

SENATE BILL REPORT

SB 5134

As of January 14, 2021

Title: 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.

Brief Description: 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.

Sponsors: Senators Salomon, Darneille, Das, Hunt, Pedersen and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/14/21.

Brief Summary of Bill

- Prohibits collective bargaining agreements covering law enforcement officers from including certain provisions related to discipline and oversight.
- Prohibits the use of arbitration for appeals of the discipline of law enforcement officers for misconduct and requires appeals of the discipline to go through a civil service commission, hearing examiner, or administrative law judge.
- Prohibits, on an appeal of the discipline of an officer, the reduction of the discipline imposed by the employer unless the discipline was arbitrary, capricious, or based on an illegal reason.
- Establishes a list of specific misconduct that must result in the discharge

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

of the law enforcement officer.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Jarrett Sacks (786-7448)

Background: Law Enforcement Collective Bargaining. The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining of wages, hours, and working conditions with employees of cities, counties, and other political subdivisions. Police have the authority to collectively bargain under PECBA, as do the officers of the Washington State Patrol and the Department of Fish and Wildlife. PECBA is administered by the Public Employment Relations Commission (PERC). Under PECBA, grievance procedures and discipline are mandatory subjects of bargaining and the parties may agree to binding arbitration to resolve grievances.

Many police agencies in Washington are represented for the purposes of collective bargaining and have collective bargaining agreements that call for binding arbitration to resolve grievances. Grievance procedures vary depending on the agreement, but may include an agreed-upon list of arbitrators. The parties may also request a list of arbitrators from PERC, the American Arbitration Association, or the Federal Mediation and Conciliation Service.

Civil Service Commissions. State law requires most cities and counties to provide civil service for city police and county sheriffs. If a city or county must provide for civil service, state law requires the creation of a civil service commission. State law requires a civil service commission to:

- make rules for the operation of the civil service system that are consistent with state law;
- give practical tests to determine the capacity of a person to perform the duties of the position sought;
- conduct investigations and prepare reports;
- hear and make determinations on appeals or complaints;
- develop and provide competitive tests to determine candidate qualifications and prepare eligibility lists based on test results;
- certify to the appointing authority the individuals ranked highest on the eligibility list; and
- keep records and approve payrolls.

State civil service laws related to city police do not apply to cities and towns that provide for civil service that substantially accomplishes the purpose of state civil service laws.

Summary of Bill: Law Enforcement Collective Bargaining Agreements. Collective

bargaining agreements (CBAs) covering law enforcement officers are prohibited from:

- requiring a waiting period before a law enforcement officer is interviewed by their employer about a use of force incident or other significant incident involving alleged misconduct— CBAs are also prohibited from allowing an officer to watch video recordings of the incident, review written statements, or talk to other officers about the incident prior to an interview and CBAs must allow for the immediate interview of an officer alleged to have been involved in, or witness to, a use of force incident;
- precluding the investigation of a complaint or the imposition of discipline by the employer based on a time limit for filing a complaint or concluding an investigation;
- limiting the manner in which complaints of misconduct are initiated, investigated, litigated, or otherwise resolved by the employer;
- preventing the employer from pursuing other incidents or types of misconduct revealed during an investigation;
- limiting retention, disclosure, use, or review of body camera and in-car video footage by the employer;
- limiting secondary employment management, oversight, and policies established by the employer;
- limiting internal review boards or early intervention systems established by the employer or local jurisdiction;
- limiting the authority, composition, or responsibilities of civilian oversight entities established by the employer, local jurisdiction, or other governing body;
- limiting the use or authority of civilian supervisors and investigators by the employer or applicable civilian oversight entity receiving complaints and conducting investigations;
- limiting full subpoena authority for civilian oversight bodies, or otherwise limit civilian oversight and review;
- limiting 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;
- limiting a chief's or sheriff's authority to remove a law enforcement officer from duty or place an officer on leave;
- limiting the procedures or timelines for the retention or destruction of law enforcement officer misconduct and employment records;
- allowing sealing, removal, redaction, or destruction of information in law enforcement officer misconduct and employment records;
- allowing 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;
- requiring 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;
- allowing the use of arbitration to decide disciplinary appeals;
- including any provision addressing the process or information regarding imposition of

discipline, hearings, appeals, or decertification for misconduct for law enforcement officers;

- limiting the employer or civilian oversight entity regarding who investigates complaints of criminal misconduct by a law enforcement officer;
- prohibiting the employer from releasing misconduct and employment information about a law enforcement officer to prospective employers, or obtaining the information from prior employers of prospective officers;
- limiting the composition, appointment requirements, policies, procedures, or rules of a civil service commission or a public safety civil service commission;
- allowing or requiring that discipline be consistent with past practice or be comparable to past discipline sanctions; or
- limiting the authority of the employer to take into account misconduct history in assignment to, reassignment from, and transfer to and from, speciality assignments as field training officers.

