
Public Safety Committee

HB 2037

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

Sponsors: Representatives Goodman and Sutherland.

Brief Summary of Bill

- Modifies the standard for use of physical force by peace officers by allowing an officer to use physical force, subject to the requirement to exercise reasonable care, to the extent necessary to: protect against a criminal offense when there is probable cause that the person has committed or is committing the offense; prevent a person from fleeing a temporary investigative detention; or take a person into custody when authorized or directed by statute.
- Defines "physical force," "deadly force," "necessary," and "totality of the circumstances" with respect to the standard for use of physical force and deadly force by peace officers.

Hearing Date: 1/25/22

Staff: Kelly Leonard (786-7147).

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

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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. 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 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.

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.

Temporary investigative detentions. In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court held that a peace officer may conduct a brief investigative detention without probable cause if the peace officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

Summary of Bill:

Definitions and use of terms. Several definitions are expanded or added with respect to the standard for use of physical and deadly force, including the following:

- "Deadly force" means intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury;
- "Necessary" means that, under the totality of the circumstances, the type and degree of physical force is reasonable to effect the legal purpose intended, and a reasonably effective alternative to the use of physical force does not appear to exist. However, in the context of deadly force, "necessary" means that, under the totality of the circumstances, the use of deadly force is a reasonable and proportional response to the threat posed to the officer and others, and a reasonably effective alternative to the use of deadly force does not appear to exist;
- "Physical force" means any use of force, other than deadly force, that involves physical effort to control, restrain, or overcome the resistance of another person; and
- "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.

The provision regarding use of deadly force is modified by replacing the term "imminent threat" with "immediate threat," distinguishing it from the restrictions on the use of physical force. 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.

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

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, when defending against criminal conduct is modified. In those

instances, physical force may be used to the extent necessary to protect against a criminal offense when there is probable cause that the person has committed or is committing the offense.

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:

- preventing a person from fleeing a temporary investigative detention; or
- taking a person into custody when authorized or directed by statute.

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.

Appropriation: None.

Fiscal Note: Requested on January 24, 2022.

Effective Date: The bill contains an emergency clause and takes effect immediately.