

HOUSE BILL REPORT

SSB 5066

As Passed House - Amended:

April 7, 2021

Title: An act relating to a peace officer's duty to intervene.

Brief Description: Concerning a peace officer's duty to intervene.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Das, Darneille, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Mullet, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Stanford and Wilson, C.).

Brief History:

Committee Activity:

Public Safety: 3/12/21, 3/18/21 [DPA];

Appropriations: 3/30/21, 3/31/21 [DPA(PS)].

Floor Activity:

Passed House: 4/7/21, 71-27.

Brief Summary of Substitute Bill (As Amended By House)

- Requires a peace officer to intervene when witnessing another officer engaging in the use of excessive force.
- Requires a peace officer to report to a supervisor when he or she witnesses another officer committing wrongdoing.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Do not pass. Signed by 4 members: Representatives Mosbrucker,

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

Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Young.

Minority Report: Without recommendation. Signed by 1 member: Representative Griffey.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff and Schmick.

Minority Report: Without recommendation. Signed by 4 members: Representatives Corry, Assistant Ranking Minority Member; Jacobsen, Rude and Steele.

Staff: Yvonne Walker (786-7841).

Background:

Use of Force by Peace Officers. The United States Constitution, and in particular the Bill of Rights, protects citizens from excessive force by the government. Depending on the custodial status of the person against whom force is being used, the Fourth, Fourteenth, or Eighth Amendment provides the legal standard for determining whether the use of force is permissible. For persons subject to arrest or detained pre-trial, the standards generally require the use of force by an officer to be reasonable under the totality of the circumstances. Whether an officer's actions are reasonable depends upon several factors. This may include, for example, the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the peace officer or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. For persons serving a sentence following a conviction, the standard requires the use of force by a peace officer to be applied without the purpose of maliciously causing harm.

State law does not contain separate standards for use of physical force by law enforcement officers or corrections officers, though it generally authorizes a law enforcement officer to use all necessary means to effect the arrest of a suspect who flees or resists arrest. This authorization is subject to the limitations under the United States Constitution as well as the

justifiable homicide standard in the state criminal code. Law enforcement agencies and correctional facilities typically adopt policies on the use of force, including the types of force allowed and when force may be used.

Duty to Render First Aid. Law enforcement officers must provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement. The Criminal Justice Training Commission (CJTC), in consultation with other entities, maintains guidelines for implementing the duty to render first aid. The guidelines must: have first aid training requirements; address best practices for securing a scene to facilitate the safe, swift, and effective provision of first aid to anyone injured in a scene controlled by law enforcement or as a result of law enforcement action; and assist agencies and law enforcement officers in balancing the many essential duties of officers with the solemn duty to preserve the life of persons with whom officers come into direct contact.

Training. The CJTC provides training and educational programs to law enforcement officers, corrections officers, and other public safety professionals in Washington.

Local law enforcement officers are required to complete basic training through the CJTC. Basic training consists of a 720-hour program covering a wide variety of subjects including, for example, criminal law and procedures, traffic enforcement, emergency vehicle operations, crisis intervention, and defensive tactics. Troopers with the Washington State Patrol (WSP) complete comparable training through an academy operated by the WSP. In addition, all law enforcement officers are required to complete certain advanced and ongoing training, including, for example, violence de-escalation training and crisis intervention training.

Certification and Decertification. The CJTC also certifies and, when necessary, decertifies state and local law enforcement officers. To obtain certification, an applicant is subjected to a background investigation and must meet certain qualifications. The CJTC may deny or revoke certification following notice and a hearing if a person is or becomes unsuitable for certification based on certain findings. Among other bases, the CJTC may revoke a law enforcement officer's certification if he or she has been discharged by a law enforcement agency for disqualifying misconduct.

Summary of Amended Bill:

Intervention and Reporting. Standards for intervention and reporting misconduct are established.

"Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency. Any identifiable on-duty peace officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person must intervene when in a position to do so to end the use of excessive force or

attempted use of excessive force, or to prevent the further use of excessive force. A peace officer must also render aid at the earliest safe opportunity to any person injured as a result of the use of force.

"Wrongdoing" means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature. Any identifiable on-duty peace officer who observes any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, must report such wrongdoing to the officer's supervisor or other supervisory peace officer in accordance with the peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

A law enforcement agency may not discipline or retaliate in any way against a peace officer for intervening to end excessive force in good faith or for reporting wrongdoing in good faith. A law enforcement agency must send notice to the CJTC of any disciplinary decision resulting from a peace officer's failure to intervene or failure to report to determine whether the officer's conduct may be grounds for suspension or revocation of certification.

