

ESHB 2037 - S AMD TO LAW COMM AMD (S-4940.1/22) **1396**
By Senator Padden

OUT OF ORDER 03/04/2022

1 Beginning on page 3, line 3, strike all of section 3 and insert
2 the following:

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

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

7 (i) Protect against criminal conduct where there is probable
8 cause to make an arrest; ((effect))

9 (ii) Effect an arrest; ((prevent))

10 (iii) Prevent an escape as defined under chapter 9A.76 RCW;

11 (iv) Effect an investigative detention with less than probable
12 cause if the peace officer has reasonable and articulable facts that
13 point towards criminal activity, including when, under the totality
14 of the circumstances, the situation escalates so that there are now
15 facts sufficient to effectuate an arrest, whether or not an arrest is
16 carried out; or ((protect))

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

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

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

29 ~~((ii) "Necessary" means that, under the totality of the~~
30 ~~circumstances, a reasonably effective alternative to the use of~~
31 ~~deadly force does not exist, and that the amount of force used was a~~

1 reasonable and proportional response to the threat posed to the
2 officer and others.

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

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

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

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

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

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

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

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

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

EFFECT: (1) Permits peace officers to use force when necessary to protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape; effect an investigative detention with less than probable cause if the peace officer has reasonable and articulable facts that point towards criminal activity, including when, under the totality of the circumstances, the situation escalates so that there are now facts sufficient to effectuate an arrest, whether or not an arrest is carried out; or protect against an imminent threat of bodily injury.

(2) Amends the reasonable care standard to allow peace officers, when using physical force, to use a proportional amount, rather than the least amount, of physical force necessary.

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