

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5259

Chapter 326, Laws of 2021

67th Legislature
2021 Regular Session

LAW ENFORCEMENT—USE OF FORCE—DATA COLLECTION

EFFECTIVE DATE: July 25, 2021

Passed by the Senate April 14, 2021
Yeas 46 Nays 2

DENNY HECK

President of the Senate

Passed by the House April 6, 2021
Yeas 97 Nays 1

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 18, 2021 11:51 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5259** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 18, 2021

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5259

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman, and Wilson, C.; by request of Attorney General)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to requiring reporting, collecting, and
2 publishing information regarding law enforcement interactions with
3 the communities they serve; adding a new chapter to Title 10 RCW; and
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that law enforcement
7 transparency and accountability are vital in maintaining public
8 trust. Data collection is one essential tool to allow the public, law
9 enforcement, and policymakers to analyze the effectiveness of
10 existing police practices, determine which policies and training work
11 and do not work, and avoid unintended consequences by supporting
12 policy decisions with clear and relevant data.

13 The legislature finds that creating a statewide data collection
14 program that creates a publicly accessible database to track metrics
15 will help to promote openness, transparency, and accountability,
16 build stronger police-community relations, improve trust and
17 confidence in policing services, evaluate specific areas of concern
18 such as biased policing and excessive force, and ultimately improve
19 the quality of policing services.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Contractor" means the institution of higher education
5 contracted with the office of the attorney general to implement the
6 statewide use of force data program as provided in this chapter.

7 (2) "Great bodily harm" has the same meaning as in RCW 9A.04.110.

8 (3) "Institution of higher education" has the same meaning as in
9 RCW 28B.92.030.

10 (4) "Law enforcement agency" or "agency" means any general
11 authority Washington law enforcement agency and limited authority
12 Washington law enforcement agency as those terms are defined in RCW
13 10.93.020.

14 (5) "Substantial bodily harm" has the same meaning as in RCW
15 9A.04.110.

16 NEW SECTION. **Sec. 3.** (1)(a) Subject to the availability of
17 amounts appropriated for this specific purpose, the attorney
18 general's office shall establish an advisory group to assist with the
19 office's design, development, and implementation of a statewide use
20 of force data program. Members are appointed by the attorney
21 general's office and must consist of:

22 (i) At least three representatives from local nongovernmental
23 organizations or advocacy groups that have a focus on or expertise in
24 the use and role of data as it relates to interactions between law
25 enforcement and the community;

26 (ii) At least three representatives from law enforcement agencies
27 or organizations representing the interests of law enforcement in
28 interacting and utilizing this data; and

29 (iii) At least one representative from the private sector or the
30 public sector with experience in data collection programs, preferably
31 law enforcement data collection.

32 (b) To ensure the advisory group has diverse and inclusive
33 representation of those affected by its work, advisory group members
34 whose participation in the advisory group may be hampered by
35 financial hardship may apply for a stipend in an amount not to exceed
36 \$100 for each day during which the member attends an official meeting
37 of the advisory group or performs prescribed duties approved by the
38 attorney general's office.

1 (2) By April 1, 2022, the advisory group shall submit to the
2 attorney general its recommendations on the following elements:

3 (a) How to prioritize the implementation of the reporting,
4 collection, and publication of the use of force data reports required
5 in section 4(2) of this act;

6 (b) Additional incidents and data to be collected from law
7 enforcement agencies on interactions between officers and the public,
8 such as traffic stops, pedestrian stops, calls for services, arrests,
9 vehicle pursuits, and disciplinary actions, as well as demographic
10 information including race, ethnicity, and gender of a crime victim
11 or victims. This recommendation should consider phased
12 implementation, if necessary, based on current practices and
13 available data as compared to additional practices and new data that
14 would need to be implemented by law enforcement agencies;

15 (c) Recommend practices for law enforcement agencies to collect
16 and report data to the contractor. To the greatest extent feasible,
17 the reporting mechanisms for the program must include the opportunity
18 for law enforcement agencies to submit the required data elements
19 through incident reports or any other electronic means. The advisory
20 group may also work to develop a standardized incident report that
21 meets the data and reporting requirements of the statewide use of
22 force data program for voluntary use by law enforcement agencies;

