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**SENATE BILL 5073**

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

**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 and 43.101.410; 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 adopted 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, especially communities of color and persons suffering from mental health or behavioral issues.

(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) Amending our state's use of deadly force statute is one piece of building and maintaining trust between law enforcement agencies and the people they protect and serve. 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.

(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 or serious injury of a civilian, the legislature finds that agencies should develop policies for external investigation by bodies outside the department in which the incident occurred.

(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~~)) if a reasonable officer would have believed that the use of deadly force was necessary in light of all the facts and circumstances known to the officer at the time.

(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:

(1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall, in consultation with community stakeholders and state and local governmental agencies, convene a model policy work group to develop model policies for law enforcement agencies including establishing channels for meaningful community input into key policing policies and robust, independent civilian oversight of police accountability practices.

(2) The model policy must establish a channel for meaningful community input into key policing policies and accountability structures and processes that provide for:

(a) Safe mechanisms to submit formal complaints;

(b) Objective and timely investigations of complaints;

(c) Classification standards for findings and a consistent method of publishing findings;

(d) Implementation of appropriate discipline or training if misconduct is found; and

(e) A process that ensures the discipline or training is completed.

(3) The Washington association of sheriffs and police chiefs shall complete and make the model policy available to law enforcement agencies no later than June 1, 2018.

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

In all instances of the use of deadly force by a law enforcement officer resulting in death or substantial bodily harm, 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 agency, other than the agency employing the involved officer, with investigative competency and resources to conduct the investigation.

**PART 3**

**TRAINING AND COMMUNITY OUTREACH**

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

Subject to the availability of amounts appropriated for this specific purpose, 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 8 of this act.

(2) Develop a training module for field officer training that requires new recruits to meet with community advisory boards and to ride with senior officers with experience working in diverse communities that have a high level of law enforcement activity.

(3) Develop a grant program and model to assist jurisdictions who create advisory boards, comprised of diverse communities within their jurisdiction, to help build trusting, cooperative relationships with recruits and other law enforcement personnel.

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 marginalized communities, build trust, and strengthen community law enforcement relations. 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.

**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 amounts appropriated for this specific purpose, the attorney general must prepare and submit an annual report by December 1st of each year to the governor and the appropriate committees of the house of representatives and senate regarding the use of deadly force by law enforcement and corrections officers.

(2)(a) For each case, the report must include:

(i) Demographic characteristics of the officer and the citizens involved, including sex, age, race, and ethnicity;

(ii) The presence of an actual or apparent disability or behavioral health issue;

(iii) The agency or agencies employing the officer involved;

(iv) The location of the event;

(v) The weapon or weapons used by the officer and the citizen, if any, including, but not limited to, information on discharging of firearms; and

(vi) The injuries, if any, suffered by officers and citizens.

(b) The report may include any other information that the attorney general determines relevant to accurately record the circumstances of each incident.

(3) For the purposes of this section, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

(4) All 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 sixty days of the incident, unless the attorney general establishes a different reporting deadline. The report must contain all information requested in a format approved by the attorney general.

**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. Priority must be given to local law enforcement agencies that achieve and maintain professional accreditation. 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**

**MODERN POLICING**

**Sec.**  RCW 43.101.410 and 2002 c 14 s 2 are each amended to read as follows:

(1) Local law enforcement agencies shall comply with the ((~~recommendations of the Washington association of sheriffs and police chiefs~~)) requirements regarding racial profiling and implicit bias, as set forth under (a) through (f) of this subsection. Local law enforcement agencies shall:

(a) Adopt a written policy designed to condemn and prevent racial profiling and decisions and actions rooted in racial bias;

(b) Review and audit their existing procedures, practices, and training to ensure that they are not rooted in biases about any racial or ethnic groups and do not enable or foster the practice of ((~~racial profiling~~)) illegally profiling members of any specific racial or ethnic group;

(c) Continue training to address the issues related to racial profiling and implicit bias. Officers should be trained ((~~in how to better interact~~)) to employ the principles of procedural justice when interacting with persons they stop so that legitimate police actions are not misperceived as racial profiling or biased policing;

(d) Ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling or other behavior or institutional practices that appear to be driven by racial bias. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling or behaving in a manner that indicates racial bias must be held accountable through the appropriate disciplinary procedures within each department;

(e) Work with the minority groups in their community to appropriately address the issue of racial profiling and implicit bias; and

(f) Within fiscal constraints, collect demographic data on traffic stops and analyze that data to ensure that racial profiling is not occurring.

(2) The Washington association of sheriffs and police chiefs shall coordinate with the criminal justice training commission to ensure that issues related to racial profiling and implicit bias are addressed in basic law enforcement training and offered in regional training for in-service law enforcement officers at all levels.

(3) Local law enforcement agencies shall report all information required under this section to the Washington association of sheriffs and police chiefs.

(4) 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 7**

**FUNDING**

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

The criminal justice training 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.

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