

SENATE BILL REPORT

SB 5261

As of February 2, 2021

Title: An act relating to collecting information regarding police use of deadly force, personnel complaints, pursuit incidences, and patrol car crashes.

Brief Description: Collecting information regarding police use of deadly force, personnel complaints, pursuit incidences, and patrol car crashes.

Sponsors: Senators Padden, Holy, King, Wagoner, Wilson, J. and Wilson, L..

Brief History:

Committee Activity: Law & Justice: 2/02/21.

Brief Summary of Bill

- Requires law enforcement agencies to report all instances of the use of deadly force to the Washington Association of Sheriffs and Police Chiefs (WASPC).
- Requires law enforcement agencies to report all personnel complaints filed against a peace officer leading to an investigation; pursuits incidences; and patrol car crashes to WASPC.
- Directs WASPC to summarize and report all information and data received to the Governor and the Legislature and make the information available on a public website.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: There are two types of law enforcement agencies in the state—general authority law enforcement agencies and limited authority law enforcement agencies. "General authority law enforcement agency" means any agency, department, or division of

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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.

Law enforcement officers are authorized to use deadly force under 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.

Great bodily harm and substantial bodily harm are both defined in the Washington Criminal Code. Substantial bodily harm is when a person sustains temporary, but substantial disfigurement or loss of function. Great bodily harm is when a person sustains injury which is likely to cause death or which causes significant permanent disfigurement or loss of function.

Under the Washington Criminal Records Privacy Act, conviction records or records pertaining to an incident within the last 12 months for which a person is currently being processed by the criminal justice system may be disseminated without restriction. Criminal history record information that includes nonconviction data may only be disseminated to specified entities for authorized statutory purposes.

Summary of Bill: All general authority and limited authority law enforcement agencies must report to the Washington Association of Sheriffs and Police Chiefs (WASPC) all incidents of the use of deadly force including those in which:

- a fatality occurred;
- a person experienced serious bodily injury; and
- a firearm was discharged by law enforcement in the direction of a person, but the

discharge did not result in death or serious bodily injury.

When reporting an incident, the agency employing the officer that used force must provide detailed information regarding the incident, including the following:

- the date, time, and location of the incident, including the location type;
- the total number of officers that applied force during the incident;
- the number of officers from the reporting agency that applied force during the incident;
- whether the officer or officers approached the subject;
- whether it was an ambush incident;
- whether a supervisor or senior officer was present or consulted during the incident;
- the reason for initial contact between the subject and the officer;
- whether the initial contact was due to unlawful or criminal activity;
- the national incident based reporting system or local incident number;
- the case numbers for the local use of force reports from any other law enforcement agencies that were involved;
- the age, sex, race, ethnicity, height, and weight of the subject and the officer;
- the type of injury to the subject;
- the type of force used that was connected to the serious bodily injury or death;
- whether the subject resisted and the type of resistance;
- whether the threat by the subject was direct to the officer or another party;
- whether there was an apparent or known impairment in the physical condition of the subject;
- where the subject was armed or believed to be armed with a weapon at the time of the incident;
- the officer's year's of service;
- whether the officer was a full-time employee at the time of the incident;
- whether the officer was readily identifiable;
- whether the officer was on duty at the time of the incident;
- whether the officer discharged a firearm;
- whether the officer was injured;
- the type of injury to the officer; and
- any other information deemed relevant or necessary by WASPC.

All general authority and limited authority law enforcement agencies must report to WASPC all personnel complaints filed against a peace officer leading to an investigation, pursuits incidences, and patrol car crashes. Information that must be reported is specified.

WASPC must establish and maintain a central repository for the collection and classification of all reported information and develop a procedure to analyze and report the information to the public. On an annual basis, WASPC must summarize the information, publish an annual report on its website, and submit a copy to the Governor and the appropriate committees of the Legislature. Dissemination and publication of the report must be consistent with the Washington State Criminal Records Privacy Act, the Criminal

Justice Information Act, and all other confidentiality requirements under federal or state law.

"Serious bodily injury" is defined as 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.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Requested on January 29, 2021.

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: PRO: We are currently operating in a space without data. It is not possible to measure the effectiveness of policing reforms or whether further reforms are necessary without data. Policing and police interactions disproportionately impact minority populations. A lack of transparency surrounding police interactions erodes public trust. There is broad agreement citizens deserve better information to reduce violent interactions between law enforcement and the public.

Collection of data should not be a partisan issue. Better data helps in the furtherance of good police practices that in turn builds public confidence and integral to law enforcement in management and professional growth.

Law enforcement will support almost any data collection effort. Transparency is vital to building and maintaining public trust. Data should be comparable to other states. Complex set of data that needs context. Needs decisions and actions resulting from data that result in change.

One of the major distinctions between SB 5259 and 5261 is where the data is housed. It is important for transparency and trust that the information be housed in an agency that is not closely connected with law enforcement.

There are a few recommendations for improvement. Tort payout data is complex and should not be included in this bill; there should be a robust process for community input; the agency housing the data should be publicly bid rather than assigned to WSU or WASPC; periodic independent reviews should be incorporated to ensure agencies are reporting appropriately; and language should be added to clarify that localities cannot adopt contracts that conflict with the bill.

OTHER: There is a direct correlation between universal competent data and informed

decisions. What is not measured, cannot be managed. Most of this data is readily available and can be provided. It is, however, important to keep in mind the burden of reporting on smaller agencies. This bill will require training and in some cases additional equipment or software. Small agencies do not have the ability to cover these costs.

The bill should allow law enforcement agencies to submit the data by submitting incident reports. This relieves the fiscal impact and allows for objectivity and uniformity.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Jeff DeVere, Washington Council of Police and Sheriffs.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Craig Meidl, Spokane Police Department; Michael Transue, Washington Fraternal Order of Police.

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