

E2SSB 5259 - H COMM AMD
By Committee on Appropriations

ADOPTED AS AMENDED 04/06/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that law
4 enforcement transparency and accountability are vital in maintaining
5 public trust. Data collection is one essential tool to allow the
6 public, law enforcement, and policymakers to analyze the
7 effectiveness of existing police practices, determine which policies
8 and training work and do not work, and avoid unintended consequences
9 by supporting policy decisions with clear and relevant data.

10 The legislature finds that creating a statewide data collection
11 program that creates a publicly accessible database to track metrics
12 will help to promote openness, transparency, and accountability,
13 build stronger police-community relations, improve trust and
14 confidence in policing services, evaluate specific areas of concern
15 such as biased policing and excessive force, and ultimately improve
16 the quality of policing services.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

20 (1) "Contractor" means the institution of higher education
21 contracted with the office of the attorney general to implement the
22 statewide use of force data program as provided in this chapter.

23 (2) "Great bodily harm" has the same meaning as in RCW 9A.04.110.

24 (3) "Institution of higher education" has the same meaning as in
25 RCW 28B.92.030.

26 (4) "Law enforcement agency" or "agency" means any general
27 authority Washington law enforcement agency and limited authority
28 Washington law enforcement agency as those terms are defined in RCW
29 10.93.020.

30 (5) "Substantial bodily harm" has the same meaning as in RCW
31 9A.04.110.

1 NEW SECTION. **Sec. 3.** (1)(a) Subject to the availability of
2 amounts appropriated for this specific purpose, the attorney
3 general's office shall establish an advisory group to assist with the
4 office's design, development, and implementation of a statewide use
5 of force data program. Members are appointed by the attorney
6 general's office and must consist of:

7 (i) At least three representatives from local nongovernmental
8 organizations or advocacy groups that have a focus on or expertise in
9 the use and role of data as it relates to interactions between law
10 enforcement and the community;

11 (ii) At least three representatives from law enforcement agencies
12 or organizations representing the interests of law enforcement in
13 interacting and utilizing this data; and

14 (iii) At least one representative from the private sector or the
15 public sector with experience in data collection programs, preferably
16 law enforcement data collection.

17 (b) To ensure the advisory group has diverse and inclusive
18 representation of those affected by its work, advisory group members
19 whose participation in the advisory group may be hampered by
20 financial hardship may apply for a stipend in an amount not to exceed
21 \$100 for each day during which the member attends an official meeting
22 of the advisory group or performs prescribed duties approved by the
23 attorney general's office.

24 (2) By April 1, 2022, the advisory group shall submit to the
25 attorney general its recommendations on the following elements:

26 (a) How to prioritize the implementation of the reporting,
27 collection, and publication of the use of force data reports required
28 in section 4(2) of this act;

29 (b) Additional incidents and data to be collected from law
30 enforcement agencies on interactions between officers and the public,
31 such as traffic stops, pedestrian stops, calls for services, arrests,
32 vehicle pursuits, and disciplinary actions, as well as demographic
33 information including race, ethnicity, and gender of a crime victim
34 or victims. This recommendation should consider phased
35 implementation, if necessary, based on current practices and
36 available data as compared to additional practices and new data that
37 would need to be implemented by law enforcement agencies;

38 (c) Recommend practices for law enforcement agencies to collect
39 and report data to the contractor. To the greatest extent feasible,
40 the reporting mechanisms for the program must include the opportunity

1 for law enforcement agencies to submit the required data elements
2 through incident reports or any other electronic means. The advisory
3 group may also work to develop a standardized incident report that
4 meets the data and reporting requirements of the statewide use of
5 force data program for voluntary use by law enforcement agencies;

6 (d) Recommend practices for the public to report relevant
7 information to the contractor directly, or its successor, including
8 correcting misreported and otherwise incorrect data;

9 (e) Recommend practices for public, law enforcement, and academic
10 access and use of program data that must include, at a minimum:

11 (i) Public access to deidentified raw and/or refined incident
12 based data using an established open data standard, available online
13 at no cost in a downloadable, machine-readable, nonproprietary
14 format, redacted only as necessary to comply with the public records
15 act (chapter 42.56 RCW) and the Washington state criminal records
16 privacy act (chapter 10.97 RCW);

17 (ii) Publicly accessible online data dashboards that summarize
18 and analyze the data, excluding personally identifiable information;

19 (iii) Interactive data visualization tools designed for law
20 enforcement agencies and other entities to use the data for research,
21 professional development, training, and management;

