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**SUBSTITUTE SENATE BILL 5073**

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

**By** Senate Law & Justice (originally sponsored by Senators Frockt, McCoy, Pedersen, Hasegawa, Darneille, Chase, Hunt, and Wellman)

AN ACT Relating to recommendations from the joint legislative task force on the use of deadly force in community policing; amending RCW 9A.16.040, 43.101.200, and 43.101.280; adding new sections to chapter 36.28A RCW; adding new sections to chapter 43.10 RCW; adding new sections to chapter 43.101 RCW; and creating new sections.

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

**PART 1**

**INTENT**

NEW SECTION. **Sec.**  (1) During the 2016 regular legislative session, the legislature established the joint legislative task force on the use of deadly force in community policing. The legislature charged the task force with: Reviewing laws, practices, and training programs regarding use of deadly force in Washington and other states; reviewing current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force; and recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public. Task force membership included a diverse swath of representatives from law enforcement, public defenders, prosecutors, civil rights groups, community representatives, and legislators.

(2) It is the intent of the legislature to respond to the recommendations considered by the task force, which touch on various subjects including the state deadly force statute; training and community outreach; law enforcement accountability to its community; data collection; behavioral health; less lethal weapons; and funding and oversight. The legislature finds the following:

(a) Today's officers are faced with a wide variety of challenges on the streets, making effective and expanded training critical to their safety and the safety of those with whom they interact. Adequate funding of our state's criminal justice training commission is necessary. Additional financial support for enhanced training in cultural awareness, interactions involving people with disabilities with mental health and behavioral issues, de-escalation, the use of less lethal options during encounters, and addressing implicit bias should be prioritized. Funding should also be made available to ensure that agencies can outfit their officers with less lethal options to maximize the response options available when interacting with a member of the public.

(b) The concept of modern day policing continues to evolve. It is necessary to continue to strive to build bonds of public trust, bridging the divide between police officers and the diverse communities they serve.

(c) It is critical that changes to our state's use of deadly force law provide our men and women in uniform the protection they need when responding to our calls for help and keeping our communities safe. Concurrently, the legislature finds that the law should hold accountable those officers who act beyond what is reasonable in encounters with our citizens, but also account for honest mistakes that are the result of an officer's need to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving.

(d) A change in our state's use of deadly force by eliminating the requirement for an affirmative proof of malice will bring Washington law more in line with other states who have codified their use of deadly force laws. The legislature's intent in defining good faith is to clarify the standard that will be considered in deciding the presence or absence of good faith. Good faith will consider all the circumstances, including the officer's intent, and is ultimately an objective standard. After taking into account all of the circumstances, the decision will be whether the action taken was reasonable.

(e) Law enforcement accountability to the communities they serve is vital to maintaining policies that reflect community values. Agencies should work to establish and facilitate channels for community input into key policies and procedures. To engender confidence in the response to interactions with police that result in the death of a civilian, the legislature finds that agencies should develop policies for an independent criminal investigation.

(f) The use of data collection is essential to inform law enforcement agencies and the public about the effectiveness of existing practices, which policies work and do not work, and any unintended consequences. The legislature supports creating a database to better assess police use of force, regardless of whether a fatality results, and to track metrics such as demographic characteristics, frequency of incidents involving the use of force, weapons used by peace officers and citizens, the agencies and communities involved, and the frequency of firearm discharges, among others.

**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~~))

(b) 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((~~.~~)); or

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

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

(2) In considering whether to use deadly force under subsection (1)(c) 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 threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) 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) 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. For purposes of this section, "good faith" is whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.

(4) 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.

**PART 2**

**ACCOUNTABILITY**

NEW SECTION. **Sec.**  A new section is added to chapter 36.28A RCW to read as follows:

Subject to the availability of funds appropriated for this specific purpose, the Washington association of sheriffs and police chiefs must develop a model policy listing best practices and recommended options for law enforcement agencies to consider when seeking public input into policing policies and accountability practices.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

In all instances where the application of force results in death, the law enforcement agency shall facilitate the completion of an independent criminal investigation. The law enforcement agency may enter into an agreement with an external police agency, other than the agency employing the involved officer, with investigative competency and resources to conduct the investigation. For the purposes of this section, a police agency with the ability to investigate a homicide is deemed to have the competency necessary to conduct the investigation.

**PART 3**

**TRAINING, COMMUNITY OUTREACH, AND MODERN POLICING**

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

The commission shall:

(1) Review, update, and provide basic and in-service training for peace officers and corrections officers anchored in critical thinking and the development of sound judgment that:

(a) Emphasizes de-escalation in patrol tactics and interpersonal communication training;

(b) Supports alternatives to arrest or citation in situations where appropriate;

(c) Develops understanding of implicit and explicit bias and proper means to address them;

(d) Develops understanding of cultural competency and the historical intersection of race and policing;

(e) Develops understanding and skills to effectively and safely interact with people with disabilities and behavioral health issues;

(f) Includes "shoot/don't shoot" scenario training; and

(g) Uses less than lethal force and technologies, subject to the creation and funding of the program in section 11 of this act.

