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SENATE BILL 5000

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State of Washington

65th Legislature

2017 Regular Session

By Senator McCoy

Prefiled 12/05/16.

1 AN ACT Relating to the use of deadly force by law enforcement and  
2 corrections officers; amending RCW 9A.16.040; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the invaluable  
6 contributions of law enforcement officers who risk their own lives  
7 every day to protect our families and communities. We applaud their  
8 efforts to show respect and compassion to all citizens while holding  
9 individuals accountable for their criminal activity.

10 The legislature acknowledges that officers are often placed in  
11 harm's way and must make decisions quickly while under extreme  
12 stress. Although regrettable in every case, the use of deadly force  
13 may sometimes be necessary to protect the safety of others. The  
14 legislature also acknowledges that both the people of this state and  
15 law enforcement officers themselves rely on and expect officer  
16 accountability for the unjustified use of deadly force, the failure  
17 of which damages the public trust in those who serve the public  
18 honorably and with compassion.

19 The legislature recognizes that the police executive research  
20 forum, a nationally recognized leader on policing, has published  
21 thirty guiding principles on the use of deadly force and identified

1 "sanctity of life" as the paramount principle. Similarly, the  
2 president's task force on 21st century policing, created "to  
3 strengthen community policing and trust among law enforcement  
4 officers and the communities they serve," in its final report,  
5 recommends that "a clearly stated 'sanctity of life' philosophy must  
6 also be in the forefront of every officer's mind."

7 It is the intent of the legislature to improve our use of deadly  
8 force statute in a manner that protects the sanctity of all human  
9 life, makes clear that the force used must be necessary and  
10 proportional and may only be used as a last resort, adds more  
11 specific language regarding the threat that must be present to  
12 justify the use of deadly force, and revises language describing  
13 officer accountability for unjustified uses of deadly force. It is  
14 the understanding of the legislature that the "reasonable belief"  
15 standard is applied to address honest mistakes. The legislature  
16 believes this emphasis on the sanctity of life, fairness, and  
17 accountability will strengthen community policing and reduce violent  
18 interactions between the public and law enforcement officers.

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

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

23 ~~(a))~~ when a public officer is acting in obedience to the  
24 judgment of a competent court(~~or~~) for a sentence of death under  
25 chapter 10.95 RCW.

26 ~~((b))~~ (2) Homicide or the use of deadly force is justifiable  
27 when ((necessarily)) used by a peace officer to overcome actual  
28 resistance to the execution of the legal process, mandate, or order  
29 of a court or officer, or in the discharge of a legal duty, and the  
30 peace officer has a reasonable belief of an imminent threat of death  
31 or serious physical harm to the officer or a third party and the  
32 deadly force is necessary to prevent death or serious physical harm.

33 ~~((c))~~ (3) Homicide or the use of deadly force is justifiable  
34 when ((necessarily used by)) a peace officer, or person acting under  
35 the officer's command and in the officer's aid, has a reasonable  
36 belief of an imminent threat of death or serious physical harm to the  
37 officer or a third party, the deadly force is necessary to prevent  
38 death or serious physical harm, and the deadly force is used:

1       ~~((i))~~ (a) To arrest or apprehend a person who the officer  
2 reasonably believes has committed, has attempted to commit, is  
3 committing, or is attempting to commit a felony;

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

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

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

12       ~~((2))~~ (4) In considering whether to use deadly force under  
13 subsection ~~((1)(c))~~ (3) of this section ~~((, to arrest or apprehend~~  
14 ~~any person for the commission of any crime,))~~ the peace officer must  
15 have probable cause to believe that the suspect ~~((, if not~~  
16 ~~apprehended,))~~ poses ((a)) an imminent threat of death or serious  
17 physical harm to the officer or ((a)) an imminent threat of death or  
18 serious physical harm to others.

19       ~~((Among the circumstances which))~~ (5) An example of a  
20 circumstance that may be considered by peace officers as ((a)) an  
21 "imminent threat of serious physical harm" ~~((are the following:~~

22       ~~(a) The))~~ is when the suspect threatens a peace officer with a  
23 weapon or displays a weapon in a manner that could reasonably be  
24 construed as threatening ~~((; or~~

25       ~~(b) There is probable cause to believe that the suspect has~~  
26 ~~committed any crime involving the infliction or threatened infliction~~  
27 ~~of serious physical harm.~~

28       ~~Under these circumstances deadly force may also be used if~~  
29 ~~necessary to prevent escape from the officer, where, if feasible,~~  
30 ~~some warning is given.~~

31       ~~(3))~~ .

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

38       (7) For deadly force to be justified under this section the  
39 officer or third party assisting the officer must give a clear  
40 warning of his or her intent to use deadly force, with sufficient

1 time for the warning to be observed, unless to do so would unduly  
2 place the officer or third party assisting the officer at risk or  
3 would create an imminent risk of death or serious physical harm to  
4 other persons, or would be clearly inappropriate or futile under the  
5 circumstances.

6 (8) As used in this section:

7 (a) "Necessary" means that force is used as a last resort and  
8 that all other available means including deescalation were  
9 considered, that no alternative to the use of force appeared to  
10 exist, and that the amount of force used was proportional to the  
11 threat presented.

12 (b) "Reasonable belief" and "reasonably believes" mean that a  
13 reasonable officer on the scene, in light of the totality of the  
14 facts and circumstances from the officer's perspective, would believe  
15 that the described facts exist.

16 (c) "Imminent" means the danger and risk is actually present at  
17 the time in the facts and circumstances the officer is facing.

18 ~~((+4))~~ (9) This section shall not be construed as:

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

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

24 (10) In addition to the requirements of this section, a public  
25 officer, peace officer, or person aiding the officer shall not  
26 discharge their firearms at or from a moving vehicle unless deadly  
27 force is being used against the officer or another person present, by  
28 means other than a moving vehicle.

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