
HOUSE BILL 1737

State of Washington

67th Legislature

2022 Regular Session

By Representatives Mosbrucker, Jacobsen, Griffey, Graham, and Young

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1 AN ACT Relating to improving public safety; amending RCW
2 10.116.020, 10.116.030, 10.116.040, 10.116.060, 10.120.010,
3 10.120.020, 43.101.080, 43.43.837, 43.101.105, and 10.93.190;
4 reenacting and amending RCW 43.101.010; creating a new section; and
5 declaring an emergency.

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

7 **Sec. 1.** RCW 10.116.020 and 2021 c 320 s 2 are each amended to
8 read as follows:

9 (1) A peace officer may not use a chokehold or neck restraint on
10 another person in the course of his or her duties as a peace officer,
11 except to protect his or her life or the life of another person.

12 (2) Any policies pertaining to the use of force adopted by law
13 enforcement agencies must be consistent with this section.

14 (3) For the purposes of this section:

15 (a) "Chokehold" means the intentional application of direct
16 pressure to a person's trachea or windpipe for the purpose of
17 restricting another person's airway.

18 (b) "Neck restraint" refers to any vascular neck restraint or
19 similar restraint, hold, or other tactic in which pressure is applied
20 to the neck for the purpose of constricting blood flow.

1 **Sec. 2.** RCW 10.116.030 and 2021 c 320 s 4 are each amended to
2 read as follows:

3 (1) A law enforcement agency may not use or authorize its peace
4 officers or other employees to use tear gas unless necessary to
5 alleviate a present risk of serious harm posed by a: (a) Riot; (b)
6 barricaded subject; or (c) hostage situation.

7 (2) Prior to using tear gas as authorized under subsection (1) of
8 this section, the officer or employee shall:

9 (a) Exhaust alternatives to the use of tear gas that are
10 available and appropriate under the circumstances;

11 (b) Obtain authorization to use tear gas from a supervising
12 officer, who must determine whether the present circumstances warrant
13 the use of tear gas and whether available and appropriate
14 alternatives have been exhausted as provided under this section;

15 (c) Announce to the subject or subjects the intent to use tear
16 gas; and

17 (d) Allow sufficient time and space for the subject or subjects
18 to comply with the officer's or employee's directives.

19 ~~(3) ((In the case of a riot outside of a correctional, jail, or
20 detention facility, the officer or employee may use tear gas only
21 after: (a) Receiving authorization from the highest elected official
22 of the jurisdiction in which the tear gas is to be used, and (b)
23 meeting the requirements of subsection (2) of this section.~~

24 ~~(4))~~) For the purposes of this section:

25 (a) "Barricaded subject" means an individual who is the focus of
26 a law enforcement intervention effort, has taken a position in a
27 physical location that does not allow immediate law enforcement
28 access, and is refusing law enforcement orders to exit.

29 ~~(b) ("Highest elected official" means the county executive in
30 those charter counties with an elective office of county executive,
31 however designated, and in the case of other counties, the chair of
32 the county legislative authority. In the case of cities and towns, it
33 means the mayor, regardless of whether the mayor is directly elected,
34 selected by the council or legislative body pursuant to RCW 35.18.190
35 or 35A.13.030, or selected according to a process in an established
36 city charter. In the case of actions by the Washington state patrol,
37 it means the governor.~~

38 ~~(e))~~) "Hostage situation" means a scenario in which a person is
39 being held against his or her will by an armed, potentially armed, or
40 otherwise dangerous suspect.

1 ~~((d))~~ (c) "Tear gas" means chloroacetophenone (CN), O-
2 chlorobenzylidene malononitrile (CS), and any similar chemical
3 irritant dispersed in the air for the purpose of producing temporary
4 physical discomfort or permanent injury, except "tear gas" does not
5 include oleoresin capsicum (OC).

6 **Sec. 3.** RCW 10.116.040 and 2021 c 320 s 5 are each amended to
7 read as follows:

8 (1) A law enforcement agency may not acquire or use any
9 ~~((military))~~ prohibited equipment. Any law enforcement agency in
10 possession of ~~((military))~~ prohibited equipment as of July 25, 2021,
11 shall return ~~((the equipment to the federal agency from which it was~~
12 ~~acquired, if applicable, or))~~, destroy, or otherwise dispose of the
13 equipment by December 31, 2022.

14 ~~((a))~~ Each law enforcement agency shall compile an inventory
15 of military equipment possessed by the agency, including the proposed
16 use of the equipment, estimated number of times the equipment has
17 been used in the prior year, and whether such use is necessary for
18 the operation and safety of the agency or some other public safety
19 purpose. The agency shall provide the inventory to the Washington
20 association of sheriffs and police chiefs no later than November 1,
21 2021.

22 ~~(b)~~ The Washington association of sheriffs and police chiefs
23 shall summarize the inventory information from each law enforcement
24 agency and provide a report to the governor and the appropriate
25 committees of the legislature no later than December 31, 2021.

