
SUBSTITUTE SENATE BILL 5073

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Frockt, McCoy, Pedersen, Hasegawa, Darneille, Chase, Hunt, and Wellman)

1 AN ACT Relating to recommendations from the joint legislative
2 task force on the use of deadly force in community policing; amending
3 RCW 9A.16.040, 43.101.200, and 43.101.280; adding new sections to
4 chapter 36.28A RCW; adding new sections to chapter 43.10 RCW; adding
5 new sections to chapter 43.101 RCW; and creating new sections.

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

7 **PART 1**

8 **INTENT**

9 NEW SECTION. **Sec. 1.** (1) During the 2016 regular legislative
10 session, the legislature established the joint legislative task force
11 on the use of deadly force in community policing. The legislature
12 charged the task force with: Reviewing laws, practices, and training
13 programs regarding use of deadly force in Washington and other
14 states; reviewing current policies, practices, and tools used by or
15 otherwise available to law enforcement as an alternative to lethal
16 uses of force; and recommending best practices to reduce the number
17 of violent interactions between law enforcement officers and members
18 of the public. Task force membership included a diverse swath of
19 representatives from law enforcement, public defenders, prosecutors,
20 civil rights groups, community representatives, and legislators.

1 (2) It is the intent of the legislature to respond to the
2 recommendations considered by the task force, which touch on various
3 subjects including the state deadly force statute; training and
4 community outreach; law enforcement accountability to its community;
5 data collection; behavioral health; less lethal weapons; and funding
6 and oversight. The legislature finds the following:

7 (a) Today's officers are faced with a wide variety of challenges
8 on the streets, making effective and expanded training critical to
9 their safety and the safety of those with whom they interact.
10 Adequate funding of our state's criminal justice training commission
11 is necessary. Additional financial support for enhanced training in
12 cultural awareness, interactions involving people with disabilities
13 with mental health and behavioral issues, de-escalation, the use of
14 less lethal options during encounters, and addressing implicit bias
15 should be prioritized. Funding should also be made available to
16 ensure that agencies can outfit their officers with less lethal
17 options to maximize the response options available when interacting
18 with a member of the public.

19 (b) The concept of modern day policing continues to evolve. It is
20 necessary to continue to strive to build bonds of public trust,
21 bridging the divide between police officers and the diverse
22 communities they serve.

23 (c) It is critical that changes to our state's use of deadly
24 force law provide our men and women in uniform the protection they
25 need when responding to our calls for help and keeping our
26 communities safe. Concurrently, the legislature finds that the law
27 should hold accountable those officers who act beyond what is
28 reasonable in encounters with our citizens, but also account for
29 honest mistakes that are the result of an officer's need to make
30 split-second decisions in circumstances that are tense, uncertain,
31 and rapidly evolving.

32 (d) A change in our state's use of deadly force by eliminating
33 the requirement for an affirmative proof of malice will bring
34 Washington law more in line with other states who have codified their
35 use of deadly force laws. The legislature's intent in defining good
36 faith is to clarify the standard that will be considered in deciding
37 the presence or absence of good faith. Good faith will consider all
38 the circumstances, including the officer's intent, and is ultimately
39 an objective standard. After taking into account all of the

1 circumstances, the decision will be whether the action taken was
2 reasonable.

3 (e) Law enforcement accountability to the communities they serve
4 is vital to maintaining policies that reflect community values.
5 Agencies should work to establish and facilitate channels for
6 community input into key policies and procedures. To engender
7 confidence in the response to interactions with police that result in
8 the death of a civilian, the legislature finds that agencies should
9 develop policies for an independent criminal investigation.

10 (f) The use of data collection is essential to inform law
11 enforcement agencies and the public about the effectiveness of
12 existing practices, which policies work and do not work, and any
13 unintended consequences. The legislature supports creating a database
14 to better assess police use of force, regardless of whether a
15 fatality results, and to track metrics such as demographic
16 characteristics, frequency of incidents involving the use of force,
17 weapons used by peace officers and citizens, the agencies and
18 communities involved, and the frequency of firearm discharges, among
19 others.

