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**SUBSTITUTE HOUSE BILL 1506**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Robertson, O'Brien, Delvin, Hatfield, McDonald, Morris, Bush, Sterk, Smith, K. Schmidt, Hickel, Zellinsky, Scott, Conway, Regala, Sullivan, Chandler, Cooper, Costa, Linville, Mitchell, Schoesler, Thompson, Anderson, Carrell and Dunn)

Read first time 02/28/97.

1 AN ACT Relating to a bill of rights for peace officers; reenacting  
2 and amending RCW 42.17.310; adding a new chapter to Title 41 RCW;  
3 providing an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that it is important  
6 for law enforcement agencies to understand and properly implement  
7 disciplinary actions. The legislature recognizes that law enforcement  
8 officers have a right to a process within their agency that affords the  
9 protection of state law and labor regulations. At the same time the  
10 legislature recognizes the rights of the citizens to express their  
11 concerns regarding the conduct of police officers and the  
12 responsibility of law enforcement management to fully investigate those  
13 concerns, while protecting the rights of the officer during the  
14 investigative process. Consequently, this chapter establishes the  
15 mechanism necessary to enable all agencies and officers to properly  
16 understand and implement labor law policies. It is not the intent of  
17 this chapter to protect criminal activity.

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

3        (1) "Peace officer" means a duly appointed city, port district,  
4 public airport, county, or state law enforcement officer.

5        (2) "Internal investigation" means an investigation into the  
6 conduct of a police officer where the employer, or the employer's  
7 agent, either knows or reasonably should know that the conduct, if  
8 proven, could lead to the suspension, demotion, or discharge of the  
9 subject employee. "Internal investigation" shall not mean fitness-for-  
10 duty examinations performed by health care professionals, so long as no  
11 communications between the evaluated peace officer and the health care  
12 professional related to an event or circumstance that could reasonably  
13 lead to discipline are disclosed by the health care professional to the  
14 employer.

15        (3) "Complaint" means an allegation by either a citizen or another  
16 public employee that the subject employee has engaged in misconduct.

17        (4) "Criminal investigation" means an investigation the exclusive  
18 purpose of which is to determine whether criminal charges should be  
19 filed against the officer.

20        (5) "Union representative" means a business agent, attorney, shop  
21 steward, or other representative authorized to engage in such activity  
22 by the employee's exclusive bargaining representative.

23        NEW SECTION.     **Sec. 3.** (1) No later than December 31, 1997, the  
24 criminal justice training commission, in conjunction with the  
25 Washington association of sheriffs and police chiefs and the Washington  
26 state council of police officers, shall implement a labor law training  
27 program. The curriculum shall include, but not be limited to:

28        (a) Federal and state case law regarding due process;

29        (b) Civil service, state labor law, and contracts;

30        (c) Miranda requirements;

31        (d) Polygraph requirements;

32        (e) Retaining and expunging personnel files;

33        (f) Providing adequate and reasonable notice;

34        (g) Responding to threats, promises, and rewards; and

35        (h) Restrictions on recording and publishing officer statements.

36        (2) Beginning January 1, 1998, the criminal justice training  
37 commission shall incorporate the labor law training program into the  
38 basic training course. Furthermore, the labor law training program

1 must be incorporated into the curriculum of supervisory, middle  
2 management, and executive level training.

3 (3) The commission shall develop a labor law training guide  
4 available to all law enforcement personnel.

5 (4) The Washington association of sheriffs and police chiefs shall  
6 require all law enforcement agencies seeking accreditation under the  
7 Washington association of sheriffs and police chiefs accreditation  
8 program to implement disciplinary and grievance procedures mandated by  
9 state and federal law.

10 NEW SECTION. **Sec. 4.** (1) This section shall not apply to criminal  
11 investigations.

12 (2) A peace officer who becomes the subject of an internal  
13 investigation must be advised, in writing, before questioning:

14 (a) Whether he or she is suspected of conduct that could be grounds  
15 for termination, suspension, or other disciplinary actions involving an  
16 economic sanction; and

17 (b) Whether he or she is a witness or a suspect. If the peace  
18 officer is a suspect, he or she must be apprised in writing of the  
19 allegations of such complaints before the interview commences.

