Washington's ((state)) basic law enforcement academy by the commission and within ((twelve)) 12 months of the date of completion ((been made)) has received a conditional offer of employment as a fully commissioned ((peace)) officer in Washington state; ((or)) and~~

~~((d) Persons whose peace officer)) (f) Officers whose certification, commission, ((and/or)) or licensing has lapsed because of a break in service ((as a full-time, fully commissioned peace officer in this)) in Washington or any other state or territory for more than ((twenty-four)) 24 months but less than ((sixty)) 60 months ((and who are required to attend the equivalency)).~~

~~(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.~~

~~(5) Applicants who ((are required to)) must participate in the equivalency academy ((for the purpose of becoming)) to become a certified ((peace)) officer must attend the first available session ((of the equivalency academy)) as a condition of certification ((as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis)).~~

~~(6) It is the responsibility of ((the)) an applicant's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner((, and as necessary, to ensure that the participation provided by this section is affected)) and all requirements within this section are met.~~

~~((5)) (7) The decision to request an officer's participation in the equivalency process is ((discretionary with)) at the discretion of the ((head)) sheriff or chief of the officer's employing agency((,)) who must advise the commission of that decision ((by appropriate notation upon)) on the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information.~~

~~((6)) (8) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a ((pre-condition of participation within such)) condition of participating in the equivalency process:~~

- (a) A statement of the applicant's health and physical condition ~~((by an examining physician));~~
- (b) A record of the applicant's firearms qualification;
- (c) A liability release agreement by the applicant; ~~((and))~~
- (d) ~~((A criminal records check regarding such applicant.~~
- ~~(7) If comparable emergency vehicle operations training))~~ Previous employment agencies with dates of employment;
- (e) Documentation of completion of the previous training program;
- (f) Written syllabus detailing specific areas of training and hours of training;
- (g) Documentation of current certification status; and
- (h) For peace and tribal officers, verification of comparable emergency vehicle operations training (EVOC).

~~If this~~ has not been completed previously, the applicant ~~((will be required to))~~ must complete the commission's current basic law enforcement ~~((academy emergency vehicle operation course))~~ EVOC, as scheduled by the commission; all costs associated with this training will be the responsibility of the law enforcement agency.

~~((8))~~ (9) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission ~~((will: (a)))~~ shall issue a certificate of completion ~~((of equivalent basic law enforcement training; or (b)))~~ and a certificate of certification.

(10) If the officer has not met the qualifications to satisfactorily complete the equivalency academy, the commission shall:

- (a) Issue a certificate of completion ((of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or
- (c) Require completion of the commission's)) and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the officer to attend the basic law enforcement academy.

[Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-045, filed 12/11/13, effective 1/11/14)

WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training. (1) A law enforcement agency may sponsor a reserve officer, as defined by WAC 139-05-810, as an applicant for the basic law enforcement ~~((training))~~ academy.

(2) The commission has sole discretion to admit or deny admittance to the basic law enforcement academy. Priority for admittance to

the basic law enforcement academy shall be given to applicants currently employed as fully commissioned (~~law enforcement~~) officers.

(3) Reserve officer applicants who are admitted to the basic law enforcement academy are responsible for the full cost of attendance (~~at the basic law enforcement academy,~~) including payment for room and board if (~~room and board are requested by the applicant~~) needed. Full payment for attendance at the basic law enforcement academy must be paid in advance (~~as a condition of attendance~~) and is nonrefundable.

(4) Reserve officer applicants must provide proof of agency labor and industries coverage or adequate medical insurance coverage as a condition of admission to the basic law enforcement academy. Such applicants must maintain said medical insurance throughout the duration of the academy(~~+~~) and must immediately notify the commission in the event that medical insurance terminates, changes, or coverage and liability under the policy is substantially changed. The commission has sole discretion to determine what constitutes adequate medical insurance coverage for attendance at the basic law enforcement academy.

(5) Reserve officer applicants must satisfy all other requirements for admittance to and continued participation in the basic law enforcement academy(~~+~~) to include those requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

[Statutory Authority: RCW 43.101.080. WSR 14-01-045, § 139-05-241, filed 12/11/13, effective 1/11/14.]

AMENDATORY SECTION (Amending WSR 18-13-057, filed 6/14/18, effective 7/15/18)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) (~~Effective January 1, 2006,~~) Every peace or tribal officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of (~~twenty-four~~) 24 hours of in-service training annually.

(a) (~~This requirement is effective January 1, 2006, for incumbent officers.~~

~~(b))~~) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(~~(e))~~) (b) Training may be developed and provided by the employer or other training resources.

(~~(d))~~) (c) The commission will publish guidelines for approved in-service training.

(~~(e) As of July 1, 2018, the twenty-four~~) (d) The 24 hours must include the successful completion of the (~~training~~) commission's (~~two-hour~~) annual online crisis intervention course prescribed under RCW 43.101.427.

(2) (~~(Effective January 1, 2016,)~~) Every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of (~~(twenty-four)~~) 24 hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve (~~(peace officer/tribal)~~) peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic (~~(reserve)~~) law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the (~~(twenty-four)~~) 24 hours must include the successful completion of the (~~(training)~~) commission's (~~(two-hour)~~) annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a recordkeeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for (~~(peace)~~) officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three-month extension under this provision provides the individuals named until March 31st to complete the mandated (~~(twenty-four)~~) 24 hours.

(d) Any training obtained during this three-month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-13-057, § 139-05-300, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 43.101.080. WSR 16-19-040, § 139-05-300, filed 9/14/16, effective 10/15/16; WSR 15-19-042, § 139-05-300, filed 9/10/15, effective 10/11/15; WSR 09-16-098, § 139-05-300, filed 8/4/09, effective 9/4/09; WSR 05-20-029, § 139-05-300, filed 9/28/05, effective 10/29/05; WSR 05-01-112, § 139-05-300, filed 12/15/04, effective 1/15/05.]

