

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1310

67th Legislature
2021 Regular Session

Passed by the House April 23, 2021
Yeas 56 Nays 41

**Speaker of the House of
Representatives**

Passed by the Senate April 23, 2021
Yeas 26 Nays 23

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1310** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1310

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By House Appropriations (originally sponsored 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 02/22/21.

1 AN ACT Relating to permissible uses of force by law enforcement
2 and correctional officers; amending RCW 43.101.450; adding a new
3 section to chapter 43.101 RCW; adding a new chapter to Title 10 RCW;
4 creating new sections; 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 community corrections officers to
12 act with reasonable care when carrying out their duties, including
13 using de-escalation tactics and alternatives to deadly force.
14 Further, the legislature intends to address public safety concerns by
15 limiting the use of deadly force to very narrow circumstances where
16 there is an imminent threat of serious physical injury or death. It
17 is the intent of the legislature that when practicable, peace
18 officers will use the least amount of physical force necessary to
19 overcome actual resistance under the circumstances.

20 It is the fundamental duty of law enforcement to preserve and
21 protect all human life.

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

4 (1) "Law enforcement agency" includes any "general authority
5 Washington law enforcement agency" and any "limited authority
6 Washington law enforcement agency" as those terms are defined in RCW
7 10.93.020.

8 (2) "Less lethal alternatives" include, but are not limited to,
9 verbal warnings, de-escalation tactics, conducted energy weapons,
10 devices that deploy oleoresin capsicum, 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; however, "peace officer" does not include
15 any corrections officer or other employee of a jail, correctional, or
16 detention facility, but does include any community corrections
17 officer.

18 NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided under
19 this section, a peace officer may use physical force against a person
20 when necessary to: Protect against criminal conduct where there is
21 probable cause to make an arrest; effect an arrest; prevent an escape
22 as defined under chapter 9A.76 RCW; or protect against an imminent
23 threat of bodily injury to the peace officer, another person, or the
24 person against whom force is being used.

25 (b) A peace officer may use deadly force against another person
26 only when necessary to protect against an imminent threat of serious
27 physical injury or death to the officer or another person. For
28 purposes of this subsection (1)(b):

29 (i) "Imminent threat of serious physical injury or death" means
30 that, based on the totality of the circumstances, it is objectively
31 reasonable to believe that a person has the present and apparent
32 ability, opportunity, and intent to immediately cause death or
33 serious bodily injury to the peace officer or another person.

34 (ii) "Necessary" means that, under the totality of the
35 circumstances, a reasonably effective alternative to the use of
36 deadly force does not exist, and that the amount of force used was a
37 reasonable and proportional response to the threat posed to the
38 officer and others.

1 (iii) "Totality of the circumstances" means all facts known to
2 the peace officer leading up to and at the time of the use of force,
3 and includes the actions of the person against whom the peace officer
4 uses such force, and the actions of the peace officer.

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

8 (a) When possible, exhaust available and appropriate de-
9 escalation tactics prior to using any physical force, such as:
10 Creating physical distance by employing tactical repositioning and
11 repositioning as often as necessary to maintain the benefit of time,
12 distance, and cover; when there are multiple officers, designating
13 one officer to communicate in order to avoid competing commands;
14 calling for additional resources such as a crisis intervention team
15 or mental health professional when possible; calling for back-up
16 officers when encountering resistance; taking as much time as
17 necessary, without using physical force or weapons; and leaving the
18 area if there is no threat of imminent harm and no crime has been
19 committed, is being committed, or is about to be committed;

