

Chapter 10.120 RCW

LAW ENFORCEMENT AND CORRECTIONAL OFFICERS—PERMISSIBLE USES OF FORCE

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RCW 10.120.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "De-escalation tactics" refer to actions used by a peace officer that are intended to minimize the likelihood of the need to use force during an incident. Depending on the circumstances, "de-escalation tactics" may include, but are not limited to: Using clear instructions and verbal persuasion; attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident; creating physical distance by employing tactical repositioning to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; requesting and using available support and resources, such as a crisis intervention team, a designated crisis responder or other behavioral health professional, or back-up officers.

(3) "Law enforcement agency" includes any "general authority Washington law enforcement agency" and any "limited authority Washington law enforcement agency" as those terms are defined in RCW 10.93.020.

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

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

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

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

(8) "Totality of the circumstances" means all facts known to the peace officer leading up to, and at the time of, the use of force, and includes the actions of the person against whom the peace officer uses

such force, and the actions of the peace officer. [2022 c 80 § 2; 2022 c 4 § 2; 2021 c 324 § 2.]

Reviser's note: This section was amended by 2022 c 4 § 2 and by 2022 c 80 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2022 c 80: "(1) In 2021, the legislature passed Engrossed Second Substitute House Bill No. 1310, codified as chapter 10.120 RCW, with the goal of establishing a uniform statewide standard for use of force by peace officers. Since these provisions were enacted, the complexities and nuances of police practices and applicable laws, both in statute and common law, have posed implementation challenges for some police agencies. For that reason, the legislature hereby intends to provide clarification and guidance to police agencies and the public with the passage of chapter 4, Laws of 2022, focusing on behavioral health and other related issues, and the additional changes in this legislation, focusing on enforcement practices as well as clarifying definitions.

(2) The legislature did not enact RCW 10.120.020 with the purpose of preventing or prohibiting peace officers from protecting citizens from danger. To the contrary, the legislature recognizes the importance of enforcing criminal laws and providing safety for all. Therefore, the legislature intends to provide clear authority for peace officers to use physical force to prevent persons from fleeing lawful temporary investigative detentions, also known as Terry stops, and to take persons into custody when authorized or directed by state law. Yet this authority is not without limits. Peace officers must exercise reasonable care when determining whether to use physical force and when using any physical force against another person. Peace officers must, when possible and appropriate, use de-escalation tactics before using physical force. Peace officers may only use force to the extent necessary and reasonable under the totality of the circumstances. This high standard of safety reflects national best practices developed and supported by police leaders across the nation. Most importantly, it strikes the appropriate balance between two important interests: The safety of the public and the peace officers who serve to protect us, and the right of the people to be secure in their persons against unreasonable searches and seizures." [2022 c 80 § 1.]

Effective date—2022 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2022]." [2022 c 80 § 4.]

Intent—2022 c 4: "(1) In 2021, the legislature passed Engrossed Second Substitute House Bill No. 1310, codified as chapter 10.120 RCW, with the goal of establishing a uniform statewide standard for use of force by peace officers. The standard emphasizes the importance of exercising reasonable care and preserving and protecting human life. However, the complexities and nuances of police practices and applicable laws, both in statute and common law, have posed implementation challenges for some police agencies. For that reason, the legislature hereby recognizes the urgent need to provide clarification and guidance for police agencies and the public.

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

(3) While the newly established civil standard in RCW 10.120.020 is unique insofar as it is codified in state law, it represents national best practices developed by police leaders across the nation. The legislature does not intend to abrogate the criminal liability protections afforded to peace officers in chapter 9A.16 RCW. Instead, the legislature hereby reaffirms its intent to establish RCW 10.120.020 as a distinct and more restrictive civil standard to inform the policies and practices applicable to all peace officers operating within state agencies and local governments. The legislature recognizes the profoundly important role peace officers have in protecting communities, and further recognizes that implementing and enforcing these best practices will improve public safety for all persons across the state." [2022 c 4 § 1.]

Effective date—2022 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 4, 2022]." [2022 c 4 § 4.]

