

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2037

67th Legislature
2022 Regular Session

Passed by the House February 12, 2022
Yeas 87 Nays 11

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2022
Yeas 32 Nays 16

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 SUBSTITUTE HOUSE BILL 2037** 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 SUBSTITUTE HOUSE BILL 2037

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman and Sutherland)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to modifying the standard for use of force by
2 peace officers, but only with respect to providing that physical
3 force may be used to the extent necessary, clarifying that deadly
4 force may be used in the face of an immediate threat, clarifying that
5 physical force may be used to protect against a criminal offense when
6 there is probable cause that a person has committed or is committing
7 the offense, authorizing the use of physical force to prevent a
8 person from fleeing a temporary investigative detention, authorizing
9 the use of physical force to take a person into custody when
10 authorized or directed by statute, providing that the standard does
11 not permit violations to the United States Constitution or state
12 Constitution, and defining deadly force, physical force, necessary,
13 and totality of the circumstances; amending RCW 10.120.010 and
14 10.120.020; creating a new section; and declaring an emergency.

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

16 NEW SECTION. **Sec. 1.** (1) In 2021, the legislature passed
17 Engrossed Second Substitute House Bill No. 1310, codified as chapter
18 10.120 RCW, with the goal of establishing a uniform statewide
19 standard for use of force by peace officers. Since these provisions
20 were enacted, the complexities and nuances of police practices and
21 applicable laws, both in statute and common law, have posed

1 implementation challenges for some police agencies. For that reason,
2 the legislature hereby intends to provide clarification and guidance
3 to police agencies and the public with the passage of chapter . . .
4 (House Bill No. 1735), Laws of 2022, focusing on behavioral health
5 and other related issues, and the additional changes in this
6 legislation, focusing on enforcement practices as well as clarifying
7 definitions.

8 (2) The legislature did not enact RCW 10.120.020 with the purpose
9 of preventing or prohibiting peace officers from protecting citizens
10 from danger. To the contrary, the legislature recognizes the
11 importance of enforcing criminal laws and providing safety for all.
12 Therefore, the legislature intends to provide clear authority for
13 peace officers to use physical force to prevent persons from fleeing
14 lawful temporary investigative detentions, also known as *Terry* stops,
15 and to take persons into custody when authorized or directed by state
16 law. Yet this authority is not without limits. Peace officers must
17 exercise reasonable care when determining whether to use physical
18 force and when using any physical force against another person. Peace
19 officers must, when possible and appropriate, use de-escalation
20 tactics before using physical force. Peace officers may only use
21 force to the extent necessary and reasonable under the totality of
22 the circumstances. This high standard of safety reflects national
23 best practices developed and supported by police leaders across the
24 nation. Most importantly, it strikes the appropriate balance between
25 two important interests: The safety of the public and the peace
26 officers who serve to protect us, and the right of the people to be
27 secure in their persons against unreasonable searches and seizures.

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

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Deadly force" has the same meaning as provided in RCW
33 9A.16.010.

34 (2) "Law enforcement agency" includes any "general authority
35 Washington law enforcement agency" and any "limited authority
36 Washington law enforcement agency" as those terms are defined in RCW
37 10.93.020.

38 ((+2)) (3) "Less lethal alternatives" include, but are not
39 limited to, verbal warnings, de-escalation tactics, conducted energy

1 weapons, devices that deploy oleoresin capsicum, batons, and beanbag
2 rounds.

3 ~~((3))~~ (4) "Necessary" means that, under the totality of the
4 circumstances, a reasonably effective alternative to the use of
5 physical force or deadly force does not appear to exist, and the type
6 and amount of physical force or deadly force used is a reasonable and
7 proportional response to effect the legal purpose intended or to
8 protect against the threat posed to the officer or others.

9 (5) "Peace officer" includes any "general authority Washington
10 peace officer," "limited authority Washington peace officer," and
11 "specially commissioned Washington peace officer" as those terms are
12 defined in RCW 10.93.020; however, "peace officer" does not include
13 any corrections officer or other employee of a jail, correctional, or
14 detention facility, but does include any community corrections
15 officer.

16 (6) "Physical force" means any act reasonably likely to cause
17 physical pain or injury or any other act exerted upon a person's body
18 to compel, control, constrain, or restrain the person's movement.
19 "Physical force" does not include pat-downs, incidental touching,
20 verbal commands, or compliant handcuffing where there is no physical
21 pain or injury.

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

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

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

31 (a) ~~Protect against ((criminal conduct where there is probable~~
32 ~~cause to make an arrest; effect))~~ a criminal offense when there is
33 probable cause that the person has committed, is committing, or is
34 about to commit the offense;

35 (b) Effect an arrest; ((prevent))

36 (c) Prevent an escape as defined under chapter 9A.76 RCW; ((or
37 protect))

38 (d) Prevent a person from fleeing or stop a person who is
39 actively fleeing a lawful temporary investigative detention, provided

1 that the person has been given notice that he or she is being
2 detained and is not free to leave;

3 (e) Take a person into custody when authorized or directed by
4 statute; or

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

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

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

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

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

27 ~~(2))~~ (3) REASONABLE CARE. A peace officer shall use reasonable
28 care when determining whether to use physical force and when using
29 any physical force against another person. To that end, a peace
30 officer shall:

31 (a) When possible, exhaust available and appropriate de-
32 escalation tactics prior to using any physical force, such as:
33 Creating physical distance by employing tactical repositioning and
34 repositioning as often as necessary to maintain the benefit of time,
35 distance, and cover; when there are multiple officers, designating
36 one officer to communicate in order to avoid competing commands;
37 calling for additional resources such as a crisis intervention team
38 or mental health professional when possible; calling for back-up
39 officers when encountering resistance; taking as much time as
40 necessary, without using physical force or weapons; and leaving the

1 area if there is no threat of imminent harm and no crime has been
2 committed, is being committed, or is about to be committed;

3 (b) When using physical force, use the least amount of physical
4 force necessary to overcome resistance under the circumstances. This
5 includes a consideration of the characteristics and conditions of a
6 person for the purposes of determining whether to use force against
7 that person and, if force is necessary, determining the appropriate
8 and least amount of force possible to effect a lawful purpose. Such
9 characteristics and conditions may include, for example, whether the
10 person: Is visibly pregnant, or states that they are pregnant; is
11 known to be a minor, objectively appears to be a minor, or states
12 that they are a minor; is known to be a vulnerable adult, or
13 objectively appears to be a vulnerable adult as defined in RCW
14 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 (c) Terminate the use of physical force as soon as the necessity
20 for such force ends;

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

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

25 ~~((3))~~ (4) A peace officer may not use any force tactics
26 prohibited by applicable departmental policy, this chapter, or
27 otherwise by law, except to protect his or her life or the life of
28 another person from an imminent threat.

29 ~~((4))~~ (5) Nothing in this section ~~((prevents))~~:

30 (a) Permits a peace officer to use physical force or deadly force
31 in a manner or under such circumstances that would violate the United
32 States Constitution or state Constitution; or

33 (b) Prevents a law enforcement agency or political subdivision of
34 this state from adopting policies or standards with additional
35 requirements for de-escalation and greater restrictions on the use of
36 physical and deadly force than provided in this section.

37 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
38 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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