



Washington State Joint Legislative Task Force on the Use of Deadly Force in Community Policing

December 1, 2016
Final Report to the Legislature and Governor
Required by ESHB 2908, 2016 Legislature

December 1, 2016

The Honorable Jay Inslee
Governor of Washington
P.O. Box 40002
Olympia, WA 98504-0002

The Honorable Brad Owen
Lieutenant Governor of Washington
P.O. Box 40482
Olympia, WA 98504-0482

The Honorable Frank Chopp
Speaker of the House
P.O. Box 40600
Olympia, WA 98504-0600

Dear Governor Inslee, Lieutenant Governor Owen, and Speaker Chopp:

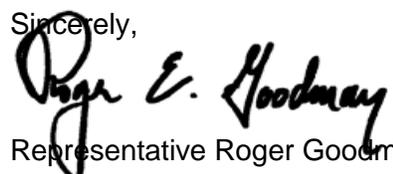
We are pleased to present the Final Report of the Joint Legislative Task Force on the Use of Deadly Force in Community Policing.

During the 2016 interim, the Task Force reviewed several issues relating to deadly force and community policing in this state. As co-chairs, we aimed to foster balanced, robust, and substantive discussions of these difficult issues. To that end, we would like to express our deep gratitude to all of the Task Force members for their commitment to this process and their invaluable input.

While the Task Force did not reach consensus on all issues, we have come to understand that legislators, law enforcement, prosecutors, defense attorneys, advocates, and community representatives agree far more often than they disagree. Notably, the apparent underlying message of every proposed recommendation – whether or not formally adopted by the Task Force – is that we can and must take steps to reduce violent interactions between law enforcement and the communities they serve.

We submit this report and its recommendations for your consideration in the 2017 legislative session.

Sincerely,



Representative Roger Goodman
Co-Chair



Senator Kirk Pearson
Co-Chair

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Executive Summary

During the 2016 regular legislative session, the Legislature established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing through the passage of Engrossed Substitute House Bill 2908. The legislation 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, including Tasers and other nonlethal weapons; and
- Recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

The Task Force worked within an aggressive time frame to develop its recommendations. It convened four meetings for a total of 26 hours from June to November. Task Force members also met independently with interested stakeholders and constituents.

The Task Force engaged in robust and substantive discussions on difficult policy issues facing the state. Topics considered include: standards for using deadly force; practices for investigating officer-involved shootings; police training and funding; less lethal weapons; and data collection practices. Also, racial bias, behavioral health issues, de-escalation, and accountability and oversight were recurring items of discussion throughout Task Force deliberations.

The Task Force utilized an inclusive and transparent process for considering recommendation proposals. This report is a reflection of that process. All submitted proposals, whether or not they were adopted, are included in the text of this report with the accompanying vote count. The Task Force adopted 15 recommendations on a variety of subjects, including: the state deadly force statute; training and community outreach; accountability; data collection; racial bias; behavioral health; less lethal weapons; and funding and oversight.

Membership

Representative Roger Goodman, Co-Chair
Washington House of Representatives

Representative Dave Hayes
Washington House of Representatives

Lieutenant Travis Adams
Washington State Fraternal Order of Police

Al Authorlee
The Tenth Amendment Center

Lisa Daugaard
Public Defender Association

Kelly Harris
Association of Washington Cities

Chief Ken Hohenberg
Washington Association of Sheriffs and Police Chiefs

Fe Lopez
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Gloria Ochoa-Bruck
Washington Commission on Hispanic Affairs

Gabriel Portugal
Latino Civic Alliance

Sue Rahr
Criminal Justice Training Commission

Mark Roe
Washington Association of Prosecuting Attorneys

Stephanie Wright
Washington State Association of Counties

Senator Kirk Pearson, Co-Chair
Washington Senate

Senator David Frockt
Washington Senate

Captain Monica Alexander
Washington State Patrol

Jorge L. Baron
Northwest Immigrant Rights Project

Gerald Hankerson
National Association for the Advancement of Colored People

Toshiko Hasegawa
Washington State Commission on Asian Pacific American Affairs

Dr. Karen Johnson
Black Alliance of Thurston County

Kim Mosolf
Disability Rights Washington

Sergeant Rich Phillips (Retired)
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Acknowledgments

The Task Force especially thanks Kathryn Leathers, House Democratic Caucus Counsel, Jackson Maynard, Senate Majority Coalition Caucus Counsel, Victoria Cantore, Senate Democratic Caucus Counsel, and John Gower, House Republican Caucus Counsel for contributing assistance with planning and deliberations.

Introduction

What is the Task Force mandate?

Engrossed Substitute House Bill 2908 (2016) established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing (Task Force). The legislation 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, including Tasers and other nonlethal weapons; and
- Recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

The Task Force membership included 26 members representing various state entities, law enforcement, professional associations, and community advocates. The Task Force elected Representative Goodman and Senator Pearson as co-chairs.

The Task Force was required to meet four times and did so on June 28 (Olympia), July 26 (Burien), September 13 (Olympia), and November 21 (Olympia). The Task Force is required to submit a final report to the Legislature and Governor by December 1, 2016.

What is in this report?

The Task Force was assigned with reviewing and discussing significant and provocative issues. As a result, through bipartisan leadership and a transparent process, the Task Force co-chairs sought to foster dispassionate and critical discussion about the right policies for Washington. This report reflects the product of this effort, both in its recommendations and its format.

- ***Topics Reviewed by the Task Force.*** The report summarizes the topics reviewed by the Task Force, including references to invited speakers and reviewed materials. It is difficult to capture every comment or idea shared during meetings, especially given the depth and length of conversations. As such, meetings were recorded by TVW and are available to the public online at tvw.org.
- ***Recommendations.*** All Task Force members were given an opportunity to propose recommendations, and all of those proposals were considered at the final meeting. Every proposal and associated vote count are included in this report, regardless of whether they were adopted.
- ***Member statements.*** The Task Force is composed of members with diverse backgrounds, expertise, and opinions. It is difficult, and perhaps impossible, for a single report written in one voice to represent everyone adequately. An individual member may have voted for one or more recommendations for different reasons than others, or they may oppose one or more

recommendations supported by the majority of the Task Force. For this reason, several Task Force members have included their own statements explaining their perspective on the Task Force work and recommendations as well as their perspectives on the issues. The Task Force views these statements as a core representation of the reasoning behind the adopted recommendations, and interested parties are advised to read them.

Topics Reviewed by the Task Force

The Task Force met four times for a total of 26 hours over the course of the 2016 interim. Task Force meetings included staff briefings, presentations from experts and practitioners, and discussions. Task Force members also independently consulted with stakeholders, advocates, and the media throughout the Task Force's operations. While the Task Force discussed a wide range of issues, it focused considerable time on five major subjects: a) standards for using deadly force; b) practices for investigating officer-involved shootings; c) police training and funding; d) less lethal weapons; and e) data on deadly force incidents.

A. Standards for Using Deadly Force

The Task Force reviewed and discussed the legal standards for using deadly force. While the Task Force itself is composed of experts on the subject, the Task Force also consulted with and received testimony from the following experts:

- Deborah Ahrens, Professor, Seattle University School of Law, on the constitutional principles governing use of deadly force by police officers;
- Tom McBride, Washington Association of Prosecuting Attorneys, on Washington's standards and practices for criminal liability in deadly force incidents; and
- Jeff Robinson, Director of the Center for Justice, American Civil Liberties Union, on the national perspective of deadly force issues as well as a critical examination of Washington's statute.

The Task Force reviewed U.S. Supreme Court cases, state statutes, and over 130 pages of memoranda and letters on charging decisions written by prosecutors in Washington. These documents, along with the presentation materials from the above experts, can be found on the Task Force's website.¹

Federal constitutional standards for excessive force claims. The Task Force reviewed four major US Supreme Court decisions on the subject: *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989); *Scott v. Harris*, 550 U.S. 372 (2007); and *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). All of these cases involved federal lawsuits filed under 42 U.S.C. § 1983—a section of the U.S. Code covering the violation of a person's civil rights—against the individual officers involved in the incidents.

The Constitution, and in particular the Bill of Rights, protects citizens from excessive force by the government. The legal standard for determining whether or not an act of force is constitutional depends on the custodial status of the civilian. For encounters and seizures in the public sphere, the Fourth Amendment applies.

¹ See <http://leg.wa.gov/JointCommittees/DFTF/Pages/default.aspx>.

The Fourth Amendment guarantees "the right of the people to be secure in their persons . . . against unreasonable searches and seizures. . . ." Whenever an officer restrains a person's freedom to walk away, he or she has seized that person; apprehension by deadly force is a seizure and must be reasonable under the circumstances. The "reasonableness" of a particular use of force is examined from the perspective of a reasonable officer on the scene, rather than with the benefit of hindsight. According to the case law, "reasonableness" is not capable of precise definition or mechanical application, and it depends on the particular facts and circumstances of each case, including: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Since the US Supreme Court has not articulated a clear, multi-factor test for evaluating excessive force, law enforcement officers often have qualified immunity in civil lawsuits. Qualified immunity is available to state or federal employees when their actions, even if later found to be unlawful, did not violate "clearly established law."

Federal case law does not address criminal culpability of police officers engaging in excessive force under the Fourth Amendment, as the case law arose from civil cases. Crimes are generally creatures of statute, existing independently from civil lawsuits and with different legal standards.

Washington's standard for justifiable use of deadly force. Whether a law enforcement officer is criminally culpable typically depends on the state crimes and defenses in the context of the particular circumstances underlying the harm to the other person.² In Washington, there are two primary defenses available to law enforcement officers charged with murder or manslaughter crimes: 1) self-defense (RCW 9A.16.020); and 2) justifiable homicide (RCW 9A.16.040, attached as *appendix A*), also commonly referred to as the deadly force statute. The deadly force statute is reserved for law enforcement and those acting on their behalf.³

Deadly force is defined as the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. Last amended in 1986, the deadly force statute authorizes law enforcement to use deadly force in only the circumstances delineated in the statute, with some conditions. In addition to the broader standard authorizing deadly force, the statute further provides, "A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section."

² While rarely used, there is a federal criminal law for violating someone's civil rights. It is a crime for a person acting under color of law to willfully deprive or conspire to deprive another person of any right protected by the Constitution or the law of the United States (18 U.S.C. 241, 242). Color of law means that the person doing the act is using power given to him or her by a governmental agency. Whether charges are filed under this law is a discretionary decision made by the US Department of Justice.

³ There are different standards for the justifiable homicide defense for law enforcement and civilians. The civilian standard can be found at RCW 9A.16.050.

Based on an examination of materials provided by Washington's elected prosecutors, the above language appears to be a significant factor when deciding whether an officer committed a crime and whether charges will be filed against him or her.

Washington is the only state with a "without malice and with good faith" defense for law enforcement officers. Some Task Force members and invited experts contend that the language provides de facto immunity to law enforcement officers in even egregious circumstances, while others believe the standard provides proper protection to law enforcement in light of the difficult and dangerous nature of the job.

Should the state standard be changed? This question underpinned much of the Task Force's work and it is reflected in the Task Force's recommendations.



The Task Force engaged in a facilitated discussion around the pros and cons of the current statute and whether or not to change it. Below are some of the highlights from the discussion.

Why should the statute be kept the same?

- Law enforcement officers are not perfect and need space for mistakes without criminalization. The current standard recognizes the snap decisions officers are required to make on a daily basis.
- Police are asked to do more to protect public safety than civilians and should have appropriate protections. Changing the statute could have a chilling effect on law enforcement.
- There are not enough data to support changing the statute. The state should start with data collection standards, research police and community interactions, and engage in additional conversations.

Why should it be changed?

- Malice is too hard to prove and is a high bar for prosecutors. The current standard allows officers to act intentionally and recklessly without penalty. This is bad for public safety.
- The current standard makes Washington a national outlier, and it should be changed in order for Washington to align with other states.
- The current standard is creating distrust between law enforcement and the community. Changing the standard will help restore authentic trust and demonstrate collaboration between law enforcement and the community.

B. Practices for Investigating Officer-Involved Shootings

The Task Force received testimony from Mark Roe, a Task Force member and the Snohomish County Prosecutor, Sergeant Shawn Stich from the Snohomish County Sheriff's Office and the Snohomish County Multi-Agency Response Team, and Lieutenant Stephen Hirjak from the Seattle Police Department, on the practices for investigating officer-involved shootings. Presentation materials can be found on the Task Force's website.

Between the experts, the Task Force reviewed two models for investigations: multi-agency response teams and internal investigative teams. Law enforcement agencies in Snohomish County use a multi-agency response team, referred to as SMART. SMART is composed of twenty-four officers from agencies across the county. When an officer-involved fatality occurs, SMART is activated and investigates the incident instead of the agency connected with the involved officer. The county prosecutor reviews each incident for criminal charges regardless of the circumstances. In contrast, the Seattle Police Department utilizes an internal force investigation team, referred to as FIT. FIT is composed of officers within the same agency, but they are in a separate unit with a separate command structure. Strict protocols are in place to ensure integrity and accountability in the investigative process. Each incident is also evaluated by a review board.

C. Police Training and Funding

The Task Force received expert testimony from Sue Rahr, a Task Force member and Executive Director of the Criminal Justice Training Commission (CJTC), on law enforcement training in Washington. Presentation materials can be found on the Task Force's website.

All commissioned police officers and deputies are mandated to receive basic training from the Criminal Justice Training Commission, except Washington State Troopers, who receive training at a separate academy. The initial officer training includes 720 hours of instruction provided over a five-month period. The Task Force was informed about the goals of the Washington training model including: the creation of a more effective learning environment; development of critical thinking and decision-making skills; instilling values that lead to ethical self-regulation in the use of power; and the improvement of the public's trust. These goals are designed to increase self-regulation in the law enforcement profession, thereby improving the physical safety of the public and officers and also earning the public trust.

Until 2009, CJTC funding was provided through the Public Safety and Education Account, but current funding for the law enforcement training is provided through the General Fund. Current budget shortfalls have resulted in delays in providing training for new recruits. The CJTC recommends providing support for increased funding for crisis intervention training and the Building Public Trust Initiative.

D. Less Lethal Weapons

The Task Force received expert testimony from Officer Kerry Zeiger, a Task Force Member and the Taser and Less Lethal Coordinator with the Seattle Police Department, on less lethal weapons used by law enforcement. Presentation materials can be found on the Task Force's website.

The Task Force reviewed two of the commonly used less lethal weapons: pepper spray and Tasers. Pepper spray is an irritant made of ground chili peppers and causes pain and burning in the affected areas. While pepper spray has a low risk of injury, it can cause secondary exposure to officers. After deployment, suspects must be monitored for effects. Tasers fire two probes with a circuit of electricity. The electricity disrupts motor and sensory nerves, causing uncontrollable muscle contractions and pain. The Taser is generally safe while still causing incapacitation of a suspect. However, Tasers can be difficult to use in a crisis situation and have a high failure rate. Examples of other less lethal weapons include impact launchers and impact objects.

Less lethal weapons provide more distance between officers and suspects, which provides more opportunity for de-escalation. Less lethal weapons can reduce the risk of injury and death. Task Force experts encouraged the expansion of less lethal weapons. Currently, many departments across the state do not use less lethal weapons due to funding and other issues. If the state requires expanding use of these weapons, experts recommend specialized training and funding.

E. Data on Deadly Force Incidents

The Task Force received expert testimony from Bob Scales, Partner of Sanford, Olson, and Scales LLC, on the available data regarding the use of deadly force by law enforcement and against law enforcement. Presentation materials can be found on the Task Force's website.

There have been many attempts to collect data regarding the use of force since 2000. The information presented to the Task Force included national and Washington state data regarding the use of force by and against law enforcement officers using the Police Force Analysis Network (P-FAN), the Police Force Analysis System (P-FAS), and the Seattle University Center for the Study of Crime and Justice (Washington State Use of Force Data Project). Currently, there is no centralized reporting requirement for the use of force by or against law enforcement officers.

Sanford, Olson, and Scales LLC recommends creating a statewide definition of reportable force, requiring the use of standardized reporting forms, and requiring annual ongoing reporting by all 274 state law enforcement agencies. Information from the agency reports would then be used to create a database that could be utilized by each agency as well as by the public and the Legislature.

Recommendations

Process

All Task Force members were given an opportunity to submit recommendation proposals for consideration by the Task Force. The Task Force reviewed and voted on proposals at its final meeting.

