

**9. Reform binding interest arbitration to provide greater authority for Chiefs and Sheriffs to dismiss officers who are not helpful to the agency's mission or betray the public's trust.**

## BILL DRAFT

### **PART I** FINDINGS AND INTENT

**Sec. 101.** (1) The Legislature reaffirms the purpose of chapter 41.56 RCW to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

(2) The Legislature finds, however, that, in the case of law enforcement and corrections officers, chapter 41.56 RCW has unintentionally served to protect officers who should not be employed in the public service of law enforcement.

(3) The Legislature intends to take immediate steps to reduce most egregious of these circumstances, establish a task force to study and make recommendations for larger and more productive reforms to chapter 41.56 to provide greater authority for Sheriffs and Police Chiefs to dismiss officers who are not helpful to the agency's mission or betray the public's trust, and to provide training to law enforcement supervisors to ensure adequate and proper hiring, training, mentoring, supervising, disciplining, and termination practices to provide greater adherence to applicable labor laws, collective bargaining agreements, and due process requirements.

### **PART II** TERMINATING OFFICERS FOR CRIMES AND DISHONESTY

**Sec. 201.** RCW 41.12.080 and 2007 c 218 § 13 are each amended to read as follows:

(1) The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and except as provided in subsection (2) of this section, any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

{1} (a) Incompetency, inefficiency or inattention to or dereliction of duty;

{2} (b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct

himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

{3} (c) Mental or physical unfitness for the position which the employee holds;

{4} (d) Dishonest, disgraceful, immoral or prejudicial conduct;

{5} (e) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

{6} (f) Conviction of a felony, or a misdemeanor, involving moral turpitude;

{7} (g) Any other act or failure to act which 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.

(2) If an employer removes or discharges a person who holds an office, place, position, or employment under this chapter 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, and the employer followed applicable labor laws, collective bargaining provisions, and due process requirements, the employer is deemed to have had just cause for the removal or discharge, and the removal or discharge may not be overturned.

(3) For purposes of this section “illegal act” and an “act of dishonesty or untruthfulness” means the same as defined in section 204 of this act.

**Sec. 202.** RCW 41.14.110 and 2012 c 117 § 14 are each amended to read as follows:

(1) The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and except as provided in subsection (2) of this section, any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

{1} (a) Incompetency, inefficiency or inattention to or dereliction of duty;

{2} (b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

{3} (c) Mental or physical unfitness for the position which the employee holds;

{4} (d) Dishonest, disgraceful, immoral or prejudicial conduct;

{5} (e) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental

or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

~~(6) (f)~~ Conviction of a felony, or a misdemeanor, involving moral turpitude;

~~(7) (g)~~ Any other act or failure to act which 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.

(2) If an employer removes or discharges a person who holds an office, place, position, or employment under this chapter 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, and the employer followed applicable labor laws, collective bargaining provisions, and due process requirements, the employer is deemed to have had just cause for the removal or discharge, and the removal or discharge may not be overturned.

(3) For purposes of this section “illegal act” and an “act of dishonesty or untruthfulness” means the same as defined in section 204 of this act.

**Sec. 203.** RCW 43.43.070 and 1984 c 141 s 2 are each amended to read as follows:

(1) Discharge of any officer with probationary status and discharge, demotion, or suspension of any officer with nonprobationary status shall be only for cause, which shall be clearly stated in a written complaint, sworn to by the person preferring the charges, and served upon the officer complained of.

(2) Removal or discharge of any officer for committing an illegal act or an act of dishonesty or untruthfulness established by clear and convincing evidence and the employer followed applicable labor laws, collective bargaining provisions, and due process requirements, shall be deemed to satisfy the reasonableness and lawfulness standard set forth in RCW 43.43.100.

(3) Upon being so served, any such officer shall be entitled to a public hearing before a trial board consisting of two Washington state patrol officers of the rank of captain, and one officer of equal rank with the officer complained of, who shall be selected by the chief of the Washington state patrol by lot from the roster of the patrol. In the case of complaint by an officer, such officer shall not be a member of the trial board.

(4) For purposes of this section “illegal act” and an “act of dishonesty or untruthfulness” means the same as defined in section 204 of this act.

**NEW SECTION. Sec. 204.** A NEW SECTION is added to chapter 41.56 RCW to read as follows:

(1) If a law enforcement or corrections agency removes or discharges a person who holds an office, place, position, or employment under this chapter 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, and the employer followed applicable labor laws, collective

bargaining provisions, and due process requirements, the employer is deemed to have had just cause for the removal or discharge, and the removal or discharge may not be overturned.

