1054-S.E AMS LAW S2079.3

ESHB 1054 — S COMM AMD
By Committee on Law & Justice

NOT ADOPTED 04/06/2021

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

(4) For the purposes of this section:
(a) "Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway.

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

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

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

(3) The model policy work group shall consider:
   (a) Training curriculum, including the history of race and policing;
   (b) Circumstances where the deployment of a canine may not be appropriate;
   (c) Circumstances where deployment of a canine on leash may be appropriate;
   (d) Strategies for reducing the overall rate of canine bites;
   (e) Circumstances where a canine handler should consider the use of tactics other than deploying a canine;
(f) Explicitly prohibiting the use of canines for crowd control purposes;

(g) Canine reporting protocols;

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

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

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

(5) This section expires July 1, 2022.

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

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

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

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

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

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

(2) For the purposes of this section:

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

(b) "Tear gas" refers to chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), and any similar chemical irritant dispersed in the air for the purpose of producing temporary
physical discomfort or permanent injury, except "tear gas" does not include oleoresin capsicum (OC).

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

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

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

(3) For the purposes of this section:
   (a) "Military equipment" means firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, mine resistant ambush protected vehicles, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.
   (b) "Grenade" refers to any explosive grenade designed to injure or kill subjects, such as a fragmentation grenade or antitank grenade, or any incendiary grenade designed to produce intense heat or fire. "Grenade" does not include other nonexplosive grenades designed to temporarily incapacitate or disorient subjects without causing permanent injury, such as a stun grenade, sting grenade, smoke grenade, tear gas grenade, or blast ball.

(4) This section does not prohibit a law enforcement agency from participating in a federal military equipment surplus program, provided that any equipment acquired through the program does not constitute military equipment. This may include, for example: Medical supplies; hospital and health care equipment; office supplies,
furniture, and equipment; school supplies; warehousing equipment; unarmed vehicles and vessels; conducted energy weapons; public address systems; scientific equipment; and protective gear and weather gear.

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

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

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

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

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

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

(ii) For those jurisdictions with fewer than 10 commissioned officers, if a supervisor is not on duty at the time, the officer will request the on-call supervisor be notified of the pursuit according to the agency's procedures. The officer must consider alternatives to the vehicular pursuit, the justification for the
vehicular pursuit, and other safety considerations, including but not limited to speed, weather, traffic, road conditions, and the known presence of minors in the vehicle. The officer must terminate the vehicular pursuit if any of the requirements of this subsection are not met.

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

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

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

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

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

(2) An officer may not seek and a court may not issue a search or arrest warrant granting an express exception to the requirement for the officer to provide notice of his or her office and purpose when executing the warrant.
NEW SECTION.  Sec. 9.  RCW 43.101.226 (Vehicular pursuits—Model policy) and 2003 c 37 s 2 are each repealed.

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

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On page 1, line 2 of the title, after "officers;" strike the remainder of the title and insert "amending RCW 10.31.040; adding a new chapter to Title 10 RCW; repealing RCW 43.101.226; and providing 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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