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**SENATE BILL 5000**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators McCoy, Hunt, and Chase

AN ACT Relating to the use of deadly force by law enforcement and corrections officers; amending RCW 9A.16.040; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature recognizes the invaluable contributions of law enforcement officers who risk their own lives every day to protect our families and communities. We applaud their efforts to show respect and compassion to all citizens while holding individuals accountable for their criminal activity.

The legislature acknowledges that officers are often placed in harm's way and must make decisions quickly while under extreme stress. Although regrettable in every case, the use of deadly force may sometimes be necessary to protect the safety of others. The legislature also acknowledges that both the people of this state and law enforcement officers themselves rely on and expect officer accountability for the unjustified use of deadly force, the failure of which damages the public trust in those who serve the public honorably and with compassion.

The legislature recognizes that the police executive research forum, a nationally recognized leader on policing, has published thirty guiding principles on the use of deadly force and identified "sanctity of life" as the paramount principle. Similarly, the president's task force on 21st century policing, created "to strengthen community policing and trust among law enforcement officers and the communities they serve," in its final report, recommends that "a clearly stated 'sanctity of life' philosophy must also be in the forefront of every officer's mind."

It is the intent of the legislature to improve our use of deadly force statute in a manner that protects the sanctity of all human life, makes clear that the force used must be necessary and proportional and may only be used as a last resort, adds more specific language regarding the threat that must be present to justify the use of deadly force, and revises language describing officer accountability for unjustified uses of deadly force. It is the understanding of the legislature that the "reasonable belief" standard is applied to address honest mistakes. The legislature believes this emphasis on the sanctity of life, fairness, and accountability will strengthen community policing and reduce violent interactions between the public and law enforcement officers.

**Sec.**  RCW 9A.16.040 and 1986 c 209 s 2 are each amended to read as follows:

(1) Homicide or the use of deadly force is justifiable ((~~in the following cases:~~

~~(a)~~)) when a public officer is acting in obedience to the judgment of a competent court((~~; or~~)) for a sentence of death under chapter 10.95 RCW.

((~~(b)~~)) (2) Homicide or the use of deadly force is justifiable when ((~~necessarily~~)) used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty, and the peace officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm.

((~~(c)~~)) (3) Homicide or the use of deadly force is justifiable when ((~~necessarily used by~~)) a peace officer, or person acting under the officer's command and in the officer's aid, has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party, the deadly force is necessary to prevent death or serious physical harm, and the deadly force is used:

((~~(i)~~)) (a) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

((~~(ii)~~)) (b) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; ((~~or~~

~~(iii)~~)) (c) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

((~~(iv)~~)) (d) To lawfully suppress a riot ((~~if the actor or another participant is armed with a deadly weapon~~)).

((~~(2)~~)) (4) In considering whether to use deadly force under subsection ((~~(1)(c)~~)) (3) of this section((~~, to arrest or apprehend any person for the commission of any crime,~~)) the peace officer must have probable cause to believe that the suspect((~~, if not apprehended,~~)) poses ((~~a~~)) an imminent threat of death or serious physical harm to the officer or ((~~a~~)) an imminent threat of death or serious physical harm to others.

((~~Among the circumstances which~~)) (5) An example of a circumstance that may be considered by peace officers as ((~~a~~)) an "imminent threat of serious physical harm" ((~~are the following:~~

~~(a) The~~)) is when the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening((~~; or~~

~~(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.~~

~~Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.~~

~~(3)~~)).

(6) A public officer or peace officer shall not be held criminally liable for using deadly force ((~~without malice and with a good faith belief that such act is justifiable pursuant to this section~~)) if a reasonable officer would have believed the use of deadly force was necessary in light of all the facts and circumstances known to the officer at the time.

(7) For deadly force to be justified under this section the officer or third party assisting the officer must give a clear warning of his or her intent to use deadly force, with sufficient time for the warning to be observed, unless to do so would unduly place the officer or third party assisting the officer at risk or would create an imminent risk of death or serious physical harm to other persons, or would be clearly inappropriate or futile under the circumstances.

(8) As used in this section:

(a) "Necessary" means that force is used as a last resort and that all other available means including deescalation were considered, that no alternative to the use of force appeared to exist, and that the amount of force used was proportional to the threat presented.

(b) "Reasonable belief" and "reasonably believes" mean that a reasonable officer on the scene, in light of the totality of the facts and circumstances from the officer's perspective, would believe that the described facts exist.

(c) "Imminent" means the danger and risk is actually present at the time in the facts and circumstances the officer is facing.

((~~(4)~~)) (9) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

(10) In addition to the requirements of this section, a public officer, peace officer, or person aiding the officer shall not discharge their firearms at or from a moving vehicle unless deadly force is being used against the officer or another person present, by means other than a moving vehicle.

**--- END ---**