

# SENATE BILL REPORT

## SB 5259

---

---

As of February 2, 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:** Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman and Wilson, C.; by request of Attorney General.

**Brief History:**

**Committee Activity:** Law & Justice: 2/02/21.

**Brief Summary of Bill**

- Requires law enforcement agencies to report all instances of the use of force to Washington State University (WSU) on a quarterly basis.
- Requires the Office of Risk Management and local government to report tort payouts to WSU resulting from any incident involving the improper use of force by a law enforcement officer.
- Directs WSU to summarize and report all information and data received to the Legislature and make the information available on a public website.

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** There are two types of law enforcement agencies in the state—general authority law enforcement agencies and limited authority law enforcement agencies. "General authority law enforcement agency" means any agency, department, or division of

---

*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.*

a municipal corporation, political subdivision, or other unit of local government, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. This includes, for example, county sheriffs, municipal police departments, the Washington State Patrol, and the Department of Fish and Wildlife.

"Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas. This includes, for example, the Department of Corrections, Department of Natural Resources, Department of Social and Health Services, Gambling Commission, and Liquor and Cannabis Board.

Law enforcement officers are authorized to use deadly force under certain circumstances. This includes, for example, when necessarily used to apprehend or arrest a person who poses a threat of serious physical harm to the officer or others. In each circumstance, the officer must have a good faith belief that the act is justifiable according to certain statutory requirements.

Law enforcement officers must complete basic and advanced training to obtain and maintain certification. With the passage of Initiative 940 in 2018, officers are also required to complete de-escalation training. Officers must be trained on alternatives to the use of physical or deadly force so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force.

Great bodily harm and substantial bodily harm are both defined in the Washington Criminal Code. Substantial bodily harm is when a person sustains temporary, but substantial disfigurement or loss of function. Great bodily injury is when a person sustains injury which is likely to cause death or which causes significant permanent disfigurement or loss of function.

**Summary of Bill:** On a quarterly basis, all general authority and limited authority law enforcement agencies must report to the Washington State University (WSU) all incidents of the use of force by a law enforcement officer including those in which:

- a fatality occurred;
- a person experienced substantial or great bodily harm;
- a law enforcement officer used force against a person, but the force did not result in a fatality, substantial bodily harm, or great bodily harm.

When reporting an incident, the agency employing the officer that used force must provide detailed information regarding the incident, including:

- the date, time, and location of the incident
- the agency or agencies employing the law enforcement officer;

- the type of force used by the officer;
- the type of injury to the person against whom force was used;
- the type of injury to the officer, if any;
- whether the person was armed or unarmed; believed to be armed; and if armed, the type of weapon the person possessed;
- the age, gender, race, and ethnicity of the person and the officer;
- if applicable, the person's tribal affiliation;
- whether the person exhibited any signs of mental health or substance abuse issues;
- the officer's years of service;
- the reason for the initial contact between the officer and person;
- whether any minors were present at the scene; and
- the entity conducting the independent investigation, if applicable.

By July 31st of each year, the Office of Risk Management and all local government entities must report to WSU the amount of any tort payout occurring in the preceding 12 months involving an allegation of the improper use of force by a Washington peace officer under its employ.

Subject to amounts appropriated, WSU must establish and maintain an online repository for collecting information from law enforcement agencies and the public regarding law enforcement's use of force. WSU must publish information received from law enforcement agencies regarding incidents of the use of force no less than quarterly. On a biannual basis, WSU must summarize the information in a readable format, submit a report to the Legislature, and make the information available on a public website. On an annual basis, WSU must summarize information received regarding tort payouts, submit a report to the Legislature, and make the information available on a public website. WSU must separately report information received from the public regarding law enforcement use of force.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Requested on January 29, 2021.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: We are currently operating in a space without data. It is not possible to measure the effectiveness of policing reforms or whether further reforms are necessary without data. Policing and police interactions disproportionately impact minority populations. A lack of transparency surrounding police interactions erodes public trust. There is broad agreement that citizens deserve better information to reduce violent interactions between law enforcement and the public.

Collection of data should not be a partisan issue. Better data helps in the furtherance of good police practices that in turn builds public confidence and integral to law enforcement in management and professional growth.

Law enforcement will support almost any data collection effort. Transparency is vital to building and maintaining public trust. Data should be comparable to other states. Disagree that tort payouts should be included. Complex set of data, that needs context. Needs decisions and actions resulting from data that result in change.

One of the major distinctions between SB 5259 and 5261 is where the data is housed. It is important for transparency and trust that the information be housed in an agency that is not closely connected with law enforcement.

There are a few recommendations for improvement. Tort payout data is complex and should not be included in this bill; there should be a robust process for community input; the agency housing the data should be publicly bid rather than assigned to WSU or the Washington Association of Sheriffs and Police Chiefs; periodic independent reviews should be incorporated to ensure agencies are reporting appropriately; and language should be added to clarify that localities cannot adopt contracts that conflict with the bill.

**OTHER:** There is a direct correlation between universal competent data and informed decisions. What is not measured, cannot be managed. Most of this data is readily available and can be provided. It is, however, important to keep in mind the burden of reporting on smaller agencies. This bill will require training and in some cases additional equipment or software. Small agencies do not have the ability to cover these costs.

The bill should allow law enforcement agencies to submit the data by submitting incident reports. This relieves the fiscal impact and allows for objectivity and uniformity. Tort payout data should not be collected.

**Persons Testifying:** PRO: Senator T'wina Nobles, Prime Sponsor; Spike Unruh, Washington State Patrol Troopers Association; Martina Morris, Next Steps Washington; Jeff DeVere, Washington Council of Police and Sheriffs; Michael Transue, Washington Fraternal Order of Police; Yasmin Trudeau, Washington State Office of the Attorney General.

**OTHER:** James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** No one.