Final Recommendations

The Task Force adopted recommendations by a majority vote (14 or more votes). The original proposals are attached as *Appendix B* to this report. Many of the proposals were amended during Task Force discussions prior to adoption, which means final recommendations below differ from those in *Appendix B*. The final recommendations are organized below by subject to the extent feasible. The order does not reflect priority.

Deadly Force Statute

- | | In Favor | Opposed | Abstaining/
Excused |
|---|-----------------|----------------|--------------------------------|
| 1. The Task Force recommends the following changes to the deadly force statute: | 14 | 10 | 2 |

Remove malice requirement from RCW 9A.16.040(3).

Remove RCW 9A.16.040(3)'s explicit reference to "good faith," but add a defense to criminal liability if a reasonable officer would have believed the use of deadly force to have been necessary in light of all the facts and circumstances known to the officer at the time.

Amended 9A.16.040(3) would appear as follows:

(3) A public officer or peace officer shall not be held criminally liable for using deadly force (~~(without malice and with a good faith belief that such act is justifiable pursuant to this section)~~) if a reasonable officer would have believed the use of deadly force was necessary in light of all the facts and circumstances known to the officer at the time.

See B2 in Appendix B for original proposal.

Accountability

- | | | | |
|--|-----------------------|---------------------|-------------------------------------|
| 2. The Task Force recommends establishing a channel for meaningful community input into key policing policies and robust, independent civilian oversight of police accountability practices. | In Favor
18 | Opposed
4 | Abstaining/
Excused
4 |
|--|-----------------------|---------------------|-------------------------------------|

See C1(b) in Appendix B for original proposal.

3.	The Task Force recommends requiring the establishment of meaningful police accountability structures that, among other things, ensures that there is a safe mechanism to submit formal complaints about officers; an objective investigation of those complaints is completed in a timely manner; makes findings; where there is a finding of misconduct, recommends appropriate discipline and/or training; and ensures that discipline is appropriately completed.	In Favor 17	Opposed 3	Abstaining/ Excused 6
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See C1(d) in Appendix B for original proposal.

4.	Consistent with Recommendation 2.2.2 found on page 21 of the 21st Century Policing Taskforce ("mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths"), the Task Force recommends requiring that all instances of deadly force be investigated by external bodies (outside the department employing the officer(s) involved) with investigative competency and sufficient resources; and providing oversight and funding through the Attorney General's Office.	In Favor 18	Opposed 2	Abstaining/ Excused 6
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See C1(g) in Appendix B for original proposal.

Training and Community Outreach

5.	The Task Force recommends the following three components designed to meet the legislative mandate of the task force to “[r]ecommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public.”	In Favor 24	Opposed 0	Abstaining/ Excused 2
1.	The Task Force recommends that more funding be provided for the Criminal Justice Training Center (CJTC) to review, update, and provide training that: <ul style="list-style-type: none"> a. emphasizes de-escalation and alternatives to arrest or summons in situations where appropriate; and b. includes shoot/don't shoot scenarios and the use of less than lethal technologies. 			

2. The Task Force recommends that advisory boards comprised of marginalized communities be created or designated in each jurisdiction that trains cadets at the CJTC. The CJTC would incorporate a training component that would require cadets to meet with an advisory board in its jurisdiction.
3. The Task Force recommends that as a part of the training at the CJTC or on FTO status that cadets will be paired with an experienced and knowledgeable officer and patrol a diverse community in order to see a working positive example of how that officer interacts with members of the community in the course of his or her duties.

See A1 in Appendix B for original proposal.

<p>6. The Task Force recommends enhancing required academy training at the Criminal Justice Training Center (CJTC) and Washington State Patrol Academy and requiring periodic training in the Department of Corrections and local police departments for all law enforcement and correction officers in Washington, with emphasis on de-escalation and good judgment skills, understanding and addressing implicit and explicit bias, cultural competency, use of less lethal force, and interacting with people with disabilities and behavioral issues so that officers are trained to address such issues in a science-based, humane and safe manner; and fund that capacity with grants for jurisdictions that need assistance to meet this requirement, on condition that they develop their training in conjunction with the CJTC.</p>	<p>In Favor</p> <p>18</p>	<p>Opposed</p> <p>4</p>	<p>Abstaining/ Excused</p> <p>4</p>
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See C1(f) in Appendix B for original proposal.

<p>7. The Task Force recommends requiring a study and recommendations to increase the diversity of Washington’s law enforcement officers to ensure meaningful community engagement with marginalized communities that helps build trust and strengthen community-police relations.</p>	<p>In Favor</p> <p>19</p>	<p>Opposed</p> <p>0</p>	<p>Abstaining/ Excused</p> <p>7</p>
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See F6 in Appendix B for original proposal.

Data Collection

8.	The Task Force recommends requiring state-wide collection and reporting of data from all levels of law enforcement and corrections officers on use of deadly force (regardless of whether anyone is killed or injured), including: <ul style="list-style-type: none"> ○ The number of tort claims filed and monies paid in use of force cases; ○ The demographic characteristics of the officers and citizens involved in each incident, including sex, age, race, ethnicity, and presence of disability; ○ The number of incidents in which peace officers discharged firearms at citizens; ○ The agency or agencies employing the involved officers and location of each incident; ○ The particular weapon(s) used by peace officers and citizens; and ○ The injuries, if any, suffered by officers and citizens; and require regular reports to the public, at least annually, by each law enforcement agency. 	In Favor 19	Opposed 3	Abstaining/ Excused 4
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See C1(e) in Appendix B for original proposal.

9.	The Task Force recommends creating a central collection point within the state for all law enforcement agencies to send officer-involved firearm discharge data.	In Favor 19	Opposed 1	Abstaining/ Excused 6
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See E1(1) in Appendix B for original proposal.

10.	The Task Force recommends requiring law enforcement agencies to report the use of deadly force to the Attorney General’s Office, and requiring the Attorney General’s Office to collect data, on a standardized statewide basis, regarding the use of deadly force by law enforcement officers.	In Favor 20	Opposed 0	Abstaining/ Excused 6
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See F1 in Appendix B for original proposal.

Less Lethal Weapons

11.	The Task Force recommends that the Legislature fund a grant program for local law enforcement agencies to	In Favor 17	Opposed 0	Abstaining/ Excused 9
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equip primary responding officers with less lethal weapons.

See F3 in Appendix B for original proposal.

Racial Bias

12. The Task Force recommends revising RCW 43.101.410 (Racial profiling—Policies—Training—Complaint review process—Data collection and reporting) in keeping with current understanding that most policing practices that raise fairness concerns may not be implemented by individual officers engaging in racial profiling, but rather may reflect implicit bias by officers or institutional bias by policing organizations; replacing “racial profiling” with measures to collect and report data on racial disparity in enforcement; and requiring departments to consider alternative approaches that would reduce racial disparity without diminishing public safety.	In Favor	Opposed	Abstaining/ Excused
	16	2	9

See C1(b) in Appendix B for original proposal.

Behavior Health

13. The Task Force recommends reducing potentially harmful interactions between police and people experiencing behavioral health challenges by improving and increasing funding for Washington’s community behavioral health system. The best way to prevent police use-of-force incidents involving people experiencing behavioral health challenges is to prevent the challenges entirely.	In Favor	Opposed	Abstaining/ Excused
	20	0	6

See G2 in Appendix B for original proposal.

Funding, Oversight, and Training

14. The Task Force recommends that the Legislature provide financial incentives for law enforcement agencies and jails to receive and maintain professional accreditation.	In Favor	Opposed	Abstaining/ Excused
	17	2	7

See F5 in Appendix B for original proposal.

	In Favor	Opposed	Abstaining/ Excused
15. The Task Force recommends petitioning the legislature to implement the following:	20	0	6
a) Provide full funding for the Washington State Criminal Justice Training Commission (CJTC), including creating a designated funding source with a non-appropriated account;			
b) Develop, implement, and monitor deadly force management and oversight for administrative and supervisory personnel;			
c) Provide funding for communities acting in partnership with law enforcement agencies to apply for grants to better address their own concerns of public safety with their community partners;			
d) Provide equipment and advanced training for de-escalation and the use of less lethal options during encounters;			
e) Address staffing levels with adequate funding. Develop short and long term goals and solutions.			

See H1(2) in Appendix B for original proposal.

Other Proposals Considered by the Task Force

The following proposals were considered but did not obtain the majority vote required to become recommendations of the Task Force.

	In Favor	Opposed	Abstaining/ Excused
1. Setting aside other statutory changes that might be appropriate, only the malice element should be removed from our deadly force statute.	2	18	6

See B4 in Appendix B for original proposal.

	In Favor	Opposed	Abstaining/ Excused
2. Revising RCW 9A.16.040 to reflect the following best practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing.	13	11	2

Principle #1: “The sanctity of human life should be at the heart of everything an agency does.”

Drafting approach: All uses of deadly force, except capital punishment, are restricted to situations where the threat is reasonably understood to be imminent and the use of deadly force is reasonably understood to be necessary.

Provide that use of deadly force is justified where an officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm. Provide clear definitions of “imminent,” “necessary,” and “reasonable belief,” making it clear that reasonably believes encompasses and protects an officer who makes an honest mistake.

Principle #2: “Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor.”

Drafting approach: Use “sanctity of life” as the backdrop and add requirements that protect police, the public, and suspects. Add the word “imminent” and “reasonably believes” throughout. Revise the definition of “necessary” to make clear that use of force should be a last resort and reference de-escalation and less lethal alternatives. Remove the “malice” and “good faith” defense. Remove RCW 9A.16.040(3)’s explicit reference to “good faith,” but add a defense to criminal liability if a reasonable officer would have believed the use of deadly force to have been necessary in light of all the facts and circumstances known to the officer at the time. Clearly define “imminent” and “reasonably believes.” Require a warning in all situations unless a warning is futile.

Principle #3: “Police use of force must meet the test of proportionality”

Drafting approach: The revised definition of “necessary” will connect the proportionality principle to the threat presented.

Principle #4: “Adopt de-escalation as formal agency policy”

Drafting approach: Add “de-escalation” to the definition of “necessary.”

Principle #8: “Shooting at vehicles must be strictly prohibited.”

Drafting approach: Prohibit shooting at vehicles unless the suspect is using deadly force aside from the moving vehicle itself.

Principle #9: “Prohibit use of deadly force against individuals who pose a danger only to themselves.”

Drafting approach: Existing law uses the phrase “harm to others” or “third party.” Make this consistent throughout RCW 9A.16.040.

See C1(a) in Appendix B for original proposal.

3.	Establishing an independent state-wide special prosecutor with the authority to investigate and file charges in cases involving alleged misuse of deadly force by law enforcement and corrections personnel.	In Favor 12	Opposed 10	Abstaining/ Excused 4
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See C1(c) in Appendix B for original proposal.

4.	Remove affirmative proof of malice from the deadly force justification statute and expressly define good faith as whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.	In Favor 5	Opposed 14	Abstaining/ Excused 7
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See E1(3) in Appendix B for original proposal.

5.	That the Legislature fund competitive grants to local law enforcement agencies to conduct community engagement activities, <u>and</u> that the Legislature fund the Commission on African American Affairs, Commission on Asian Pacific American Affairs, Commission on Hispanic Affairs, and the Governor’s Office of Indian Affairs to strengthen relations between their respective communities and law enforcement.	In Favor 5	Opposed 11	Abstaining/ Excused 11
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See F2 in Appendix B for original proposal.

6.	Make no changes to current Washington State Use of Force laws.	In Favor 4	Opposed 14	Abstaining/ Excused 8
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See H1(1) in Appendix B for original proposal.

Withdrawn and Tabled Proposals.

The following proposals were withdrawn from consideration by their sponsors: B1; B3; D1; E1(2); E1(4); G1; I1; J1. F4 was tabled and not considered. See *Appendix B* for the full text of the proposals.

Member Statements

Community Representatives (Joint Statement)

We were honored to be appointed to serve on the Task Force on Deadly Force in Community Policing (Task Force), pursuant to Engrossed Substitute House Bill 2908. Policing as a profession and law and order in our communities are evolving. Thank you for acknowledging these shifts and setting the stage for representatives of diverse communities, law enforcement, local and county government, and the Washington State legislature to work collaboratively and proactively for our collective future.

Each of us came to the table with unique experiences, knowledge, and ideas about what might make sense moving forward. What was shared between each of us from the beginning was our mutual hope for a safer future for both our beloved law enforcement and the communities they serve. The task force recommendations are a result of collaboration and compromise of all members of the task force who contributed their time, energy, and expertise to the process.

We, the undersigned, all emerged from this process with a deeper understanding of the perspective and insights of law enforcement and a renewed commitment to the important work of building healthy relationships between law enforcement and communities, which requires listening and openness on all sides.

We invested many hours preparing for and participating in this Task Force. We spent time in our communities seeking input and sharing information. We spent time reaching across the table to gain perspective on different points of view. We spent time researching and learning about promising national policing practices and recommended reforms on use of deadly force laws. We educated and informed ourselves about the decisions in front of the Task Force. Each of us ended up supporting somewhat different approaches than we entered this process thinking we would be championing. By working together, we experienced the power of partnership, the benefits of listening and learning, and the opportunities in change.

We support the adopted recommendations of this Task Force. They address 1) police officers working in communities to bridge the divide between police and people of color, persons with disabilities, and persons dealing with behavioral health challenges, 2) increasing and more fully supporting police training to reduce violent and lethal interactions, 3) revising our state's use of deadly force law (RCW 9A.16.040), 4) improving data collection to better understand how often and under what circumstances force is used, and 5) ensuring that investigation of deadly force incidents is external, independent and credible. Many of these recommendations flow directly from the widely-respected findings of the President's 21st Century Policing Task Force.

We believe that the success of these recommendations is contingent upon amending our state's use of deadly force law and, taken together, will strengthen policing policies, practices, and procedures that reduce violent interactions between the police and the public they serve and protect. We affirm

the role of law enforcement to protect human life and believe that accountability and public trust are key components of law and order.

Our initial proposal to amend the deadly force statute, HB2907, which some of us supported during the 2016 legislative session, was amended during the task force process based on the data and testimony presented by task force members and guest presenters over the course of the work of the task force, resulting in proposal C. Many elements of this proposal were adopted by majority vote at the final task force meeting.

We do not believe there is a stark division between community-based advocates, law enforcement and government representatives. The current and former prosecuting attorneys serving on the task force, two legislative members of the task force, those representing local government, and some representatives of law enforcement acknowledged the need to make changes to the current law on deadly force.

As we learned more about the current law, it became clear that revising it was a foundational goal of any other real and lasting change. We adopted Recommendation B2 that removes the malice and the good faith provisions and provides a safe harbor for an officer who reasonably believes that the use of deadly force was necessary, even if his or her understanding later is shown to have been in error. Reframing the defense and clarifying the framework in Washington's use of deadly force statute (RCW 9A.16.040) places Washington in line with other states, where prosecution for negligent homicide in appropriate cases is possible (it presently is not in our state) and opens up the horizon for critical work between the community and police.

We look forward to participating in the legislative process. We will diligently work to get the adopted recommendations enacted and bring forward other reforms.

We are optimistic that we will all work together on ensuring that the law is fair, just, and equitable in providing our men and women in uniform the protection they need when responding to our calls for help and keeping our communities safe and, where appropriate, that the law allows the ability to hold accountable those officers that use deadly force in a manner that is unreasonable and unjustifiable.

We are committed to improving community-police relations and making Washington a national leader for strategically and systematically creating a culture for safe, fair and impartial policing.

Respectfully submitted,

Jorge L. Barón, Northwest Immigrant Rights Project
Gloria Ochoa-Bruck, Washington Commission on Hispanic Affairs
Lisa Dugaard, Public Defender Association/Washington Defender Association/Washington
Association of Criminal Defense Lawyers

Gerald Hankerson, President, National Association for the Advancement of Colored People
Toshiko Hasegawa, Washington State Commission on Asian Pacific American Affairs
Dr. Karen A. Johnson, Chair-Black Alliance of Thurston County
Fé Lopez, OneAmerica
Kim Mosolf, Disability Rights of Washington
Gabriel Portugal, Latino Civic Alliance
De'sean Quinn, Washington Commission on African- American Affairs
Timothy Reynon, Governor's Office on Indian Affairs
Officer Cynthia Softli, President, Black Law Enforcement Association of Washington

**Kelly Harris, Association of Washington Cities, and Mark Roe, Washington
Association of Prosecuting Attorneys (Joint Statement)**

Minority Report

In *Tennessee v. Garner*, 471 U.S. 1 (1985), a 1985 United States Supreme Court case, the Court held that the Fourth Amendment treats deadly force as a seizure, and the use of deadly force is unreasonable absent probable cause to believe in a significant threat of death or serious bodily injury to the officer or others. As with other Fourth Amendment claims, a prosecutor, court, or jury is asked to pass upon "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989). This test is used because "[e]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138 (1990). This objective good faith standard continues to be used in police shootings, which courts recognize "are often the most difficult—and divisive—cases that our legal system and society encounter." *Huizar v. City of Anaheim (Estate of Diaz)*, ___ F.3d ___ (9th Cir. Oct. 27, 2016).

