

FINAL BILL REPORT

E2SSB 5259

C 326 L 21
Synopsis as Enacted

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, Lias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman and Wilson, C.; by request of Attorney General).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Public Safety
House Committee on Appropriations

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 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

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poses a threat of serious physical harm to the officer or others. In each circumstance, the officer must have a good faith belief 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: 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 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 1st and December 1st 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.

Votes on Final Passage:

Senate	46	2	
House	97	1	(House amended)
Senate	46	2	(Senate concurred)

Effective: July 25, 2021