26 ~~(3))~~ For the purposes of this section:

27 (a) ~~((("Military equipment" means firearms and ammunition of .50~~
28 ~~caliber or greater, machine guns, armed helicopters, armed or armored~~
29 ~~drones, armed vessels, armed vehicles, armed aircraft, tanks, long~~
30 ~~range acoustic hailing devices, rockets, rocket launchers, bayonets,~~
31 ~~grenades, missiles, directed energy systems, and electromagnetic~~
32 ~~spectrum weapons.~~

33 ~~(b))~~ "Grenade" refers to any explosive grenade designed to
34 injure or kill subjects, such as a fragmentation grenade or antitank
35 grenade, or any incendiary grenade designed to produce intense heat
36 or fire. "Grenade" does not include other nonexplosive grenades
37 designed to temporarily incapacitate or disorient subjects without
38 causing permanent injury, such as a stun grenade, sting grenade,
39 smoke grenade, tear gas grenade, or blast ball.

1 (b) "Machine gun" has the same meaning as defined in RCW
2 9.41.010. A firearm that was previously a "machine gun" that has
3 since been permanently modified to no longer meet the capabilities of
4 a "machine gun" as defined in RCW 9.41.010 shall not be considered a
5 "machine gun."

6 (c) "Prohibited equipment" means rifles of .50 caliber or
7 greater, machine guns, armed helicopters, armed or armored drones,
8 armed vessels, armed vehicles, armed aircraft, tanks, long range
9 acoustic hailing devices, rockets, rocket launchers, bayonets,
10 grenades, missiles, directed energy systems, and electromagnetic
11 spectrum weapons.

12 (d) "Rifle" has the same meaning as provided under RCW 9.41.010,
13 except "rifle" does not refer to any device designed or used to
14 deploy less lethal equipment.

15 (4) This section does not prohibit a law enforcement agency from
16 participating in a federal military equipment surplus program,
17 provided that any equipment acquired through the program does not
18 constitute ~~((military))~~ prohibited equipment. This may include, for
19 example: Medical supplies; hospital and health care equipment; office
20 supplies, furniture, and equipment; school supplies; warehousing
21 equipment; unarmed vehicles and vessels; conducted energy weapons;
22 public address systems; scientific equipment; and protective gear and
23 weather gear.

24 **Sec. 4.** RCW 10.116.060 and 2021 c 320 s 7 are each amended to
25 read as follows:

26 (1) A peace officer may not ~~((engage in))~~ conduct a vehicular
27 pursuit, unless:

28 (a) ~~((i))~~ There is ~~((probable cause))~~ reasonable suspicion to
29 believe that a person in the vehicle has committed or is committing a
30 violent offense or sex offense as defined in RCW 9.94A.030, ~~((or))~~ an
31 escape under chapter 9A.76 RCW ~~((or~~

32 ~~((ii) There is reasonable suspicion a person in the vehicle has~~
33 ~~committed or is committing))~~, a driving under the influence offense
34 under RCW 46.61.502, a crime against persons offense pursuant to RCW
35 9.94A.411, or another criminal offense where the public safety risks
36 of failing to apprehend or identify the person are considered to be
37 greater than the safety risks of the vehicular pursuit under the
38 circumstances;

1 (b) The pursuit is necessary for the purpose of identifying or
2 apprehending the person;

3 (c) The person poses (~~(an imminent threat to the)~~) a public
4 safety (~~(of others)~~) risk and the safety risks of failing to
5 apprehend or identify the person are considered to be greater than
6 the safety risks of the vehicular pursuit under the circumstances;
7 and

8 (d) (~~((i) Except as provided in (d) (ii) of this subsection, the)~~)
9 The officer (~~(has received)~~) receives authorization to (~~(engage in)~~)
10 continue the pursuit from a supervising officer and there is
11 supervisory control of the pursuit. The officer in consultation with
12 the supervising officer must consider alternatives to the vehicular
13 pursuit. The supervisor must consider the justification for the
14 vehicular pursuit and other safety considerations, including but not
15 limited to speed, weather, traffic, road conditions, and the known
16 presence of minors in the vehicle, and the vehicular pursuit must be
17 terminated if any of the requirements of this subsection are not
18 met(~~(+~~

19 ~~(ii) For those jurisdictions with fewer than 10 commissioned~~
20 ~~officers, if)).~~ If a supervisor is not on duty at the time, the
21 officer will request the on-call supervisor be notified of the
22 pursuit according to the agency's procedures. The officer must
23 consider alternatives to the vehicular pursuit, the justification for
24 the vehicular pursuit, and other safety considerations, including but
25 not limited to speed, weather, traffic, road conditions, and the
26 known presence of minors in the vehicle. The officer must terminate
27 the vehicular pursuit if any of the requirements of this subsection
28 are not met.

29 (2) A pursuing officer shall comply with any agency procedures
30 for designating the primary pursuit vehicle and determining the
31 appropriate number of vehicles permitted to participate in the
32 vehicular pursuit and comply with any agency procedures for
33 coordinating operations with other jurisdictions, including available
34 tribal police departments when applicable.

35 (3) A peace officer may not fire a weapon upon a moving vehicle
36 unless necessary to protect against an imminent threat of serious
37 physical harm resulting from the operator's or a passenger's use of a
38 deadly weapon. For the purposes of this subsection, a vehicle is not
39 considered a deadly weapon unless the operator is using the vehicle

1 as a deadly weapon and no other reasonable means to avoid potential
2 serious harm are immediately available to the officer.

