

WSR 23-19-038  
PERMANENT RULES  
CRIMINAL JUSTICE  
TRAINING COMMISSION

[Filed September 13, 2023, 1:00 p.m., effective October 14, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The WAC changes are [necessary] to meet the legislative requirements of HB [SHB] 1132 (2023) to certify limited authority peace officers who have the powers of arrest and carry a firearm as part of their duties. This includes hearing processes, processes for certification, and determining training. The WAC changes also included requiring reserve officers to report use of force, suspension, and misconduct.

Citation of Rules Affected by this Order: Amending WAC 139-01-310, 139-05-200, 139-05-210, 139-06-210, 139-06-040, 139-06-050, 139-06-070, and 139-06-100.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 23-16-060 on July 26, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: September 13, 2023.

Derek Zable  
Records Manager

**OTS-4790.1**

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

**WAC 139-01-310 Definitions for Title 139 WAC.** The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(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) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified limited authority peace officer** means any limited authority Washington peace officer as defined in subsection (22) of this section who as a normal part of their duties has powers of arrest and carries a firearm.

(4) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, certified limited authority peace officer, certified tribal police officer (~~(with a recognized certified tribe)~~), and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

~~((4))~~ (5) **Certified tribal law enforcement agency** means any tribal law enforcement agency in Washington who has signed a tribal certification agreement with the commission as outlined in WAC 139-06-015 and who is currently in good standing.

(6) **Certified tribal police officer** means any police officer employed by a certified tribal law enforcement agency who has completed the requirements of certification.

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

~~((5))~~ (8) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

~~((6))~~ (9) **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.

~~((7))~~ (10) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

~~((8))~~ (11) **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.

~~((9))~~ (12) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

~~((10))~~ (13) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

~~((11))~~ (14) **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);

(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; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

~~((12))~~ (15) **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.

~~((13))~~ (16) **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.

~~((14))~~ (17) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

~~((15))~~ (18) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

~~((16))~~ (19) **Lapsed certification** means that a certified 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.

~~((17))~~ (20) **Law enforcement personnel** means any person elected, appointed, or employed as a general authority Washington peace officer or certified limited authority peace officer.

(21) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws

relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

~~((18))~~ (22) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

~~((19))~~ (23) **Peace officer** means any officer of general authority or certified limited authority as defined in subsections (18) and (22) of this section respectively.

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

~~((20))~~ (25) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

~~((21))~~ (26) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

~~((22))~~ (27) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((23))~~ (28) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

~~((24))~~ (29) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((25))~~ (30) **Revocation** means to cancel a certified officer's certification.

~~((26))~~ (31) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

~~((27))~~ (32) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((28))~~ (33) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((29))~~ (34) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-01-310, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4791.2

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-05-200 Requirement of basic law enforcement training for officers.** (1) A peace officer or tribal police officer whose certification has been denied, revoked (~~(( $\oplus$ ))~~), suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy diploma.

(2) (a) As a condition of continued employment, unless exempted by the commission, all general authority peace 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 then successfully complete the training.

(b) As a condition of continued employment, unless exempted by the commission, all limited authority peace officers subject to certification whose employment commences on or after July 1, 2023, must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial 12-month period of employment and then successfully complete the training.

(c) As a condition of continued certification, all certified limited authority peace officers whose employment commenced prior to July 1, 2023, must submit to the commission documentation of any prior training received and complete any supplemental training deemed necessary by the commission by December 31, 2024, unless otherwise waived or extended by the commission.

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

(a) 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 subject to certification begins ongoing regular employment with the agency.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-200, filed 6/9/22, effective 7/10/22. 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 23-01-086, filed 12/16/22, effective 1/16/23)

**WAC 139-05-210 Process for equivalency.** (1) (~~(A)~~) A peace officer, tribal police officer, or corrections officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to recruits 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 (9) 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) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority, limited authority, or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Limited authority officers who have been certified by completing a basic training program in Washington or another state;

(e) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(~~(e)~~) (f) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(~~(f)~~) (g) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned, or certified limited authority, officer in Washington state.

(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) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve a recruit for participation in the equivalency process.

(9) The recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

- (a) A statement of the recruit's health and physical condition including a physician signature;
- (b) A liability release agreement by the recruit;
- (c) Previous employment agencies with dates of employment;
- (d) Documentation of completion of the previous training program;
- (e) Written syllabus detailing specific areas of training and hours of training;
- (f) Documentation of current certification status; and
- (g) For peace and tribal officers:
  - (i) A record of the recruit's firearms qualification; and
  - (ii) Verification of comparable emergency vehicle operations (EVO) training (~~((EVOC))~~).