20 (3) Prior to any questioning concerning a complaint, the peace  
21 officer must be advised of his or her right to representation and  
22 afforded the opportunity and the facilities to contact and consult  
23 privately with an attorney of his or her own choosing. Counsel may be  
24 present during the interrogation, but may not participate in the  
25 interrogation except to advise the peace officer. Additionally, a  
26 peace officer must be advised of his or her right to, and allowed,  
27 labor representation to the extent permitted by chapter 41.56 RCW. The  
28 subject officer may elect to have private counsel or his or her union  
29 representative, but not both, present during the interview.

30 (4) An internal investigation interview must be recorded  
31 mechanically. There can be no germane "off the record" questions.  
32 Upon request, the peace officer must be provided an exact copy of any  
33 written statement he or she has signed, or of a verbatim transcript of  
34 his or her interview if one is created. The employer shall maintain  
35 mechanical recordings made pursuant to this subsection for a minimum  
36 period of three years.

37 (5) Internal investigation interviews must be completed within a  
38 reasonable time and the peace officer must be afforded such

1 intermissions as he or she shall reasonably request for consultation  
2 with his or her attorney or labor representative, to attend to personal  
3 necessities, meals, telephone calls, and rest periods.

4 (6) Internal investigation interviews must be limited in scope to  
5 activities, circumstances, or events which pertain to a peace officer's  
6 conduct or fitness to hold office.

7 (7) The peace officer may not be threatened with dismissal or other  
8 disciplinary punishment as a guise to attempt to obtain his or her  
9 resignation, nor may he or she be subject to abusive or offensive  
10 language or intimidation in any other manner. No promises or rewards  
11 may be made as an inducement for the accused officer to answer  
12 questions. Nothing in this section prevents an employer from offering  
13 an accused employee the option of resigning after the internal  
14 investigation is complete and the employer has made a preliminary  
15 decision regarding discipline.

16 (8) Peace officers are conclusively presumed to be under the direct  
17 order of their employer to answer all questions asked of the officer  
18 during an internal investigation. The employer may not offer a peace  
19 officer the opportunity to take a polygraph test without advising that  
20 peace officer that his or her refusal to take such a test may not be  
21 considered as evidence in any subsequent judicial or administrative  
22 proceeding without the peace officer's consent. No polygraph evidence  
23 of any kind will be admissible in disciplinary proceedings except by  
24 stipulation of the parties.

25 NEW SECTION. **Sec. 5.** There shall be no common law immunity for  
26 defamatory statements contained in complaints against peace officers.

27 NEW SECTION. **Sec. 6.** (1) By July 31, 2000, all public entities  
28 that employ peace officers shall have within the terms of their  
29 collective bargaining agreement and include within the rules of their  
30 civil service commission a peace officer's bill of rights that  
31 provides, at a minimum, for the procedural protections embodied in  
32 section 4 of this act.

33 (2) After July 31, 2000, all public entities that are not required  
34 to have a civil service commission and which have no exclusive  
35 bargaining representative are governed by this chapter.

1        NEW SECTION.    **Sec. 7.**    Internal investigation files that do not  
2 result in specific findings of misconduct may not be considered a  
3 public record under state or local law. Witness statements of witness  
4 peace officers may not be considered a public record under state or  
5 local law. Nothing in this section may be construed so as to limit the  
6 compelled production of documents in an administrative or judicial  
7 proceeding where appropriate protective orders are available to prevent  
8 public disclosure of the documents. Peace officers may request that  
9 disciplinary records be expunged from personnel files after a minimum  
10 period of five years if there is no recurrence of similar misconduct  
11 for which the peace officer was disciplined during that period.  
12 Requests for expungement may not be unreasonably denied. Nothing in  
13 this section may be construed as requiring the employer to destroy  
14 employment records necessary to the employer's case if it is engaged in  
15 litigation related to that peace officer's employment at the time those  
16 records would otherwise be destroyed.

17        **Sec. 8.**    RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996  
18 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as  
19 follows:

20        (1) The following are exempt from public inspection and copying:

21        (a) Personal information in any files maintained for students in  
22 public schools, patients or clients of public institutions or public  
23 health agencies, or welfare recipients.

24        (b) Personal information in files maintained for employees,  
25 appointees, or elected officials of any public agency to the extent  
26 that disclosure would violate their right to privacy.

27        (c) Information required of any taxpayer in connection with the  
28 assessment or collection of any tax if the disclosure of the  
29 information to other persons would (i) be prohibited to such persons by  
30 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
31 in unfair competitive disadvantage to the taxpayer.