NEW SECTION

WAC 139-05-911 Tribal certification. Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the tribal government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[]

AMENDATORY SECTION (Amending WSR 17-10-055, filed 5/2/17, effective 6/2/17)

WAC 139-05-915 (~~(Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.)~~) Canines—Training and certification.

(1) Canine teams working in the state of Washington shall be certified to the adopted standards as set by ~~((criminal justice training commission (CJTC)))~~ commission policy.

(a) The standards shall be maintained by the commission ~~((staff))~~ and readily available to ~~((stakeholders))~~ the public.

(b) These standards include the minimum performance standards for canine teams performing specific law enforcement or corrections functions.

(c) As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the commission in the category for ~~((the))~~ a team's intended use.

(2) An evaluator shall be ~~((a person who is recognized and))~~ appointed by the ~~((CJTC))~~ commission to perform the testing of the canine teams.

(a) The qualifications to become an evaluator ~~((relating to))~~ for canine certification shall be outlined in the evaluation policy adopted by the ~~((CJTC))~~ commission.

(b) In evaluating the proficiency of ~~((the))~~ a canine team, evaluators shall use the standards approved by the commission for that particular discipline.

(c) Each certification issued pursuant to these rules will remain valid as set forth in ~~((CJTC))~~ commission policy, as long as the composition and responsibility of the canine team does not change.

(d) A canine team's certification shall automatically expire if the specific handler and canine, originally paired at the time of certification ~~((r))~~ cease to perform canine team functions together or if the function for which the team was certified changes.

(3) This process is not related to ~~((r nor does it have any effect upon r))~~ and does not change the requirements for ~~((peace))~~ officer certification.

(4) Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington (~~peace officer or corrections~~) officer.

(5) Certified canine teams should have the knowledge and ability to comply with the canine model policy established on December 28, 2021, pursuant to section 3, chapter 320, Laws of 2021. This model policy provides the following:

(a) Canine certification training requirements - Set forth in the commission canine training policy;

(b) Considerations of canine deployment;

(c) Appropriate canine deployment;

(d) Strategies for minimizing law enforcement canine bites;

(e) Circumstances where a canine handler should consider the use of tactics other than deploying a canine;

(f) Prohibited use of a police canine;

(g) Use of canines to apprehend suspects;

(h) Agency canine team reporting protocols;

(i) Circumstances that would warrant the decertification of canine teams; and

(j) Circumstances where the use of voluntary canines and canine handlers may be appropriate.

(6) To report a use of force as outlined in the canine model policy, canine teams should follow the guidelines set forth in WAC 139-06-025.

[Statutory Authority: RCW 43.101.080. WSR 17-10-055, § 139-05-915, filed 5/2/17, effective 6/2/17; WSR 17-01-059, § 139-05-915, filed 12/14/16, effective 1/14/17; WSR 05-20-029, § 139-05-915, filed 9/28/05, effective 10/29/05; WSR 05-01-114, § 139-05-915, filed 12/15/04, effective 1/15/05; WSR 03-07-100, § 139-05-915, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-915, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-915, filed 9/10/86.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-912	Requirement of training for state fire marshals.
----------------	--

OTS-3682.2

Chapter 139-06 WAC

~~((CERTIFICATION, DENIAL, REVOCATION, INVESTIGATION, COMMENCEMENT OF ACTION))~~ CERTIFICATION—NOTICES, INVESTIGATIONS, HEARINGS, AND ACTIONS

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-010 Certification. (1) (~~(Effective January 1, 2002, all Washington peace)~~) All officers shall (~~(be required to)~~) submit a signed (~~(peace)~~) officer certification form to the commission (~~(, which shall serve as an official)~~) to officially request (~~(for)~~) certification as (~~(a peace)~~) an officer in Washington state. The form shall be submitted to the commission by the (~~(peace)~~) officer (~~(at such time as)~~) once the (~~(peace)~~) officer has met (~~(the)~~) all requirements (~~(for certification contained in RCW 43.101.095, and shall certify that the peace officer has met such requirements)~~).

(a) Responsibility for the review and acceptance of an applicant's psychological background, polygraph, and other background materials lies with the hiring agency.

(b) The commission shall issue a certificate (~~(of peace officer certification)~~) upon verification that (~~(the peace)~~) an officer is eligible for certification.

(2) (~~(A peace officer who has satisfied, or has been exempted from, the basic training requirements of RCW 43.101.200, prior to January 1, 2002, but who was not employed as a commissioned peace officer on January 1, 2002, and has not had a break of more than twenty-four consecutive months of law enforcement service, shall upon his or her return to employment submit a peace officer certification form to the commission as described in subsection (1) of this section. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification. If the peace officer's break in law enforcement service was more than twenty-four consecutive months, the peace officer must comply with the training requirements of WAC 139-05-200. The commission shall determine under chapter 43.101 RCW and rules of the commission whether the peace officer is eligible for certification and, if so, it shall determine any requirements that the peace officer must meet as a condition of certification.~~)

(3)) The commission shall allow an officer to retain status as a certified officer provided that the officer:

(a) Timely meets basic training requirements or is exempted in whole or in part under RCW 43.101.200 or 43.101.220, or under policies of the commission;

(b) Has not had a break of more than 24 consecutive months of service;

(c) Is not denied certification by the commission under this chapter; and

(d) Has not had certification suspended or revoked by the commission.

(3) Following a break in service and timely meeting the basic training requirements, an officer shall, upon return to service, submit an officer certification form to the commission as described in subsection (1) of this section.

(a) The commission shall issue a certificate of officer certification upon verification that the officer is eligible for certification.

(b) If an officer's break in service is less than 24 months and the officer's certification remains in good standing, no additional training is required.

(c) If an officer's break in service was more than 24 consecutive months and less than 60 months and the officer's certification is in

good standing, the officer must comply with commission training requirements per WAC 139-05-200 and 139-05-210.

