
HOUSE BILL 2628

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Hope, Fagan, Nealey, and Pearson

Read first time 01/19/12. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to mandatory drug testing of law enforcement agency
2 and fire department employees; and adding new sections to chapter
3 43.101 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the difficulty,
6 challenge, and danger of those who work for law enforcement agencies
7 and fire departments, the jeopardy to public safety posed by officers
8 and employees of law enforcement agencies and fire departments who are
9 impaired by drugs, and the importance of statewide safety standards.
10 State and local communities go to great lengths and expense to hire,
11 train, and equip officers and employees of law enforcement agencies and
12 fire departments.

13 Officers and employees of law enforcement agencies and fire
14 departments often face extreme hazards and life-threatening
15 circumstances while protecting and serving the public. Law enforcement
16 officers and firefighters are critically important to public safety,
17 and their well-being is vital. Due to the special nature of their
18 work, law enforcement officers and firefighters are exposed to higher

1 incidents of stress, danger, hostility, and risk, which can and does
2 impact their physical and mental well-being.

3 Because law enforcement officers and firefighters have the right to
4 drive at high speeds on crowded streets, and peace officers have the
5 right to use deadly force, it is critical that they are always capable
6 of performing at peak levels of productivity and health. An impaired
7 law enforcement officer or firefighter creates a direct threat to the
8 public safety and drug use by law enforcement officers, firefighters,
9 and other employees of their agencies severely undermines the integrity
10 of law enforcement agencies and fire departments and undermines the
11 public's trust and confidence in their officers and employees.

12 It is the intent of the legislature to establish statewide safety
13 standards to best ensure that officers and employees of law enforcement
14 agencies and fire departments are not impaired by a chemical
15 dependency, substance addiction, or illegal drug use that would
16 adversely affect the officer's or employee's ability to do his or her
17 job safely. Therefore, this act requires all peace officers,
18 firefighters, and other employees and officers of law enforcement
19 agencies and fire departments to submit to mandatory drug testing
20 immediately after their involvement in any traffic collision, shooting
21 incident, or other situation involving injury or harm to persons
22 occurring during the performance of their duties, and random drug
23 testing.

24 NEW SECTION. **Sec. 2.** Unless the context clearly requires
25 otherwise, the definitions in this section apply throughout this
26 chapter.

27 (1) "Confirmation test" means a second analytical procedure to
28 identify the presence of a specific controlled substance or controlled
29 substance metabolite which is independent of the screen test and which
30 uses a different technique and chemical principle from that of the
31 screen test in order to ensure reliability and accuracy.

32 (2) "Drug" means any controlled substance subject to testing
33 pursuant to drug testing regulations adopted by the United States
34 department of transportation.

35 (3) "Drug test" means a method for determining the presence of a
36 drug in a specimen using a scientifically reliable method performed in

1 accordance with regulations governing drug testing adopted by the
2 United States department of transportation.

3 (4) "Medical review officer" means a licensed physician who:

4 (a) Has knowledge of substance abuse disorders, laboratory testing
5 procedures, and chain of custody collection procedures;

6 (b) Verifies positive, confirmed test results; and

7 (c) Has the necessary medical training to interpret and evaluate a
8 peace officer's, firefighter's, or employee's positive test result in
9 relation to the peace officer's, firefighter's, or employee's medical
10 history and any other relevant biomedical information.

11 (5) "Peace officer" means a general authority Washington peace
12 officer as defined by RCW 10.93.020(3) and reserve peace officers. For
13 purposes of this chapter, a reserve peace officer is an individual who
14 is an officer of a Washington law enforcement agency who does not serve
15 such agency on a compensated or full-time basis but who, when called by
16 the agency into active service, is fully commissioned on the same basis
17 as a general authority Washington peace officer to enforce the criminal
18 laws of the state.

19 (6) "Random selection method" means a mechanism for the selection
20 of an individual which results in an equal probability that any person
21 from the group of individuals subject to the selection mechanism will
22 be selected.

