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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-1046.4/17 4th draft

ATTY/TYPIST: KS:tcw

BRIEF DESCRIPTION: Concerning recommendations from the joint legislative task force on the use of deadly force in community policing.

1 AN ACT Relating to recommendations from the joint legislative  
2 task force on the use of deadly force in community policing; amending  
3 RCW 9A.16.040 and 43.101.410; adding new sections to chapter 36.28A  
4 RCW; adding new sections to chapter 43.10 RCW; adding new sections to  
5 chapter 43.101 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART 1

## **INTENT**

NEW SECTION. **Sec. 1.** (1) During the 2016 regular legislative session, the legislature established the joint legislative task force on the use of deadly force in community policing. 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. Task force membership included a diverse swath of representatives from law enforcement, public defenders, prosecutors, civil rights groups, community representatives, and legislators.

1       (2) It is the intent of the legislature to respond to the  
2 recommendations adopted by the task force, which touch on various  
3 subjects including the state deadly force statute; training and  
4 community outreach; law enforcement accountability to its community;  
5 data collection; behavioral health; less lethal weapons; and funding  
6 and oversight. The legislature finds the following:

7           (a) Today's officers are faced with a wide variety of challenges  
8 on the streets, making effective and expanded training critical to  
9 their safety and the safety of those with whom they interact.  
10 Adequate funding of our state's criminal justice training commission  
11 is necessary. Additional financial support for enhanced training in  
12 cultural awareness, interactions involving people with disabilities  
13 with mental health and behavioral issues, de-escalation, the use of  
14 less lethal options during encounters, and addressing implicit bias  
15 should be prioritized. Funding should also be made available to  
16 ensure that agencies can outfit their officers with less lethal  
17 options to maximize the response options available when interacting  
18 with a member of the public.

19           (b) The concept of modern day policing continues to evolve. It is  
20 necessary to continue to strive to build bonds of public trust,  
21 bridging the divide between police officers and the diverse  
22 communities they serve, especially communities of color and persons  
23 suffering from mental health or behavioral issues.

24           (c) It is critical that changes to our state's use of deadly  
25 force law provide our men and women in uniform the protection they  
26 need when responding to our calls for help and keeping our  
27 communities safe. Concurrently, the legislature finds that the law  
28 should hold accountable those officers who act beyond what is  
29 reasonable in encounters with our citizens, but also account for  
30 honest mistakes that are the result of an officer's need to make  
31 split-second decisions in circumstances that are tense, uncertain,  
32 and rapidly evolving.

33           (d) Amending our state's use of deadly force statute is one piece  
34 of building and maintaining trust between law enforcement agencies  
35 and the people they protect and serve. A change in our state's use of  
36 deadly force by eliminating the requirement for an affirmative proof  
37 of malice will bring Washington law more in line with other states  
38 who have codified their use of deadly force laws. The legislature's  
39 intent in defining good faith is to clarify the standard that will be  
40 considered in deciding the presence or absence of good faith. Good

1 faith will consider all the circumstances, including the officer's  
2 intent, and is ultimately an objective standard. After taking into  
3 account all of the circumstances, the decision will be whether the  
4 action taken was reasonable.

5 (e) Law enforcement accountability to the communities they serve  
6 is vital to maintaining policies that reflect community values.  
7 Agencies should work to establish and facilitate channels for  
8 community input into key policies and procedures. To engender  
9 confidence in the response to interactions with police that result in  
10 the death or serious injury of a civilian, the legislature finds that  
11 agencies should develop policies for investigation by bodies outside  
12 the department in which the incident occurred.

13 (f) The use of data collection is essential to inform law  
14 enforcement agencies and the public about the effectiveness of  
15 existing practices, which policies work and do not work, and any  
16 unintended consequences. The legislature supports creating a database  
17 to better assess police use of force, regardless of whether a  
18 fatality results, and to track metrics such as demographic  
19 characteristics, frequency of incidents involving the use of force,  
20 weapons used by peace officers and citizens, the agencies and  
21 communities involved, and the frequency of firearm discharges, among  
22 others.

23       **Sec. 2.** RCW 9A.16.040 and 1986 c 209 s 2 are each amended to  
24 read as follows:

25       (1) Homicide or the use of deadly force is justifiable in the  
26 following cases:

27           (a) When a public officer is acting in obedience to the judgment  
28 of a competent court; ((or))

29           (b) When necessarily used by a peace officer to overcome actual  
30 resistance to the execution of the legal process, mandate, or order  
31 of a court or officer, or in the discharge of a legal duty((.)); or

32           (c) When necessarily used by a peace officer or person acting  
33 under the officer's command and in the officer's aid:

34              (i) To arrest or apprehend a person who the officer reasonably  
35 believes has committed, has attempted to commit, is committing, or is  
36 attempting to commit a felony;

37              (ii) To prevent the escape of a person from a federal or state  
38 correctional facility or in retaking a person who escapes from such a  
39 facility; ((or))

1           (iii) To prevent the escape of a person from a county or city  
2 jail or holding facility if the person has been arrested for, charged  
3 with, or convicted of a felony; or

4 (iv) To lawfully suppress a riot if the actor or another  
5 participant is armed with a deadly weapon.