32        (d) Specific intelligence information and specific investigative  
33 records compiled by investigative, law enforcement, and penology  
34 agencies, and state agencies vested with the responsibility to  
35 discipline members of any profession, the nondisclosure of which is  
36 essential to effective law enforcement or for the protection of any  
37 person's right to privacy.

1 (e) Information revealing the identity of persons who are witnesses  
2 to or victims of crime or who file complaints with investigative, law  
3 enforcement, or penology agencies, other than the public disclosure  
4 commission, if disclosure would endanger any person's life, physical  
5 safety, or property. If at the time a complaint is filed the  
6 complainant, victim or witness indicates a desire for disclosure or  
7 nondisclosure, such desire shall govern. However, all complaints filed  
8 with the public disclosure commission about any elected official or  
9 candidate for public office must be made in writing and signed by the  
10 complainant under oath.

11 (f) Test questions, scoring keys, and other examination data used  
12 to administer a license, employment, or academic examination.

13 (g) Except as provided by chapter 8.26 RCW, the contents of real  
14 estate appraisals, made for or by any agency relative to the  
15 acquisition or sale of property, until the project or prospective sale  
16 is abandoned or until such time as all of the property has been  
17 acquired or the property to which the sale appraisal relates is sold,  
18 but in no event shall disclosure be denied for more than three years  
19 after the appraisal.

20 (h) Valuable formulae, designs, drawings, and research data  
21 obtained by any agency within five years of the request for disclosure  
22 when disclosure would produce private gain and public loss.

23 (i) Preliminary drafts, notes, recommendations, and intra-agency  
24 memorandums in which opinions are expressed or policies formulated or  
25 recommended except that a specific record shall not be exempt when  
26 publicly cited by an agency in connection with any agency action.

27 (j) Records which are relevant to a controversy to which an agency  
28 is a party but which records would not be available to another party  
29 under the rules of pretrial discovery for causes pending in the  
30 superior courts.

31 (k) Records, maps, or other information identifying the location of  
32 archaeological sites in order to avoid the looting or depredation of  
33 such sites.

34 (l) Any library record, the primary purpose of which is to maintain  
35 control of library materials, or to gain access to information, which  
36 discloses or could be used to disclose the identity of a library user.

37 (m) Financial information supplied by or on behalf of a person,  
38 firm, or corporation for the purpose of qualifying to submit a bid or  
39 proposal for (i) a ferry system construction or repair contract as

1 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
2 construction or improvement as required by RCW 47.28.070.

3 (n) Railroad company contracts filed prior to July 28, 1991, with  
4 the utilities and transportation commission under RCW 81.34.070, except  
5 that the summaries of the contracts are open to public inspection and  
6 copying as otherwise provided by this chapter.

7 (o) Financial and commercial information and records supplied by  
8 private persons pertaining to export services provided pursuant to  
9 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
10 export projects pursuant to RCW 43.23.035.

11 (p) Financial disclosures filed by private vocational schools under  
12 chapters 28B.85 and 28C.10 RCW.

13 (q) Records filed with the utilities and transportation commission  
14 or attorney general under RCW 80.04.095 that a court has determined are  
15 confidential under RCW 80.04.095.

16 (r) Financial and commercial information and records supplied by  
17 businesses or individuals during application for loans or program  
18 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
19 or during application for economic development loans or program  
20 services provided by any local agency.

21 (s) Membership lists or lists of members or owners of interests of  
22 units in timeshare projects, subdivisions, camping resorts,  
23 condominiums, land developments, or common-interest communities  
24 affiliated with such projects, regulated by the department of  
25 licensing, in the files or possession of the department.

26 (t) All applications for public employment, including the names of  
27 applicants, resumes, and other related materials submitted with respect  
28 to an applicant.

29 (u) The residential addresses and residential telephone numbers of  
30 employees or volunteers of a public agency which are held by the agency  
31 in personnel records, employment or volunteer rosters, or mailing lists  
32 of employees or volunteers.

33 (v) The residential addresses and residential telephone numbers of  
34 the customers of a public utility contained in the records or lists  
35 held by the public utility of which they are customers.

