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**SUBSTITUTE SENATE BILL 5259**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman, and Wilson, C.; by request of Attorney General)

AN ACT Relating to requiring reporting, collecting, and publishing information regarding law enforcement interactions with the communities they serve; adding a new chapter to Title 10 RCW; and creating a new section.

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

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

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

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

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

(2) "Law enforcement agency" includes any "general authority Washington law enforcement agency" and "limited authority Washington law enforcement agency" as those terms are defined in RCW 10.93.020.

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

(4) "University" means a four-year institution of higher education.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for these purposes:

(a) The attorney general's office shall establish an advisory group to design a program to examine any additional data needs or gaps necessary to implement or carry out the university's use of force data program. The advisory group shall consult with private or public entities where there are additional data elements that would be beneficial to furthering the intent of this act. Those additional data elements, as determined by the advisory group, shall also be provided as recommendations to the legislature. Recommendations resulting from this advisory group shall be provided to the legislature by December 1, 2021. This advisory group shall include:

(i) At least three representatives from local nongovernmental organizations or advocacy groups that are focused on the interactions between law enforcement and the community;

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

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

(b) Any staff or researchers supporting the program or its contractors must have appropriate expertise and experience in data collection and analysis, including training in racial equity issues.

(2) The advisory group shall meet at least on a bi-monthly basis, or until the program is finalized and approved.

(3) The advisory group may request and solicit information on ideas for the design, development, and management of the data collection program from qualified universities and experts.

(4) By January 1, 2022, the advisory group shall submit to the attorney general their recommendations for the statewide implementation of a data collection program, reporting, and publication program, which must include the following elements:

(a) Prioritize the use of force data collection elements and obligations in section 4 of this act;

(b) Define the specific data to be collected from law enforcement agencies on interactions between officers and the public, this includes additional incidents and interactions and additional details of those incidents and interactions, such as traffic stops, calls for services, arrests, vehicle pursuits, and disciplinary actions as identified by the advisory group;

(c) Establish procedures and deadlines for law enforcement agencies to collect and report data to the university, which should incorporate methodologies based in best practices or those tested and validated in other jurisdictions, where possible;

(d) Establish procedures for the public to report relevant information to the university directly, or its successor, including correcting misreported and otherwise incorrect data;

(e) Establish reporting, analyzing, and publishing practices and procedures for the university and its contractors, which must include, at a minimum:

(i) Public access to data and analysis in a searchable format published on a website by the university;

(ii) Access to raw and/or refined data for academic research;

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

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

(v) Analysis of data, using methodologies based in best practices or those tested and validated in other jurisdictions, if possible, including, but not limited to, analysis of the data using legal algorithms based on available and applicable legal standards;

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

(vii) Agency level comparative dashboards for all law enforcement agencies in the state;

(viii) Historical data, if available, in order to identify long-term trends and patterns; and

(ix) Semiannual reports, summarizing the data collected and any related analysis, published on the website and submitted to the legislature and governor by March 30th and September 30th of each year; and

(f) Consider phased implementation, if necessary, for collecting and reporting data on different types of interactions and incidents based on current practices and currently available data as compared to additional practices that must be put into place by individual agencies across the state, provided that any phased implementation prioritizes use of force data as provided in section 4 of this act.

(4)(a) The office of the attorney general shall review the policy submitted pursuant to subsection (3) of this section, and shall approve or reject the policy, either in part or in full, based on recommendations of the advisory group and the funding available and necessary to achieve those recommendations. In reviewing the policy, the office of the attorney general shall consider:

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

(ii) The institutional operations and demands of law enforcement agencies and the university. In considering the institutional operations and demands of law enforcement, the attorney general shall accept and consider comment from the criminal justice training center and local law enforcement agencies.

(b) If the policy is rejected, in part or in full, the advisory group shall submit a revised policy in accordance with any deadlines established by the office of the attorney general. Regardless of any revisions to the policy or any phased implementation approved by the office of the attorney general, data collection, reporting, and publication shall commence by July 1, 2022, on the elements provided under section 4 of this act. The office of the attorney general may approve a policy with an earlier implementation deadline, if recommended by the advisory group.