6               (2) In considering whether to use deadly force under subsection  
7 (1)(c) of this section, to arrest or apprehend any person for the  
8 commission of any crime, the peace officer must have probable cause  
9 to believe that the suspect, if not apprehended, poses a threat of  
10 serious physical harm to the officer or a threat of serious physical  
11 harm to others. Among the circumstances which may be considered by  
12 peace officers as a "threat of serious physical harm" are the  
13 following:

14           (a) The suspect threatens a peace officer with a weapon or  
15 displays a weapon in a manner that could reasonably be construed as  
16 threatening; or

17           (b) There is probable cause to believe that the suspect has  
18 committed any crime involving the infliction or threatened infliction  
19 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.

23           (3) A public officer or peace officer shall not be held  
24 criminally liable for using deadly force ((without malice and)) with  
25 a good faith belief that such act is justifiable pursuant to this  
26 section. For purposes of this section, "good faith" is whether a  
27 reasonable peace officer, relying upon the facts and circumstances  
28 known by the officer at the time of the incident, would have used  
29 deadly force.

30 (4) This section shall not be construed as:

31           (a) Affecting the permissible use of force by a person acting  
32 under the authority of RCW 9A.16.020 or 9A.16.050; or

33 (b) Preventing a law enforcement agency from adopting standards  
34 pertaining to its use of deadly force that are more restrictive than  
35 this section.

## **PART 2**

# **ACCOUNTABILITY**

NEW SECTION. Sec. 3. A new section is added to chapter 36.28A  
RCW to read as follows:

3       Subject to the availability of funds appropriated for this  
4 specific purpose, the Washington association of sheriffs and police  
5 chiefs must develop a model policy listing best practices and  
6 recommended options for law enforcement agencies to consider when  
7 seeking public input into policing policies and accountability  
8 practices.

9        NEW SECTION.    Sec. 4. A new section is added to chapter 43.10  
10    RCW to read as follows:

In all instances of the use of deadly force, as defined in section 7 of this act, by a law enforcement officer, the law enforcement agency shall facilitate the completion of an independent criminal investigation. The law enforcement agency may enter into an agreement with an external agency, other than the agency employing the involved officer, with investigative competency and resources to conduct the investigation.

## PART 3

#### **TRAINING AND COMMUNITY OUTREACH**

20        NEW SECTION.    Sec. 5. A new section is added to chapter 43.101  
21    RCW to read as follows:

22       Subject to the availability of amounts appropriated for this  
23 specific purpose, the commission shall:

24           (1) Review, update, and provide basic and in-service training for  
25 peace officers and corrections officers anchored in critical thinking  
26 and the development of sound judgment that:

27 (a) Emphasizes de-escalation in patrol tactics and interpersonal  
28 communication training;

29               (b) Supports alternatives to arrest or citation in situations  
30 where appropriate;

31 (c) Develops understanding of implicit and explicit bias and  
32 proper means to address them;

33 (d) Develops understanding of cultural competency and the  
34 historical intersection of race and policing;

35 (e) Develops understanding and skills to effectively and safely  
36 interact with people with disabilities and behavioral health issues;

(f) Includes "shoot/don't shoot" scenario training; and

1               (g) Uses less than lethal force and technologies, subject to the  
2 creation and funding of the program in section 8 of this act.

3                   (2) Develop a training module for field officer training that  
4 requires new recruits to meet with community advisory boards and to  
5 ride with senior officers with experience working in diverse  
6 communities that have a high level of law enforcement activity.

7           (3) Develop a grant program and model to assist jurisdictions who  
8 create advisory boards, comprised of diverse communities within their  
9 jurisdiction, to help build trusting, cooperative relationships with  
10 recruits and other law enforcement personnel.

11        NEW SECTION.    **Sec. 6.**    Subject to the availability of amounts  
12      appropriated for this specific purpose, the Washington state  
13      institute for public policy shall conduct a study to determine what  
14      actions can be taken by law enforcement agencies to increase the  
15      diversity of Washington's law enforcement officers to ensure  
16      meaningful community engagement with diverse communities, build trust  
17      and legitimacy, and strengthen community law enforcement relations  
18      while maintaining public safety. The study must include a survey of  
19      research literature and models used in other states. The institute  
20      shall submit a report with findings to the appropriate committees of  
21      the legislature and the governor by December 1, 2017.

