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## Public Safety Committee

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### HB 1054

**Brief Description:** Establishing requirements for tactics and equipment used by peace officers.

**Sponsors:** Representatives Johnson, J., Entenman, Dolan, Ryu, Berry, Simmons, Bateman, Kloba, Lekanoff, Duerr, Fitzgibbon, Slatter, Wylie, Ramos, Berg, Tharinger, Ramel, Ortiz-Self, Senn, Peterson, Gregerson, Valdez, Callan, Hackney, Morgan, Chopp, Cody, Ormsby, Taylor, Frame, Santos, Macri, Davis, Pollet, Bergquist and Harris-Talley.

#### Brief Summary of Bill

- Prohibits peace officers from using chokeholds and neck restraints.
- Prohibits peace officers from using unleashed police dogs to arrest or apprehend persons.
- Prohibits law enforcement agencies from acquiring or using tear gas and certain types of military equipment.
- Prohibits uniformed peace officers from intentionally covering, concealing, or obscuring the number or other identifying information on their badges.
- Prohibits a peace officer from seeking, and a court from issuing, a search or arrest warrant granting an express exception to the "knock and announce" rule.
- Establishes restrictions on vehicular pursuits.

**Hearing Date:** 1/12/21

**Staff:** Kelly Leonard (786-7147).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

## Tactics and Equipment.

A peace officer's use of any particular weapon or other tactic or tool is limited by the constitutional protections afforded to the public. Any use of force must be reasonable under the circumstances. Officers use various tools and equipment issued to them by individual agencies, and most agencies have policies governing the use of those tools and equipment. In addition, the basic training provided by the Criminal Justice Training Commission (CJTC) to all general authority law enforcement officers includes training on patrol procedures, firearms, and defensive tactics.

*Tear gas.* The term "tear gas" refers to a group of substances that irritate mucous membranes, causing a stinging sensation in the eyes and irritating the upper respiratory tract. Tear gas is dispersed in the air through the use of sprays, fog generators, or grenades and shells. Tear gas has been used by peace officers to control or disperse crowds as well as to control or influence the movements of armed suspects in certain settings. Tear gas typically includes chloracetophenone (CN) and O-chlorobenzylidene malononitrile (CS), but other chemical irritants have also been used, including, for example, oleoresin capsicum (OC), commonly referred to as pepper spray.

*Military Surplus Program.* The United States Department of Defense operates a military surplus transfer program where excess property is transferred to law enforcement agencies. Law enforcement agencies may apply to participate in the program. While participating agencies do not pay for the equipment, they are responsible for shipping, storage, and maintenance costs. The types of equipment available and requested through the program varies, including, for example, armored vehicles, helicopters, rifles, respirators, digital cameras, night vision goggles, and office equipment.

## Executing search and arrest warrants.

An officer may make a nonconsensual entry into a dwelling or building in order to execute a search or arrest warrant. Prior to doing so, an officer must announce his or her identity, demand admittance, announce the purpose of their demand, and be explicitly or implicitly denied admittance. This is commonly referred to as the "knock and announce" rule.

An officer must comply with all of the elements of the "knock and announce" rule, unless there are exigent circumstances or it would otherwise be considered a useless gesture. The courts look to certain factors to determine if there were exigent circumstances, including: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is reasonably trustworthy information that the suspect is guilty; (4) whether there is strong reason to believe that the suspect is on the premises; (5) the likelihood that the suspect will escape if not swiftly apprehended; and (6) whether the entry is made peaceably.

A "no-knock warrant" is a legal term referring to a warrant where the court has provided advance

authorization to enter without complying with the "knock and announce" rule. State statute neither authorizes nor prohibits "no-knock warrants."