23 (7) "Shooting" means the discharge of a firearm by a peace officer
24 in the performance of his or her duties resulting in death or injury to
25 any human being.

26 (8) "Specimen" means tissue, fluid, or a product of the human body
27 capable of revealing the presence of drugs or their metabolites.

28 (9) "Traffic collision" means an occurrence associated with the
29 operation of a motor vehicle if, as a result, any individual suffers or
30 complains of bodily injury.

31 NEW SECTION. **Sec. 3.** A city, county, town, port district, or any
32 other taxing district shall perform (1) mandatory drug testing for an
33 employee and officer of any law enforcement agency or fire department
34 within its jurisdiction as soon as reasonably practicable after a
35 traffic collision, shooting incident, or other incident involving
36 injury or harm to persons occurring during the performance of the

1 employee's or officer's duties, and (2) random drug testing for all
2 peace officers, firefighters, and employees employed by the agency.

3 NEW SECTION. **Sec. 4.** Random peace officer, firefighter, and
4 employee drug testing imposed pursuant to section 3 of this act shall
5 conform to the following:

6 (1) At least thirty percent of the average number of peace
7 officers, firefighters, and employees employed by the taxing district's
8 law enforcement agency or fire department shall undergo random drug
9 testing by the agency each calendar year;

10 (2) Peace officers, firefighters, and employees who are notified of
11 selection for random drug testing shall proceed to the test site
12 immediately;

13 (3) Random drug testing shall occur during, or immediately before
14 or after, a regular work period;

15 (4) The selection of peace officers, firefighters, and employees
16 for random drug testing shall be made by a random selection method; and

17 (5) Random drug testing shall be unannounced and the dates for
18 administering the tests shall be spread reasonably throughout the
19 calendar year.

20 NEW SECTION. **Sec. 5.** Peace officer drug testing after a shooting
21 imposed pursuant to section 3 of this act shall require that a peace
22 officer who discharges a firearm in the performance of his or her
23 duties resulting in death or injury to any human being shall submit to
24 a drug test as soon as practicable following the discharge.

25 NEW SECTION. **Sec. 6.** Posttraffic collision drug testing imposed
26 pursuant to section 3 of this act shall require that a peace officer,
27 firefighter, or other employee or officer of a law enforcement agency
28 or fire department, who is operating a motor vehicle involved in a
29 traffic collision shall submit to a drug test as soon as practicable
30 following the traffic collision.

31 NEW SECTION. **Sec. 7.** Drug testing imposed pursuant to section 3
32 of this act after any incident involving substantial bodily harm as
33 defined in RCW 9A.04.110 occurring during the performance of the
34 employee's or officer's duties shall require that a peace officer,

1 firefighter, or other employee or officer of the law enforcement agency
2 or fire department, who is involved in the incident, shall submit to a
3 drug test as soon as reasonably practicable after the incident.

4 NEW SECTION. **Sec. 8.** Drug testing pursuant to this act shall be
5 carried out within the terms of a written policy consistent with this
6 act that has been distributed to all peace officers, firefighters, and
7 other employees of the law enforcement agency or fire department,
8 subject to the policy. The written policy shall include at least the
9 following:

- 10 (1) A description of those persons who are subject to testing;
- 11 (2) The circumstances under which testing will be required;
- 12 (3) A description of the testing methods and collection procedures
13 to be used;
- 14 (4) The consequences of a refusal to participate in the testing;
- 15 (5) The right of a peace officer, firefighter, or other employee or
16 officer, on request, to obtain the written test results;
- 17 (6) The right of a peace officer, firefighter, or other employee or
18 officer, on request, to explain in a confidential setting a positive
19 test result; and
- 20 (7) A statement of the law enforcement agency's or fire
21 department's policy regarding the confidentiality of the test results.

