WSR 21-18-043
ATTORNEY GENERAL'S OFFICE
[Filed August 25, 2021, 7:46 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION

WASHINGTON ATTORNEY GENERAL

The Washington attorney general routinely publishes notice of an opportunity to comment for opinion requests that we receive from the heads of state agencies, state legislators, and county prosecuting attorneys if we anticipate publishing a formal opinion in response to the request. We do so in order to provide members of the public with a chance to provide any legal analysis that they would like us to consider as we develop our opinion. In preparing any comments, please be aware that our opinion will provide our considered legal analysis of the question presented, and therefore comments that address the interpretation of the law are more helpful than comments that express an opinion as to what the law should be.

You may provide your comments to the attorney general's office by email to OpinionComments@atg.wa.gov or by writing to the Office of the Attorney General, Solicitor General Division, Attention Opinions Chief, P.O. Box 40100, Olympia, WA 98504-0100. We will consider any comments we receive before we complete our opinion. Although there is no deadline for submitting comments, comments are the most helpful if received within 30 days of this notice. Comments focused solely on what the law should be are less helpful than comments that interpret current law. You may also request a copy of the opinion request in which you are interested and information about the attorney general's opinion process.

If you are interested in receiving notice of new formal opinion requests via email, you may visit the attorney general's website at http://www.atg.wa.gov/ago%E2%80%90opinions for more information on how to join our AGO opinions list.

The attorney general's office seeks public input on the following opinion request(s):

Opinion Docket No. 21-08-02
Request by:
Roger Goodman, Representative, District 45
Jesse Johnson, Representative, District 30

QUESTIONS:

1. What constitutes "physical force" in the context of the standard in E2SHB 1310?

2. Does the standard in E2SHB 1310 preclude an officer from using physical force in the context of an investigatory detention (based on reasonable suspicion and not probable cause) when it becomes apparent that an individual will not otherwise comply with the request to stop?

3. In light of the standard in E2SHB 1310, are the provisions of Chapter 71.05 RCW, Chapter 13.34 RCW, Chapter 43.185C RCW, and other statutes and court orders (civil or criminal) authorizing or directing a law enforcement officer to take a person into custody to be interpreted as authorizing the officer to use physical force when necessary for that purpose?

4. In light of the standard in E2SHB 1310, is a law enforcement officer authorized to use physical force pursuant to the emergency aid doctrine, where there is no "imminent threat of bodily injury to the officer, another person, or the person against whom force is being used"? Does using physical force in this manner breach a legal duty to

leave the scene, and would an officer's efforts constitute an exception to the Public Duty Doctrine under the rescue doctrine?

5. Read together, does section 3(3) of E2SHB 1310 effectively authorize a law enforcement officer to use a chokehold or neck restraint "to protect against his or her life or the life of another person from an imminent threat" despite the specific prohibition of such tactics in section 2 of Engrossed Substitute House Bill 1054 (2021)?

6. How should the terms "possible, "available," and "appropriate" in section 3 of E2SHB 1310 be interpreted? Should those terms be interpreted according to their common definitions or according to the "reasonable officer" standard established under Graham v. Connor, 490 U.S. 386 (1989), which provides that "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"?