
SENATE BILL 5134

State of Washington

67th Legislature

2021 Regular Session

By Senators Salomon and Darneille

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1 AN ACT Relating to enhancing public trust and confidence in law
2 enforcement and strengthening law enforcement accountability for
3 general authority Washington peace officers, excluding department of
4 fish and wildlife officers, by: Excluding police accountability
5 topics from being subject to bargaining in those law enforcement
6 union contracts, precluding use of arbitration for those law
7 enforcement officer disciplinary appeals, and specifying mandatory
8 grounds for discharge from employment for those general authority
9 Washington peace officers; amending RCW 41.56.100 and 41.56.905; and
10 adding a new chapter to Title 41 RCW.

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

12 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

13 (a) Policing is unique among governmental functions, due to the
14 authority and broad discretion of police officers to engage in state-
15 sanctioned use of force, taking of life, and taking of liberty. For
16 this reason, collective bargaining agreements and accountability
17 mechanisms for law enforcement unions and guilds have significantly
18 different impacts on the public than those of other public sector
19 employees. More accountability to the public is necessary than
20 existing law enforcement collective bargaining agreements and law
21 enforcement disciplinary appeals arbitration processes provide.

1 (b) Considerable local and national evidence demonstrates that
2 law enforcement union and guild collective bargaining agreements, and
3 the use of arbitration for appeals of law enforcement discipline,
4 have resulted in shielding officers from accountability for
5 misconduct, including use of excessive force. These barriers to
6 accountability have resulted in the reinstatement of law enforcement
7 officers despite their having engaged in serious misconduct that
8 harmed members of the public, and undermined public trust and
9 confidence in the work of law enforcement agencies.

10 (2) The legislature recognizes that law enforcement
11 accountability systems, structures, policies, and practices that are
12 transparent and effective, and mete out fair, impartial, and swift
13 discipline commensurate to wrongdoing, help uphold the civil and
14 constitutional rights of the public and reduce misconduct.

15 (3) This act is intended to reduce barriers to police
16 accountability but does not alter any other collective bargaining
17 rights of law enforcement officers, nor does it change collective
18 bargaining rights for public employees other than law enforcement.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires
21 otherwise.

22 (1) "Law enforcement officer" has the meaning provided for
23 "general authority Washington peace officer" in RCW 10.93.020, but
24 excludes peace officers employed by the department of fish and
25 wildlife.

26 (2) "Law enforcement union" means an exclusive bargaining
27 representative that engages in collective bargaining on behalf of law
28 enforcement officers.

29 NEW SECTION. **Sec. 3.** (1) A collective bargaining agreement
30 covering law enforcement officers must not:

31 (a) Require a waiting period before a law enforcement officer is
32 interviewed by the officer's employer or an agent of the employer
33 about a use of force incident or other significant incident involving
34 alleged misconduct, or allow an officer to watch video recordings of
35 the incident, or review written statements, or talk to other officers
36 about the incident prior to submitting to an interview. An immediate
37 interview of an officer alleged to have been involved in a use of

1 force incident or other significant incident involving alleged
2 misconduct, or to have witnessed such an incident, must be allowed;

3 (b) Preclude the investigation of a complaint or the imposition
4 of discipline by a law enforcement officer's employer based on a time
5 limit for filing of a complaint or concluding an investigation;

6 (c) Limit the manner in which complaints of misconduct are
7 initiated, investigated, litigated, or otherwise resolved by a law
8 enforcement officer's employer;

9 (d) Prevent a law enforcement officer's employer from pursuing
10 other incidents or types of misconduct revealed during an
11 investigation;

12 (e) Limit retention, disclosure, use, or review of body camera
13 and in-car video footage by a law enforcement officer's employer;

14 (f) Limit secondary employment management, oversight, and
15 policies established by a law enforcement officer's employer;

16 (g) Limit internal review boards or early intervention systems
17 established by a law enforcement officer's employer or local
18 jurisdiction;

19 (h) Limit the authority, composition, or responsibilities of
20 civilian oversight entities established by a law enforcement
21 officer's employer, local jurisdiction, or other governing body;

22 (i) Limit the use or authority of civilian supervisors and
23 investigators by a law enforcement officer's employer or applicable
24 civilian oversight entity receiving complaints and conducting
25 investigations;

26 (j) Limit full subpoena authority for civilian oversight bodies,
27 or otherwise limit civilian oversight and review;

28 (k) Limit public access to, retention of, or disclosure of,
29 information and records regarding incidents, complaints,
30 investigations, findings, disciplinary decisions, litigation,
31 appeals, or decertification involving law enforcement officers;

32 (l) Limit a chief's or sheriff's authority to remove a law
33 enforcement officer from duty or place an officer on leave;

34 (m) Limit the procedures or timelines for the retention or
35 destruction of law enforcement officer misconduct and employment
36 records;

37 (n) Allow sealing, removal, redaction, or destruction of
38 information in law enforcement officer misconduct and employment
39 records;

1 (o) Allow law enforcement officers or their union representatives
2 to raise previously undisclosed information at disciplinary appeal
3 hearings where that information was known and not disclosed by the
4 officer or union representative during the underlying investigation;

