

# HOUSE BILL REPORT

## E2SSB 5259

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### As Passed House - Amended:

April 6, 2021

**Title:** An act relating to requiring reporting, collecting, and publishing information regarding law enforcement interactions with the communities they serve.

**Brief Description:** Concerning law enforcement data collection.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman and Wilson, C.; by request of Attorney General).

### Brief History:

#### Committee Activity:

Public Safety: 3/16/21, 3/23/21 [DPA];

Appropriations: 4/1/21 [DPA(APP w/o PS)].

#### Floor Activity:

Passed House: 4/6/21, 97-1.

### Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Requires the Office of the Attorney General to establish an advisory group to make recommendations for the design, development, and implementation of a statewide program for collecting, reporting, and publishing use of force data by April 1, 2022.
- Requires the Office of the Attorney General to engage in a competitive procurement process to select a Washington private or public institution of higher education to implement the statewide use of force data program.
- Requires law enforcement agencies to report all instances of the use of force by no later than three months after the Office of the Attorney

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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 part of the legislation nor does it constitute a statement of legislative intent.*

General determines the statewide use of force data program can accept reports.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

**Staff:** Corey Patton (786-7388).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Public Safety. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke, Caldier, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler.

**Staff:** Yvonne Walker (786-7841).

### **Background:**

Depending on the custodial status of the person against whom force is being used, the Fourth or Fourteenth Amendment of the United States Constitution provides the legal standard for determining whether the use of force by a law enforcement officer is permissible. For persons subject to arrest or detained pretrial, the standards 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 officer or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

State law does not contain separate standards for use of physical force by officers, but it generally authorizes an 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 restrictions in the state law governing justifiable homicide and use of deadly force.

Deadly force is the intentional application of force using firearms or any other means reasonably likely to cause death or serious physical injury. An officer has the same right of self-defense as other individuals. In addition, an officer's use of deadly force is justified when, in good faith, the deadly force is:

- applied without malice in obedience to the judgment of a competent court;
- 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;
- 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;
- used to prevent escape from a federal or state correctional facility;
- used to prevent escape from a county or city jail or holding facility if the person escaping has been arrested for, charged with, or convicted of a felony; or
- used to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

Good faith exists when, objectively considering all facts, circumstances, and information known to the officer at the time, a similarly situated, reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

Substantial bodily harm is an injury that causes a temporary but substantial disfigurement, fracture, or impairment of the function of any body part or organ.

Great bodily harm is an injury that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any body part or organ.

### **Summary of Amended Bill:**

#### Statewide Use of Force Data Program Advisory Group.

The Office of the Attorney General (AGO) must establish an advisory group to assist with the design, development, and implementation of a statewide use of force data program. The advisory group must contain:

- at least three representatives from local nongovernmental organizations or advocacy groups with a focus on or expertise in the use and role of data as it relates to interactions between law enforcement and the community;
- at least three representatives from law enforcement agencies or organizations representing the interests of law enforcement in interacting with and utilizing program data; and

- at least one representative from the private or public sector with experience in data collection programs.

An advisory group member whose participation in the advisory group may be hampered by financial hardship may apply for a stipend in an amount not to exceed \$100 for each day the member attends an official meeting of the advisory group or performs duties approved by the AGO.

The advisory group must submit recommendations to the AGO by April 1, 2022, on the following subjects:

- how to prioritize the implementation of the reporting, collection, and publication of use of force data reports;
- additional data to be collected on interactions between law enforcement officers and the public;
- practices for law enforcement agencies to collect and report data;
- practices for the public to report relevant information, including correcting misreported data; and
- practices for public, law enforcement, and academic access and use of program data that must include, at a minimum: (1) public online access to deidentified raw or refined data using an established open data standard; (2) public online access to dashboards that summarize and analyze data; (3) interactive data visualization tools designed for law enforcement agencies and other entities; (4) the ability to extract data in order to standardize data across multiple agencies; (5) protection and removal of all personally identifiable information; (6) semiannual reports published on the website and submitted to the Legislature and Governor by June 1 and December 1 of each year; (7) quality improvement, including periodical input from stakeholders; (8) analytical dashboards with individual officer details for use as a risk management tool; (9) agency level comparative dashboards; and (10) incorporation of available historical data to identify long-term patterns.

The AGO must review and approve or reject the recommendations, with consideration for the following:

- available funding;
- prioritizing the implementation of the reporting, collection, and publication of use of force data reports;
- the public's interest in transparent, expedient access to information; and
- the institutional operations and demands of law enforcement.

The AGO may not approve any recommendation that would disclose information that would jeopardize an active criminal investigation, confidential informant, or intelligence information. The advisory group may revise any rejected recommendations for reconsideration by the AGO.

The provision creating the advisory group expires on January 1, 2023.

### Contracted Institution of Higher Education.

The AGO must engage in a competitive procurement process to contract with a Washington private or public institution of higher education to implement the statewide use of force data program. Advisory group members may participate in the development of the request for proposal and the review and evaluation of responsive bidders but may not participate or bid in the competitive procurement. The contracted institution of higher education must provide appropriate training to its staff, including training on racial equity issues.