(d) If an officer's break in service is over 60 months and the officer's certification is in good standing, the officer must attend the basic law enforcement academy or the corrections officer academy. An officer may also request a variance per WAC 139-05-940.

(4) A certification granted based on an administrative exemption under WAC 139-05-200 shall remain in effect for the duration of the exemption. However, such certification is subject to the requirements of RCW 43.101.105.

~~((4))~~ (5) Upon determination that a certification form contains missing or ((deficient)) erroneous information, the commission ((staff)) shall notify the ((peace)) officer and the ((peace)) officer's employing agency ((for purposes of this chapter, "peace officer's employing agency" shall mean the law enforcement agency of termination and/or current employing law enforcement agency) of such and the peace)) and the officer must submit the ((missing or deficient)) correct information to the commission within ((thirty)) 30 days of the date the request is issued. Failure to submit the ((missing or deficient)) correct information within the required time shall result in a recommendation ((that)) to deny the ((peace)) officer's request for certification ((be denied)).

~~((4))~~ (6) In order to determine ((a peace)) an officer's eligibility for certification, the commission ((staff)) may request records and information in addition to that provided on the ((peace)) officer certification form. The ((peace)) officer or the ((peace)) officer's employing agency shall submit the requested records and information within ((thirty)) 30 days of the date the request is issued. Failure to comply with the commission's request shall result in a recommendation ((that)) to deny the ((peace)) officer's request for certification ((be denied)).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-010, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-020 ((Notification of termination.)) Agency reporting requirements—Force, separation, and investigation. ~~((1) Each law enforcement agency of the state of Washington or any political subdivision thereof who employs peace officers shall notify the commission by approved personnel action report form when a peace officer terminates employment with that agency for any reason. Such notification must be made within fifteen days of the termination becoming final.~~

~~((2) The agency shall, upon request by the commission, provide any additional documentation, files or information, as the commission may deem necessary to determine whether the termination provides grounds for revocation or denial of the peace officer's certification.))~~

(1) Within 15 days the employing agency of a certified officer shall use an approved form to notify the commission of the following occurrences:

(a) When an officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by an officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that an officer has been charged with a crime. An employing agency shall have written policies that require an officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by an officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts an officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that an officer resigned or retired in anticipation of discipline, the employing agency shall conduct and complete an internal investigation and provide all relevant information to the commission as it would if the officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by an officer or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with an officer or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that an officer may have committed misconduct in exchange for allowing that officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, inves-

tigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-030 Investigative ((cooperation)) authority—Duty to cooperate. ((All agencies)) (1) An agency shall cooperate in any investigation conducted by the commission regarding ((a peace)) an officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that an officer resigned or retired in anticipation of discipline, then the employing agency shall conduct and complete an investigation and provide all relevant information to the commission as if the officer were still employed by the agency under RCW 43.101.135.

(2) An officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(3) Requests from the commission for records do not constitute a public record request and are not subject to any waiting periods or timelines associated with the Public Records Act, chapter 42.56 RCW.

(4) An officer must also consent to and facilitate a review of the officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information 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 and information.

(5) An employing agency may not enter into any agreement or contract with an officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the officer may have committed misconduct in exchange for allowing an officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-040 Investigation (~~(, probable cause~~ ~~Commencement of proceedings)~~ ~~and appeal—Procedures for misconduct.~~ (1) (~~Upon request by a peace officer's employing agency, on its own initiative, or upon the filing of a complaint, on an approved form, by a law enforcement officer or duly authorized representative of a law enforcement agency, the commission may commence an investigation to determine whether there is probable cause to believe that a peace officer's certification should be denied or revoked under RCW 43.101.105.~~

~~(2))~~ The commission may investigate to determine whether there is preponderance of the evidence to believe an officer's certification should be revoked or suspended. Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint or request from any member of the public including law enforcement or corrections agencies and officers.

(2) The commission may conduct its investigation either concurrently or consecutively to any internal investigation conducted by the employing agency.

(3) The commission may initiate the hearings process by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

(4) Upon a determination by the commission that there is a preponderance of the evidence to believe that an officer's certification should be revoked or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

(5) Upon a determination by the commission (~~(staff)~~) that there is not (~~(probable cause)~~) preponderance of the evidence to revoke or deny (~~(a peace)~~) an officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the (~~(peace)~~) officer's employing agency (~~(7)~~) and the complainant, if any. (~~(A peace)~~)

(6) An officer's employing agency, or the complainant, if any, may request a review by the (~~(chair)~~) executive director of the commission, or (~~(his or her)~~) their designee, of a determination that there is not (~~(probable cause)~~) preponderance of the evidence to revoke or (~~(deny a peace)~~) suspend an officer's certification, by making such request in writing within (~~(fourteen)~~) 14 days of the (~~(mailing)~~) receipt of written notification of the decision not to proceed.

~~((3) Upon a determination by the commission that there is probable cause to believe that the peace officer's certification should be revoked or denied, the commission shall prepare a statement of charges and commence revocation proceedings under RCW 43.101.155.~~

~~(4) Any designee of the chair under this section must be a member of the commission.)~~ (7) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

(8) The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-050 (~~Notification Request for hearing Default.~~)

Statement of charges and notification for hearing. (1) ~~The~~ commission (~~staff~~) shall prepare a statement of charges (~~stating~~) providing the grounds for denial or revocation of the (~~peace~~) officer's certification under RCW 43.101.105.

(a) ~~The statement of charges shall (be accompanied by) include~~ a notice (~~that~~) informing the (~~peace~~) officer (~~is~~) that they are entitled to a hearing on the denial or revocation of their certification and the steps to request a hearing.

(b) ~~The notice (shall include the steps the peace officer must take to request a hearing. The notice)~~ and statement of charges shall be sent to the (~~peace~~) officer and (~~a copy~~) to the (~~peace officer's employing~~) agency that employed the officer at the time of the alleged misconduct. If the officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.

