

SENATE BILL REPORT

SB 5259

As Reported by Senate Committee On:
Law & Justice, February 4, 2021
Ways & Means, February 22, 2021

Title: An act relating to requiring reporting, collecting, and publishing information regarding law enforcement interactions with the communities they serve.

Brief Description: Concerning law enforcement data collection.

Sponsors: Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman and Wilson, C.; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 2/02/21, 2/04/21 [DPS-WM].
Ways & Means: 2/17/21, 2/22/21 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Requires the Attorney General's Office to establish an advisory group to make recommendations for implementation of a program for statewide data collection, reporting, and publication of use of force data by April 1, 2022.
- Directs the Attorney General's Office to engage in a competitive procurement process to select a Washington private or public institution of higher education to design, develop, and manage the data collection program.
- Requires all law enforcement agencies to report all instances of the use of force to the university no later than three months after the Attorney General's Office determines the contractor can accept reports.

SENATE COMMITTEE ON LAW & JUSTICE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5259 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5259 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Liias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

Staff: Julie Murray (786-7711)

Background: There are two types of law enforcement agencies in the state—general authority law enforcement agencies and limited authority law enforcement agencies. "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. This includes, for example, county sheriffs, municipal police departments, the Washington State Patrol, and the Department of Fish and Wildlife.

"Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas. This includes, for example, the Department of Corrections, Department of Natural Resources, Department of Social and Health Services, Gambling Commission, and Liquor and Cannabis Board.

Law enforcement officers are authorized to use deadly force under certain circumstances. This includes, for example, when necessarily used to apprehend or arrest a person who poses a threat of serious physical harm to the officer or others. In each circumstance, the officer must have a good faith belief that the act is justifiable according to certain statutory requirements.

Law enforcement officers must complete basic and advanced training to obtain and maintain certification. With the passage of Initiative 940 in 2018, officers are also required to complete de-escalation training. Officers must be trained on alternatives to the use of physical or deadly force so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force.

Great bodily harm and substantial bodily harm are both defined in the Washington Criminal Code. Substantial bodily harm is when a person sustains temporary, but substantial disfigurement or loss of function. Great bodily injury is when a person sustains injury which is likely to cause death or which causes significant permanent disfigurement or loss of function.

Summary of Bill (Second Substitute): The Attorney General's Office (AGO) must establish an advisory group to assist with the design, development and implementation of a statewide use of force data program. The advisory group must consist of three representatives from local nongovernment organizations or advocacy groups focused on the interaction between law enforcement and the community; three representatives from law enforcement agencies or organizations representing the interests of law enforcement; and at least one representative from the private sector with experience in data collection.

The advisory group must submit recommendations to the AGO on the phased implementation of additional data elements; practices for law enforcement reporting, utilizing incident reports to the greatest extent feasible; and practices for public access to deidentified data. Recommendations are due by April 1, 2022. The AGO must review the recommendations from the advisory group and approve or reject, in whole or in part, the recommendations. When reviewing the recommendations, the AGO must consider available funding, prioritizing the reporting of data required by law, the public's interest in accessing information in a transparent and expedient manner, and the institutional operations and demands of law enforcement. The AGO may approve recommendations subject to legislative funding. Rejected recommendations may be revised by the advisory group for reconsideration by the AGO. The advisory group sunsets on January 1, 2023.

The AGO must engage in a competitive procurement process to contract with a Washington private or public institution of higher education to design, develop, and manage the statewide use of force data collection program. The advisory group, or designated members, may participate in the procurement process. However, advisory members and representatives of entities participating in the advisory group may not bid or participate in the procurement. The AGO is the sole authority to select and award the contract to the institution of higher education. All general authority and limited authority law enforcement agencies must report institution of higher education incidents of the use of force by a law enforcement officer including those in which:

- a fatality occurred;
- a person experienced substantial or great bodily harm;

- a law enforcement officer used force against a person, but the force did not result in a fatality, substantial bodily harm, or great bodily harm; or
- a law enforcement officer:
 1. discharged a firearm at or in the direction of a person;
 2. pointed a firearm at a person;
 3. used a chokehold or vascular neck restraint;
 4. used an electronic control weapon including, but not limited to, a taser, against a person;
 5. used oleoresin capsicum spray against a person;
 6. discharged a less lethal shotgun or other impact munitions at or in the direction of a person;
 7. struck a person using an impact weapon or instrument including, but not limited to, a club, baton, or flashlight;
 8. used any part of their body to physically strike a person including, but not limited to, punching, kicking, slapping, or using closed fists or feet;
 9. used a vehicle to intentionally strike a person or vehicle; or
 10. deployed a canine by releasing it from the physical control of the law enforcement officer or had under the law enforcement officer's control a canine that bites a person.

When reporting an incident, the agency employing the officer that used force must provide detailed information regarding the incident, including:

- the date, time, and location of the incident
- the agency or agencies employing the law enforcement officer;
- the type of force used by the officer;
- the type of injury to the person against whom force was used;
- the type of injury to the officer, if any;
- whether the person was armed or unarmed; believed to be armed; and if armed, the type of weapon the person possessed;
- the age, gender, race, and ethnicity of the person and the officer;
- if applicable, the person's tribal affiliation;
- whether the person exhibited any signs of mental health or substance abuse issues;
- the officer's years of service;
- the reason for the initial contact between the officer and person;
- whether any minors were present at the scene;
- the entity conducting the independent investigation, if applicable;
- whether dashboard or body worn camera footage was recorded for the incident; and
- the number of officers and suspects who were present when force was used.

