Proposed Substitute House Bill 1735
H-2193.1/22
By Representative Johnson

Brief summary of the original bill:

- Expands the authority for a peace officer to use physical force, subject to the requirement to exercise reasonable care, to include circumstances where such force is necessary to take a person into custody or provide assistance in circumstances involving involuntary treatment or evaluation under civil or forensic commitment laws, take a minor into protective custody in certain circumstances, or execute or enforce a court order.
- Modifies the requirement to exercise reasonable care before using force, including defining "de-escalation tactics" and clarifying when de-escalation tactics and less lethal alternatives must be used by a peace officer before using physical or deadly force.
- Provides that the standard for use of force by peace officers does not limit or restrict a peace officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions to protect health and safety, and does not prevent a peace officer from responding to requests for assistance or service by specified individuals and members of the public.

The proposed substitute makes the following changes to the original bill:

- Replaces references to "law enforcement agencies" with "police agencies" in the intent section.
- Modifies the provision allowing a peace officer to use physical force to the extent necessary to "take a person into custody or provide assistance" under civil and forensic commitment laws by providing that a peace officer may use physical force to the extent necessary to "take a person into custody, transport a person for evaluation or treatment, or provide other assistance" under civil and forensic commitment laws.
- Modifies the provision allowing a peace officer to use physical force to the extent necessary to take a minor into protective custody by removing references to specific statutes. Instead, an officer may do so when "authorized or directed by statute."
- Removes the general authority for a peace officer to use physical force to the extent necessary to enforce or execute a court order, and instead provides that a peace officer may use physical force to the extent necessary to: Execute or enforce a court order authorizing or directing a peace officer to take a person into custody; execute a search warrant; or 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.
- Adds designated crisis responders and shelter and housing providers to the list of professionals referenced in the provision specifying that the standard for use of physical force does not prevent a peace officer from responding to requests for assistance or service from specified professionals and members of the public.
- Adds a provision specifying that the standard for use of physical force does not permit 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.
- Reorganizes subsection numbering.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2193.1/22

ATTY/TYPIST: JO:jcm

BRIEF DESCRIPTION: Modifying the standard for use of force by peace officers.

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

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

NEW SECTION. **Sec. 1.** (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.

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

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

(1) "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.

(2) "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.

((~~(2)~~)) (3) "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.

((~~(3)~~)) (4) "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.

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

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

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

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

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

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

((~~(b) A~~)) (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 ((~~imminent~~)) immediate threat of serious physical injury or death to the officer or another person. For purposes of this subsection ((~~(1)(b)~~)):

((~~(i) "Imminent~~)) "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.

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

((~~(iii)~~)) "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.

((~~(2)~~)) (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, ((~~exhaust available and appropriate de-escalation tactics prior to using any physical force, such as: Creating physical distance by employing tactical repositioning and repositioning as often as necessary 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; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as~~

~~necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed~~)) 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 ((~~available and appropriate~~)) 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 ((~~their~~)) his or her use.

((~~(3)~~)) (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.

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

(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.

NEW SECTION. **Sec. 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.

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