(2) A request for a hearing on the (~~denial~~) potential suspension or revocation of certification must be made by the (~~peace~~) officer on an approved form and received by the commission within (~~sixty~~) 60 days from the date of (~~the mailing of~~) sending the statement of charges.

(a) If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by an officer to request a hearing within 60 days of sending of the statement of charges, or failure by the officer or their counsel to appear at a requested hearing or (at a) any prehearing or status conference, shall constitute default. In such circumstances, the commission shall enter an order of default and (the hearing panel shall enter a) final order under RCW 34.05.440.

(4) (~~A peace~~) An officer may waive the right to a hearing (~~by so indicating on the hearing request~~) on an approved form. By waiving the right to a hearing, the (~~peace~~) officer acknowledges that (~~his or her~~) their certification (~~should be denied or revoked and the hearings panel shall enter such an~~) will be subject to discipline as deemed appropriate by the commission and that the commission shall enter a final order.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

HEARING AND OUTCOMES

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-060 Hearing panels. (1) The commission shall (~~es-~~~~tab-~~~~lish~~) cultivate a list of (~~eligible~~) qualified individuals to be appointed as members of (~~the~~) hearing panels in certification ac-
tions.

(a) Names of qualified individuals interested in serving as panel members under RCW 43.101.380 may be submitted (~~for consideration from law enforcement agencies, law enforcement organizations representing management or labor, from institutions of higher learning, and from eligible individuals interested in serving as panel members. Staff shall review applications and submit a list of eligible individuals to the commission. The commission shall have sole discretion over the selection of panel members.~~

(2) A new panel may, but need not, be established for each hear-
ing.

(3) Each hearing panel shall select a presiding member who shall be responsible for signing documents on behalf of the panel, and for conducting prehearing conferences and any other hearings that may be necessary. If a panel hears more than one hearing, a new presiding member may, but need not, be selected for each hearing.) by any per-
son for consideration by the commission. The commission will establish desired qualifications in policy.

(b) With the exception of appointed members of the commission, interested individuals shall submit the:

(i) Hearing panel member application;

(ii) Cover letter;

(iii) Resume;

(iv) The names and contact information for three references; and

(v) Letter of support from their agency supervisor or administra-
tor. Members of the public may submit a letter of recommendation in lieu of a letter of support.

(c) Materials shall be submitted to the commission's hearing co-
ordinator at the following address: 19010 1st Avenue South, Burien,
Washington 98148. Materials may also be submitted via email, as iden-
tified on the commission website.

(2) The commission shall review applications and submit a list of qualified individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(3) Prior to the hearings panel being selected for a hearing, the commission will confirm with panelists that they have no conflicts of interest as outlined in the hearing panel member handbook. Examples of conflicts of interest include, but are not limited to, the below sit-
uations:

(a) Personal, working, and financial relationships, past or present; and

(b) Shared affiliations in groups, organizations, and activities.

(4) If a panel member is concerned that they have a conflict of interest, including a relationship with a party or a witness that would prevent the panel member from judging the case fairly, they must notify the commission as soon as possible. If the petitioner or respondent has any motion for disqualification of a panel member, the motion must be filed prior to the first prehearing conference.

(5) In all hearings requested under RCW 43.101.155, an administrative law judge (ALJ) appointed under chapter 34.12 RCW shall preside. The ALJ makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(6) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel:

(a) One police chief or sheriff from an agency, who is not a current or past employer of the officer;

(b) One certified Washington officer who is at or below the level of first line supervisor and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

(7) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel:

(a) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility;

(b) One corrections officer who is at or below the level of first line supervisor and who has at least 10 years' experience as a corrections officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

(8) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel:

(a) One tribal police chief;

(b) One tribal police officer who is at or below the level of first line supervisor, and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former officer.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-060, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-070 (~~(Location of hearings—Identification of panel—Disqualification.)~~) **Conference and hearings procedures.** (~~((1) Upon receipt of a request for hearing, the hearing panel shall set the date and time of the hearing, and the date and time of a prehearing conference. Hearings will be held at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, unless the panel determines otherwise.~~

~~(2) Notification of the dates of the hearing and initial prehearing conference shall also contain the names of the members of the hearing panel.~~

~~(3) Any motion for disqualification of a panel member must be filed prior to the initial prehearing conference.)~~ (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will contain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witness or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing teleconference, the panel members will be provided with all materials admitted into evidence, as well as all briefing submitted by the parties.

(6) Failure of the officer or the officer's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the subject officer must attend the proceeding in person.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the subject officer shall remain visible on screen at all times the parties are on the record. Failure to comply with this attendance requirement shall constitute default and the hearings panel shall enter a final order revoking peace officer certification under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) Failure of the officer or their attorney to attend or participate in the hearing will result in a finding of default and an order will be entered under RCW 34.05.440.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-080 Filing of documents for hearings. ((A~~A~~)) (1) If a hearing is to be conducted in person, an original and five copies of ((all documents, pleadings and other correspondence shall be filed at the commission's training facility located at)) the opening brief, witness list, exhibit list, and exhibits are to be submitted to the commission at: 19010 1st Avenue South, Burien, Washington, 98148 ((, addressed to the attention of the certification manager, and one copy shall also be served on the opposing party or their attorney, if represented by counsel. Service shall be accomplished in accordance with the superior court civil rules.)) as outlined in the prehearing order.

(a) All hearing documents received by the commission will be shared with the petitioner, respondent, and the administrative law judge (ALJ).

(b) In addition, an electronic copy of each document shall be provided to the commission, the petitioner, the ALJ, and the respondent or their representative. Service shall be accomplished in accordance with the superior court civil rules.

(2) Witness lists must include a statement of the subject matter on which the witness is expected to testify. Failure to include subject matter in such a statement may be grounds for exclusion of testimony regarding that subject matter at the hearing.

