

SENATE BILL REPORT

SB 6527

As Reported by Senate Committee On:
Law & Justice, February 6, 2020

Title: An act relating to collecting information regarding police use of deadly force.

Brief Description: Collecting information regarding police use of deadly force.

Sponsors: Senators Frockt, Padden, Rivers, Van De Wege, Darneille, Dhingra and Wilson, C.

Brief History:

Committee Activity: Law & Justice: 2/04/20, 2/06/20 [DPS-WM].

Brief Summary of First Substitute Bill

- Requires law enforcement agencies in the state to report all incidents of the police use of deadly force to the Washington Association of Sheriffs and Police Chiefs (WASPC).
- Requires WASPC to collect and maintain information on the use of deadly force and summarize the information in an annual report to be published on its web page.
- Specifies information that must be included in a law enforcement agency's report to WASPC, consistent with data collected by the FBI for National Use-Of-Force Data Collection.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6527 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; Holy, Kuderer, Salomon and Wilson, L..

Staff: Shani Bauer (786-7468)

Background: Washington Association of Sheriffs and Police Chiefs. WASPC is an independent organization consisting of sheriffs, police chiefs, the Washington State Patrol, and the Department of Corrections. The WASPC is also a statutory entity and currently

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receives state funding to manage certain programs, including the jail booking and reporting system and Arrest and Jail Alternatives Law Enforcement Grant Program.

Law Enforcement Use of Deadly Force. "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. Law enforcement officers may use deadly force in 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.

General 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.

Criminal and Public Records. The Washington State Criminal Records Privacy Act and the Criminal Justice Information Act provide for the acquisition, retention, deletion and dissemination of criminal history record information. When read together, the acts ensure complete, accurate, confidential and secure criminal history. The Public Records Act (PRA) requires all state and local agencies to disclose public records to any person upon request, unless the record falls within certain statutory exemptions.

Summary of Bill (First Substitute): Subject to amounts appropriated, WASPC must collect and maintain information on the police use of deadly force and monitor, record, analyze, and report the information to the public on an annual basis. The report must be posted on the WASPC website and a copy must be submitted to the Governor and appropriate committees of the Legislature.

Every general authority law enforcement agency and limited authority law enforcement agency in the state must report to WASPC all instances of the police use of deadly force, including when:

- a fatality occurs in connection with the use of force by a law enforcement officer;
- serious bodily injury occurs in connection with the use of force by a law enforcement officer; or
- a firearm is discharged by law enforcement at or in the direction of a person.

Serious bodily injury is defined to mean bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Information that must be included in the law enforcement report to WASPC is specified, consistent with data collected by the FBI for National Use-Of-Force Data Collection. The state auditor must annually audit any law enforcement agency or WASPC if they fail to meet their reporting obligations regarding police use of deadly force.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute): Language providing that records regarding the police use of deadly force held by WASPC are exempt from the PRA.

Law enforcement is required to report to WASPC when:

- a fatality occurs in connection with the use of force by a law enforcement officer;
- serious bodily injury occurs in connection with the use of force by a law enforcement officer; or
- a firearm is discharged by law enforcement at or in the direction of a person.

Information that must be reported to WASPC with any report is specified, consistent with data collected by the FBI for National Use-Of-Force Data Collection. Serious bodily injury is defined.

The state auditor must annually audit any law enforcement agency or WASPC if they fail to meet their reporting obligations.

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: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: At the end of the rulemaking process for Initiative 940, the CJTC understood there was a need to have a data collection effort. This bill is still a work in progress, but there is a substitute that is widely agreed upon. The changes build on a voluntary data collection program utilized by the FBI. This would ensure that the information reported by Washington can be directly compared to information reported by the FBI across other states.

All of the stakeholders have worked hard on these issues and good relationships have been built. Data collection is another step in enhancing those relationships. The original language in the bill is overly vague. There is general consensus that the FBI model is a great place to start.

OTHER: Issues regarding the police use of deadly force are of tremendous public concern. The ability to examine the methodology in how WASPC formulates its report is imperative and make sure that the data matches the conclusions. Having records open would go a long way to crossing the breach between public trust in these situations.

Persons Testifying: PRO: James McMahan, Washington Association of Sheriffs and Police Chiefs; Derek Zable, Criminal Justice Training Commission; Jeff DeVere, Washington Council of Police and Sheriffs.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington; Arthur West, citizen.

Persons Signed In To Testify But Not Testifying: No one.