20 (b) When using physical force, use the least amount of physical
21 force necessary to overcome resistance under the circumstances. This
22 includes a consideration of the characteristics and conditions of a
23 person for the purposes of determining whether to use force against
24 that person and, if force is necessary, determining the appropriate
25 and least amount of force possible to effect a lawful purpose. Such
26 characteristics and conditions may include, for example, whether the
27 person: Is visibly pregnant, or states that they are pregnant; is
28 known to be a minor, objectively appears to be a minor, or states
29 that they are a minor; is known to be a vulnerable adult, or
30 objectively appears to be a vulnerable adult as defined in RCW
31 74.34.020; displays signs of mental, behavioral, or physical
32 impairments or disabilities; is experiencing perceptual or cognitive
33 impairments typically related to the use of alcohol, narcotics,
34 hallucinogens, or other drugs; is suicidal; has limited English
35 proficiency; or is in the presence of children;

36 (c) Terminate the use of physical force as soon as the necessity
37 for such force ends;

38 (d) When possible, use available and appropriate less lethal
39 alternatives before using deadly force; and

1 (e) Make less lethal alternatives issued to the officer
2 reasonably available for their use.

3 (3) A peace officer may not use any force tactics prohibited by
4 applicable departmental policy, this chapter, or otherwise by law,
5 except to protect his or her life or the life of another person from
6 an imminent threat.

7 (4) Nothing in this section prevents a law enforcement agency or
8 political subdivision of this state from adopting policies or
9 standards with additional requirements for de-escalation and greater
10 restrictions on the use of physical and deadly force than provided in
11 this section.

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

16 (2) By December 1, 2022, all law enforcement agencies shall:
17 Adopt policies consistent with the model policies and submit copies
18 of the applicable policies to the attorney general; or, if the agency
19 did not adopt policies consistent with the model policies, provide
20 notice to the attorney general stating the reasons for any departures
21 from the model policies and an explanation of how the agency's
22 policies are consistent with section 3 of this act, including a copy
23 of the agency's relevant policies. After December 1, 2022, whenever a
24 law enforcement agency modifies or repeals any policies pertaining to
25 the use of force or de-escalation tactics, the agency shall submit
26 notice of such action with copies of any relevant policies to the
27 attorney general within 60 days.

28 (3) By December 31st of each year, the attorney general shall
29 publish on its website a report on the requirements of this section,
30 including copies of the model policies, information as to the status
31 of individual agencies' policies, and copies of any agency policies
32 departing from the model policies.

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

35 The basic training provided to criminal justice personnel by the
36 commission must be consistent with the standards in section 3 of this
37 act and the model policies established by the attorney general under
38 section 4 of this act.

1 **Sec. 6.** RCW 43.101.450 and 2019 c 1 s 3 (Initiative Measure No.
2 940) are each amended to read as follows:

3 (1) Beginning one year after December 6, 2018, all law
4 enforcement officers in the state of Washington must receive violence
5 de-escalation training. Law enforcement officers beginning employment
6 after December 6, 2018, must successfully complete such training
7 within the first (~~fifteen~~)15 months of employment. The commission
8 shall set the date by which other law enforcement officers must
9 successfully complete such training.

10 (2) All law enforcement officers shall periodically receive
11 continuing violence de-escalation training to practice their skills,
12 update their knowledge and training, and learn about new legal
13 requirements and violence de-escalation strategies.

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

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

19 (5) The commission shall submit a report to the legislature and
20 the governor by January 1st and July 1st of each year on the
21 implementation of and compliance with subsections (1) and (2) of this
22 section. The report must include data on compliance by agencies and
23 officers. The report may also include recommendations for any changes
24 to laws and policies necessary to improve compliance with subsections
25 (1) and (2) of this section.

26 NEW SECTION. **Sec. 7.** RCW 10.31.050 (Officer may use force) and
27 2010 c 8 s 1031, Code 1881 s 1031, 1873 p 229 s 211, & 1854 p 114 s
28 75 are each repealed.

29 NEW SECTION. **Sec. 8.** Sections 2 through 4 of this act
30 constitute a new chapter in Title 10 RCW.

31 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
32 this act, referencing this act by bill or chapter number, is not
33 provided by June 30, 2021, in the omnibus appropriations act, this
34 act is null and void.

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