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**HOUSE BILL 1082**

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**State of Washington****67th Legislature****2021 Regular Session****By** Representatives Goodman and J. Johnson

Prefiled 01/05/21.

1       AN ACT Relating to state oversight and accountability of peace  
2 officers and corrections officers; amending RCW 43.101.010,  
3 43.101.020, 43.101.030, 43.101.040, 43.101.060, 43.101.080,  
4 43.101.085, 43.101.095, 43.101.105, 43.101.115, 43.101.135,  
5 43.101.145, 43.101.155, 43.101.157, 43.101.230, 43.101.390,  
6 43.101.420, 34.12.035, 40.14.070, 43.101.380, and 43.101.400;  
7 creating a new section; repealing RCW 43.101.096, 43.101.106,  
8 43.101.116, 43.101.136, 43.101.146, 43.101.156, and 43.101.180; and  
9 prescribing penalties.

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

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

13       When used in this chapter:

14       (1) ((The term "commission")) "Applicant" means an individual who  
15 has received a conditional offer of employment with a law enforcement  
16 or corrections agency pending certification as a peace officer or  
17 corrections officer.

18       (2) "Commission" means the Washington state criminal justice  
19 training commission.

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

4       (3) ((The term "criminal")) Criminal justice personnel" means any  
5 person who serves ((in a county, city, state, or port commission  
6 agency engaged in crime prevention, crime reduction, or enforcement  
7 of the criminal law)) as a peace officer, reserve officer, or  
8 corrections officer.

9       (4) ((The term "law")) Law enforcement personnel" means any  
10 ((public employee or volunteer having as a primary function the  
11 enforcement of criminal laws in general or any employee or volunteer  
12 of, or any individual commissioned by, any municipal, county, state,  
13 or combination thereof, agency having as its primary function the  
14 enforcement of criminal laws in general as distinguished from an  
15 agency possessing peace officer powers, the primary function of which  
16 is the implementation of specialized subject matter areas. For the  
17 purposes of this subsection "primary function" means that function to  
18 which the greater allocation of resources is made)) person elected,  
19 appointed, or employed as a general authority Washington peace  
20 officer as defined in RCW 10.93.020.

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

27       (6) "Chief for a day program" means a program in which  
28 commissioners and staff partner with local, state, and federal law  
29 enforcement agencies, hospitals, and the community to provide a day  
30 of special attention to chronically ill children. Each child is  
31 selected and sponsored by a law enforcement agency. The event, "chief  
32 for a day," occurs on one day, annually or every other year and may  
33 occur on the grounds and in the facilities of the commission. The  
34 program may include any appropriate honoring of the child as a  
35 "chief," such as a certificate swearing them in as a chief, a badge,  
36 a uniform, and donated gifts such as games, puzzles, and art  
37 supplies.

38       (7) ((A peace officer or corrections officer is "convicted"))  
39 "Convicted" means at the time a plea of guilty , nolo contendere, or  
40 deferred sentence has been accepted, or a verdict of guilty or

finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes ((a deferral of sentence)) all instances in which a plea of guilty or nolo contendere is the basis for conviction, all proceedings in which there is a case disposition agreement, and ((also includes the)) any equivalent disposition by a court in a jurisdiction other than the state of Washington.

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

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

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

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

(9) When used in context of proceedings referred to in this chapter, "final" means that the peace officer or corrections officer

1 has exhausted all available civil service appeals, collective  
2 bargaining remedies, and all other such direct administrative  
3 appeals, and the officer has not been reinstated as the result of the  
4 action. Finality is not affected by the pendency or availability of  
5 state or federal administrative or court actions for discrimination,  
6 or by the pendency or availability of any remedies other than direct  
7 civil service and collective bargaining remedies.

8 (10)) "Peace officer" ((means any law enforcement personnel  
9 subject to the basic law enforcement training requirement of RCW  
10 43.101.200 and any other requirements of that section,  
11 notwithstanding any waiver or exemption granted by the commission,  
12 and notwithstanding the statutory exemption based on date of initial  
13 hire under RCW 43.101.200)) has the same meaning as a general  
14 authority Washington peace officer as defined in RCW 10.93.020.  
15 Commissioned officers of the Washington state patrol, whether they  
16 have been or may be exempted by rule of the commission from the basic  
17 training requirement of RCW 43.101.200, are included as peace  
18 officers for purposes of this chapter. Fish and wildlife officers  
19 with enforcement powers for all criminal laws under RCW 77.15.075 are  
20 peace officers for purposes of this chapter.

21 ((11)) (9) "Corrections officer" means any corrections agency  
22 employee whose primary job function is to provide for the custody,  
23 safety, and security of adult ((prisoners)) persons in jails and  
24 detention facilities ((and who is subject to the basic corrections  
25 training requirement of RCW 43.101.220 and any other requirements of  
26 that section, notwithstanding any waiver or exemption granted by the  
27 commission, and notwithstanding the statutory exemption based on date  
28 of initial hire under RCW 43.101.220. For the purpose of RCW  
29 43.101.080, 43.101.096, 43.101.106, 43.101.116, 43.101.121,  
30 43.101.126, 43.101.136, 43.101.146, 43.101.156, 43.101.380, and  
31 43.101.400, "corrections)) in the state. "Corrections officer" does  
32 not include individuals employed by state agencies.

33 (10) "Finding" means a determination based on a preponderance of  
34 the evidence whether alleged misconduct occurred; did not occur;  
35 occurred, but was consistent with law and policy; or could neither be  
36 proven or disproven.

37 (11) "Reserve officer" means any person who does not serve as a  
38 peace officer of this state on a full-time basis, but who, when  
39 called by an agency into active service, is fully commissioned on the

1 same basis as full-time officers to enforce the criminal laws of this  
2 state and includes:

3 (a) Specially commissioned Washington peace officers as defined  
4 in RCW 10.93.020;

5 (b) Limited authority Washington peace officers as defined in RCW  
6 10.93.020;

7 (c) Persons employed as security by public institutions of higher  
8 education as defined in RCW 28B.10.016; and

9 (d) Persons employed for the purpose of providing security in the  
10 K-12 Washington state public school system as defined in RCW  
11 28A.150.010 and who are authorized to use force in fulfilling their  
12 responsibilities.

13 (12) "Tribal police officer" means any person employed and  
14 commissioned by a tribal government to enforce the criminal laws of  
15 that government.

16 **Sec. 2.** RCW 43.101.020 and 1974 ex.s. c 94 s 2 are each amended  
17 to read as follows:

18 (1) There is hereby created and established a state commission to  
19 be known and designated as the Washington state criminal justice  
20 training commission.

21 (2) The purpose of ((such)) the commission shall be to ((provide  
22 programs and standards for the training of criminal justice  
23 personnel)) establish and administer standards and processes for  
24 certification, suspension, and decertification of peace officers and  
25 corrections officers. The commission shall provide programs and  
26 training that enhance the integrity, effectiveness, and  
27 professionalism of peace officers and corrections officers while  
28 helping to ensure that law enforcement and correctional services are  
29 delivered to the people of Washington in a manner that fully complies  
30 with the Constitutions and laws of this state and United States. In  
31 carrying out its duties, the commission shall strive to promote  
32 public trust and confidence in every aspect of the criminal justice  
33 system.

34 (3) The purpose outlined in subsection (2) of this section is the  
35 first priority of the commission. In addition, the commission shall  
36 provide training programs for other criminal justice personnel.

37 **Sec. 3.** RCW 43.101.030 and 2020 c 44 s 1 are each amended to  
38 read as follows:

1        The commission shall consist of ((sixteen)) seventeen members ((~~who shall be selected~~)) as follows:

2        (1) The governor shall appoint ((two)):

3            (a) One incumbent sheriff((s)) and ((two)) one incumbent  
4 chief((s)) of police((~~one~~)).

