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**SENATE BILL 5677**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Salomon and Pedersen

Prefiled 01/05/22.

1 AN ACT Relating to enhancing public trust and confidence in law  
2 enforcement and strengthening law enforcement accountability, by  
3 specifying required practices for complaints, investigations,  
4 discipline, and disciplinary appeals for serious misconduct; adding a  
5 new chapter to Title 10 RCW; and providing an effective date.

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

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

8 (a) Policing is unique among governmental functions, due to the  
9 authority and broad discretion of law enforcement officers to engage  
10 in state-sanctioned use of force, which may include the taking of  
11 another's life or restricting another's liberty. Greater  
12 accountability to the public is necessary when an officer engages in  
13 serious misconduct.

14 (b) Processes for complaint handling, investigations, imposition  
15 of discipline, and appeals of discipline for serious officer  
16 misconduct can be ineffective and lead to unacceptable delays and a  
17 lack of accountability for serious misconduct. These barriers to  
18 accountability have resulted in reductions in discipline and the  
19 retention or reinstatement of law enforcement officers who have  
20 engaged in serious misconduct that harmed members of the public. When  
21 supervisory approaches to complaint handling, investigations, and

1 disciplinary decisions are not aligned with appropriate standards of  
2 accountability, it undermines public trust and confidence in the work  
3 of law enforcement agencies.

4 (2) The legislature recognizes that law enforcement  
5 accountability systems, structures, policies, and practices, that are  
6 consistent, transparent and effective, and mete out fair, impartial,  
7 and swift discipline commensurate to wrongdoing, reduce officer  
8 misconduct, reduce barriers to accountability, and uphold the civil  
9 and constitutional rights of the public.

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

13 (1) "Investigating authority" means the entity authorized to  
14 conduct complaint handling and investigations regarding law  
15 enforcement officer serious misconduct.

16 (2) "Law enforcement officer" or "officer" has the same meaning  
17 as provided for "general authority Washington peace officer" in RCW  
18 10.93.020.

19 (3) "Serious misconduct" means conduct that, if sustained, would  
20 result in discipline greater than oral or written reprimand,  
21 including suspension, demotion, transfer, or termination. "Serious  
22 misconduct" includes, but is not limited to, conduct listed in RCW  
23 43.101.105 (2) and (3).

24 NEW SECTION. **Sec. 3.** (1) The provisions of this section apply  
25 to complaints and investigations of serious misconduct against a law  
26 enforcement officer.

27 (2) Each jurisdiction must develop, adopt, and implement a  
28 written process for receiving and processing complaints and  
29 conducting investigations relating to law enforcement officers  
30 alleged to have engaged in serious misconduct. At a minimum, the  
31 complaint and investigation process must:

32 (a) Be timely, fair, impartial, and thorough, and must include  
33 all of the law enforcement agency's officers, regardless of rank.  
34 "Impartial" precludes anyone with a conflict of interest from  
35 processing the complaint or conducting the investigation;

36 (b) Allow complaints to be filed or initiated through any  
37 communication means including, but not limited to, in person, in  
38 writing, by phone, electronically, via a website, or through internal

1 systems, and by any person, including those who wish to file  
2 anonymously. The process must not allow termination of an  
3 investigation solely on the basis that the complainant seeks to  
4 withdraw the complaint or is unavailable, or because the named  
5 officer resigns or retires after the incident;

6 (c) Have a civilian in charge of the investigating authority, and  
7 civilian staff in whole or in part to conduct or participate in  
8 complaint handling and investigations;

9 (d) Grant the investigating authority prompt and unfettered  
10 access to all of the law enforcement agency's data, records, video,  
11 evidence, and individuals necessary to conduct thorough and timely  
12 investigations. This includes, without limitation, requiring  
13 retention, disclosure, use, and review of body camera and in-car  
14 video footage if used by the law enforcement agency;

15 (e) Require named and witness officers to fully, promptly, and  
16 truthfully participate in interviews and produce, prior to or during  
17 the course of the investigation, all relevant material evidence of  
18 which the officer or the officer's representative is aware, pursuant  
19 to the officer's conditions of employment. The law enforcement agency  
20 may not create or agree to barriers to obtaining information such as  
21 requiring a subpoena or an additional order by superior officers, nor  
22 may the law enforcement agency allow or agree to allow material  
23 evidence to be offered by the officer after the investigation is  
24 conducted during later hearings regarding the incident if the officer  
25 or officer's representative was aware of the material evidence, but  
26 did not disclose it previously;

27 (f) Record interviews by either audio or video, or both, and  
28 retain in the investigative file all such recordings, written  
29 statements, and interview notes that are part of complaint intake and  
30 investigation;

