

---

**SUBSTITUTE SENATE BILL 5919**

---

**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon, and Wagoner)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to the definition of "physical force,"  
2 "necessary," and "totality of the circumstances," and the standard  
3 for law enforcement authority to use physical force; amending RCW  
4 10.120.010 and 10.120.020; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes clarity is  
7 necessary following the passage of Engrossed Second Substitute House  
8 Bill No. 1310, codified as chapter 10.120 RCW. The legislature  
9 recognizes and finds that RCW 10.120.020 did not prohibit  
10 investigatory detentions, known as *Terry* stops, or pat downs when,  
11 under the totality of the circumstances, such are authorized by law  
12 and of a reasonable scope and duration. It is the intent of the  
13 legislature in RCW 10.120.020 that peace officers will use the least  
14 amount of physical force necessary under the circumstances. The  
15 legislature intends to address the need for a definition of "physical  
16 force" in order to aid the attorney general's office in developing  
17 and publishing model policies to help implement chapter 10.120 RCW.  
18 This definition is needed to assure that there is a uniform and  
19 consistent meaning applied throughout the state and that the criminal  
20 justice training commission is providing training to that definition.

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

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

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

14 (3) "Necessary" means that, under the totality of the  
15 circumstances, a reasonably effective alternative to the use of force  
16 does not appear to exist, and that the amount of force used was a  
17 reasonable and proportional response to effect the legal purpose  
18 intended or to protect against the threat posed to the officer or  
19 others.

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

27 (5) "Physical force" means any act likely to cause physical pain  
28 or injury or any other act exerted upon a person's body to compel,  
29 control, constrain, or restrain the person's movement. "Physical  
30 force" does not include pat downs, incidental touching, verbal  
31 commands, or compliant handcuffing where there is no physical pain or  
32 injury.

33 (6) "Totality of the circumstances" means all facts known to the  
34 peace officer leading up to, and at the time of, the use of force,  
35 and includes the actions of the person against whom the peace officer  
36 uses such force and the actions of the peace officer.

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

1 (1) (a) Except as otherwise provided under this section, a peace  
2 officer may use physical force against a person when necessary to:

3 (i) Protect against criminal conduct where there is probable  
4 cause to make an arrest; ((effect))

5 (ii) Effect an arrest; ((prevent))

6 (iii) Prevent an escape as defined under chapter 9A.76 RCW;

7 (iv) Effect an investigative detention with less than probable  
8 cause if the peace officer has reasonable and articulable facts that  
9 point towards criminal activity, including when, under the totality  
10 of the circumstances, the situation escalates so that there are now  
11 facts sufficient to effectuate an arrest, whether or not an arrest is  
12 carried out; or ((protect))

13 (v) Protect against an imminent threat of bodily injury to the  
14 peace officer, another person, or the person against whom force is  
15 being used.

16 (b) A peace officer may use deadly force against another person  
17 only when necessary to protect against an imminent threat of serious  
18 physical injury or death to the officer or another person. For  
19 purposes of this subsection (1) (b) ((÷

20 ~~(i) "Imminent"), "imminent~~ threat of serious physical injury or  
21 death" means that, based on the totality of the circumstances, it is  
22 objectively reasonable to believe that a person has the present and  
23 apparent ability, opportunity, and intent to immediately cause death  
24 or serious bodily injury to the peace officer or another person.

25 ~~((ii) "Necessary" means that, under the totality of the~~  
26 ~~circumstances, a reasonably effective alternative to the use of~~  
27 ~~deadly force does not exist, and that the amount of force used was a~~  
28 ~~reasonable and proportional response to the threat posed to the~~  
29 ~~officer and others.~~

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

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

37 (a) When possible, exhaust available and appropriate de-  
38 escalation tactics prior to using any physical force, such as:  
39 Creating physical distance by employing tactical repositioning and  
40 repositioning as often as necessary to maintain the benefit of time,

1 distance, and cover; when there are multiple officers, designating  
2 one officer to communicate in order to avoid competing commands;  
3 calling for additional resources such as a crisis intervention team  
4 or mental health professional when possible; calling for back-up  
5 officers when encountering resistance; taking as much time as  
6 necessary, without using physical force or weapons; and leaving the  
7 area if there is no threat of imminent harm and no crime has been  
8 committed, is being committed, or is about to be committed;

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

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

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

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

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

35 (4) Nothing in this section prevents a law enforcement agency or  
36 political subdivision of this state from adopting policies or  
37 standards with additional requirements for de-escalation and greater

1 restrictions on the use of physical and deadly force than provided in  
2 this section.

--- **END** ---