5            (2) ~~The governor shall appoint one~~;

6            (b) One officer at or below the level of first line supervisor  
7 from a ((county)) law enforcement agency ((and one officer at or  
8 below the level of first line supervisor from a municipal law  
9 enforcement agency. Each appointee under this subsection (2) shall  
10 have)) with at least ten years experience as a law enforcement  
11 officer((~~one~~)).

12            (3) ~~The governor shall appoint one~~;

13            (c) One person employed ((in a county correctional system and one  
14 person employed in the state correctional system.

15            (4) ~~The governor shall appoint one~~) in a state or county  
16 corrections agency;

17            (d) One incumbent county prosecuting attorney or municipal  
18 attorney((~~one~~)).

19            (5) ~~The governor shall appoint one~~) and one public defender;

20            (e) One elected official of a local government((~~one~~)).

21            (6) ~~The governor shall appoint two~~) who is not a sheriff and has  
22 not been employed in the last 10 years as a peace officer or  
23 prosecutor in any jurisdiction;

24            (f) One person with civilian oversight or auditing experience  
25 over law enforcement agencies;

26            (g) Five private ((citizens)) persons, including at least one  
27 ((from)) who resides east of the crest of the Cascade mountains and  
28 ((one from west of the crest of the Cascade mountains. At)) at least  
29 ((one of the private citizens must be)) two who are from a  
30 historically underrepresented community or communities((~~one~~)).

31            (7) ~~The governor shall appoint one~~); and

32            (h) One tribal chair, board member, councilmember, or  
33 ((designee)) enrolled member from a federally recognized tribe with  
34 an active certification agreement under RCW 43.101.157((~~one~~)).

35            (8) ~~The three remaining members shall be:~~

36            (a)) who is not a sheriff and has not been employed in the last  
37 10 years as a peace officer or prosecutor in any jurisdiction;

38            (2) The attorney general or the attorney general's designee;

1       ((b)) (3) The special agent in charge of the Seattle office of  
2 the federal bureau of investigation or the agent's designee; and  
3       ((e)) (4) The chief of the state patrol or the chief's  
4 designee.

5       **Sec. 4.** RCW 43.101.040 and 2009 c 549 s 5167 are each amended to  
6 read as follows:

7       All members appointed to the commission by the governor shall be  
8 appointed for terms of six years, such terms to commence on July  
9 first, and expire on June thirtieth(: PROVIDED, That of the).  
10 However, for members first appointed ((three shall be appointed for  
11 two year terms, three shall be appointed for four year terms, and  
12 three shall be appointed for six year terms: PROVIDED, FURTHER, That  
13 the terms of the two members appointed as incumbent police chiefs  
14 shall not expire in the same year nor shall the terms of the two  
15 members appointed as representing correctional systems expire in the  
16 same year nor shall the terms of the two members appointed as  
17 incumbent sheriffs expire in the same year)) as a result of  
18 chapter . . ., Laws of 2021 (this act), the governor shall appoint  
19 members to terms ranging from two years to six years in order to  
20 stagger future appointments. Any member chosen to fill a vacancy  
21 created otherwise than by expiration of term shall be appointed for  
22 the unexpired term of the member ((he or she)) the appointee is to  
23 succeed. Any member may be reappointed for additional terms.

24       **Sec. 5.** RCW 43.101.060 and 1999 c 97 s 2 are each amended to  
25 read as follows:

26       The commission shall elect a chair and a vice chair from among  
27 its members. ((Seven)) Nine members of the commission shall  
28 constitute a quorum. ((The governor shall summon the commission to  
29 its first meeting.

30       Meetings)) The commission shall meet at least quarterly.  
31 Additional meetings may be called by the chair and shall be called by  
32 ((him or her)) the chair upon the written request of six members.

33       **Sec. 6.** RCW 43.101.080 and 2020 c 119 s 13 are each amended to  
34 read as follows:

35       The commission shall have all of the following powers:

36       (1) ((To meet at such times and places as it may deem proper;  
37       (2) To adopt any rules and regulations as it may deem necessary;

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

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

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

(6) To select and employ an executive director, and to empower him or her to perform such duties and responsibilities as it may deem necessary;

(7) To)) Conduct training, including the basic law enforcement academy and in-service training, and assume legal, fiscal, and program responsibility for all training conducted by the commission;

((8) To establish)) (2) Grant, deny, suspend, or revoke certification of, or require remedial training for, peace officers and corrections officers under the provisions of this chapter;

(3) Grant, deny, suspend, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process;

(4) Related to its duties under subsections (2) and (3) of this section, provide for the comprehensive and timely investigation of complaints where necessary to ensure adherence to policy and law, strengthen the integrity and accountability of peace officers and corrections officers, and maintain public trust and confidence in the criminal justice system in this state;

(5) Establish, by rule and regulation, curricula and standards for the training of criminal justice personnel where such curricula and standards are not prescribed by statute;

((9) To own) (6) Own, establish, and operate, or ((to)) contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel ((and to purchase, lease, or otherwise acquire, subject to the approval of the department of enterprise services, a training facility or facilities necessary to the conducting of such programs;

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

~~(11) To review) );~~

1        (7) Review and approve or reject standards for instructors of  
2 training programs for criminal justice personnel, and ((to)) employ  
3 personnel from other law enforcement agencies on a temporary basis as  
4 instructors without any loss of employee benefits to those  
5 instructors from those agencies;

6        ((12) To direct)) (8) Direct the development of alternative,  
7 innovative, and interdisciplinary training techniques;

8        ((13) To review)) (9) Review and approve or reject training  
9 programs conducted for criminal justice personnel and rules  
10 establishing and prescribing minimum training and education standards  
11 ((recommended by the training standards and education boards)),  
12 including continuing education;

13        ((14) To allocate)) (10) Allocate financial resources among  
14 training and education programs conducted by the commission;

15        ((15) To)) (11) Purchase, lease, or otherwise acquire, subject  
16 to the approval of the department of enterprise services, a training  
17 facility or facilities and allocate training facility space among  
18 training and education programs conducted by the commission;

19        ((16) To issue)) (12) Issue diplomas certifying satisfactory  
20 completion of any training or education program conducted or approved  
21 by the commission to any person so completing such a program;

22        ((17) To provide)) (13) Provide for the employment of such  
23 personnel as may be practical to serve as temporary replacements for  
24 any person engaged in a basic training program as defined by the  
25 commission;

26        ((18) To establish)) (14) Establish rules and regulations  
27 ((recommended by the training standards and education boards))  
28 prescribing minimum standards relating to physical, mental, and moral  
29 fitness which shall govern the recruitment of criminal justice  
30 personnel where such standards are not prescribed by statute or  
31 constitutional provision;

32        ((19) To require)) (15) Require county, city, port, or state law  
33 enforcement and corrections agencies that make a conditional offer of  
34 employment to an applicant as a fully commissioned peace officer, a  
35 reserve officer, or a corrections officer to administer a background  
36 investigation ((including a check of criminal history, verification  
37 of immigrant or citizenship status as either a citizen of the United  
38 States of America or a lawful permanent resident, a psychological  
39 examination, and a polygraph test or similar assessment to each  
40 applicant, the results of which shall be used by the employer to

1 determine the applicant's suitability for employment as a fully  
2 commissioned peace officer, a reserve officer, or a corrections  
3 officer. The background investigation, psychological examination, and  
4 the polygraph examination shall be administered in accordance with  
5 the requirements of RCW 43.101.095(2) for peace officers, and RCW  
6 43.101.096 for corrections officers. The employing county, city, or  
7 state law enforcement agency may require that each peace officer,  
8 reserve officer, or corrections officer who is required to take a  
9 psychological examination and a polygraph or similar test pay a  
10 portion of the testing fee based on the actual cost of the test or  
11 four hundred dollars, whichever is less. County, city, and state law  
12 enforcement agencies may establish a payment plan if they determine  
13 that the peace officer, reserve officer, or corrections officer does  
14 not readily have the means to pay for his or her portion of the  
15 testing fee. This subsection does not apply to corrections officers  
16 employed by state agencies;

