

SENATE BILL REPORT

SB 5066

As Reported by Senate Committee On:
Law & Justice, January 21, 2021
Ways & Means, February 11, 2021

Title: An act relating to a peace officer's duty to intervene.

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

Sponsors: Senators Dhingra, Das, Darneille, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Mullet, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Stanford and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/19/21, 1/21/21 [DPS, DNP, w/oRec].
Ways & Means: 2/01/21, 2/11/21 [DPS (LAW), DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires a peace officer to intervene when the officer witnesses a fellow peace officer engaging in the use of excessive force.
- Requires a peace officer who observes wrongdoing by a fellow officer to report the wrongdoing to the officer's supervisor.
- Requires law enforcement agencies to adopt written policies on the duty to intervene and ensure that all law enforcement officers obtain training on the policy through the Criminal Justice Training Commission.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5066 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy.

Minority Report: That it be referred without recommendation.

Signed by Senator Wagoner.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5066 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Lias, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Muzzall, Rivers, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Gildon.

Staff: Amanda Cecil (786-7460)

Background: Under the law, the use of deadly force by a peace officer must be in good faith. Good faith is an objective standard, considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

It is state policy for law enforcement personnel to provide or facilitate first aid rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement. The Criminal Justice Training Commission (CJTC) must have guidelines addressing first aid training, best practices for securing a scene to facilitate the safe, swift, and effective provision of first aid to persons injured at a scene, and assisting law enforcement to balance the many essential duties of officers with the solemn duty to preserve the life of persons with whom officers come into direct contact.

Summary of Bill (First Substitute): An 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. The peace officer must render aid to any person injured as a result of the use of force at the

earliest safe opportunity. Excessive force is defined as force that exceeds the degree of force permitted by law or policy of the witnessing officer's agency.

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

A member of a law enforcement agency may not discipline or retaliate against a peace officer for intervening or reporting wrongdoing. A law enforcement agency must report any disciplinary action for the failure to intervene or report wrongdoing to the CJTC to determine whether the officer's conduct may be grounds for suspension or revocation of certification.

By December 1, 2021, 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 June 1, 2022, all law enforcement agencies must adopt and implement a written duty to intervene policy consistent with the model policy. No later than January 31, 2022, the CJTC must incorporate training on the duty to intervene in the basic law enforcement training curriculum. Existing peace officers must receive training no later than December 31, 2023.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

The observing officer must be identifiable and on-duty for the duty to intervene or report wrongdoing to apply. The definition of excessive force is modified to clarify that force that exceeds the degree of force permitted by the policy of the witnessing officer's agency will control. An act in violation of the public's trust is eliminated from the definition of wrongdoing and provides that any conduct must not be de minimis or a technical violation to qualify as wrongdoing.

Appropriation: None.

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 (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The vast majority

of law enforcement officers are out there doing the right thing and holding themselves to a very high standard. This bill is about empowering good officers and setting up clear processes to make sure officers are in a position to call out wrongdoing and intervene when they need to. The bill also incorporates accountability and ensures the reporting does not fall on deaf ears.

This bill provides direction to any officer to step in when they see excessive force or any other wrongdoing. Black people and people of color have been brought to county jails after being beaten. The person should have been taken to a hospital instead of jail. These are often tense and fast moving situations. These situations may not always result in death but leave an indelible mark. It is absolutely necessary that officers intervene when they see the excessive use of force. This bill provides a framework for that intervention.

A statewide duty to intervene is a top legislative priority for the Association of Washington Cities.

There are many good law enforcement officers. This is already part of what they do and they are supportive of this policy.

OTHER: Law enforcement organizations are supportive of creating a consistent statewide policy on the duty to intervene. Some aspects of the bill need fine tuning. In addition to the observing officer, the observed officer should be immediately identifiable as an officer. The failure to render aid should also subject an officer to decertification. The definitions of excessive and wrongdoing need some adjustment. Excessive force is defined as force exceeding that allowed by law or policy. It is unclear what policy will apply when officers from multiple jurisdictions or agencies are present. It is unclear how an officer will know if there has been an attempted excessive use of force. There should be some knowledge of intent. The definition of wrongdoing is also overly vague. Expectations need to be reasonable and clear.

Only final disciplinary decisions should be forwarded to the CJTC.

Persons Testifying (Law & Justice): PRO: Senator Manka Dhingra, Prime Sponsor; Sharon Swanson, Association of Washington Cities; Sakara Remmu, The Washington Black Lives Matter Alliance; James Schrimpsheer, Washington Fraternal Order of Police.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Jeff DeVere, Washington Council of Police and Sheriffs; Spike Unruh, Washington State Patrol Troopers Association.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This is about empowering officers that want to do the right thing. Many law enforcement

agencies already require peer intervention training. This creates costs for state and local government and it is important those costs are funded.

CON: The definition of wrong-doing does not allow for any discrepancy between agencies. There should be a duty to report and intervene and this needs to be modified.

OTHER: The expectations need to be reasonable and clear and this bill does not quite get there.

Persons Testifying (Ways & Means): PRO: Candice Bock, Association of Washington Cities.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Jeff DeVere, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.