

# SENATE BILL REPORT

## SB 5073

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As Reported by Senate Committee On:  
Law & Justice, February 16, 2017

**Title:** An act relating to recommendations from the joint legislative task force on the use of deadly force in community policing.

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

**Sponsors:** Senators Frockt, McCoy, Pedersen, Hasegawa, Darneille, Chase, Hunt and Wellman.

**Brief History:**

**Committee Activity:** Law & Justice: 2/02/17, 2/16/17 [DPS-WM, DNP].

### Brief Summary of Substitute Bill

- Removes lack of malice as a justifiable homicide defense for law enforcement and defines good faith.
- Requires development of a model policy listing best practices for agencies to consider when seeking public input.
- Defines deadly force.
- Directs law enforcement agencies to facilitate completion of independent investigations.
- Mandates updates to training on de-escalation techniques, implicit bias, cultural competency interaction with people with disabilities, and use of less than lethal force.
- Eliminates the 25 percent copay from agencies sending people to the Criminal Justice Training Commission (CJTC) for training and provides funds for backfilling replacement officers while others are receiving basic law enforcement training with accredited agencies receiving priority for funding.
- Directs the Attorney General (AG) to report on the use of deadly force every other year.
- Creates a grant program to equip law enforcement with less lethal weapons.

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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.*

- Engages an accredited university in Washington to develop a methodology for analyzing data regarding disparate impact on diverse communities.
- Creates the Public Safety Enhancement account and directs a portion of the funds to be used to provide advanced patrol tactics and scenario-based simulations.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5073 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille and Frockt.

**Minority Report:** Do not pass.

Signed by Senators Angel and Wilson.

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

**Background:** In 2016, the Legislature established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing (Task Force). The Legislature charged the Task Force with: reviewing laws, practices, and training programs regarding use of deadly force in Washington and other states; reviewing current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force; and recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

The Task Force membership included representatives from law enforcement, public defenders, prosecutors, civil rights groups, community representatives, and legislators. Four meetings were held in 2016. Each Task Force member was given the opportunity to submit recommendations for a vote of the Task Force membership. Fifteen recommendations were adopted by a majority of the Task Force. The Task Force published its final report to the Legislature and the Governor on December 1, 2016.

Currently, homicide or the use of deadly force is justifiable if:

- a public officer is acting in obedience to the judgment of a competent court;
- 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
- necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:
  - 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;
  - 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;

- 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
- to lawfully suppress a riot if the person 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, the officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a threat of serious physical harm are:

- 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, where, if feasible, some warning is given.

An officer is not to be held criminally liable for using deadly force without malice and with a good faith belief that such an act is justifiable. A law enforcement agency may adopt standards pertaining to its use of deadly force that are more restrictive than provided by statute.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** Justifiable Homicide. A lack of malice is removed as a defense to justify homicide or the use of deadly force by a law enforcement officer. An officer is not to be held criminally liable for using deadly force if a reasonable officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.

Deadly force means: (1) the intentional application of force through the use of firearms or any other means reasonably likely to cause death or great bodily harm by a law enforcement officer, regardless of the outcome; and (2) the application of force by a law enforcement officer that results in death or great bodily harm.

Accountability. The Washington Association of Sheriffs and Police Chiefs (WASPC) must develop a model policy listing best practices and recommended options for law enforcement agencies to consider when seeking public input into policing policies and accountability practices.

Law enforcement agencies must facilitate completion of independent criminal investigations in all instances when deadly force is used by law enforcement if its use results in death. The agency may use an external police agency with investigative competency.

Training, Community Outreach, and Modern Policing. The CJTC must update and provide basic and in-service training for peace and corrections officers anchored in critical thinking and the development of sound judgement that:

- emphasizes de-escalation in patrol tactics and interpersonal communication;
- supports alternatives to arrest or citation;
- develops an understanding of implicit and explicit bias;
- develops an understanding of cultural competency and the historical intersection of race and policing;
- develops an 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.

The CJTC must make sure that implicit bias training becomes an integral part of the training of law enforcement personnel.

The CJTC must also incorporate a training component that includes veteran officers monitoring recruits and sharing insights about working effectively with community members. This may include ride-alongs or working in community programs where appropriate.

The Washington State Institute for Public Policy conducts a study to determine what actions can be taken by law enforcement agencies to increase diversity among law enforcement officers. The study must include a survey of research literature and models used in other states. A report of findings is due by December 1, 2017.

Law enforcement agencies do not have to reimburse the CJTC for 25 percent of the cost of initial training. The CJTC reimburses participating law enforcement agencies for the cost of temporary replacements when an officer is receiving basic law enforcement training. Priority for reimbursement is given to accredited agencies.

Data Collection. The AG must develop and prepare a reporting mechanism for law enforcement and corrections officers to use when reporting the use of deadly force. The AG must report, by December 1st every other year regarding the use of deadly force by law enforcement and corrections officers.

All law enforcement agencies and the Department of Corrections must report all officer-involved uses of deadly force to the AG within five business days after the conclusion of the independent criminal investigation. The report must contain all information requested in a format approved by the AG.

Less Than Lethal Weapons. The WASPC administers a program for distributing funds to local law enforcement agencies to equip primary responding law enforcement officers with less than lethal weapons. An annual report must be made to the appropriate committees of the Legislature, the Governor, and the CJTC regarding the agencies receiving funds, the amounts distributed, and the equipment purchased.

