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**SENATE BILL 5919**

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

**By** Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon, and Wagoner

AN ACT Relating to the standard for law enforcement authority to detain or pursue persons; and amending RCW 10.116.060, 10.120.010, and 10.120.020.

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

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

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

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

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

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

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

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

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

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

(3) A peace officer may not fire a weapon upon a moving vehicle unless necessary to protect against an imminent threat of serious physical harm resulting from the operator's or a passenger's use of a deadly weapon. For the purposes of this subsection, a vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer.

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

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

(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 force does not appear to exist, and that the amount of force used was 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 technique or tactic used by a peace officer pursuant to enforcing the criminal laws of this state that is reasonably likely to cause physical injury or transient pain.

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

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

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

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

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

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

(vi) 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 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) "Imminent~~)), "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((~~,~~)) and opportunity((~~, and intent~~)) to ((~~immediately~~)) imminently 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) 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~~)) safe and feasible, ((~~exhaust~~)) employ 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~~)) safe and feasible; 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~~)) a proportional 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~~)) reasonable 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; and

(d) When ((~~possible~~)) safe and feasible, 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) 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) 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.

**--- END ---**