22 (iv) The ability to extract data from incident reports, or other
23 electronic means, and officer narratives in order to standardize data
24 across multiple agencies;

25 (v) Ensure protection and removal of all personally identifiable
26 information of officers, subjects, and victims in any data or
27 analyses that are publicly released; and

28 (vi) Semiannual reports, summarizing the data collected and any
29 related analysis, published on the website and submitted to the
30 legislature and governor by June 1st and December 1st of each year;

31 (f) Recommend practices for quality improvement, including
32 periodically obtaining input from stakeholders about how the program
33 can better meet the needs of the public and law enforcement;

34 (g) Recommend practices in the following areas:

35 (i) Analytical dashboards with individual officer details for use
36 by law enforcement agencies as a risk management tool;

37 (ii) Agency level comparative dashboards for all law enforcement
38 agencies in the state;

39 (iii) Incorporating available historical data to identify long-
40 term trends and patterns; and

1 (iv) Analysis of data, using methodologies based in best
2 practices or tested and validated in other jurisdictions, if
3 possible, including, but not limited to, analysis of the data using
4 legal algorithms based on available and applicable legal standards.

5 (3) (a) The office of the attorney general shall review the
6 recommendations of the advisory group and approve or reject, in whole
7 or in part, the recommendations. In reviewing the program
8 recommendations, the office of the attorney general shall consider:

9 (i) Available funding to achieve the recommendations;

10 (ii) Prioritizing the implementation of the reporting,
11 collection, and publication of the use of force data reports in
12 section 4(2) of this act;

13 (iii) The interests of the public in accessing information in a
14 transparent and expedient manner. In considering the interests of the
15 public, the advisory board shall accept and consider comments from
16 impacted family members or their designees;

17 (iv) The institutional operations and demands of law enforcement
18 agencies through input and comments from the criminal justice
19 training center and local law enforcement agencies.

20 (b) For any recommendation that was rejected, in part or in full,
21 the advisory group may submit revised recommendations for
22 consideration by the office of the attorney general in accordance
23 with any deadlines established by the office. The office of the
24 attorney general may also approve recommendations subject to the
25 legislature appropriating the funding necessary for their
26 implementation.

27 (c) The office of the attorney general may not approve any
28 recommendation that requires any law enforcement agency to disclose
29 information that would jeopardize an active criminal investigation,
30 confidential informant, or intelligence information.

31 (4) The approved recommendations and the requirements contained
32 in section 4 of this act constitute the statewide use of force data
33 program.

34 (5) This section expires January 1, 2023.

35 NEW SECTION. **Sec. 4.** (1) Each law enforcement agency in the
36 state is required to report each incident where a law enforcement
37 officer employed by the agency used force and:

38 (a) A fatality occurred in connection with the use of force;

- 1 (b) Great bodily harm occurred in connection with the use of
2 force;
- 3 (c) Substantial bodily harm occurred in connection with the use
4 of force; or
- 5 (d) A law enforcement officer:
- 6 (i) Discharged a firearm at or in the direction of a person;
- 7 (ii) Pointed a firearm at a person;
- 8 (iii) Used a chokehold or vascular neck restraint;
- 9 (iv) Used an electronic control weapon including, but not limited
10 to, a taser, against a person;
- 11 (v) Used oleoresin capsicum spray against a person;
- 12 (vi) Discharged a less lethal shotgun or other impact munitions
13 at or in the direction of a person;
- 14 (vii) Struck a person using an impact weapon or instrument
15 including, but not limited to, a club, baton, or flashlight;
- 16 (viii) Used any part of their body to physically strike a person
17 including, but not limited to, punching, kicking, slapping, or using
18 closed fists or feet;
- 19 (ix) Used a vehicle to intentionally strike a person or vehicle;
20 or
- 21 (x) Deployed a canine by releasing it from the physical control
22 of the law enforcement officer or had under the law enforcement
23 officer's control a canine that bites a person.
- 24 (2) Each report required in subsection (1) of this section must
25 include the following information:
- 26 (a) The date and time of the incident;
- 27 (b) The location of the incident;
- 28 (c) The agency or agencies employing the law enforcement
29 officers;
- 30 (d) The type of force used by the law enforcement officer;
- 31 (e) The type of injury to the person against whom force was used,
32 if any;
- 33 (f) The type of injury to the law enforcement officer, if any;
- 34 (g) Whether the person against whom force was used was armed or
35 unarmed;
- 36 (h) Whether the person against whom force was used was believed
37 to be armed;
- 38 (i) The type of weapon the person against whom force was used was
39 armed with, if any;