(3) The petitioner and respondent should submit a proposed findings of fact and conclusion of law within three days of the conclusion of the hearing.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-080, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-100 (~~Attendance at hearing—Burden of proof.~~) Outcomes for determinations of misconduct—Suspension, probation, re-training. (~~(1) The peace officer shall appear in person at the hearing. Failure to appear in person shall constitute default and the hearing panel shall enter an order under RCW 34.05.440.~~

~~(2) The standard of proof shall be clear, cogent, and convincing evidence.)~~

(1) When an applicant or officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may deny, suspend, or revoke certification, require remedial training, or impose a probationary term. In determining an appropriate action following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

(a) Information provided by the complainant(s), if any;

(b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;

(c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;

(d) Any information obtained by the commission through its own investigation or research;

(e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and

(f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended an officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate an officer based solely on imposition of suspension by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating an officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-110 Final order. (~~((1) The hearing panel shall enter its final order within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, the peace officer's employing agency, and the complainant, if any.~~

~~(2) The decision of the hearing panel shall be the final decision of the commission.))~~ (1) The administrative law judge (ALJ) makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(2) The hearings panel shall enter the final order within 90 days of the conclusion of the hearing. The commission shall serve a copy of the order to the parties and the officer's employing agency. It will also appear on the commission website.

(3) The final order issued by the hearings panel shall be the final decision of the commission.

(4) The transcripts, admitted evidence, recordings, and written decision of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure and are subject to subpoena and discovery proceedings in civil actions.

(5) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-110, filed 12/20/02, effective 1/20/03.]

((REINSTATEMENT OF CERTIFICATION))

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-130 Standards for readmission to academy, certification after denial, and reinstatement of certification. ~~((1) (a) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting the requirements set forth in WAC 139-05-242 (Readmission to basic law enforcement academy). The commission may impose a probationary period upon readmission.~~

~~(b) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for disqualifying misconduct is eligible for readmission and certification only upon meeting the requirements of subsection (4) of this section.~~

~~(2) A peace officer whose certification is denied or revoked based upon prior administrative error of issuance is eligible for certification or reinstatement of certification upon a determination by the commission that the factors that should have prevented the peace officer from being certified have been remedied and the peace officer is otherwise eligible for certification.~~

~~(3) A peace officer whose certification is denied or revoked based upon failure to cooperate, or interference with an investigation, is eligible for certification or reinstatement of certification if the peace officer's conduct did not also involve disqualifying misconduct, or other illegal or unethical conduct, and upon a showing that the peace officer has thereafter fully cooperated and is otherwise eligible for certification. In making its determination, the commission may consider the nature and seriousness of the peace officer's conduct.~~

~~(4) A peace 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 revocation or denial, petition the commission for certification or reinstatement of certification. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.~~

~~(5) A peace officer whose certification is denied or revoked based solely upon a criminal conviction may petition the commission for certification or reinstatement of certification immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.~~

~~(6) A peace officer whose certification has been denied or revoked, or whose certification has lapsed, due to a break of more than twenty-four consecutive months of law enforcement service as a peace officer, may upon return to service as a law enforcement officer, petition the commission for certification or reinstatement of certification. Upon receipt of a petition for certification or reinstatement of~~

~~certification, the commission shall determine if the peace officer is eligible for certification or reinstatement of certification. The terms of certification or reinstatement of certification may be subject to the requirement of basic law enforcement academy or the basic law enforcement equivalency academy in addition to other requirements as imposed by the commission.)) (1) A person denied a certification based upon dismissal or withdrawal from a basic academy under RCW 43.101.105 (3) (a) is eligible for readmission and certification upon meeting standards established in the rules of the commission.~~

~~(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in commission policy per RCW 43.101.115(2).~~

~~(3) A person whose certification is mandatorily denied or revoked pursuant to RCW 43.101.105(2) is not eligible for certification at any time.~~

~~(4) A person whose certification is denied or revoked for reasons other than provided in subsections (1) through (3) of this section may, five years after the revocation or denial, petition the commission for reinstatement of certification or for eligibility for reinstatement. The commission may hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in commission policy. If the certificate is reinstated or eligibility for certification is determined, the commission shall establish a probationary period of certification.~~

~~(5) A person whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon final judicial reversal of the conviction. The commission may hold a hearing on a request to consider reinstatement, and the commission may allow reinstatement based on standards established in commission policy. If the certificate is reinstated or if eligibility for certification is determined, the commission shall establish a probationary period of certification.~~

~~(6) A person whose certification has been denied or revoked may petition the commission for certification or reinstatement of certification as such time as they are eligible under RCW 43.101.115 and this section.~~

~~(7) The commission's policies and decisions regarding reinstatement shall align with its responsibilities to enhance public trust and confidence in the law enforcement profession and correctional system.~~

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-130, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 14-01-046, filed 12/11/13, effective 1/11/14)

WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification. (1) ~~((The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.~~

~~(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary or required, the peace officer and~~

~~the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision to grant or deny the petition and the reasons for the decision. Where the petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that the petition was denied.~~

~~(3))~~ The commission may hold a hearing to determine an officer's eligibility for certification or reinstatement of certification per RCW 43.101.115.

(a) The commission will review the request and determine whether to hold a hearing based on criteria established in commission policy. The officer and their employing agency shall be notified of the decision in writing and the reasons for the decision, if denied.

(b) Where a petition is denied, the officer or their employing agency may appeal the denial utilizing commission appeal processes within 14 days of receipt of notification that the petition was denied.

(2) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel.

(a) The hearing panel as defined in RCW 43.101.380 shall review the certification file and any additional records and information submitted by the parties prior to the hearing and may request any additional records and information ((in order)) to assist in its determination.

(b) The issues shall be limited to whether the ((peace)) officer is eligible for certification, whether certification should be reinstated, and whether ((appropriate)) probationary terms should be imposed as a condition of reinstatement pursuant to WAC 139-06-150.

