**2037-S.E AMS LAW S4940.1 - NOT FOR FLOOR USE**

**ESHB 2037** - S COMM AMD

By Committee on Law & Justice

**NOT ADOPTED 03/04/2022**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) In 2021, the legislature passed Engrossed Second Substitute House Bill No. 1310, codified as chapter 10.120 RCW, with the goal of establishing a uniform statewide standard for use of force by peace officers. Since these provisions were enacted, the complexities and nuances of police practices and applicable laws, both in statute and common law, have posed implementation challenges for some police agencies. For that reason, the legislature hereby intends to provide clarification and guidance to police agencies and the public with the passage of chapter . . . (House Bill No. 1735), Laws of 2022, focusing on behavioral health and other related issues, and the additional changes in this legislation, focusing on enforcement practices as well as clarifying definitions.

(2) The legislature did not enact RCW 10.120.020 with the purpose of preventing or prohibiting peace officers from protecting citizens from danger. To the contrary, the legislature recognizes the importance of enforcing criminal laws and providing safety for all. Therefore, the legislature intends to provide clear authority for peace officers to use physical force to prevent persons from fleeing lawful temporary investigative detentions, also known as *Terry* stops, and to take persons into custody when authorized or directed by state law. Yet this authority is not without limits. Peace officers must exercise reasonable care when determining whether to use physical force and when using any physical force against another person. Peace officers must, when possible and appropriate, use de-escalation tactics before using physical force. Peace officers may only use force to the extent necessary and reasonable under the totality of the circumstances. This high standard of safety reflects national best practices developed and supported by police leaders across the nation. Most importantly, it strikes the appropriate balance between two important interests: The safety of the public and the peace officers who serve to protect us, and the right of the people to be secure in their persons against unreasonable searches and seizures.

**Sec.**  RCW 10.120.010 and 2021 c 324 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Deadly force" has the same meaning as provided in RCW 9A.16.010.

(2) "Law enforcement agency" includes any "general authority Washington law enforcement agency" and any "limited authority Washington law enforcement agency" as those terms are defined in RCW 10.93.020.

((~~(2)~~)) (3) "Less lethal alternatives" include, but are not limited to, verbal warnings, de-escalation tactics, conducted energy weapons, devices that deploy oleoresin capsicum, batons, and beanbag rounds.

((~~(3)~~)) (4) "Necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others.

(5) "Peace officer" includes any "general authority Washington peace officer," "limited authority Washington peace officer," and "specially commissioned Washington peace officer" as those terms are defined in RCW 10.93.020; however, "peace officer" does not include any corrections officer or other employee of a jail, correctional, or detention facility, but does include any community corrections officer.

(6) "Physical force" means any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement. "Physical force" does not include pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury.

(7) "Totality of the circumstances" means all facts known to the peace officer leading up to, and at the time of, the use of force, and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer.

**Sec.**  RCW 10.120.020 and 2021 c 324 s 3 are each amended to read as follows:

(1)((~~(a)~~)) PHYSICAL FORCE. Except as otherwise provided under this section, a peace officer may use physical force against a person ((~~when~~)) to the extent necessary to:

(a) Protect against ((~~criminal conduct where there is probable cause to make an arrest; effect~~)) a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense;

(b) Effect an arrest; ((~~prevent~~))

(c) Prevent an escape as defined under chapter 9A.76 RCW; ((~~or protect~~))

(d) Prevent a person from intentionally fleeing or stop a person who is intentionally and actively fleeing a lawful temporary investigative detention for a criminal offense, provided that the person has been given notice that he or she is being detained and is not free to leave;

(e) Take a person into custody when authorized or directed by statute; or

(f) Protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

((~~(b) A~~)) (2) DEADLY FORCE. Except as otherwise provided under this section, a peace officer may use deadly force against another person only when necessary to protect against an ((~~imminent~~)) immediate threat of serious physical injury or death to the officer or another person. For purposes of this subsection ((~~(1)(b)~~)):

((~~(i) "Imminent~~)) "Immediate threat of serious physical injury or death" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

((~~(ii) "Necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others.~~

~~(iii) "Totality of the circumstances" means all facts known to the peace officer leading up to and at the time of the use of force, and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer.~~

~~(2)~~)) (3) REASONABLE CARE. A peace officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer shall:

(a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as: Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed;

(b) When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances. This includes a consideration of the characteristics and conditions of a person for the purposes of determining whether to use force against that person and, if force is necessary, determining the appropriate and least amount of force possible to effect a lawful purpose. Such characteristics and conditions may include, for example, whether the person: Is visibly pregnant, or states that they are pregnant; is known to be a minor, objectively appears to be a minor, or states that they are a minor; is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020; displays signs of mental, behavioral, or physical impairments or disabilities; is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has limited English proficiency; or is in the presence of children;

(c) Terminate the use of physical force as soon as the necessity for such force ends;

(d) When possible, use available and appropriate less lethal alternatives before using deadly force; and

(e) Make less lethal alternatives issued to the officer reasonably available for their use.

((~~(3)~~)) (4) A peace officer may not use any force tactics prohibited by applicable departmental policy, this chapter, or otherwise by law, except to protect his or her life or the life of another person from an imminent threat.

((~~(4)~~)) (5) Nothing in this section ((~~prevents~~)):

(a) Permits a peace officer to use physical force or deadly force in a manner or under such circumstances that would violate the United States Constitution or state Constitution; or

(b) Prevents a law enforcement agency or political subdivision of this state from adopting policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force than provided in this section.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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On page 1, line 13 of the title, after "circumstances;" strike the remainder of the title and insert "amending RCW 10.120.010 and 10.120.020; creating a new section; and declaring an emergency."

EFFECT: Permits a peace officer to use physical force to the extent necessary to prevent a person from intentionally fleeing, or to stop a person who is intentionally and actively fleeing, a lawful temporary investigative detention for a criminal offense, provided that the person has been given notice that he or she is being detained and not free to leave.