

SENATE BILL REPORT

SB 6621

As of February 2, 2016

Title: An act relating to providing for development of policy recommendations for the use of deadly force by a public officer or peace officer.

Brief Description: Providing for a task force on policing and the use of deadly force.

Sponsors: Senators Fraser, Jayapal, Keiser, Darneille and McCoy.

Brief History:

Committee Activity: Law & Justice: 2/03/16.

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 suspect, if not apprehended, poses a threat of serious physical harm to others. Among the

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.

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.

"Imminence" in this context does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out. "Necessary" means that, under the circumstances as they reasonably appeared to the actor at the time, no reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to the effect the lawful purpose intended.

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: The Washington State Institute for Public Policy (WSIPP) convenes a task force on policing and the use of deadly force. Membership includes:

- one member from each of the two largest caucuses of the Senate;
- one member from each of the two largest caucuses of the House of Representatives; and
- one member each from:
 - Black Alliance of Thurston County;
 - Latino Civic Alliance;
 - American Civil Liberties Union;
 - NAACP;
 - Commission on African American Affairs;
 - Commission on Asian Pacific American Affairs;
 - Commission on Hispanic Affairs;
 - Governor's Office of Indian Affairs;
 - Washington State Criminal Justice Training Commission;
 - Washington Association of Sheriffs and Police Chiefs;
 - Washington Council of Police and Sheriffs;
 - Washington Gender and Justice Commission;
 - Washington Interpreter Commission;
 - Washington State Minority and Justice Commission;
 - Association of Washington Cities;
 - Washington State Association of Counties;
 - Washington Association of Prosecuting Attorneys; and
 - Washington Defender Association.

At least one of the legislative members must be from the "members of color caucus."

The task force must:

- review laws, practices, and training programs regarding the use of deadly force in Washington State and in the other 49 states, the civil rights issues associated with the use of deadly force, any disproportionate impacts on minority communities from the use of deadly force, and other issues that arise for police and prosecutors. WSIPP must review research literature on policies or interventions that include de-escalation tactics and reduce the use of lethal force;
- consider the Amnesty International Report from June 2015 entitled "Deadly Force: Police Use of Lethal Force in the United States" as an approach to benchmark Washington's law in terms of civil rights requirement;
- review the definition of "necessary" to evaluate how it could provide direction to encourage the use of less lethal alternatives such as de-escalation and encourage deadly force only when a threat is "imminent";
- review whether the standards for the use of deadly force should include the concept of "imminent" threat of serious physical harm; and
- review other areas directly related to the use of deadly force, such as statutory changes and training curriculum needed to bring greater transparency and accountability to the use of deadly force.

The reviews must include a discussion of the training needed to bring about the recommended changes. The task force prepares recommendations to the Legislature on changes to statutes related to the use of force by a public officer or peace officer and funding proposals that would bring Washington's laws, practices, and training programs into conformance with principles of necessity and proportionality. The task force reports its findings and recommendations to the governor and the appropriate committees of the Legislature by December 1, 2016.

Staff support for the task force is provided by WSIPP, Senate Committee Services, and the House of Representatives Office of Program Research. Consultants may be hired to assist.

Legislative members of the task force are reimbursed for travel expenses. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

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