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SENATE/HOUSE BILL XXXX

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State of Washington      67<sup>th</sup> Legislature      2021 Regular Session  
By Senators/Representatives ...

1            AN ACT Relating to enhancing public trust and confidence in  
2 law enforcement and strengthening law enforcement accountability  
3 by: excluding police accountability topics from being subject to  
4 bargaining in law enforcement union contracts; precluding use of  
5 arbitration for law enforcement officer disciplinary appeals;  
6 and specifying mandatory grounds for discharge from employment  
7 for law enforcement officers; adding new sections to chapter  
8 41.56 RCW.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11  
12            NEW SECTION. **Sec. 1.** The legislature finds that:

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

23            (2) Considerable local and national evidence demonstrates  
24 that law enforcement union and guild collective bargaining  
25 agreements, and the use of arbitration for appeals of law  
26 enforcement discipline, have resulted in shielding officers from  
27 accountability for misconduct, including use of excessive force.

**Commented [A1]:** We are asking legislative staff to recommend where Sec. 2 and 4 should be placed.

1 These barriers to accountability have resulted in the  
2 reinstatement of law enforcement officers despite having engaged  
3 in serious misconduct harming members of the public, undermining  
4 public trust and confidence in the work of law enforcement  
5 agencies.

6 (3) The legislature recognizes that law enforcement  
7 accountability systems, structures, policies, and practices that  
8 are transparent and effective, and mete out fair, impartial, and  
9 swift discipline commensurate to wrongdoing, will help ensure  
10 the civil and constitutional rights of the public are upheld,  
11 reduce misconduct, and maintain law enforcement agency cultures  
12 of accountability and adherence to policy and law.

13 (4) This **bill** is intended to reduce barriers to police  
14 accountability but does not alter any other collective  
15 bargaining rights of law enforcement officers nor does it change  
16 collective bargaining rights for public employees other than law  
17 enforcement. All public employees maintain the right to bargain  
18 with respect to matters related to wages and benefits.

19  
20 **Sec. 2.** Definitions applicable to this **bill** only. For this  
21 section and sections 3 through 6 of this act the following  
22 definitions apply:

23 (1) "Law enforcement officer" means "general authority  
24 Washington peace officers" employed by "general authority  
25 Washington law enforcement agencies" as defined in RCW  
26 10.93.020(1) and (3).

27 (2) "Law enforcement union" means any bargaining entity  
28 that engages in collective bargaining on behalf of law  
29 enforcement officers.

30  
31 NEW SECTION. **Sec. 3.** A new section is added to chapter  
32 41.56 RCW to read as follows:

33 (1) A collective bargaining agreement with a law  
34 enforcement union shall not:

**Commented [A2]:** Staff to select correct term, here and throughout - is it bill or chapter or other?

**Commented [A3]:** Legislative staff to figure out where to put this, to carry out the intent that this bill applies to law enforcement only and not to any other public employees.

1 (a) Require a waiting period before an officer is  
2 interviewed by the officer's employer or an agent of the  
3 employer about a use of force incident or other significant  
4 incident involving alleged misconduct, or allow an officer to  
5 watch video recordings of the incident or talk to other officers  
6 about the incident prior to submitting to an interview. An  
7 immediate interview of an officer alleged to have been involved  
8 in a use of force incident or other significant incident  
9 involving alleged misconduct, or to have witnessed such an  
10 incident, must be allowed;

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

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

18 (d) Prevent the officer's employer from pursuing other  
19 incidents or types of misconduct revealed during an  
20 investigation;

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

23 (f) Limit secondary employment management, oversight, and  
24 policies established by the officer's employer;

25 (g) Limit internal review boards or early intervention  
26 systems established by the officer's employer or local  
27 jurisdiction;

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

31 (i) Limit the use or authority of civilian supervisors and  
32 investigators by the employer or civilian oversight entity  
33 receiving complaints and conducting investigations;