1 (j) The age, gender, race, and ethnicity of the person against
2 whom force was used, if known;

3 (k) The tribal affiliation of the person against whom force was
4 used, if applicable and known;

5 (l) Whether the person against whom force was used exhibited any
6 signs associated with a potential mental health condition or use of a
7 controlled substance or alcohol based on the observation of the law
8 enforcement officer;

9 (m) The name, age, gender, race, and ethnicity of the law
10 enforcement officer;

11 (n) The law enforcement officer's years of service;

12 (o) The reason for the initial contact between the person against
13 whom force was used and the law enforcement officer;

14 (p) Whether any minors were present at the scene of the incident,
15 if known;

16 (q) The entity conducting the independent investigation of the
17 incident, if applicable;

18 (r) Whether dashboard or body worn camera footage was recorded
19 for an incident;

20 (s) The number of officers who were present when force was used;
21 and

22 (t) The number of suspects who were present when force was used.

23 (3) Each law enforcement agency must also report any additional
24 incidents and data required by the statewide use of force data
25 program developed in section 3 of this act.

26 (4) All law enforcement agencies shall submit the reports
27 required by this section in accordance with the requirements of the
28 statewide use of force data program no later than three months after
29 the office of the attorney general determines that the system
30 procured in section 5 of this act can accept law enforcement agency
31 reports. Reports must be made in the format and time frame
32 established in the statewide use of force data program.

33 (5) A law enforcement agency has satisfied its reporting
34 obligations pursuant to this act by submitting the reports and data
35 required under this section. The contractor shall provide technical
36 assistance to any law enforcement agency in gathering, compiling, and
37 submitting the required reports and data for each incident.

38 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
39 appropriated for this specific purpose, the office of the attorney

1 general must engage in a competitive procurement to contract with an
2 institution of higher education to implement the statewide use of
3 force data program. The primary purpose of the contract is to develop
4 a system for law enforcement agencies to report, collect, and publish
5 the use of force data reports required in section 4 of this act.

6 (2) The request for proposal or other procurement method should
7 encourage collaboration with other public and private institutions,
8 businesses, and organizations with significant expertise and
9 experience in collecting, tracking, and reporting data on law
10 enforcement interactions with the public.

11 (3) Members and representatives of entities participating in the
12 advisory group established in section 3 of this act may not
13 participate or bid in the competitive procurement.

14 (4) The advisory group, or designated members of the group, may
15 participate in the procurement process through the development of the
16 request for proposal and the review and evaluation of responsive
17 bidders.

18 (5) The contract must require the successful bidder to provide
19 appropriate training to its staff and subcontractor staff, including
20 training on racial equity issues.

21 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
22 constitute a new chapter in Title 10 RCW."

23 Correct the title.

EFFECT: (1) Requires each law enforcement agency to submit use of
force reports in accordance with the requirements of the statewide
use of force data program, rather than providing that reports must be
made in the format and time frame established in the program.

(2) Specifies that a law enforcement agency's use of force report
must identify whether minors were present at the scene of the
incident, if that information is known, and the involved law
enforcement officer's name.

(3) Requires the advisory group for the program to recommend
practices for the following:

(a) Quality improvement, including periodically obtaining input
from stakeholders about how the program can better meet the needs of
the public and law enforcement;

(b) Analysis of data, including, if possible, analysis using
legal algorithms;

(c) Public access to deidentified raw and/or refined incident-
based data using an established open data standard, available online
at no cost in a downloadable, machine-readable, nonproprietary
format, redacted only as necessary to comply with the public records
act and the Washington state criminal records privacy act; and

(d) Public access to online data dashboards that summarize and analyze data, excluding personally identifiable information.

(4) Requires, rather than authorizes, the advisory group to recommend practices in the areas of analytical dashboards, agency level comparative dashboards, and incorporation of historical data.

(5) Requires the advocacy group for the program to contain the following:

(a) At least three representatives from local nongovernmental organizations or advocacy groups with a focus on or expertise in the use and role of data as it relates to interactions between law enforcement and the community, rather than organizations or groups that are focused on the interactions between law enforcement and the community; and

(b) At least three representatives from law enforcement agencies or organizations representing the interests of law enforcement in, rather than by, interacting and utilizing this data.

(6) Specifies that a law enforcement agency satisfies its reporting obligations to the program by submitting the required reports and data.

(7) Prohibits the office of the attorney general from approving any recommendation that would disclose information that would jeopardize an active criminal investigation, confidential informant, or intelligence information.

(8) Requires the contractor to provide technical assistance to any law enforcement agency in gathering, compiling, and submitting required reports and data.

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