(2) Incorporate a training component that includes veteran officers mentoring recruits and sharing insights and experiences about working effectively with community members that the recruit officer may not have experience interacting with. This may include ride-alongs, or working in community programs that enhance engagement between neighborhoods and police where applicable.

NEW SECTION. **Sec.**  Subject to the availability of amounts appropriated for this specific purpose, the Washington state institute for public policy shall conduct a study to determine what actions can be taken by law enforcement agencies to increase the diversity of Washington's law enforcement officers to ensure meaningful community engagement with diverse communities, build trust and legitimacy, and strengthen community law enforcement relations while maintaining public safety. The study must include a survey of research literature and models used in other states. The institute shall submit a report with findings to the appropriate committees of the legislature and the governor by December 1, 2017.

**Sec.**  RCW 43.101.200 and 2015 3rd sp.s. c 4 s 957 are each amended to read as follows:

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) Except as otherwise provided in this chapter, the commission shall provide the aforementioned training together with necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week((~~, except during the 2013~~‑~~2015 and 2015-2017 fiscal biennia when the employing, county, city, or state law enforcement agency shall reimburse the commission for twenty-five percent of the cost of training its personnel~~)). Additionally, to the extent funds are provided for this purpose, the commission shall reimburse to participating law enforcement agencies ((~~with ten or less full-time commissioned patrol officers~~)) the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his or her training period. When reimbursing funds to participating law enforcement agencies, the commission must give priority to accredited agencies.

**Sec.**  RCW 43.101.280 and 2005 c 282 s 46 are each amended to read as follows:

The criminal justice training commission shall develop, in consultation with the administrative office of the courts and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and ((~~its~~)) implicit bias and their implications for working with youth of color and their families. ((~~The curriculum shall be developed by October 1, 1993.~~)) The commission shall ensure that ethnic ((~~and~~)), diversity, and implicit bias training becomes an integral part of the training of law enforcement personnel so as to incorporate cultural sensitivity and awareness into the daily activities of law enforcement personnel.

**PART 4**

**DATA COLLECTION**

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) Subject to the availability of funds appropriated for this specific purpose, the attorney general shall develop and prepare a reporting mechanism for law enforcement agencies to utilize when reporting the use of deadly force by law enforcement and corrections officers.

(2) The report must include all information that the attorney general determines to be relevant to accurately and comprehensively record the circumstances of each use of deadly force by law enforcement or corrections officers.

(3) For the purposes of this section, "deadly force" means:

(a) The application of deadly force as defined in RCW 9A.16.010 by a law enforcement officer, regardless of the outcome; and

(b) The application of force by a law enforcement officer that results in death or great bodily harm, as defined in RCW 9A.04.110.

(4) All general and limited authority law enforcement agencies and the department of corrections must report all officer involved uses of deadly force to the attorney general, including all information in subsection (2) of this section and any other information required by the attorney general within five business days of the conclusion of the independent criminal investigation. The report must contain all information requested in a format approved by the attorney general.

(5) The attorney general must prepare and submit a report by December 1st of each odd-numbered year to the governor and the appropriate committees of the house of representatives and the senate regarding the reported use of deadly force by law enforcement and corrections officers, including all of the information and reports submitted under subsection (4) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 36.28A RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall engage with researchers from an accredited university in Washington to develop a methodology for collecting and analyzing demographic data in several key enforcement areas in order to monitor trends that may indicate disparate impact on minority communities. Once methodology has been developed, protocols must then be developed for law enforcement agencies to submit data for analysis by qualified researchers and for reporting with recommendations for mitigating any disparate impact without sacrificing public safety. The Washington association of sheriffs and police chiefs shall submit a report with the completed protocols to the appropriate committees of the legislature, the governor, and the criminal justice training commission by December 1, 2018.

**PART 5**

**LESS LETHAL WEAPONS**

NEW SECTION. **Sec.**  A new section is added to chapter 36.28A RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall administer a program for distributing funds to local law enforcement agencies to equip primary responding law enforcement officers with less lethal weapons. The Washington association of sheriffs and police chiefs shall submit a report by December 30th of each year to the appropriate committees of the legislature, the governor, and the criminal justice training commission regarding the agencies receiving funds, the amounts distributed, and the equipment purchased.

**PART 6**

**FUNDING**

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

The public safety enhancement account is created in the custody of the state treasurer. Revenues to the account consist of transfers and appropriations by the legislature; private gifts, grants, and donations; federal funds; and all other sources directed by law to the account. Expenditures from the account may be used only to carry out the duties of the commission. Only the criminal justice training commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. A portion of the funds must be used to provide training in advanced patrol tactics and scenario-based simulations. A portion of the funds distributed under this section must be distributed to the Washington state patrol for training in the subjects set forth in section 5(1) of this act.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by December 30, 2017, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held by a court to be invalid, the remainder of the act is incapable of accomplishing the legislative purpose and shall also be invalid.

**--- END ---**