
Public Safety Committee

HB 1529

Brief Description: Concerning recommendations from the joint legislative task force on the use of deadly force in community policing.

Sponsors: Representatives Ryu, Santos, Jinkins, Kirby, Pollet, Senn, Dolan, Appleton, Hudgins, Farrell, Stanford, Cody, Macri and McBride.

Brief Summary of Bill

- Modifies the criminal liability standard for peace officers using deadly force.
- Requires independent investigations of certain deadly force incidents involving peace officers.
- Requires the collection and reporting of data related to deadly force incidents involving peace officers.
- Creates a program to fund procurement of less lethal weapons.
- Expands racial profiling laws to account for racial bias.
- Requires the creation of a work group to develop model policies for law enforcement agencies to establish independent civilian oversight of police accountability practices.
- Requires the Criminal Justice Training Commission to update basic and in-service training for peace officers and corrections officers according to specified requirements.
- Creates the Criminal Justice Training Account.

Hearing Date: 1/31/17

Staff: Kelly Leonard (786-7147).

Background:

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.

Joint Legislative Task Force on the Use of Deadly Force in Community Policing. During the 2016 regular legislative session, the Legislature established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing (Task Force) through the passage of Engrossed Substitute House Bill 2908. The legislation directed the Task Force with the following tasks:

- review laws, practices, and training programs regarding use of deadly force in Washington 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
- recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

The Task Force submitted a final report with recommendations to the Legislature and the Governor on December 1, 2016.

Deadly Force. Deadly force is defined in statute as 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 on the Use of Deadly Force by Peace Officers. Whether a law enforcement officer is criminally culpable for using deadly force typically depends on the state crimes and defenses in the context of the particular circumstances underlying the harm to the other person. There are two primary defenses available to law enforcement officers charged with murder or manslaughter crimes: self-defense and justifiable homicide. The standards for justifiable homicide contain the requirements for use of deadly force by peace officers and those acting on their behalf.

For peace officers, deadly force is legally justifiable in any of the following contexts:

1. when acting in obedience to the judgment of a competent court;
2. when necessarily used 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
3. when necessarily used 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;
 - prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;
 - 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
 - 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 following circumstances:

- 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.

In addition to delineating the circumstances where deadly force is authorized, the justifiable homicide standard specifies that a peace officer cannot be held criminally liable for using deadly force when it is used without malice and with a good faith belief that the use is permitted under the standard.

United States Supreme Court Cases on Excessive Forces. There is no federal statute governing the use of deadly force by officers. However, the United States Supreme Court (Court) has addressed use of force issues in some notable cases involving civil claims for damages. In *Tennessee v. Garner* (1985), the Court held that a law enforcement officer may not use deadly force to prevent the escape of a fleeing suspect unless he or she has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. In *Graham v. Connor* (1989), the Court held that whether a law enforcement officer uses excessive force is determined based on if he or she was "objectively reasonable" in light of the circumstances confronting him or her. These cases involved civil lawsuits filed against officers and agencies, which means the court's decisions do not address criminal culpability of law enforcement officers.

Less Lethal Weapons. Less lethal weapons are generally designed to induce a subject to submit or to comply with directions. The death of a subject is significantly less likely to occur from the discharge of a less lethal weapon than from the discharge of a firearm. Less lethal weapons, include, for example: conducted energy devices (Tasers); pepper spray; rubber projectiles; and batons.

Racial Profiling. Racial profiling occurs when police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain crimes. In Washington, all local law enforcement agencies are required to comply with recommendations established by the Washington Association of Sheriffs and Police Chiefs (WASPC) with respect to racial profiling, including the following:

- adopt a written policy designed to condemn and prevent racial profiling;
- review their existing procedures, practices, and training to ensure that they do not enable or foster the practice of racial profiling;
- continue training to address the issues related to racial profiling;
- ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling. Officers found to be engaged in racial profiling must be held accountable through the appropriate disciplinary procedures within each department;
- work with the minority groups in their community to appropriately address the issue of racial profiling; and
- within fiscal constraints, collect demographic data on traffic stops and analyze that data to ensure that racial profiling is not occurring.

Criminal Justice Training Commission. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training, and educational programs for law enforcement,

corrections, and other public safety professionals in Washington. The CJTC is responsible for certifying and decertifying officers.

Summary of Bill:

State Law on the Use of Deadly Force by Peace Officers. The "without malice and with good faith" clause is removed from the deadly force statute. Instead, a public officer or peace officer may not be held criminally liable for using deadly force if a reasonable officer would have believed that the use of deadly force was necessary in light of all the facts and circumstances known to the officer at the time.

