

WSR 21-21-040

ATTORNEY GENERAL'S OFFICE

[Filed October 13, 2021, 8:34 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION
WASHINGTON ATTORNEY GENERAL

The Washington attorney general routinely publishes notice of an opportunity to comment for opinion requests that we receive from the heads of state agencies, state legislators, and county prosecuting attorneys if we anticipate publishing a formal opinion in response to the request. We do so in order to provide members of the public with a chance to provide any legal analysis that they would like us to consider as we develop our opinion. In preparing any comments, please be aware that our opinion will provide our considered legal analysis of the question presented, and therefore comments that address the interpretation of the law are more helpful than comments that express an opinion as to what the law should be.

You may provide your comments to the attorney general's office by email to OpinionComments@atg.wa.gov or by writing to the Office of the Attorney General, Solicitor General Division, Attention Opinions Chief, P.O. Box 40100, Olympia, WA 98504-0100. We will consider any comments we receive before we complete our opinion. Although there is no deadline for submitting comments, comments are the most helpful if received within 30 days of this notice. Comments focused solely on what the law should be are less helpful than comments that interpret current law. You may also request a copy of the opinion request in which you are interested and information about the attorney general's opinion process.

If you are interested in receiving notice of new formal opinion requests via email, you may visit the attorney general's website at <http://www.atg.wa.gov/ago%E2%80%9090opinions> for more information on how to join our AGO Opinions List.

The attorney general's office seeks public input on the following opinion request(s):

**Opinion Docket No. 21-09-03
Request by Representative Skyler Rude et al.**

QUESTIONS:

SET ONE:

1. Do RCW 71.05.150 and RCW 71.05.153 establish a legal duty for peace officers? And would the decision to not respond pursuant to these provisions constitute a breach of a legal duty?

2. If a peace officer is not authorized to use physical force to conduct an investigatory detention where there is reasonable suspicion, but not probable cause as required by RCW 10.120.020(1), that the person is involved in criminal activity, then can the person lawfully evade or flee the officer attempting to conduct the investigation? In the absence of the circumstances delineated in RCW 10.120.020(1), under what authority, if any, could the officer pursue a fleeing suspect? Can the officer use physical force to stop or detain a fleeing suspect?

3. Does RCW 10.120.020 (2) (a) require peace officers to leave the scene where there is a high likelihood of the use of physical force and where there is no threat of imminent harm and no reasonable suspicion of criminal activity? If a peace officer is required to leave a scene under such circumstances, would it be reasonable for a peace officer to not respond to a scene because information known to the peace

officer indicates that there is a high likelihood of the use of physical force and that there is no threat of imminent harm and no reasonable suspicion of criminal activity? Would the refusal to respond to such a scene breach a legal duty? And would that constitute an exception to the Public Duty Doctrine?

4. How should RCW 10.120.020 (1)(b) be read together with RCW 9A.16.040?

5. How should RCW 10.120.020 be read in context of the Court's ruling in *Graham v. Connor*?

6. Is RCW 10.120.020 consistent with the Court's "objectively reasonable" standard in *Graham v. Connor*?

7. Is a peace officer's use of force lawful if it is consistent with the Court's ruling in *Graham v. Connor* but is not consistent with RCW 10.120.020?

SET TWO:

1. Do the restrictions on the acquisition and use of "firearms and ammunition of .50 caliber or greater" in RCW 10.116.040 apply only to pistols, rifles, and conventional ammunition typically measured by caliber? Put another way, does the same provision prohibit the acquisition and use of a firearm or conventional ammunition measuring at .50 inches or greater even if the particular firearm or conventional ammunition is not typically measured by caliber, including, for example, shotguns and shotgun slugs?

2. Does RCW 10.116.040 prohibit law enforcement agencies from acquiring and/or using any firearm with a barrel diameter of .50 inches or greater even if the device is being acquired and/or used for the purpose of deploying less lethal alternatives?

3. Does RCW 10.116.040 prohibit law enforcement agencies from acquiring and/or using less lethal alternatives (i.e. rubber bullets, beanbag rounds, tear gas rounds, flash bang rounds, baton rounds, and other less lethal projectiles) with a diameter of .50 inches or greater?