3 (4) For purposes of this section, "vehicular pursuit" means an
4 attempt by a uniformed peace officer in a vehicle equipped with
5 emergency lights and a siren to stop a moving vehicle where the
6 operator of the moving vehicle appears to be aware that the officer
7 is signaling the operator to stop the vehicle and the operator of the
8 moving vehicle appears to be willfully resisting or ignoring the
9 officer's attempt to stop the vehicle by increasing vehicle speed,
10 making evasive maneuvers, or operating the vehicle in a reckless
11 manner that endangers the safety of the community or the officer.

12 **Sec. 5.** RCW 10.120.010 and 2021 c 324 s 2 are each amended to
13 read as follows:

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

16 (1) "Feasible," "appropriate," "necessary," "possible,"
17 "proportional," "reasonable," "available," and "imminent" must be
18 interpreted according to an objective standard which considers all
19 the facts, circumstances, and information known to the officer at the
20 time to determine whether a similarly situated reasonable officer
21 would have determined the action was feasible, appropriate,
22 necessary, possible, proportional, reasonable, available, or
23 imminent.

24 (2) "Law enforcement agency" includes any "general authority
25 Washington law enforcement agency" and any "limited authority
26 Washington law enforcement agency" as those terms are defined in RCW
27 10.93.020.

28 ((+2)) (3) "Less lethal alternatives" include, but are not
29 limited to, verbal warnings, de-escalation tactics, conducted energy
30 weapons, devices that deploy oleoresin capsicum, batons, and beanbag
31 rounds.

32 ((+3)) (4) "Necessary" means that, under the totality of the
33 circumstances, a reasonably effective alternative to the use of force
34 does not appear to exist, and that the amount of force used was a
35 reasonable and proportional response to effect the legal purpose
36 intended or to protect against the threat posed to the officer or
37 others.

38 (5) "Peace officer" includes any "general authority Washington
39 peace officer," "limited authority Washington peace officer," and

1 "specially commissioned Washington peace officer" as those terms are
2 defined in RCW 10.93.020; however, "peace officer" does not include
3 any corrections officer or other employee of a jail, correctional, or
4 detention facility, but does include any community corrections
5 officer.

6 (6) "Physical force" means any technique or tactic used by a
7 peace officer pursuant to enforcing the criminal laws of this state
8 that is reasonably likely to cause physical injury or transient pain.

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

13 **Sec. 6.** RCW 10.120.020 and 2021 c 324 s 3 are each amended to
14 read as follows:

15 (1)(a) Except as otherwise provided under this section, a peace
16 officer may use physical force against a person when necessary to:

17 (i) Protect against criminal conduct where there is probable
18 cause to make an arrest; ((effect))

19 (ii) Effect an arrest; ((prevent an escape as defined under
20 chapter 9A.76 RCW))

21 (iii) Prevent a person from fleeing a lawful detention by a peace
22 officer;

23 (iv) Carry out any warrant or other court order authorizing or
24 directing a peace officer to take a person into custody;

25 (v) Ensure the safety of a peace officer or others when
26 encountering a person reasonably suspected of possessing firearms or
27 other dangerous weapons, or when conducting a search or other lawful
28 activity that reasonably creates a high risk of danger to the officer
29 or another person; or ((protect))

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

33 (b) A peace officer may use deadly force against another person
34 only when necessary to protect against an imminent threat of serious
35 physical injury or death to the officer or another person. For
36 purposes of this subsection (1)(b) ~~((~~

37 ~~(i) "Imminent))~~, "imminent threat of serious physical injury or
38 death" means that, based on the totality of the circumstances, it is
39 objectively reasonable to believe that a person has the present and

1 apparent ability(~~(r)~~) and opportunity(~~(, and intent)~~) to
2 (~~immediately~~) imminently cause death or serious bodily injury to
3 the peace officer or another person.

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

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

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

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

29 (b) When using physical force, use (~~the least~~) a proportional
30 amount of physical force necessary to overcome resistance under the
31 circumstances. This includes a consideration of the characteristics
32 and conditions of a person for the purposes of determining whether to
33 use force against that person and, if force is necessary, determining
34 the appropriate and least amount of force (~~possible~~) reasonable to
35 effect a lawful purpose. Such characteristics and conditions may
36 include, for example, whether the person: Is visibly pregnant, or
37 states that they are pregnant; is known to be a minor, objectively
38 appears to be a minor, or states that they are a minor; is known to
39 be a vulnerable adult, or objectively appears to be a vulnerable
40 adult as defined in RCW 74.34.020; displays signs of mental,

1 behavioral, or physical impairments or disabilities; is experiencing
2 perceptual or cognitive impairments typically related to the use of
3 alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has
4 limited English proficiency; or is in the presence of children;

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

7 (d) When ((possible)) safe and feasible, use available and
8 appropriate less lethal alternatives before using deadly force(;~~and~~

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

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

15 (4) Nothing in this section prevents a law enforcement agency or
16 political subdivision of this state from adopting policies or
17 standards with additional requirements for de-escalation and greater
18 restrictions on the use of physical and deadly force than provided in
19 this section.