~~((4))~~ (3) The hearing panel shall enter its decision on the petition by written order as soon as possible within ((ninety)) 90 days of the conclusion of the hearing, unless the time ((period)) is extended for good cause((7)) or waived. A copy of the order shall be sent to the parties and to ((the peace officer's)) their employing agency.

~~((5))~~ (4) The decision of the hearing panel shall be the final order of the commission.

~~((6) A peace))~~ (5) An officer whose petition for eligibility for certification or reinstatement of certification was denied by a hearing panel for reasons other than those outlined in RCW 43.101.115 (1), (2), and (3) may file a subsequent petition after five years have ((elapsed)) lapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept ((for filing)) a petition for reinstatement submitted after two prior petitions have been denied.

[Statutory Authority: RCW 43.101.080. WSR 14-01-046, § 139-06-140, filed 12/11/13, effective 1/11/14; WSR 03-02-010, § 139-06-140, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-150 (~~(Probationary terms on reinstatement.)~~) **Terms of suspension and retraining.** ((Upon a determination that a peace officer should be certified or reinstated, the commission may impose a term of probation which may include requirements to ensure that the peace officer has taken positive and substantial steps or actions to reconcile the causes for which the peace officer's certification was denied or revoked. When probation is imposed, the terms shall be furnished in writing to the peace officer and the peace officer's agency. Failure of the peace officer to meet the terms of probation may be grounds for a hearing to determine the status of the peace officer's certification.)) (1) The length and conditions of any suspension of a certification imposed under RCW 43.101.105 will be included in the final order.

(2) Consistent with any conditions included in a final order imposing a suspension of a certification under (1) of this section, the commission may require an officer to take positive and substantial steps including retraining to reconcile the causes for which the hearings panel suspended the officer's certification.

(3) The period of suspension of a certification may be for a specified length of time, conditioned upon the completion of retraining or other requirements specified in the final order, or both. However, the period of a suspension of a certification shall last no longer than one year.

(4) Any retraining imposed in a final order shall comply with a list of approved retraining maintained by the commission.

(5) When such conditions have been satisfactorily met and any mandatory minimum length of time has concluded, the commission shall issue a notice lifting the suspension.

(a) Prior to lifting a suspension, the commission shall ensure that any conditions of a suspension of certification as described in (1) of this section are completed; and

(b) The notice lifting the suspension will be provided to the respondent and the employing agency, if any.

(6) If after one year any conditions included in a final order imposing a suspension of a certification under (1) of this section have not been satisfactorily met, the commission shall seek to revoke the respondent's certification.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-150, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-160 Miscellaneous. ((These)) The rules ((are intended to supplement the procedures)) contained in this chapter are intended to supplement the procedures contained in the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure, chapter 10-08 WAC.

(1) In the case of conflict between the ((Administrative Procedure Act, the)) model rules of procedure((,)) and the ((procedural))

rules adopted in this chapter, the ~~((procedural))~~ rules adopted in this chapter shall govern.

~~((Peace))~~ (2) Officer certification proceedings are distinct from proceedings before the commission under chapter 139-03 WAC and this chapter is not intended to modify chapter 139-03 WAC.

(3) This chapter is not intended to affect standards relating to civil service appeals, to collective bargaining remedies, or to any similar remedies ~~((for direct review))~~ of employment actions.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-160, filed 12/20/02, effective 1/20/03.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-06-090	Prehearing conferences.
WAC 139-06-120	Petition for reinstatement of certification.

OTS-2602.3

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-010 ((Conditions)) Conditional offers of employment.

~~((As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer, including any person whose certification has lapsed as a result of a break in service of twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or other truth verification assessment as authorized by the county, city, or state law enforcement agency in compliance with the requirements of this chapter.))~~ (1) Any applicant who has been offered a conditional offer of employment as an officer must submit to a background investigation to determine suitability for employment.

(2) This includes officers whose certification has lapsed as a result of a break in service except those recalled to active military service.

(3) Hiring agencies may not make a nonconditional offer of employment prior to an applicant's completion of the background check.

(a) Hiring agencies shall verify in writing to the commission that they complied with all background check requirements prior to making any final offer of employment; and

(b) Responsibility for all background verification lies with the hiring agency.

(4) Reserve officers shall submit to the same background requirements as officers.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-010, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-010, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 18-19-066, filed 9/17/18, effective 10/18/18)

WAC 139-07-020 Background information. (~~(1) Requirements for the applicant.~~

~~(a) Personal history statement. The applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the employer before the start of a background investigation. The personal history statement form shall contain questions and answers which aid in determining whether the person is suitable for employment as a certified peace officer or a reserve officer. The questions shall address whether the applicant meets the minimum requirements for employment, has engaged in conduct or a pattern of conduct which would jeopardize the public trust in the law enforcement profession, and is of good moral character.~~

~~(b) Information requirements. To assist with the background investigation, the applicant shall provide the following:~~

~~(i) Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident. A copy of any of the following United States government or United States Citizenship Immigration Services documents are acceptable proof: A United States birth certificate, a United States passport, a permanent resident card, a certificate of naturalization, or a certificate of citizenship.~~

~~(ii) Proof of education. A certified copy of a diploma, certificate, transcript, or homeschool transcript is acceptable proof.~~

~~(iii) Record of any military discharge. A certified copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.~~

~~(iv) Personal references. The names and addresses of at least three people who can provide information as personal references.~~

~~(v) Previous employers or school attendees. The names and addresses of all employers and schools attended within the last ten years, at a minimum.~~

~~(vi) Residence history. A listing of the complete residential addresses for the last ten years.~~

~~(2) Requirements of the agency. At a minimum, the agency shall include the following in its collection and assessment of an applicant's background information, which also includes determining if the information provided by the applicant is accurate and truthful. The agency shall:~~

~~(a) Query all the law enforcement agency records in jurisdictions listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(b) Query the motor vehicle division driving records from any state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(c) Complete and submit a fingerprint card inventory sheet to the Federal Bureau of Investigation and Washington state patrol records division for query;~~

