

ESHB 1054 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 04/06/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Law enforcement agency" includes any "general authority
7 Washington law enforcement agency" and any "limited authority
8 Washington law enforcement agency," as those terms are defined in RCW
9 10.93.020, and any state or local agency providing or otherwise
10 responsible for the custody, safety, and security of adults or
11 juveniles incarcerated in correctional, jail, or detention
12 facilities. "Law enforcement agency" does not include the national
13 guard or state guard under Title 38 RCW or any other division of the
14 United States armed forces.

15 (2) "Peace officer" includes any "general authority Washington
16 peace officer," "limited authority Washington peace officer," and
17 "specially commissioned Washington peace officer" as those terms are
18 defined in RCW 10.93.020, and any employee, whether part-time or
19 full-time, of a jail, correctional, or detention facility who is
20 responsible for the custody, safety, and security of adult or
21 juvenile persons confined in the facility.

22 NEW SECTION. **Sec. 2.** (1) A peace officer may not use a
23 chokehold on another person in the course of his or her duties as a
24 peace officer.

25 (2) A peace officer may not use a neck restraint on another
26 person in the course of his or her duties as a peace officer unless
27 the neck restraint is necessary to protect against an imminent threat
28 of serious physical injury or death to the officer or another person.

29 (3) Any policies pertaining to the use of force adopted by law
30 enforcement agencies must be consistent with this section.

31 (4) For the purposes of this section:

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

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

7 NEW SECTION. **Sec. 3.** (1) The criminal justice training
8 commission shall convene a work group to develop a model policy for
9 the training and use of canine teams.

10 (2) The criminal justice training commission must ensure that the
11 work group is equally represented between community and law
12 enforcement stakeholders, including the following: Families who have
13 lost loved ones as a result of violent interactions with law
14 enforcement; an organization advocating for civil rights; a statewide
15 organization advocating for Black Americans; a statewide organization
16 advocating for Latinos; a statewide organization advocating for Asian
17 Americans, Pacific Islanders, and Native Hawaiians; a federally
18 recognized tribe located in Washington state; a community
19 organization from eastern Washington working on police
20 accountability; a community organization from western Washington
21 working on police accountability; a community organization serving
22 persons who are unhoused; the faith-based community with advocacy on
23 police accountability; an emergency room doctor with relevant
24 experience; Washington association of sheriffs and police chiefs;
25 Washington state patrol; Washington fraternal order of police;
26 Washington council of police and sheriffs; Washington state patrol
27 troopers association; council of metropolitan police and sheriffs;
28 teamsters local 117; and Washington state police canine association.

29 (3) The model policy work group shall consider:

30 (a) Training curriculum, including the history of race and
31 policing;

32 (b) Circumstances where the deployment of a canine may not be
33 appropriate;

34 (c) Circumstances where deployment of a canine on leash may be
35 appropriate;

36 (d) Strategies for reducing the overall rate of canine bites;

37 (e) Circumstances where a canine handler should consider the use
38 of tactics other than deploying a canine;

1 (f) Explicitly prohibiting the use of canines for crowd control
2 purposes;

3 (g) Canine reporting protocols;

4 (h) Circumstances where the use of voluntary canines and canine
5 handlers may be appropriate; and

6 (i) Identifying circumstances that would warrant the
7 decertification of canine teams.

8 (4) The criminal justice training commission shall publish the
9 model policy on its website by January 1, 2022.

10 (5) This section expires July 1, 2022.

11 NEW SECTION. **Sec. 4.** (1) A law enforcement agency may not use
12 or authorize its peace officers or other employees to use tear gas
13 unless necessary to alleviate a present risk of serious harm posed by
14 a riot inside a correctional, jail, or detention facility, barricaded
15 subject, or hostage situation. Prior to deploying tear gas, the
16 officer or employee shall:

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

19 (b) Obtain authorization to use tear gas from the chief law
20 enforcement officer, who must determine whether the present
21 circumstances warrant the use of tear gas and whether available and
22 appropriate alternatives have been exhausted as provided under this
23 section;

24 (c) Announce to the subject or subjects the intent to use tear
25 gas;

26 (d) Allow sufficient time and space for the subject or subjects
27 to comply with the officer's or employee's directives; and

28 (e) Announce to the subject or subjects for a second time,
29 immediately prior to deploying tear gas, the intent to use tear gas.

30 (2) For the purposes of this section:

31 (a) "Chief law enforcement officer" refers to the chief law
32 enforcement officer of the law enforcement agency, including: The
33 sheriff or chief for a general authority Washington law enforcement
34 agency; and the executive head of the department or agency for a
35 limited authority Washington law enforcement agency, such as the
36 secretary of corrections for the department of corrections.

37 (b) "Tear gas" refers to chloroacetophenone (CN), O-
38 chlorobenzylidene malononitrile (CS), and any similar chemical
39 irritant dispersed in the air for the purpose of producing temporary

1 physical discomfort or permanent injury, except "tear gas" does not
2 include oleoresin capsicum (OC).

