
Public Safety Committee

SSB 5066

Brief Description: Concerning a peace officer's duty to intervene.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Das, Darneille, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Mullet, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Stanford and Wilson, C.).

Brief Summary of Substitute Bill

- Requires an officer to intervene when witnessing another officer engaging in the excessive use of force.
- Requires an officer to report to a supervisor when he or she witnesses another officer committing wrongdoing.

Hearing Date: 3/12/21

Staff: Kelly Leonard (786-7147).

Background:

Use of Force by Peace Officers. The U.S. Constitution, and in particular the Bill of Rights, protects citizens from excessive force by the government. Depending on the custodial status of the person against whom force is being used, the Fourth, Fourteenth, or Eighth Amendment provides the legal standard for determining whether the use of force is permissible. For persons subject to arrest or detained pre-trial, the standards generally require the use of force by an officer to be reasonable under the totality of the circumstances. Whether an officer's actions are reasonable depends upon several factors. This may include, for example, the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the peace officer or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. For persons serving a sentence following a conviction, the standard requires the use of force by a

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peace officer to be applied without the purpose of maliciously causing harm.

State law does not contain separate standards for use of physical force by law enforcement officers or corrections officers, though it generally authorizes a law enforcement officer to use all necessary means to effect the arrest of a suspect who flees or resists arrest. This authorization is subject to the limitations under the U.S. Constitution as well as the justifiable homicide standard in the state criminal code. Law enforcement agencies and correctional facilities typically adopt policies on the use of force, including the types of force allowed and when force may be used.

Duty to Render First Aid. Law enforcement officers must provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement. The Criminal Justice Training Commission (CJTC), in consultation with other entities, maintains guidelines for implementing the duty to render first aid. The guidelines must: have first aid training requirements; address best practices for securing a scene to facilitate the safe, swift, and effective provision of first aid to anyone injured in a scene controlled by law enforcement or as a result of law enforcement action; and assist agencies and law enforcement officers in balancing the many essential duties of officers with the solemn duty to preserve the life of persons with whom officers come into direct contact.

Training. The Criminal Justice Training Commission (CJTC) provides training and educational programs to law enforcement officers, corrections officers, and other public safety professionals in Washington.

Local law enforcement officers are required to complete basic training through the Criminal Justice Training Commission (CJTC). Basic training consists of a 720-hour program covering a wide variety of subjects including, for example, criminal law and procedures, traffic enforcement, emergency vehicle operations, crisis intervention, and defensive tactics. Troopers with the Washington State Patrol (WSP) complete comparable training through an academy operated by the WSP. In addition, all law enforcement officers are required to complete certain advanced and ongoing training, including, for example, violence de-escalation training and crisis intervention training.

Corrections officers are required to engage in basic corrections training that complies with standards adopted by the CJTC. The training must be successfully completed within the first six months of employment, unless otherwise extended or waived by the CJTC. The program is 10 weeks in length and includes training on combating manipulation, legal issues, professionalism, emotional survival and peer support, transport, booking, communications, and searches.

Certification and Decertification. The CJTC also certifies and, when necessary, decertifies state and local law enforcement officers and local corrections officers. To obtain certification, an applicant is subjected to a background investigation and must meet certain qualifications. The CJTC may deny or revoke certification following notice and a hearing if a person is or becomes unsuitable for certification based on certain findings. Among other bases, the CJTC may revoke a law enforcement officer's certification if he or she has been discharged by a law enforcement

agency for disqualifying misconduct.

Definitions. State statutes rely upon different definitions of peace officer and law enforcement officer, depending on the context. The Mutual Aid Peace Officers Power Act contains definitions for general authority, limited authority, and specially commissioned peace officers for the purposes of delineating the powers and responsibilities of certain public officers and employees when providing mutual aid between agencies and operating across jurisdictions.

"General authority peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority law enforcement agency who is commissioned to enforce the criminal laws of the state generally. "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, 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, as distinguished from a limited authority law enforcement agency, and any other unit of government expressly designated by statute as a general authority law enforcement agency. For example, municipal law enforcement agencies, the Washington State Patrol, and the Department of Fish and Wildlife are general authority law enforcement agencies.

"Limited authority peace officer" means any full-time, fully compensated officer of a limited authority law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

"Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government of this state, 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, including but not limited to, the Department of Natural Resources, Department of Social and Health Services, Gambling Commission, Lottery Commission, Parks and Recreation Commission, Utilities and Transportation Commission, Liquor and Cannabis Board, Office of the Insurance Commissioner, and the Department of Corrections.

"Specially commissioned peace officer" means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify as a general authority peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by Oregon or Idaho.

Summary of Substitute Bill:

Intervention and Reporting. Standards for intervention and reporting misconduct are added to the Mutual Aid Peace Officers Power Act.

"Excessive force" means force that exceeds the degree of force permitted by law or policy of the witnessing officer's agency. Any identifiable on-duty peace officer who witnesses another peace officer engaging or attempting to engage in the excessive use of force against another person must intervene when in a position to do so to end the excessive use of force or attempted excessive use of force, or to prevent the further use of excessive force. A peace officer must also render aid at the earliest safe opportunity to any person injured as a result of the use of force.

"Wrongdoing" means conduct that is harmful or contrary to law; or that is a violation of professional standards or ethical rules; and that is not de minimis or a technical violation. Any identifiable on-duty peace officer who observes any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, must report such wrongdoing to the officer's supervisor or other supervisory peace officer in accordance with the peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

A law enforcement agency may not discipline or retaliate in any way against a peace officer for intervening to end excessive force or for reporting wrongdoing. A law enforcement agency must send notice to the CJTC of any disciplinary decision resulting from a peace officer's failure to intervene or failure to report wrongdoing to determine whether the officer's conduct may be grounds for suspension or revocation of certification under the current procedures for general authority peace officers.

Policies and Training. The CJTC, the Washington State Patrol, the Washington Association of Sheriffs and Police Chiefs, and organizations representing state and local law enforcement officers must develop a written model policy on the duty to intervene by December 1, 2021. Every state, county, and municipal law enforcement agency must adopt and implement a written duty to intervene policy by June 1, 2022. Agencies may adopt the model policy; however, any policy must, at a minimum, be consistent with the requirements in the bill. The CJTC must incorporate training on the duty to intervene in the basic law enforcement training curriculum by January 31, 2022. Existing peace officers must receive training on the duty to intervene by December 31, 2023.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.