~~(d) Query the National Crime Information Center/Interstate Identification Index (NCIC/III) and the Washington Criminal Information Center/Washington State Identification System (WACIC/WASIS) or the equivalent for each state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(e) Contact a minimum of three references and a reasonable number of previous employers listed in subsection (1)(b)(iv) and (v) of this section and document the answers to inquiries concerning whether the person meets the standards of this section; and~~

~~(f) At the conclusion of all of the requirements of the collection and assessment of an applicant's background information, the agency shall complete a report that attests to all the requirements, including the requirements of WAC 139-05-220.)~~ (1) Hiring agency background checks must include the following records and information for new applicants, including reserve officers:

(a) Criminal history;

(b) National decertification indices or data banks;

(c) Commission records including employment history and certification status;

(d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;

(e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;

(f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;

(g) A review of the applicant's social media accounts;

(h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;

(i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;

(j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and

(k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant may be offered employment by more than one agency. The background results may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall 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 an officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-030 Psychological examination. (1) The psychological examination shall be administered by a ~~(())~~ qualified professional ~~((, "which means))~~ who is a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW.

~~(a) ((The qualified professional who administers the examinations should be trained and experienced in psychological testing, test interpretation, psychological assessment techniques, and the administration of psychological examinations specific to peace officer applicants of law enforcement agencies.~~

~~(b))~~ The examiner shall be trained and experienced in psychological testing, test interpretation, psychological examination techniques, and the administration of psychological examinations specific to law enforcement or corrections agencies;

(b) Agencies should confirm with the Washington state department of health that the examiner is in good standing;

(c) If the examiner has less than one year experience in psychological examination for public safety, then they shall be supervised by an examiner with at least two years' experience in psychological examination for public safety;

(d) The examiner shall be trained and knowledgeable in issues regarding discrimination, implicit and explicit bias, and police-community relations;

(e) The examiner shall be trained and knowledgeable in issues of posttraumatic stress and traumatic brain injury;

(f) The examination ~~((should))~~ shall be based upon attributes considered most important for effective performance as ~~((a peace))~~ an officer ~~((as obtained))~~; such attributes may be identified from a job analysis and data provided by the ~~((law enforcement agency making the conditional offer of employment. The data may include interviews, surveys, or other appropriate sources where job performance information was obtained.~~

~~(c) Psychological examination reports older than six months shall not be considered valid for the purpose of RCW 43.101.080(19) and 43.101.095(2).~~

~~(d))~~ hiring agency. Attributes should include self and emotional regulation, decision making and judgment, conflict management, stress tolerance, dominance vs. passivity, and other interpersonal and psychological characteristics that allow for insight to an individual's potential to adequately perform the essential duties of an officer and

to determine what, if any, risk factors exist in the applicant's profile based on objective examination results; and

(g) The examination report, including all ~~((testing))~~ examination materials and documentation used to complete the examination report, ~~((should))~~ shall be maintained in a manner consistent with applicable confidentiality, records retention, and public disclosure laws and rules.

~~((2))~~ ~~((Through the examination, the qualified professional shall determine the psychological suitability of the peace officer applicant by an assessment of whether he or she is free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.~~

~~((3))~~ Psychological examination reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

(3) The examiner shall determine the psychological suitability of the applicant by an examination of whether they are free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.

(4) The sole purpose of the psychological examination under this chapter is compliance with RCW 43.101.080~~((19))~~ (15) and 43.101.095(2)~~((a))~~ and shall not be used for any other purpose ~~((by the law enforcement agency or any party)).~~

~~((4))~~ (5) It is the responsibility of the hiring agency to receive and review the results of the psychological exam. The commission does not routinely review these exams but may do so pursuant to RCW 43.101.400.

(6) Prior to the ~~((administration of the))~~ examination, the applicant must ~~((sign an informed))~~ consent in writing to the conditions of the evaluation. The informed consent should clearly state the ~~((law enforcement))~~ hiring agency is the client so that the applicant ~~((is informed))~~ knows that the entire examination would be shared with the agency.

~~((5))~~ (7) The examination shall include the following:

(a) A minimum of ~~((two))~~ three written psychological tests~~((+))~~

~~((i))~~ The tests should be) that are objective, job-related, psychological instruments validated for use in evaluating law enforcement or correctional officers~~((-))~~;

(i) For the purpose of this section, a validated test is defined as a test that has a substantial research base for interpretation with normal range populations in general and public safety applications in particular;

(ii) ~~((If mail-order, internet based, or computerized tests are employed, the examiner should verify and interpret individual results;))~~ Validated tests used must be the most current versions and be consistent with current, objective, and relevant norms; and

(iii) It is the examiner's responsibility to determine what tests can and will be used to make a valid and reliable determination of applicant suitability based on available instruments that include current, objective, and relevant norms to the position in question;

(b) ((A)) At least one comprehensive, face-to-face, clinical interview with the applicant conducted after a complete review of the psychological test results; if a complete review of the psychological test results is not completed prior to the interview, then a second interview shall be conducted;

(c) An interpretation of the psychological test results by the ~~((qualified professional))~~ examiner;

(d) An opinion on psychological suitability by the ~~((qualified professional))~~ examiner; and

(e) A list and summary of the information relied upon for the ~~((assessment))~~ examination.

~~((6))~~ (8) Findings of the psychological examination shall be ~~((reported in writing to the law enforcement agency requesting the examination-~~

~~(7)))~~ shared by the examiner with the hiring agency verbally with an opportunity to ask questions, as well as reported in writing.

(9) The examiner shall provide an opinion regarding the likelihood that an applicant can safely and effectively perform the essential functions of the position. Any risk factors should also be indicated as well. Areas of essential function to evaluate include, but are not limited to:

(a) Adaptability and flexibility;

(b) Avoidance or risk-tasking behaviors;

(c) Conscientiousness and dependability;

(d) Decision making and judgment;

(e) Emotional regulation and stress tolerance;

(f) Impulse control and attention to safety;

(g) Integrity and ethics;

(h) Social competence; and

(i) Teamwork.

