
HOUSE BILL 1310

State of Washington

67th Legislature

2021 Regular Session

By Representatives J. Johnson, 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

Read first time 01/20/21. Referred to Committee on Public Safety.

1 AN ACT Relating to permissible uses of force by law enforcement
2 and correctional officers; amending RCW 9A.16.040 and 43.101.450;
3 adding a new section to chapter 43.101 RCW; adding a new chapter to
4 Title 10 RCW; creating a new section; and repealing RCW 10.31.050.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature recognizes that additional
7 clarity is necessary following the passage of Initiative Measure No.
8 940 (chapter 1, Laws of 2019) and Substitute House Bill No. 1064
9 (chapter 4, Laws of 2019). The legislature intends to address
10 excessive force and discriminatory policing by establishing a
11 requirement for law enforcement and correctional officers to act with
12 reasonable care when carrying out their duties, including using de-
13 escalation tactics and alternatives to deadly force. Further, the
14 legislature intends to address public safety concerns by limiting the
15 use of deadly force to very narrow circumstances where there is an
16 imminent threat of serious physical injury or death.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

1 (1) "Law enforcement agency" includes any "general authority
2 Washington law enforcement agency" and any "limited authority
3 Washington law enforcement agency" as those terms are defined in RCW
4 10.93.020, and any state or local agency providing or otherwise
5 responsible for the custody, safety, and security of adults or
6 juveniles incarcerated in correctional, jail, or detention
7 facilities.

8 (2) "Less lethal alternatives" include, but are not limited to,
9 conducted energy weapons, devices that deploy oleoresin capsicum,
10 batons, and beanbag rounds.

11 (3) "Peace officer" includes any "general authority Washington
12 peace officer," "limited authority Washington peace officer," and
13 "specially commissioned Washington peace officer" as those terms are
14 defined in RCW 10.93.020, and any employee, whether part-time or
15 full-time, of a jail, correctional, or detention facility who is
16 responsible for the custody, safety, and security of adult or
17 juvenile persons confined in the facility.

18 NEW SECTION. **Sec. 3.** (1) Except as otherwise provided under
19 this section, a peace officer may use physical force against another
20 person when necessary to effect an arrest, prevent an escape as
21 defined under chapter 9A.76 RCW, or otherwise protect against an
22 imminent threat of bodily injury to the peace officer or another
23 person. A peace officer may use deadly force against another person
24 only as a last resort when necessary to protect against an imminent
25 threat of serious physical injury or death to the officer or another
26 person, as provided in RCW 9A.16.040.

27 (2) A peace officer shall use reasonable care when determining
28 whether to use physical force and when using any physical force
29 against another person. To that end, a peace officer shall:

30 (a) Reasonably avoid engaging in conduct that would create
31 situations requiring physical force;

32 (b) Exhaust available and appropriate de-escalation tactics prior
33 to using any physical force, such as: Creating physical distance by
34 employing tactical repositioning and repositioning as often as
35 necessary to maintain the benefit of time, distance, and cover; when
36 there are multiple officers, designating one officer to communicate
37 in order to avoid competing commands; calling for additional
38 resources such as a crisis intervention team or mental health
39 professional; calling for back-up officers when encountering

1 resistance; taking as much time as necessary, without using physical
2 force or weapons; and leaving the area if there is no threat of
3 imminent harm or no crime is being committed;

4 (c) When using physical force, use only the minimal degree of
5 physical force necessary under the circumstances. This includes a
6 consideration of the characteristics and conditions of a person for
7 the purposes of determining whether to use force against that person
8 and, if force is necessary, determining the appropriate and minimal
9 degree of force. Such characteristics and conditions may include, for
10 example, whether the person: Is visibly pregnant, or states that they
11 are pregnant; is known to be a minor, objectively appears to be a
12 minor, or states that they are a minor; is known to be a vulnerable
13 adult, or objectively appears to be a vulnerable adult as defined in
14 RCW 74.34.020; displays signs of mental, behavioral, or physical
15 impairments or disabilities; is experiencing perceptual or cognitive
16 impairments typically related to the use of alcohol, narcotics,
17 hallucinogens, or other drugs; is suicidal; has limited English
18 proficiency; or is in the presence of children;

19 (d) Terminate the use of physical force as soon as the necessity
20 for such force ends; and

21 (e) Use available and appropriate less lethal alternatives before
22 using deadly force, and make less lethal alternatives issued to the
23 officer reasonably available for their use.