20 **Sec. 7.** RCW 43.101.010 and 2021 c 323 s 1 are each reenacted and
21 amended to read as follows:

22 When used in this chapter:

23 (1) "Applicant" means an individual who has received a
24 conditional offer of employment with a law enforcement or corrections
25 agency.

26 (2) "Chief for a day program" means a program in which
27 commissioners and staff partner with local, state, and federal law
28 enforcement agencies, hospitals, and the community to provide a day
29 of special attention to chronically ill children. Each child is
30 selected and sponsored by a law enforcement agency. The event, "chief
31 for a day," occurs on one day, annually or every other year and may
32 occur on the grounds and in the facilities of the commission. The
33 program may include any appropriate honoring of the child as a
34 "chief," such as a certificate swearing them in as a chief, a badge,
35 a uniform, and donated gifts such as games, puzzles, and art
36 supplies.

37 (3) "Commission" means the Washington state criminal justice
38 training commission.

1 (4) "Convicted" means at the time a plea of guilty, nolo
2 contendere, or deferred sentence has been accepted, or a verdict of
3 guilty or finding of guilt has been filed, notwithstanding the
4 pendency of any future proceedings, including but not limited to
5 sentencing, posttrial or postfact-finding motions and appeals.
6 "Conviction" includes all instances in which a plea of guilty or nolo
7 contendere is the basis for conviction, all proceedings in which
8 there is a case disposition agreement, and any equivalent disposition
9 by a court in a jurisdiction other than the state of Washington.

10 (5) "Correctional personnel" means any employee or volunteer who
11 by state, county, municipal, or combination thereof, statute has the
12 responsibility for the confinement, care, management, training,
13 treatment, education, supervision, or counseling of those individuals
14 whose civil rights have been limited in some way by legal sanction.

15 (6) "Corrections officer" means any corrections agency employee
16 whose primary job function is to provide for the custody, safety, and
17 security of adult persons in jails and detention facilities in the
18 state. "Corrections officer" does not include individuals employed by
19 state agencies.

20 (7) "Criminal justice personnel" means any person who serves as a
21 peace officer, reserve officer, specially commissioned officer,
22 limited authority peace officer, or corrections officer.

23 (8) "Finding" means a determination based on a preponderance of
24 the evidence whether alleged misconduct occurred; did not occur;
25 occurred, but was consistent with law and policy; or could neither be
26 proven or disproven.

27 (9) "Law enforcement personnel" means any person elected,
28 appointed, or employed as a general authority Washington peace
29 officer as defined in RCW 10.93.020.

30 (10) "Peace officer" has the same meaning as a general authority
31 Washington peace officer as defined in RCW 10.93.020. Commissioned
32 officers of the Washington state patrol, whether they have been or
33 may be exempted by rule of the commission from the basic training
34 requirement of RCW 43.101.200, are included as peace officers for
35 purposes of this chapter. Fish and wildlife officers with enforcement
36 powers for all criminal laws under RCW 77.15.075 are peace officers
37 for purposes of this chapter.

38 (11) "Reserve officer" means any person who does not serve as a
39 peace officer of this state on a full-time basis, but who, when
40 called by an agency into active service, is fully commissioned on the

1 same basis as full-time officers to enforce the criminal laws of this
2 state (~~and includes:~~

3 ~~(a) Specially commissioned Washington peace officers as defined~~
4 ~~in RCW 10.93.020;~~

5 ~~(b) Limited authority Washington peace officers as defined in RCW~~
6 ~~10.93.020;~~

7 ~~(c) Persons employed as security by public institutions of higher~~
8 ~~education as defined in RCW 28B.10.016; and~~

9 ~~(d) Persons employed for the purpose of providing security in the~~
10 ~~K-12 Washington state public school system as defined in RCW~~
11 ~~28A.150.010 and who are authorized to use force in fulfilling their~~
12 ~~responsibilities)).~~

13 (12) "Tribal police officer" means any person employed and
14 commissioned by a tribal government to enforce the criminal laws of
15 that government.

16 **Sec. 8.** RCW 43.101.080 and 2021 c 323 s 6 are each amended to
17 read as follows:

18 The commission shall have all of the following powers:

19 (1) Conduct training, including the basic law enforcement academy
20 and in-service training, and assume legal, fiscal, and program
21 responsibility for all training conducted by the commission;

22 (2) Grant, deny, suspend, or revoke certification of, or require
23 remedial training for, peace officers and corrections officers under
24 the provisions of this chapter;

25 (3) Grant, deny, suspend, or revoke certification of tribal
26 police officers whose tribal governments have agreed to participate
27 in the tribal police officer certification process;

28 (4) Related to its duties under subsections (2) and (3) of this
29 section, provide for the comprehensive and timely investigation of
30 complaints where necessary to ensure adherence to law and agency
31 policy, strengthen the integrity and accountability of peace officers
32 and corrections officers, and maintain public trust and confidence in
33 the criminal justice system in this state;

34 (5) Establish, by rule and regulation, curricula and standards
35 for the training of criminal justice personnel where such curricula
36 and standards are not prescribed by statute;

