
Public Safety Committee

HB 1310

Brief Description: Concerning permissible uses of force by law enforcement and correctional officers.

Sponsors: Representatives Johnson, J., Lovick, Ryu, Simmons, Berry, Fitzgibbon, Hackney, Wylie, Sells, Wicks, Cody, Callan, Gregerson, Santos, Senn, Ortiz-Self, Chopp, Davis, Valdez, Dolan, Bateman, Ormsby, Bergquist, Morgan, Ramel, Ramos, Lekanoff, Frame, Harris-Talley, Pollet, Macri and Peterson.

Brief Summary of Bill

- Establishes a standard for use of physical force by peace officers.
- Modifies the criminal liability protections for homicide or use of deadly force committed or used by peace officers.

Hearing Date: 1/29/21

Staff: Kelly Leonard (786-7147).

Background:

Use of Force by Peace Officers. The U.S. Constitution, and in particular the Bill of Rights, protects citizens from excessive force by the government. Depending on the custodial status of the person against whom force is being used, the Fourth, Fourteenth, or Eighth Amendment provides the legal standard for determining whether the use of force is permissible. For persons subject to arrest or detained pre-trial, the standards generally require the use of force by a peace officer to be reasonable under the totality of the circumstances. Whether an officer's actions are reasonable depends upon several factors. This may include, for example, the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the peace officer or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

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.

For persons serving a sentence following a conviction, the standard requires the use of force by a corrections or peace officer to be applied without the purpose of maliciously causing harm.

State law does not contain separate standards for use of physical force by peace officers, though it generally authorizes an officer to use all necessary means to effect the arrest of a suspect who flees or resists arrest. This authorization is subject to the limitations under the U.S. Constitution as well as the restrictions in the state criminal code. Law enforcement agencies and correctional facilities typically adopt policies on the use of force, including the types of force allowed and when force may be used.

Civil Remedies. Under federal law, the primary legal remedy for the excessive use of force by a peace officer is to seek damages through a civil cause of action for deprivation of constitutional rights under 42 USC § 1983. Though state law does not provide a specific cause of action for state constitutional rights, a person may file a tort claim for assault or battery based on the intentional actions of a peace officer. In 2019 the State Supreme Court held that an injured party could also file a negligence claim premised on a peace officer's unreasonable failure to follow police practices calculated to avoid use of deadly force, so long as, considering the totality of the circumstances, allegations support a negligence claim concerning the peace officer's actions leading up to the decision to use deadly force.

Criminal Liability of Peace Officers. The U.S. Constitution and related civil case law do not address criminal liability of peace officers engaging in excessive force. Crimes are based in statute, existing independently from civil lawsuits and with different standards. Whether a peace officer is criminally liable for using force depends on the specific crime alleged and any applicable defense.

A peace officer has the same right of self-defense as others. In addition, deadly force is justifiable when used by a peace officer in certain circumstances so long as he or she is operating in good faith. "Good faith" is an objective standard which must consider all the facts, circumstances, and information known to the peace officer at the time to determine whether a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. The circumstances where deadly force is justifiable includes, for example, when necessarily used to: arrest a suspect who the peace officer reasonably believes has committed a felony; prevent escape or recapture an escapee from prison or jail; or suppress a riot involving a deadly weapon. When deadly force is used to arrest a suspect who may have committed a felony, the peace officer must have probable cause to believe the suspect poses a threat of serious physical harm if not arrested. Evidence that the suspect poses such a threat could include that the suspect has threatened a peace officer with a weapon, or that there is probable cause to believe the suspect has committed a crime involving threatened or actual serious physical harm. In such cases, deadly force may also be used if necessary to prevent the suspect's escape after a warning has been issued, if possible.