Washington's current use of force statute, which was adopted shortly after *Garner*, applies both an objective "good faith" standard and a subjective "malice" standard. Subsequent to the enactment of our current statute, the United States Supreme Court counseled that, with respect to the lawfulness of an officer's use of force, "subjective concepts like 'malice' and 'sadism' have no proper place in that inquiry." *Graham v. Connor*, 490 U.S. 386, 399 (1989). Removing "malice" and defining "good faith," as whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force, renews our commitment to the Fourth Amendment standard.

Further, the phrase 'good faith' is an appropriate label for this definition within a criminal charging standard as opposed to a civil liability standard. A police officer's intent should be relevant and part of the calculation, just not controlling. Stated another way, we want to protect honest mistakes, but not necessarily egregious ones.

The definition of good faith contained in this bill is derived from *Graham*. The calculus of reasonableness contained in the definition makes "allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396–97 (1989).

Proposed Recommendation:

1. Create a central collection point within the state for all law enforcement agencies to send officer-involved firearm discharge data.

2. Require and fund expanded basic and in-service training for law enforcement officers on de-escalation, disengagement and less-than-lethal force options.
 3. Remove affirmative proof of malice from the deadly force justification statute and expressly define good faith as whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.
 4. Engage in a campaign of public service announcements, utilizing state celebrities, encouraging that objections, frustrations, or anger with law enforcement contacts to be resolved after the incident, not on the roadside, or in the heat of the moment.
-

Description/Reasoning:

1. Currently, most law enforcement agencies have some deadly force data collection and review. The process is not uniform. More problematically for public policy purposes, the data collection is inconsistent which may thwart analysis. The FBI is likely going to standardize data collection. Washington State can take advantage of this uniform data collection by centralizing the collection and storage. This could be done at several state agencies, including the Criminal Justice Training Commission or the Attorney General's Office.
 2. The great majority of experienced law enforcement officers know when public safety is not compromised by attempting to calm, negotiate, and deescalate a potentially violent situation. Required and funded basic and in-service training can implement those practices more broadly and immediately in new law enforcement officers, and across the spectrum of all existing law enforcement officers.
 3. Amend RCW 9A.16.040(3) to read as follows:
A public officer or peace officer shall not be held criminally liable for using deadly force ~~((without malice and))~~ with a good faith belief that such act is justifiable pursuant to this section. For purposes of this chapter, good faith is whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.
 4. A campaign of public service outreach and announcements, even utilizing famous people, should encourage anyone and everyone who comes in contact with law enforcement to follow the officer's directions. If the contacted citizen feels the cops are wrong, they should address that later, not out on the street or in the community at a time everyone is worked up.
-

Other Relevant Background Information:

1. We expect to see new federal requirements on use of deadly force reporting implemented during 2017. Once reviewed and validated for Washington State, a central state agency repository, such as the Attorney General's Office, will provide better opportunities for data analysis and its separation from local law enforcement agencies will increase public confidence in reported data. This should be limited to police discharge of firearms, because that will be a manageable amount of data, and is the most critical and dangerous circumstance for this task force to address.

2. The Criminal Justice Training Commission is already implementing training to reduce confrontation and improve de-escalation during the basic law enforcement training. This current effort should be supported, expanded, required, and fully funded. It will be important to expand this training to ongoing in-service requirements – which includes a commitment to provide this training to all existing officers, no matter where they work, and to make such training ongoing, and a permanent part law enforcements' curriculum.

3. Eliminating affirmative proof of malice, while retaining an expressly defined good faith standard is fair, and consistent with other states. The Task Force should reject the extreme positions that either A. Eliminate all protection for law enforcement (ie. eliminate both malice and good faith), even though law enforcement are affirmatively required to enter dangerous situation, or B. To do nothing (i.e. do not amend RCW 9A.16.040 at all.) with the current subjective bar to individual criminal accountability. While such a statutory change is unlikely to have any effect on the occurrence of deadly encounters, this change would bring Washington law more in line with other states, none of whom currently require proof of malice.

4. The best and highest result from Task Force efforts, and indeed it's goal, is to recommend policies that will reduce and avoid fatalities. Avoiding confrontations, de-escalating unavoidable confrontations, and finally resolving violent confrontations without death or injury, is going to involve behavior changes by suspects, citizens and officers alike. Cooler heads and changed conduct from everyone can save lives. When emotions take over, escalation tends to occur. These announcements would be similar to information thousands of good parents already give their children all across the state.

Mark Roe, Washington Association of Prosecuting Attorneys
Kelly Harris, Association of Washington Cities



WASHINGTON STATE FRATERNAL ORDER OF POLICE

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MINORITY REPORT

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*The Washington State Fraternal Order of Police represents over 2400 law enforcement professionals from agencies throughout Washington State, including city, county, state and federal police officers. As a subordinate lodge of the Grand Lodge Fraternal Order of Police, representing over 325,000 members nationwide, we are active in Olympia and Washington DC with a Legislative Program to support law enforcement for all members.*  
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The Washington State Fraternal Order of Police (WAFOP) concedes that the majority of the members of this Task Force assume that law enforcement in our state use deadly force to excess. The response to this assumption by the majority is a proposal to change RCW 9A.16.040(3) to remove “malice” and “good faith” from the statute. ***It is our belief that the majority’s position, absent good quality data which is currently not available, is a solution seeking a problem.*** The 2,400+ members of the Washington State FOP oppose a change in the statute at this time.

A change in RCW 9A.16.040(3) that removes “malice’ and “good faith” is a position we cannot accept at this time for the following reasons:

Description and Reasoning

One theme that recurred repeatedly during the meetings of the Joint Legislative Task Force on the Use of Deadly Force in Community Policing is that there is a **total lack of available data** on police use of force at state and federal levels.

FBI Director James Comey has said in recent national interviews that a lack of adequate data on police use of force encounters is contributing to a regrettable false narrative about the amount, rate and degree of force used by police.

In the second meeting of the Task Force we heard expert testimony from Bob Scales on Use of Force Data Collection and Analysis. Mr. Scales' opening discussion was about the lack of available data on police use of force and he pointed out that *“you cannot manage what you don't measure.”*

Additionally, we have heard comment from numerous members of the Task Force that understanding the frequency and degree to which police use force is extremely difficult to determine due to the lack of available and reliable data. The WAFOP and other police organizations in Washington State are in agreement that there is a lack of available data on which to reach solid conclusions about police use of force in Washington State and nationwide.

The lack of available data is an issue of grave concern to both law enforcement and to those who rightfully monitor the conduct of law enforcement agencies. The Washington State Fraternal Order of Police believes a top priority of the Washington State Legislature should be to fully fund and require participation by Washington State law enforcement agencies in a statewide use of force database. A database of this nature would be a first of its kind in the United States and would make Washington State a leader in data collection on this critical issue.

We believe the national issue regarding police use of deadly force is important; however, the question that we believe cannot be adequately answered at this time due to the dearth of available data is if there is a problem in Washington State. The Washington State Fraternal Order of Police believes that thorough and complete data collection should precede any considered changes in Washington State law. To change state law without accurate data about the amounts, degrees, and rates of police use of force would be irresponsible; it is poor leadership to propose a “solution” before knowing if, and the degree to which, a problem exists.

The Washington State Fraternal Order of Police takes a position against changes and updates in law and procedures until we can make intelligent decisions about the best way to make those improvements, and until we gather adequate information on police use of force in Washington State we do not believe it is responsible to propose changes to law.

WAFOP Proposed Next Steps

While the Washington State Fraternal Order of Police believes that data collection is the best first step in meaningful reform, we firmly believe other parallel paths can be followed to lay a foundation for important change that both law enforcement and community stakeholders could embrace. We were grateful that the members of the task force showed near unanimous support for many of our proposals, to include:

- Provide full funding for the Washington State Criminal Justice Training Commission (CJTC), including creating a designated funding source with a non-appropriated account;
- Develop, implement and monitor deadly force management and oversight for administrative and supervisory personnel;
- Provide funding for communities acting in partnership with law enforcement agencies to apply for grants to better address their own concerns of public safety with their community partners;
- Provide equipment and advanced training for de-escalation and the use of less lethal options during encounters;
- Address staffing levels with adequate funding. Develop short and long term goals and solutions.

The WAFOP would further recommend that the legislature support efforts to expand accreditation of law enforcement agencies to help ensure that Washington law enforcement is performing up to industry best practices. The legislature should provide funding and incentives to encourage participation in an accreditation process.

Providing for members of our communities who suffer from mental illness.

The Washington State Fraternal Order of Police would like to point out the specific issue of greatest concern to law enforcement and to communities across Washington State: In deadly encounters which officers face on the street the subject involved very often has a mental issue that has not been addressed, and/or the mental illness has been addressed but the individual has failed to participate in recommended treatment.

The WAFOP believes that the legislature must, if it hopes to reduce the frequency of violent encounters with police, address the issue of mental illness through funding of facilities and programs to provide for the mentally ill. The interaction between law enforcement officers and mentally ill persons in our communities is especially problematic. A person suffering from mental illness is often not involved in criminal conduct, but due to the potential volatility of interactions with the mentally ill, law enforcement is regularly called to address the concerns of family, community service workers, and the public.

Taking a mentally ill individual to jail should not be the only option available to law enforcement. The legislature will need to work with mental health professionals to identify and fund options for proactively addressing individuals with mental health issues. In addition to new facilities and programs, law enforcement officers should be provided with more training on how to identify and address individuals with mental illnesses.

Finally, state funding should be provided to law enforcement agencies for less lethal tools and for training in their application in order to maximize the response options available when confronting a violent, mentally ill individual.

Officer Selection Process

The selection of Washington State law enforcement officers is without question one of the best in the nation. During the hiring process the candidate is vetted for employment by a rigorous process which includes several interviews, a polygraph examination, and a psychological evaluation. Once the candidate is hired they attend a demanding 19 week basic academy (BLEA) and then enter the hiring agency's FTO/PTO performance program where they are evaluated over 14 weeks. If the candidate does not satisfactorily complete the entire program during their probationary period they are terminated. Their CJTC certification is revoked.

In addition, every commissioned officer in Washington State must attend a minimum of 24 hours of training per year to maintain their law enforcement certification as required by CJTC. Annual Crisis Intervention Training (CIT) Training is also required. In other words, potential candidates are meticulously screened before being hired, and once hired new officers must go through rigorous and extensive training prior to assuming the duties and authority of a full time police officer.

The rigorous hiring and training process which we use in Washington to select our officers is unquestionably one of the best in the country. To remove "malice" and "good faith" from the statute at this time is to say that despite having one of the best vetting processes in the country we believe our officers go to work with malice in their heart and will not even make a good faith effort to do their jobs in the best interest of the community. The WAFOP welcomes a comprehensive, mandatory data collection process in our state and believe it will show that our officers deserve the protection of the statute as it is currently written. We have some of the best officers in the nation, and they police their communities without malice and always with a good faith.

Conclusion

The Washington State Fraternal Order of Police was honored to have the opportunity to sit on this task force and to have a voice in the critical issues that were discussed. Our organization looks forward to continued participation in discussions about law enforcement and its important role in our communities.

PROPOSED RECOMMENDATIONS:

- 1. Make no changes to current Washington State Use of Force laws.**
- 2. Accept the recommendations which we proposed and were agreed upon by near unanimous vote of the task force members, which were:**
 - a. Provide full funding for the Washington State Criminal Justice Training Commission (CJTC), including creating a designated funding source with a non-appropriated account;**
 - b. Develop, implement and monitor deadly force management and oversight for administrative and supervisory personnel;**

- c. Provide funding for communities acting in partnership with law enforcement agencies to apply for grants to better address their own concerns of public safety with their community partners;
 - d. Provide equipment and advanced training for de-escalation and the use of less lethal options during encounters;
 - e. Address staffing levels with adequate funding. Develop short and long term goals and solutions.
3. Provide legislative funding in an effort to expand accreditation of law enforcement agencies.
4. Focus legislative attention on addressing issues of mental health in our communities, including funding for mental health facilities and services across Washington State.
5. Provide state funding to law enforcement agencies for less lethal tools and training in those tools to afford officers more force options in critical incidents.

Respectfully submitted,

Travis Adams, Task Force Member
Washington State Fraternal Order of Police

Al Authorlee, The Tenth Amendment Center

On behalf of the Tenth Amendment Center, as the appointed representative to the Joint Legislative Task Force on the Use of Deadly Force in Community Policing, I have read the draft which was released to members of the press. The draft has been forwarded to, and reviewed by members of the Tenth Amendment Center.

I appreciate everyone who spoke to the fact that this is a work in progress. We have to continue to communicate and collaborate as Washingtonians and as Americans.

I feel that the recommendations will help protect our citizens, both civilian and police. They will allow the police to remain under local control, allow them to continue to enforce the law and respect Washington States sovereignty.

I feel that we have respected the spirit the Bill of Rights and specifically, the 10th Amendment of the Constitution of the United States of America.

Alfred G. Authorlee

Representative for the Tenth Amendment Center

Lisa Daugaard, Public Defender Association



I was honored to serve on the Joint Legislative Task Force on the Use of Deadly Force in Community Policing, representing the Washington Association of Criminal Defense Lawyers and the Washington Defender Association, as well as my own organization. Our organizations and their members represent and act on behalf of people who become the focus of law enforcement action, as suspects and defendants. On some occasions, those include police officers who are investigated for or charged with criminal offenses.

Because officers are sometimes criminal defendants, I was charged to support changes to the threshold for criminal liability for officers only to the extent that those changes would not place officers unfairly in jeopardy of criminal prosecution when they do their best in the performance of their job, even if they later are found to have made mistakes with grave consequences.

I voted in support of the adopted proposal for change to the standard for criminal liability for officers who unlawfully use deadly force, because it makes it possible for the justice system to hold officers accountable for unreasonable, unlawful uses of deadly force, while not unfairly placing officers in jeopardy of criminal prosecution for reasonable acts. The adopted proposal balances the goal of improved accountability in extreme cases, with fairness to officers and respect for the fact that they often must make nearly instant decisions under pressure, with incomplete information, and at personal risk.

Why was it important to recommend changes to the criminal liability standard? Because, as it stands today, it is virtually impossible for prosecutors in Washington to pursue charges against officers who unlawfully use deadly force—even when that use of force is clearly negligent. The current threshold for criminal liability is subjective (depending on whether the officer(s) involved thought they were doing the right thing), and it needs to be objective (whether a reasonable officer would have thought the force was lawful and necessary). Under current Washington law, officers essentially are immunized from liability for negligent homicide—where they do not intend to unlawfully take a life, but act contrary to the standard of care we are entitled to expect from law enforcement. Other states permit the prosecution of police officers for negligent homicide, illustrated by the recent indictment of the St. Anthony, Minnesota officer who shot Philando Castile during a routine traffic stop.

Since the Task Force convened, I've reflected on why members of the public attach such significance to the failure ever to hold officers criminally liable for wrongful killings. I believe it has to do with the essence of policing itself. In police work, officers are holding civilians to account for violations

of the law. If the law does not apply to officers, there is a cloud of hypocrisy that fundamentally damages the legitimacy of the police function.

No one knows better than a public defender that the system of accountability through prosecution and punishment is imperfect, has been over-used and can be abused. But to entirely exclude a category of people who kill from the process of public accountability through prosecution is to say to their victims that we do not care in the same way as if they had been injured by a civilian.

We heard arguments during the task force's deliberations that prosecuting a small number of officers in extreme cases cannot be expected to reduce the incidence of deadly force. While that may be true, that argument misses the reason this issue resonates with many in the general public. We do not prosecute civilians who kill unlawfully solely in order to prevent or deter future homicides. We as a society have chosen this—criminal liability—as one mechanism for saying we care that a life was wrongly taken. We communicate our values and set norms and expectations in part through this public accountability process, however imperfect it may be.