### Vehicular pursuits.

An officer who has authority to make an arrest may proceed in fresh pursuit of a person who is reasonably believed to have committed a violation of traffic or criminal laws or for whom the officer has an arrest warrant. When proceeding in pursuit of a suspect, the officer may violate certain rules of the road, including, for example, stop signals, speed limits, and parking restrictions. State law requires the CJTC to maintain a model policy on vehicular pursuits. The policy must include procedures for:

- supervisory control of the pursuit, if available;
- designating the primary pursuit vehicle and determining the total number of vehicles allowed to participate in the pursuit at one time;
- coordinating operations with other jurisdictions; and
- determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

All state, county, and municipal law enforcement agencies are required to adopt and implement vehicular pursuit policies. Though they are not required to adopt the model policy maintained by the CJTC, any adopted policy must include the same elements outlined above. All officers must receive training on how to conduct vehicular pursuits.

### **Summary of Bill:**

#### Tactics and equipment.

Restrictions are established on the use of certain tactics and equipment used by peace officers and law enforcement agencies. "Law enforcement agency" includes any general authority Washington law enforcement agency, the Liquor and Cannabis Board, the Department of Corrections, 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. "Peace officer" includes law enforcement personnel and correctional personnel employed or commissioned by a law enforcement agency.

*Neck restraints and chokeholds.* A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer. "Chokehold" refers to any tactic in which direct pressure is applied to a person's trachea or windpipe, or any other tactic intended to restrict another person's airway. "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.

*Police dogs.* A peace officer may not use an unleashed police dog for the purpose of arresting or

apprehending another person. Any law enforcement agency authorizing the use of police dogs must adopt policies consistent with this restriction.

*Tear Gas.* A law enforcement agency may not purchase, acquire, use, or authorize its peace officers or other employees to use tear gas for any purpose. "Tear gas" includes chloracetophenone (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 it does not include oleoresin capsicum (OC).

*Military equipment.* A law enforcement agency may not acquire or use any military equipment, including firearms and ammunition of .50 caliber or greater, machine guns, silencers, armored vehicles, armed or armored 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, grenade launchers, missiles, directed energy systems, and electromagnetic spectrum weapons.

Any law enforcement agency in possession of military equipment must return the equipment to the federal agency from which it was acquired, if applicable, or destroy the equipment by December 31, 2022. However, the restrictions on military equipment do 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.

*Badges.* A uniformed peace officer may not intentionally cover, conceal, or obscure the number or other identifying information on his or her badge while on duty.

#### Executing warrants.

An officer may not seek, and a court may not issue, a search or arrest warrant granting an express exception to the "knock and announce" rule.

#### Vehicular pursuits.

The requirements for agency policies on vehicular pursuits are modified. The model policy developed by the CJTC must prohibit an officer from engaging in a vehicular pursuit, unless: there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense or sex offense; the pursuit is necessary for the purpose of identifying or apprehending the person; under the circumstances, the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks associated with the vehicular pursuit; and the officer has received authorization to engage in the pursuit from a supervising officer. Further, the model policy must require supervisory approval and control of any vehicular pursuit and require the supervising officer to consider specific factors affecting public safety, including whether there are minors present in the vehicle. The model policy must also provide for alternatives to vehicular pursuits for identifying or apprehending persons.

The model policy must prohibit an officer from firing 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, not including the vehicle itself.

In developing the model policy, the CJTC must consult with the Washington State Patrol, Washington Association of Sheriffs and Police Chiefs, organizations representing state and local law enforcement officers, community stakeholders, and families impacted by law enforcement use of deadly force.

By March 1, 2022, every state, county, and municipal law enforcement agency must adopt and implement written policies for vehicular pursuits consistent with the requirements in the bill.

The CJTC must provide training on vehicular pursuits to every full-time law enforcement officer by January 1, 2025. Beginning January 1, 2023, the CJTC must provide training to every newly hired full-time officer within six months of employment.

The CJTC must establish and maintain a central repository for the collection of information regarding vehicular pursuits. Law enforcement agencies must submit information on vehicular pursuits to the CJTC on a monthly basis and the CTJC must publish annual reports.

**Appropriation:** None.

**Fiscal Note:** Requested on January 5, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.