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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1310

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State of Washington

67th Legislature

2021 Regular Session

**By** House Appropriations (originally sponsored by Representatives J. Johnson, Lovick, Ryu, Simmons, Berry, Fitzgibbon, Hackney, Wylie, Sells, Wicks, Cody, Callan, Gregerson, Santos, Senn, Ortiz-Self, Chopp, Davis, Valdez, Dolan, Bateman, Ormsby, Bergquist, Morgan, Ramel, Ramos, Lekanoff, Frame, Harris-Talley, Pollet, Macri, and Peterson)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to permissible uses of force by law enforcement  
2 and correctional officers; amending RCW 43.101.450; adding a new  
3 section to chapter 43.101 RCW; adding a new chapter to Title 10 RCW;  
4 creating new sections; and repealing RCW 10.31.050.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that additional  
7 clarity is necessary following the passage of Initiative Measure No.  
8 940 (chapter 1, Laws of 2019) and Substitute House Bill No. 1064  
9 (chapter 4, Laws of 2019). The legislature intends to address  
10 excessive force and discriminatory policing by establishing a  
11 requirement for law enforcement and community corrections officers to  
12 act with reasonable care when carrying out their duties, including  
13 using de-escalation tactics and alternatives to deadly force.  
14 Further, the legislature intends to address public safety concerns by  
15 limiting the use of deadly force to very narrow circumstances where  
16 there is an imminent threat of serious physical injury or death.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires  
19 otherwise.

1 (1) "Law enforcement agency" includes any "general authority  
2 Washington law enforcement agency" and any "limited authority  
3 Washington law enforcement agency" as those terms are defined in RCW  
4 10.93.020.

5 (2) "Less lethal alternatives" include, but are not limited to,  
6 conducted energy weapons, devices that deploy oleoresin capsicum,  
7 batons, and beanbag rounds.

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

15 NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided under  
16 this section, a peace officer may use physical force against another  
17 person when necessary to: Protect against criminal conduct where  
18 there is probable cause to make an arrest; effect an arrest; prevent  
19 an escape as defined under chapter 9A.76 RCW; or protect against an  
20 imminent threat of bodily injury to the peace officer or another  
21 person.

22 (b) A peace officer may use deadly force against another person  
23 only when necessary to protect against an imminent threat of serious  
24 physical injury or death to the officer or another person.

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

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

1 (b) When using physical force, use only the minimal degree of  
2 physical force necessary to overcome resistance under the  
3 circumstances. This includes a consideration of the characteristics  
4 and conditions of a person for the purposes of determining whether to  
5 use force against that person and, if force is necessary, determining  
6 the appropriate and minimal degree of force. Such characteristics and  
7 conditions may include, for example, whether the person: Is visibly  
8 pregnant, or states that they are pregnant; is known to be a minor,  
9 objectively appears to be a minor, or states that they are a minor;  
10 is known to be a vulnerable adult, or objectively appears to be a  
11 vulnerable adult as defined in RCW 74.34.020; displays signs of  
12 mental, behavioral, or physical impairments or disabilities; is  
13 experiencing perceptual or cognitive impairments typically related to  
14 the use of alcohol, narcotics, hallucinogens, or other drugs; is  
15 suicidal; has limited English proficiency; or is in the presence of  
16 children;

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

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

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

23 (3) A peace officer may not use any force tactics prohibited by  
24 applicable departmental policy, this chapter, or otherwise by law,  
25 except to protect his or her life or the life of another person.

26 (4) Nothing in this section prevents a law enforcement agency  
27 from adopting policies or standards with additional requirements for  
28 de-escalation and greater restrictions on the use of physical and  
29 deadly force than provided in this section.

30 (5) For the purposes of this subsection and subsection (1)(b) of  
31 this section:

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

37 (b) "Necessary" means that, under the totality of the  
38 circumstances, a reasonably effective alternative to the use of  
39 deadly force does not exist, and that the amount of force used was a

1 reasonable and proportional response to the threat posed to the  
2 officer and others.

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

7 NEW SECTION. **Sec. 4.** (1) By July 1, 2022, the attorney general  
8 shall develop and publish model policies on law enforcement's use of  
9 force and de-escalation tactics consistent with section 3 of this  
10 act.

11 (2) By December 1, 2022, all law enforcement agencies shall:  
12 Adopt policies consistent with the model policies and submit copies  
13 of the applicable policies to the attorney general; or, if the agency  
14 did not adopt policies consistent with the model policies, provide  
15 notice to the attorney general stating the reasons for any departures  
16 from the model policies and an explanation of how the agency's  
17 policies are consistent with section 3 of this act, including a copy  
18 of the agency's relevant policies. After December 1, 2022, whenever a  
19 law enforcement agency modifies or repeals any policies pertaining to  
20 the use of force or de-escalation tactics, the agency shall submit  
21 notice of such action with copies of any relevant policies to the  
22 attorney general within 60 days.

23 (3) By December 31st of each year, the attorney general shall  
24 publish on its website a report on the requirements of this section,  
25 including copies of the model policies, information as to the status  
26 of individual agencies' policies, and copies of any agency policies  
27 departing from the model policies.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101  
29 RCW to read as follows:

30 The basic training provided to criminal justice personnel by the  
31 commission must be consistent with the standards in section 3 of this  
32 act and the model policies established by the attorney general under  
33 section 4 of this act.

34 **Sec. 6.** RCW 43.101.450 and 2019 c 1 s 3 (Initiative Measure No.  
35 940) are each amended to read as follows:

36 (1) Beginning one year after December 6, 2018, all law  
37 enforcement officers in the state of Washington must receive violence

1 de-escalation training. Law enforcement officers beginning employment  
2 after December 6, 2018, must successfully complete such training  
3 within the first (~~fifteen~~) 15 months of employment. The commission  
4 shall set the date by which other law enforcement officers must  
5 successfully complete such training.

6 (2) All law enforcement officers shall periodically receive  
7 continuing violence de-escalation training to practice their skills,  
8 update their knowledge and training, and learn about new legal  
9 requirements and violence de-escalation strategies.

10 (3) The commission shall set training requirements through the  
11 procedures in RCW 43.101.455.

12 (4) Violence de-escalation training provided under this section  
13 must be consistent with section 3 of this act and the model policies  
14 established by the attorney general under section 4 of this act.

15 (5) The commission shall submit a report to the legislature and  
16 the governor by January 1st and July 1st of each year on the  
17 implementation of and compliance with subsections (1) and (2) of this  
18 section. The report must include data on compliance by agencies and  
19 officers. The report may also include recommendations for any changes  
20 to laws and policies necessary to improve compliance with subsections  
21 (1) and (2) of this section.

22 NEW SECTION. Sec. 7. RCW 10.31.050 (Officer may use force) and  
23 2010 c 8 s 1031, Code 1881 s 1031, 1873 p 229 s 211, & 1854 p 114 s  
24 75 are each repealed.

25 NEW SECTION. Sec. 8. Sections 2 through 4 of this act  
26 constitute a new chapter in Title 10 RCW.

27 NEW SECTION. Sec. 9. If specific funding for the purposes of  
28 this act, referencing this act by bill or chapter number, is not  
29 provided by June 30, 2021, in the omnibus appropriations act, this  
30 act is null and void.

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