5 (p) Require a specific standard of review or burden of proof
6 greater than a preponderance of evidence in order to find misconduct
7 or to impose or uphold discipline of law enforcement officers.
8 Nothing in this subsection shall be construed as limiting a local
9 jurisdiction's authority to apply a standard for appeals that is less
10 than a preponderance of evidence;

11 (q) Allow the use of arbitration to decide disciplinary appeals;

12 (r) Include any provision addressing the processes or information
13 regarding imposition of discipline, hearings, appeals, or
14 decertification for misconduct for law enforcement officers;

15 (s) Limit the law enforcement officer's employer or a civilian
16 oversight entity regarding who shall investigate, and in what manner,
17 complaints of criminal misconduct by a law enforcement officer;

18 (t) Prohibit the law enforcement officer's employer from
19 releasing misconduct and employment information about a law
20 enforcement officer to prospective employers, or obtaining such
21 information from prior employers of prospective law enforcement
22 officers;

23 (u) Limit the composition, appointment requirements, policies,
24 procedures, or rules of civil service commissions or public safety
25 civil service commissions;

26 (v) Allow or require that discipline be consistent with past
27 practice or be comparable to past discipline sanctions; or

28 (w) Limit the authority of the law enforcement officer's employer
29 to take into account misconduct history in assignment to,
30 reassignment from, and transfer to or from, specialty assignments and
31 as field training officers.

32 (2) The provisions of subsection (1) of this section are not
33 subject to bargaining with law enforcement unions and may not be
34 modified by collective bargaining with law enforcement unions.

35 (3) Any provision in a collective bargaining agreement or other
36 agreement entered or amended after the effective date of this section
37 that is contrary to the provisions of this section is void and
38 unenforceable.

1 (4) If any provision of this section conflicts with any other
2 statute, ordinance, rule, or regulation of any public employer, the
3 provisions of this section control.

4 NEW SECTION. **Sec. 4.** (1) The following applies to any
5 discipline of law enforcement officers for misconduct:

6 (a) Notwithstanding the provisions of RCW 41.56.122, discipline
7 of law enforcement officers for misconduct must not be subject to
8 arbitration. Discipline of law enforcement officers for misconduct is
9 subject to appeal to a civil service commission created under RCW
10 41.12.030 or 41.14.030, or the superior court of Thurston county
11 under RCW 43.43.100 for cases involving the Washington state patrol.
12 The law enforcement officer's employer may choose to use an
13 administrative law judge or hearing examiner in lieu of a civil
14 service commission to hear disciplinary appeals brought by law
15 enforcement officers. Any civil service commissioner, administrative
16 law judge, or hearing examiner who hears appeals covered by this
17 section must:

- 18 (i) Be selected on the basis of merit;
19 (ii) Have the necessary subject matter expertise;
20 (iii) Not have a conflict of interest;
21 (iv) Not have worked for a law enforcement agency for any period
22 within the 10 years preceding their appointment or selection; and
23 (v) Be on contract or staff for the civil service commission or
24 jurisdiction, not selected on a case-by-case basis.

25 (b) A party may appeal the decision of a civil service
26 commission, administrative law judge, or hearing examiner regarding
27 discipline of a law enforcement officer for misconduct to superior
28 court only if the decision violates an explicit, well-defined, and
29 dominant public policy established by case law.

30 (c) The civil service commission, administrative law judge, or
31 hearing examiner shall uphold the discipline imposed on a law
32 enforcement officer and may not reduce the discipline imposed if the
33 finding of misconduct is upheld, unless they find that the discipline
34 was arbitrary, capricious, or based on an illegal reason. Deference
35 to factual findings is required and de novo review is not permitted.

36 (2) The following applies to any appeal of discipline for
37 misconduct imposed on a law enforcement officer:

- 38 (a) Hearings, except for deliberations, must be open to the
39 public;

1 (b) All requests by the law enforcement officer or their union
2 for an appeal must be made within 10 days of receiving the
3 notification of discipline, such appeals must be heard within 90 days
4 of the imposition of the discipline, and the decision must be entered
5 within 30 days of the close of the hearing;

6 (c) Past disciplinary decisions made by the same law enforcement
7 agency for the same or similar conduct are not grounds for reducing
8 or overturning discipline imposed;

9 (d) Any procedural error or other contractual violation regarding
10 the imposition of discipline must be weighed against the nature of
11 the misconduct found to have been committed in determining the
12 appropriate remedy;

13 (e) The written decision resulting from the appeal must be made
14 available to the parties and the public and subject to disclosure
15 under the public records act, chapter 42.56 RCW; and

16 (f) The decision must be final and binding without further appeal
17 other than as set forth in this section.

18 (3) Any provision in a collective bargaining agreement entered
19 into or amended after the effective date of this section that is
20 contrary to the provisions of this section is void and unenforceable.

21 NEW SECTION. **Sec. 5.** (1) The legislature finds that when law
22 enforcement officers commit certain misconduct impacting the public
23 interest, discharge from employment is the appropriate discipline.