If this has not been completed previously, the recruit must complete the commission's current basic law enforcement (~~((EVOC))~~) EVO training, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the recruit has not met the qualifications to satisfactorily complete an equivalency academy, the commission shall:

- (a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-05-210, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. 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.]

#### OTS-4792.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-020 Agency reporting requirements—Force, separation, and investigation.** (1) Within 15 days the employing agency of either

a certified officer or reserve officer shall use an approved form to notify the commission of the following occurrences:

(a) When a certified officer or reserve officer is separated from the agency for any reason;

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

(c) When the agency first learns that a certified officer or reserve officer has been charged with a crime. An employing agency shall have written policies that require a certified officer or reserve 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 a certified officer or reserve 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 a certified officer's or reserve 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 a certified officer or reserve officer resigned or retired in anticipation of discipline, the agency who employed the officer at the time of the misconduct shall timely conduct and complete an internal investigation and provide all relevant information to the commission as it would if the (~~certified~~) 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 certified officer or reserve officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the (~~certified~~) 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, then 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 certified 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 a certified officer, reserve 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 a certified officer, reserve 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 a certified officer or reserve officer may have committed misconduct in exchange for allowing that (~~certified~~) officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer or reserve 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 any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-020, filed 6/9/22, effective 7/10/22. 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 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-040 Investigation and appeal—Procedures for misconduct.** (1) Commission investigations are to determine whether there is preponderance of the evidence to believe the certified officer's certification should be denied, revoked, or suspended.

(2) Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint per WAC 139-17-010.

(3) The commission may conduct its investigation before, during, or after any internal or criminal investigation by another agency, except in cases where a revocation decision requires a finding that the certified officer's conduct violated policy or law under RCW 43.101.105 (2) or (3).

(4) The commission may investigate any instance where there is a pattern of acts by a certified officer that may have not resulted in formal adjudication of wrongdoing but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or (3).

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

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

(7) Upon a determination by the commission that there is not preponderance of the evidence to revoke, suspend, or deny the certified 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 certified officer's employing agency and the complainant, if any.

(8) The certified officer's employing agency, or the complainant, if any, may request a review by the executive director of the commis-

sion, or their designee, of a determination that there is not preponderance of the evidence to revoke or suspend the certified officer's certification, by making such request in writing within 14 days of the receipt of written notification of the decision not to proceed.

(9) 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.

(10) 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 and 43.101.801. WSR 22-13-075, § 139-06-040, filed 6/9/22, effective 7/10/22. 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 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-050 Statement of charges and notification for hearing.** (1) The commission shall prepare a statement of charges providing the grounds for denial, suspension, or revocation of the certified officer's certification under RCW 43.101.105.

(a) The statement of charges shall include a notice informing the certified officer that they are entitled to a hearing on the denial, suspension, or revocation of their certification, the steps to request a hearing, and that failure to request or attend a hearing will cause their certification to be denied or revoked.

(b) The statement of charges shall be sent to the certified officer and to the agency that employed the certified officer at the time of the alleged misconduct. If the certified 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 potential denial, suspension, or revocation of certification must be made by the certified officer on an approved form and received by the commission within 60 days from the date 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 the certified officer to request a hearing within 60 days of sending of the statement of charges, or failure by the certified officer or their counsel to appear at any prehearing or status conference, shall constitute default and the commission shall enter an order of default and final order under RCW 34.05.440.

(4) Failure of the certified officer to appear at the scheduled hearing shall constitute default and the hearing panel shall enter an order of default and final order under RCW 34.05.440.

(5) The certified officer may waive the right to a hearing on an approved form. By waiving the right to a hearing, the certified officer acknowledges that their certification will be revoked, suspended, or denied and that the commission shall enter an order of default and a final order under RCW 34.05.440.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-050, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-070 Conference and hearings procedures.** (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~~) witnesses 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)~~) conference, the panel members will be provided with all materials admitted into evidence, to include witness list and copies of the statement of charges, as well as all briefings submitted by the parties.

(6) Failure of the respondent or the respondent'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 respondent must attend the proceeding in person. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(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 respondent shall remain visible on screen at all times the parties are on the record. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order 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) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(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 and 43.101.801. WSR 22-13-075, § 139-06-070, filed 6/9/22, effective 7/10/22. 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 23-01-086, filed 12/16/22, effective 1/16/23)

**WAC 139-06-100 Outcomes for determinations of misconduct—~~Denial, suspension, ((probation)) revocation, retraining, or dismissal of the statement of charges.~~** (1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension(~~, probation~~), revocation of certification, remedial training, or dismissal of the statement of charges. In determining an appropriate outcome 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 the certified 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 the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified 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 certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-06-100, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]