Independent Investigations of Deadly Force Incidents. In all instances of the use of deadly force by a law enforcement officer resulting in death or substantial bodily harm, the law enforcement agency must facilitate the completion of an independent criminal investigation. The law enforcement agency may enter into an agreement with an external agency, other than the agency employing the involved officer, with investigative competency and resources to conduct the investigation.

Data Collection. If funds are appropriated to the Office of the Attorney General (AGO) for this purpose, the AGO must collect data from law enforcement agencies and the Department of Corrections (DOC) on uses of deadly force and submit an annual report to the Legislature and the Governor.

Law enforcement agencies and the DOC must report the following data to the AGO within 60 days of the incident, unless the AGO creates a different deadline:

- demographic characteristics of the officer and the citizens involved, including sex, age, race, and ethnicity;
- the presence of an actual or apparent disability or behavioral health issue;
- the agency or agencies employing the officer involved;
- the location of the event;
- the weapon or weapons used by the officer and the citizen, if any, including, but not limited to, information on discharging of firearms; and
- the injuries, if any, suffered by officers and citizens.

Less Lethal Weapons. If funds are appropriated for this specific purpose, the WASPC must administer a program for distributing funds to local law enforcement agencies to equip primary responding law enforcement officers with less lethal weapons. Priority must be given to local law enforcement agencies that achieve and maintain professional accreditation. The WASPC must submit an annual report on the agencies receiving funds, the amounts distributed, and the equipment purchased.

Racial Bias. The law governing racial profiling is expanded to account for racial bias. Local law enforcement agencies must adopt written policies preventing decisions and actions rooted in racial bias and review and audit existing procedures and practices to ensure they are not rooted in racial bias. Training must address implicit bias, including training officers to employ the principles of procedural justice when interacting with persons so that legitimate police actions are not misperceived as biased policing. Citizen compliant review processes must adequately address behavior and institutional practices appearing to be driven by racial bias. Officers found

to behave in a manner indicating racial bias must be held accountable through disciplinary procedures.

If funds are appropriated for this specific purpose, the WASPC must engage with researchers from an accredited university in Washington to develop a methodology for collecting and analyzing demographic data in order to monitor trends that may indicate disparate impact on minority communities. The WASPC must develop protocols for law enforcement agencies to submit data for analysis by qualified researchers and for reporting with recommendations for mitigating any disparate impact without sacrificing public safety.

Diversity in Law Enforcement. If funds are appropriated for this specific purpose, the Washington State Institute for Public Policy must conduct a study to determine what actions can be taken by law enforcement agencies to increase the diversity of Washington's law enforcement officers.

Model Policies for Meaningful Community Input. If funds are appropriated for this specific purpose, the WASPC must convene a work group to develop model policies for law enforcement agencies to establish channels for meaningful community input into key policing policies and robust, independent civilian oversight of police accountability practices. The model policies must provide for:

- safe mechanisms to submit formal complaints;
- objective and timely investigations of complaints;
- classification standards for findings and a consistent method of publishing findings;
- implementation of appropriate discipline or training if misconduct is found; and
- a process that ensures the discipline or training is completed.

Training. If funds are appropriated for this specific purpose, the CJTC must review, update, and provide basic and in-service training for peace officers and corrections officers anchored in critical thinking and the development of sound judgment that:

- emphasizes de-escalation in patrol tactics and interpersonal communication training;
- supports alternatives to arrest or citation in situations where appropriate;
- develops understanding of implicit and explicit bias and proper means to address them;
- develops understanding of cultural competency and the historical intersection of race and policing;
- develops understanding and skills to effectively and safely interact with people with disabilities and behavioral health issues;
- includes "shoot/don't shoot" scenario training; and
- uses less than lethal force and technologies, subject to the creation and funding of the program for funding less lethal weapons in the bill.

The CJTC must also develop a training module for field officer training that requires new recruits to meet with community advisory boards and to ride with senior officers with experience working in diverse communities that have a high level of law enforcement activity. The CJTC must develop a grant program to assist jurisdictions who create advisory boards, comprised of diverse communities within their jurisdiction, to help build trusting, cooperative relationships with recruits and other law enforcement personnel.

Criminal Justice Training Account. The Criminal Justice Training Account (Account) is created. Revenues to the Account consist of: transfers and appropriations by the Legislature; private gifts, grants, and donations; federal funds; and all other sources directed by law to the Account. Expenditures from the Account may be used only to carry out the duties of the CJTC. Only the CJTC may authorize expenditures from the Account.

Appropriation: None.

Fiscal Note: Requested on January 27, 2017.

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