24 (3) A peace officer may not use any force tactics prohibited by
25 applicable departmental policy, this chapter, or otherwise by law.

26 (4) Nothing in this section prevents a law enforcement agency
27 from adopting policies or standards with additional requirements for
28 de-escalation and greater restrictions on the use of physical and
29 deadly force than provided in this section.

30 NEW SECTION. **Sec. 4.** (1) By July 1, 2022, the attorney general
31 shall develop and publish model policies on law enforcement's use of
32 force and de-escalation tactics consistent with section 3 of this
33 act.

34 (2) By September 31, 2022, all law enforcement agencies shall:
35 Adopt policies consistent with the model policies and submit copies
36 of the applicable policies to the attorney general; or, if the agency
37 did not adopt policies consistent with the model policies, provide
38 notice to the attorney general stating the reasons for any departures
39 from the model policies and an explanation of how the agency's

1 policies are consistent with section 3 of this act, including a copy
2 of the agency's relevant policies. After September 31, 2022, whenever
3 a law enforcement agency modifies or repeals any policies pertaining
4 to the use of force or de-escalation tactics, the agency shall submit
5 notice of such action with copies of any relevant policies to the
6 attorney general within 60 days.

7 (3) By December 1st of each year, the attorney general shall
8 publish on its website a report on the requirements of this section,
9 including copies of the model policies, information as to the status
10 of individual agencies' policies, and copies of any agency policies
11 departing from the model policies.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101
13 RCW to read as follows:

14 The basic training provided to criminal justice personnel by the
15 commission must be consistent with the standards in section 3 of this
16 act and the model policies established by the attorney general under
17 section 4 of this act.

18 **Sec. 6.** RCW 9A.16.040 and 2019 c 4 s 3 are each amended to read
19 as follows:

20 (1) Homicide or the use of deadly force is justifiable (~~in the~~
21 ~~following cases:~~

22 ~~(a) When a public officer applies deadly force in obedience to~~
23 ~~the judgment of a competent court; or~~

24 ~~(b) When necessarily used by a peace officer meeting the good~~
25 ~~faith standard of this section to overcome actual resistance to the~~
26 ~~execution of the legal process, mandate, or order of a court or~~
27 ~~officer, or in the discharge of a legal duty; or~~

28 ~~(c) When necessarily used by a peace officer meeting the good~~
29 ~~faith standard of this section or person acting under the officer's~~
30 ~~command and in the officer's aid:~~

31 ~~(i) To arrest or apprehend a person who the officer reasonably~~
32 ~~believes has committed, has attempted to commit, is committing, or is~~
33 ~~attempting to commit a felony;~~

34 ~~(ii) To prevent the escape of a person from a federal or state~~
35 ~~correctional facility or in retaking a person who escapes from such a~~
36 ~~facility;~~

1 ~~(iii) To prevent the escape of a person from a county or city~~
2 ~~jail or holding facility if the person has been arrested for, charged~~
3 ~~with, or convicted of a felony; or~~

4 ~~(iv) To lawfully suppress a riot if the actor or another~~
5 ~~participant is armed with a deadly weapon.~~