17 (20) To promote)) in accordance with the requirements of RCW  
18 43.101.095 to determine the applicant's suitability for employment as  
19 a fully commissioned peace officer, reserve officer, or corrections  
20 officer;

21 (16) Appoint members of a hearings board as provided under RCW  
22 43.101.380;

23 (17) Issue public recommendations to the governing body of a law  
24 enforcement agency regarding the agency's command decisions,  
25 inadequacy of policy or training, investigations or disciplinary  
26 decisions regarding misconduct, potential systemic violations of law  
27 or policy, unconstitutional policing, or other matters;

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

37 All));

38 (19) Adopt, amend, repeal, and administer rules and regulations  
39 ((adopted by the commission shall be adopted and administered))

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

3       **Sec. 7.** RCW 43.101.085 and 2020 c 119 s 1 are each amended to  
4 read as follows:

5       In addition to its other powers granted under this chapter, the  
6 commission has authority and power to:

7       (1) ~~((Adopt, amend, or repeal rules as necessary to carry out  
8 this chapter;~~

9       ~~(2)) Contract for services as it deems necessary in order to  
10 carry out its duties and responsibilities;~~

11       ~~(2) Cooperate with and secure the cooperation of any department,  
12 agency, or instrumentality in state, county, and city government, and  
13 other commissions affected by or concerned with the business of the  
14 commission;~~

15       ~~(3) Select and employ an executive director, and empower the  
16 director to perform such duties and responsibilities as the  
17 commission may deem necessary;~~

18       ~~(4) Issue subpoenas and statements of charges, and administer  
19 oaths in connection with investigations, hearings, or other  
20 proceedings held under this chapter, or designate individuals to do  
21 so;~~

22       ~~((3)) (5) Employ such staff as necessary for the implementation  
23 and enforcement of this chapter;~~

24       ~~(6) Take or cause to be taken depositions and other discovery  
25 procedures as needed in investigations, hearings, and other  
26 proceedings held under this chapter;~~

27       ~~((4) Appoint members of a hearings board as provided under RCW  
28 43.101.380;~~

29       ~~((5)) (7) Enter into contracts for professional services  
30 determined by the commission to be necessary for adequate enforcement  
31 of this chapter;~~

32       ~~((6) Grant, deny, or revoke certification of peace officers and  
33 corrections officers under the provisions of this chapter;~~

34       ~~(7) Designate individuals authorized to sign subpoenas and  
35 statements of charges under the provisions of this chapter;~~

36       ~~(8) Employ such investigative, administrative, and clerical staff  
37 as necessary for the enforcement of this chapter; and~~

(9) Grant, deny, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process)) and

(8) Do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it.

**Sec. 8.** RCW 43.101.095 and 2018 c 32 s 5 are each amended to read as follows:

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

(2) (a) ((As a condition of continuing employment for any)) Any applicant who has been offered a conditional offer of employment as a ((fully commissioned)) peace officer or ((a)) reserve officer ((after July 24, 2005)) or offered a conditional offer of employment as a corrections officer after July 1, 2021, including any person whose certification has lapsed as a result of a break of more than ((twenty-four)) 24 consecutive months in the officer's service ((as a fully commissioned peace officer or reserve officer, the applicant shall)) must submit to a background investigation ((including a)) to determine the applicant's suitability for employment. Employing agencies may only make a conditional offer of employment pending completion of the background check and shall verify in writing to the commission that they have complied with all background check requirements prior to making any nonconditional offer of employment.

(b) The background check must include:

(i) A check of criminal history, ((verification)) any national decertification index, commission records, and all disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct and the reason for separation from employment. Law enforcement or correctional

1 agencies that previously employed the applicant shall disclose  
2 employment information within 30 days of receiving a written request  
3 from the employing agency conducting the background investigation,  
4 including the reason for the officer's separation from the agency.  
5 Complaints or investigations of misconduct must be disclosed  
6 regardless of the result of the investigation or whether the  
7 complaint was unfounded;

8 (ii) Inquiry to the local prosecuting authority in any  
9 jurisdiction in which a peace officer has served as to whether the  
10 officer is on any potential impeachment disclosure list;

11 (iii) Verification of immigrant or citizenship status as either a  
12 citizen of the United States of America or a lawful permanent  
13 resident((, a));

14 (iv) A psychological examination((, and a)) administered by a  
15 psychiatrist licensed in the state of Washington pursuant to chapter  
16 18.71 RCW or a psychologist licensed in the state of Washington  
17 pursuant to chapter 18.83 RCW, in compliance with standards  
18 established in rules of the commission;

19 (v) A polygraph or similar assessment ((as)) administered by  
20 ((the county, city, or state law enforcement agency, the results of  
21 which shall be used to determine the applicant's suitability for  
22 employment as a fully commissioned peace officer or a reserve  
23 officer.

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

28 (ii) The psychological examination shall be administered by a  
29 psychiatrist licensed in the state of Washington pursuant to chapter  
30 18.71 RCW or a psychologist licensed in the state of Washington  
31 pursuant to chapter 18.83 RCW, in compliance with standards  
32 established in rules of the commission.

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

37 (iv)) an experienced professional with appropriate training and  
38 in compliance with standards established in rules of the commission;  
39 and

1        (vi) Any other test or assessment ((to be administered as part of  
2 ~~the background investigation shall be administered in compliance with~~  
3 ~~standards established in rules of)) that may be required in rule by~~  
4 the commission.

5        ~~((b))~~ (c) The employing county, city, port, or state law  
6 enforcement agency may require that each ~~((peace officer or reserve~~  
7 ~~officer))~~ person who is required to take a psychological examination  
8 and a polygraph or similar test pay a portion of the testing fee  
9 based on the actual cost of the test or ~~((four hundred dollars))~~  
10 \$400, whichever is less. County, city, port, and state ~~((law~~  
11 ~~enforcement))~~ agencies may establish a payment plan if they determine  
12 that the ~~((peace officer or reserve officer))~~ person does not readily  
13 have the means to pay ~~((for his or her portion of))~~ the testing fee.

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

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

29        ~~((5))~~ (4) As a ~~((prerequisite to))~~ condition of certification,  
30 ~~((as well as a prerequisite to pursuit of a hearing under RCW~~  
31 ~~43.101.155,))~~ a peace officer or corrections officer must, on a form  
32 devised or adopted by the commission, authorize the release to the  
33 employing agency and commission of ((his or her)) the officer's  
34 personnel files, including disciplinary, termination ((papers)),  
35 civil or criminal investigation ((files)), or other ((files,  
36 papers,)) records or information that are directly related to a  
37 certification matter or decertification matter before the commission.  
38 The release of information may not be delayed, limited, or precluded  
39 by any agreement or contract between the officer, or the officer's  
40 union, and the entity responsible for the records or information.

1       ((+6)) (5) The employing agency and commission ((is)) are  
2 authorized to receive criminal history record information that  
3 includes nonconviction data for any purpose associated with  
4 employment ((by the commission)) or ((peace officer)) certification  
5 under this chapter. Dissemination or use of nonconviction data for  
6 purposes other than that authorized in this section is prohibited.