1 (j) Limit full subpoena authority for civilian oversight  
2 bodies, or otherwise limit civilian oversight and review;  
3 (k) Limit public access to, retention of, or disclosure of,  
4 information and records regarding incidents, complaints,  
5 investigations, findings, disciplinary decisions, litigation,  
6 appeals, or decertification of officers;  
7 (l) Limit a chief's or sheriff's authority to remove an  
8 officer from duty or place an officer on leave;  
9 (m) Limit the procedures or timelines for the retention or  
10 destruction of officer misconduct and employment records;  
11 (n) Allow sealing, removal, redaction, or destruction of  
12 information in officer misconduct and employment records;  
13 (o) Allow officers or union representatives to raise  
14 previously undisclosed information at disciplinary appeal  
15 hearings where that information was known and not disclosed by  
16 the officer or union representative during the underlying  
17 investigation;  
18 (p) Require a specific standard of review or that the  
19 burden of proof in order to find misconduct, or to impose or  
20 uphold discipline, must be greater than a preponderance. Nothing  
21 in this subsection shall be construed as limiting a local  
22 jurisdiction's authority to apply a standard for appeals that is  
23 more deferential to management than a preponderance;  
24 (q) Allow the use of arbitration to decide disciplinary  
25 appeals;  
26 (r) Include any provision addressing the processes or  
27 information regarding imposition of discipline, hearings,  
28 appeals, or decertification for misconduct;  
29 (s) Limit the officer's employer or civilian oversight  
30 entity regarding who shall investigate, and in what manner,  
31 complaints of criminal misconduct;  
32 (t) Prohibit the employer from releasing misconduct and  
33 employment information to prospective employers or obtaining

1 such information from prior employers of prospective law  
2 enforcement officers; or

3 (u) Limit the composition, appointment requirements,  
4 policies, procedures, or rules of civil service commissions or  
5 public safety civil service commissions.

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

10 (3) Any provision of a contract or collective bargaining  
11 agreement entered or amended after the effective date of this  
12 act that is contrary to **this section** is void and unenforceable.

13  
14 **Sec. 4.** A new section is added to chapter 41.56 RCW to read  
15 as follows:

16 (1) Notwithstanding the provisions of RCW 41.56.122,  
17 discipline of law enforcement officers for misconduct shall not  
18 be subject to arbitration, but instead shall be subject to  
19 **appeal** to a civil service commission or a public safety civil  
20 service commission if a jurisdiction has one.

21 (2) A party may appeal the decision of a civil service  
22 commission or public safety civil service commission to a  
23 superior court only if the decision violates an explicit, well-  
24 defined, and dominant public policy established by case law.

25 (3) For discipline of law enforcement officers for  
26 misconduct, the following procedures must be followed:

27 (a) The civil service commission or public safety civil  
28 service commission shall uphold the discipline imposed on a law  
29 enforcement officer and may not reduce the discipline imposed if  
30 the finding of misconduct is upheld, unless it finds that the  
31 discipline was arbitrary, capricious, or based on an illegal  
32 reason. Deference to factual findings is required and de novo  
33 review is not permitted.

**Commented [A4]:** Question for legislative staff: should this be worded differently? Should it include "that is contrary to 'any provision of' this section," e.g.?

**Commented [A5]:** Is the Administrative Procedures Act implicated by this section?

1 (b) Appeals of discipline imposed on law enforcement  
2 officers shall be governed as follows:

3 (i) Hearings, except for commission deliberations, shall be  
4 open to the public;

5 (ii) All requests by the officer or union for an appeal  
6 shall be made within ten days of receiving the notification of  
7 discipline, such appeals shall be heard within ninety days of  
8 the imposition of the discipline, and the decision shall be  
9 entered within thirty days of the completion of the hearing;

10 (iii) The written decision resulting from the appeal shall  
11 be made available to the parties and the public and subject to  
12 disclosure under the public records act. The decision shall be  
13 final and binding without further appeal other than as set forth  
14 in Section 4(2) of this Chapter; and

15 (iv) Commission members hearing appeals must be appointed  
16 or selected on the basis of merit, have the necessary subject  
17 matter expertise, not have a conflict of interest, and not have  
18 worked for a law enforcement agency for any period within the  
19 ten years preceding appointment or selection.