24 (2) The employer may not consider past discipline practices as an
25 extenuating circumstance and may not impose discipline other than
26 discharge based on past practice for similar misconduct. The
27 following specific misconduct must result in discharge of law
28 enforcement officers:

29 (a) Use of excessive force or being present, aware of another
30 officer's use of excessive force, and able to intervene, and failing
31 to intervene or report another officer's use of excessive force;

32 (b) Knowingly hiding material evidence, failing to report
33 exonerating information, or making materially misleading, deceptive,
34 untrue, or fraudulent statements or representations during an
35 investigation, in law enforcement documents or reports, or while
36 testifying under oath;

37 (c) Theft or misappropriation of funds or property, or use of the
38 position of law enforcement officer for personal gain through fraud
39 or misrepresentation;

1 (d) Serious or repeated harassment or discrimination based on a
2 legally protected class defined in chapter 49.60 RCW;

3 (e) Commission of or conviction of a felony offense under the
4 laws of this state, or of a comparable offense under federal law or
5 the laws of another state;

6 (f) Acting with deliberate indifference to a substantial risk of
7 harm to a person in custody;

8 (g) Engaging in sexual contact with a person who has been
9 detained, who is in custody, or where under the totality of the
10 circumstances a reasonable person would believe he or she was facing
11 the possibility of being detained or taken into custody; or

12 (h) Violations of duties established under RCW 10.93.160.

13 (3) Nothing contained in this section is intended to prohibit a
14 law enforcement officer from being discharged for misconduct not
15 contained in this section.

16 (4) Any provision in a collective bargaining agreement entered or
17 amended on or after the effective date of this section that is
18 contrary to the provisions of this section is void and unenforceable.

19 NEW SECTION. **Sec. 6.** (1) The state, cities, towns, counties,
20 and other municipalities or political subdivisions, must adopt laws,
21 ordinances, rules, regulations, or policies establishing procedures
22 for receiving and investigating complaints of misconduct by and
23 imposing discipline on law enforcement officers. Such laws,
24 ordinances, rules, regulations, or policies must be consistent with
25 this chapter. The process by which a jurisdiction or department
26 proposes and adopts such laws, ordinances, rules, regulations, or
27 policies must include reasonable opportunity for public review and
28 comment, as well as review and comment by civilian oversight
29 officials if a jurisdiction has them, taking into consideration
30 challenges to access, such as availability of public transportation,
31 differences in access to technology and the internet, disability, and
32 language barriers. The adopted laws, ordinances, rules, regulations,
33 or policies must be posted by the jurisdiction on a publicly facing
34 website.

35 (2) Provisions of local laws, ordinances, rules, regulations,
36 policies, or contracts including memoranda of understanding,
37 settlement agreements, or other agreements, that are inconsistent
38 with or conflict with the requirements of state law including this
39 chapter must not be enacted and are preempted and repealed,

1 regardless of the nature of the code, charter, or home rule status of
2 the city, town, county, or municipality.

3 **Sec. 7.** RCW 41.56.100 and 2010 c 235 s 801 are each amended to
4 read as follows:

5 (1) A public employer shall have the authority to engage in
6 collective bargaining with the exclusive bargaining representative
7 and no public employer shall refuse to engage in collective
8 bargaining with the exclusive bargaining representative. However, a
9 public employer is not required to bargain collectively with any
10 bargaining representative concerning any matter (~~(which)~~):

11 (a) Which by ordinance, resolution, or charter of said public
12 employer has been delegated to any civil service commission or
13 personnel board similar in scope, structure, and authority to the
14 board created by chapter 41.06 RCW; or

15 (b) That is covered under chapter 41.--- RCW (the new chapter
16 created in section 9 of this act).

17 (2) Upon the failure of the public employer and the exclusive
18 bargaining representative to conclude a collective bargaining
19 agreement, any matter in dispute may be submitted by either party to
20 the commission. This subsection does not apply to negotiations and
21 mediations conducted between a school district employer and an
22 exclusive bargaining representative under RCW 28A.657.050.

23 (3) If a public employer implements its last and best offer where
24 there is no contract settlement, allegations that either party is
25 violating the terms of the implemented offer shall be subject to
26 grievance arbitration procedures if and as such procedures are set
27 forth in the implemented offer, or, if not in the implemented offer,
28 if and as such procedures are set forth in the parties' last
29 contract.

30 **Sec. 8.** RCW 41.56.905 and 1983 c 287 s 5 are each amended to
31 read as follows:

32 The provisions of this chapter are intended to be additional to
33 other remedies and shall be liberally construed to accomplish their
34 purpose. Except as provided in RCW 53.18.015 and chapter 41.--- RCW
35 (the new chapter created in section 9 of this act), if any provision
36 of this chapter conflicts with any other statute, law, ordinance,
37 rule (~~(or)~~), regulation, or policy of any public employer, the
38 provisions of this chapter shall control.

1 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act
2 constitute a new chapter in Title 41 RCW.

3 NEW SECTION. **Sec. 10.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- **END** ---