20 **Sec. 2.** RCW 9A.16.040 and 1986 c 209 s 2 are each amended to
21 read as follows:

22 (1) Homicide or the use of deadly force is justifiable in the
23 following cases:

24 (a) When a public officer is acting in obedience to the judgment
25 of a competent court; ~~((~~or~~))~~

26 (b) When necessarily used by a peace officer to overcome actual
27 resistance to the execution of the legal process, mandate, or order
28 of a court or officer, or in the discharge of a legal duty~~((~~or~~))~~; or

29 (c) When necessarily used by a peace officer or person acting
30 under the officer's command and in the officer's aid:

31 (i) To arrest or apprehend a person who the officer reasonably
32 believes has committed, has attempted to commit, is committing, or is
33 attempting to commit a felony;

34 (ii) To prevent the escape of a person from a federal or state
35 correctional facility or in retaking a person who escapes from such a
36 facility; ~~((~~or~~))~~

37 (iii) To prevent the escape of a person from a county or city
38 jail or holding facility if the person has been arrested for, charged
39 with, or convicted of a felony; or

1 (iv) To lawfully suppress a riot if the actor or another
2 participant is armed with a deadly weapon.

3 (2) In considering whether to use deadly force under subsection
4 (1)(c) of this section, to arrest or apprehend any person for the
5 commission of any crime, the peace officer must have probable cause
6 to believe that the suspect, if not apprehended, poses a threat of
7 serious physical harm to the officer or a threat of serious physical
8 harm to others. Among the circumstances which may be considered by
9 peace officers as a "threat of serious physical harm" are the
10 following:

11 (a) The suspect threatens a peace officer with a weapon or
12 displays a weapon in a manner that could reasonably be construed as
13 threatening; or

14 (b) There is probable cause to believe that the suspect has
15 committed any crime involving the infliction or threatened infliction
16 of serious physical harm.

17 Under these circumstances deadly force may also be used if
18 necessary to prevent escape from the officer, where, if feasible,
19 some warning is given.

20 (3) A public officer or peace officer shall not be held
21 criminally liable for using deadly force (~~without malice and~~) with
22 a good faith belief that such act is justifiable pursuant to this
23 section. For purposes of this section, "good faith" is whether a
24 reasonable peace officer, relying upon the facts and circumstances
25 known by the officer at the time of the incident, would have used
26 deadly force.

27 (4) This section shall not be construed as:

28 (a) Affecting the permissible use of force by a person acting
29 under the authority of RCW 9A.16.020 or 9A.16.050; or

30 (b) Preventing a law enforcement agency from adopting standards
31 pertaining to its use of deadly force that are more restrictive than
32 this section.

33 PART 2

34 ACCOUNTABILITY

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.28A
36 RCW to read as follows:

37 Subject to the availability of funds appropriated for this
38 specific purpose, the Washington association of sheriffs and police

1 chiefs must develop a model policy listing best practices and
2 recommended options for law enforcement agencies to consider when
3 seeking public input into policing policies and accountability
4 practices.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10
6 RCW to read as follows:

7 In all instances where the application of force results in death,
8 the law enforcement agency shall facilitate the completion of an
9 independent criminal investigation. The law enforcement agency may
10 enter into an agreement with an external police agency, other than
11 the agency employing the involved officer, with investigative
12 competency and resources to conduct the investigation. For the
13 purposes of this section, a police agency with the ability to
14 investigate a homicide is deemed to have the competency necessary to
15 conduct the investigation.

16 **PART 3**

17 **TRAINING, COMMUNITY OUTREACH, AND MODERN POLICING**

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101
19 RCW to read as follows:

20 The commission shall:

21 (1) Review, update, and provide basic and in-service training for
22 peace officers and corrections officers anchored in critical thinking
23 and the development of sound judgment that:

24 (a) Emphasizes de-escalation in patrol tactics and interpersonal
25 communication training;

26 (b) Supports alternatives to arrest or citation in situations
27 where appropriate;

28 (c) Develops understanding of implicit and explicit bias and
29 proper means to address them;

30 (d) Develops understanding of cultural competency and the
31 historical intersection of race and policing;

32 (e) Develops understanding and skills to effectively and safely
33 interact with people with disabilities and behavioral health issues;

34 (f) Includes "shoot/don't shoot" scenario training; and

35 (g) Uses less than lethal force and technologies, subject to the
36 creation and funding of the program in section 11 of this act.