20 (c) The commission or jurisdiction, including the  
21 Washington state patrol, may choose to use an administrative law  
22 judge or hearing examiner in lieu of a civil service commission  
23 or public safety civil service commission to hear officer  
24 disciplinary appeals, provided that the administrative law judge  
25 or hearing examiner is selected on the basis of merit, has the  
26 necessary subject matter expertise, does not have a conflict of  
27 interest, has not worked for a law enforcement agency for any  
28 period within the ten years preceding appointment or selection,  
29 and is on contract or staff for the commission or jurisdiction,  
30 not selected on a case-by-case basis.

31 (d) The commission or jurisdiction shall adopt rules to  
32 effectuate **this act**.

33 (4) Any provision of a contract or collective bargaining  
34 agreement entered or amended after the effective date of **this**

1 act, that is contrary to this section, is void and  
2 unenforceable.

**Commented [A6]:** Same question for legislative staff: add "any provision of" before "this section"?

3  
4 **NEW SECTION. Sec. 5.** A new section is added to chapter  
5 41.56 RCW to read as follows:

**Commented [A7]:** This section like the ones above should go in a place that makes clear it applies to law enforcement officers only.

6 (1) The legislature has determined that when law  
7 enforcement officers commit certain misconduct impacting the  
8 public interest, discharge from employment is the appropriate  
9 discipline. The employer may not consider past discipline  
10 practices as an extenuating circumstance and may not impose  
11 discipline other than discharge based on past practice for  
12 similar misconduct. The following specific misconduct shall  
13 result in discharge of law enforcement officers:

14 (a) Use of excessive force, as defined by \_\_\_\_\_, or  
15 was present, aware of another officer's use of excessive force,  
16 able to intervene, and failed to intervene or report another  
17 officer's use of excessive force;

**Commented [A8]:** There will be a separate bill currently called the de-escalation bill that will define what constitutes excessive force; our intent is to reference the de-escalation bill here and make them consistent.

18 (b) Knowingly making misleading, deceptive, untrue, or  
19 fraudulent statements or representations during an official  
20 investigation, in law enforcement documents or reports, or while  
21 testifying under oath;

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

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

27 (e) Conviction or the commission of a felony offense or  
28 gross misdemeanor domestic violence offense under the laws of  
29 this state, or of a comparable offense under federal law or the  
30 laws of another state;

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

33 (g) Engaging in nonconsensual sexual contact with a person  
34 in custody; or

1 (h) Violations of duties established under chapter  
2 10.93.160.

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

6 (3) Any provision of a contract or collective bargaining  
7 agreement entered or amended on or after the effective date of  
8 **this bill** that is contrary to or inconsistent with this section  
9 is void and unenforceable.

10

11 NEW SECTION. Sec. 6. A new section is added to chapter  
12 41.56 RCW to read as follows:

13 (1) The state, as to the state patrol, and cities, towns,  
14 counties or other municipalities or political subdivisions, must  
15 adopt laws or policies establishing procedures for receiving and  
16 investigating complaints of law enforcement misconduct and  
17 imposing discipline. Such laws and policies must be consistent  
18 with **this act**, and the process by which a jurisdiction proposes  
19 and adopts such laws or policies must include reasonable  
20 opportunity for public review and comment, as well as review and  
21 comment by civilian oversight officials if a jurisdiction has  
22 them, taking into consideration challenges to access such as  
23 availability of public transportation, differences in access to  
24 technology and the internet, and disability and language  
25 barriers.

26 (2) Local laws and policies, including but not limited to  
27 provisions labeled "officer bill of rights", memoranda of  
28 understanding, settlement agreements, or other agreements that  
29 are inconsistent with the requirements of state law, **shall** not  
30 be enacted and are preempted and repealed, regardless of the  
31 nature of the code, charter, or home rule status of the city,  
32 town, county, or municipality.

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**Commented [A9]:** Does the bill need to reference 41.56.100(1)?

**Commented [A10]:** Add this to a place in the statute where it is clear that this is limited to law enforcement union collective bargaining agreements only

**Commented [A11]:** Legislative staff should advise on proper term here.