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

12       **Sec. 9.** RCW 43.101.105 and 2011 c 234 s 3 are each amended to  
13 read as follows:

14       (1) ((Upon)) To help prevent misconduct, enhance peace officer  
15 and corrections officer accountability through the imposition of  
16 sanctions commensurate to the wrongdoing when misconduct occurs, and  
17 enhance public trust and confidence in the criminal justice system,  
18 upon request by ((a peace)) an officer's employer or on its own  
19 initiative, the commission may deny, suspend, or revoke certification  
20 of ((any peace)), or require remedial training for, an officer((r  
21 after)) as provided in this section. The commission shall provide the  
22 officer with written notice and a hearing, if a hearing is timely  
23 requested by the ((peace)) officer under RCW 43.101.155((, based upon  
24 a finding of one or more of the following conditions:

25       (a) The peace officer has failed to timely meet all requirements  
26 for obtaining a certificate of basic law enforcement training, a  
27 certificate of basic law enforcement training equivalency, or a  
28 certificate of exemption from the training;

29       (b) The peace officer has knowingly falsified or omitted material  
30 information on an application for training or certification to the  
31 commission;

32       (c) The peace officer has been convicted at any time of a felony  
33 offense under the laws of this state or has been convicted of a  
34 federal or out-of-state offense comparable to a felony under the laws  
35 of this state; except that if a certified peace officer was convicted  
36 of a felony before being employed as a peace officer, and the  
37 circumstances of the prior felony conviction were fully disclosed to  
38 his or her employer before being hired, the commission may revoke

certification only with the agreement of the employing law enforcement agency;

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

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

(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness)). Notice and hearing are not required when a peace officer voluntarily surrenders certification.

(2) ((After July 24, 2005, the)) The commission must deny or revoke certification of a peace officer or corrections officer if the applicant or officer:

(a) (i) Has been convicted of:

(A) A felony offense;

(B) A gross misdemeanor domestic violence offense;

(C) An offense with sexual motivation as defined in RCW 9.94A.030;

(D) An offense under chapter 9A.44 RCW; or

(E) A federal or out-of-state offense comparable to an offense listed in (a) (i) (A) through (D) of this subsection (2); and

(ii) (A) The offense was not disclosed at the time of application for initial certification; or

(B) The officer was a certified peace officer or corrections officer at the time of the offense;

(b) Has been found by a court to have engaged in the use of force which resulted in death or serious injury and the use of force violated the law;

(c) Has been found by a court to have witnessed another officer's use of excessive force and:

(i) Was in a position to intervene to end the excessive use of force and failed to do so; or

(ii) Failed to report the use of excessive force in accordance with policy or procedure;

1       (d) Has been found by a court to have knowingly made misleading,  
2 deceptive, untrue, or fraudulent representations in the practice of  
3 being a peace officer or corrections officer including, but not  
4 limited to, committing perjury, filing false reports, hiding  
5 evidence, or failing to report exonerating information. This  
6 subsection (2) (d) does not apply to representations made in the  
7 course and for the purposes of an undercover investigation; or

8       (e) Is prohibited from possessing weapons by state or federal law  
9 or by a permanent court order entered after a hearing.

10      (3) The commission may deny, suspend, or revoke certification or  
11 require remedial training of an officer if the applicant or officer:

12       (a) Failed to timely meet all requirements for obtaining a  
13 certificate of basic law enforcement or corrections training, a  
14 certificate of basic law enforcement or corrections training  
15 equivalency, or a certificate of exemption from the training;

16       (b) Was previously issued a certificate through administrative  
17 error on the part of the commission;

18       (c) Knowingly falsified or omitted material information on an  
19 application to the employer or for training or certification to the  
20 commission;

21       (d) Interfered with an investigation or action for denial or  
22 revocation of certification by:

23           (i) Knowingly making a materially false statement to the  
24 commission;

25           (ii) Failing to timely and accurately report information to the  
26 commission as required by law or policy; or

27           (iii) In any matter under investigation by or otherwise before  
28 the commission, tampering with evidence or tampering with or  
29 intimidating any witness;

30       (e) Engaged in a use of force that could reasonably be expected  
31 to cause physical injury, and the use of force violated the law or  
32 policy of the officer's employer;

33       (f) Committed sexual harassment as defined by state law;

34       (g) Through fraud or misrepresentation, has used the position of  
35 peace officer or corrections officer for personal gain;

36       (h) Following any record relating to an incident in which a  
37 finding was made by any law enforcement agency, corrections agency,  
38 oversight agency, or other local government agency with authority to  
39 investigate that an officer engaged in conduct including, but not  
40 limited to, verbal statements, writings, online posts, recordings,

1 and gestures, involving prejudice or discrimination against a person  
2 on the basis of race, religion, creed, color, national origin,  
3 immigration status, disability, genetic information, marital status,  
4 sex, gender, gender identity, gender expression, age, sexual  
5 orientation, or military and veteran status;

6 (i) Whether occurring on or off duty, has:

7 (i) Been found to have committed a felony, without regard to  
8 conviction;

9 (ii) Engaged in a pattern of acts showing an intentional or  
10 reckless disregard for the rights of others, including but not  
11 limited to violation of an individual's constitutional rights under  
12 the state or federal constitution or a violation of RCW 10.93.160;

13 (iii) Engaged in unsafe practices involving firearms, weapons, or  
14 vehicles which indicate either a willful or wanton disregard for the  
15 safety of persons or property; or

16 (iv) Engaged in any conduct or pattern of conduct that: Indicates  
17 an inability to meet the ethical and professional standards required  
18 of a peace officer or corrections officer; tends to disrupt,  
19 diminish, or otherwise jeopardize public trust; undermines public  
20 confidence in the law enforcement profession and correctional system;  
21 or demonstrates an inability or unwillingness to uphold the officer's  
22 sworn oath to enforce the constitution and laws of the United States  
23 and the state of Washington;

24 (j) Has been suspended or discharged, or has resigned or retired  
25 in lieu of discharge, for any conduct listed in this section; or

26 (k) Has voluntarily surrendered the person's certification as a  
27 peace officer or corrections officer.

28 (4) In addition to the penalties set forth in subsection (3) of  
29 this section, the commission may issue one or more of the following  
30 sanctions on the officer: Reprimand, mandatory retraining, and  
31 placement on probation for up to two years. The commission may  
32 suspend a peace officer or corrections officer certification pending  
33 a decertification hearing in appropriate circumstances.

34 (5) The commission shall deny certification to any applicant who  
35 ((has)) lost ((his or her)) certification as a result of a break in  
36 service of more than ((twenty-four)) 24 consecutive months if that  
37 applicant failed to comply with the requirements set forth in RCW  
38 43.101.080((+19)) 15 and 43.101.095(2).

39 (6) Any of the misconduct listed in subsections (2) and (3) of  
40 this section is grounds for denial, suspension, or revocation of

1 certification of a reserve officer to the same extent as applied to a  
2 peace officer.

3 **Sec. 10.** RCW 43.101.115 and 2001 c 167 s 4 are each amended to  
4 read as follows:

5 (1) A person denied a certification based upon dismissal or  
6 withdrawal from a basic law enforcement academy ((~~for any reason not~~  
7 ~~also involving discharge for disqualifying misconduct~~) or basic  
8 corrections academy under RCW 43.101.105(3)(a) is eligible for  
9 readmission and certification upon meeting standards established in  
10 rules of the commission, which rules may provide for probationary  
11 terms on readmission.

12 (2) A person whose certification is denied or revoked based upon  
13 prior administrative error of issuance, failure to cooperate, or  
14 interference with an investigation is eligible for certification upon  
15 meeting standards established in rules of the commission, ((~~rules~~  
16 ~~which may~~) which rules shall provide for a probationary period of  
17 certification in the event of reinstatement of eligibility.

18 (3) A person whose certification is mandatorily denied or revoked  
19 ((~~based upon a felony criminal conviction~~) pursuant to RCW  
20 43.101.105(2) is not eligible for certification at any time.