37 (6) Own, establish, and operate, or contract with other qualified
38 institutions or organizations for the operation of, training and
39 education programs for criminal justice personnel;

1 (7) Review and approve or reject standards for instructors of
2 training programs for criminal justice personnel, and employ
3 personnel from law enforcement agencies on a temporary basis as
4 instructors without any loss of employee benefits to those
5 instructors from those agencies;

6 (8) Direct the development of alternative, innovative, and
7 interdisciplinary training techniques;

8 (9) Review and approve or reject training programs conducted for
9 criminal justice personnel and rules establishing and prescribing
10 minimum training and education standards, including continuing
11 education;

12 (10) Allocate financial resources among training and education
13 programs conducted by the commission;

14 (11) Purchase, lease, or otherwise acquire, subject to the
15 approval of the department of enterprise services, a training
16 facility or facilities and allocate training facility space among
17 training and education programs conducted by the commission;

18 (12) Issue diplomas certifying satisfactory completion of any
19 training or education program conducted or approved by the commission
20 to any person so completing such a program;

21 (13) Provide for the employment of such personnel as may be
22 practical to serve as temporary replacements for any person engaged
23 in a basic training program as defined by the commission;

24 (14) Establish rules and regulations prescribing minimum
25 standards relating to physical, mental, and moral fitness which shall
26 govern the recruitment of criminal justice personnel where such
27 standards are not prescribed by statute or constitutional provision;

28 (15) Require county, city, port, or state law enforcement and
29 corrections agencies that make a conditional offer of employment to
30 an applicant as a fully commissioned peace officer, a reserve
31 officer, a specially commissioned peace officer, a limited authority
32 peace officer, or a corrections officer to administer a background
33 investigation in accordance with the requirements of RCW 43.101.095
34 to determine the applicant's suitability for employment as a fully
35 commissioned peace officer, reserve officer, or corrections officer;

36 (16) Appoint members of a hearings panel as provided under RCW
37 43.101.380;

38 (17) Issue public recommendations to the governing body of a law
39 enforcement agency regarding the agency's command decisions,
40 inadequacy of policy or training, investigations or disciplinary

1 decisions regarding misconduct, potential systemic violations of law
2 or policy, unconstitutional policing, or other matters;

3 (18) Promote positive relationships between law enforcement and
4 the residents of the state of Washington through commissioners and
5 staff participation in the "chief for a day program." The executive
6 director shall designate staff who may participate. In furtherance of
7 this purpose, the commission may accept grants of funds and gifts and
8 may use its public facilities for such purpose. At all times, the
9 participation of commissioners and staff shall comply with chapter
10 42.52 RCW and chapter 292-110 WAC; and

11 (19) Adopt, amend, repeal, and administer rules and regulations
12 pursuant to the administrative procedure act, chapter 34.05 RCW, and
13 the open public meetings act, chapter 42.30 RCW.

14 **Sec. 9.** RCW 43.43.837 and 2021 c 203 s 2 are each amended to
15 read as follows:

16 (1) Except as provided in subsection (2) of this section, in
17 order to determine the character, competence, and suitability of any
18 applicant or service provider to have unsupervised access, the
19 secretary of the department of social and health services and the
20 secretary of the department of children, youth, and families may
21 require a fingerprint-based background check through both the
22 Washington state patrol and the federal bureau of investigation at
23 any time, but shall require a fingerprint-based background check when
24 the applicant or service provider has resided in the state less than
25 three consecutive years before application, and:

26 (a) Is an applicant or service provider providing services to
27 children or people with developmental disabilities under RCW
28 74.15.030;

29 (b) Is an individual sixteen years of age or older who: (i) Is
30 not under the placement and care authority of the department of
31 children, youth, and families; and (ii) resides in an applicant or
32 service provider's home, facility, entity, agency, or business or who
33 is authorized by the department of children, youth, and families to
34 provide services to children under RCW 74.15.030;

35 (c) Is an individual who is authorized by the department of
36 social and health services to provide services to people with
37 developmental disabilities under RCW 74.15.030; or

38 (d) Is an applicant or service provider providing in-home
39 services funded by:

1 (i) Medicaid personal care under RCW 74.09.520;
2 (ii) Community options program entry system waiver services under
3 RCW 74.39A.030;
4 (iii) Chore services under RCW 74.39A.110; or
5 (iv) Other home and community long-term care programs,
6 established pursuant to chapters 74.39 and 74.39A RCW, administered
7 by the department of social and health services.

8 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
9 hired after January 7, 2012, are subject to background checks under
10 RCW 74.39A.056.

11 (3) To satisfy the shared background check requirements provided
12 for in RCW 43.216.270 and 43.20A.710, the department of children,
13 youth, and families and the department of social and health services
14 shall share federal fingerprint-based background check results as
15 permitted under the law. The purpose of this provision is to allow
16 both departments to fulfill their joint background check
17 responsibility of checking any individual who may have unsupervised
18 access to vulnerable adults, children, or juveniles. Neither
19 department may share the federal background check results with any
20 other state agency or person.