31 (g) When there is an incident such as excessive use of force for  
32 which officers and witnesses will be interviewed as part of force  
33 review or incident review, distinct from a possible administrative  
34 misconduct investigation, require in-person interviews of named and  
35 witness officers to occur promptly, and no later than 60 minutes  
36 after the end of their shift. No waiting period may be required or  
37 agreed to, and the interview must occur prior to an opportunity for  
38 named and witness officers to watch video recordings of the incident,  
39 review written or recorded statements of others, or talk to other  
40 officers about the incident, provided, however, where the interview

1 may result in disciplinary action of the officer, that officer may  
2 request that a union representative be present for the interview;

3 (h) Issue the investigation findings within 180 days of the  
4 complaint being filed or initiated, unless good cause for an  
5 extension is established by the investigating authority and  
6 documented in the investigative file. "Good cause" for an extension  
7 means, for example, tolling for authorized reasons such as a related  
8 criminal investigation, temporary unavailability of witnesses or  
9 evidence, or other reasons that will promote a fair, impartial, and  
10 thorough investigation and not constitute undue delay. If the  
11 investigation findings are issued in excess of 180 days, within 30  
12 days of issuing the investigation findings, the investigating  
13 authority must make a written statement of the reason or reasons the  
14 time limit was exceeded, which shall be retained in the investigative  
15 file and reported to the jurisdiction;

16 (i) Provide the investigating authority and any civilian  
17 oversight entity that has investigative authority with full subpoena  
18 authority to compel production of evidence or testimony when  
19 necessary;

20 (j) Allow the investigating authority to pursue investigation of  
21 other incidents of possible misconduct revealed during the course of  
22 an investigation;

23 (k) Allow the investigating authority to investigate complaints  
24 of alleged serious misconduct that is criminal in nature, other than  
25 those investigations that fall under chapter 43.102 RCW, without  
26 limiting the manner of receiving complaints or conducting  
27 investigations, including decisions regarding which entity should  
28 conduct any necessary criminal investigation, coordination with the  
29 criminal investigators if external to the investigating authority,  
30 and whether the criminal and administrative investigations should be  
31 done concurrently or sequentially, to ensure that both the criminal  
32 and administrative investigations are rigorous, thorough, and timely;

33 (l) Provide the chief law enforcement officer with full authority  
34 to remove an officer from duty or place an officer on leave when  
35 allegations of serious misconduct have been made, including unpaid  
36 leave;

37 (m) Provide that a named officer in an ongoing investigation of  
38 serious misconduct is ineligible for promotion during the pendency of  
39 the investigation; and

1 (n) Require that the investigating authority maintain a  
2 centralized electronic numbering and tracking system for all  
3 allegations of serious misconduct by officers, including the time  
4 taken to complete the investigation under (h) of this subsection.

5 (3) For serious misconduct that occurs after the effective date  
6 of this section, each jurisdiction must allow investigations to be  
7 conducted and discipline to be imposed for complaints of serious  
8 misconduct that are filed or initiated at least three years after the  
9 occurrence of the alleged serious misconduct, without any preclusion  
10 or limitation on the manner of investigation or imposition of  
11 discipline. There shall be no time limitation for (a) criminal law  
12 violations; (b) excessive force that causes, or is reasonably  
13 expected to cause, great bodily harm, substantial bodily harm, loss  
14 of consciousness, or death; (c) dishonesty; or (d) any serious  
15 misconduct where the misconduct has been concealed.

16 (4)(a) Beginning July 1, 2023, this section applies to  
17 departments with 25 law enforcement officers or more as of January 1,  
18 2021; and

19 (b) Beginning July 1, 2025, this section applies to all other  
20 departments with law enforcement officers.

21 NEW SECTION. **Sec. 4.** Each jurisdiction must develop, adopt, and  
22 implement a written process for imposing and documenting discipline  
23 for serious misconduct. At a minimum, the discipline and  
24 documentation process must:

25 (1) Require that the disciplinary history of officers and  
26 applicants to become officers be considered in all hiring, promotion,  
27 and transfer decisions, and that the information considered and the  
28 fact of this consideration be documented and retained;

29 (2) Allow prompt and full public access to, and disclosure of,  
30 incident reports, complaints, disciplinary findings, investigative  
31 and disciplinary records, litigation, appeals, and decertification,  
32 including settlements or other agreements related to such incidents,  
33 complaints, and discipline, in accordance with chapter 42.56 RCW;

34 (3) Require that, for as long as an officer's employment records  
35 are retained pursuant to the requirements of RCW 40.14.070, there be  
36 no sealing, removal, redaction, or destruction of those records;

37 (4) Allow discipline to be imposed based on a preponderance of  
38 the evidence standard, and cannot require a more stringent burden of  
39 proof; and

1 (5) Require imposition of discipline commensurate to the serious  
2 misconduct. Past disciplinary decisions made by the same or other law  
3 enforcement agencies for the same or similar conduct prior to the  
4 effective date of this section may not be used as a basis for  
5 reducing or not imposing discipline. The authority to impose  
6 discipline may not be foreclosed by any time limit for conducting the  
7 investigation or the process of imposing the discipline.