My office works in close partnership with police departments and police officers to develop alternatives to conventional law enforcement strategies for people whose law violations stem from unmet behavioral health or human services needs. We appreciate the difficulty and complexity of what police officers are called upon to do. We also have come to understand that genuine partnership with rank and file police officers, respecting their views and perspectives and their crucial role as authors of change, is essential if we are to fundamentally shift police-community dynamics in American society.

I personally worry about the safety of the officers I know and work with and would not support an approach that exposes them to risk of liability unfairly. Nor would I support a measure that contributes to an atmosphere that divides officers from the community. The comprehensive recommendations of the Task Force do the opposite. They acknowledge the need for improved accountability in extreme cases of wrongful use of force; respect officers' need to feel free from unfair liability; and provide resources and strategies to reduce tension and conflict that can lead to deadly force being used unnecessarily. It is my sincere hope that these principles will be incorporated into legislation that we can all support.

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Toshiko Hasegawa, Washington Commission on Asian Pacific American Affairs

As the representative of the Commission on Asian Pacific American Affairs (CAPAA) to the Task Force on Deadly Force in Community Policing, I am affiliated with the Japanese American Citizens League (JACL) Seattle Chapter, the flagship chapter of the nation's oldest and largest Asian-American civil rights organization. I am also affiliated with Asian Pacific Directors Coalition (APDC), a coalition of directors, elected officials and organizational leaders of Asian and Pacific ancestry in Washington State.

I have worked closely with law enforcement throughout my professional and academic career and approached the task force proceedings with an appreciation for the dangerous and noble nature of law enforcement officer's job. It is my wholehearted conviction that "bad apple" officers are few and far between, and that, by and large, officers join the force out of love for community and their commitment to strengthening community through their contributions as public servants. They put themselves in harm's way, and there should be a defense to criminal liability for officers who, objectively, acted reasonably when using deadly force.

I also recognize that people of color, especially those of African ancestry, have historically been subjects of suspicion for criminal activity. I approached the task force having heard the plea made by diverse communities who historically and disproportionately suffer the profound impact of criminalization perpetuated by implicit biases, presumptions of guilt, and fear. There must be a systematic mechanism for officers to understand their own implicit biases, understand that "compliance" is defined differently in other countries, or to recognize that someone may not be complying because they don't speak English, or are deaf, disabled, or mentally ill. The fact is, as state law currently reads, an officer's actions can be reckless, negligent and unnecessary, and yet still, perfectly legal. It's not right that, even in light of egregious circumstances, there is no avenue for legal recourse to hold individuals accountable for their actions.

We listened to experts from law enforcement, WAPA and ACLU. We digested supplementary materials provided to us by legislative staff and the task force co-chairs. All the information presented throughout the coursework of the task force demonstrated clearly that the state law on deadly force must change. That takeaway was reflected by the will of nineteen task force members to revise RCW 9A.16.040(3). I was proud of the joint proposal I submitted with eleven colleagues that outlined changes to the entire law, RCW 9A.16.040(1-3), which reached beyond the issue specific to the problematic "malice" and "good faith" standards.

To inform my vote as to how to change the law, I hosted a series of community feedback conversations:

- Two broader community conversations (July & September) in Seattle, WA, totaling over 60 attendees from Pierce, King and Snohomish Counties.
- Three JACL Seattle membership meetings, totaling 20 attendees

- Two APDC membership meetings, totaling 25 attendees
- One CAPAA meeting hosted (September 17) in Vancouver, WA, totaling 20 attendees
- One joint meeting Co-hosted with the Commission on Hispanic Affairs and Commission on African American Affairs in Spokane, WA, totaling over 50 attendees, including law enforcement, prosecutors, educators and community advocates.

There were three objectives of these community meetings:

- 1) to educate community members of the current state law on deadly force and how it works
- 2) to provide an update on most recent task force activities
- 3) to gather community input and frame the message that community stakeholders wanted represented in task force meetings and recommendations.

Although I believe reforming the law is a step in the right direction, I also hold true that it, alone, is not the whole answer. Changing the state law on deadly force and setting statewide standards for training, reporting the use of force, data collection, and investigating the alleged misuse of force, provides law enforcement agencies with a framework to be successful in their internal functions and in their service to the public. By honoring our recommendations, you as policy makers convey your commitment to the success of our law enforcement agencies and officers, the public's ability to foster trust, and the American principle of justice for all.

Fundamentally, I believe trust and accountability are key pillars to maintaining healthy relationships. As a task force member, I truly believe that improved community-police relations promote the safety of both law enforcement and the public they serve. To frame this issue as "community vs. law enforcement" is a false dichotomy, and assumes the two are at odds with one another. That is an inherently problematic relationship between protectors and those they are sworn to serve.

I am confident in every single recommendation voted upon and approved by members of the task force. I strongly urge the Governor to include the recommendations as part of his request legislation, and for the state legislature to take every action necessary to see the recommendations implemented into state law as policy.

I thank Governor Jay Inslee for affording me the unique and profound privilege to weigh in on this critical issue. It has been an honor to serve you, CAPAA and the residents of Washington State in this capacity.

Respectfully submitted,

Toshiko Hasegawa
Commission on Asian Pacific American Affairs

Chief Ken Hohenberg, Washington Association of Sheriffs and Police Chiefs

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I would like to share our appreciation for the opportunity to participate in a candid conversation among a diverse group of well-intentioned advocates. The use of deadly force by law enforcement officers is an important topic that deserves the kind of passionate attention given to it by the task force. While our association does not agree with all of the recommendations made by the majority of members on the task force, and would have preferred that other recommendations be included, we look forward to working with the Legislature to find common ground to reduce the violent interactions between law enforcement and the public.

Respectfully,

Ken Hohenberg
Washington Association of Sheriffs and Police Chiefs

Dr. Karen Johnson, Black Alliance of Thurston County

The use of deadly force by law enforcement is under review across the nation, including this State. The close working relationship between law enforcement and prosecutors has contributed to a public perception that a conflict of interest exists when dealing with allegations of law enforcement misconduct, especially regarding the use of deadly force.

In Washington State, criminal liability for unjustified use of deadly force by law enforcement is governed by RCW 9A.16.040. Washington law is unique among the 50 states in that it contains a defense that many of us believe to be a barrier to prosecution for unjustified use of force.

The Black Alliance of Thurston County, in partnership with a statewide coalition of over 100 organizations and individuals (we), are thankful for the establishment of and a seat on the Task Force on Deadly Force in Community Policing (Task Force), pursuant to Engrossed Substitute House Bill (HB) 2908.

During the 2016 legislative session, we worked very hard to get HB2908 passed as a substitute to HB2907, a bill to amend Washington's use of deadly force law. As a former Hospital Administrator, I thought the task would be relatively straight forward. It quickly became apparent that my assessment was in error, so I came to this Task Force table to listen, hear, and understand differing points of view with the hope of identifying places to agree, connect, and support.

None of us would have made it to this table to have the rich, relevant, robust conversations we had about safe policing practices without the courageous leadership demonstrated by House and Senate members who passed HB2908 and the Governor for signing it into law.

Thankfully, we did not miss this defining moment in history. Some say that policing must change because things are getting worse. We say now is the time for sweeping systemic and cultural change. A time to collectively bend the long arc of the moral universe a little closer toward liberty and justice for all, not just some. We, also, believe that what we do now in Washington can and will have huge effects on police-community relations for years to come.

Our initial proposal to amend the deadly force statute, HB2907, which some of us supported during the 2016 legislative session, was amended during the task force process based on the data and testimony presented by task force members and guest presenters over the course of the work of the task force, resulting in proposal C. Many elements of this proposal were adopted by majority vote at the final task force meeting.

As we learned more about the current law, it became clear that revising it was a foundational goal of any other real and lasting change. We adopted Recommendation B2 that removes the malice and the good faith provisions and provides a safe harbor for an officer who reasonably believes that the use

of deadly force was necessary, even if his or her understanding later is shown to have been in error. Reframing the defense and clarifying the framework in Washington's use of deadly force statute (RCW 9A.16.040) places Washington in line with other states, where prosecution for negligent homicide in appropriate cases is possible (it presently is not in our state) and opens up the horizon for critical work between the community and police.

We affirm the role of law enforcement to protect human life and believe that accountability and public trust are a key part of law and order.

The time is upon us to choose to be courageous leaders and tell the world that we will no longer tolerate the unjustified killing of God's creation or to be cowardice lackeys, acting like a weak servant to a statute that we have the power to change.

Let us choose to be courageous leaders and join our voices together to declare this decree: "Unjustified Police Killings: Not in our State!"

Let us honor the peace officers of this state, who, each and every day, put themselves in harm's way to protect us from danger by liberating them from the unhealthy effects of alcoholism, drug abuse, and domestic violence associated with keeping an unwritten code of triple silence- hear, see, and speak no evil-when a rogue officer unjustifiably kills another human being with impunity, not valuing the sanctity of human life.

Thomas Paine said, "a body...holding themselves accountable to nobody ought not to be trusted by anybody." Let us create a system of law enforcement that inspires public trust, improves public safety, and instills police accountability. Let us be the national leader that places the sanctity of human life at the core of its law enforcement culture.

We are optimistic that we will all work together on ensuring that the law is fair, just, and equitable in providing our men and women in uniform the protection they need when responding to our calls for help and keeping our communities safe and, where appropriate, that the law allows the ability to hold accountable those officers that use deadly force in a manner that is unreasonable and unjustifiable.

We are committed to improving community-police relations and making Washington a national leader for strategically and systematically creating a culture for safe, fair and impartial policing.

Respectfully submitted,

Dr. Karen A. Johnson
Chair, Black Alliance of Thurston County

Comments on Task Force Recommendations:

- F4: For the record, I, again, state that F4 should have been withdrawn or voted against since we revised and adopted H2(b), striking the Public Safety and Education Account (PSEA) from it. We withdrew or voted against all other items that were dealt with in some other recommendation.

- F5 and other Recommendations Receiving a Nay/Abstain Vote from me:
I voted for recommendations that lead to sustainable, systemic and cultural change. For example, I wholeheartedly support accreditation. I do not support voluntary accreditation with tenuous funding, thus I voted Nay.

Kim Mosolf, Disability Rights Washington



Disability Rights
WASHINGTON
Washington's protection and advocacy system

Disability Rights Washington is a private non-profit organization that protects the rights of people with disabilities statewide. Our mission is to advance the dignity, equality, and self-determination of people with disabilities. The organization works to pursue justice on matters related to human and legal rights, including reform of Washington's criminal justice and mental healthcare systems.

Disability Rights Washington is honored to have served on the Joint Legislative Task Force on the Use of Deadly Force in Community Policing, especially as the only member formally representing people with disabilities. The ability to engage in substantive, public discussion about the policing of Washington's marginalized communities has been invaluable. Members with vastly different backgrounds and interests were able to listen and be heard, and the result is a set of substantive and thoughtful recommendations that we urge the legislature and governor to follow. We hope that the important work of this Task Force will continue.

Disability Rights Washington strongly supports the changes to RCW 9A.16.040 recommended by this Task Force, but also believes that the statutory changes should go farther. The law must better reflect the sanctity of human life. Among other things, it should include requirements of de-escalation whenever possible and the terms "imminent" and "reasonably believes" throughout. Although not formally recommended by this Task Force, Disability Rights Washington also believes there should be an independent state-wide special prosecutor with the authority to investigate and file charges in cases involving alleged misuse of deadly force by law enforcement.

The Task Force was charged with reviewing training for law enforcement. Law enforcement agencies need to better understand and engage with people with disabilities. While this cannot be achieved solely by training, meaningful and periodic training does offer a very good opportunity. When done well and with the participation of people with disabilities, training can rectify stereotypes, provide practical strategies, and promote better familiarity with disability community services. The legislature must require this training, and must adequately and regularly fund the Criminal Justice Training Commission to develop and provide such training.

Much of the focus of this Task Force has been on police interaction with people with behavioral health issues. Disability Rights Washington applauds this conversation while cautioning against perpetuating damaging stereotypes about this population, including that they are violent and frightening, or that they are inherently incapable of making their own life and treatment decisions. It is also imperative to include in this conversation the ways that Washington's failing community behavioral health system contributes to incidents of police deadly force. Washington has long failed

to properly fund and support community behavioral health services. According to a recent report from Mental Health America, Washington State ranked as one of the worst states in the nation in providing mental health care to adults. The result has been widely reported on—when people with behavioral health issues cannot access adequate care and stability in their communities, they are often funneled into the criminal justice system. They are at increased risk of volatile and potentially dangerous interaction with law enforcement.

Continuing a respectful public conversation about the policing of people with behavioral health problems is absolutely imperative, but the conversation must also recognize the many other disabilities that are relevant to interaction with law enforcement. People who are deaf or hard of hearing may have serious communication barriers with law enforcement which can lead to potentially dangerous misunderstandings. People with diabetes may face a related medical emergency causing disorientation or aggression that can be mistaken for intoxication or belligerence during police encounters. People with intellectual disability or autism may have difficulty understanding and responding appropriately to law enforcement commands. This all can cause confusion, frustration and potentially serious bodily harm as a result.

As one member of the Task Force put it at our final meeting, to build trust requires that we know each other. This Task Force has helped us all to know each other better, and resulted in recommendations that will help build trust between law enforcement and the community. Disability Rights Washington urges the legislature and the governor to take meaningful action pursuant to the Task Force's recommendations.

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DRW is a member of the National Disability Rights Network. A substantial portion of the DRW budget is federally funded.



STATE OF WASHINGTON

COMMISSION ON HISPANIC AFFAIRS

COMISIÓN DE ASUNTOS HISPANOS

Police Accountability and Community Trust

Legislative Priorities

CHA supports:

- implementation of uniform statutorily mandated, research-based and evidenced based minimum 40 hour Crisis Intervention and Implicit Bias training for Washington’s law enforcement officers that is state funded.
- amending RCW 9A.16.040 to eliminate the need for proof of malice and the lack of good faith when reviewing the use of deadly force by a law enforcement officer with substitute language premised on “the reasonable officer acting in good faith” standard.
- implementation of statutorily mandated centralized reporting of use of force incidents where a firearm is discharged.
- implementation of a uniform statutorily mandated incident investigation protocol in incidents involving the use of deadly force.

The Commission on Hispanic Affairs looks to facilitate the passing of legislation, administrative action and statewide initiative/s that address increasing police accountability, strengthening and building community trust and reducing disproportionate minority contact in the upcoming legislative session. The Commission strives to ensure that the use of force by policing entities is used only when absolutely necessary. In addition, the Commission advocates for thoughtful review and analysis of RCW 9A.16.040.

RCW 9A.16.040, is the only statute in the nation that requires proof of malice as an element the justifiable use of deadly force. According to the Seattle Times, 213 deaths involving the use of deadly force by law enforcement in the State of Washington. There is a startling lack of state level data available to address

Police Involved Shooting Deaths by Race, Washington				
Race/Ethnicity	Deaths	Share of Police Killings	Share of State Population	Ratio
Black	21	9.9%	3.6%	2.8
Native American	6	2.8%	1.3%	2.2
White	155	72.8%	70.8%	1.0
Multiracial	7	3.3%	4.0%	0.8
Hispanic	18	8.5%	12.2%	0.7
Asian/Pacific Islander	6	2.8%	8.2%	0.3

issues regarding the statute. In 2010, the state of Washington was the second worst state in prosecuting law enforcement officers (16%) and in convicting law enforcement officers (17%) when accused of misconduct, according to the Cato Institute's National Police Misconduct Reporting Project.



Body Cameras and inadequate Cultural Competency and Implicit Bias training impact the use of force by policing entities. The use of body cameras by police officers has been shown to reduce use of force by nearly 40%. Cultural Competency training has been proven to reduce implicit bias that leads to the overrepresentation of people of color in the criminal justice system.



WASHINGTON
COUNCIL
OF
POLICE &
SHERIFFS

MINORITY REPORT

Law enforcement supports many of the recommendations included in the task force report that will help to improve relations and reduce the number of violent interaction between law enforcement officers and the public. No one wants to reduce violent interactions more than the men and women of law enforcement who face them every day risking injury and their lives and who suffer if they ever have to employ deadly force in the line of duty.