21 (4) The secretary of the department of children, youth, and
22 families shall require a fingerprint-based background check through
23 the Washington state patrol identification and criminal history
24 section and the federal bureau of investigation when the department
25 seeks to approve an applicant or service provider for a foster or
26 adoptive placement of children in accordance with federal and state
27 law. Fees charged by the Washington state patrol and the federal
28 bureau of investigation for fingerprint-based background checks shall
29 be paid by the department of children, youth, and families for
30 applicant and service providers providing foster care as required in
31 RCW 74.15.030.

32 (5) Any secure facility operated by the department of social and
33 health services or the department of children, youth, and families
34 under chapter 71.09 RCW shall require applicants and service
35 providers to undergo a fingerprint-based background check through the
36 Washington state patrol identification and criminal history section
37 and the federal bureau of investigation.

38 (6) Service providers and service provider applicants, except for
39 those long-term care workers exempted in subsection (2) of this
40 section, who are required to complete a fingerprint-based background

1 check may be hired for a (~~one hundred twenty~~) 120-day provisional
2 period as allowed under law or program rules when:

3 (a) A fingerprint-based background check is pending; and

4 (b) The applicant or service provider is not disqualified based
5 on the immediate result of the background check.

6 (7) Fees charged by the Washington state patrol and the federal
7 bureau of investigation for fingerprint-based background checks shall
8 be paid by the applicable department for applicants or service
9 providers providing:

10 (a) Services to people with a developmental disability under RCW
11 74.15.030;

12 (b) In-home services funded by medicaid personal care under RCW
13 74.09.520;

14 (c) Community options program entry system waiver services under
15 RCW 74.39A.030;

16 (d) Chore services under RCW 74.39A.110;

17 (e) Services under other home and community long-term care
18 programs, established pursuant to chapters 74.39 and 74.39A RCW,
19 administered by the department of social and health services or the
20 department of children, youth, and families; and

21 (f) Services in, or to residents of, a secure facility under RCW
22 71.09.115.

23 (8) Service providers licensed under RCW 74.15.030 must pay fees
24 charged by the Washington state patrol and the federal bureau of
25 investigation for conducting fingerprint-based background checks.

26 (9) Department of children, youth, and families service providers
27 licensed under RCW 74.15.030 may not pass on the cost of the
28 background check fees to their applicants unless the individual is
29 determined to be disqualified due to the background information.

30 (10) The department of social and health services and the
31 department of children, youth, and families shall develop rules
32 identifying the financial responsibility of service providers,
33 applicants, and the department for paying the fees charged by law
34 enforcement to roll, print, or scan fingerprints-based for the
35 purpose of a Washington state patrol or federal bureau of
36 investigation fingerprint-based background check.

37 (11) As a condition of hiring and continuing employment, any
38 person employed as security by a public institution of higher
39 education as defined in RCW 28B.10.016 and any person employed for

1 the purpose of providing security in the K-12 Washington state public
2 school system as defined in RCW 28A.150.010 must:

3 (a) Undergo a fingerprint-based background check through both the
4 Washington state patrol and the federal bureau of investigation; and

5 (b) Successfully complete training provided or approved by the
6 criminal justice training commission.

7 (12) For purposes of this section, unless the context plainly
8 indicates otherwise:

9 (a) "Applicant" means a current or prospective department of
10 social and health services, department of children, youth, and
11 families, or service provider employee, volunteer, student, intern,
12 researcher, contractor, or any other individual who will or may have
13 unsupervised access because of the nature of the work or services he
14 or she provides. "Applicant" includes, but is not limited to, any
15 individual who will or may have unsupervised access and is:

16 (i) Applying for a license or certification from the department
17 of social and health services or the department of children, youth,
18 and families;

19 (ii) Seeking a contract with the department of social and health
20 services, the department of children, youth, and families, or a
21 service provider;

22 (iii) Applying for employment, promotion, reallocation, or
23 transfer;

24 (iv) An individual that a department of social and health
25 services or department of children, youth, and families client or
26 guardian of a department of social and health services or department
27 of children, youth, and families client chooses to hire or engage to
28 provide services to himself or herself or another vulnerable adult,
29 juvenile, or child and who might be eligible to receive payment from
30 the department of social and health services or the department of
31 children, youth, and families for services rendered; or

32 (v) A department of social and health services or department of
33 children, youth, and families applicant who will or may work in a
34 department-covered position.

35 (b) "Authorized" means the department of social and health
36 services or the department of children, youth, and families grants an
37 applicant, home, or facility permission to:

38 (i) Conduct licensing, certification, or contracting activities;

39 (ii) Have unsupervised access to vulnerable adults, juveniles,
40 and children;

1 (iii) Receive payments from a department of social and health
2 services or department of children, youth, and families program; or

3 (iv) Work or serve in a department of social and health services
4 or department of children, youth, and families-covered position.

5 (c) "Secretary" means the secretary of the department of social
6 and health services.

7 (d) "Secure facility" has the meaning provided in RCW 71.09.020.

