

SB 5919 - S AMD 1062
By Senator Dhingra

ADOPTED AS AMENDED 02/09/2022

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

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

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

22 The definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

24 (1) "Law enforcement agency" includes any "general authority
25 Washington law enforcement agency" and any "limited authority
26 Washington law enforcement agency" as those terms are defined in RCW
27 10.93.020.

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

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

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

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

20 (6) "Totality of the circumstances" means all facts known to the
21 peace officer leading up to, and at the time of, the use of force,
22 and includes the actions of the person against whom the peace officer
23 uses such force and the actions of the peace officer.

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

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

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

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

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

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

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

4 (b) A peace officer may use deadly force against another person
5 only when necessary to protect against an imminent threat of serious
6 physical injury or death to the officer or another person. For
7 purposes of this subsection (1) (b) (~~(i)~~

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

13 ~~((ii) "Necessary" means that, under the totality of the~~
14 ~~circumstances, a reasonably effective alternative to the use of~~
15 ~~deadly force does not exist, and that the amount of force used was a~~
16 ~~reasonable and proportional response to the threat posed to the~~
17 ~~officer and others.~~

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

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

25 (a) When possible, exhaust available and appropriate de-
26 escalation tactics prior to using any physical force, such as:
27 Creating physical distance by employing tactical repositioning and
28 repositioning as often as necessary to maintain the benefit of time,
29 distance, and cover; when there are multiple officers, designating
30 one officer to communicate in order to avoid competing commands;
31 calling for additional resources such as a crisis intervention team
32 or mental health professional when possible; calling for back-up
33 officers when encountering resistance; taking as much time as
34 necessary, without using physical force or weapons; and leaving the
35 area if there is no threat of imminent harm and no crime has been
36 committed, is being committed, or is about to be committed;

37 (b) When using physical force, use ~~((the least))~~ a proportional
38 amount of physical force necessary to overcome resistance under the
39 circumstances. This includes a consideration of the characteristics
40 and conditions of a person for the purposes of determining whether to

1 use force against that person and, if force is necessary, determining
2 the appropriate and least amount of force (~~(possible)~~) reasonable to
3 effect a lawful purpose. Such characteristics and conditions may
4 include, for example, whether the person: Is visibly pregnant, or
5 states that they are pregnant; is known to be a minor, objectively
6 appears to be a minor, or states that they are a minor; is known to
7 be a vulnerable adult, or objectively appears to be a vulnerable
8 adult as defined in RCW 74.34.020; displays signs of mental,
9 behavioral, or physical impairments or disabilities; is experiencing
10 perceptual or cognitive impairments typically related to the use of
11 alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has
12 limited English proficiency; or is in the presence of children;

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

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

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

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

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

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28 On page 1, line 1, of the title, after "to" strike the remainder
29 of the title and insert "the definition of "physical force,"
30 "necessary," and "totality of the circumstances," and the standard
31 for law enforcement authority to use physical force and providing the
32 authority for a peace officer to engage in a vehicular pursuit when
33 there is reasonable suspicion a person has violated the law and the

1 officer follows appropriate safety standards; amending RCW 10.120.010
2 and 10.120.020; and creating a new section."

EFFECT: Amends the title.

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