6 ~~(2) In considering whether to use deadly force under subsection~~
7 ~~(1)(c) of this section, to arrest or apprehend any person for the~~
8 ~~commission of any crime, the peace officer must have probable cause~~
9 ~~to believe that the suspect, if not apprehended, poses a threat of~~
10 ~~serious physical harm to the officer or a threat of serious physical~~
11 ~~harm to others. Among the circumstances which may be considered by~~
12 ~~peace officers as a "threat of serious physical harm" are the~~
13 ~~following:~~

14 ~~(a) The suspect threatens a peace officer with a weapon or~~
15 ~~displays a weapon in a manner that could reasonably be construed as~~
16 ~~threatening; or~~

17 ~~(b) There is probable cause to believe that the suspect has~~
18 ~~committed any crime involving the infliction or threatened infliction~~
19 ~~of serious physical harm.~~

20 ~~Under these circumstances deadly force may also be used if~~
21 ~~necessary to prevent escape from the officer, where, if feasible,~~
22 ~~some warning is given, provided the officer meets the good faith~~
23 ~~standard of this section.~~

24 ~~(3) A public officer covered by subsection (1)(a) of this section~~
25 ~~shall not be held criminally liable for using deadly force without~~
26 ~~malice and with a good faith belief that such act is justifiable~~
27 ~~pursuant to this section.~~

28 ~~(4) A peace officer shall not be held criminally liable for using~~
29 ~~deadly force in good faith, where "good faith" is an objective~~
30 ~~standard which shall consider all the facts, circumstances, and~~
31 ~~information known to the officer at the time to determine whether a~~
32 ~~similarly situated reasonable officer would have believed that the~~
33 ~~use of deadly force was necessary to prevent death or serious~~
34 ~~physical harm to the officer or another individual.~~

35 ~~(5)) when necessarily committed or used by a peace officer as a~~
36 ~~last resort to protect against an imminent threat of serious physical~~
37 ~~injury or death to the peace officer or others.~~

38 (2) For the purposes of this section:

39 (a) "Imminent threat" means that, based on the totality of the
40 circumstances, it is objectively reasonable to believe that a person

1 has the present ability, opportunity, and intent to immediately cause
2 death or serious bodily injury to the peace officer or another
3 person.

4 (b) "Necessarily" and "necessary" means that, under the totality
5 of the circumstances, a reasonably effective alternative to the use
6 of deadly force does not exist, and that the amount of force used was
7 a reasonable and proportional response to the threat posed to the
8 officer and others.

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

13 (3) This section shall not be construed as:

14 (a) Affecting the permissible use of force by a person acting
15 under the authority of RCW 9A.16.020 or 9A.16.050; or

16 (b) Preventing a law enforcement agency from adopting standards
17 pertaining to its use of deadly force that are more restrictive than
18 this section.

19 **Sec. 7.** RCW 43.101.450 and 2019 c 1 s 3 (Initiative Measure No.
20 940) are each amended to read as follows:

21 (1) Beginning one year after December 6, 2018, all law
22 enforcement officers in the state of Washington must receive violence
23 de-escalation training. Law enforcement officers beginning employment
24 after December 6, 2018, must successfully complete such training
25 within the first (~~fifteen~~) 15 months of employment. The commission
26 shall set the date by which other law enforcement officers must
27 successfully complete such training.

28 (2) All law enforcement officers shall periodically receive
29 continuing violence de-escalation training to practice their skills,
30 update their knowledge and training, and learn about new legal
31 requirements and violence de-escalation strategies.

32 (3) The commission shall set training requirements through the
33 procedures in RCW 43.101.455.

34 (4) Violence de-escalation training provided under this section
35 must be consistent with section 3 of this act and the model policies
36 established by the attorney general under section 4 of this act.

1 NEW SECTION. **Sec. 8.** RCW 10.31.050 (Officer may use force) and
2 2010 c 8 s 1031, Code 1881 s 1031, 1873 p 229 s 211, & 1854 p 114 s
3 75 are each repealed.

4 NEW SECTION. **Sec. 9.** Sections 2 through 4 of this act
5 constitute a new chapter in Title 10 RCW.

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