

ESHB 2037 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 03/04/2022

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

3 "NEW SECTION. **Sec. 1.** (1) In 2021, the legislature passed
4 Engrossed Second Substitute House Bill No. 1310, codified as chapter
5 10.120 RCW, with the goal of establishing a uniform statewide
6 standard for use of force by peace officers. Since these provisions
7 were enacted, the complexities and nuances of police practices and
8 applicable laws, both in statute and common law, have posed
9 implementation challenges for some police agencies. For that reason,
10 the legislature hereby intends to provide clarification and guidance
11 to police agencies and the public with the passage of chapter . . .
12 (House Bill No. 1735), Laws of 2022, focusing on behavioral health
13 and other related issues, and the additional changes in this
14 legislation, focusing on enforcement practices as well as clarifying
15 definitions.

16 (2) The legislature did not enact RCW 10.120.020 with the purpose
17 of preventing or prohibiting peace officers from protecting citizens
18 from danger. To the contrary, the legislature recognizes the
19 importance of enforcing criminal laws and providing safety for all.
20 Therefore, the legislature intends to provide clear authority for
21 peace officers to use physical force to prevent persons from fleeing
22 lawful temporary investigative detentions, also known as *Terry* stops,
23 and to take persons into custody when authorized or directed by state
24 law. Yet this authority is not without limits. Peace officers must
25 exercise reasonable care when determining whether to use physical
26 force and when using any physical force against another person. Peace
27 officers must, when possible and appropriate, use de-escalation
28 tactics before using physical force. Peace officers may only use
29 force to the extent necessary and reasonable under the totality of
30 the circumstances. This high standard of safety reflects national
31 best practices developed and supported by police leaders across the
32 nation. Most importantly, it strikes the appropriate balance between

1 two important interests: The safety of the public and the peace
2 officers who serve to protect us, and the right of the people to be
3 secure in their persons against unreasonable searches and seizures.

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

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Deadly force" has the same meaning as provided in RCW
9 9A.16.010.

10 (2) "Law enforcement agency" includes any "general authority
11 Washington law enforcement agency" and any "limited authority
12 Washington law enforcement agency" as those terms are defined in RCW
13 10.93.020.

14 ((+2)) (3) "Less lethal alternatives" include, but are not
15 limited to, verbal warnings, de-escalation tactics, conducted energy
16 weapons, devices that deploy oleoresin capsicum, batons, and beanbag
17 rounds.

18 ((+3)) (4) "Necessary" means that, under the totality of the
19 circumstances, a reasonably effective alternative to the use of
20 physical force or deadly force does not appear to exist, and the type
21 and amount of physical force or deadly force used is a reasonable and
22 proportional response to effect the legal purpose intended or to
23 protect against the threat posed to the officer or others.

24 (5) "Peace officer" includes any "general authority Washington
25 peace officer," "limited authority Washington peace officer," and
26 "specially commissioned Washington peace officer" as those terms are
27 defined in RCW 10.93.020; however, "peace officer" does not include
28 any corrections officer or other employee of a jail, correctional, or
29 detention facility, but does include any community corrections
30 officer.

31 (6) "Physical force" means any act reasonably likely to cause
32 physical pain or injury or any other act exerted upon a person's body
33 to compel, control, constrain, or restrain the person's movement.
34 "Physical force" does not include pat-downs, incidental touching,
35 verbal commands, or compliant handcuffing where there is no physical
36 pain or injury.

37 (7) "Totality of the circumstances" means all facts known to the
38 peace officer leading up to, and at the time of, the use of force,

1 and includes the actions of the person against whom the peace officer
2 uses such force, and the actions of the peace officer.

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

5 (1) ~~((a))~~ PHYSICAL FORCE. Except as otherwise provided under
6 this section, a peace officer may use physical force against a person
7 ~~((when))~~ to the extent necessary to:

8 (a) Protect against ~~((criminal conduct where there is probable~~
9 cause to make an arrest; effect)) a criminal offense when there is
10 probable cause that the person has committed, is committing, or is
11 about to commit the offense;

12 (b) Effect an arrest; ~~((prevent))~~

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

15 (d) Prevent a person from intentionally fleeing or stop a person
16 who is intentionally and actively fleeing a lawful temporary
17 investigative detention for a criminal offense, provided that the
18 person has been given notice that he or she is being detained and is
19 not free to leave;

20 (e) Take a person into custody when authorized or directed by
21 statute; or

22 (f) Protect against an imminent threat of bodily injury to the
23 peace officer, another person, or the person against whom force is
24 being used.

25 ~~((b) A)~~ (2) DEADLY FORCE. Except as otherwise provided under
26 this section, a peace officer may use deadly force against another
27 person only when necessary to protect against an ~~((imminent))~~
28 immediate threat of serious physical injury or death to the officer
29 or another person. For purposes of this subsection ~~((1) (b))~~:

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

35 ~~((ii) "Necessary" means that, under the totality of the~~
36 circumstances, a reasonably effective alternative to the use of
37 deadly force does not exist, and that the amount of force used was a
38 reasonable and proportional response to the threat posed to the
39 officer and others.

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

5 ~~(2))~~ (3) REASONABLE CARE. A peace officer shall use reasonable
6 care when determining whether to use physical force and when using
7 any physical force against another person. To that end, a peace
8 officer shall:

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

21 (b) When using physical force, use the least amount of physical
22 force necessary to overcome resistance under the circumstances. This
23 includes a consideration of the characteristics and conditions of a
24 person for the purposes of determining whether to use force against
25 that person and, if force is necessary, determining the appropriate
26 and least amount of force possible to effect a lawful purpose. Such
27 characteristics and conditions may include, for example, whether the
28 person: Is visibly pregnant, or states that they are pregnant; is
29 known to be a minor, objectively appears to be a minor, or states
30 that they are a minor; is known to be a vulnerable adult, or
31 objectively appears to be a vulnerable adult as defined in RCW
32 74.34.020; displays signs of mental, behavioral, or physical
33 impairments or disabilities; is experiencing perceptual or cognitive
34 impairments typically related to the use of alcohol, narcotics,
35 hallucinogens, or other drugs; is suicidal; has limited English
36 proficiency; or is in the presence of children;

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

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

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

3 ~~((3))~~ (4) A peace officer may not use any force tactics
4 prohibited by applicable departmental policy, this chapter, or
5 otherwise by law, except to protect his or her life or the life of
6 another person from an imminent threat.

7 ~~((4))~~ (5) Nothing in this section (~~prevents~~):

8 (a) Permits a peace officer to use physical force or deadly force
9 in a manner or under such circumstances that would violate the United
10 States Constitution or state Constitution; or

11 (b) Prevents a law enforcement agency or political subdivision of
12 this state from adopting policies or standards with additional
13 requirements for de-escalation and greater restrictions on the use of
14 physical and deadly force than provided in this section.

15 NEW SECTION. Sec. 4. This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and takes
18 effect immediately."

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19 On page 1, line 13 of the title, after "circumstances;" strike
20 the remainder of the title and insert "amending RCW 10.120.010 and
21 10.120.020; creating a new section; and declaring an emergency."

EFFECT: Permits a peace officer to use physical force to the
extent necessary to prevent a person from intentionally fleeing, or
to stop a person who is intentionally and actively fleeing, a lawful
temporary investigative detention for a criminal offense, provided
that the person has been given notice that he or she is being
detained and not free to leave.

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