21 (4) A ((~~peace officer~~)) person whose certification is denied or  
22 revoked ((~~based upon discharge for disqualifying misconduct, but not~~  
23 ~~also based upon a felony criminal conviction,~~) for reasons other  
24 than provided in subsections (1) through (3) of this section may,  
25 five years after the revocation or denial, petition the commission  
26 for reinstatement of the certificate or for eligibility for  
27 reinstatement. The commission ((~~shall~~)) may hold a hearing on the  
28 petition to consider reinstatement, and the commission may allow  
29 reinstatement based upon standards established in rules of the  
30 commission. If the certificate is reinstated or eligibility for  
31 certification is determined, the commission ((~~may~~)) shall establish a  
32 probationary period of certification.

33 (5) A ((~~peace officer~~)) person whose certification is revoked  
34 based solely upon a criminal conviction may petition the commission  
35 for reinstatement immediately upon a final judicial reversal of the  
36 conviction. The commission shall hold a hearing on request to  
37 consider reinstatement, and the commission may allow reinstatement  
38 based on standards established in rules of the commission. If the  
39 certificate is reinstated or if eligibility for certification is

1 determined, the commission ((may)) shall establish a probationary  
2 period of certification.

3 (6) The commission's rules and decisions regarding reinstatement  
4 shall align with its responsibilities to enhance public trust and  
5 confidence in the law enforcement profession and correctional system.

6 **Sec. 11.** RCW 43.101.135 and 2001 c 167 s 6 are each amended to  
7 read as follows:

8 (1) (a) Upon ((termination)) separation of a peace officer or  
9 corrections officer from an employing agency for any reason,  
10 including termination, resignation, or retirement, the agency ((ef  
11 termination)) shall ((, within fifteen days of the termination,))  
12 notify the commission within 15 days of the separation date on a  
13 personnel action report form provided by the commission. ((The agency  
14 of termination shall, upon))

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

20 (2) In addition to those circumstances under subsection (1) of  
21 this section and whether or not disciplinary proceedings have been  
22 concluded, the employing agency shall:

23 (a) Notify the commission within 15 days of learning of the  
24 occurrence of any death or serious injury caused by the use of force  
25 by an officer or any time an officer has been charged with a crime.  
26 Employing agencies must have a policy requiring officers to report  
27 any pending criminal charges and any conviction, plea, or other case  
28 disposition immediately to their agency; and

29 (b) Notify the commission within 15 days of an initial  
30 disciplinary decision by an employing agency for alleged behavior or  
31 conduct by an officer that is noncriminal and may result in  
32 revocation of certification pursuant to RCW 43.101.105.

33 (3) To better enable the commission to act swiftly and  
34 comprehensively when misconduct has occurred that may undermine  
35 public trust and confidence in law enforcement or the correctional  
36 system, if the totality of the circumstances support a conclusion  
37 that the officer resigned or retired in anticipation of discipline,  
38 whether or not the misconduct was discovered at the time, and when  
39 such discipline, if carried forward, would more likely than not have

1     led to discharge, or if the officer was laid off when disciplinary  
2     investigation or action was imminent or pending which could have  
3     resulted in the officer's suspension or discharge, the employing  
4     agency shall conduct the investigation and provide all relevant  
5     information to the commission as if the officer were still employed  
6     by the agency.

7        (4) Upon request of the commission, the employing agency shall  
8     provide such additional documentation or information as the  
9     commission deems necessary to determine whether the ((termination))  
10    separation or event provides grounds for suspension or revocation  
11    ((under RCW 43.101.105)).

12        (5) At its discretion, the commission may:

13        (a) Immediately suspend certification, pending proceedings  
14     through the employing agency;

15        (b) Initiate decertification proceedings upon conclusion of any  
16     investigation or disciplinary proceedings initiated by the employing  
17     agency;

18        (c) Separately pursue revocation of certification under RCW  
19     43.101.105; or

20        (d) Wait to proceed until any investigation, disciplinary  
21     proceedings, or appeals through the employing agency are final before  
22     taking action. Where a decertification decision requires a finding  
23     that the officer's conduct violated policy and the employing agency  
24     has begun its investigation into the underlying event, the commission  
25     shall await notification of a finding by the employing agency before  
26     beginning the decertification process.

27        (6) No action or failure to act by an employing agency or  
28     decision resulting from an appeal of that action precludes action by  
29     the commission to suspend or revoke an officer's certification.

30        (7) An employing agency may not enter into any agreement or  
31     contract with an officer, or union:

32        (a) Not to report conduct, delay reporting, or preclude  
33     disclosure of any relevant information, including a promise not to  
34     check the box on a commission notice that indicates the officer may  
35     have committed misconduct, in exchange for allowing an officer to  
36     resign or retire or for any other reason; or

37        (b) That allows the agency to destroy or remove any personnel  
38     record while the officer is employed and for 10 years thereafter.  
39     Such records must include all misconduct and equal employment  
40     opportunity complaints, progressive discipline imposed including

1 written reprimands, supervisor coaching, suspensions, involuntary  
2 transfers, investigatory files, and other disciplinary appeals and  
3 litigation records.

4 (8) The commission shall maintain ((these notices)) all  
5 information provided pursuant to this section in a permanent file((  
6 subject to RCW 43.101.400)).

7 (9) In addition to disciplinary action authorized in RCW  
8 43.101.105, the commission may impose a civil penalty not to exceed  
9 \$10,000 for the failure by an officer or an employing agency to  
10 timely and accurately report information pursuant to this section.

11 **Sec. 12.** RCW 43.101.145 and 2001 c 167 s 8 are each amended to  
12 read as follows:

13 ((A law enforcement)) (1) Any individual, including commission  
14 staff or a member of the commission, a peace officer, or a duly  
15 authorized representative of a law enforcement agency, may submit a  
16 written complaint to the commission ((charging)) stating that ((a  
17 peace)) an officer's certificate should be denied, suspended, or  
18 revoked, and specifying the grounds for the ((charge)) complaint.  
19 Filing a complaint does not make a complainant a party to the  
20 commission's action. ((The))

21 (2) Except as provided in subsection (3)(b) of this section, the  
22 commission has sole discretion whether to investigate a complaint,  
23 and the commission has sole discretion whether to investigate matters  
24 relating to certification, denial of certification, or revocation of  
25 certification on any other basis, without restriction as to the  
26 source or the existence of a complaint. All complaints must be  
27 resolved with a written determination, regardless of the decision to  
28 investigate.

29 (3) (a) The commission may initiate an investigation in any  
30 instance where there is a pattern of complaints or other actions that  
31 may not have resulted in a formal adjudication of wrongdoing, but  
32 when considered together demonstrate a pattern of similar conduct.

33 (b) The commission shall initiate an investigation when an  
34 officer is the subject of three complaints of excessive use of force  
35 in the previous five years.

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

1       **Sec. 13.**   RCW 43.101.155 and 2001 c 167 s 9 are each amended to  
2 read as follows:

3       (1) If the commission determines, upon investigation, that there  
4 is ~~((probable))~~ cause to believe that a peace officer's or  
5 corrections officer's certification should be denied, suspended, or  
6 revoked under RCW 43.101.105, the commission must prepare and serve  
7 upon the officer a statement of charges. Service on the officer must  
8 be by mail or by personal service on the officer unless the officer  
9 has consented to service in some other manner, including electronic  
10 notification. Notice of the charges must also be mailed to or  
11 otherwise served upon the officer's agency of ~~((termination))~~  
12 separation and any current ~~((law enforcement))~~ agency employer. The  
13 statement of charges must be accompanied by a notice that to receive  
14 a hearing on the denial or revocation, the officer must, within  
15 ~~((sixty))~~ 14 days of ~~((communication of))~~ the statement of charges,  
16 request a hearing before the hearings ~~((board))~~ panel appointed under  
17 RCW 43.101.380. Failure of the officer to request a hearing within  
18 the ~~((sixty-day))~~ 14-day period constitutes a default, whereupon the  
19 commission may enter an order under RCW 34.05.440.