23 (d) Recommend practices for the public to report relevant
24 information to the contractor directly, or its successor, including
25 correcting misreported and otherwise incorrect data;

26 (e) Recommend practices for public, law enforcement, and academic
27 access and use of program data that must include, at a minimum:

28 (i) Public access to deidentified raw and/or refined incident
29 based data using an established open data standard, available online
30 at no cost in a downloadable, machine-readable, nonproprietary
31 format, redacted only as necessary to comply with the public records
32 act (chapter 42.56 RCW) and the Washington state criminal records
33 privacy act (chapter 10.97 RCW);

34 (ii) Publicly accessible online data dashboards that summarize
35 and analyze the data, excluding personally identifiable information;

36 (iii) Interactive data visualization tools designed for law
37 enforcement agencies and other entities to use the data for research,
38 professional development, training, and management;

1 (iv) The ability to extract data from incident reports, or other
2 electronic means, and officer narratives in order to standardize data
3 across multiple agencies;

4 (v) Ensure protection and removal of all personally identifiable
5 information of officers, subjects, and victims in any data or
6 analyses that are publicly released; and

7 (vi) Semiannual reports, summarizing the data collected and any
8 related analysis, published on the website and submitted to the
9 legislature and governor by June 1st and December 1st of each year;

10 (f) Recommend practices for quality improvement, including
11 periodically obtaining input from stakeholders about how the program
12 can better meet the needs of the public and law enforcement;

13 (g) Recommend practices in the following areas:

14 (i) Analytical dashboards with individual officer details for use
15 by law enforcement agencies as a risk management tool;

16 (ii) Agency level comparative dashboards for all law enforcement
17 agencies in the state;

18 (iii) Incorporating available historical data to identify long-
19 term trends and patterns; and

20 (iv) Analysis of data, using methodologies based in best
21 practices or tested and validated in other jurisdictions, if
22 possible, including, but not limited to, analysis of the data using
23 legal algorithms based on available and applicable legal standards.

24 (3)(a) The office of the attorney general shall review the
25 recommendations of the advisory group and approve or reject, in whole
26 or in part, the recommendations. In reviewing the program
27 recommendations, the office of the attorney general shall consider:

28 (i) Available funding to achieve the recommendations;

29 (ii) Prioritizing the implementation of the reporting,
30 collection, and publication of the use of force data reports in
31 section 4(2) of this act;

32 (iii) The interests of the public in accessing information in a
33 transparent and expedient manner. In considering the interests of the
34 public, the advisory board shall accept and consider comments from
35 impacted family members or their designees;

36 (iv) The institutional operations and demands of law enforcement
37 agencies through input and comments from the criminal justice
38 training center and local law enforcement agencies.

39 (b) For any recommendation that was rejected, in part or in full,
40 the advisory group may submit revised recommendations for

1 consideration by the office of the attorney general in accordance
2 with any deadlines established by the office. The office of the
3 attorney general may also approve recommendations subject to the
4 legislature appropriating the funding necessary for their
5 implementation.

6 (c) The office of the attorney general may not approve any
7 recommendation that requires any law enforcement agency to disclose
8 information that would jeopardize an active criminal investigation,
9 confidential informant, or intelligence information.

10 (4) The approved recommendations and the requirements contained
11 in section 4 of this act constitute the statewide use of force data
12 program.

13 (5) This section expires January 1, 2023.

14 NEW SECTION. **Sec. 4.** (1) Each law enforcement agency in the
15 state is required to report each incident where a law enforcement
16 officer employed by the agency used force and:

17 (a) A fatality occurred in connection with the use of force;

18 (b) Great bodily harm occurred in connection with the use of
19 force;

20 (c) Substantial bodily harm occurred in connection with the use
21 of force; or

22 (d) A law enforcement officer:

23 (i) Discharged a firearm at or in the direction of a person;

24 (ii) Pointed a firearm at a person;

25 (iii) Used a chokehold or vascular neck restraint;

26 (iv) Used an electronic control weapon including, but not limited
27 to, a taser, against a person;