(5) Following the approval of the policy under subsection (4) of this section, the university, or its successor, may submit revisions to the policy to modify the types of data collected and reported in section 4 of this act, including requiring reporting of additional data from law enforcement agencies. The office of the attorney general shall review and approve or reject any requested revisions in accordance with this section.

(6) Following the approval of the program, the advisory board shall conduct a competitive bidding process to select a university to design, develop, and manage the data collection program according to the approved specifications. The selected university will be responsible for meeting all the requirements in section 4 of this act.

NEW SECTION. **Sec.**  (1) The university shall establish and maintain a program, in consultation with the advisory group to collect, report, and publish information on law enforcement's use of force. The program must be operated in accordance with the policy approved by the office of the attorney general. All law enforcement agencies shall submit the data by way of incident reports, or other electronic means, in a manner specified by the university, to the university as required under subsection (2) of this section when:

(a) A fatality occurs in connection with the use of force by a law enforcement officer;

(b) Great bodily harm occurs in connection with the use of force by a law enforcement officer;

(c) Substantial bodily harm occurs in connection with the use of force by a law enforcement officer; or

(d) A law enforcement officer:

(i) Discharges a firearm at or in the direction of a person;

(ii) Points a firearm at a person;

(iii) Uses a chokehold or vascular neck restraint;

(iv) Uses an electronic control weapon including, but not limited to, a taser, against a person;

(v) Uses oleoresin capsicum spray against a person;

(vi) Discharges a less-lethal shotgun or other impact munitions at or in the direction of a person;

(vii) Strikes a person using an impact weapon or instrument including, but not limited to, a club, baton, or flashlight;

(viii) Uses any part of their body to physically strike a person including, but not limited to, punching, kicking, slapping, or using closed fists or feet;

(ix) Uses a vehicle to intentionally strike a person or vehicle; or

(x) Either deploys a canine by releasing it from the physical control of the law enforcement officer, if it bites a person, or both.

(2) When reporting an incident as required under subsection (1) of this section, the agency employing the officer that used force shall provide the following:

(a) The date and time of the incident;

(b) The location of the incident;

(c) The agency or agencies employing the law enforcement officers;

(d) The type of force used by the law enforcement officer;

(e) The type of injury to the person against whom force was used, if any;

(f) The type of injury to the law enforcement officer, if any;

(g) Whether the person against whom force was used was armed or unarmed;

(h) Whether the person against whom force was used was believed to be armed;

(i) The type of weapon the person against whom force was used was armed with, if any;

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

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

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

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

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

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

(p) Whether any minors were present at the scene of the incident;

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

(r) Any other information required by the policy under section 3 of this act;

(s) Whether dashboard or body worn camera footage was recorded for an incident;

(t) Number of officers who were present when force was used;

(u) Number of suspects who were present when force was used.

(3) All law enforcement agencies shall develop a reporting plan with the university for any additional data required by the policy under this section, including additional types of interactions and incidents where force is contemplated but not expressly outlined as listed in subsection (2) of this section, and additional data relevant to such interactions and incidents.

(4) In carrying out the requirements of this section, the university may contract with public and private institutions of higher education, other organizations, and businesses with significant expertise and experience in collecting, tracking, and reporting data on law enforcement's interactions with the public in the state.

(5) All law enforcement agencies shall report to the university any additional data required by the policy under section 3 of this act, including additional types of interactions and incidents, and additional data relevant to such interactions and incidents.

(6) All law enforcement agencies shall submit the data required under this section to the university in the format and by the deadlines established by the policy under section 3 of this act, provided that agencies begin submitting data required under subsections (1) and (2) of this section no later than July 1, 2022, and provided that such submissions must occur on at least a quarterly basis.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act constitute a new chapter in Title 10 RCW.

**--- END ---**