We support the following recommendations adopted by the Task Force:

Petition the legislature to implement the following:

- Provide full funding for the Washington State Criminal Justice Training Commission (CJTC), including creating a designated funding source with a non-appropriated account;
- Develop, implement and monitor deadly force management and oversight for administrative and supervisory personnel;
- Provide funding for communities acting in partnership with law enforcement agencies to apply for grants to better address their own concerns of public safety with their community partners;
- Provide equipment and advanced training for de-escalation and the use of less lethal options during encounters;
- Address staffing levels with adequate funding. Develop short and long term goals and solutions

ADDITIONAL RECOMMENDATION FOR MINORITY REPORT

We believe that moving forward requires that in addition to the above, the recommendations we proposed are vital to this effort and should be included:

1. Make no changes to current Washington State use of force laws under RCW 9A.16.040.
2. Provide legislative funding for a statewide database to record use-of-force situations and incidents.
3. Fully funding mental health facilities and services across the state.
4. Provide full funding with incentives to law enforcement agencies to meet best practices by participating in an accreditation process.

Washington has among the best trained officers in the country. While we believe that existing law accomplishes what the legislature intended, we remain committed to engage in conversations that leads to better understanding and cooperation and reducing violent interactions between law enforcement officers and members of the community.

Respectfully Submitted,

Rich Phillips

Task Force Member

Washington Council of Police and Sheriffs

Attachment to WACOPS Statement

WACOPS MINORITY REPORT
<p>Description/Reasoning:</p> <p>In accordance with HB2908, this task force has the three following action items:</p> <ul style="list-style-type: none">• Review laws, practices, and training programs regarding the use of deadly force in Washington state and other states;• Review current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and• Recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public. <p>The prior three meetings of the task force have addressed the first two bullet points above and began the discussion regarding recommendations. The presentations and discussions regarding existing practices and training programs identified that The Washington State Criminal Justice Training Center (CJTC) has begun implementing the Presidents 21st Century Policy on Policing, and provides training in de-escalation, Blue Courage, Guardian vs. Warrior, and crisis intervention training within the resources available. The presentation on alternatives to lethal uses of force provided the task force with an overview of options available, the potential malfunctions or ineffectiveness of the tools, along with some of the risks to the public and officers. The availability of less than lethal options has dramatically reduced the number of officer involved shootings.</p> <p>A critical point regarding the deployment of less than lethal options that was mentioned but seemed to be skipped over rather quickly was that use of force options may not be on a continuum. Long distance pepper spray, then taser, then deadly force may not be an option in dealing with a noncompliant suspect that is posing a danger to the public and officer safety. A point that was not made in the presentation is that our flags are lowered to half-staff and our badges are shrouded when a law enforcement officer deploys a less than lethal option when only a deadly force option will stop the threat. This underscores the importance of adequate/reality based training in less than</p>

lethal and deadly force options. Additionally, not all departments have the resources to purchase the tools and provide adequate ongoing training.

It must be pointed out that CJTC no longer has a dedicated funding stream and from one legislative session to the next has to wait for a final budget to determine what resources it has to accomplish their mission. The Public Safety Education Account (PSEA) that formerly provided a dedicated funding stream has long been swept and those resources diverted to the general fund. The PSEA must be reestablished and those resources dedicated to law enforcement training.

Once funding is secured, both Basic Law Enforcement Academy (BLEA) and advanced training (including command and supervisory staff) can be enhanced through CJTC. Additional funding must also be made available for law enforcement agencies to bolster their in-house training. Based on size and resources there is a wide variety in quantity and quality of training available once an officer has graduated from the academy. Not every department has post-BLEA and/or Field Training Officer (FTO) programs available to bridge the gap from BLEA training to patrolling our communities. Annual ongoing training has been dramatically cut with shrinking local government budgets. Restoring training resources is critical in order for our law enforcement officers to be able to perform at the high level that we all expect.

One cannot discount the strain placed on law enforcement from failures in Public Health and Mental Health policies. 911 calls to law enforcement continue to increase for un-medicated, untreated individuals with mental health and other public health issues that cannot or will not find the resources in the community to assist themselves prior to crisis. The CIT training is providing law enforcement with new tools to better understand and interact with these individuals, but the sheer volume of requests for service is overwhelming and a strain on the entire system.

The population of Washington State is increasing at one of the highest rates in the country and staffing levels in our police agencies have been falling at an even greater rate. The economic crisis of the late 2000's had a devastating effect on local government police agencies and the financial rebound has yet to restore the staffing cuts that reached 20-25% in some police departments. As calls for service increase, there are fewer officers to respond and as expected, greater caseloads. The outcome of these staffing shortages is increased officer fatigue, longer waits for backup, decreased training and decreased proactive and community policing.

The President's 21st Century Policy on Policing is based on the following six pillars:

1. Building Trust and Legitimacy
2. Policy and Oversight
3. Technology and Social Media
4. Community Policing and Crime Reduction
5. Training and Education
6. Officer Wellness and Safety

Staffing shortages are having a devastating impact and impeding our law enforcement agencies ability to effectively engage in pillars 1, 4, 5, and 6.

Some of the answers to reducing violent interactions between law enforcement and members of the public may exist within the communities themselves. Each community is unique and the pathway to solutions in Longview isn't likely the same as those in Olympia, Seattle or Spokane. Resources should be made available to communities to improve police relations and understanding between law enforcement and the communities they serve. Along with these localized avenues, generalized education regarding police interactions should be developed and dispersed statewide via PSA's or other methods including the schools.

Intuitively each of these proposed recommendations will have some positive impact on reducing violent interactions between law enforcement and members of the public. How about empirically? Without robust data collection and evaluation, we will have no evidence of what is actually making our communities safer.

Finally, in regards to changing RCW 9A.16.040 to remove “malice” and “good faith”, there has been no credible evidence provided to this task force that modifying the statute would reduce violent interactions between law enforcement and members of the public. Meanwhile, community policing, training, de-escalation, staffing, and less than lethal options have all had measurable reductions in violent interactions between law enforcement and members of the public. It was apparent to more than one task force member that so much time was spent on changing the law discussion, that little time was actually spent discussing ways to decrease and/or prevent officer need to employ deadly force options. Changing the law so that it looked like the task force accomplished something is not only irresponsible but could make our communities less safe and ignores the legislative charge of its duties.

Tim Reynon, Governor's Office on Indian Affairs

On behalf of the 29 tribes from across the State of Washington, I express our appreciation for the opportunity to participate in the work of the Joint Legislative Task Force (Task Force) on the Use of Deadly Force in Community Policing and provide input from a tribal perspective about ways we can create safer communities and improve and strengthen the relationship between our citizens and the Law Enforcement Officers who protect and serve us on a daily basis. In addition to sharing the sentiments expressed in the Joint Community Statement submitted by several of the Task Force members, I felt it important for the governor, the state legislature and all who read this report, to understand the unique perspectives and concerns shared by tribal communities in the State of Washington, and, therefore, submit this additional statement and recommendations for your consideration.

The issue of police use of deadly force is of particular concern to tribes and tribal members throughout the state because several of our tribal communities continue to experience these tragic situations and, according to the Center on Juvenile and Criminal Justice (CJCJ), Native Americans are the group most likely to be killed by law enforcement (<http://www.cjcj.org/news/8113>). In fact, in recent years, parents and grandparents within many of our communities have started to have “the talk” – a conversation about how to respond if approached by law enforcement and a reminder that their child’s main objective is to return home safely – at an early age. The care and safety of our members is paramount and we will do all we can to help protect them and make our communities safe for generations to come. That is why we were honored to participate in the work of the Task Force and fully support the recommendations it submitted.

In addition to the recommendations put forth by the Task Force, we feel it important for the Governor and the State legislature to consider the following recommendations as they relate to the unique, sovereign status of tribes in the State of Washington:

1. Develop protocols for law enforcement departments and coroner and medical examiners’ offices to work with local tribes when tribal members are involved in police use of deadly force incidents.
2. Include one or more qualified tribal members as participants in any civilian oversight boards that oversee any jurisdiction located on or near a tribal reservation.
3. Include tribal cultural awareness training by a qualified tribal representatives as part of the enhanced Academy training and on-going training recommended by the Task Force, and require such training for those jurisdictions located on or near any tribal reservation.
4. Include at least one qualified tribal member or tribal law enforcement officer as a participant in any external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths, where the victim is a tribal member.

5. Review the hiring practices for law enforcement officers and provide hiring preferences for enrolled tribal members in law enforcement departments serving tribal communities and actively recruit tribal members to apply for such positions.
6. Provide better access to the Washington State Criminal Information Center (WSCIC) to allow tribal law enforcement departments to input tribal criminal information.

These additional requirements acknowledge the unique government-to-government relationship that tribes have with the State of Washington and its local governments. They are intended to help strengthen that relationship by requiring transparency and encouraging state and local law enforcement agencies to work more collaboratively and proactively with the tribes and tribal law enforcement agencies. Ultimately, these recommendations, along with the recommendations put forth by the Task Force, will strengthen the relationship between our communities and law enforcement which, in turn, will create stronger and safer communities for our members, our citizens and our law enforcement officers who put their lives on the line every day. We recognize and respect the tremendously difficult job that law enforcement officers have and we want to ensure that they, too, are protected.

As the Joint Community Statement mentioned, the Task Force provided an opportunity for representatives of diverse communities, law enforcement, local and county government, and the Washington State legislature to come together to start to address the serious issue of police use of deadly force to protect our collective future. For the Native American community, we look forward to the Seventh Generation when making important decisions that affect our tribal members and our community. It is with that perspective that we encourage the Governor and State legislature to do all within your power to see that these recommendations become a reality in the State of Washington. There is much work to be done to make this happen and we commit to continuing to work with you to create stronger and safer communities for our grandchildren, and their grandchildren, and their grandchildren.

Thank you again for the honor and privilege of participating in this monumental work.

Respectfully submitted,

Timothy D. Reynon, Tribal Council Member
Puyallup Tribe of Indians
Governor's Office on Indian Affairs' Representative to the Joint Legislative Task Force on the Use of Deadly Force in Community Policing

Officer Kerry Zeiger, Council of Metropolitan Police and Sheriffs

The Council of Metropolitan Police and Sheriffs still believes that a statewide data collection base is critically needed to determine if indeed there is a problem with law enforcement's use of deadly force.

Initially, members of the task force stated that a change in the law was necessary because law enforcement officers use deadly force more often on persons of color. Yet no data was presented to support this perception. In fact, the information presented by Tom McBride from the Washington Association of Prosecuting Attorneys showed that this was not the case at all. When this fact was raised by COMPAS representative Kerry Zieger, our organization was referred to as "racist" by one task force member. In reality COMPAS represents the Seattle Police Officers' Guild and the King County Police Officers' Guild— the most diverse law enforcement groups in the state.

The only source of data offered to support the need to change the law was the Seattle Times article "Shielded by the Law." COMPAS offered several examples of the inaccuracies in the article and it certainly should not be used as justification for changing such an important law. Other recent, credible academic studies are available dealing with the use of the force and they should be explored and consulted before the statute is changed.

During the last meeting of the task force, law enforcement representatives were accused of not even being open to a change in the deadly force law. Task force members demanded there be a "compromise," however there really was never any conversation about compromise. It was clear from the very first meeting that a majority of task force members were simply interested in removing "malice" and "good faith" from the law without full discussion of any other topic assigned to the task force.

One of the key assignments of this task force was to make recommendations on best practices to reduce the number of violent encounters with law enforcement. Yet very little time and effort was spent exploring these issues. We think that is an unfortunate missed opportunity because that is the one area assigned to the task force that really could have saved lives – for both our citizens and our officers.

Appendices

Appendix A

Deadly Force Statute, RCW 9A.16.040 ("Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.")

9A.16.040. Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.

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

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

(b) When necessarily used by a peace officer 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.

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

(i) 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;

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

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

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

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

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

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

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) This section shall not be construed as:

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

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

HISTORY: 1986 c 209 § 2; 1975 1st ex.s. c 260 § 9A.16.040.

NOTES:

Legislative recognition:

"The legislature recognizes that *RCW 9A.16.040* establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the authority of *RCW 9.01.200*, *9A.16.020*, or *9A.16.050* is not restricted and remains broader than the limitations imposed on peace officers." [1986 c 209 § 3.]

Appendix B
Recommendation Proposals Submitted by Task Force Members

Jt. Leg. Task Force on the Use of Deadly Force in Community Policing

Recommendation Proposals

Revised November 16, 2016

A. Senator Kirk Pearson	2
B. Senator David Frockt	4
C. Jorge Baron (NWIRP), Lisa Daugaard (PDA), Toshiko Hasegawa (WA Comm. Asian Pacific American Affairs), Gerald Hankerson (NAACP), Dr. Karen Johnson (BATC), Fe Lopez (OneAmerica), Kim Mosolf (DRW), Gabriel Portugal (LCA), De’sean Quinn (WA Comm. African-American Affairs), Timothy Reynon (Gov. Office Indian Affairs), Officer Cynthia Softli (BLEA), Gloria Ochoa-Bruck (WA Comm. Hispanic Affairs)	7
D. Dr. Karen Johnson (BATC), Lisa Daugaard (PDA), De’sean Quinn (WA Comm. African-American Affairs), Kim Mosolf (DRW), Fe Lopez (OneAmerica), Jorge Baron (NWIRP), Kelly Harris (AWC), Gloria Ochoa-Bruck (WA Comm. Hispanic Affairs), Timothy Reynon (Gov. Office Indian Affairs), Gerald Hankerson (NAACP), Toshiko Hasegawa (WA Comm. Asian Pacific American Affairs), Gabriel Portugal (Latino Civic Alliance), Officer Cynthia Softli (BLEA) REVISED 11-16	11
E. Kelly Harris (AWC) and Mark Roe (WAPA)	14
F. Chief Ken Hohenberg (WASPC)	16
G. Kim Mosolf (DRW)	21
H. Sergeant Rich Phillips (WACOPS), Lieutenant Travis Adams (WAFOP), and Officer Kerry Zieger (COMPAS)	23
I. Gabriel Portugal (LCA)	26
J. Officer Kerry Zieger (COMPAS)	28

A. Senator Kirk Pearson

#A1

Task Force Member(s):

Sen. Kirk Pearson

Proposed Recommendation:

The proposal has three components designed to meet the legislative mandate of the task force to “[r]ecommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public.”

1. The Jt. Leg. Task Force on the Use of Deadly Force in Community Policing recommends that more funding be provided for the Criminal Justice Training Center (CJTC) to review, update, and provide training that:
 - a. emphasizes de-escalation and alternatives to arrest or summons in situations where appropriate; and
 - b. includes shoot/don’t shoot scenarios and the use of less than lethal technologies.
2. The Jt. Leg. Task Force on the Use of Deadly Force in Community Policing recommends that minority advisory boards comprised of communities of colors be created or designated in each jurisdiction that trains cadets at the CJTC. The CJTC would incorporate a training component that would require cadets to meet with a minority advisory board in its jurisdiction.
3. The Jt. Leg. Task Force on the Use of Deadly Force in Community Policing recommends that as a part of the training at the CJTC that cadets will be paired with a seasoned veteran officer and patrol a minority community in order to see a working positive example of how that officer interacts with members of the community in the course of his or her duties.

Description/Reasoning:

These recommendations are designed to enact specific action items identified in the President’s Task Force on 21st Century Policing Implementation Guide. (Implementation Guide). The Implementation Guide emphasized training as a tool to drive change and explained the rationale as follows: “Many of the recommendations addressed the importance of training for basic recruits and in-service training in a number of key areas.

- Changing the culture of policing requires an emphasis on policing in a democratic society, training officers about how to protect human rights, dignity, and public safety for all.
- Undertake trainings and organizational change that address procedural justice, implicit bias, and de-escalation/use of force.
- Revisit field training officer processes to ensure they match up with the guardian culture of policing.
- Engage the community in trainings.” Implementation Guide, p. 20.

Recommendations 1 and 3 (to extent it incorporates training) are taken from Specific Action Step 1 for Law Enforcement that provides:

“1. Review and update policies, training, and data collection on use of force. Emphasize de-escalation and alternatives to arrest or summons in situations where appropriate. Policies and training should include shoot/don’t shoot scenarios and the use of less than lethal technologies.” (Implementation Guide, p. 11)

Recommendation 2 is drawn from Specific Action Step 1 for Communities that provides:
“1. Actively engage with local law enforcement by participating in community meetings, surveys, listening posts, civilian oversight boards, citizen academies, chaplain programs, and innovative activities related to technology. (Implementation Guide, p. 13)”

Recommendation 3 is drawn from an example Action Item in the Implementation Guide that provides:

“Action Item 4.4.2 Law enforcement agencies should develop programs that create opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders.” (Implementation Guide, p. 7).