36 (w)(i) The federal social security number of individuals governed  
37 under chapter 18.130 RCW maintained in the files of the department of  
38 health, except this exemption does not apply to requests made directly  
39 to the department from federal, state, and local agencies of

1 government, and national and state licensing, credentialing,  
2 investigatory, disciplinary, and examination organizations; (ii) the  
3 current residential address and current residential telephone number of  
4 a health care provider governed under chapter 18.130 RCW maintained in  
5 the files of the department, if the provider requests that this  
6 information be withheld from public inspection and copying, and  
7 provides to the department an accurate alternate or business address  
8 and business telephone number. On or after January 1, 1995, the  
9 current residential address and residential telephone number of a  
10 health care provider governed under RCW 18.130.140 maintained in the  
11 files of the department shall automatically be withheld from public  
12 inspection and copying unless the provider specifically requests the  
13 information be released, and except as provided for under RCW  
14 42.17.260(9).

15 (x) Information obtained by the board of pharmacy as provided in  
16 RCW 69.45.090.

17 (y) Information obtained by the board of pharmacy or the department  
18 of health and its representatives as provided in RCW 69.41.044,  
19 69.41.280, and 18.64.420.

20 (z) Financial information, business plans, examination reports, and  
21 any information produced or obtained in evaluating or examining a  
22 business and industrial development corporation organized or seeking  
23 certification under chapter 31.24 RCW.

24 (aa) Financial and commercial information supplied to the state  
25 investment board by any person when the information relates to the  
26 investment of public trust or retirement funds and when disclosure  
27 would result in loss to such funds or in private loss to the providers  
28 of this information.

29 (bb) Financial and valuable trade information under RCW 51.36.120.

30 (cc) Client records maintained by an agency that is a domestic  
31 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
32 crisis center as defined in RCW 70.125.030.

33 (dd) Information that identifies a person who, while an agency  
34 employee: (i) Seeks advice, under an informal process established by  
35 the employing agency, in order to ascertain his or her rights in  
36 connection with a possible unfair practice under chapter 49.60 RCW  
37 against the person; and (ii) requests his or her identity or any  
38 identifying information not be disclosed.

1 (ee) Investigative records compiled by an employing agency  
2 conducting a current investigation of a possible unfair practice under  
3 chapter 49.60 RCW or of a possible violation of other federal, state,  
4 or local laws prohibiting discrimination in employment.

5 (ff) Business related information protected from public inspection  
6 and copying under RCW 15.86.110.

7 (gg) Financial, commercial, operations, and technical and research  
8 information and data submitted to or obtained by the clean Washington  
9 center in applications for, or delivery of, program services under  
10 chapter 70.95H RCW.

11 (hh) Information and documents created specifically for, and  
12 collected and maintained by a quality improvement committee pursuant to  
13 RCW 43.70.510, regardless of which agency is in possession of the  
14 information and documents.

15 (ii) Personal information in files maintained in a data base  
16 created under RCW 43.07.360.

17 (jj) Law enforcement internal investigation files that do not  
18 result in specific findings of misconduct as provided in section 7 of  
19 this act.

20 (kk) Witness statements by witness peace officers as provided in  
21 section 7 of this act.

22 (2) Except for information described in subsection (1)(c)(i) of  
23 this section and confidential income data exempted from public  
24 inspection pursuant to RCW 84.40.020, the exemptions of this section  
25 are inapplicable to the extent that information, the disclosure of  
26 which would violate personal privacy or vital governmental interests,  
27 can be deleted from the specific records sought. No exemption may be  
28 construed to permit the nondisclosure of statistical information not  
29 descriptive of any readily identifiable person or persons.

30 (3) Inspection or copying of any specific records exempt under the  
31 provisions of this section may be permitted if the superior court in  
32 the county in which the record is maintained finds, after a hearing  
33 with notice thereof to every person in interest and the agency, that  
34 the exemption of such records is clearly unnecessary to protect any  
35 individual's right of privacy or any vital governmental function.

36 (4) Agency responses refusing, in whole or in part, inspection of  
37 any public record shall include a statement of the specific exemption  
38 authorizing the withholding of the record (or part) and a brief  
39 explanation of how the exemption applies to the record withheld.

1        NEW SECTION.    **Sec. 9.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 10.**    If this chapter conflicts with any other  
6 statute, ordinance, rule, or regulation of any public employer, the  
7 provisions of this chapter prevail.

8        NEW SECTION.    **Sec. 11.**    Section 7 of this act is necessary for the  
9 immediate preservation of the public peace, health, or safety, or  
10 support of the state government and its existing public institutions,  
11 and takes effect July 1, 1997.

12        NEW SECTION.    **Sec. 12.**    Sections 1 through 7, 9, and 10 of this act  
13 constitute a new chapter in Title 41 RCW.

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