

# SENATE BILL REPORT

## SB 5919

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As of January 31, 2022

**Title:** An act relating to the standard for law enforcement authority to detain or pursue persons.

**Brief Description:** Concerning the standard for law enforcement authority to detain or pursue persons.

**Sponsors:** Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon and Wagoner.

**Brief History:**

**Committee Activity:** Law & Justice: 2/01/22.

**Brief Summary of Bill**

- Adds definitions related to the use of physical force.
- Amends when a peace officer may use physical force.
- Amends the standard for reasonable care.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** Use of Force. In 2021, the legislature passed, and the governor signed into law, E2SHB 1310. In part, that bill, created a standard for the use of force by peace officers. A peace officer may use physical force against another person when necessary to protect against criminal conduct where there is probable cause to make and 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 only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person.

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*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.*

A peace officer must use reasonable care in determining when and whether to use physical force and to that end, must:

- when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force;
- use the least amount of physical force necessary to overcome resistance under the circumstances;
- 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 the officer's use.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Use of Force. The definitions relating to the use of force are amended. "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. "Physical force" means an act by a peace officer that involves physical harm, compulsion, or constraint exerted upon or against a person's body, including physical interactions meant to restrain, hold back, or control individuals, including force unlikely to cause pain or injury. Physical force does not include verbal commands, pat downs, incidental touching, or compliant handcuffing where there is no physical pain or injury. "Necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of force does not appear to exist, and that the amount of force used was a reasonable and proportional response to the effect the legal purpose intended or to protect against the threat posed to the officer or others.

The situations where a peace officer may use physical force are expanded. A peace officer may use physical force against a person when necessary to:

- protect against criminal conduct where there is probable cause to make an arrest;
- effect an arrest;
- prevent an escape ;
- effect an investigative detention, including when, under the totality of the circumstances, the situation escalates so that there are now facts sufficient to effectuate an arrest, whether or not an arrest is carried out; or
- protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

The standard for reasonable care is amended. 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 safe and feasible, employ available and appropriate de-escalation tactics prior to using any physical force;
- use a proportional amount of physical force necessary to overcome resistance under the circumstances;
- terminate the use of physical force as soon as the necessity for such force ends; and
- when safe and feasible, use available and appropriate less lethal alternatives before using deadly force.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.