

FINAL BILL REPORT

ESHB 2037

C 80 L 22
Synopsis as Enacted

Brief Description: Modifying the standard for use of force by peace officers.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Goodman and Sutherland).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

Constitutional Restrictions on the Use of Force by Peace Officers.

The United States Constitution protects citizens from excessive force by the government. Depending on the custodial status of the person against whom force is being used, the Fourth or Fourteenth Amendment provides the legal standard for determining whether the use of force is permissible. For example, when a person is subject to arrest or detained pretrial, courts have held that the use of force by a peace officer must be reasonable under the totality of the circumstances. Whether a peace officer's actions are considered reasonable depends upon several factors. This may include the severity of the crime, the threat to the safety of the peace officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. When a person is injured by excessive force, the primary legal remedy is to seek damages through a civil cause of action for deprivation of constitutional rights under 42 U.S.C. §1983.

State Standard for the Use of Force by Peace Officers.

In 2021 the state enacted a standard for use of force by peace officers, including separate restrictions on the use of physical force and deadly force.

Physical Force. Under the standard, a peace officer may use physical force against another person when necessary to:

- protect against criminal conduct where there is probable cause to make an arrest;
- effect an arrest;

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- prevent an escape offense; or
- protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

Deadly Force. 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. "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. "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. "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.

Reasonable Care and Other Restrictions. A peace officer must 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 must:

- when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force;
- when using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances, which includes a consideration of the characteristics and conditions of the 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;
- terminate the use of physical force as soon as the necessity for such force ends;
- when possible, use available and appropriate less lethal alternatives before using deadly force; and
- make less lethal alternatives issued to the officer reasonably available for his or her use.

Agency Policies. By July 1, 2022, the Attorney General must develop and publish model policies on use of force and de-escalation tactics consistent with the standard. By December 1, 2022, all law enforcement agencies must adopt the model policy or otherwise adopt policies consistent with the standard. Law enforcement agencies may adopt policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force. Law enforcement agencies must provide copies of policies and additional information to the Attorney General, including any future modifications.

Temporary Investigative Detentions.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court held that a peace

officer may conduct a brief investigative detention without probable cause if the peace officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

Summary:

The standard for the use of force by peace officers is modified.

Definitions. Definitions for "physical force" and "deadly force" are added to the standard. The definitions for "necessary" and "totality of the circumstances" are modified so as to make them broadly apply to the standard.

"Physical force" means any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement. "Physical force" does not include pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury. "Deadly force" means intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

"Necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. "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.

Physical force. A peace officer may use physical force against a person to the extent necessary to carry out the acts specified in the standard. The authority of a peace officer to use physical force against a person when defending against criminal conduct is modified. In those instances, physical force may be used to the extent necessary to protect against a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense.

The authority of a peace officer to use physical force against a person, subject to the requirement to exercise reasonable care, is expanded to include additional specific circumstances. A peace officer may use physical force against a person to the extent necessary to prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention, provided that the person has been given notice that he or she is being detained and is not free to leave. A peace officer may also use physical force to the extent necessary to take a person into custody when authorized or directed by statute.

Deadly Force. The provision regarding use of deadly force is modified by replacing the term "imminent threat of serious physical injury or death" with "immediate threat of serious

physical injury or death," distinguishing it from the restrictions on the use of physical force, but otherwise retaining the same definition. A peace officer may use deadly force against another person only when necessary to protect against an immediate threat of serious physical injury or death to the officer or another person.

Reasonable Care and Other Restrictions. A provision is added specifying that the standard does not permit a peace officer to use physical force or deadly force in a manner or under such circumstances that would violate the United States Constitution or state Constitution.

Votes on Final Passage:

House	87	11
Senate	32	16

Effective: March 17, 2022