Each law enforcement agency must also report any additional incidents and data required by the statewide use of force data program developed by the advisory group and approved by the AGO. All law enforcement agencies must submit the reports required by this section no later than three months after the office of the attorney general determines the institution of higher education's system can accept law enforcement agency reports. Reports must be

made in the format and time frame established in the statewide use of force data program.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

A daily stipend is authorized for advisory group members who may experience financial hardship from participating in the advisory group. The completion date is extended for advisory group recommendations from January 1, 2022 to April 1, 2022. The work of the advisory group is supplemental to base requirements for collection of data outlined in the bill. The advisory group is required to consider phased implementation of additional data elements, including demographic information about crime victims; recommend practices for law enforcement reporting, utilizing incident reports to the greatest extent feasible; and recommend practices for public access to deidentified data. The advisory group sunsets on January 1, 2023.

The AGO is required to consider available funding when accepting or rejecting recommendations for the use of force data program. The AGO is allowed to approve recommendations subject to legislative funding. The AGO is required to engage in a competitive procurement to contract with a public or private institution of higher education in Washington State. The AGO is designated as the sole authority to select and award the contract. Law enforcement agencies are required to submit reports no later than three months after the AGO determines the contractor can accept reports.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

The AGO is required to establish an advisory group to examine data needs or gaps in the university's use of force data program; group membership is prescribed. The advisory group must make recommendations to the AGO for statewide implementation of data collection, reporting, and publication no later than January 1, 2022. The AGO must review the recommendations from the advisory group and recommend revisions. Upon approval, the advisory board must conduct a competitive bidding process to select a university to design, develop, and manage the data collection program. Law enforcement agencies may submit data to the university utilizing incident reports or other electronic means. Additional data elements that must be reported include, the reporting of whether dashboard or body worn camera footage was recorded for an incident, and the number of officers and suspects who were present when force was used. Law enforcement agencies must develop a reporting plan for the submission of additional data relevant to public interactions and incidents. Provisions requiring the reporting of tort payout information are removed.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: We are currently operating in a space without data. It is not possible to measure the effectiveness of policing reforms or whether further reforms are necessary without data. Policing and police interactions disproportionately impact minority populations. A lack of transparency surrounding police interactions erodes public trust. There is broad agreement that citizens deserve better information to reduce violent interactions between law enforcement and the public.

Collection of data should not be a partisan issue. Better data helps in the furtherance of good police practices that in turn builds public confidence and integral to law enforcement in management and professional growth.

Law enforcement will support almost any data collection effort. Transparency is vital to building and maintaining public trust. Data should be comparable to other states. Disagree that tort payouts should be included. Complex set of data, that needs context. Needs decisions and actions resulting from data that result in change.

One of the major distinctions between SB 5259 and 5261 is where the data is housed. It is important for transparency and trust that the information be housed in an agency that is not closely connected with law enforcement.

There are a few recommendations for improvement. Tort payout data is complex and should not be included in this bill; there should be a robust process for community input; the agency housing the data should be publicly bid rather than assigned to WSU or the Washington Association of Sheriffs and Police Chiefs; periodic independent reviews should be incorporated to ensure agencies are reporting appropriately; and language should be added to clarify that localities cannot adopt contracts that conflict with the bill.

OTHER: There is a direct correlation between universal competent data and informed decisions. What is not measured, cannot be managed. Most of this data is readily available and can be provided. It is, however, important to keep in mind the burden of reporting on smaller agencies. This bill will require training and in some cases additional equipment or software. Small agencies do not have the ability to cover these costs.

The bill should allow law enforcement agencies to submit the data by submitting incident reports. This relieves the fiscal impact and allows for objectivity and uniformity. Tort payout data should not be collected.

Persons Testifying (Law & Justice): PRO: Senator T'wina Nobles, Prime Sponsor; Spike

Unruh, Washington State Patrol Troopers Association; Martina Morris, Next Steps Washington; Jeff DeVere, Washington Council of Police and Sheriffs; Michael Transue, Washington Fraternal Order of Police; Yasmin Trudeau, Washington State Office of the Attorney General.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We fully support the legislation. We think the bill creates a transparent, properly informed and robust use of force data collection system that can be used by law enforcement agencies, academia and public. While the bill may be a little on the expensive side, it is absolutely and unequivocally necessary to be best situated to make data driven decisions. We think using incident reports is the best way to go and we submit the advisory group will be in a good position to determine what sorts of incident reports and electronic transmissions could be used. I speak in support of this agency request legislation. The policy committee made changes to address the use of incident reports to lower costs. Many of the changes should result in a decrease of local costs, but higher state costs. This bill has broad bipartisan support and support from community advocates and law enforcement. The program will help ground us in facts and data so we can make informed decisions. Many pieces of the bill are subject to appropriation so the legislature will be in control of how robust the program is. We believe good management policy decisions concerning law enforcement must be assisted by reliable data. We support this approach and believe it is not an option any longer to not have a system collecting data. We have talked about funding it in the past; we hope it happens this time.

OTHER: We support the underlying goals of this bill, but this can be a particularly expensive venture for local government. I point you to the reporting data, the specific formats and deadlines required by the bill and ask the bill be amendment to simply require law enforcement agencies to submit incident reports for relevant interactions with the public. We think it will reduce local government costs and increase the objectivity and usefulness of the reports.

Persons Testifying (Ways & Means): PRO: Michael Transue, Washington Fraternal Order of Police; Yasmin Trudeau, Washington State Office of the Attorney General; Jeff DeVere, Washington Council of Police and Sheriffs.

OTHER: James McMahan, Washington Association of Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.