
Public Safety Committee

HB 2907

Brief Description: Addressing the use of deadly force by a public officer or peace officer.

Sponsors: Representatives Moscoso, Appleton, Walkinshaw, Pettigrew, Reykdal, S. Hunt, Tharinger, Stanford, Gregerson, Sawyer, Frame and Santos.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Modifies the legally permissible uses of deadly force by officers. |
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Hearing Date: 2/3/16

Staff: Kelly Leonard (786-7147).

Background:

State Law on Use of Deadly Force by Officers. Deadly force is the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. State law authorizes the use of deadly force by officers in certain circumstances. Deadly force is legally justifiable in any of the following contexts:

- when a public officer is acting in obedience to the judgment of a competent court;
- when necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or
- when necessarily used by a peace officer or a person acting under the officer's command and in the officer's aid: (a) to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony; (b) to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; (c) to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or (d) to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if he or she is not apprehended. Under these circumstances, deadly force may also be used if necessary to prevent escape from the officer, as long as some warning is given when feasible. Threat of serious physical harm includes, but is not limited to: the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Protection from liability. A public officer or peace officer cannot be held criminally liable for using deadly force when it is used without malice and with a good faith belief that the use is permitted under the law.

Federal Law on Use of Deadly Force by Officers. There is no federal statute governing the use of deadly force by officers. However, the U.S. Supreme Court (Court) has addressed use of force issues in some notable cases involving civil claims for damages. In *Tennessee v. Garner* (1985), the Court held that a law enforcement officer may not use deadly force to prevent the escape of a fleeing suspect unless he or she has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. In *Graham v. Connor* (1989), the Court held that whether a law enforcement officer used excessive force is determined based on if he or she was "objectively reasonable" in light of the circumstances confronting him or her.

Summary of Bill:

The state law governing justifiable homicide and use of deadly force by officers is modified.

The use of deadly force by a public officer, peace officer, or person aiding him or her is justifiable when the officer reasonably believes that there is an imminent threat of death or serious bodily injury to the officer or to a third party and that the deadly force is necessary to prevent it, and at least one of the following applies:

- the officer is acting in obedience to the judgment of a competent court;
- the officer is using deadly force to overcome actual resistance to the execution of legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or
- the deadly force is used by a peace officer or person acting under the officer's command and in the officer's aid: (a) to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony; (b) to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; (c) to prevent the escape of a person from a county or city jail or holding facility; or (d) to lawfully suppress a riot.

The bill removes provisions regarding considerations to be made when using deadly force to arrest or apprehend a suspect.

The bill removes the protection from criminal liability for officers regarding acting without malice and with good faith.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.