8 (e) "Service provider" means entities, facilities, agencies,
9 businesses, or individuals who are licensed, certified, authorized,
10 or regulated by, receive payment from, or have contracts or
11 agreements with the department of social and health services or the
12 department of children, youth, and families to provide services to
13 vulnerable adults, juveniles, or children. "Service provider"
14 includes individuals whom a department of social and health services
15 or department of children, youth, and families client or guardian of
16 a department of social and health services or department of children,
17 youth, and families client may choose to hire or engage to provide
18 services to himself or herself or another vulnerable adult, juvenile,
19 or child and who might be eligible to receive payment from the
20 department of social and health services or the department of
21 children, youth, and families for services rendered.

22 **Sec. 10.** RCW 43.101.105 and 2021 c 323 s 9 are each amended to
23 read as follows:

24 (1) To help prevent misconduct, enhance peace officer and
25 corrections officer accountability through the imposition of
26 sanctions commensurate to the wrongdoing when misconduct occurs, and
27 enhance public trust and confidence in the criminal justice system,
28 upon request by an officer's employer or on its own initiative, the
29 commission may deny, suspend, or revoke certification of, or require
30 remedial training for, an officer as provided in this section. The
31 commission shall provide the officer with written notice and a
32 hearing, if a hearing is timely requested by the officer under RCW
33 43.101.155. Notice and hearing are not required when a peace officer
34 voluntarily surrenders certification.

35 (2) The commission must deny or revoke the certification of an
36 applicant or officer if the applicant or officer:

37 (a) (i) Has been convicted of:

38 (A) A felony offense;

39 (B) A gross misdemeanor domestic violence offense;

1 (C) An offense with sexual motivation as defined in RCW
2 9.94A.030;

3 (D) An offense under chapter 9A.44 RCW; or

4 (E) A federal or out-of-state offense comparable to an offense
5 listed in (a)(i)(A) through (D) of this subsection (2); and

6 (ii)(A) The offense was not disclosed at the time of application
7 for initial certification; or

8 (B) The officer was a certified peace officer or corrections
9 officer at the time of the offense; and

10 (iii) The offense is not one for which the officer was granted a
11 full and unconditional pardon; and

12 (iv) The offense was not adjudicated as a juvenile and the record
13 sealed;

14 (b) Has been terminated by the employing agency or otherwise
15 separated from the employing agency after engaging in, or was found
16 by a court to have engaged in, the use of force which resulted in
17 death or serious injury and the use of force violated the law;

18 (c) Has been terminated by the employing agency or otherwise
19 separated from the employing agency after witnessing, or found by a
20 court to have witnessed, another officer's use of excessive force
21 and:

22 (i) Was in a position to intervene to end the excessive use of
23 force and failed to do so; or

24 (ii) Failed to report the use of excessive force in accordance
25 with agency policy or law;

26 (d) Has been terminated by the employing agency or otherwise
27 separated from the employing agency after knowingly making, or found
28 by a court to have knowingly made, misleading, deceptive, untrue, or
29 fraudulent representations in the practice of being a peace officer
30 or corrections officer including, but not limited to, committing
31 perjury, filing false reports, hiding evidence, or failing to report
32 exonerating information. This subsection (2)(d) does not apply to
33 representations made in the course and for the purposes of an
34 undercover investigation or other lawful law enforcement purpose; or

35 (e) Is prohibited from possessing weapons by state or federal law
36 or by a permanent court order entered after a hearing.

37 (3) The commission may deny, suspend, or revoke certification or
38 require remedial training of an applicant or officer if the applicant
39 or officer:

- 1 (a) Failed to timely meet all requirements for obtaining a
2 certificate of basic law enforcement or corrections training, a
3 certificate of basic law enforcement or corrections training
4 equivalency, or a certificate of exemption from the training;
- 5 (b) Was previously issued a certificate through administrative
6 error on the part of the commission;
- 7 (c) Knowingly falsified or omitted material information on an
8 application to the employer or for training or certification to the
9 commission;
- 10 (d) Interfered with an investigation or action for denial or
11 revocation of certification by:
- 12 (i) Knowingly making a materially false statement to the
13 commission;
- 14 (ii) Failing to timely and accurately report information to the
15 commission as required by law or policy; or
- 16 (iii) In any matter under review or investigation by or otherwise
17 before the commission, tampering with evidence or tampering with or
18 intimidating any witness;
- 19 (e) Engaged in a use of force that could reasonably be expected
20 to cause physical injury, and the use of force violated the law or
21 policy of the officer's employer;
- 22 (f) Committed sexual harassment as defined by state law;
- 23 (g) Through fraud or misrepresentation, has used the position of
24 peace officer or corrections officer for personal gain;
- 25 (h) Engaged in conduct including, but not limited to, verbal
26 statements, writings, online posts, recordings, and gestures,
27 involving prejudice or discrimination against a person on the basis
28 of race, religion, creed, color, national origin, immigration status,
29 disability, genetic information, marital status, sex, gender, gender
30 identity, gender expression, age, sexual orientation, or military and
31 veteran status;
- 32 (i) Has affiliation with one or more extremist organizations;
- 33 (j) Whether occurring on or off duty, has:
- 34 (i) Been found to have committed a felony, without regard to
35 conviction;
- 36 (ii) Engaged in a pattern of acts showing an intentional or
37 reckless disregard for the rights of others, including but not
38 limited to violation of an individual's constitutional rights under
39 the state or federal Constitution or a violation of RCW 10.93.160;