Other Relevant Background Information:

https://cops.usdoj.gov/pdf/taskforce/Implementation_Guide.pdf

B. Senator David Frockt

#B1
Task Force Member(s): Senator David Frockt
Proposed Recommendation: Remove malice requirement from RCW 9A.16.040(3). Remove RCW 9A.16.040(3)'s explicit reference to "good faith," but add a defense to criminal liability if the use of deadly force was reasonable in light of all the facts and circumstances known to the officer at the time of the incident, as well as the officer's training and experience. Amended RCW 9A. 16.040(3) would appear as follows: (3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section <u>if the use of force was reasonable in light of all the facts and circumstances known to the officer at the time, as well as the officer's training and experience.</u>
Description/Reasoning: An analysis of whether the use of force – both the act of resorting to deadly force and the severity of the force used – was reasonable in light of all the circumstances known to the officer at the time of the incident brings our statute more in line with how other states approach this issue, as well as controlling legal authority.
Other Relevant Background Information:

#B2
Task Force Member(s): Senator David Frockt
Proposed Recommendation: Remove malice requirement from RCW 9A.16.040(3). Remove RCW 9A.16.040(3)'s explicit reference to "good faith," but add a defense to criminal liability if a reasonable officer would have believed the use of deadly force to have been necessary in light of all the facts and circumstances known to the officer at the time, as well as the officer's training and experience. Amended 9A.16.040(3) would appear as follows:

(3) A public officer or peace officer shall not be held criminally liable for using deadly force ~~without malice and with a good faith belief that such act is justifiable pursuant to this section~~ if a reasonable officer would have believed the use of deadly force was necessary in light of all the facts and circumstances known to the officer at the time, as well as the officer's training and experience.

Description/Reasoning:

WPIC 16.03 – Justifiable Homicide, Resistance to Felony – instructs the jury that “[t]he slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to [him] [her] at the time [and prior to] the incident.” This is also reflected in related case law.

This recommendation creates a “reasonable officer” standard by which a peace officer’s actions will be assessed. It allows for an officer’s use of deadly force without criminal liability if a reasonable peace officer under the same circumstances, taking into account the officer’s training and experience, would have found the use of force to be necessary (“necessary” being a requirement found in Section 1 of RCW 9A.16.040).

Other Relevant Background Information:

#B3

Task Force Member(s):

Senator David Frockt

Proposed Recommendation:

Remove malice requirement from RCW 9A.16.040(3).

Remove RCW 9A.16.040(3)’s explicit reference to “good faith,” but add a defense to criminal liability if the officer used such force and means as a “reasonably prudent officer” would use under the same or similar conditions as they reasonably appeared to the officer, taking into consideration all the facts and circumstances as they appeared to the officer at the time of and prior to the incident.

Amended RCW 9A.16.040(3) would appear as follows:

(3) A public or peace officer shall not be held criminally liable if the officer employed such force and means as a reasonably prudent officer would use under the same or similar conditions as they reasonably appeared to the officer, taking into consideration all the facts and circumstances as they appeared to officer at the time of and prior to the incident.

Description/Reasoning:

WPIC 16.03 – Justifiable Homicide, Resistance to Felony – instructs the jury that “[t]he slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and

circumstances as they appeared to [him] [her] at the time [and prior to] the incident.” This is also reflected in related case law.

This recommendation creates a “reasonably prudent officer” standard by which a peace officer’s actions will be assessed. It allows for an officer’s use of deadly force without criminal liability if a reasonable peace officer under the same circumstances, taking into account the officer’s training and experience, would have found the use of force to be necessary (“necessary” being a requirement found in Section 1 of RCW 9A.16.040).

Other Relevant Background Information:

#B4

Task Force Member(s):

Senator David Frockt

Proposed Recommendation:

Setting aside other statutory changes that might be appropriate, the malice element should be removed from our deadly force statute.

Description/Reasoning:

Other Relevant Background Information:

C. Jorge Baron (NWIRP), Lisa Daugaard (PDA), Toshiko Hasegawa (WA Comm. Asian Pacific American Affairs), Gerald Hankerson (NAACP), Dr. Karen Johnson (BATC), Fe Lopez (OneAmerica), Kim Mosolf (DRW), Gabriel Portugal (LCA), De’sean Quinn (WA Comm. African-American Affairs), Timothy Reynon (Gov. Office Indian Affairs), Officer Cynthia Softli (BLEA), Gloria Ochoa-Bruck (WA Comm. Hispanic Affairs)

#C1

Task Force Members:

Jorge Baron, Northwest Immigrant Rights Project
 Lisa Daugaard, Public Defender Association/Washington Defender Association/Washington Association of Criminal Defense Lawyers
 Toshiko Hasegawa, WA State Commission on Asian Pacific American Affairs
 Dr. Karen Johnson, Black Alliance of Thurston County
 Fe Lopez, OneAmerica
 Kim Mosolf, Disability Rights of WA
 Gabriel Portugal, Latino Civic Alliance
 De’sean Quinn, WA Commission on African- American Affairs
 Timothy Reynon, Governor’s Office on Indian Affairs
 Officer Cynthia Softli, Black Law Enforcement Association of WA
 Gloria Ochoa-Bruck, WA Commission on Hispanic Affairs
 Gerald Hankerson, National Association for the Advancement of Colored People
(Joint Proposal)

Proposed Recommendation:

Strengthen public trust in law enforcement and reduce violent interactions between the public and the law enforcement officers by:

- (a) Revising RCW 9A.16.040 to reflect the following best practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing;**
Principle #1: “The sanctity of human life should be at the heart of everything an agency does.”

Drafting approach: All uses of deadly force, except capital punishment, are restricted to situations where the threat is reasonably understood to be imminent and the use of deadly force is reasonably understood to be necessary.

Provide that use of deadly force is justified where an officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm. Provide clear definitions of “imminent,” “necessary,” and “reasonable belief,” making it clear that reasonably believes encompasses and protects an officer who makes an honest mistake.

Principle #2: “Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor.”

Drafting approach: Use “sanctity of life” as the backdrop and add requirements that protect police, the public, and suspects. Add the word “imminent” and “reasonably believes” throughout. Revise the definition of “necessary” to make clear that use of force should be a last resort and reference de-escalation and less lethal alternatives. Remove the “malice” and “good faith” defense. Clearly define “imminent” and “reasonably believes.” Require a warning in all situations unless a warning is futile.

Principle #3: “Police use of force must meet the test of proportionality”

Drafting approach: The revised definition of “necessary” will connect the proportionality principle to the threat presented.

Principle #4: “Adopt de-escalation as formal agency policy”

Drafting approach: Add “de-escalation” to the definition of “necessary.”

Principle #8: “Shooting at vehicles must be strictly prohibited.”

Drafting approach: Prohibit shooting at vehicles unless the suspect is using deadly force aside from the moving vehicle itself.

Principle #9: “Prohibit use of deadly force against individuals who pose a danger only to themselves.”

Drafting approach: Existing law uses the phrase “harm to others” or “third party.” Make this consistent throughout RCW 9A.16.040.

- (b) Establishing a channel for meaningful community input into key policing policies and robust, independent civilian oversight of police accountability practices;**
- (c) Establishing an independent state-wide special prosecutor with the authority to investigate and file charges in cases involving alleged misuse of deadly force by law enforcement and corrections personnel;**
- (d) Requiring the establishment of meaningful police accountability structures that, among other things, ensures that there is a safe mechanism to submit formal complaints about officers; an objective investigation of those complaints is completed in a timely manner; makes findings; where there is a finding of misconduct, recommends appropriate discipline and/or training; and ensures that discipline is appropriately completed;**
- (e) Requiring state-wide collection and reporting of data from all levels of law enforcement and corrections officers on use of deadly force (regardless of whether anyone is killed or injured), including:**
 - The number of tort claims filed and monies paid in use of force cases;**
 - The demographic characteristics of the officers and citizens involved in each incident, including sex, age, race, ethnicity, and presence of disability;**
 - The number of incidents in which peace officers discharged firearms at citizens;**

- The demographic characteristics of the officers and citizens involved in each incident, including sex, age, race, and ethnicity;
- The agency or agencies employing the involved officers and location of each incident;
- The particular weapon(s) used by peace officers and citizens;
- The injuries, if any, suffered by officers and citizens; and require regular reports to the public, at least annually, by each law enforcement agency;

- (f) Requiring academy training at the Criminal Justice Training Center (CJTC) and periodic training in the Department of Corrections and local police departments for all law enforcement and correction officers in Washington, with emphasis on de-escalation and good judgment skills, understanding and addressing implicit and explicit bias, cultural competency, use of less lethal force, and interacting with people with disabilities and behavioral issues so that officers are trained to address such issues in a science-based, humane and safe manner; and fund that capacity with grants for jurisdictions that need assistance to meet this requirement, on condition that they develop their training in conjunction with the CJTC;
- (g) Consistent with Recommendation 2.2.2 found on page 21 of the 21st Century Policing Taskforce (["mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths"]), require that all instances of deadly force be investigated by external bodies (outside the department employing the officer(s) involved) with investigative competency and sufficient resources; and fund that capacity through the Criminal Justice Training Commission; and
- (h) Revising RCW 43.101.400 (Racial profiling—Policies—Training—Complaint review process—Data collection and reporting) in keeping with current understanding that most policing practices that raise fairness concerns may not be implemented by individual officers engaging in racial profiling, but rather may reflect implicit bias by officers or institutional bias by policing organizations; replace “racial profiling” with measures to collect and report data on racial disparity in enforcement, and to require departments to consider alternative approaches that would reduce racial disparity without diminishing public safety.

Description/Reasoning:

We affirm the role of law enforcement to protect human life and believe that accountability and public trust are key components of law and order. Strengthening community policing policies, practices, and procedures that reduce violent interactions between the public and the law enforcement officers makes sense when they are built upon the foundational piece of amending Washington’s use of deadly force statute (RCW 9A.16.040) because, as Thomas Paine said, “a body...holding themselves accountable to nobody ought not to be trusted by anybody.”

Other Relevant Background Information:

This task force was charged to:

- (a) Review laws, practices and training programs regarding the use of deadly force in Washington state and other states;
- (b) Review current polices, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and

(c) Recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

This recommendation incorporates the principles and practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing that, when implemented, are designed to reduce the number of violent interactions between law enforcement officers and members of the public.

The Police Executive Research Forum (PERF) is a highly respected leader in the field of policing. Five weeks after Mike Brown was killed in Ferguson on August 9th 2014, PERF brought hundreds of law enforcement leaders together from across the nation to do what amounted to soul searching on the issue of police use of deadly force. This work culminated in *Defining Moments for Police Chiefs* which was published by PERF in February 2015.

Since then PERF has issued a number of foundational documents addressing policing.

In the spring of 2016, PERF published *30 Guiding Principles on the Use of Deadly Force*.

Similarly, the President’s Task Force on 21st Century Policing published a comprehensive report on reform in the spring of 2015, which aligns with many PERF principles.

REVISED (11/16) (additional sponsors and grammatical corrections).

D. Dr. Karen Johnson (BATC), Lisa Daugaard (PDA), De’sean Quinn (WA Comm. African-American Affairs), Kim Mosolf (DRW), Fe Lopez (OneAmerica), Jorge Baron (NWIRP), Kelly Harris (AWC), Gloria Ochoa-Bruck (WA Comm. Hispanic Affairs), Timothy Reynon (Gov. Office Indian Affairs), Gerald Hankerson (NAACP), Toshiko Hasegawa (WA Comm. Asian Pacific American Affairs), Gabriel Portugal (Latino Civic Alliance), Officer Cynthia Softli (BLEA)

#D1

Task Force Members:

Dr. Karen Johnson, Black Alliance of Thurston County
Lisa Daugaard, Public Defender Association/Washington Defender Association/Washington Association of Criminal Defense Lawyers
De’sean Quinn, WA Commission on African- American Affairs
Kim Mosolf, Disability Rights of WA
Fe Lopez, OneAmerica
Jorge Baron, Northwest Immigrant Rights Project
Kelly Harris, Association of WA Cities
Gloria Ochoa-Bruck, WA Commission on Hispanic Affairs
Timothy Reynon, Governor’s Office on Indian Affairs
Gerald Hankerson, President, National Association for the Advancement of Colored People
Toshiko Hasegawa, WA Commission on Asian Pacific American Affairs
Gabriel Portugal, Latino Civic Alliance
Officer Cynthia Softli, Black Law Enforcement Association of WA
(Joint Proposal)

Proposed Recommendation:

Strengthen public trust in law enforcement and reduce violent interactions between the public and the law enforcement officers by **revising RCW 9A.16.040 to reflect the following best practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing:**

Principle #1: “The sanctity of human life should be at the heart of everything an agency does.”

Drafting approach: All uses of deadly force, except capital punishment, are restricted to situations where the threat is reasonably understood to be imminent and the use of deadly force is reasonably understood to be necessary.

Provide that use of deadly force is justified where an officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm. Provide clear definitions of “imminent,” “necessary,” and “reasonable belief,” making it clear that reasonably believes encompasses and protects an officer who makes an honest mistake.

Principle #2: “Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor.”

Drafting approach: Use “sanctity of life” as the backdrop and add requirements that protect police, the public, and suspects. Add the word “imminent” and “reasonably believes” throughout. Revise the definition of “necessary” to make clear that use of force should be a last resort and reference de-escalation and less lethal alternatives. Remove the “malice” and “good faith” defense. Clearly define “imminent” and “reasonably believes.” Require a warning in all situations unless a warning is futile.

Principle #3: “Police use of force must meet the test of proportionality”

Drafting approach: The revised definition of “necessary” will connect the proportionality principle to the threat presented.

Principle #4: “Adopt de-escalation as formal agency policy”

Drafting approach: Add “de-escalation” to the definition of “necessary.”

Principle #8: “Shooting at vehicles must be strictly prohibited.”

Drafting approach: Prohibit shooting at vehicles unless the suspect is using deadly force aside from the moving vehicle itself.

Principle #9: “Prohibit use of deadly force against individuals who pose a danger only to themselves.”

Drafting approach: Existing law uses the phrase “harm to others” or “third party.” Make this consistent throughout RCW 9A.16.040.

Description/Reasoning:

We affirm the role of law enforcement to protect human life and believe that accountability and public trust are key components of law and order. Strengthening community policing policies, practices, and procedures that reduce violent interactions between the public and the law enforcement officers makes sense only when they are built upon the foundational piece of amending Washington’s use of deadly force statute (RCW 9A.16.040) because, as Thomas Paine said, “a body...holding themselves accountable to nobody ought not to be trusted by anybody.”

Other Relevant Background Information:

This task force was charged to:

- (a) Review laws, practices and training programs regarding the use of deadly force in Washington state and other states;
- (b) Review current polices, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and
- (c) Recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

This recommendation incorporates the principles and practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing that, when implemented, are designed to reduce the number of violent interactions between law enforcement officers and members of the public.

The Police Executive Research Forum (PERF) is a highly respected leader in the field of policing. Five weeks after Mike Brown was killed in Ferguson on August 9, 2014, PERF brought hundreds of law enforcement leaders together from across the nation to do what amounted to soul searching on the issue of police use of deadly force. This work culminated in *Defining Moments for Police Chiefs* which was published by PERF in February 2015.

Since then PERF has issued a number of foundational documents addressing policing.

In the spring of 2016, PERF published *30 Guiding Principles on the Use of Deadly Force*.

Similarly, the President's Task Force on 21st Century Policing published a comprehensive report on reform in the spring of 2015, which aligns with many PERF principles.

