

## **LAW ENFORCEMENT'S EXCESSIVE USE OF DEADLY FORCE PROPOSAL TO FIX WASHINGTON'S BROKEN LAW**

### **PROBLEM**

Law enforcement's excessive use of deadly force is in the national news on a daily basis. Hundreds of men and women are killed by police each year, many under questionable circumstances. Others are beaten or injured. Black men and people of color are disproportionately the targets of deadly force and violence. This is not good for the police and not good for the community.

### **LAWS ACROSS THE FIFTY STATES**

State statutes and U.S. Supreme Court case law govern the use of deadly force. Amnesty International published a report in June 2015 on the use of deadly force in the United States. The report describes each State law. Unfortunately, no State law stands out as a model and some States have no law at all.

Amnesty International found that all the State laws "fail to comply with international law and standards. Many of them do not even meet the less stringent standard set by U.S. constitutional law." The Report focuses on the standard that deadly force is necessary when the immediate situation warranted it, alternatives were not available, and the amount of force used was proportional to the threat.

### **WASHINGTON STATE LAW – AN ALMOST PERFECT DEFENSE**

Only Washington law provides a defense against prosecution when a police officer acts "without malice and with a good faith belief that such act is justifiable." Malice is defined in law as "evil intent." King County Prosecutor Dan Satterberg says "This almost perfect defense to a mistaken use of force has kept police officers out of court as defendants." On 9/26/15, the Seattle Times, in "[Shielded by the Law](#)" referred to our law as "the nation's most restrictive law on holding officers accountable for the unjustified use of deadly force."

### **WASHINGTON STATE LAW – AN OUTLIER AND EGREGIOUS**

Tom McBride, the Executive Secretary of the Washington Association of Prosecuting Attorneys, says that if the legislature decides to not change the law it would leave Washington an "outlier." "Washington — it's the most egregious," said Jamira Burley, an Amnesty International official who handles gun violence and criminal justice issues," according to the Seattle Times.

### **EVEN IN THE VERY WORST CASES OUR LAW WOULDN'T ALLOW PROSECUTORS TO CHARGE**

Examples, from Chicago, Cincinnati, Cleveland, and California, illustrate the problem with Washington State law. The police officers could not have been charged in this state.

- Chicago - Officer Van Dyke kills 17-year-old Laquan McDonald, shooting him sixteen times. <http://m.democracynow.org/stories/15713>
- Cincinnati - Officer Ray Tensing kills unarmed 43-year-old Sam Dubose at a license plate stop. <http://m.democracynow.org/stories/15401>
- Cleveland – Officers Timothy Loehmann and Frank Garmback kill 12-year-old Tamir Rice. <http://m.democracynow.org/stories/15370>

- California – Police kill unarmed Ricardo Diaz-Zeferino who has his hands in the air.  
<http://m.democracynow.org/stories/15282>

### **TO BE CLEAR – OUR LAW IS NOT HELPFUL TO ANYONE IN THIS STATE**

Washington's law is not working. To promote effective policing and preserve public trust, we must be able to hold officers accountable for irresponsible behavior. The requirement to prove "evil intent" leaves citizens vulnerable to the misuse of force. Our law is demoralizing to the police, destructive to the public, and an embarrassment to the State.

The shooting that occurred in Pasco, Washington in February 2015 is a clear example of what is wrong with the law. Antonio Zambrano-Montes was throwing rocks at the police. He was shot dead and charges were not filed.

"The Prosecutor found that the incident did not meet the high standard for criminal prosecution of officers under state law, which requires showing that the officers acted with malice and without good faith" "The prosecutor's statement clearly shows the need to amend our state law for use of deadly force by law enforcement," said Kathleen Taylor, ACLU of Washington executive director, in a statement." [Tri-City Herald 9/10/15](#).

### **PROPOSAL: House draft H-3399.1 and Senate draft S-3580.1**

**These drafts are identical and propose to amend RCW 9A.16.040 (Use of Deadly Force by a public officer or peace officer) by:**

- adding the word imminent throughout draft.
- adding the word necessary (necessary is already defined in RCW 9A.16.010).
- clarifying the language regarding use of deadly force against fleeing felons/escapees so it is clear that the risk to the officer has to be imminent.
- removes subsection (3), which contains the phrase "without malice and with a good faith belief".

The first three changes are in line with the recommendations of Amnesty International. The fourth change addresses "malice", which is what makes Washington's statute so egregious.

### **REFERENCE MATERIALS**

Amnesty International Report - June 2015

[https://www.amnestyusa.org/sites/default/files/aiusa\\_deadlyforcereportjune2015.pdf](https://www.amnestyusa.org/sites/default/files/aiusa_deadlyforcereportjune2015.pdf)

Democracy Now Reporting

<http://m.democracynow.org/tags/317>

Leonard Pitts Opinion

<http://www.theolympian.com/opinion/op-ed/article48927730.html#storylink=cpy>