

# SENATE BILL REPORT

## ESHB 2908

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As of February 23, 2016

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

**Committee Activity:** Law & Justice: 2/23/16.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** It is a defense to a charge of murder or manslaughter that the homicide was justifiable. Homicide or the use of deadly force is justifiable:

1. when a public officer is acting in obedience to the judgment of a court;
2. 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 discharge of a legal duty; and
3. when necessarily used by a peace officer or 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 public officer must have probable cause to believe that the

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suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances which may be considered by a peace officer as a “threat of serious physical harm” are the following:

- 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.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given. A public officer may not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable.

**Summary of 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,
- 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 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:

- 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.

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

Staff support must be provided by Senate Committee Services and the 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This effort will build community trust. Police have a tough job and this bill will help bring the community together. A lack of clarity in the current law does not provide justice to either law enforcement or victims of improper police action. Marginalized people are not being adequately protected. Police need to defend themselves, but should not be above the law. This effort will promote humanity and good decision making. There is a growing perception that police can kill with impunity. People should respect law enforcement, not fear them. We all need to be accountable for our actions. We need to have a legitimate debate about how to address the issue of justice for law enforcement actions.

CON: WASPC supports the effort to reduce violence between law enforcement and the public, but this bill falls short. The bill assumes a predetermined outcome.

OTHER: Law enforcement officers face the potential for violence daily. The lack of clarity in the law is not the issue. The bill should not assume conclusions and predetermined outcomes. The scope of the task force work is too narrow and lacks an acknowledgement of specific

circumstances. It is important to collect data before the scope of the task force duties can be determined. Decisions should be made on the basis of data, not emotions.

**Persons Testifying:** PRO: Representative Ryu, prime sponsor; Senator Karen Fraser; Catlin Kienn, citizen; Barnet Kalikow, Kalikow Law Center; Lisa Daugaard, Public Defender Assoc.; Noah iedel, Self Advocates in Leadership; Dr. Karen A. Johnson, Black Alliance of Thurston County; David Lord, citizen; Linda Malanchuk-Finnan, Washington State National Organization for Women; Selena Kilmoyer, Interfaith Works Thurston County

CON: Mitch Barker, WASPC

OTHER: Renee Maher and Logan Bahr, Council of Metropolitan Police and Sheriffs; Michael Sargent, Fraternal Order of Police

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