

FINAL BILL REPORT

E2SHB 1310

C 324 L 21
Synopsis as Enacted

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

Sponsors: House Committee on Appropriations (originally sponsored by 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).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

Use of Force by Peace Officers. The United States Constitution, 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 or Fourteenth Amendment provides the legal standard for determining whether the use of force is permissible. For persons subject to arrest or detained pretrial, the use of force by a peace officer must be reasonable under the totality of the circumstances. Whether an officer's actions are considered reasonable depends upon several factors. This may include, for example, the severity of the crime, the 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.

State law does not contain separate standards for use of 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 United States Constitution and the restrictions in the state criminal code governing justifiable homicide and use of deadly force. Law enforcement agencies and correctional facilities

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typically adopt policies on the use of force, including the types of force permitted 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 U.S.C. §1983. Though state law does not provide a specific cause of action for violation of 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 Washington 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 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. 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 include, 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.

Training. All peace officers are required to complete basic training through the Criminal Justice Training Commission (CJTC). Basic training 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 peace officers are required to complete violence de-escalation training through the CJTC within the first 15 months of employment, and then must complete updated violence de-escalation training periodically thereafter.

Summary:

Use of Force by Peace Officers. A civil standard for use of force by peace officers is established. A peace officer may use physical force against another person when necessary to: protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

A peace officer may use deadly force against another person only when necessary to protect

against an imminent threat of serious physical injury or death to the officer or another person. "Necessary" 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 of serious physical injury or death" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent 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 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.

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:

- when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force;
- when using physical force, use the least amount of physical force necessary to overcome resistance 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 least amount of force possible to effect a lawful purpose;
- terminate the use of physical force as soon as the necessity for such force ends;
- when possible, 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 amount of force, are included.

A peace officer may not use any force tactics prohibited by applicable departmental policy, the act, or otherwise by law, except to protect his or her life or the life of another person from an imminent threat.

Agency Policies. Agencies and political subdivisions 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 act.

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 December 1, 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. Basic training and mandatory violence de-escalation training through the CJTC must be consistent with the standard and the model policy established by the Attorney General. In addition, the CJTC must submit semiannual reports to the Legislature and Governor on the implementation and compliance with violence de-escalation training requirements, including data on compliance by agencies and officers.

Votes on Final Passage:

House 55 42

Senate 26 23 (Senate amended)

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

Conference Committee

Senate 26 23

House 56 41

Effective: July 25, 2021