The WASPC must engage with researchers from an accredited university in Washington to develop a methodology for collecting and analyzing demographic data in several key enforcement areas in order to monitor trends that may indicate disparate impact on diverse communities. Protocols must then be developed 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. The WASPC must submit a report by December 1, 2018.

**Funding.** The Public Safety Enhancement account (Account) is created in the custody of the State Treasurer. 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. A portion of the funds must be used to provide training in advanced patrol tactics and scenario-based simulations and some funds must be distributed for training Washington State Patrol regarding de-escalation and the use of less than lethal force.

If the Act is not funded by December 30, 2017, the Act is null and void. If any provision of the Act is held by a court to be invalid, the remainder of the Act is incapable of accomplishing the legislative purpose and is also invalid.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Clarifies that independent criminal investigation is required in all instances where the application of force results in death.
- Specifies that training includes ride-alongs where applicable.
- Eliminates the 25 percent co-pay from local agencies to the CJTC for basic law enforcement training.
- Gives priority to accredited agencies when reimbursing to participating law enforcement agencies for temporary replacements.
- Defines deadly force as: (1) the intentional application of force with a firearm or any other means reasonably likely to cause death or great bodily harm by a law enforcement officer, regardless of the outcome; and (2) the application of force by a law enforcement officer that results in death or great bodily harm.
- Directs the CJTC to assure that implicit bias training becomes an integral part of training law enforcement personnel.
- Mandates that spending from the public safety enhancement account must include advanced patrol tactics and scenario based simulations. The Washington State Patrol receives a portion of these funds.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is the product of 26 hours of cooperation and deliberation. In order to find common ground, people need to work together. Removing malice would bring Washington in line with the statutes in

other states. No state other than Washington has the malice requirement. Across the country, law enforcement officers perform well under the good faith standard. State supported and centralized training has contributed to making Washington officers some of the best in the nation. Officers should not face prison for making an honest mistake. Removing malice and retaining good faith strikes the right balance between protecting officers and members of the public. Officers need the trust and confidence of the community and the community needs confidence that law enforcement is working for them. The definition of good faith clarifies that the prosecutor will look at the totality of the circumstances. This will help make officers more responsible and skilled in community policing. Officers have become de facto mental health counselors and they need this additional training to handle that task. Good faith is an objective standard. Total immunity does not enhance justice or trust. There does not need to be a dichotomy between officers and the communities they serve. Sometimes training is not enough to prevent officers from making bad decisions. Malice is nearly impossible to prove. This change will help stop the epidemic of unconscious violence.

CON: In Seattle, there were 400,000 calls and deadly force was only used 4 times. It is difficult to establish a single training solution that works throughout the state. This will result in increased costs to local agencies because the officers getting the training will need to be backfilled. Law enforcement need the training funding. Officers oppose the elimination of malice and the definition of good faith in the bill. Officers should not be subjected to the same standards as others because they cannot run from the danger. Officers are already accountable to the counties, cities and people. Changes should not be based on hyperbole and anecdotes.

OTHER: It is always the goal of law enforcement to reduce the use of deadly force. We need to reduce all violent interactions. Trust in officers suffers because of the malice standard. This is a statewide problem, so it calls for a statewide solution. Each version of the bill is getting better.

**Persons Testifying:** PRO: Senator David Frockt, Prime Sponsor; Sue Rahr, Executive Director, Criminal Justice Training Center; Mark Roe, Prosecuting Attorney, Snohomish County Prosecutor's Office; Jon Tunheim, Prosecuting Attorney, Thurston County Prosecutor's Office; Felix Vargas, Retired US Officer; Kim Molsolf, Attorney, Disability Rights Washington; Toshiko Hasegawa, Washington State Commission on Asian Pacific American Affairs; Leslie Cushman, Reform Deadly Force Washington; Karen Johnson, Chair, Black Alliance of Thurston County; Brad Towers, Washington for Good Policing; Lanna Covarrubias, citizen; Lisa Earl, citizen; Chester Earl, citizen; Joyce Ostling, citizen; Bill Ostling, citizen; R. Peggy Smith, League of Women Voters Washington; Howard Gale, citizen; Larry Jefferson, Criminal Defense Attorney & WSBA Member; Kim Miles, citizen.

CON: Representative Morgan Irwin, 31st Legislative District; Jason Southard, WACOPS and Monroe Police Guild; Grant Southard, citizen.

OTHER: Neil Martin, President, WACOPS; Marco Montebianco, President, WSFOP; Jeff Merrill, President, WSPTA; Steve Eggert, President, COMPAS; James McMahan, Policy Director, WASPC; Travis Adams, Fraternal Order of Police; Michael Sargent, Fraternal Order of Police; Theresa Scheimesher, Fraternal Order of Police, COMPAS; Kelly Montebianco, Fraternal Order of Police; Glen Carpenter, WACOPS.

**Persons Signed In To Testify But Not Testifying:** PRO: Haley Bennett, citizen; Ron Posthuma, citizen; Noah Seidel, SAIL; Courtney Weaver, Washington for Good Policing

CON: Bob Lurry, King County Police Officer's Guild.

OTHER: Park McCann, citizen.