1 (2) Incorporate a training component that includes veteran
2 officers mentoring recruits and sharing insights and experiences
3 about working effectively with community members that the recruit
4 officer may not have experience interacting with. This may include
5 ride-alongs, or working in community programs that enhance engagement
6 between neighborhoods and police where applicable.

7 NEW SECTION. **Sec. 6.** Subject to the availability of amounts
8 appropriated for this specific purpose, the Washington state
9 institute for public policy shall conduct a study to determine what
10 actions can be taken by law enforcement agencies to increase the
11 diversity of Washington's law enforcement officers to ensure
12 meaningful community engagement with diverse communities, build trust
13 and legitimacy, and strengthen community law enforcement relations
14 while maintaining public safety. The study must include a survey of
15 research literature and models used in other states. The institute
16 shall submit a report with findings to the appropriate committees of
17 the legislature and the governor by December 1, 2017.

18 **Sec. 7.** RCW 43.101.200 and 2015 3rd sp.s. c 4 s 957 are each
19 amended to read as follows:

20 (1) All law enforcement personnel, except volunteers, and reserve
21 officers whether paid or unpaid, initially employed on or after
22 January 1, 1978, shall engage in basic law enforcement training which
23 complies with standards adopted by the commission pursuant to RCW
24 43.101.080. For personnel initially employed before January 1, 1990,
25 such training shall be successfully completed during the first
26 fifteen months of employment of such personnel unless otherwise
27 extended or waived by the commission and shall be requisite to the
28 continuation of such employment. Personnel initially employed on or
29 after January 1, 1990, shall commence basic training during the first
30 six months of employment unless the basic training requirement is
31 otherwise waived or extended by the commission. Successful completion
32 of basic training is requisite to the continuation of employment of
33 such personnel initially employed on or after January 1, 1990.

34 (2) Except as otherwise provided in this chapter, the commission
35 shall provide the aforementioned training together with necessary
36 facilities, supplies, materials, and the board and room of
37 noncommuting attendees for seven days per week(~~(, except during the~~
38 ~~2013-2015 and 2015-2017 fiscal biennia when the employing, county,~~

1 ~~city, or state law enforcement agency shall reimburse the commission~~
2 ~~for twenty five percent of the cost of training its personnel)).~~
3 Additionally, to the extent funds are provided for this purpose, the
4 commission shall reimburse to participating law enforcement agencies
5 ~~((with ten or less full-time commissioned patrol officers))~~ the cost
6 of temporary replacement of each officer who is enrolled in basic law
7 enforcement training: PROVIDED, That such reimbursement shall include
8 only the actual cost of temporary replacement not to exceed the total
9 amount of salary and benefits received by the replaced officer during
10 his or her training period. When reimbursing funds to participating
11 law enforcement agencies, the commission must give priority to
12 accredited agencies.

13 **Sec. 8.** RCW 43.101.280 and 2005 c 282 s 46 are each amended to
14 read as follows:

15 The criminal justice training commission shall develop, in
16 consultation with the administrative office of the courts and the
17 commissions established under chapters 43.113, 43.115, and 43.117
18 RCW, a curriculum for a general understanding of ethnic and cultural
19 diversity and ~~((its))~~ implicit bias and their implications for
20 working with youth of color and their families. ~~((The curriculum~~
21 ~~shall be developed by October 1, 1993.))~~ The commission shall ensure
22 that ethnic ~~((and))~~, diversity, and implicit bias training becomes an
23 integral part of the training of law enforcement personnel so as to
24 incorporate cultural sensitivity and awareness into the daily
25 activities of law enforcement personnel.

