

# SENATE BILL REPORT

## ESHB 2037

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As of February 18, 2022

**Title:** An act relating to modifying the standard for use of force by peace officers, but only with respect to providing that physical force may be used to the extent necessary, clarifying that deadly force may be used in the face of an immediate threat, clarifying that physical force may be used to protect against a criminal offense when there is probable cause that a person has committed or is committing the offense, authorizing the use of physical force to prevent a person from fleeing a temporary investigative detention, authorizing the use of physical force to take a person into custody when authorized or directed by statute, providing that the standard does not permit violations to the United States Constitution or state Constitution, and defining deadly force, physical force, necessary, and totality of the circumstances.

**Brief Description:** Modifying the standard for use of force by peace officers.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Goodman and Sutherland).

**Brief History:** Passed House: 2/12/22, 87-11.

**Committee Activity:** Law & Justice: 2/21/22.

### Brief Summary of Bill

- Modifies the standard for the use of physical force by peace officers.
- Defines physical force.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** In 2021, Washington enacted standards for the use of physical force and deadly force by peace officers. Under these standards, a peace officer may use physical force against another person when necessary to:

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- protect against criminal conduct where there is probable cause to make an arrest;
- prevent an escape; or
- protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

When determining whether to use physical force, an officer must use reasonable care. To that end, the officer must:

- when possible, exhaust all available and appropriate de-escalation tactics prior to using any physical force;
- when using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances, which includes a consideration of the characteristics and conditions of the 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;
- terminate the use of physical force as soon as the necessity for such force ends;
- when possible, use available and appropriate less lethal alternatives before using deadly force; and
- make less lethal alternatives issued to the officer reasonably available for his or her use.

A peace officer may use deadly force against another person only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person. In this context, 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.

"Imminent threat of serious physical harm" means that, based on the totality of the circumstance, 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.

"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.

By July 1, 2022, the Attorney General must develop and publish model policies on use of force and de-escalation tactics consistent with the standard. By December 1, 2022, all law enforcement agencies must adopt the model policy or otherwise adopt policies consistent with the standard. Law enforcement agencies may adopt policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force. Law enforcement agencies must provide copies of policies and additional information to the Attorney General, including any future modifications.

**Summary of Bill: Definitions.** "Physical force" is defined as 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.

"Deadly force" means intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

"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 untended or to protect against the threat posed to the officer or others.

"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.

Physical Force. The standard for the use of physical force is modified. A peace officer may use physical force against a person to the extent necessary to:

- protect against a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense;
- effect an arrest;
- prevent an escape;
- prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention, provided that the person has been given notice that he or she is being detained and is not free to leave;
- take a person into custody when authorized or directed by statute; or
- protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

Deadly Force. The standard for the use of deadly force is modified. A peace officer may use deadly force against another person only when necessary to protect against an immediate, rather than imminent, threat of serious physical injury or death to the officer or another person. "Immediate threat of 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.

Reasonable Care. A provision is added specifying that the standard does not permit 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.