(2) For purposes of this section, the following terms have the following meanings:

- (a) "Illegal act" means 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 9.94A.030; a sex offense, as defined in RCW 9.94A.030; theft, as defined in RCW 9A.56.030 through 9A.56.050; fraud under chapter 9A.60 RCW; malicious mischief, as defined in RCW 9A.48.070 through 9A.48.090; and indecent exposure, as defined in RCW 9A.88.010.
- (b) "An act of dishonesty or untruthfulness" means intentionally 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.

### **PART III** **COLLECTIVE BARGAINING AND BINDING INTEREST ARBITRATION TASK FORCE**

#### **NEW SECTION. Sec. 301.**

(1) The joint legislative task force on peace officer collective bargaining and binding interest arbitration is established for the purpose of making recommendations to collective bargaining and binding interest arbitration for peace officers to provide greater authority for Sheriffs and Police Chiefs to dismiss officers who are not helpful to the agency's mission or betray the public's trust.

(2) The task force shall be comprised of the following members:

- (a) one member from each of the two largest caucuses of the senate, appointed by the caucus leaders of the senate;
- (b) one member from each of the two largest caucuses of the house, appointed by the caucus leaders of the house;
- (c) one member from each of the following, appointed jointly by the president of the senate and the speaker of the house:
  - (i) Sheriffs;
  - (ii) Police Chiefs;
  - (iii) bargaining units that represents county Sheriffs deputies;
  - (iv) bargaining units that represents city police officers;
  - (v) counties;
  - (vi) cities; and
  - (vii) the public.

(3) The duty of the task force is to study and make findings and recommendations to collective bargaining and binding interest arbitration for peace officers to provide greater authority for Sheriffs and Police Chiefs to dismiss officers who are not helpful to the agency's mission or betray the public's trust. In carrying out this duty, the task force must, at a minimum, study and make findings and recommendations the following considerations:

(a) replacing the use of arbitrators for an alternative dispute resolution mechanism where the neutral fact finder does not have a personal financial incentive in his or her decisions;

(b) establishing a statewide uniform disciplinary code for law enforcement and corrections officers, thereby removing the topic from collective bargaining negotiations;

(c) requiring that law enforcement and corrections officers who are placed on administrative leave as a result of an accusation or suspicion of wrongdoing be placed on unpaid leave, with full back-pay if the allegations prove to be unfounded;

(d) discouraging or prohibiting law enforcement and corrections agencies from compelling a statement pursuant to an administrative investigation, commonly known as a *Garrity* statement, and proceeding with disciplinary actions without any statement from the officer if the officer refuses to provide one voluntarily;

(e) prohibiting sergeants and other first level supervisors from participating in the same collective bargaining unit of those they supervise; and

(f) other potential reforms to collective bargaining or binding interest arbitration that would provide greater authority for Sheriffs and Police Chiefs to dismiss officers who are not helpful to the agency's mission or betray the public's trust.

(4) The task force shall choose two cochairs from among its legislative membership. The legislative membership shall convene the initial meeting of the task force.

(5) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(6) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force meetings and expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(8) The first meeting of the task force must occur prior to August 1, 2021. The task force shall submit a preliminary report regarding its initial findings and recommendations to the governor and appropriate committees of the legislature no later than December 1, 2021.

(9) The task force must meet not less than monthly, except when the Legislature is in session.

(10) The task force shall report its final findings and recommendations to the governor and the appropriate committees of the legislature no later than December 1, 2022.

(11) This section expires December 31, 2022.

#### **PART IV** **SUPERVISORY TRAINING**

**NEW SECTION. Sec. 401.** A NEW SECTION is added to chapter 43.101 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the criminal justice training commission, in partnership with the Washington association of sheriffs and police chiefs, must develop and administer a training program for law enforcement supervisors and administrators to more effectively hire, train, mentor, supervise, discipline, and terminate law enforcement officers consistent with applicable labor laws, collective bargaining agreements, and due process requirements.

#### **PART V** **MISCEALEANOUS PROVISIONS**

**NEW SECTION Sec. 501.** A NEW SECTION is added to chapter 41.56 RCW to read as follows:

Notwithstanding any provisions of this chapter, the provisions of this act and the implementation thereof do not constitute personnel matters, working conditions, or any other change that require collective bargaining.

**NEW SECTION. Sec. 502.** 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.

**NEW SECTION. Sec. 503.** To the extent that the any provision of this act conflicts with any local regulation, ordinance, collective bargaining agreement, memorandum of understanding, policy, or practice, the provisions of this act shall prevail and the conflicting provision shall be null and void.

-END-