

# SENATE BILL REPORT

## SB 5668

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As of February 18, 2013

**Title:** An act relating to the removal and discharge of peace officers.

**Brief Description:** Addressing the removal and discharge of peace officers.

**Sponsors:** Senators Padden and Baumgartner.

**Brief History:**

**Committee Activity:** Law & Justice: 2/15/13.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Sharon Swanson (786-7447)

**Background:** The tenure of everyone holding an office, place, position, or employment in a city police department or sheriff's office must be only during good behavior, and any such person may be removed, discharged, suspended without pay, demoted, reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

- incompetency, inefficiency, or inattention or dereliction of duty;
- dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or fellow employees;
- mental or physical unfitness for the position that the employee holds;
- dishonest, disgraceful, immoral, or prejudicial conduct;
- drunkenness or use of intoxicating liquors, narcotics, or any other habit-forming drug to the extent that the use interferes with the mental or physical fitness of the employee;
- conviction of a felony or a misdemeanor involving moral turpitude; or
- any other act or failure to act that in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

A Washington State Patrol officer may be discharged for cause, that must be clearly stated in a written complaint, sworn to by the person preferring the charges, and served upon the officer complained of. The officer is entitled to a public hearing before a trial board.

In *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, No. 80720-5 (2009), the Washington State Supreme Court held that, in order to vacate an arbitration decision arising

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out of a collective bargaining agreement as contrary to public policy, the public policy must be explicit, well-defined, and dominant. The supreme court, however, also concluded that there was no statute or other expression of the state's public policy requiring the termination or prohibiting the reinstatement of a law enforcement officer found to have been untruthful.

**Summary of Bill:** When an employer removes or discharges a person who holds an office, place, position, or employment with a city police department, sheriff's office, criminal justice training commission, or with the state patrol, for committing an illegal act or an act of dishonesty or untruthfulness, and an arbitrator finds that the employer established that the person engaged in the act or acts by clear and convincing evidence, the employer is deemed to have just cause for the removal or discharge, and the arbitrator may not overturn the removal or discharge.

Illegal act is defined as the commission of a crime involving moral turpitude in the discharge of the person's official duties, including but not limited to:

- a violent offense, as defined in RCW 9A.030;
- a sex offense, as defined in RCW 9A.030;
- theft, as defined in RCW 9A.56.030 through 9A.56.050;
- fraud under RCW 9A.60;
- malicious mischief, as defined in RCW 9A.48.070 through 9A.48.090; or
- indecent exposure, as defined in RCW 9A.88.010.

An act of dishonesty or untruthfulness means making a false statement in response to a direct question in an official investigation or disciplinary process or intentionally making a false statement in an official public document.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This proposed legislation will allow the 39 sheriff's offices within the state of Washington to uphold the oaths they took and maintain the trust our citizens have for law enforcement professionals. This bill protects the reputations and professionalism of the overwhelming majority of law enforcement officers who do not engage in illegal acts or are challenged to tell the truth. Law enforcement officers must be accountable for their actions and our sheriffs and police chiefs must have the authority to maintain standards of conduct in their departments. Police officers should not commit crimes on duty or lie. This bill is not about doing away with due process or arbitration. Arbitration should be available for most disciplinary issues but there need to be some bright lines. If a police officer commits official misconduct, that officer needs to be relieved of duty. Police departments succeed only if there is integrity and trust in each other and with the public in us. People with badges on are held to a higher standard and that is the way it should be. This bill is not about attacking the arbitration process. It is about requiring honesty and truthfulness.

CON: This bill is nothing more than a solution in search of a problem. The rights not to be disciplined or discharged but for just cause and binding contract arbitration are well-established rights that organized labor has negotiated and won at the bargaining table. The arbitration process was specifically put in place to take politics, personalities, and egos out of the equation and let an independent, neutral third party with training and experience decide issues that could not be resolved by management and labor. We did not come here and ask you to make changes to these bargained-for rights because we lost a case. Instead, we thought this is the system we bargained for and it is working. We urge this committee not to be fooled or try to fix a system that is not broken. Management and labor have both signed the agreements that we must both abide by. This bill goes back on that agreement. Often when an arbitrator reinstates an employee it is because the process was flawed or there was an incomplete investigation. This bill would tie the hands of arbitrators.

**Persons Testifying:** PRO: Ozzie Knezovich, Spokane County Sheriff; Paul Pastor, Pierce County Sheriff; Mark Nelson, Cowlitz County Sheriff; John Snaza, Thurston County Sheriff; Steve Mansfield, Lewis County Sheriff; Mike Burgess, Spokane County.

CON: Fred Ruetsch, Retired Spokane County Detective; Jamie Daniels, WA Council of Police & Sheriffs; Renee Maher, Council of Sheriffs & Metropolitan Police; Carol Burke, Fraternal Order of Police.