(10) The written report shall include the following:

(a) The date of completion and a signature of the ~~((qualified professional who conducted the examination))~~ examiner;

(b) Name and date of birth of applicant, position applied for, and agency which made the conditional offer of employment;

(c) A list and summary of the information relied upon for the ~~((assessment))~~ examination;

(d) All the components of the examination, as defined in this chapter;

(e) Factors which could affect the reliability and validity of the ~~((assessment))~~ examination; and

(f) An ~~((assessment))~~ opinion of the psychological suitability of the applicant to be ~~((a peace officer or reserve))~~ an officer for the ~~((particular law enforcement))~~ hiring agency.

~~((8) A peace officer))~~ (11) An applicant may be offered employment by more than one ~~((law enforcement))~~ agency that is conditional on the results of a psychological examination.

~~((9))~~ (12) The ~~((peace officer))~~ applicant may be required to pay all or a portion of the cost of the examination under RCW 43.101.080~~((19))~~ (15) and 43.101.095(2).

~~((10))~~ (13) One psychological examination may be shared with more than one ~~((law enforcement))~~ agency under the following circumstances:

(a) The agency which initiated the psychological examination and the ~~((qualified professional conducting the examination))~~ examiner agreed to share the psychological examination report and recommendations with ~~((the other law enforcement))~~ another agency;

(b) The applicant signed a release permitting ~~((the other))~~ another agency to have the psychological examination report;

(c) The psychological examination was completed within six months of the request ~~((by the other law enforcement agency));~~ and

(d) The job analyses of ~~((the initiating and other law enforcement))~~ both agencies ~~((must be))~~ are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-030, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-030, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-040 Polygraph examination or other truth verification assessment. (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

~~(2) Standards for polygraph ((and other truth verification)) assessments ((.)):~~

~~(a) ((Equipment used to conduct truth verification assessments as a part of the preemployment testing for certification of a peace officer or reserve law enforcement officer must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer.~~

~~(b) The examiners, analysts, and their techniques for conducting a truth verification assessment must comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination.~~

~~(c) Truth verification assessments under this chapter are intended as one of the tools for incremental validity to risk assessment and risk management efforts surrounding the evaluation and selection of peace officer and reserve officer applicants.~~

~~(d) Preemployment tests and assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement. The truth verification assessment questions should be simple, direct, and easily understood by the applicant. Test information and results should be considered confidential within the screening process to be used exclusively by the county, city, or state law enforcement agency to assist with the selection of their applicant.~~

~~(2) Polygraph examination.~~

~~(a) An experienced polygraph examiner who is a graduate of a polygraph school accredited by the American Polygraph Association (APA) shall conduct the polygraph test. The examiner must also show that he or she is in compliance with completion of a minimum of thirty hours of APA-approved continuing education every two calendar years.~~

~~(b) Polygraph tests administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph testing, risk assessment, risk management, and field investigation principles.~~

~~(c) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.~~

~~(i) The polygraph examiner shall record a chart semiannually to demonstrate correct functioning and shall be maintained by the examiner for a period of one year.~~

~~(ii) At a minimum, a polygraph instrument shall continuously record the following components during the testing process:~~

~~(A) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;~~

~~(B) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;~~

~~(C) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and~~

~~(D) A motion sensor.~~

~~(d) The county, city, or state law enforcement agency which authorized the polygraph test shall maintain all documentation of the test for a minimum of three years from the date of the test unless otherwise required by law.) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) and belong to the Northwest Polygraph Association or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;~~

~~(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;~~

~~(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;~~

~~(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and~~

~~(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.~~

~~(3) Polygraph assessments:~~

~~(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;~~

~~(b) Polygraph examiners shall ask questions on the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;~~

~~(c) Model questions shall be adopted in commission policy; and~~

~~(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.~~

~~(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:~~

~~(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;~~

~~(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;~~

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) A polygraph finding of dishonesty shall disqualify an applicant.

(9) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

OTS-3683.2

Chapter 139-17 WAC COMPLAINTS

NEW SECTION

WAC 139-17-010 Complaint submission and investigation. (1) Any individual may submit a written complaint to the commission about an officer's conduct. Filing a complaint does not make a complainant a party to the commission's action.

(a) Individuals who need assistance filing a written complaint will be accommodated.

(b) The commission shall make the complaint process transparent and accessible including accepting complaints in any format, accepting anonymous and third-party complaints, making language translation available as needed to accommodate complainants, and refraining from

inquiring about complainants' age, immigration status, or other information not relevant to the complaint.

(c) The commission shall review complaints thoroughly and conduct preliminary investigation to evaluate whether to investigate.

(d) Complainants shall receive information about the process for investigation and any potential adjudication and receive the name of a point of contact at the commission to answer questions as needed. Complainants shall also receive a letter providing the final disposition of their complaint, regardless of the decision to investigate or the outcome of the investigation.

(2) The commission shall refer criminal complaints to the law enforcement agency with jurisdiction.

(3) The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate issues or concerns relating to revocation or suspension on any other basis, without restriction as to the source or the existence of a complaint.

(4) The commission may investigate a pattern of complaints or other conduct that individually may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or

(3). The commission must consider the employing agency's policies and procedures and the officer's job duties and assignment in determining what constitutes a pattern.

(5) The commission shall conduct timely and expedient investigations.

(a) The commission may await the conclusion of an agency's internal administrative investigation or a criminal investigation in order to gain access to greater information or conduct a more thorough investigation.

(b) The commission shall not delay investigations in which the employing agency does not fully cooperate per WAC 139-06-030.

(6) A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

(7) All complaints must be resolved with a written determination, regardless of the decision to investigate.

[]