Intent—2021 c 324: "The legislature recognizes that additional clarity is necessary following the passage of Initiative Measure No. 940 (chapter 1, Laws of 2019) and Substitute House Bill No. 1064 (chapter 4, Laws of 2019). The legislature intends to address excessive force and discriminatory policing by establishing a requirement for law enforcement and community corrections officers to act with reasonable care when carrying out their duties, including using de-escalation tactics and alternatives to deadly force. Further, the legislature intends to address public safety concerns by limiting the use of deadly force to very narrow circumstances where there is an imminent threat of serious physical injury or death. It is the intent of the legislature that when practicable, peace officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.

It is the fundamental duty of law enforcement to preserve and protect all human life." [2021 c 324 § 1.]

RCW 10.120.020 Permissible uses of force. (1) PHYSICAL FORCE. Except as otherwise provided under this section, a peace officer may use physical force against a person to the extent necessary to:

- (a) Protect against a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense;
- (b) Effect an arrest;
- (c) Prevent an escape as defined under chapter 9A.76 RCW;
- (d) Take a person into custody, transport a person for evaluation or treatment, or provide other assistance under chapter 10.77, 71.05, or 71.34 RCW;

- (e) Take a minor into protective custody when authorized or directed by statute;
- (f) Execute or enforce a court order authorizing or directing a peace officer to take a person into custody;
- (g) Execute a search warrant;
- (h) Execute or enforce an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a peace officer to use physical force to execute or enforce the directive or order; or
- (i) Prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention, provided that the person has been given notice that he or she is being detained and is not free to leave;
- (j) Take a person into custody when authorized or directed by statute; or
- (k) Protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

(2) DEADLY FORCE. Except as otherwise provided under this section, a peace officer may use deadly force against another person only when necessary to protect against an immediate threat of serious physical injury or death to the officer or another person. For purposes of this subsection: "Immediate threat of serious physical injury or death" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

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

- (a) When possible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force;
- (b) When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances. This includes a consideration of the characteristics and conditions of a person for the purposes of determining whether to use force against that person and, if force is necessary, determining the appropriate and least amount of force possible to effect a lawful purpose. Such characteristics and conditions may include, for example, whether the person: Is visibly pregnant, or states that they are pregnant; is known to be a minor, objectively appears to be a minor, or states that they are a minor; is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020; displays signs of mental, behavioral, or physical impairments or disabilities; is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has limited English proficiency; or is in the presence of children;
- (c) Terminate the use of physical force as soon as the necessity for such force ends;
- (d) When possible, use less lethal alternatives that are available and appropriate under the circumstances before using deadly force; and

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

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

(5) Nothing in this section:

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

(b) Prevents a peace officer from responding to requests for assistance or service from first responders, medical professionals, behavioral health professionals, social service providers, designated crisis responders, shelter or housing providers, or any member of the public;

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

(d) Prevents a law enforcement agency or political subdivision of this state from adopting policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and deadly force than provided in this section. [2022 c 80 § 3; 2022 c 4 § 3; 2021 c 324 § 3.]

Reviser's note: This section was amended by 2022 c 4 § 3 and by 2022 c 80 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2022 c 80: See notes following RCW 10.120.010.

Intent—Effective date—2022 c 4: See notes following RCW 10.120.010.

Intent—2021 c 324: See note following RCW 10.120.010.

RCW 10.120.030 Policies for use of force and de-escalation tactics. (1) By July 1, 2022, the attorney general shall develop and publish model policies on law enforcement's use of force and de-escalation tactics consistent with RCW 10.120.020.

(2) By December 1, 2022, all law enforcement agencies shall: Adopt policies consistent with the model policies and submit copies of the applicable policies to the attorney general; or, if the agency did not adopt policies consistent with the model policies, provide notice to the attorney general stating the reasons for any departures from the model policies and an explanation of how the agency's policies are consistent with RCW 10.120.020, including a copy of the agency's relevant policies. After December 1, 2022, whenever a law enforcement agency modifies or repeals any policies pertaining to the use of force or de-escalation tactics, the agency shall submit notice of such action with copies of any relevant policies to the attorney general within 60 days.

(3) By December 31st of each year, the attorney general shall publish on its website a report on the requirements of this section, including copies of the model policies, information as to the status of individual agencies' policies, and copies of any agency policies departing from the model policies. [2021 c 324 § 4.]

Intent—2021 c 324: See note following RCW 10.120.010.