

SB 5919 - S AMD 1054

By Senator Dhingra

PULLED 02/09/2022

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

3
4 "NEW SECTION. **Sec. 1.** The legislature recognizes clarity is
5 necessary following the passage of Engrossed Second Substitute House
6 Bill No. 1310, codified as chapter 10.120 RCW. The legislature
7 recognizes and finds that RCW 10.120.020 did not prohibit
8 investigatory detentions, known as *Terry* stops, or pat downs when,
9 under the totality of the circumstances, such are authorized by law
10 and of a reasonable scope and duration. It is the intent of the
11 legislature in RCW 10.120.020 that peace officers will use the least
12 amount of physical force necessary under the circumstances. The
13 legislature intends to address the need for a definition of
14 "physical force" in order to aid the attorney general's office in
15 developing and publishing model policies to help implement chapter
16 10.120 RCW. This definition is needed to assure that there is a
17 uniform and consistent meaning applied throughout the state and that
18 the criminal justice training commission is providing training to
19 that definition. It is the fundamental duty of law enforcement to
20 preserve and protect all human life.

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

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

26 (1) "Law enforcement agency" includes any "general authority
27 Washington law enforcement agency" and any "limited authority

1 Washington law enforcement agency" as those terms are defined in RCW
2 10.93.020.

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

6 (3) "Necessary" means that, under the totality of the
7 circumstances, a reasonably effective alternative to the use of
8 force does not appear to exist, and that the amount of force used
9 was a reasonable and proportional response to effect the legal
10 purpose intended or to protect against the threat posed to the
11 officer or others.

12 (4) "Peace officer" includes any "general authority Washington
13 peace officer," "limited authority Washington peace officer," and
14 "specially commissioned Washington peace officer" as those terms are
15 defined in RCW 10.93.020; however, "peace officer" does not include
16 any corrections officer or other employee of a jail, correctional,
17 or detention facility, but does include any community corrections
18 officer.

19 (5) "Physical force" means any act likely to cause physical pain
20 or injury or any other act exerted upon a person's body to compel,
21 control, constrain, or restrain the person's movement. "Physical
22 force" does not include pat downs, incidental touching, verbal
23 commands, or compliant handcuffing where there is no physical pain
24 or injury.

25 (6) "Totality of the circumstances" means all facts known to the
26 peace officer leading up to, and at the time of, the use of force,
27 and includes the actions of the person against whom the peace
28 officer uses such force and the actions of the peace officer.

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

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

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1 (i) Protect against criminal conduct where there is probable
2 cause to make an arrest; ((effect))
3 (ii) Effect an arrest; ((prevent))
4 (iii) Prevent an escape as defined under chapter 9A.76 RCW;
5 (iv) Effect an investigative detention with less than probable
6 cause if the peace officer has reasonable and articulable facts that
7 point towards criminal activity, including when, under the totality
8 of the circumstances, the situation escalates so that there are now
9 facts sufficient to effectuate an arrest, whether or not an arrest
10 is carried out; or ((protect))

11 (v) Protect against an imminent threat of bodily injury to the
12 peace officer, another person, or the person against whom force is
13 being used.

14 (b) A peace officer may use deadly force against another person
15 only when necessary to protect against an imminent threat of serious
16 physical injury or death to the officer or another person. For
17 purposes of this subsection (1)(b)((÷

18 ~~(i) "Imminent")~~, "imminent threat of serious physical injury or
19 death" means that, based on the totality of the circumstances, it is
20 objectively reasonable to believe that a person has the present and
21 apparent ability, opportunity, and intent to immediately cause death
22 or serious bodily injury to the peace officer or another person.

23 ~~((ii) "Necessary" means that, under the totality of the~~
24 ~~circumstances, a reasonably effective alternative to the use of~~
25 ~~deadly force does not exist, and that the amount of force used was a~~
26 ~~reasonable and proportional response to the threat posed to the~~
27 ~~officer and others.~~

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

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

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

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

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

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

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

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

7 (4) Nothing in this section prevents a law enforcement agency or
8 political subdivision of this state from adopting policies or
9 standards with additional requirements for de-escalation and greater
10 restrictions on the use of physical and deadly force than provided in
11 this section."

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13 **SB 5919** S AMD

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16 On page 1, line 3 of the title, after "physical force" strike
17 the remainder of the title and insert "and providing the authority
18 for a peace officer to engage in a vehicular pursuit when there is
19 reasonable suspicion a person has violated the law and the officer
20 follows appropriate safety standards; amending RCW 10.120.010 and
21 10.120.020; and creating a new section."

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EFFECT: Amends the title.

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