

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1735

67th Legislature
2022 Regular Session

Passed by the House January 28, 2022
Yeas 90 Nays 5

**Speaker of the House of
Representatives**

Passed by the Senate February 25,
2022
Yeas 49 Nays 0

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 **SUBSTITUTE HOUSE BILL 1735** 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**

SUBSTITUTE HOUSE BILL 1735

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

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

READ FIRST TIME 01/25/22.

1 AN ACT Relating to modifying the standard for use of force by
2 peace officers but only with respect to providing that physical force
3 may be used to the extent necessary, clarifying that deadly force may
4 be used in the face of an immediate threat, authorizing the use of
5 physical force to take a person into custody or provide assistance in
6 certain circumstances involving a civil or forensic commitment,
7 authorizing the use of physical force to take a minor into protective
8 custody, authorizing the use of physical force to execute or enforce
9 a court order, defining de-escalation tactics, clarifying when de-
10 escalation tactics and less lethal alternatives must be used by a
11 peace officer, specifying that the standard does not limit or
12 restrict a peace officer's authority or responsibility to perform
13 lifesaving measures or perform community caretaking functions, and
14 specifying that the standard does not prevent a peace officer from
15 responding to requests for assistance or service; amending RCW
16 10.120.010 and 10.120.020; creating a new section; and declaring an
17 emergency.

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

19 NEW SECTION. **Sec. 1.** (1) In 2021, the legislature passed
20 Engrossed Second Substitute House Bill No. 1310, codified as chapter
21 10.120 RCW, with the goal of establishing a uniform statewide

1 standard for use of force by peace officers. The standard emphasizes
2 the importance of exercising reasonable care and preserving and
3 protecting human life. However, the complexities and nuances of
4 police practices and applicable laws, both in statute and common law,
5 have posed implementation challenges for some police agencies. For
6 that reason, the legislature hereby recognizes the urgent need to
7 provide clarification and guidance for police agencies and the
8 public.

9 (2) The legislature intends for peace officers to continue
10 performing the critical role of supporting those in crisis and
11 assisting vulnerable members of our communities. The legislature does
12 not intend to prevent or prohibit peace officers from protecting
13 citizens from danger. The legislature recognizes that peace officers
14 can and do perform these responsibilities while also maintaining the
15 highest standards of safety and reasonable care expressed in RCW
16 10.120.020.

17 (3) While the newly established civil standard in RCW 10.120.020
18 is unique insofar as it is codified in state law, it represents
19 national best practices developed by police leaders across the
20 nation. The legislature does not intend to abrogate the criminal
21 liability protections afforded to peace officers in chapter 9A.16
22 RCW. Instead, the legislature hereby reaffirms its intent to
23 establish RCW 10.120.020 as a distinct and more restrictive civil
24 standard to inform the policies and practices applicable to all peace
25 officers operating within state agencies and local governments. The
26 legislature recognizes the profoundly important role peace officers
27 have in protecting communities, and further recognizes that
28 implementing and enforcing these best practices will improve public
29 safety for all persons across the state.

30 **Sec. 2.** RCW 10.120.010 and 2021 c 324 s 2 are each amended to
31 read as follows:

32 The definitions in this section apply throughout this chapter
33 unless the context clearly requires otherwise.

34 (1) "De-escalation tactics" refer to actions used by a peace
35 officer that are intended to minimize the likelihood of the need to
36 use force during an incident. Depending on the circumstances, "de-
37 escalation tactics" may include, but are not limited to: Using clear
38 instructions and verbal persuasion; attempting to slow down or
39 stabilize the situation so that more time, options, and resources are

1 available to resolve the incident; creating physical distance by
2 employing tactical repositioning to maintain the benefit of time,
3 distance, and cover; when there are multiple officers, designating
4 one officer to communicate in order to avoid competing commands;
5 requesting and using available support and resources, such as a
6 crisis intervention team, a designated crisis responder or other
7 behavioral health professional, or back-up officers.

8 (2) "Law enforcement agency" includes any "general authority
9 Washington law enforcement agency" and any "limited authority
10 Washington law enforcement agency" as those terms are defined in RCW
11 10.93.020.

12 ~~((+2))~~ (3) "Less lethal alternatives" include, but are not
13 limited to, verbal warnings, de-escalation tactics, conducted energy
14 weapons, devices that deploy oleoresin capsicum, batons, and beanbag
15 rounds.