20       (2) If a hearing is requested, the officer is required to provide  
21 an email address that constitutes the officer's legal address for  
22 purposes of any subsequent communication from the commission. Unless  
23 otherwise agreed to by the mutual agreement of the parties or for  
24 good cause, within two weeks of receipt of the officer's request for  
25 a hearing, the commission shall set a date ((of)) for the hearing,  
26 which must be ((scheduled not earlier than ninety days nor later than  
27 one hundred eighty days after communication of the statement of  
28 charges to the officer; the one hundred eighty-day period may be  
29 extended on mutual agreement of the parties or for good cause)) held  
30 within 90 days thereafter. ((The)) On the date the hearing is set,  
31 the commission shall ((give written)) transmit electronic notice of  
32 the hearing ((at least twenty days prior to the hearing)) to the  
33 officer, and provide public notice on the commission website,  
34 specifying the time, date, and place of hearing.

35       **Sec. 14.**   RCW 43.101.157 and 2006 c 22 s 2 are each amended to  
36 read as follows:

37       (1) Tribal governments may voluntarily request certification for  
38 their police officers. Tribal governments requesting certification  
39 for their police officers must enter into a written agreement with

1 the commission. The agreement must require the tribal law enforcement  
2 agency and its officers to comply with all of the requirements for  
3 granting, denying, and revoking certification as those requirements  
4 are applied to peace officers certified under this chapter and the  
5 rules of the commission.

6 (2) Officers making application for certification as tribal  
7 police officers shall meet the requirements of this chapter and the  
8 rules of the commission as those requirements are applied to  
9 certification of peace officers. Application for certification as a  
10 tribal police officer shall be accepted and processed in the same  
11 manner as those for certification of peace officers.

12 ~~((3) For purposes of certification, "tribal police officer" means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.))~~

15 **Sec. 15.** RCW 43.101.230 and 1981 c 134 s 1 are each amended to  
16 read as follows:

17 ~~((Indian tribe))~~ Tribal police officers and employees who are  
18 engaged in law enforcement activities and who do not qualify as  
19 "criminal justice personnel" or "law enforcement personnel" under RCW  
20 43.101.010~~((, as now law or hereafter amended,))~~ may be provided  
21 training under this chapter if: (a) The tribe is recognized by the  
22 federal government, and (b) the tribe pays to the commission the full  
23 cost of providing such training. The commission shall place all money  
24 received under this section into the criminal justice training  
25 account.

26 **Sec. 16.** RCW 43.101.390 and 2001 c 167 s 11 are each amended to  
27 read as follows:

28 (1) The commission~~((, its boards,))~~ and individuals acting on  
29 behalf of the commission ~~((and its boards))~~ are immune from suit in  
30 any civil or criminal action contesting or based upon proceedings or  
31 other official acts performed in the course of their duties in the  
32 administration and enforcement of this chapter.

33 (2) Without limiting the generality of the foregoing, the commission and individuals acting on behalf of the commission are immune from suit in any civil action based on the certification, denial of certification, suspension, or decertification of peace officers, reserve officers, or corrections officers resulting from

1       information or the lack of information provided by the employing  
2       agency.

3       **Sec. 17.**    RCW 43.101.420 and 2009 c 19 s 1 are each amended to  
4       read as follows:

5       (1) The commission shall offer a training session on personal  
6       crisis recognition and crisis intervention services to criminal  
7       justice, ((~~correctional personnel~~)) corrections, and other public  
8       safety employees. The training shall be implemented by the commission  
9       in consultation with appropriate public and private organizations  
10      that have expertise in crisis referral services and in the underlying  
11      conditions leading to the need for crisis referral.

12      (2) The training shall consist of a minimum of one hour of  
13      classroom or internet instruction, and shall include instruction on  
14      the following subjects:

15       (a) The description and underlying causes of problems that may  
16       have an impact on the personal and professional lives of public  
17       safety employees, including mental health issues, chemical  
18       dependency, domestic violence, financial problems, and other personal  
19       crises;

20       (b) Techniques by which public safety employees may recognize the  
21       conditions listed in (a) of this subsection and understand the need  
22       to seek assistance and obtain a referral for consultation and  
23       possible treatment; and

24       (c) A listing of examples of public and private crisis referral  
25       agencies available to public safety employees.

26       (3) The training developed by the commission shall be made  
27       available by the commission to all employees of state and local  
28       agencies that perform public safety duties. The commission may charge  
29       a reasonable fee to defer the cost of making the training available.

30       **Sec. 18.**    RCW 34.12.035 and 1984 c 141 s 6 are each amended to  
31       read as follows:

32       The chief administrative law judge shall designate an  
33       administrative law judge with subject matter expertise to serve, as  
34       the need arises, as presiding officer in ((~~state~~)):

35       (1) State patrol disciplinary hearings conducted under RCW  
36       43.43.090; and

37       (2) Decertification hearings conducted under RCW 43.101.380.

1       **Sec. 19.**   RCW 40.14.070 and 2011 c 60 s 18 are each amended to  
2 read as follows:

3       (1) (a) ((County)) Other than those records detailed in subsection  
4 (4) of this section, county, municipal, and other local government  
5 agencies may request authority to destroy noncurrent public records  
6 having no further administrative or legal value by submitting to the  
7 division of archives and records management lists of such records on  
8 forms prepared by the division. The archivist, a representative  
9 appointed by the state auditor, and a representative appointed by the  
10 attorney general shall constitute a committee, known as the local  
11 records committee, which shall review such lists and which may veto  
12 the destruction of any or all items contained therein.

13       (b) A local government agency, as an alternative to submitting  
14 lists, may elect to establish a records control program based on  
15 recurring disposition schedules recommended by the agency to the  
16 local records committee. The schedules are to be submitted on forms  
17 provided by the division of archives and records management to the  
18 local records committee, which may either veto, approve, or amend the  
19 schedule. Approval of such schedule or amended schedule shall be by  
20 unanimous vote of the local records committee. Upon such approval,  
21 the schedule shall constitute authority for the local government  
22 agency to destroy the records listed thereon, after the required  
23 retention period, on a recurring basis until the schedule is either  
24 amended or revised by the committee.

25       (2) (a) Except as otherwise provided by law, and other than the  
26 law enforcement records detailed in subsection (4) of this section,  
27 no public records shall be destroyed until approved for destruction  
28 by the local records committee. Official public records shall not be  
29 destroyed unless:

30       (i) The records are six or more years old;  
31       (ii) The department of origin of the records has made a  
32 satisfactory showing to the state records committee that the  
33 retention of the records for a minimum of six years is both  
34 unnecessary and uneconomical, particularly where lesser federal  
35 retention periods for records generated by the state under federal  
36 programs have been established; or

37       (iii) The originals of official public records less than six  
38 years old have been copied or reproduced by any photographic,  
39 photostatic, microfilm, miniature photographic, or other process

1 approved by the state archivist which accurately reproduces or forms  
2 a durable medium for so reproducing the original.

3 An automatic reduction of retention periods from seven to six  
4 years for official public records on record retention schedules  
5 existing on June 10, 1982, shall not be made, but the same shall be  
6 reviewed individually by the local records committee for approval or  
7 disapproval of the change to a retention period of six years.

8 The state archivist may furnish appropriate information,  
9 suggestions, and guidelines to local government agencies for their  
10 assistance in the preparation of lists and schedules or any other  
11 matter relating to the retention, preservation, or destruction of  
12 records under this chapter. The local records committee may adopt  
13 appropriate regulations establishing procedures to be followed in  
14 such matters.

15 Records of county, municipal, or other local government agencies,  
16 designated by the archivist as of primarily historical interest, may  
17 be transferred to a recognized depository agency.