Training. The Criminal Justice Training Commission (CJTC) provides basic and advanced law

enforcement training and educational programs for law enforcement, local corrections officers, and other public safety professionals in Washington. All law enforcement personnel, with the exception of volunteers and reserve officers, are required to complete the Basic Law Enforcement Academy (BLEA). The BLEA consists of a 720-hour program covering a wide variety of subjects including: criminal law and procedures, traffic enforcement, cultural awareness, communication and writing skills, emergency vehicle operations, firearms, crisis intervention, patrol procedures, criminal investigation, and defensive tactics. In addition, all law enforcement officers are required to complete violence de-escalation training through the CJTC.

Definitions. State statutes rely upon different definitions of peace officer and law enforcement agency, depending on the context. The Mutual Aid Peace Officers Power Act contains definitions for general authority, limited authority, and specially commissioned peace officers, as well as general authority and limited authority law enforcement agencies.

"General authority peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority law enforcement agency who is commissioned to enforce the criminal laws of the state generally. "Limited authority peace officer" means any full-time, fully compensated officer of a limited authority law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. "Specially commissioned peace officer" means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify as a general authority peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by Oregon or Idaho.

"General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority law enforcement agency, and any other unit of government expressly designated by statute as a general authority law enforcement agency. Among others, the Washington State Patrol and the Department of Fish and Wildlife are general authority law enforcement agencies. "Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the Department of Natural Resources, Department of Social and Health Services, Gambling Commission, Lottery Commission, Parks and Recreation Commission, Utilities and Transportation Commission, Liquor and Cannabis Board, Office of the Insurance Commissioner, and the Department of Corrections.

Summary of Bill:

Use of Force by Peace Officers. A standard for use of force by peace officers is established. "Peace officer" includes any general authority, limited authority, and specially commissioned peace officer as those terms are defined in the Mutual Aid Peace Officers Power Act, 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 as those terms are Mutual Aid Peace Officers Power Act, 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.

A peace officer may use physical force against another person when necessary to effect an arrest, prevent an escape, or otherwise protect against an imminent threat of bodily injury to the peace officer or another person. A peace officer may use deadly force against another person only as a last resort when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person.

A peace officer must use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer must:

- reasonably avoid engaging in conduct that would create situations requiring physical force;
- exhaust available and appropriate de-escalation tactics prior to using any physical force;
- when using physical force, use only the minimal degree of physical force necessary under the circumstances, which includes a consideration of the characteristics and conditions of the person for the purposes of determining whether to use force against that person and, if force is necessary, determining the appropriate and minimal degree of force;
- terminate the use of physical force as soon as the necessity for such force ends; and
- use available and appropriate less lethal alternatives before using deadly force, and make less lethal alternatives issued to the officer reasonably available for his or her use.

Examples of de-escalation tactics, as well as the types of characteristics and conditions an officer must consider when determining the appropriate degree of force, are included.

A peace officer may not use any force tactics prohibited by applicable departmental policy, the bill, or otherwise by law.

Criminal Liability of Peace Officers. The criminal liability protections for peace officers using deadly force, including the good faith standard and the particular circumstances for which deadly force is permitted, are removed and replaced. Homicide or the use of deadly force is justifiable when necessarily committed or used by a peace officer as a last resort to protect against an imminent threat of serious physical injury or death to the peace officer or others.

"Necessarily" means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others.

"Imminent threat" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

"Totality of the circumstances" means all credible facts known to the peace officer leading up to and at the time of the use of force, and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer.

Agency Policies. Agencies may adopt policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force than those provided in the bill.

By July 1, 2022, the Attorney General must develop and publish model policies on use of force and de-escalation tactics consistent with the standard. By September 31, 2022, all law enforcement agencies must adopt the model policy or otherwise adopt policies consistent with the standard. Law enforcement agencies must provide copies of policies and additional information to the Attorney General, including any future modifications. The Attorney General must publish annual reports on agencies' policies.

Training. Training provided through the Basic Law Enforcement Academy and mandatory violence de-escalation training must be consistent with the standard for use of force and the model policy established by the Attorney General.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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