Policies and Training. The CJTC, in consultation with the WSP, the Washington Association of Sheriffs and Police Chiefs, and organizations representing state and local law enforcement officers must develop a written model policy on the duty to intervene by December 1, 2021. Every state, county, and municipal law enforcement agency must adopt and implement a written duty to intervene policy by June 1, 2022. Agencies may adopt the model policy; however, any policy must, at a minimum, be consistent with the requirements in the bill. The CJTC must incorporate training on the duty to intervene in the basic law enforcement training curriculum by January 31, 2022. Peace officers who completed basic law enforcement training before January 31, 2022, must receive training on the duty to intervene by December 31, 2023.

Appropriation: None.

Fiscal Note: Preliminary 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 (Public Safety):

(In support) There have been multiple known incidents involving excessive force and misconduct where other law enforcement officers stood by and did nothing. This is not acceptable. This bill is about empowering law enforcement officers to be ethical guardians. This bill is about doing the right thing. Officers would be required to intervene when another officer uses excessive force, and officers would also be required to report misconduct. This is particularly important even in circumstances where officers work for

different agencies. The protections against retaliation are also significant.

The bill, as written, has been crafted carefully over many months. The definitions are tied to agency policies, which is important for implementation. Some stakeholders have suggested limiting the bill to on-duty officers; however, it is important that officers intervene even when the other officer is off-duty. This would be an assault.

This bill will not fully address systemic racism in law enforcement, but it is an important step in the right direction. It is time to restore trust with the public.

The intent of the bill is laudable. There may be some technical changes, including changes to the definitions, that would help align it with the intent of the sponsor.

(Opposed) None.

(Other) The bill represents a quandary. The state should enact requirements for intervening and reporting wrongdoing—everyone should support this. However, further refinement is needed.

The definition of "excessive force" should be modified. The bill refers to the "degree of" force based on the perception of the witnessing officer. This could create a dilemma where an officer intervenes even when the other officer is doing what they are supposed to do. There are also issues with officers of different agencies being bound by different standards. The definition of "wrongdoing" should also be modified. The bill defines "wrongdoing" as anything that is harmful. This is vague and would be difficult to implement.

The requirement for an officer to intervene when another officer is "attempting to engage" in excessive force is problematic. It is unclear what this means or what officers are expected to do in these situations. The Legislature should carefully review how this bill interrelates to Senate Bill 5051. It is important to have clarity about what is expected of officers.

Staff Summary of Public Testimony (Appropriations):

(In support) Most law enforcement officers do perform their work honorably. However, for line officers, there was a worry of the use of the word "attempting" in the bill as it is felt that it inserts too much subjectivity into the standard that could result in inconsistent interpretations. It was also suggested that the bill be amended to allow the CJTC to make recommendations to the Legislature on any possible statewide policies. However, there is appreciation that the terms "witnesses" and "observes" have been clarified in the bill. The bill has been very well worked, and it is best that any future concerns be addressed after the bill has been implemented. All law enforcement officers should have a duty to intervene and report misconduct, and this legislation will help establish and restore the public's trust in law enforcement.

(Opposed) None.

(Other) There has been a great amount of work done on this bill. However, there is still concern regarding the definition of "excessive force." This requires intervention when an officer sees force that exceeds the force permitted by the policy of the witnessing officer's agency. The term may cause confusion and unintended physical altercations between law enforcement in a mutual aid situation where multiple agencies are responding to the same chaotic scene. It is preferred that a more subjective definition be used that would allow for officers to consider what is objectively reasonable under the circumstances. This bill deals with split-second decisions.

Persons Testifying (Public Safety): (In support) Senator Dhingra, prime sponsor; Matt Zuvich, Washington Federation of State Employees; Sakara Remmu, Washington Black Lives Matter Alliance; Spike Unruh, Washington State Patrol Troopers Association; Aaron Williams, Seattle Community Police Commission; and Michael Transue, Washington Fraternal Order of Police.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Jeff DeVere, Washington Council of Police and Sheriffs.

Persons Testifying (Appropriations): (In support) Sharon Swanson, Association of Washington Cities; and Michael Transue, Washington Fraternal Order of Police.

(Other) Sanjay Walvekar, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.