
SENATE BILL 5435

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hargrove, Pflug, Kline, Fraser, Shin, Kohl-Welles, and Roach; by request of Criminal Justice Training Commission

Read first time 01/25/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to background investigations for peace officers and
2 reserve officers; and amending RCW 43.101.080, 43.101.095, and
3 43.101.105.

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

5 **Sec. 1.** RCW 43.101.080 and 2008 c 69 s 3 are each amended to read
6 as follows:

7 The commission shall have all of the following powers:

8 (1) To meet at such times and places as it may deem proper;

9 (2) To adopt any rules and regulations as it may deem necessary;

10 (3) To contract for services as it deems necessary in order to
11 carry out its duties and responsibilities;

12 (4) To cooperate with and secure the cooperation of any department,
13 agency, or instrumentality in state, county, and city government, and
14 other commissions affected by or concerned with the business of the
15 commission;

16 (5) To do any and all things necessary or convenient to enable it
17 fully and adequately to perform its duties and to exercise the power
18 granted to it;

- 1 (6) To select and employ an executive director, and to empower him
2 or her to perform such duties and responsibilities as it may deem
3 necessary;
- 4 (7) To assume legal, fiscal, and program responsibility for all
5 training conducted by the commission;
- 6 (8) To establish, by rule and regulation, standards for the
7 training of criminal justice personnel where such standards are not
8 prescribed by statute;
- 9 (9) To own, establish, and operate, or to contract with other
10 qualified institutions or organizations for the operation of, training
11 and education programs for criminal justice personnel and to purchase,
12 lease, or otherwise acquire, subject to the approval of the department
13 of general administration, a training facility or facilities necessary
14 to the conducting of such programs;
- 15 (10) To establish, by rule and regulation, minimum curriculum
16 standards for all training programs conducted for employed criminal
17 justice personnel;
- 18 (11) To review and approve or reject standards for instructors of
19 training programs for criminal justice personnel, and to employ
20 personnel on a temporary basis as instructors without any loss of
21 employee benefits to those instructors;
- 22 (12) To direct the development of alternative, innovate, and
23 interdisciplinary training techniques;
- 24 (13) To review and approve or reject training programs conducted
25 for criminal justice personnel and rules establishing and prescribing
26 minimum training and education standards recommended by the training
27 standards and education boards;
- 28 (14) To allocate financial resources among training and education
29 programs conducted by the commission;
- 30 (15) To allocate training facility space among training and
31 education programs conducted by the commission;
- 32 (16) To issue diplomas certifying satisfactory completion of any
33 training or education program conducted or approved by the commission
34 to any person so completing such a program;
- 35 (17) To provide for the employment of such personnel as may be
36 practical to serve as temporary replacements for any person engaged in
37 a basic training program as defined by the commission;

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

6 (19) To require ~~((that each applicant that has been offered a~~
7 ~~conditional offer of employment as a fully commissioned peace officer~~
8 ~~or a fully commissioned reserve officer take and successfully pass a~~
9 ~~psychological examination))~~ county, city, or state law enforcement
10 agencies that make a conditional offer of employment to an applicant as
11 a fully commissioned peace officer or a reserve office to administer a
12 background investigation including a check of criminal history, a
13 psychological examination, and a polygraph test or similar assessment
14 ~~((procedure as administered by county, city, or state law enforcement~~
15 ~~agencies as a condition of employment as a peace officer))~~ to each
16 applicant, the results of which shall be used by the employer to
17 determine the applicant's suitability for employment as a fully
18 commissioned peace officer or a reserve officer. The background
19 investigation, psychological examination, and the polygraph examination
20 shall be administered in accordance with the requirements of RCW
21 43.101.095(2). The employing county, city, or state law enforcement
22 agency may require that each peace officer or reserve officer who is
23 required to take a psychological examination and a polygraph or similar
24 test pay a portion of the testing fee based on the actual cost of the
25 test or four hundred dollars, whichever is less. County, city, and
26 state law enforcement agencies may establish a payment plan if they
27 determine that the peace officer or reserve officer does not readily
28 have the means to pay for his or her portion of the testing fee;

29 (20) To promote positive relationships between law enforcement and
30 the citizens of the state of Washington by allowing commissioners and
31 staff to participate in the "chief for a day program." The executive
32 director shall designate staff who may participate. In furtherance of
33 this purpose, the commission may accept grants of funds and gifts and
34 may use its public facilities for such purpose. At all times, the
35 participation of commissioners and staff shall comply with chapter
36 42.52 RCW and chapter 292-110 WAC.

