
SENATE BILL 5073

State of Washington

65th Legislature

2017 Regular Session

By Senators Frockt, McCoy, Pedersen, Hasegawa, Darneille, Chase, Hunt, and Wellman

Read first time 01/11/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to recommendations from the joint legislative
2 task force on the use of deadly force in community policing; amending
3 RCW 9A.16.040 and 43.101.410; adding new sections to chapter 36.28A
4 RCW; adding new sections to chapter 43.10 RCW; adding new sections to
5 chapter 43.101 RCW; and creating new sections.

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

7 **PART 1**

8 **INTENT**

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

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

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

19 (b) The concept of modern day policing continues to evolve. It is
20 necessary to continue to strive to build bonds of public trust,
21 bridging the divide between police officers and the diverse
22 communities they serve, especially communities of color and persons
23 suffering from mental health or behavioral issues.

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

33 (d) Amending our state's use of deadly force statute is one piece
34 of building and maintaining trust between law enforcement agencies
35 and the people they protect and serve. A change in our state's use of
36 deadly force by eliminating the requirement for an affirmative proof
37 of malice will bring Washington law more in line with other states
38 who have codified their use of deadly force laws.

39 (e) Law enforcement accountability to the communities they serve
40 is vital to maintaining policies that reflect community values.

1 Agencies should work to establish and facilitate channels for
2 community input into key policies and procedures. To engender
3 confidence in the response to interactions with police that result in
4 the death or serious injury of a civilian, the legislature finds that
5 agencies should develop policies for external investigation by bodies
6 outside the department in which the incident occurred.

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

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

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

21 (a) When a public officer is acting in obedience to the judgment
22 of a competent court; ~~((~~or~~))~~

23 (b) When necessarily used by a peace officer to overcome actual
24 resistance to the execution of the legal process, mandate, or order
25 of a court or officer, or in the discharge of a legal duty~~((~~-~~))~~; or

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

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

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

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

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

1 (2) In considering whether to use deadly force under subsection
2 (1)(c) of this section, to arrest or apprehend any person for the
3 commission of any crime, the peace officer must have probable cause
4 to believe that the suspect, if not apprehended, poses a threat of
5 serious physical harm to the officer or a threat of serious physical
6 harm to others. Among the circumstances which may be considered by
7 peace officers as a "threat of serious physical harm" are the
8 following:

9 (a) The suspect threatens a peace officer with a weapon or
10 displays a weapon in a manner that could reasonably be construed as
11 threatening; or

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

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

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

24 (4) This section shall not be construed as:

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

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

30 **PART 2**

31 **ACCOUNTABILITY**

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.28A
33 RCW to read as follows:

34 (1) Subject to the availability of amounts appropriated for this
35 specific purpose, the Washington association of sheriffs and police
36 chiefs shall, in consultation with community stakeholders and state
37 and local governmental agencies, convene a model policy work group to
38 develop model policies for law enforcement agencies including

1 establishing channels for meaningful community input into key
2 policing policies and robust, independent civilian oversight of
3 police accountability practices.

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

7 (a) Safe mechanisms to submit formal complaints;

8 (b) Objective and timely investigations of complaints;

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

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

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

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

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10
19 RCW to read as follows:

20 In all instances of the use of deadly force by a law enforcement
21 officer resulting in death or substantial bodily harm, the law
22 enforcement agency shall facilitate the completion of an independent
23 criminal investigation. The law enforcement agency may enter into an
24 agreement with an external agency, other than the agency employing
25 the involved officer, with investigative competency and resources to
26 conduct the investigation.

27 **PART 3**
28 **TRAINING AND COMMUNITY OUTREACH**

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101
30 RCW to read as follows:

31 Subject to the availability of amounts appropriated for this
32 specific purpose, the commission shall:

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

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

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

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

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

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

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

10 (g) Uses less than lethal force and technologies, subject to the
11 creation and funding of the program in section 8 of this act.

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

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

20 NEW SECTION. **Sec. 6.** Subject to the availability of amounts
21 appropriated for this specific purpose, the Washington state
22 institute for public policy shall conduct a study to determine what
23 actions can be taken by law enforcement agencies to increase the
24 diversity of Washington's law enforcement officers to ensure
25 meaningful community engagement with marginalized communities, build
26 trust, and strengthen community law enforcement relations. The study
27 must include a survey of research literature and models used in other
28 states. The institute shall submit a report with findings to the
29 appropriate committees of the legislature and the governor by
30 December 1, 2017.

31 **PART 4**

32 **DATA COLLECTION**

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.10
34 RCW to read as follows:

35 (1) Subject to the availability of amounts appropriated for this
36 specific purpose, the attorney general must prepare and submit an
37 annual report by December 1st of each year to the governor and the

1 appropriate committees of the house of representatives and senate
2 regarding the use of deadly force by law enforcement and corrections
3 officers.

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

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

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

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

10 (iv) The location of the event;

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

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

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

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

22 (4) All law enforcement agencies and the department of
23 corrections must report all officer involved uses of deadly force to
24 the attorney general, including all information in subsection (2) of
25 this section and any other information required by the attorney
26 general within sixty days of the incident, unless the attorney
27 general establishes a different reporting deadline. The report must
28 contain all information requested in a format approved by the
29 attorney general.

30 PART 5

31 LESS LETHAL WEAPONS

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.28A
33 RCW to read as follows:

34 Subject to the availability of amounts appropriated for this
35 specific purpose, the Washington association of sheriffs and police
36 chiefs shall administer a program for distributing funds to local law
37 enforcement agencies to equip primary responding law enforcement
38 officers with less lethal weapons. Priority must be given to local

1 law enforcement agencies that achieve and maintain professional
2 accreditation. The Washington association of sheriffs and police
3 chiefs shall submit a report by December 30th of each year to the
4 appropriate committees of the legislature, the governor, and the
5 criminal justice training commission regarding the agencies receiving
6 funds, the amounts distributed, and the equipment purchased.

7 **PART 6**
8 **MODERN POLICING**

9 **Sec. 9.** RCW 43.101.410 and 2002 c 14 s 2 are each amended to
10 read as follows:

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

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

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

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

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

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

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

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

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

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

26 **PART 7**

27 **FUNDING**

28 NEW SECTION. Sec. 10. A new section is added to chapter 43.101
29 RCW to read as follows:

30 The criminal justice training account is created in the custody
31 of the state treasurer. Revenues to the account consist of transfers
32 and appropriations by the legislature; private gifts, grants, and
33 donations; federal funds; and all other sources directed by law to
34 the account. Expenditures from the account may be used only to carry
35 out the duties of the commission. Only the criminal justice training
36 commission or the commission's designee may authorize expenditures
37 from the account. The account is subject to allotment procedures

1 under chapter 43.88 RCW, but an appropriation is not required for
2 expenditures.

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