### Reporting Obligations of Law Enforcement Agencies.

Each general or limited authority law enforcement agency must report each incident where an officer employed by the agency used force and any of the following occurred:

- a fatality in connection with the use of force;
- great bodily harm in connection with the use of force;
- substantial bodily harm in connection with the use of force; or
- an officer: (1) discharged a firearm at or in the direction of a person; (2) pointed a firearm at a person; (3) used a chokehold or vascular neck restraint; (4) used an electronic control weapon against a person; (5) used oleoresin capsicum spray against a person; (6) discharged a less lethal shotgun or other impact munitions at or in the direction of a person; (7) struck a person using an impact weapon or instrument; (8) used any part of their body to physically strike a person; (9) used a vehicle to intentionally strike a person or vehicle; or (10) deployed or had control of a canine that bites a person.

Each agency must submit the reports on its officers' use of force no later than three months after the AGO determines the statewide use of force data program can accept reports.

Reports must be submitted in accordance with the requirements of the statewide use of force data program and include:

- the date, time, and location of the incident;
- the name of the officer's employer;
- the type of force used by the officer;
- the type of injury sustained by the person the officer's force was used against;
- the type of injury sustained by the officer, if any;
- whether the person was armed or unarmed;
- whether the person was believed to be armed;
- the type of weapon the person possessed, if any;
- the age, gender, race, and ethnicity of the person and the officer, if known;
- the name of the officer, if known;
- the person's tribal affiliation, if applicable and known;
- whether the person exhibited any signs of a potential mental health condition or substance use;
- the officer's years of service;
- the reason for the initial contact between the officer and the person;
- whether any minors were present, if known;

- the name of the entity conducting an independent investigation of the incident, if applicable;
- whether dashboard or body worn camera footage was recorded for the incident;
- the number of officers and suspects who were present when force was used; and
- any additional data required by the statewide use of data program.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 25, 2021.

**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) It is important to know all the ways that law enforcement interactions impact certain populations, such as people of color. There is currently no single source where the public can obtain data on the use of force by law enforcement officers in Washington. As the state continues to implement reform in public safety policies, data collection is necessary to track outcomes, promote transparency and accountability, and rebuild community trust. Data collection may also help law enforcement agencies identify crime trends, better allocate resources, and assess the effectiveness of training and operational planning.

Every offering, goal, and data element identified in this bill has been discussed, vetted, and guided by a team of experts who perform data collection in Washington and other jurisdictions. The result is a program focused on collecting meaningful and digestible information that will lead to improved funding and policy decisions. High front-ends costs for implementing the program are warranted to ensure prompt delivery of the requested data, rather than waiting years for data sets to be populated. The program will provide technical assistance and resources to reduce any burden on law enforcement agencies. Data collected by the program should be made accessible to the public in accordance with open data standards, not just through analytical dashboards.

(Opposed) None.

(Other) This bill should specify that law enforcement agencies may satisfy their reporting requirements by submitting relevant incident reports. Funding needs to be provided for any additional data that the Office of the Attorney General is authorized to request for the program outside of the items explicitly identified in this bill. Certain information that is exempt from public disclosure, such as crime victim information or information about an active criminal investigation, should be protected.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Good management, community involvement, and policy decisions concerning law enforcement should be informed by reliable and robust data. Policing is one of the lead expenses of running a state. Currently, there are numerous law enforcement bills going through the Legislature but what is lacking is a single source of police use of force data. The enactment of this bill will create a single source of information where law enforcement, policymakers, and the public can obtain information about the use of force as law enforcement interacts with the public. This will solve a collective need for community and law enforcement to access objective and easily digestible information that will benefit everyone which is a critical and foundational investment for the state. This bill allows for objectivity, establishes a collaborative advisory board to guide implementation, and represents the best in transparency and accountability, including unbiased third-party collection and reporting of the information. This bill has been tailored properly to keep the costs down by using contractors; however, the local fiscal note seems high, as this data is already collected and it should not be much extra effort to transmit this data to the contractor.

(Opposed) None.

(Other) There are two suggestions for this bill. First, the Legislature should address the local costs associated with this bill to prevent any unfunded mandate by addressing the costs to report the data itself. Secondly, it is recommended that the costs related to public records requests should also be addressed to avoid the unintentional releasing of victim information that should otherwise be exempted from public disclosure as local law enforcement agencies will be required to redact that information before it is released.

**Persons Testifying (Public Safety):** (In support) Senator Nobles, prime sponsor; Jeff DeVere, Washington Council of Police and Sheriffs; Martina Morris, Next Steps Washington; Yasmin Trudeau, Washington State Office of the Attorney General; Michael Transue, Washington Fraternal Order of Police; and Nina Martinez, Latino Civic Alliance.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Testifying (Appropriations):** (In support) Yasmin Trudeau, Washington State Office of the Attorney General; Nina Martinez, Latino Civic Alliance; Martina Morris, Next Steps Washington; Monisha Harrell, Equal Rights Washington; Michael Transue, Washington Fraternal Order of Police; and Jeff DeVere, Washington Council of Police and Sheriffs.

(Other) James McMahan, 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.