

FINAL BILL REPORT

SHB 1735

C 4 L 22

Synopsis as Enacted

Brief Description: Modifying the standard for use of force by peace officers.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Johnson, J., Rule, Wicks, Bateman, Callan, Goodman, Macri, Orwall, Ramel, Ramos, Santos, Shewmake, Wylie, Simmons and Stonier).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

Constitutional restrictions on the use of force by peace officers.

The United States Constitution 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 example, when a person is subject to arrest or detained pretrial, courts have held that the use of force by a peace officer must be reasonable under the totality of the circumstances. Whether a peace officer's actions are considered reasonable depends upon several factors. This may include 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. When a person is injured by excessive force, the primary legal remedy is to seek damages through a civil cause of action for deprivation of constitutional rights under 42 U.S.C. §1983.

State standard for the use of force by peace officers.

In 2021 the state enacted a standard for use of force by peace officers, including separate restrictions on the use of physical force and deadly force.

Physical Force. Under the standard, 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 offense; or protect against an imminent

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threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

Deadly Force. 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.

Reasonable Care and Other Restrictions. 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.

The standard delineates types of de-escalation tactics, including: creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed.

Agency Policies. 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 may adopt policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force. Law enforcement agencies must provide copies of policies and additional information to the Attorney General, including any future modifications.

Summary:

The standard for use of force by peace officers is modified.

Physical force. A peace officer may use physical force against a person to the extent necessary to carry out specified acts. The authority of a peace officer to use physical force against a person, subject to the requirement to exercise reasonable care, is expanded to include the following circumstances:

- taking a person into custody, transporting a person for evaluation or treatment, or providing other assistance under civil or forensic commitment laws;
- taking a minor into protective custody when authorized or directed by statute;
- executing or enforcing a court order authorizing or directing a peace officer to take a person into custody;
- executing a search warrant; or
- executing or enforcing an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a peace officer to use physical force to execute or enforce the directive or order.

Deadly Force. The provision regarding use of deadly force is modified by replacing the term "imminent threat of serious physical injury or death" with "immediate threat of serious physical injury or death," distinguishing it from the restrictions on the use of physical force, but otherwise retaining the same definition. A peace officer may use deadly force against another person only when necessary to protect against an immediate threat of serious physical injury or death to the officer or another person.

Reasonable Care and Other Restrictions. The requirement to exercise reasonable care is modified so as to apply to both physical force and deadly force. A peace officer must, when possible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force. The list of de-escalation tactics in the standard are removed and replaced. "De-escalation tactics" are defined as actions used by a peace officer that are intended to minimize the likelihood of the need to use force during an incident. Depending on the circumstances, "de-escalation tactics" may include, but are not limited to:

- using clear instructions and verbal persuasion;
- attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident;
- creating physical distance by employing tactical repositioning to maintain the benefit

- of time, distance, and cover;
- when there are multiple officers, designating one officer to communicate in order to avoid competing commands; and
- requesting and using available support and resources, such as a crisis intervention team, a designated crisis responder or other behavioral health professional, or back-up officers.

A peace officer must use less lethal alternatives that are available and appropriate under the circumstances before using deadly force.

A provision is added specifying that the standard does not limit or restrict a peace officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions to protect health and safety, and that the standard does not prevent a peace officer from responding to requests for assistance or service by specified individuals and members of the public. Furthermore, the standard does not permit a peace officer to use physical force or deadly force in a manner or under such circumstances that would violate the United States Constitution or state Constitution.

Votes on Final Passage:

House	90	5
Senate	49	0

Effective: March 4, 2022