3 NEW SECTION. **Sec. 5.** (1) A law enforcement agency may not
4 acquire or use any military equipment. Any law enforcement agency in
5 possession of military equipment as of the effective date of this
6 section shall return the equipment to the federal agency from which
7 it was acquired, if applicable, or destroy the equipment by December
8 31, 2022.

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

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

21 (3) For the purposes of this section:

22 (a) "Military equipment" means firearms and ammunition of .50
23 caliber or greater, machine guns, armed helicopters, armed or armored
24 drones, armed vessels, armed vehicles, armed aircraft, tanks, mine
25 resistant ambush protected vehicles, long range acoustic hailing
26 devices, rockets, rocket launchers, bayonets, grenades, missiles,
27 directed energy systems, and electromagnetic spectrum weapons.

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

35 (4) This section does not prohibit a law enforcement agency from
36 participating in a federal military equipment surplus program,
37 provided that any equipment acquired through the program does not
38 constitute military equipment. This may include, for example: Medical
39 supplies; hospital and health care equipment; office supplies,

1 furniture, and equipment; school supplies; warehousing equipment;
2 unarmed vehicles and vessels; conducted energy weapons; public
3 address systems; scientific equipment; and protective gear and
4 weather gear.

5 NEW SECTION. **Sec. 6.** All law enforcement agencies shall adopt
6 policies and procedures to ensure that uniformed peace officers while
7 on duty and in the performance of their official duties are
8 reasonably identifiable. For purposes of this section, "reasonably
9 identifiable" means that the peace officer's uniform clearly displays
10 the officer's name or other information that members of the public
11 can see and the agency can use to identify the peace officer.

12 NEW SECTION. **Sec. 7.** (1) A peace officer may not engage in a
13 vehicular pursuit, unless:

14 (a) There is probable cause to believe that a person in the
15 vehicle has committed or is committing a violent offense or sex
16 offense as defined in RCW 9.94A.030, a driving under the influence
17 offense under RCW 46.61.502, or an escape under chapter 9A.76 RCW;

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

20 (c) The person poses an imminent threat to the safety of others
21 and the safety risks of failing to apprehend or identify the person
22 are considered to be greater than the safety risks of the vehicular
23 pursuit under the circumstances;

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

34 (ii) For those jurisdictions with fewer than 10 commissioned
35 officers, if a supervisor is not on duty at the time, the officer
36 will request the on-call supervisor be notified of the pursuit
37 according to the agency's procedures. The officer must consider
38 alternatives to the vehicular pursuit, the justification for the

1 vehicular pursuit, and other safety considerations, including but not
2 limited to speed, weather, traffic, road conditions, and the known
3 presence of minors in the vehicle. The officer must terminate the
4 vehicular pursuit if any of the requirements of this subsection are
5 not met.

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

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

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

28 **Sec. 8.** RCW 10.31.040 and 2010 c 8 s 1030 are each amended to
29 read as follows:

30 (1) To make an arrest in criminal actions, the officer may break
31 open any outer or inner door, or windows of a dwelling house or other
32 building, or any other (~~inclosure~~ [enclosure]) enclosure, if, after
33 notice of his or her office and purpose, he or she be refused
34 admittance.

35 (2) An officer may not seek and a court may not issue a search or
36 arrest warrant granting an express exception to the requirement for
37 the officer to provide notice of his or her office and purpose when
38 executing the warrant.

1 NEW SECTION. **Sec. 9.** RCW 43.101.226 (Vehicular pursuits—Model
2 policy) and 2003 c 37 s 2 are each repealed.

3 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act
4 constitute a new chapter in Title 10 RCW."

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5 On page 1, line 2 of the title, after "officers;" strike the
6 remainder of the title and insert "amending RCW 10.31.040; adding a
7 new chapter to Title 10 RCW; repealing RCW 43.101.226; and providing
8 an expiration date."

EFFECT: Specifies a peace officer may not use a neck restraint unless the neck restraint is necessary to protect against an imminent threat of serious physical injury or death to the officer or another person; limits the use of tear gas during a riot to a riot that occurs inside a correctional, jail, or detention facility; requires each law enforcement agency to compile an inventory of military equipment possessed by the agency and provide the inventory to WASPC no later than November 1, 2021; requires WASPC to summarize inventory information from agencies and submit a report to the legislature and governor no later than December 31, 2021. Adjusts requirements for vehicular pursuits, including: Authorizing a vehicular pursuit when there is probable cause to believe a person has committed a driving under the influence offense or an escape; requires the person being pursued to pose an imminent threat to the safety of others; adjusts language regarding authorization and consultation of a supervising officer; requires the officer to comply with agency procedures for coordinating with other pursuing officers and jurisdictions; and defines vehicular pursuit.

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