1 (iii) Engaged in unsafe practices involving firearms, weapons, or
2 vehicles which indicate either a willful or wanton disregard for the
3 safety of persons or property; or

4 (iv) Engaged in any conduct or pattern of conduct that: Fails to
5 meet the ethical and professional standards required of a peace
6 officer or corrections officer; disrupts, diminishes, or otherwise
7 jeopardizes public trust or confidence in the law enforcement
8 profession and correctional system; or demonstrates an inability or
9 unwillingness to uphold the officer's sworn oath to enforce the
10 Constitution and laws of the United States and the state of
11 Washington;

12 (k) Has been suspended or discharged, has resigned or retired in
13 lieu of discharge, or has separated from the agency after the alleged
14 misconduct occurred, for any conduct listed in this section; or

15 (l) Has voluntarily surrendered the person's certification as a
16 peace officer or corrections officer.

17 (4) In addition to the penalties set forth in subsection (3) of
18 this section, the commission may require mandatory retraining or
19 placement on probation for up to two years, or both. In determining
20 the appropriate penalty or sanction, the commission shall consider:
21 The findings and conclusions, and the basis for the findings and
22 conclusions, of any due process hearing or disciplinary appeals
23 hearing following an investigation by a law enforcement agency
24 regarding the alleged misconduct, if such hearing has occurred prior
25 to the commission's action; any sanctions or training ordered by the
26 employing agency regarding the alleged misconduct; and whether the
27 employing agency bears any responsibility for the situation.

28 (5) The commission shall deny certification to any applicant who
29 lost certification as a result of a break in service of more than 24
30 consecutive months if that applicant failed to comply with the
31 requirements set forth in RCW 43.101.080(15) and 43.101.095(2).

32 (6) The fact that the commission has suspended an officer's
33 certification is not, in and of itself, a bar to the employing
34 agency's maintenance of the officer's health and retirement benefits.

35 (7) Any suspension or period of probation imposed by the
36 commission shall run concurrently to any leave or discipline imposed
37 by the employing agency for the same incident.

38 (8) A law enforcement agency may not terminate a peace officer
39 based solely on imposition of suspension or probation for a period of
40 90 days or less by the commission. This subsection does not prohibit

1 a law enforcement agency from terminating a peace officer based on
2 the underlying acts or omissions for which the commission took such
3 action.

4 (9) Any of the misconduct listed in subsections (2) and (3) of
5 this section is grounds for denial, suspension, or revocation of
6 certification of a reserve officer to the same extent as applied to a
7 peace officer, if the reserve officer is certified pursuant to RCW
8 43.101.095.

9 (10) Notwithstanding any other provision of this chapter, the
10 commission must not deny, revoke, or suspend certification if the
11 commission finds, by a preponderance of the evidence, that the
12 conduct that would otherwise subject the officer to denial,
13 revocation, or suspension was made in good faith and in the interests
14 of public safety.

15 **Sec. 11.** RCW 10.93.190 and 2021 c 321 s 1 are each amended to
16 read as follows:

17 (1) Any identifiable on-duty peace officer who witnesses another
18 peace officer engaging or attempting to engage in the use of
19 excessive force against another person shall intervene when in a
20 position to do so to end the use of excessive force or attempted use
21 of excessive force, or to prevent the further use of excessive force.
22 A peace officer shall also render aid at the earliest safe
23 opportunity in accordance with RCW 36.28A.445, to any person injured
24 as a result of the use of force.

25 (2) Any identifiable on-duty peace officer who witnesses any
26 wrongdoing committed by another peace officer, or has a good faith
27 reasonable belief that another peace officer committed wrongdoing,
28 shall report such wrongdoing to the witnessing officer's supervisor
29 or other supervisory peace officer in accordance with the witnessing
30 peace officer's employing agency's policies and procedures for
31 reporting such acts committed by a peace officer.

32 (3) A member of a law enforcement agency shall not discipline or
33 retaliate in any way against a peace officer for intervening in good
34 faith or for reporting wrongdoing in good faith as required by this
35 section.

36 (4) A law enforcement agency shall send notice to the criminal
37 justice training commission of any disciplinary decision resulting
38 from a peace officer's failure to intervene or failure to report as
39 required by this section to determine whether the officer's conduct

1 may be grounds for suspension or revocation of certification under
2 RCW 43.101.105.

3 (5) For purposes of this section:

4 (a) "Excessive force" means force that exceeds the force
5 permitted by law (~~(or policy of the witnessing officer's agency)~~).

6 (b) "Peace officer" refers to any general authority Washington
7 peace officer.

8 (c) "Wrongdoing" means conduct that is contrary to law (~~(or~~
9 ~~contrary to the policies of the witnessing officer's agency)~~),
10 provided that the conduct is not de minimis or technical in nature.

11 NEW SECTION. **Sec. 12.** This act is remedial and retroactive, and
12 applies to all actions occurring on or after July 25, 2021, and all
13 actions occurring on or after the effective date of this section.

14 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect immediately.

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