28 (v) Used oleoresin capsicum spray against a person;

29 (vi) Discharged a less lethal shotgun or other impact munitions
30 at or in the direction of a person;

31 (vii) Struck a person using an impact weapon or instrument
32 including, but not limited to, a club, baton, or flashlight;

33 (viii) Used any part of their body to physically strike a person
34 including, but not limited to, punching, kicking, slapping, or using
35 closed fists or feet;

36 (ix) Used a vehicle to intentionally strike a person or vehicle;
37 or

1 (x) Deployed a canine by releasing it from the physical control
2 of the law enforcement officer or had under the law enforcement
3 officer's control a canine that bites a person.

4 (2) Each report required in subsection (1) of this section must
5 include the following information:

6 (a) The date and time of the incident;

7 (b) The location of the incident;

8 (c) The agency or agencies employing the law enforcement
9 officers;

10 (d) The type of force used by the law enforcement officer;

11 (e) The type of injury to the person against whom force was used,
12 if any;

13 (f) The type of injury to the law enforcement officer, if any;

14 (g) Whether the person against whom force was used was armed or
15 unarmed;

16 (h) Whether the person against whom force was used was believed
17 to be armed;

18 (i) The type of weapon the person against whom force was used was
19 armed with, if any;

20 (j) The age, gender, race, and ethnicity of the person against
21 whom force was used, if known;

22 (k) The tribal affiliation of the person against whom force was
23 used, if applicable and known;

24 (l) Whether the person against whom force was used exhibited any
25 signs associated with a potential mental health condition or use of a
26 controlled substance or alcohol based on the observation of the law
27 enforcement officer;

28 (m) The name, age, gender, race, and ethnicity of the law
29 enforcement officer, if known;

30 (n) The law enforcement officer's years of service;

31 (o) The reason for the initial contact between the person against
32 whom force was used and the law enforcement officer;

33 (p) Whether any minors were present at the scene of the incident,
34 if known;

35 (q) The entity conducting the independent investigation of the
36 incident, if applicable;

37 (r) Whether dashboard or body worn camera footage was recorded
38 for an incident;

39 (s) The number of officers who were present when force was used;
40 and

1 (t) The number of suspects who were present when force was used.

2 (3) Each law enforcement agency must also report any additional
3 incidents and data required by the statewide use of force data
4 program developed in section 3 of this act.

5 (4) All law enforcement agencies shall submit the reports
6 required by this section in accordance with the requirements of the
7 statewide use of force data program no later than three months after
8 the office of the attorney general determines that the system
9 procured in section 5 of this act can accept law enforcement agency
10 reports. Reports must be made in the format and time frame
11 established in the statewide use of force data program.

12 (5) A law enforcement agency has satisfied its reporting
13 obligations pursuant to this act by submitting the reports and data
14 required under this section. The contractor shall provide technical
15 assistance to any law enforcement agency in gathering, compiling, and
16 submitting the required reports and data for each incident.

17 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
18 appropriated for this specific purpose, the office of the attorney
19 general must engage in a competitive procurement to contract with an
20 institution of higher education to implement the statewide use of
21 force data program. The primary purpose of the contract is to develop
22 a system for law enforcement agencies to report, collect, and publish
23 the use of force data reports required in section 4 of this act.

24 (2) The request for proposal or other procurement method should
25 encourage collaboration with other public and private institutions,
26 businesses, and organizations with significant expertise and
27 experience in collecting, tracking, and reporting data on law
28 enforcement interactions with the public.

29 (3) Members and representatives of entities participating in the
30 advisory group established in section 3 of this act may not
31 participate or bid in the competitive procurement.

32 (4) The advisory group, or designated members of the group, may
33 participate in the procurement process through the development of the
34 request for proposal and the review and evaluation of responsive
35 bidders.

36 (5) The contract must require the successful bidder to provide
37 appropriate training to its staff and subcontractor staff, including
38 training on racial equity issues.

1 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
2 constitute a new chapter in Title 10 RCW.

Passed by the Senate April 14, 2021.

Passed by the House April 6, 2021.

Approved by the Governor May 18, 2021.

Filed in Office of Secretary of State May 18, 2021.

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