

# HOUSE BILL REPORT

## ESHB 2908

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### As Amended by the Senate

**Title:** An act relating to establishing the joint legislative task force on community policing standards for a safer Washington.

**Brief Description:** Establishing the joint legislative task force on the use of deadly force in community policing.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Ryu, Ortiz-Self, Walkinshaw, Stanford and Santos).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 2/3/16, 2/5/16 [DPS].

##### **Floor Activity:**

Passed House: 2/16/16, 98-0.

Senate Amended.

Passed Senate: 3/1/16, 45-2.

#### **Brief Summary of Engrossed Substitute Bill**

- Creates a task force on the use of deadly force in community policing.
- Requires the task force to review: (1) laws, practices, and training programs regarding the use of deadly force; (2) current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force; and (3) proposals and recommend modifications to the standards for justifiable homicide and criminal liability standards in statute to assure adequate protection for law enforcement and the community.
- Requires the task force to submit a report to the Governor and the Legislature by December 2016.

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#### **HOUSE COMMITTEE ON PUBLIC SAFETY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert,

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

Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Yvonne Walker (786-7841).

**Background:**

Deadly force is the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. State law authorizes the use of deadly force by officers in certain circumstances. Deadly force is legally justifiable in any of the following contexts:

- when a public officer is acting in obedience to the judgment of a competent court;
- when necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or
- when necessarily used by a peace officer or a person acting under the officer's command and in the officer's aid: (a) to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony; (b) to prevent the escape of a person from a federal or state correctional facility, or in retaking a person who escapes from such a facility; (c) to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or (d) to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if he or she is not apprehended. Under these circumstances, deadly force may also be used if necessary to prevent escape from the officer, as long as some warning is given when feasible. Threat of serious physical harm includes, but is not limited to: the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

**Summary of Engrossed Substitute Bill:**

A joint legislative task force on the use of deadly force in community policing is created.

Members of the task force include two members from the House of Representatives, two members from the Senate, and a member representing each of the following organizations: the Washington Association of Sheriffs and Police Chiefs; the Washington State Patrol; the Criminal Justice Training Commission; the Washington Association of Prosecuting Attorneys; the Washington Association of Criminal Defense Lawyers, Public Defender Association, or the Washington Defender Association; the Washington Association of Counties; the Association of Washington Cities; the American Civil Liberties Union of Washington; the National Association for the Advancement of Colored People; the Northwest Immigration Rights Project; the Black Alliance of Thurston County; the Disability Rights Washington; the Latino Civic Alliance; the Council of Metropolitan Police and Sheriffs; and

two members representing liberty organizations. The Governor must also appoint four members representing: the Washington State Commission on Hispanic Affairs; the Washington State Commission on Asian Pacific American Affairs; the Washington State Commission on African-American Affairs; and the Governor's Office of Indian Affairs.

The task force must:

- review laws, practices, and training programs regarding the use of deadly force in Washington state and other states;
- review current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and
- review proposals and recommend modifications to the standards for justifiable homicide and criminal liability standards in statute to assure adequate protection for law enforcement and the community.

The task force may review literature and reports on the use of deadly force, and may consult with persons, organizations, and entities with interest or experience in community policing including, but not limited to, law enforcement, local governments, professional associations, community organizations, advocacy groups, and faith-based organizations.

The task force must choose its co-chairs from among its legislative membership. The legislative membership must convene the initial meeting of the task force no later than July 1, 2016, and have at least four meetings in 2016.

The task force must submit a report to the Governor and the appropriate committees of the Legislature by December 1, 2016. A minority report must also be submitted along with the task force's report if requested by any task force member.

Staff support for the task force must be provided by Senate Committee Services and the House of Representatives, Office of Program Research. The expenses of the task force must be paid jointly by the Senate and the House of Representatives upon approval by the Senate Facilities and Operations Committee and the House Executive Rules Committee.

The task force expires December 31, 2016.

#### **EFFECT OF SENATE AMENDMENT(S):**

The intent section of the act is amended to eliminate the legislative finding that current law has insufficient clarity. The membership of the task force is amended by: (1) eliminating the person representing the American Civil Liberties Union and the two members representing liberty organizations; and (2) adding a person representing the Center for Latino Leadership, adding a person representing the Washington State Fraternal Order of Police, a person representing an association, community organization, advocacy group, or faith-based organization with experience or interest in community policing, and adding a person representing an association representing law enforcement officers who represent traditionally underrepresented communities. The duties of the task force is amended to: (1) eliminate the task of reviewing proposals and recommending modifications to the standards for justifiable homicide and criminal liability standards in statute to assure adequate protection for law

enforcement and the community; and (2) add the task of recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The bill is a proposal to bring together a joint legislative task force on community policing standards for a safer Washington. The system is broken and everyone needs to be protected, including the men and women in uniform who correctly practice policing need to have our trust and confidence restored. This is a proposal to bring all the stakeholders together.

There are many community members in diverse communities that are impacted by the deadly force issue and have a hunger to engage in it. It is suggested that if other task force bills on this issue move forward, it should involve a proactive engagement with those communities statewide.

(Opposed) None.

**Persons Testifying:** Representative Ryu, prime sponsor; and Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** Rosalund Jenkins, Black Alliance of Thurston County; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Mynor Lopez, Commission of Hispanic Affairs.