E. Kelly Harris (AWC) and Mark Roe (WAPA)

#E1
Task Force Member(s): Kelly Harris and Mark Roe (Joint proposal)
Proposed Recommendation: <ol style="list-style-type: none">1. Create a central collection point within the state for all law enforcement agencies to send officer-involved firearm discharge data.2. Require and fund expanded basic and in-service training for law enforcement officers on de-escalation, disengagement and less-than-lethal force options.3. Remove affirmative proof of malice from the deadly force justification statute and expressly define good faith as whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.4. Engage in a campaign of public service announcements, utilizing state celebrities, encouraging that objections, frustrations, or anger with law enforcement contacts to be resolved after the incident, not on the roadside, or in the heat of the moment.
Description/Reasoning: <ol style="list-style-type: none">1. Currently, most law enforcement agencies have some deadly force data collection and review. The process is not uniform. More problematically for public policy purposes, the data collection is inconsistent which may thwart analysis. The FBI is likely going to standardize data collection. Washington State can take advantage of this uniform data collection by centralizing the collection and storage. This could be done at several state agencies, including the Criminal Justice Training Commission or the Attorney General's Office.2. The great majority of experienced law enforcement officers know when public safety is not compromised by attempting to calm, negotiate, and deescalate a potentially violent situation. Required and funded basic and in-service training can implement those practices more broadly and immediately in new law enforcement officers, and across the spectrum of all existing law enforcement officers.3. Amend RCW 9A.16.040(3) to read as follows: <u>A public officer or peace officer shall not be held criminally liable for using deadly force ((without malice and)) with a good faith belief that such act is justifiable pursuant to this section. For purposes of this chapter, good faith is whether a reasonable peace officer, relying upon the facts and circumstances known by the officer at the time of the incident, would have used deadly force.</u>

4. A campaign of public service outreach and announcements, even utilizing famous people, should encourage anyone and everyone who comes in contact with law enforcement to follow the officer's directions. If the contacted citizen feels the cops are wrong, they should address that later, not out on the street or in the community at a time everyone is worked up.

Other Relevant Background Information:

1. We expect to see new federal requirements on use of deadly force reporting implemented during 2017. Once reviewed and validated for Washington State, a central state agency repository, such as the Attorney General's Office, will provide better opportunities for data analysis and its separation from local law enforcement agencies will increase public confidence in reported data. This should be limited to police discharge of firearms, because that will be a manageable amount of data, and is the most critical and dangerous circumstance for this task force to address.
2. The Criminal Justice Training Commission is already implementing training to reduce confrontation and improve de-escalation during the basic law enforcement training. This current effort should be supported, expanded, required, and fully funded. It will be important to expand this training to ongoing in-service requirements – which includes a commitment to provide this training to all existing officers, no matter where they work, and to make such training ongoing, and a permanent part law enforcements' curriculum.
3. Eliminating affirmative proof of malice, while retaining an expressly defined good faith standard is fair, and consistent with other states. The Task Force should reject the extreme positions that either A. Eliminate all protection for law enforcement (ie. eliminate both malice and good faith), even though law enforcement are affirmatively required to enter dangerous situation, or B. To do nothing (i.e. do not amend RCW 9A.16.040 at all.) with the current subjective bar to individual criminal accountability. While such a statutory change is unlikely to have any effect on the occurrence of deadly encounters, this change would bring Washington law more in line with other states, none of whom currently require proof of malice.
4. The best and highest result from Task Force efforts, and indeed its goal, is to recommend policies that will reduce and avoid fatalities. Avoiding confrontations, de-escalating unavoidable confrontations, and finally resolving violent confrontations without death or injury, is going to involve behavior changes by suspects, citizens and officers alike. Cooler heads and changed conduct from everyone can save lives. When emotions take over, escalation tends to occur. These announcements would be similar to information thousands of good parents already give their children all across the state.

F. Chief Ken Hohenberg (WASPC)

#F1
Task Force Member(s): Chief Ken Hohenberg
Proposed Recommendation: Require law enforcement agencies to report the use of deadly force to the Attorney General's Office, and require the Attorney General's Office to collect data, on a standardized statewide basis, regarding the use of deadly force by law enforcement officers.
Description/Reasoning: Washington does not routinely collect data, on a standardized statewide basis, regarding the use of deadly force by its law enforcement officers. Such reporting would include any instance where a law enforcement officer used deadly force (as defined in 9A.16.010), regardless of the outcome; and any instance where a law enforcement officer used force that resulted in death or great bodily harm (as defined in RCW 9A.04.110). Such reporting should comply with pending federal reporting standards regarding the use of deadly force by law enforcement officers. Establishing a statewide, standardized system of data collection regarding the use of deadly force by Washington's law enforcement officers enables policymakers and the public to make informed decisions relating to the use of deadly force in this state.
Other Relevant Background Information: The FBI is currently developing standards for states to submit data regarding the use of deadly force by law enforcement officers. These standards are expected to be published in late 2017. Washington's effort to collect this data should be done in a manner consistent with federal guidelines, enabling Washington to submit its data to the FBI. Estimated cost: \$60,000/FY

#F2
Task Force Member(s): Chief Ken Hohenberg
Proposed Recommendation: That the Legislature fund competitive grants to local law enforcement agencies to conduct community engagement activities, <u>and</u> that the Legislature fund the Commission on African American Affairs, Commission on Asian Pacific American Affairs, Commission on Hispanic Affairs, and the Governor's Office of Indian Affairs to strengthen relations between their respective communities and law enforcement.

Description/Reasoning:

While Washington may not have the kind of racial divide between law enforcement and the community as seen in other states, Washington can, and should, do better to connect law enforcement and the communities they serve. Sheriffs and police chiefs in Washington have been working to identify opportunities for law enforcement agencies to better engage with their communities. A ‘menu of options’ has been developed and made available to every sheriff and police chief, but these efforts require resources and agencies are left to find these resources within budgets that have dwindled over the years. Additionally, Washington’s Commission on African American Affairs, Commission on Asian Pacific American Affairs, Commission on Hispanic Affairs, and the Governor’s Office of Indian Affairs have each struggled with limited resources to engage their respective communities to build trust with law enforcement.

Establishing a stable and ongoing funding source for law enforcement agencies to engage with their communities, and for communities to engage with law enforcement will make a positive difference in police-community relations, build public trust in law enforcement, and help break down implicit bias.

Other Relevant Background Information:

Estimated cost: \$2M/FY

#F3

Task Force Member(s):

Chief Ken Hohenberg

Proposed Recommendation:

That the Legislature fund a grant program for local law enforcement agencies to equip primary responding officers with less lethal weapons.

Description/Reasoning:

While many of Washington’s local law enforcement agencies have the resources to equip and train officers with less lethal weapons, some simply do not. Less lethal weapons provide additional alternatives for officers confronted with violent interactions.

Access to less lethal weapons by primary responding law enforcement officers will, in certain circumstances, provide officers with an additional option to deadly force. This proposal seeks to equip primary responding officers with less lethal weapons; it specifically excludes specialty units from consideration.

Other Relevant Background Information:

Estimated cost: \$100,000/FY

#F4

Task Force Member(s):

Chief Ken Hohenberg

Proposed Recommendation:

That the Legislature reinstate a version of the Public Safety Education Account (PSEA) that establishes a series of dedicated funding sources into a non-appropriated account used to support the financial obligations of the Criminal Justice Training Commission (CJTC).

Description/Reasoning:

Washington requires its law enforcement officers to be certified, attending a centralized Basic Law Enforcement Academy (BLEA) that provides standardized training to newly hired law enforcement officers. The training curriculum provided to newly hired law enforcement officers emphasizes a guardian mindset to policing, de-escalation techniques, crisis intervention, procedural justice, and implicit bias and perception.

Training newly hired law enforcement officers in these curricula are key to improving public trust, developing critical thinking and decision-making skills among law enforcement officers, and instilling ethical principles. In fact, the guardian mindset for law enforcement training was the first recommendation in the first pillar (building trust and legitimacy) in the President’s Task Force on 21st Century Policing. Preliminary data from a 5-year evaluation of the CJTC’s transition to the Guardian mindset and crisis intervention training by Seattle University declared *“Findings show clear training effects upon completion of both BLEA and CIT with respect to support for CIT, identification of the condition of individuals in behavioral crisis, interactions and case disposition involving individuals in behavioral crisis.”*¹

Currently, the Criminal Justice Training Commission receives its funding from the state general fund, subject to economic and budget pressures and competing political interests of the state legislature. That, combined with the difficulty in predicting the hiring rate for local law enforcement agencies, results in circumstances where BLEA enrollments require 18 classes this fiscal year, but the CJTC is only funded to provide 10 classes. This causes 9-12 month delays in getting recruits into the academy, also violating RCW 43.101.200 (requiring the commencement of basic training within the first six months of hire). The same is true for the Corrections Officer Academy (COA) that the CJTC provides for corrections officers – the CJTC is funded for only 5 COA classes, yet faces enrollments necessary for 8 COA classes in FY17.

Establishing the Public Safety Enhancement Account, modeled after the Public Safety and Education Account, creates an ongoing, stable, non-appropriated funding source sufficient to ensure proper funding of essential criminal justice programs, including the training of law enforcement officers, corrections officers, prosecutors, coroners and medical examiners, and additional programs aimed at reducing the number of violent interactions between law enforcement and the public.

¹ Evaluation of the Washington State Criminal Justice Training Commission’s “Warriors to Guardians” Cultural Shift and Crisis Intervention Team (CIT) Training, Final Report June 30, 2015; Seattle University Department of Criminal Justice

Standardized training of law enforcement officers is an essential government function, and should be immune from the ebbs and flows of the economy and competing political interests of the legislature. The re-establishment of a version of the PSEA, providing sufficient, dedicated, sustainable, and non-appropriated funding for the financial obligations of the Criminal Justice Training Commission is essential to reducing the number of violent interactions between law enforcement and the public.

Other Relevant Background Information:

In 1984, the Legislature created the Public Safety and Education Account (PSEA) to fund standardized training of law enforcement officers, among other things. The PSEA was funded through the dedication of certain local criminal justice-related revenues (fines, fees, and forfeitures). In 2009, the PSEA was eliminated with the passage of SB 5073 (along with the Health Service Account, the Violence Reduction and Drug Enforcement Account, the Student Achievement Fund, the Water Quality Account, and the Equal Justice Subaccount), redirecting these local revenues to the state general fund. Until its elimination in 2009, the PSEA provided nearly \$100M per year in ongoing, stable funding for the purposes for which it was created.

Estimated cost: FY 18-FY21: ~\$19.5M/FY
FY22 Forward: ~\$47.5M/FY

#F5

Task Force Member(s):
Chief Ken Hohenberg

Proposed Recommendation:

That the Legislature provide financial incentives for law enforcement agencies and jails to receive and maintain professional accreditation.

Description/Reasoning:

Accreditation is a comprehensive peer-review process that conducts an in-depth review of a law enforcement agency's policies, practices and procedures according to best practices and standards to further professionalize the law enforcement industry. Currently, 59 of Washington's 276 law enforcement agencies and 1 of Washington's 57 jails have successfully completed the accreditation process².

Creating a financial incentive for law enforcement agencies and jails to achieve and maintain accreditation status will encourage more agencies to become accredited, and accelerate the professionalism of Washington's law enforcement and corrections agencies.

2

http://www.waspc.org/assets/ProfessionalServices/washington%20state%20accredited%20agencies_as%20of%2005-2016.pdf

Other Relevant Background Information:

Estimated cost: \$4.1M/FY

#F6

Task Force Member(s):

Chief Ken Hohenberg

Proposed Recommendation:

Require a study and recommendations to increase the diversity of Washington’s law enforcement officers.

Description/Reasoning:

Law enforcement agencies should better reflect the communities they serve. Washington law enforcement agencies use a hiring process as required by state civil service rules to hire law enforcement officers and applicants undergo an extensive background check process.

A study that examines Washington’s screening process and hiring standards for law enforcement officers, with recommendations from that study, could provide decision-makers with guidance on how to increase the diversity of its law enforcement officers.

Other Relevant Background Information:

Estimated cost: \$250,000 (one-time)

G. Kim Mosolf (DRW)

#G1
Task Force Member(s): Kimberly Mosolf, Disability Rights Washington
Proposed Recommendation: Require academy training at the Criminal Justice Training Center (CJTC) and periodic training in the Department of Corrections and local police departments for all law enforcement and correction officers in Washington focusing on improving outcomes of law enforcement interactions with people with disabilities. Fund that capacity with grants for jurisdictions that need assistance to meet this requirement, with the condition that they develop their training in conjunction with the CJTC.
Description/Reasoning: This training should address mental illness, but should also recognize that there are many people with other disabilities relevant to law enforcement interaction. This includes, but is not limited to, people who are deaf or hearing impaired, people with an intellectual disability, people with traumatic brain injury, or people with autism spectrum disorder. The training should involve people with disabilities, especially those with relevant experiences with law enforcement, and should incorporate evidence-based best practices. It should be in addition to the existing 8 hour CIT training mandated for law enforcement.
Other Relevant Background Information: Disability Rights Washington whole-heartedly supports the recommendations submitted jointly by Dr. Karen Johnson and the other twelve members of the Task Force. Given DRW's role as the only formal representative of people with disabilities on the Task Force, we felt it was important to further highlight the role that disability plays in police interaction and the ways police may address these concerns. While mental illness features heavily in conversations around police use of force incidents, there are many other disabilities that are relevant to police interaction. People who are deaf or hard of hearing may have serious communication barriers with law enforcement which can lead to potentially dangerous misunderstandings. People with diabetes may face a related medical emergency causing disorientation or aggression that can be mistaken for intoxication or belligerence during police encounters. People with intellectual disability or autism may have difficulty understanding and responding appropriately to law enforcement commands. This all can cause confusion, frustration and potentially serious bodily harm as a result. Law enforcement agencies need to better understand and engage with people with disabilities. While this cannot be achieved solely by training, training does offer a very good opportunity to increase understanding, provide practical strategies, and promote better familiarity between law enforcement and disability community resources.
#G2
Task Force Member(s): Kimberly Mosolf, Disability Rights Washington

Proposed Recommendation:

Reduce potentially harmful interactions between police and people experiencing mental health crisis by improving and increasing funding for Washington’s community mental health system. The best way to prevent police use-of-force incidents involving people in mental health crisis is to prevent the crisis entirely. Effective community-based treatment prevents crisis.

Description/Reasoning:

The state should fund additional, better-coordinated community mental health services to meet existing need. The state should also study and fund other promising ways of working with people who are high utilizers of emergency response services due to mental health crisis, but are not well served by the traditional outpatient treatment model. These individuals need more intensive services in order to stabilize in the community and avoid crisis-driven contact with police. Promising methods include integrating mental health and substance disorder services, developing community outreach, and improving coordination and data sharing between service providers. The state should also promote and fund Mobile Crisis Teams (MCTs). In addition to providing police with mental health treatment professionals to accompany them in responding to crisis situations, MCTs also serve people in mental health crisis before law enforcement becomes involved.

Other Relevant Background Information:

Disability Rights Washington whole-heartedly supports the recommendations submitted jointly by Dr. Karen Johnson and the other twelve members of the Task Force. Given DRW’s role as the only formal representative of people with disabilities on the Task Force, we felt it was important to further highlight the role that disability plays in police interaction and the ways police may address these concerns.

According to a recent report from Mental Health America, Washington State ranked as one of the worst states in the nation in providing mental health care to adults. After the mass de-institutionalization of people with mental illness in the mid twentieth century, we failed as a society to properly fund and support community mental health services for this population. The result has been widely reported on—when people with mental illness cannot access adequate care in their communities, they are often funneled into the criminal justice system. Society now relies on law enforcement to help people in mental health crisis, sometimes at great human cost. Over 50% of people killed by police shooting in Washington State in 2015 involved people with signs of mental illness.

H. Sergeant Rich Phillips (WACOPS), Lieutenant Travis Adams (WAFOP), and Officer Kerry Zieger (COMPAS)

<p>#H1</p>
<p>Task Force Member(s): Rich Phillips, Washington Council of Police & Sheriffs (WACOPS) Travis Adams, Washington State Fraternal Order of Police (WAFOP) Kerry Zieger, Council of Metropolitan Police and Sheriffs (COMPAS) (Joint proposal)</p>
<p>Proposed Recommendation:</p> <ol style="list-style-type: none"> 1. Make no changes to current Washington State Use of Force laws. 2. Petition the legislature to implement the following: <ul style="list-style-type: none"> • Develop criteria and provide full funding for a statewide database to record use-of-force situations and incidents; • Provide full funding for Washington State Criminal Justice Training Commission (CJTC) including reinstating the Public Safety and Education Account (PSEA); • Develop, implement and monitor deadly force management and oversight for administrative and supervisory personnel; • Develop criteria and provide full funding with incentives to law enforcement agencies to meet the best practices of the profession by participating in an accreditation process; • Provide funding for communities to apply for grants to better address their own concerns of public safety with their community partners; • Provide equipment and advanced training for de-escalation and the use of less lethal options during encounters; • Fully fund public and mental health access and facilities; • Address staffing levels with adequate funding. Develop short and long term goals and solutions.
<p>Description/Reasoning:</p> <p>In accordance with HB2908, this task force has the three following action items:</p> <ul style="list-style-type: none"> • Review laws, practices, and training programs regarding the use of deadly force in Washington state and other states; • Review current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and • Recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public. <p>The prior three meetings of the Task Force have addressed the first two bullet points above and began the discussion regarding recommendations. The presentations and discussions regarding existing practices and training programs identified that The Washington State Criminal Justice Training Center (CJTC) has begun implementing the Presidents 21st Century Policy on Policing, and provides training in de-escalation, Blue Courage, Guardian vs. Warrior, and crisis intervention training within the resources available. The presentation on alternatives to use of lethal force provided the task force</p>

with an overview of options available, the potential malfunctions or ineffectiveness of the tools, along with some of the risks to the public and officers. The availability of Force on Force training options has dramatically reduced the number of officer involved shootings.

