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**SENATE BILL 5134**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Salomon, Darneille, Das, Hunt, Pedersen, and Wilson, C.

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

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

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

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

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

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

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

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

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

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

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

(a) Require a waiting period before a law enforcement officer is interviewed by the officer's employer or an agent of the employer about a use of force incident or other significant incident involving alleged misconduct, or allow an officer to watch video recordings of the incident, or review written statements, or talk to other officers about the incident prior to submitting to an interview. An immediate interview of an officer alleged to have been involved in a use of force incident or other significant incident involving alleged misconduct, or to have witnessed such an incident, must be allowed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Be selected on the basis of merit;

(ii) Have the necessary subject matter expertise;

(iii) Not have a conflict of interest;

(iv) Not have worked for a law enforcement agency for any period within the 10 years preceding their appointment or selection; and

(v) Be on contract or staff for the civil service commission or jurisdiction, not selected on a case-by-case basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Violations of duties established under RCW 10.93.160.

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

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

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

(2) Provisions of local laws, ordinances, rules, regulations, policies, or contracts including memoranda of understanding, settlement agreements, or other agreements, that are inconsistent with or conflict with the requirements of state law including this chapter must not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

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

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

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

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

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

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

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

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

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

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

**--- END ---**