37 All rules and regulations adopted by the commission shall be

1 adopted and administered pursuant to the administrative procedure act,
2 chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

3 **Sec. 2.** RCW 43.101.095 and 2009 c 139 s 1 are each amended to read
4 as follows:

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

12 (2)(a) As a condition of continuing employment for any applicant
13 (~~that~~) who has been offered a conditional offer of employment as a
14 fully commissioned peace officer or a reserve officer after July 24,
15 2005, including any person whose certification has lapsed as a result
16 of a break of more than twenty-four consecutive months in the officer's
17 service as a fully commissioned peace officer or reserve officer, the
18 applicant shall (~~successfully pass~~) submit to a background
19 investigation including a check of criminal history, a psychological
20 examination, and a polygraph or similar (~~test~~) assessment as
21 administered by the county, city, or state law enforcement agency
22 (~~that complies with the following requirements:~~

23 ~~(i) The psychological examination shall be administered by a~~
24 ~~psychiatrist licensed in the state of Washington pursuant to chapter~~
25 ~~18.71 RCW or a psychologist licensed in the state of Washington~~
26 ~~pursuant to chapter 18.83 RCW in compliance with standards established~~
27 ~~in rules of the commission.~~

28 ~~(ii)),~~ the results of which shall be used to determine the
29 applicant's suitability for employment as a fully commissioned peace
30 officer or a reserve officer.

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

35 (ii) The psychological examination shall be administered by a
36 psychiatrist licensed in the state of Washington pursuant to chapter

1 18.71 RCW or a psychologist licensed in the state of Washington
2 pursuant to chapter 18.83 RCW, in compliance with standards established
3 in rules of the commission.

4 (iii) The polygraph ((examination)) test or similar assessment
5 shall be administered by an experienced ((polygrapher)) polygraph
6 examiner who is a graduate of a polygraph school accredited by the
7 American polygraph association and in compliance with standards
8 established in rules of the commission.

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

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

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

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

37 (6) The commission is authorized to receive criminal history record
38 information that includes nonconviction data for any purpose associated

1 with employment by the commission or peace officer certification under
2 this chapter. Dissemination or use of nonconviction data for purposes
3 other than that authorized in this section is prohibited.

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

9 **Sec. 3.** RCW 43.101.105 and 2005 c 434 s 3 are each amended to read
10 as follows:

11 (1) Upon request by a peace officer's employer or on its own
12 initiative, the commission may deny or revoke certification of any
13 peace officer, after written notice and hearing, if a hearing is timely
14 requested by the peace officer under RCW 43.101.155, based upon a
15 finding of one or more of the following conditions:

16 (a) The peace officer has failed to timely meet all requirements
17 for obtaining a certificate of basic law enforcement training, a
18 certificate of basic law enforcement training equivalency, or a
19 certificate of exemption from the training;

20 (b) The peace officer has knowingly falsified or omitted material
21 information on an application for training or certification to the
22 commission;

23 (c) The peace officer has been convicted at any time of a felony
24 offense under the laws of this state or has been convicted of a federal
25 or out-of-state offense comparable to a felony under the laws of this
26 state; except that if a certified peace officer was convicted of a
27 felony before being employed as a peace officer, and the circumstances
28 of the prior felony conviction were fully disclosed to his or her
29 employer before being hired, the commission may revoke certification
30 only with the agreement of the employing law enforcement agency;

31 (d) The peace officer has been discharged for disqualifying
32 misconduct, the discharge is final, and some or all of the acts or
33 omissions forming the basis for the discharge proceedings occurred on
34 or after January 1, 2002;

35 (e) The peace officer's certificate was previously issued by
36 administrative error on the part of the commission; or

1 (f) The peace officer has interfered with an investigation or
2 action for denial or revocation of certificate by: (i) Knowingly
3 making a materially false statement to the commission; or (ii) in any
4 matter under investigation by or otherwise before the commission,
5 tampering with evidence or tampering with or intimidating any witness.

6 (2) After July 24, 2005, the commission shall deny certification to
7 any applicant (~~that~~) who has lost his or her certification as a
8 result of a break in service of more than twenty-four consecutive
9 months if that applicant failed to (~~successfully pass the~~
10 ~~psychological examination and the polygraph test or similar assessment~~
11 ~~procedure required in~~) comply with the requirements set forth in RCW
12 43.101.080(19) and 43.101.095(2) (~~, as administered by county, city, or~~
13 ~~state law enforcement agencies~~)).

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