A critical point regarding the deployment of Force on Force training that was mentioned, but seemed to be skipped over rather quickly, was that use of force option may not be on a use of force continuum. Long distance pepper spray, then Taser, then deadly force may not be an option in dealing with a noncompliant suspect that is posing a danger to the public and officer safety. A point that was not made in the presentation is that a law enforcement officer deploys a less than lethal option when only a deadly force option will stop the threat. This underscores the importance of adequate/reality based training in less than lethal and deadly force options. Additionally, not all departments have the resources to purchase the tools and provide adequate ongoing training.

It must be pointed out that CJTC no longer has a dedicated funding stream and from one legislative session to the next has to wait for a final budget to determine what resources it has to accomplish their mission. The Public Safety Education Account (PSEA) that formerly provided a dedicated funding stream has long been swept and those resources diverted to the general fund. The PSEA must be re-established and those resources dedicated to law enforcement training.

Once funding is secured, both Basic Law Enforcement Academy (BLEA) and advanced training (including command and supervisory staff) can be enhanced through CJTC. Additional funding must also be made available for law enforcement agencies to bolster their in-house training. Based on size and resources there is a wide variety in quantity and quality of training available once an officer has graduated from the academy (BLEA). Not every department has post-BLEA and/or Field Training Officer (FTO) programs available to bridge the gap from BLEA training to patrolling our communities. Annual ongoing training has been dramatically cut with shrinking local government budgets. Restoring training resources is critical in order for our law enforcement officers to be able to perform at the high level that we all expect.

One cannot discount the strain placed on law enforcement from failures in Public Health and Mental Health policies. 9-1-1 calls for law enforcement continue to increase for un-medicated, untreated individuals with mental health and other public health issues that cannot or will not find the resources in the community to assist them prior to their crisis.

The CIT training is providing law enforcement with new tools to better understand and interact with these individuals, but the sheer volume of requests for service is overwhelming and a strain on the entire law enforcement response system.

The population of Washington State is increasing at one of the highest rates in the country and staffing levels in our police agencies have been falling at an even greater rate. The economic crisis of the late 2000's had a devastating effect on local government police agencies and the financial rebound has yet to restore the staffing cuts that have reached 20-25% in some police departments. As calls for service increase, there are fewer officers to respond and as expected, greater caseloads. The outcome of these staffing shortages is increased officer fatigue, longer waits for backup, decreased training and decreased proactive and community policing.

The President's 21st Century Policy on Policing is based on the following six pillars:

- 1. Building Trust and Legitimacy**
- 2. Policy and Oversight**
- 3. Technology and Social Media**

4. Community Policing and Crime Reduction

5. Training and Education

6. Officer Wellness and Safety

Staffing shortages are having a devastating impact and impeding our law enforcement agencies ability to effectively engage in pillars 1, 4, 5, and 6.

Some of the answers to reducing violent interactions between law enforcement and members of the public may exist within the communities themselves. Each community is unique and the pathway to solutions in smaller agencies like Longview, Bellingham or Tri Cities isn't likely the same as those in Olympia, Seattle or Spokane. Resources and adequate funding should be made available to communities to improve police relations and understanding between law enforcement and the communities they serve. Along with these localized avenues, generalized education regarding police interactions should be developed and dispersed statewide via PSA's or other methods including the schools.

Intuitively each of these proposed recommendations will have some positive impact on reducing violent interactions between law enforcement and members of the public. How about empirically? Without robust data collection and evaluation, we will have no evidence of what is actually making our communities safer.

Finally, in regards to changing RCW 9A.16.040 to remove "malice" and "good faith", there has been no credible evidence provided to this Task Force that modifying the statute would reduce violent interactions between law enforcement and members of the public. Meanwhile, community policing, training, de-escalation, staffing, and less than lethal options have all had measurable reductions in violent interactions between law enforcement and members of the public.

It was apparent to more than one Task Force member that so much time was spent on changing the law discussion, that little time was actually spent discussing ways to decrease and/or prevent officer need to employ deadly force options. Changing the law so that it looked like the Task Force accomplished something is not only irresponsible but could make our communities less safe and ignores the legislative charge of its duties.

Respectfully submitted,

Craig Bulkley, President
**WASHINGTON COUNCIL
PATROL
OF POLICE AND SHERIFFS
ASSOCIATION**



Rich O'Neill, President
**COUNCIL OF METROPOLITAN
POLICE AND SHERIFFS
COMPAS**

Marco Montebianco, President
**WASHINGTON STATE
FRATERNAL ORDER OF POLICE**



Jeff Merrill, President
**WASHINGTON STATE
TROOPERS**



I. Gabriel Portugal (LCA)

#1

Task Force Member:

Gabriel Portugal, Latino Civic Alliance

Proposed Recommendation:

LCA Recommends the modification of RCW 9A.16 .040(3) as follows:

Governing deadly force is amended deleting the following language: "malice" and "good faith".

LCA believes public safety to be a foundation for viable cities and towns in the State of Washington and that public safety is best achieved when law enforcement operates in full partnership with the community.

When the community perceives policing positively they are more willing to comply and assist police officers in efforts designed to reduce criminal behavior. The opposite is also true: When a community perceives police officers as authorized to act outside the law without accountability, the legitimacy of police work is diminished, and trust in law enforcement vanishes.

The RCW's requirement of "malice" and exception for "good faith" makes it almost impossible for a prosecutor to charge a police officer's use of unlawful deadly force no matter how outrageous. Furthermore the community perceives this as a blanket immunity for police officers involved in deadly shootings.

LCA believes removal of these words would help reduce the polarization between law enforcement and the community and be an important step toward restoring trust and building quality relationships that advance public safety.

LCA believes in the need for a comprehensive plan that addresses community-and-law enforcement collaboration. Together, community members and law enforcement, with open communication and cooperation, can develop mechanisms to improve relations between the community and law enforcement.

Additional considerations for discussion:

Establish Washington State standards and reporting of police use of deadly force

- A. Require officers give a verbal warning, when possible, before using deadly force and give subjects a reasonable amount of time to comply with that warning.
- B. Require that an officer's tactical conduct and decisions leading up to using deadly force be considered in judgements of whether such force was reasonable.
- C. Prioritize de-escalation.
- D. Carry a less-lethal weapon.
- E. Require reporting of police killings or serious injuries of civilian to a non-law enforcement agency.
- F. Prioritize recruiting police that are representative of the people their policing. One of the main problems with policing is the "stranger effect." If an officer doesn't understand some of the

cultural differences he/she could in fact interpret something quite normal to be abnormal. Therefore, the necessity to have officers that understand the community they serve is paramount.

J. Officer Kerry Zieger (COMPAS)

#J1

Task Force Member(s):

Kerry Zieger-Council of Metropolitan Police and Sheriffs

Proposed Recommendation:

- 1) Make no changes to the current deadly force law.**
- 2) Create a statewide database to collect detailed, comprehensive information on police deadly force encounters.**

Description/Reasoning:

Make no changes to the current deadly force law.

At this time we recommend no changes to the current deadly force law. There is no data or evidence to support the need for a change.

Unless and until there is actual data, any change to current law will be based on emotion and unsupported opinions. In fact, the data presented by Tom McBride from the Washington Association of Prosecuting Attorneys showed that contrary to recent media coverage, Washington State law enforcement officers are not shooting and killing a disproportionate number of minorities. Far more white males are killed by police than any other race, according to McBride.

McBride also explained, contrary to the current position of many on the Task Force who claim we need to “even the playing field,” that officers are already held to a higher standard when justifying their use of force. Calling our state an “outlier” might be accurate if you say we are the only state with the words malice and good faith. But does that make our laws the most difficult in the country to prosecute? Ten other states have **no** laws regarding deadly force by police officers. Are these states easier to prosecute a police officer? The statements proffered by some on the task force do not give any concrete data from which we can make an informed decision to say that our state is in fact an outlier.

It is clear that some members of the task force believe that officers involved in some of the recent high profile shootings in our state should be prosecuted and a failure to do is a result of a poorly worded statute. Keep in mind, however, that the Department of Justice is always able to do – and often does – a separate investigation and can prosecute any officer in violation of the law. The federal standard for charging an officer is the same throughout the country and yet none of the officers cited as examples to justify changing the law have been prosecuted by the DOJ.

Without valid data appropriately compiled by a legitimate source, many people rely on the Seattle Times article “Shielded by the Law” as fact. Yet a quick review of the article shows flaws in the data provided:

Some examples cited in the article:

28-year-old white male unarmed-inaccurate; the male wasn't even killed by police-he died in jail.
37-year-old black male unarmed-inaccurate; this was Maurice Clemmons who murdered four Lakewood Police Officers. When Clemmons was killed by Seattle Police he was in possession of one of the Lakewood Officer's guns.
39-year-old mix race male unarmed-inaccurate; again this person died in the Spokane Jail. He was not killed by police.

There are numerous other examples and this just reinforces our belief that we need accurate, unbiased data to determine **if** there is a need to change the law.

Create a statewide database to collect detailed, comprehensive information on police deadly force encounters.

Again there is no evidence to support that there is a need to change the deadly force law. Washington needs to create a statewide database with a comprehensive collection of standardized data. This will show exactly what is and is not happening during the interactions between officers and the public and we will no longer rely on sensationalized media stories for information. Data collection should be mandatory for all agencies. This is the single best way to achieve the transparency demanded by the citizens of our state.

Although we realize this type of database might be expensive, it is practical and necessary. The DOJ and other states are already actively pursuing this. Many members of Task Force also have supported this.

Other Relevant Background Information:

Appendix C
Comments on Recommendation Proposals



WASHINGTON STATE COMMISSION ON
AFRICAN AMERICAN AFFAIRS



WASHINGTON STATE COMMISSION ON
**ASIAN PACIFIC
AMERICAN AFFAIRS**

The Governor's commissions on Hispanic, African American and Asian Pacific American Affairs co-hosted a community conversation on the state law on deadly force in Spokane, Washington on 11/5/2016. One of the roles of the ethnic commissions is to provide community input and perspective.

All of the meetings have been held on the West side of the State. Task Forces in other states have convened in diverse geographic locations in an effort to provide opportunity for participation. The Washington Ethnic Commissions sought to seek input from both the public and the law enforcement community in Eastern Washington. Gonzaga Law hosted the Ethnic Commissions and the event in which law enforcement, the County Prosecuting Attorney's office, civil rights attorneys, police accountability advocacy groups, community advocates and members of the public participated.

We would like to share the feedback, input and recommendations that were received and submitted to the Ethnic Commissions from Eastern Washington to be disseminated and shared with the Task Force. We believe this input adds to the discussion and provides the Task Force with the opportunity to consider additional perspectives.

1. Standardize the definition of "the use of force" that all law enforcement agencies in the state of Washington must follow.
2. Address the possibility of fired officers being re-hired at different agencies as law enforcement. Allow for law enforcement agencies that terminate officers based on progressive discipline for excessive use of force and/or for being deceitful on duty to appeal to Superior Court and not make decision final and binding at arbitration.
3. Civil liability should apply to negligence. Criminal culpability should apply to reckless and intentional conduct. Reckless conduct is such conduct that the actor knows is wrong but does it anyway. Negligent conduct addresses circumstances in which an honest mistake was made that causes harm but it was not intentional or done in total disregard of training and protocol. It is not appropriate to ask officers to proactively engage in policing activities that put them in harm's way with a threshold that places them at risk for criminal culpability for reasonable and honest mistakes.

4. Establish independent oversight bodies to conduct investigations. Suggest establishing a standardized protocol for all agencies to conduct investigations in deadly use of force incidents that result in death.
5. Mandate that all use of deadly force cases that result in death be reviewed for a charging decision by the Attorney General's Office.
6. At this time, the Basic Law Enforcement Training curricula provided at the Academy is not research or evidenced based. We have no state standards or requirements for advanced training once a cadet leaves the academy. There are no state standards for advanced training with wide disparities between agencies dependent on available resources. We have no state standards requiring training be accredited.
7. A task force should be created that includes The Washington State Criminal Justice Training Commission (CJTC), in partnership with the Washington State University, African American Affairs, Commission on Asian Pacific American Affairs, Commission on Hispanic Affairs, Governor's Office of Indian Affairs Commission, and the WASPC Law Enforcement Training Committee representative(s), WACOPS representative(s) to use the Accreditation for Law Enforcement Agencies (CALEA) Standards/Policies (Instructional Systems and Training Administration) as a guide, and author training standards that will develop and define an Instructional Systems Approach (ISA). The standardized ISA policy driven approach will be used by the CJTC Staff to develop current and future Research-Based and Best-Practice, Basic and Advanced Law Enforcement Curricula, Implementation, and Evaluation not limited to but to include crisis intervention training, implicit bias and advanced deescalation techniques. In addition, using the ISA process approach, the same group (community driven training committee) will be used to assess, evaluate, recommend and approve any and all new content and rewrites of the Basic Law Enforcement Academy and Advanced training on an annual basis.
8. Train the public on their rights via a Public education campaign.

Toshiko Grace Hasegawa
WA Commission on Asian Pacific American Affairs

De'Sean Quinn
WA Commission on African American Affairs

Gloria Ochoa-Bruck
WA Commission on Hispanic Affairs

Seattle Community Police Commission

Our City. Our Safety. Our Police. **Better Together.**

November 18, 2016

VIA EMAIL

Re: Joint Legislative Task Force on the Use of Deadly Force in Community Policing Recommendations

Dear Task Force Members,

The Seattle Community Police Commission (CPC), charged under the Settlement Agreement between the Department of Justice and the City of Seattle with representing a broad range of community perspectives in changing police policies and practices, supports the following proposed Task Force recommendations:

Strengthen public trust in law enforcement and reduce violent interactions between the public and the law enforcement officers by:

(a) Revising RCW 9A.16.040 to reflect the following best practices developed by the Police Executive Research Forum (PERF) and the President’s Task Force on 21st Century Policing;

Principle #1: “The sanctity of human life should be at the heart of everything an agency does.”

Drafting approach: All uses of deadly force, except capital punishment, are restricted to situations where the threat is reasonably understood to be imminent and the use of deadly force is reasonably understood to be necessary.

Provide that use of deadly force is justified where an officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm. Provide clear definitions of “imminent,” “necessary,” and “reasonable belief,” making it clear that reasonably believes encompasses and protects an officer who makes an honest mistake.

Principle #2: “Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor.”

Drafting approach: Use “sanctity of life” as the backdrop and add requirements that protect police, the public, and suspects. Add the word “imminent” and “reasonably believes” throughout. Revise the definition of “necessary” to make clear that use of force should be a last resort and reference de-escalation and less lethal alternatives. Remove the “malice” and “good faith” defense. Clearly define “imminent” and “reasonably believes.” Require a warning in all situations unless a warning is futile.

Principle #3: “Police use of force must meet the test of proportionality”

Drafting approach: The revised definition of “necessary” will connect the proportionality principle to the threat presented.

Principle #4: “Adopt de-escalation as formal agency policy”

Drafting approach: Add “de-escalation” to the definition of “necessary.”

Principle #8: “Shooting at vehicles must be strictly prohibited.”

Drafting approach: Prohibit shooting at vehicles unless the suspect is using deadly force aside from the moving vehicle itself.

Principle #9: “Prohibit use of deadly force against individuals who pose a danger only to themselves.”

Drafting approach: Existing law uses the phrase “harm to others” or “third party.” Make this consistent throughout RCW 9A.16.040.

The CPC believes these proposed changes will indeed strengthen public trust in law enforcement and improve mechanisms for police accountability, while ensuring fairness to officers. We approved this statement of support at a regular meeting of the Commission on November 16, 2016.

Sincerely,

[Seattle Community Police Commission](#)