## PART 4

# DATA COLLECTION

24        NEW SECTION.    Sec. 7. A new section is added to chapter 43.10  
25    RCW to read as follows:

26           (1) Subject to the availability of funds appropriated for this  
27 specific purpose, the attorney general shall develop and prepare a  
28 reporting mechanism for law enforcement agencies to utilize when  
29 reporting the use of deadly force by law enforcement and corrections  
30 officers.

31           (2) The report must include all information that the attorney  
32 general determines to be relevant to accurately and comprehensively  
33 record the circumstances of each use of deadly force by law  
34 enforcement or corrections officers.

35           (3) For the purposes of this section, "deadly force" means the  
36 intentional application of force through the use of firearms or any

1 other means reasonably likely to cause death or great bodily harm as  
2 defined in RCW 9A.04.110.

3 (4) All general and limited authority law enforcement agencies  
4 and the department of corrections must report all officer involved  
5 uses of deadly force to the attorney general, including all  
6 information in subsection (2) of this section and any other  
7 information required by the attorney general within five business  
8 days of the conclusion of the independent criminal investigation. The  
9 report must contain all information requested in a format approved by  
10 the attorney general.

11 (5) The attorney general must prepare and submit a report by  
12 December 1st of each odd-numbered year to the governor and the  
13 appropriate committees of the house of representatives and the senate  
14 regarding the reported use of deadly force by law enforcement and  
15 corrections officers, including all of the information and reports  
16 submitted under subsection (4) of this section.

17 **PART 5**

18 **LESS LETHAL WEAPONS**

19 **NEW SECTION.** **Sec. 8.** A new section is added to chapter 36.28A  
20 RCW to read as follows:

21 Subject to the availability of amounts appropriated for this  
22 specific purpose, the Washington association of sheriffs and police  
23 chiefs shall administer a program for distributing funds to local law  
24 enforcement agencies to equip primary responding law enforcement  
25 officers with less lethal weapons. The Washington association of  
26 sheriffs and police chiefs shall submit a report by December 30th of  
27 each year to the appropriate committees of the legislature, the  
28 governor, and the criminal justice training commission regarding the  
29 agencies receiving funds, the amounts distributed, and the equipment  
30 purchased.

31 **PART 6**

32 **MODERN POLICING**

33 **Sec. 9.** RCW 43.101.410 and 2002 c 14 s 2 are each amended to  
34 read as follows:

35 (1) Local law enforcement agencies shall comply with the  
36 ((recommendations of the Washington association of sheriffs and

~~police chiefs~~) requirements regarding racial profiling and implicit bias, as set forth under (a) through (f) of this subsection. Local law enforcement agencies shall:

(a) Adopt a written policy designed to condemn and prevent racial profiling and decisions and actions rooted in racial bias;

(b) Review and audit their existing procedures, practices, and training to ensure that they are not rooted in biases about any racial or ethnic groups and do not enable or foster the practice of ((racial profiling)) illegally profiling members of any specific racial or ethnic group;

(c) Continue training to address the issues related to racial profiling and implicit bias. Officers should be trained ((in how to better interact)) to employ the principles of procedural justice when interacting with persons they stop so that legitimate police actions are not misperceived as racial profiling or biased policing;

(d) Ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling or other behavior or institutional practices that appear to be driven by racial bias. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling or behaving in a manner that indicates racial bias must be held accountable through the appropriate disciplinary procedures within each department;

(e) Work with the minority groups in their community to appropriately address the issue of racial profiling and implicit bias; and

(f) Within fiscal constraints, collect demographic data on traffic stops and analyze that data to ensure that racial profiling or implicit bias is not occurring.

(2) The Washington association of sheriffs and police chiefs shall coordinate with the criminal justice training commission to ensure that issues related to racial profiling and implicit bias are addressed in basic law enforcement training and offered in regional training for in-service law enforcement officers at all levels.

(3) Local law enforcement agencies shall report all information required under this section to the Washington association of sheriffs and police chiefs.

(4) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall engage with researchers from an accredited university in Washington to develop a methodology for collecting and analyzing

1 demographic data in several key enforcement areas in order to monitor  
2 trends that may indicate disparate impact on minority communities.  
3 Once methodology has been developed, protocols must then be developed  
4 for law enforcement agencies to submit data for analysis by qualified  
5 researchers and for reporting with recommendations for mitigating any  
6 disparate impact without sacrificing public safety. The Washington  
7 association of sheriffs and police chiefs shall submit a report with  
8 the completed protocols to the appropriate committees of the  
9 legislature, the governor, and the criminal justice training  
10 commission by December 1, 2018.

## PART 7

# FUNDING

13        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 43.101  
14    RCW to read as follows:

The public safety enhancement 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 commission. Only the criminal justice training commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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