26 **PART 4**

27 **DATA COLLECTION**

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.10
29 RCW to read as follows:

30 (1) Subject to the availability of funds appropriated for this
31 specific purpose, the attorney general shall develop and prepare a
32 reporting mechanism for law enforcement agencies to utilize when
33 reporting the use of deadly force by law enforcement and corrections
34 officers.

35 (2) The report must include all information that the attorney
36 general determines to be relevant to accurately and comprehensively

1 record the circumstances of each use of deadly force by law
2 enforcement or corrections officers.

3 (3) For the purposes of this section, "deadly force" means:

4 (a) The application of deadly force as defined in RCW 9A.16.010
5 by a law enforcement officer, regardless of the outcome; and

6 (b) The application of force by a law enforcement officer that
7 results in death or great bodily harm, as defined in RCW 9A.04.110.

8 (4) All general and limited authority law enforcement agencies
9 and the department of corrections must report all officer involved
10 uses of deadly force to the attorney general, including all
11 information in subsection (2) of this section and any other
12 information required by the attorney general within five business
13 days of the conclusion of the independent criminal investigation. The
14 report must contain all information requested in a format approved by
15 the attorney general.

16 (5) The attorney general must prepare and submit a report by
17 December 1st of each odd-numbered year to the governor and the
18 appropriate committees of the house of representatives and the senate
19 regarding the reported use of deadly force by law enforcement and
20 corrections officers, including all of the information and reports
21 submitted under subsection (4) of this section.

22 NEW SECTION. **Sec. 10.** A new section is added to chapter 36.28A
23 RCW to read as follows:

24 Subject to the availability of amounts appropriated for this
25 specific purpose, the Washington association of sheriffs and police
26 chiefs shall engage with researchers from an accredited university in
27 Washington to develop a methodology for collecting and analyzing
28 demographic data in several key enforcement areas in order to monitor
29 trends that may indicate disparate impact on minority communities.
30 Once methodology has been developed, protocols must then be developed
31 for law enforcement agencies to submit data for analysis by qualified
32 researchers and for reporting with recommendations for mitigating any
33 disparate impact without sacrificing public safety. The Washington
34 association of sheriffs and police chiefs shall submit a report with
35 the completed protocols to the appropriate committees of the
36 legislature, the governor, and the criminal justice training
37 commission by December 1, 2018.

1 **PART 5**

2 **LESS LETHAL WEAPONS**

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.28A
4 RCW to read as follows:

5 Subject to the availability of amounts appropriated for this
6 specific purpose, the Washington association of sheriffs and police
7 chiefs shall administer a program for distributing funds to local law
8 enforcement agencies to equip primary responding law enforcement
9 officers with less lethal weapons. The Washington association of
10 sheriffs and police chiefs shall submit a report by December 30th of
11 each year to the appropriate committees of the legislature, the
12 governor, and the criminal justice training commission regarding the
13 agencies receiving funds, the amounts distributed, and the equipment
14 purchased.

15 **PART 6**

16 **FUNDING**

17 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.101
18 RCW to read as follows:

19 The public safety enhancement account is created in the custody
20 of the state treasurer. Revenues to the account consist of transfers
21 and appropriations by the legislature; private gifts, grants, and
22 donations; federal funds; and all other sources directed by law to
23 the account. Expenditures from the account may be used only to carry
24 out the duties of the commission. Only the criminal justice training
25 commission or the commission's designee may authorize expenditures
26 from the account. The account is subject to allotment procedures
27 under chapter 43.88 RCW, but an appropriation is not required for
28 expenditures. A portion of the funds must be used to provide training
29 in advanced patrol tactics and scenario-based simulations. A portion
30 of the funds distributed under this section must be distributed to
31 the Washington state patrol for training in the subjects set forth in
32 section 5(1) of this act.

33 NEW SECTION. **Sec. 13.** If specific funding for the purposes of
34 this act, referencing this act by bill or chapter number, is not
35 provided by December 30, 2017, in the omnibus appropriations act,
36 this act is null and void.

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held by a court to be
3 invalid, the remainder of the act is incapable of accomplishing the
4 legislative purpose and shall also be invalid.

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