18 (b) (i) Records of investigative reports prepared by any state,  
19 county, municipal, or other law enforcement agency pertaining to sex  
20 offenders contained in chapter 9A.44 RCW or sexually violent offenses  
21 as defined in RCW 71.09.020 that are not required in the current  
22 operation of the law enforcement agency or for pending judicial  
23 proceedings shall, following the expiration of the applicable  
24 schedule of the law enforcement agency's retention of the records, be  
25 transferred to the Washington association of sheriffs and police  
26 chiefs for permanent electronic retention and retrieval. Upon  
27 electronic retention of any document, the association shall be  
28 permitted to destroy the paper copy of the document.

29 (ii) Any sealed record transferred to the Washington association  
30 of sheriffs and police chiefs for permanent electronic retention and  
31 retrieval, including records sealed after transfer, shall be  
32 electronically retained in such a way that the record is clearly  
33 marked as sealed.

34 (iii) The Washington association of sheriffs and police chiefs  
35 shall be permitted to destroy both the paper copy and electronic  
36 record of any offender verified as deceased.

37 (c) Any record transferred to the Washington association of  
38 sheriffs and police chiefs pursuant to (b) of this subsection shall  
39 be deemed to no longer constitute a public record pursuant to RCW  
40 42.56.010 and shall be exempt from public disclosure. Such records

1 shall be disseminated only to criminal justice agencies as defined in  
2 RCW 10.97.030 for the purpose of determining if a sex offender met  
3 the criteria of a sexually violent predator as defined in chapter  
4 71.09 RCW and the end-of-sentence review committee as defined by RCW  
5 72.09.345 for the purpose of fulfilling its duties under RCW  
6 71.09.025 and 9.95.420.

7 Electronic records marked as sealed shall only be accessible by  
8 criminal justice agencies as defined in RCW 10.97.030 who would  
9 otherwise have access to a sealed paper copy of the document, the  
10 end-of-sentence review committee as defined by RCW 72.09.345 for the  
11 purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420,  
12 and the system administrator for the purposes of system  
13 administration and maintenance.

14 (3) Except as otherwise provided by law, county, municipal, and  
15 other local government agencies may, as an alternative to destroying  
16 noncurrent public records having no further administrative or legal  
17 value, donate the public records to the state library, local library,  
18 historical society, genealogical society, or similar society or  
19 organization.

20 Public records may not be donated under this subsection unless:

21 (a) The records are seventy years old or more;

22 (b) The local records committee has approved the destruction of  
23 the public records; and

24 (c) The state archivist has determined that the public records  
25 have no historic interest.

26 (4) Personnel records for any peace officer or corrections  
27 officer must be retained for the duration of the officer's employment  
28 and a minimum of 10 years thereafter. Such records include all  
29 misconduct and equal employment opportunity complaints, progressive  
30 discipline imposed including written reprimands, supervisor coaching,  
31 suspensions, involuntary transfers, other disciplinary appeals and  
32 litigation records, and any other records needed to comply with the  
33 requirements set forth in RCW 43.101.095 and 43.101.135.

34 **Sec. 20.** RCW 43.101.380 and 2020 c 119 s 10 are each amended to  
35 read as follows:

36 (1) The procedures governing adjudicative proceedings before  
37 agencies under chapter 34.05 RCW, the administrative procedure act,  
38 govern hearings before the commission and govern all other actions  
39 before the commission unless otherwise provided in this chapter. The

1 standard of proof in actions before the commission is ((clear,  
2 cogent, and convincing)) a preponderance of the evidence.

3 (2) In all hearings requested under RCW 43.101.155 ((or  
4 43.101.156)), an administrative law judge appointed under chapter  
5 34.12 RCW shall be the presiding officer, shall make all necessary  
6 rulings in the course of the hearing, and shall issue a proposed  
7 recommendation, but is not entitled to vote. In addition, a ((five-  
8 member)) three-member hearings panel shall ((both)) hear the case and  
9 make the commission's final administrative decision. ((Members of the  
10 commission may, but need not, be appointed to the hearings panels.))

11 (3) The commission shall appoint ((as follows two or more  
12 panels)) a panel to hear certification actions as follows:

13 (a) When a hearing is requested in relation to a certification  
14 action of a Washington peace officer ((who is not a peace officer of  
15 the Washington state patrol)), the commission shall appoint to the  
16 panel: (i) One police chief((; (ii) one)) or sheriff from an agency  
17 not a current or past employer of the peace officer; ((iii) two  
18 certified Washington peace officers who are at or below the level of  
19 first line supervisor, one of whom is from a city or county law  
20 enforcement agency, and who have at least ten years' experience as  
21 peace officers; and (iv) one person who is not currently a peace  
22 officer and who represents a community college or four-year college  
23 or university)) (ii) one civilian member of the commission as  
24 appointed under RCW 43.101.030(1) (f) through (h); and (iii) one  
25 person with expertise and background in police accountability who is  
26 not a current or former peace officer or corrections officer.

27 (b) ((When a hearing is requested in relation to a certification  
28 action of a peace officer of the Washington state patrol, the  
29 commission shall appoint to the panel: (i) Either one police chief or  
30 one sheriff; (ii) one administrator of the state patrol; (iii) one  
31 certified Washington peace officer who is at or below the level of  
32 first line supervisor, who is not a state patrol officer, and who has  
33 at least ten years' experience as a peace officer; (iv) one state  
34 patrol officer who is at or below the level of first line supervisor,  
35 and who has at least ten years' experience as a peace officer; and  
36 (v) one person who is not currently a peace officer and who  
37 represents a community college or four-year college or university.

38 ((e))) When a hearing is requested in relation to a certification  
39 action of a Washington corrections officer, the commission shall  
40 appoint to the panel: (i) ((Two heads of)) A person who heads either

1 a city or county corrections agency or facility or of a Washington  
2 state department of corrections facility; (ii) ((two corrections  
3 officers who are at or below the level of first line supervisor, who  
4 are from city, county, or state corrections agencies, and who have at  
5 least ten years' experience as corrections officers)) one civilian  
6 member of the commission as appointed under RCW 43.101.030(1) (f)  
7 through (h); and (iii) one person with expertise and background in  
8 police accountability who is not ((currently)) a current or former  
9 peace officer or corrections officer ((and who represents a community  
10 college or four-year college or university)).

11 ((d)) (c) When a hearing is requested in relation to a  
12 certification action of a tribal police officer, the commission shall  
13 appoint to the panel (i) ((either one police chief or one sheriff;  
14 (ii))) one tribal police chief; ((iii) one certified Washington  
15 peace officer who is at or below the level of first line supervisor,  
16 and who has at least ten years' experience as a peace officer; (iv)  
17 one tribal police officer who is at or below the level of first line  
18 supervisor, and who has at least ten years' experience as a peace  
19 officer; and (v) one person who is not currently a peace officer and  
20 who represents a community college or four-year college or  
21 university)) (ii) one civilian member of the commission as appointed  
22 under RCW 43.101.030(1) (f) through (h); and (iii) one person with  
23 expertise and background in police accountability who is not a  
24 current or former peace officer or corrections officer.

25 ((e)) (d) Persons appointed to hearings panels by the  
26 commission shall, in relation to any certification action on which  
27 they sit, have the powers, duties, and immunities, and are entitled  
28 to the emoluments, including travel expenses in accordance with RCW  
29 43.03.050 and 43.03.060, of regular commission members.

