



## Bellingham City Council

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### MEMORANDUM

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**To:** Bellingham City Council  
**From:** Mark Gardner, Legislative Analyst  
**Re.:** 2021 Legislation on Policing Practices and Oversight  
**Date:** May 27, 2021

#### **2021 Washington State Policing Practices and Oversight Legislation:**

**SB 5051. Oversight and accountability for law enforcement and corrections officers.**

Expands certification and background check requirements for police officers, identifies conditions where certification can be denied or revoked, and requires consistent reporting by law enforcement agencies on officer status or misconduct charges. Also allows the public to see the results of internal investigations and find out whether an officer was previously held accountable for misconduct.

**SB 5066. Rules for a law enforcement officer's duty to intervene.** An on-duty officer who witnesses another officer engaging in use of excessive force must intervene when possible to end the excessive use of force. Aid must be rendered to a person injured by excessive use of force as soon as possible. Excessive force is force that exceeds that permitted by law or the policy of the witnessing officer's agency. Witnesses to excessive use of force must report this to a supervisor, or to their agency under accepted procedures.

**SB 5259. Improving data collection on use of force.** The Attorney General's office must establish an advisory group to assist with the creation of a statewide use of force data program. The advisory group must include three representatives from NGOs or advocacy groups, three from law enforcement agencies or law enforcement advocacy group, and at least one person with experience in data collection. Recommendations are due by April 1, 2022 on how to prioritize implementation of the reporting system, identify the needed data, identify practices used by agencies to report data, and identify avenues for the public to report on use of force incidents. The group must also identify ways to make the data accessible to the public and researchers.

**SB 5263. Defenses in personal injury and wrongful death actions.** Under current state law, a person may use as part of their defense in a civil trial the fact that another person was in the process of committing a felony when injured or killed. For law enforcement personnel, this bill limits the "felony bar" affirmative defense in civil actions to situations

where a defendant can prove each element of the defense beyond a reasonable doubt. This bill goes into effect in late July 2021.

**[SB 5353](#). Partnership grants for community engagement with law enforcement.** The Department of Commerce is directed to create a grant program to foster community engagement through neighborhood organizing, law enforcement and community partnerships, youth mobilization, and business engagement. Grants can go to public agencies or NGOs and grantees must be able to demonstrate experience with public safety community engagement initiatives. Participants must build law enforcement and community partnerships; mobilize youth to partner with neighborhood groups and law enforcement to prevent violence; and engage businesses to help prevent crimes through safety training and other prevention initiatives.

**[SB 5476](#). Responds to the Blake decision** that vacated convictions for drug possessions in cases where it could not be proven that a person was aware they had drugs on their person or property. Reestablishes a penalty for knowingly possessing drugs, making this a gross misdemeanor. This penalty expires on July 1, 2023. Law enforcement is required to refer a person to a recovery navigator program. The first and second possessions must be diverted from prosecution and diversion is allowed thereafter. Requires the Health Care Authority to create a substance use recovery advisory committee to make recommendations on a substance use recovery state plan.

**[HB 1054](#). Requirements for tactics and equipment used by officers.** The bill prohibits chokeholds and neck restraints, restricts law enforcement agencies from acquiring or using certain types of military equipment, restricts vehicular pursuits and firing on vehicles, prohibits no-knock search warrants, and limits the use of tear gas. It creates a consistent statewide standard for these tactics and provides greater oversight when they are employed by officers. The Criminal Justice Training Commission is directed to convene a work group to develop model policies on the use and training of canine teams.

**[HB 1088](#). Disclosures of information regarding credibility of police officers as witnesses.** By July 1, 2022, each county prosecutor must adopt a written protocol for disclosures of information that would call into question the credibility of an officer. When police officers are government witnesses, such impeachment evidence can include a prior conviction related to dishonesty, abuse of authority, or evidence of a bias or motive to lie. The law also requires law enforcement agencies to report to prosecuting authorities an officer's misconduct or any act of an officer that would reduce their credibility in a criminal case. Prior to hiring an officer with previous law enforcement experience, law enforcement agencies must inquire whether the officer has ever been subject to potential impeachment disclosure.

**HB 1089. Compliance audits of deadly force in investigations.** The State auditor must review any completed deadly force investigation to determine whether all rules and procedures were followed. On request of the Criminal Justice Training Commission, the state auditor must review a law enforcement agency for compliance with rules governing training and certification of officers. Takes effect in late July 2021.

**HB 1140. Juvenile access to attorneys when contacted by law enforcement.** Requires that law enforcement provide access to an attorney when questioning a juvenile during a custodial interrogation, detaining a juvenile under probable cause, or when requesting consent to search a juvenile's property or vehicle. Exceptions can be made if officers believe a person is a victim of trafficking or to protect their life against imminent threat. Attorneys are to be provided by the Office of Public Defense when necessary. Takes effect January 1, 2022.

**HB 1223. Electronic recording of custodial interrogations.** Interrogations by law enforcement must be recorded if involving a juvenile or related to a felony. Law enforcement agencies must establish rules and procedures for accuracy, preservation, and access to electronic recordings. Some exceptions are allowed, e.g. when making a recording could disclose the identity of a confidential witness. The electronic recording provisions take effect on January 1, 2022.

**HB 1267. Creation of new Office of Independent Investigations (OII).** OII will conduct unbiased investigations of police use of force. These investigations will be independent of any involved law enforcement agency and will investigate use of force incidents occurring after July 1, 2022. In cases of use of deadly force, OII investigators will take control of the scene of the incident after it is secured and any needed lifesaving measures are taken. Investigations must conclude within 120 days. The office will be overseen by an eleven-member board. Any investigators hired by the office must not have been police officers in the last 2 years; civilian investigators will take over within 5 years.

**HB 1310. Permissible uses of force.** Establishes a civil standard for permissible use of force. Permissible uses are: when force is used to protect against criminal conduct and there is a probable cause for an arrest; to effect an arrest; to prevent an escape; or to protect against an imminent threat of bodily injury. Officers should use the least amount of physical force necessary. Deadly force is only permissible when there is an imminent threat of physical injury or death to an officer or another person. Less lethal alternatives are to be used first when possible. The law takes effect July 25, 2021 and all law enforcement agencies must adopt policies consistent with the standards of this act by December 31, 2022.