16 ~~((+3))~~ (4) "Peace officer" includes any "general authority
17 Washington peace officer," "limited authority Washington peace
18 officer," and "specially commissioned Washington peace officer" as
19 those terms are defined in RCW 10.93.020; however, "peace officer"
20 does not include any corrections officer or other employee of a jail,
21 correctional, or detention facility, but does include any community
22 corrections officer.

23 **Sec. 3.** RCW 10.120.020 and 2021 c 324 s 3 are each amended to
24 read as follows:

25 (1) ~~((+a))~~ PHYSICAL FORCE. Except as otherwise provided under
26 this section, a peace officer may use physical force against a person
27 ~~((when))~~ to the extent necessary to:

28 (a) Protect against criminal conduct where there is probable
29 cause to make an arrest; ~~((effect))~~

30 (b) Effect an arrest; ~~((prevent))~~

31 (c) Prevent an escape as defined under chapter 9A.76 RCW; ~~((ex~~
32 protect))

33 (d) Take a person into custody, transport a person for evaluation
34 or treatment, or provide other assistance under chapter 10.77, 71.05,
35 or 71.34 RCW;

36 (e) Take a minor into protective custody when authorized or
37 directed by statute;

38 (f) Execute or enforce a court order authorizing or directing a
39 peace officer to take a person into custody;

1 (g) Execute a search warrant;

2 (h) Execute or enforce an oral directive issued by a judicial
3 officer in the courtroom or a written order where the court expressly
4 authorizes a peace officer to use physical force to execute or
5 enforce the directive or order; or

6 (i) Protect against an imminent threat of bodily injury to the
7 peace officer, another person, or the person against whom force is
8 being used.

9 ~~((b)A)~~ (2) DEADLY FORCE. Except as otherwise provided under
10 this section, a peace officer may use deadly force against another
11 person only when necessary to protect against an ((imminent))
12 immediate threat of serious physical injury or death to the officer
13 or another person. For purposes of this subsection ((1)(b)):

14 ~~((i) "Imminent")~~ "Immediate threat of serious physical injury or
15 death" means that, based on the totality of the circumstances, it is
16 objectively reasonable to believe that a person has the present and
17 apparent ability, opportunity, and intent to immediately cause death
18 or serious bodily injury to the peace officer or another person.

19 ~~((ii))~~ "Necessary" means that, under the totality of the
20 circumstances, a reasonably effective alternative to the use of
21 deadly force does not exist, and that the amount of force used was a
22 reasonable and proportional response to the threat posed to the
23 officer and others.

24 ~~((iii))~~ "Totality of the circumstances" means all facts known
25 to the peace officer leading up to and at the time of the use of
26 force, and includes the actions of the person against whom the peace
27 officer uses such force, and the actions of the peace officer.

28 ~~((2))~~ (3) REASONABLE CARE. A peace officer shall use reasonable
29 care when determining whether to use physical force or deadly force
30 and when using any physical force or deadly force against another
31 person. To that end, a peace officer shall:

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

1 ~~necessary, without using physical force or weapons; and leaving the~~
2 ~~area if there is no threat of imminent harm and no crime has been~~
3 ~~committed, is being committed, or is about to be committed)) use all
4 de-escalation tactics that are available and appropriate under the
5 circumstances before using physical force;~~

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

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

24 (d) When possible, use ~~((available and appropriate))~~ less lethal
25 alternatives that are available and appropriate under the
26 circumstances before using deadly force; and

27 (e) Make less lethal alternatives issued to the officer
28 reasonably available for ~~((their))~~ his or her use.

29 ~~((3))~~ (4) A peace officer may not use any force tactics
30 prohibited by applicable departmental policy, this chapter, or
31 otherwise by law, except to protect his or her life or the life of
32 another person from an imminent threat.

33 ~~((4))~~ (5) Nothing in this section ~~((prevents))~~:

34 (a) Limits or restricts a peace officer's authority or
35 responsibility to perform lifesaving measures or perform community
36 caretaking functions to ensure health and safety including, but not
37 limited to, rendering medical assistance, performing welfare checks,
38 or assisting other first responders and medical professionals;

39 (b) Prevents a peace officer from responding to requests for
40 assistance or service from first responders, medical professionals,

1 behavioral health professionals, social service providers, designated
2 crisis responders, shelter or housing providers, or any member of the
3 public;

4 (c) Permits a peace officer to use physical force or deadly force
5 in a manner or under such circumstances that would violate the United
6 States Constitution or state Constitution; or

7 (d) Prevents a law enforcement agency or political subdivision of
8 this state from adopting policies or standards with additional
9 requirements for de-escalation and greater restrictions on the use of
10 physical and deadly force than provided in this section.

11 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

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