

FINAL BILL REPORT

ESHB 1054

C 320 L 21
Synopsis as Enacted

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

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Johnson, J., Entenman, Dolan, Ryu, Berry, Simmons, Bateman, Kloba, Lekanoff, Duerr, Fitzgibbon, Slatter, Wylie, Ramos, Berg, Tharinger, Ramel, Ortiz-Self, Senn, Peterson, Gregerson, , Callan, Hackney, Morgan, Chopp, Cody, Ormsby, Taylor, , Santos, Macri, Davis, Pollet, Bergquist and Harris-Talley).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

A peace officer's use of any particular weapon or other tactic or equipment is limited by the constitutional protections afforded to the public. Any use of force must be reasonable under the circumstances. Officers use various tactics and equipment issued to them by individual agencies, and most agencies have policies governing the use of those tactics 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.

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.

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

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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 chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), but other chemical irritants have also been used, including, for example, oleoresin capsicum (OC), commonly referred to as pepper spray.

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 as the model policy. All officers must receive training on how to conduct vehicular pursuits.

Knock and Announce Rule and No-Knock 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 his or her 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."

Canine Teams. According to rules adopted by the CJTC, all canine teams used by law enforcement agencies must be certified and meet certain minimum standards. As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the CJTC in the category for the team's intended use. Certification remains valid for 24 months, as long as the composition and responsibility of the canine team does not change. To maintain active certification, a canine team must be evaluated prior to their certification expiration date.

Summary:

Restrictions are established on the use of certain tactics and equipment used by peace officers and law enforcement agencies. "Peace officer" includes any general authority, limited authority, and specially commissioned Washington peace officer, 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. "Law enforcement agency" includes any general authority and limited authority law enforcement agency, 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.

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" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting 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.

Military Equipment and the Military Surplus Program. A law enforcement agency may not acquire or use any military equipment, including firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, explosive grenades, incendiary grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

Each law enforcement agency must 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 must provide the inventory to the Washington Association of Sheriffs and Police Chiefs (WASPC) by November 1, 2021. The WASPC must summarize the inventory information from each law enforcement agency and report to the Governor and the Legislature by December 31, 2021. 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.

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.

Tear Gas. "Tear gas" includes 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. "Tear gas" does not include oleoresin capsicum (OC).

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, barricaded subject, or hostage situation.

Prior to deploying tear gas, the officer or employee must:

- exhaust alternatives to the use of tear gas that are available and appropriate under the circumstances;
- obtain authorization to use tear gas from a supervising officer, who must determine whether the present circumstances warrant the use of tear gas and whether available and appropriate alternatives have been exhausted;
- announce to the subject or subjects the intent to use tear gas; and
- allow sufficient time and space for the subject or subjects to comply with the officer's or employee's directives.

In addition, in the case of a the riot occurring outside of a correctional, jail, or detention facility, the officer or employee may use tear gas only after receiving authorization from the highest elected official in the jurisdiction. "Highest elected official" means the county executive in those charter counties with an elective office of county executive, however designated, and in the case of other counties, the chair of the county legislative authority. In the case of cities and towns, it means the mayor, regardless of whether the mayor is directly elected, selected by the council or legislative body according to procedures in statute, or selected according to a process in an established city charter. In the case of actions by the Washington State Patrol, it means the Governor.

Vehicular Pursuits. A "vehicular pursuit" means an attempt by a uniformed peace 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. A peace officer may not engage 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, sex offense or an escape offense, or there is reasonable suspicion that a person in the vehicle has committed or is committing a driving under the influence offense;

- the pursuit is necessary for the purpose of identifying or apprehending the person; and
- 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 associated with the vehicular pursuit under the circumstances.

An officer must receive authorization to engage in any vehicular pursuit from a supervising officer, and there must be supervisory control of any vehicular pursuit. The supervising officer must consider the justification for the vehicular pursuit and other safety considerations, including speed, weather, traffic, road conditions, and the known presence of minors in the vehicle. However, in jurisdictions with fewer than 10 commissioned officers, if a supervisor is not on duty at the time, the pursuing officer will request the on-call supervisor be notified of the pursuit according to agency procedures. In the absence of a supervisor in these circumstances, the pursuing officer must still comply with the same requirements and safety considerations in evaluating whether to conduct or terminate a pursuit.

A pursuing officer must 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.

The requirements for the CJTC to adopt a model policy and for individual agencies to adopt policies consistent with the model policy are repealed.

Firing upon Vehicles. 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. 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.

No-Knock 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.

Identification. Law enforcement agencies must adopt policies and procedures to ensure that uniformed peace officers while on duty and in the performance of their official duties are reasonably identifiable. "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.

Canine Teams. The CJTC must convene a work group to develop a model policy for the training and use of canine teams. The CJTC must ensure that the work group is equally

represented between community and law enforcement stakeholders, including certain representatives and interest groups. The model policy work group must consider:

- training curriculum, including the history of race and policing;
- circumstances where the deployment of a canine may not be appropriate;
- circumstances where deployment of a canine on leash may be appropriate;
- strategies for reducing the overall rate of canine bites;
- circumstances where a canine handler should consider the use of tactics other than deploying a canine;
- explicitly prohibiting the use of canines for crowd control purposes;
- canine reporting protocols;
- circumstances where the use of voluntary canines and canine handlers may be appropriate; and
- identifying circumstances that would warrant the decertification of canine teams.

The CJTC must publish the model policy on its website by January 1, 2022.

Votes on Final Passage:

House 54 43

Senate 27 22 (Senate amended)

House (House refused to concur/asked Senate for conference thereon)

Conference Committee

Senate 28 20

House 55 42

Effective: July 25, 2021