30 ((3) Where the charge upon which revocation or denial is based  
31 is that a peace officer or corrections officer was "discharged for  
32 disqualifying misconduct," and the discharge is "final," within the  
33 meaning of RCW 43.101.105(1) (d) or 43.101.106(4), and the officer  
34 received a civil service hearing or arbitration hearing culminating  
35 in an affirming decision following separation from service by the  
36 employer, the hearings panel may revoke or deny certification if the  
37 hearings panel determines that the discharge occurred and was based  
38 on disqualifying misconduct;)) (4) In decertification matters where  
39 there was a criminal hearing, a due process hearing, a disciplinary  
40 appeals hearing, or a finding entered by a law enforcement agency

1 following an investigation, the hearings panel need not redetermine  
2 the underlying facts but may make ((this)) its determination based  
3 solely on review of the records and decision relating to ((the  
4 employment separation)) those proceedings and any investigative or  
5 summary materials from the administrative law judge, legal counsel,  
6 and commission staff. However, the hearings panel may, in its  
7 discretion, consider additional evidence to determine whether ((such  
8 a discharge)) misconduct occurred ((and was based on such  
9 disqualifying misconduct)). The hearings panel shall, upon written  
10 request by the subject peace officer or corrections officer, allow  
11 the peace officer or corrections officer to present additional  
12 evidence of extenuating circumstances.

13 ((Where the charge upon which revocation or denial of  
14 certification is based is that a peace officer or corrections officer  
15 "has been convicted at any time of a felony offense" within the  
16 meaning of RCW 43.101.105(1)(c) or 43.101.106(3), the hearings panel  
17 shall revoke or deny certification if it determines that the peace  
18 officer or corrections officer was convicted of a felony. The  
19 hearings panel need not redetermine the underlying facts but may make  
20 this determination based solely on review of the records and decision  
21 relating to the criminal proceeding. However, the hearings panel  
22 shall, upon the panel's determination of relevancy, consider  
23 additional evidence to determine whether the peace officer or  
24 corrections officer was convicted of a felony.

25 Where the charge upon which revocation or denial is based is  
26 under RCW 43.101.105(1) (a), (b), (e), or (f) or 43.101.106 (1), (2),  
27 (5), or (6), the hearings panel shall determine the underlying facts  
28 relating to the charge upon which revocation or denial of  
29 certification is based.

30 (4)) (5) The commission is authorized to proceed regardless of  
31 whether an arbitrator or other appellate decision maker overturns the  
32 discipline imposed by the officer's employing agency or whether the  
33 agency settles an appeal. No action or failure to act by a law  
34 enforcement agency or corrections agency or decision resulting from  
35 an appeal of that action precludes action by the commission to  
36 suspend or revoke an officer's certificate or to require remedial  
37 training for the officer.

38 (6) The hearings, but not the deliberations of the hearings  
39 panel, are open to the public. The transcripts, admitted evidence,  
40 and written decisions of the hearings panel on behalf of the

1 commission are not confidential or exempt from public disclosure, and  
2 are subject to subpoena and discovery proceedings in civil actions.

3 (7) Summary records of hearing dispositions must be made  
4 available on an annual basis on a public website.

5 (8) The commission's final administrative decision is subject to  
6 judicial review under RCW 34.05.510 through 34.05.598.

7 **Sec. 21.** RCW 43.101.400 and 2020 c 119 s 12 are each amended to  
8 read as follows:

9 (1) Except as provided under subsection (2) of this section,  
10 ((the following records of the commission are confidential and exempt  
11 from public disclosure: (a) The contents of personnel action reports  
12 filed under RCW 43.101.135 or 43.101.136; (b))) all files, papers,  
13 and other information obtained by the commission as part of an  
14 initial background investigation pursuant to RCW 43.101.095((5) or  
15 43.101.096; and (c) all investigative files of the commission  
16 compiled in carrying out the responsibilities of the commission under  
17 this chapter)) (2) and (4) are confidential and exempt from public  
18 disclosure. Such records are not subject to public disclosure,  
19 subpoena, or discovery proceedings in any civil action, except as  
20 provided in ((subsection (5) of this section)) RCW 43.101.380(6) or  
21 which become part of the record in a suspension or decertification  
22 matter.

23 (2) Records which are otherwise confidential and exempt under  
24 subsection (1) of this section may be reviewed and copied: (a) By the  
25 officer involved or the officer's counsel or authorized  
26 representative, who may review the officer's file and may submit any  
27 additional exculpatory or explanatory evidence, statements, or other  
28 information, any of which must be included in the file; (b) by a duly  
29 authorized representative of (i) the agency of termination, or (ii) a  
30 current employing law enforcement or corrections agency, which may  
31 review and copy its employee-officer's file; or (c) by a  
32 representative of or investigator for the commission.

33 (3) Records which are otherwise confidential and exempt under  
34 subsection (1) of this section may also be inspected at the offices  
35 of the commission by a duly authorized representative of a law  
36 enforcement or corrections agency considering an application for  
37 employment by a person who is the subject of a record. A copy of  
38 records which are otherwise confidential and exempt under subsection  
39 (1) of this section may later be obtained by an agency after it hires

1 the applicant. In all other cases under this subsection, the agency  
2 may not obtain a copy of the record.

3 ~~(4) ((Upon a determination that a complaint is without merit,~~  
4 ~~that a personnel action report filed under RCW 43.101.135 does not~~  
5 ~~merit action by the commission, or that a matter otherwise~~  
6 ~~investigated by the commission does not merit action, the commission~~  
7 ~~shall purge records addressed in subsection (1) of this section.~~

8 ~~(5) The hearings, but not the deliberations, of the hearings~~  
9 ~~board are open to the public. The transcripts, admitted evidence, and~~  
10 ~~written decisions of the hearings board on behalf of the commission~~  
11 ~~are not confidential or exempt from public disclosure, and are~~  
12 ~~subject to subpoena and discovery proceedings in civil actions.~~

13 ~~(6))) The commission shall maintain a database that is publicly~~  
14 ~~searchable, machine readable, and exportable, and accompanied by a~~  
15 ~~complete, plain-language data dictionary describing the names of~~  
16 ~~officers and employing agencies, all conduct investigated,~~  
17 ~~certifications denied, notices and accompanying information provided~~  
18 ~~by law enforcement or correctional agencies, including the reasons~~  
19 ~~for separation from the agency, decertification or suspension actions~~  
20 ~~pursued, and final disposition and the reasons therefor for at least~~  
21 ~~30 years after final disposition of each incident. The dates for each~~  
22 ~~material step of the process must be included. Any decertification~~  
23 ~~must be reported to the national decertification index.~~

24 (5) Every individual, legal entity, and agency of federal, state,  
25 or local government is immune from civil liability, whether direct or  
26 derivative, for providing information to the commission in good  
27 faith.

28 NEW SECTION. **Sec. 22.** No later than December 1, 2022, the  
29 criminal justice training commission shall submit a written report to  
30 the governor and the appropriate committees of the legislature  
31 detailing progress of implementation of this act.

32 NEW SECTION. **Sec. 23.** The following acts or parts of acts are  
33 each repealed:

34 (1) RCW 43.101.096 (Corrections officer certification) and 2020 c  
35 119 s 3;

36 (2) RCW 43.101.106 (Denial or revocation of corrections officer  
37 certification) and 2020 c 119 s 4;

1       (3) RCW 43.101.116 (Denial or revocation of corrections officer  
2 certification—Readmission to academy—Reinstatement) and 2020 c 119 s  
3 5;

4       (4) RCW 43.101.136 (Termination of corrections officer—  
5 Notification to commission) and 2020 c 119 s 7;

6       (5) RCW 43.101.146 (Written complaint by corrections officer or  
7 corrections agency to deny or revoke corrections officer  
8 certification—Immunity of complainant) and 2020 c 119 s 8;

9       (6) RCW 43.101.156 (Denial or revocation of corrections officer  
10 certification—Statement of charges—Notice—Hearing) and 2020 c 119 s  
11 9; and

12       (7) RCW 43.101.180 (Priorities) and 1981 c 136 s 27 & 1974 ex.s.  
13 c 94 s 18.

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