H-1906.2

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**HOUSE BILL 1726**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Goodman, J. Johnson, Callan, Ramel, Ramos, Orwall, Wylie, and Stonier

AN ACT Relating to modifying the standard for use of physical force by peace officers in circumstances involving criminal conduct by allowing a peace officer to use physical force to protect against criminal conduct or effect an investigatory detention when there is reasonable suspicion that a person has committed or is committing a violent offense, a sex offense, an assault, or domestic violence, and allowing a peace officer to use physical force to protect against any other type of criminal offense when there is probable cause that a person has committed or is committing such an offense, subject to the requirement to exercise reasonable care and other protections afforded to the public under the law; amending RCW 10.120.010 and 10.120.020; and declaring an emergency.

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

**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) "Assault" means assault in the first degree, assault in the second degree, assault in the third degree, assault in the fourth degree, assault of a child in the first degree, assault of a child in the second degree, or assault of a child in the third degree.

(2) "Domestic violence" has the same meaning as defined in RCW 9.94A.030.

(3) "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)~~)) (4) "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)~~)) (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) "Sex offense" has the same meaning as defined in RCW 9.94A.030.

(7) "Violent offense" has the same meaning as defined in RCW 9.94A.030.

**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 necessary to:

(a) Protect against a violent offense, a sex offense, an assault, or domestic violence when there is reasonable suspicion that the person has committed or is committing the offense;

(b) Protect against ((~~criminal conduct where~~)) a criminal offense not included under (a) of this subsection when there is probable cause ((~~to make an arrest; effect an arrest; prevent~~)) that the person has committed or is committing the offense;

(c) Effect a temporary investigatory detention when there is reasonable suspicion that the person has committed or is committing a violent offense, a sex offense, an assault, or domestic violence;

(d) Effect an arrest;

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

(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 threat of serious physical injury or death to the officer or another person. For purposes of this subsection ((~~(1)(b)~~)):

((~~(i)~~)) (a) "Imminent 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)~~)) (b) "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)~~)) (c) "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 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.

**--- END ---**