22 NEW SECTION. **Sec. 9.** All specimen collection and testing pursuant
23 to this act shall be performed in accordance with the following:

- 24 (1) A specimen shall be collected with due regard to the privacy of
25 the individual providing the specimen, and in a manner reasonably
26 calculated to prevent substitution or contamination of the specimen;
- 27 (2) Specimen collection shall be documented, and the documentation
28 procedures shall include labeling of specimen containers so as to
29 reasonably preclude the likelihood of erroneous identification of test
30 results;
- 31 (3) Specimen storage and transportation to the place of testing
32 shall be performed in a manner that reasonably precludes the
33 probability of sample misidentification, contamination, and
34 adulteration;
- 35 (4) Specimen testing shall conform to scientifically accepted
36 analytical methods and procedures;

1 (5) Specimen testing shall be conducted at a laboratory approved or
2 certified by the United States department of health and human services;

3 (6) Before the result of a positive initial screening may be used
4 as a basis for any action by a law enforcement agency or fire
5 department, the law enforcement agency or fire department shall verify
6 or confirm the positive initial screening test by a confirmation test;

7 (7) Laboratory analyses required by this act shall be restricted to
8 those tests required by this act to detect drugs. They shall not be
9 used for other purposes such as the analysis of physiological states or
10 diseases;

11 (8) Prior to reporting a positive test result, the medical review
12 officer shall give the peace officer, firefighter, or other employee or
13 officer of the law enforcement agency or fire department, an
14 opportunity to discuss the test result, including providing
15 verification of any prescription medications. If the employee or
16 officer meets with the medical review officer and fails to present
17 information affecting the test result or if the employee or officer
18 refuses to meet with the medical review officer, the medical review
19 officer will verify a positive test result and will inform the law
20 enforcement agency or fire department on a confidential basis that the
21 employee or officer tested positive;

22 (9) Within five working days after its receipt of a positive
23 confirmed test result from the laboratory, the law enforcement agency
24 or fire department shall inform the employee or officer in writing of
25 the positive test result. The law enforcement agency or fire
26 department shall provide to the employee or officer, upon request, a
27 copy of the test results; and

28 (10) If the employee or officer meets with the medical review
29 officer and fails to present information affecting a positive test
30 result, the medical review officer will inform the employee or officer
31 that he or she may request split specimen testing. For purposes of
32 this section, "split specimen testing" means that an employee who
33 wishes to challenge a positive drug test must notify the medical review
34 officer that he or she wishes split specimen testing within seventy-two
35 hours after he or she is notified of a positive test result, and the
36 test of the second specimen must be processed at a different laboratory
37 than the laboratory that tested the primary specimen.

1 NEW SECTION. **Sec. 10.** (1) No cause of action is or may be
2 established against a law enforcement agency or fire department that
3 has established a program of drug testing in accordance with this act
4 unless the law enforcement agency's or fire department's action was
5 based on a false positive drug test result and the law enforcement
6 agency or fire department knew or clearly should have known that the
7 result was in error and ignored the true test result because of
8 reckless or malicious disregard for the truth.

9 (2) In any claim, including a claim under this act, if it is
10 alleged that a law enforcement agency's or fire department's action was
11 based on a false positive test result, there is a rebuttable
12 presumption that the test result was valid if the law enforcement
13 agency or fire department complied with the provisions of this act; and
14 the law enforcement agency or fire department is not liable for
15 monetary damages if its reliance on a false positive test result was
16 reasonable and in good faith.

17 NEW SECTION. **Sec. 11.** The drug test results obtained pursuant to
18 this act shall be treated as sensitive information and shall be
19 released only to persons within the agency who have senior
20 administrative personnel authority and to their immediate staff. All
21 drug test results shall be maintained by the law enforcement agency or
22 fire department in a secure location with controlled access and
23 separate from other files containing personnel information. No
24 evidence derived from a positive test result pursuant to this act shall
25 be admissible in a criminal prosecution concerning unlawful possession,
26 sale, or distribution of controlled substances.

27 NEW SECTION. **Sec. 12.** Nothing in this act shall prohibit law
28 enforcement agencies or fire departments from conducting any lawful
29 testing of employees or officers that is in addition to the minimum
30 testing in this act.

31 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act are each
32 added to chapter 43.101 RCW under the new subchapter heading "Mandatory
33 drug testing of law enforcement agency and fire department employees."

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