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**SECOND SUBSTITUTE SENATE BILL 5259**

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

**By** Senate Ways & Means (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 providing an expiration date.

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

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

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

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

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

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

(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 or the public sector with experience in data collection programs, preferably law enforcement data collection.

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

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

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

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

(c) Recommend practices for law enforcement agencies to collect and report data to the contractor. To the greatest extent feasible, the reporting mechanisms for the program must include the opportunity for law enforcement agencies to submit the required data elements through incident reports or any other electronic means. The advisory group may also work to develop a standardized incident report that meets the data and reporting requirements of the statewide use of force data program for voluntary use by law enforcement agencies;

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

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

(i) Public access to deidentified data and analysis in a searchable format published on a website by the contractor, including dashboards produced for agency use and methodologies employed in meeting requirements identified in this section, as long as any publication of those materials does not include personally identifiable information;

(ii) Access to deidentified 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) Ensure protection and removal of all personally identifiable information of officers, subjects, and victims in any data or analyses that are publicly released; and

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

(f) The advisory group may make recommendations in the following areas if time and resources allow:

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

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

(iii) Incorporating available historical data to identify long-term trends and patterns.

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

(i) Available funding to achieve the recommendations;

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

(iii) 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;

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

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

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

(5) This section expires January 1, 2023.

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

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

(b) Great bodily harm occurred in connection with the use of force;

(c) Substantial bodily harm occurred in connection with the use of force; or

(d) A law enforcement officer:

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

(ii) Pointed a firearm at a person;

(iii) Used a chokehold or vascular neck restraint;

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

(v) Used oleoresin capsicum spray against a person;

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

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

(viii) 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;

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

(x) 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.

(2) Each report required in subsection (1) of this section must include the following information:

(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 and known;

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

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

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

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

(4) All law enforcement agencies shall submit the reports required by this section no later than three months after the office of the attorney general determines that the system procured in section 5 of this act 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.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the office of the attorney general must engage in a competitive procurement to contract with an institution of higher education to implement the statewide use of force data program. The primary purpose of the contract is to develop a system for law enforcement agencies to report, collect, and publish the use of force data reports required in section 4 of this act.

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

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

(4) The advisory group, or designated members of the group, may participate in the procurement process through the development of the request for proposal and the review and evaluation of responsive bidders. The office of the attorney general is the sole authority to select and award the contract to the institution of higher education.

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

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

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