Appeal of Disciplinary Decisions. Discipline of law enforcement officers for misconduct are not subject to arbitration. Appeals of disciplinary decisions for misconduct are subject to a civil service commission. The employer may choose to use an administrative law judge (ALJ) or hearing examiner in lieu of a civil service commission to hear disciplinary appeals.

Any civil service commissioner, ALJ, or hearing examiner who hears appeals must:

- be selected on the basis of merit;
- have the necessary subject matter expertise;
- not have a conflict of interest;
- not have worked for a law enforcement agency in the ten years preceding their appointment; and
- be on contract or staff for the civil service commission or jurisdiction, rather than selected on a case-by-case basis.

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

The civil service commission, ALJ, or hearing examiner must uphold the discipline imposed and may not reduce the discipline unless they find it was arbitrary, capricious, or based on an illegal reason.

For appeals of discipline of misconduct:

- hearings, except for deliberations, must be open to the public;
- all requests by the officer or their union must be made within ten days of receiving notification of discipline, the appeals must be heard within 90 days of the imposition of discipline, and a decision must be entered within 30 days of the close of the hearing;

- 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;
- 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;
- the written decision must be made available to the parties and the public and is subject to disclosure under the Public Records Act; and
- the decision must be final and binding without further appeal.

Discipline and Discharge for Misconduct. An 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 the law enforcement officer:

- use of excessive force or being present and 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;
- knowingly hiding material evidence, failing to report exonerating information, or making materially misleading, deceptive, untrue, or fraudulent statements during an investigation, in documents or reports, or while testifying under oath;
- theft of misappropriation of funds or property, use of the position of law enforcement officer for personal gain through fraud or misrepresentation;
- serious or repeated harassment or discrimination based on a legally protected class under the Washington Law Against Discrimination;
- commission or conviction of a felony offense;
- acting with deliberate indifference to a substantial risk of harm to a person in custody;
- engaging in sexual contact with a person who has been detained, who is in custody, or where a reasonable person would believe they were facing the possibility of being detained or taken into custody; or
- violating any of the duties of law enforcement officers relating to an individual's immigration or citizenship status established under current state law.

The state, cities, towns, counties, and other municipalities or political subdivisions must establish procedures for receiving and investigating complaints of misconduct and imposing discipline on law enforcement officers. The process for adopting the procedures must include the opportunity for public review and comment and review and comment by civilian oversight officials if a jurisdiction has them.

Law enforcement officer means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally. Law enforcement officer does not include peace officers employed by the Department of Fish and Wildlife.

Appropriation: None.

Fiscal Note: Requested on January 10, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The bill sends appeals to a civil service commission and entities that do not have conflicts of interest while still allowing for due process and appeals. The bill addresses many police reform issues that have come up through the years. The bill helps hold police accountable while preserving collective bargaining. Collective bargaining stands in the way of reforms the citizens and cities have passed. The current system conceals discipline from public scrutiny. Extensive research shows that the inclusion of certain collective bargaining terms cause the issues that erode public trust.

CON: The bill attacks the fundamental tenets of collective bargaining. The bill only acknowledges individual problem cases and not systemic issues. The bill leaves the responsibility at the feet of workers instead of management who also perpetuate systemic issues. Management does not get it right all the time and the bill prevents holding them accountable. Washington is already a leader in police reform under current labor laws. This bill tips the scale to the employer and erodes hard-earned protections. The bill has the Legislature getting far too into the details of collective bargaining agreements between management and workers.

OTHER: Some of the bill goes too far instead of trying to strike a balance with bargaining. The bill may overwhelm civil service commissions. Sheriffs and police chiefs are opposed to the provisions that require discharging the officer for certain acts listed in the bill.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Candice Bock, Association of Washington Cities; Leslie Reed, citizen; Amy Sundberg, citizen; Judge Anne Levinson (retired); Breean Beggs, Spokane City Council, President; Paige Fernandez, American Civil Liberties Union, National Policing Policy Advisor; Fred Thomas, parent of Leonard Thomas; Devon S. Connor-Green, Black Lives Matter Seattle-King County; David Parsons, UAW 4121, President; Shannon Cheng, citizen.

CON: Leanne Kunze, Washington Federation of State Employees/AFSCME Council 28; Spike Unruh, Washington State Patrol Troopers Association; Teresa Taylor, Washington Council of Police & Sheriffs; Marco Montebalco, Washington State Fraternal Order of Police; Dennis Lawson, Washington State Council of Fire Fighters; Shaunie Wheeler James, Teamsters Joint Council; Larry Brown, Washington State Labor Council, AFL-CIO; John Scearcy, Teamsters Local 117.

OTHER: James McMahan, Washington Association of Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying:

OTHER: Dario de la Rosa, Public Employment Relations Commission.