

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

Summary of Action Taken on November 21, 2016

(Adopted Recommendations Below Include Adopted Amendments)

A. Senator Kirk Pearson

#A1 - ADOPTED

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

B. Senator David Frockt

#B1 -WITHDRAWN

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~~ 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.

#B2 - ADOPTED

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.

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.

#B3 - WITHDRAWN

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.

#B4 – NOT ADOPTED

Task Force Member(s):

Senator David Frockt

Proposed Recommendation:

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

C. Jorge Baron (NWIRP), Lisa Daugaard (PDA), Toskiko 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:

C1(a) – NOT ADOPTED

(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. 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.

C1(b) – ADOPTED

- (b) Establishing a channel for meaningful community input into key policing policies and robust, independent civilian oversight of police accountability practices;

C1(c) – NOT ADOPTED

- (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;

C1(d) – ADOPTED

- (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;

C1(e) – ADOPTED

- (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 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;

C1(f) – ADOPTED

- (f) Enhance required academy training at the Criminal Justice Training Center (CJTC) and Washington State Patrol Academy and require 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;

C1(g) – ADOPTED

- (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 provide oversight and funding through the Attorney General's Office;

C1(h) – ADOPTED

(h) 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; 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.

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)

#D1 - WITHDRAWN

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, 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.

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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.

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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.

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

#E1

Task Force Member(s):

Kelly Harris and Mark Roe

(Joint proposal)

Proposed Recommendation:

E1(1) - ADOPTED

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

WITHDRAWN

2. Require and fund expanded basic and in-service training for law enforcement officers on de-escalation, disengagement and less-than-lethal force options.

E1(3) – NOT ADOPTED

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.

WITHDRAWN

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.

F. Chief Ken Hohenberg (WASPC)

#F1 - ADOPTED

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.

#F2 – NOT ADOPTED

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, and 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.

#F3 - ADOPTED

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.

#F4 - TABLED

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).

#F5 - ADOPTED

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 process¹.

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.

Other Relevant Background Information:

1

http://www.waspc.org/assets/ProfessionalServices/washington%20state%20accredited%20agencies_as%20of%202005-2016.pdf

Estimated cost: \$4.1M/FY

#F6 - ADOPTED

Task Force Member(s):

Chief Ken Hohenberg

Proposed Recommendation:

Require 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.

G. Kim Mosolf (DRW)

#G1 - WITHDRAWN

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.

#G2 - ADOPTED

Task Force Member(s):

Kimberly Mosolf, Disability Rights Washington

Proposed Recommendation:

Reduce 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.

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

#H1

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)

Proposed Recommendation:

H1(1) – NOT ADOPTED

- 1. Make no changes to current Washington State Use of Force laws.**

H1(2) - ADOPTED

2. 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.

I. Gabriel Portugal (LCA)

#I1-WITHDRAWN

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 - WITHDRAWN

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.**