8 NEW SECTION. **Sec. 5.** Each jurisdiction must develop, adopt, and  
9 implement a written process for receiving and processing all appeals  
10 of law enforcement discipline for serious misconduct. At a minimum,  
11 the disciplinary appeal process must be conducted using the following  
12 procedures:

13 (1) The decision maker for law enforcement disciplinary appeals,  
14 whether public safety civil service commissioners, administrative law  
15 judges, arbitrators, hearing examiners, or others, must be appointed  
16 based on merit, with subject matter expertise, and without conflicts  
17 of interest with any involved party. Commissioners may not be an  
18 employee of that jurisdiction, nor have worked for law enforcement in  
19 the prior 10 years. If administrative law judges, arbitrators, or  
20 hearing examiners are used, they must be on contract to the  
21 jurisdiction, and not selected on a case-by-case basis. To be on the  
22 roster to serve as an administrative law judge, arbitrator, or  
23 hearing examiner, any decision maker must be available to hear and  
24 rule on cases in accordance with the timelines set forth in this  
25 section;

26 (2) Discipline must be upheld if the decision maker finds that  
27 the officer committed the alleged serious misconduct, unless the  
28 discipline is arbitrary and capricious or exceeds the chief law  
29 enforcement officer's legal authority;

30 (3) Deference to factual findings is required and de novo review  
31 is not permitted. If material information that could not reasonably  
32 have been known comes to light, the case must be returned to the  
33 investigating authority for further investigation;

34 (4) The standard of review must be a preponderance of the  
35 evidence;

36 (5) Imposition of discipline must be commensurate to the serious  
37 misconduct. Past disciplinary decisions made by the same or other law  
38 enforcement agencies for the same or similar conduct prior to the

1 effective date of this section must not be used as a basis for  
2 reducing or overturning discipline imposed;

3 (6) Any procedural error or contractual violation regarding the  
4 imposition of discipline must be weighed against the nature of the  
5 serious misconduct found to have been committed in determining the  
6 appropriate remedy. Any modification of discipline due to a  
7 procedural error or contractual violation must be made only to the  
8 minimum extent necessary to address the error or violation;

9 (7) Hearings for law enforcement disciplinary appeals for serious  
10 misconduct must be open to the public, and there must be public  
11 notification of scheduled hearings, as well as notification to the  
12 complainant;

13 (8) The law enforcement disciplinary appeal process must be  
14 timely: All requests by the law enforcement officer or the officer's  
15 union for an appeal must be made within 10 days of receiving the  
16 notification of discipline, such appeals must be heard within 90 days  
17 of the imposition of the discipline, and the written decision  
18 regarding the appeal must be issued within 30 days of the close of  
19 the hearing;

20 (9) The written decision regarding the appeal must be made  
21 available to the parties and the public promptly upon its issuance;

22 (10) The right to appeal to superior court for decisions that  
23 violate an explicit, well-defined, and dominant public policy, as  
24 established by case law or statute, is maintained, but the decision  
25 must otherwise be final and binding without further appeal other than  
26 as set forth in this section; and

27 (11) Use of arbitration rules or other procedures that are  
28 contrary to state law or local ordinance, or to transparency or  
29 fairness, is prohibited.

30 NEW SECTION. **Sec. 6.** Jurisdictions may choose to have civilian  
31 oversight entities or community members involved in holding law  
32 enforcement officers who engage in serious misconduct accountable. A  
33 jurisdiction's laws, policies, rules, contracts, or other agreements  
34 may expand the accountability measures of this chapter, but may not  
35 undermine the authority, independence, composition, and  
36 responsibilities of such entities or the requirements of this  
37 chapter.

1        NEW SECTION.    **Sec. 7.**    After the effective date of this section,  
2 contracts and agreements that are inconsistent with the requirements  
3 of this chapter shall not be entered or extended. Any provision of a  
4 contract or agreement that is entered, extended, or amended after the  
5 effective date of this section that is contrary to this chapter is  
6 void and unenforceable.

7        NEW SECTION.    **Sec. 8.**    The provisions of this chapter shall be  
8 liberally construed to accomplish their purpose. If any provision of  
9 this chapter conflicts with any other statute, ordinance, rule, or  
10 regulation of any public employer, the provision of this chapter  
11 shall control.

12       NEW SECTION.    **Sec. 9.**    If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16       NEW SECTION.    **Sec. 10.**   Sections 1 through 8 and 11 of this act  
17 constitute a new chapter in Title 10 RCW.

18       NEW SECTION.    **Sec. 11.**   This act takes effect July 1, 2023.

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