

E2SHB 1310 - S AMD
By Senator

ADOPTED AND ENGROSSED 04/10/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

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

19 NEW SECTION. **Sec. 2.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires
21 otherwise.

22 (1) "Law enforcement agency" includes any "general authority
23 Washington law enforcement agency" and any "limited authority
24 Washington law enforcement agency" as those terms are defined in RCW
25 10.93.020.

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

29 (3) "Peace officer" includes any "general authority Washington
30 peace officer," "limited authority Washington peace officer," and
31 "specially commissioned Washington peace officer" as those terms are

1 defined in RCW 10.93.020; however, "peace officer" does not include
2 any corrections officer or other employee of a jail, correctional, or
3 detention facility, but does include any community corrections
4 officer.

5 NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided under
6 this section, a peace officer may use physical force against a person
7 when necessary to: Protect against criminal conduct where there is
8 probable cause to make an arrest; effect an arrest; prevent an escape
9 as defined under chapter 9A.76 RCW; or protect against an imminent
10 threat of bodily injury to the peace officer, another person, or the
11 person against whom force is being used.

12 (b) A peace officer may use deadly force against another person
13 only when necessary to protect against an imminent threat of serious
14 physical injury or death to the officer or another person. For
15 purposes of this subsection (1)(b):

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

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

26 (iii) "Totality of the circumstances" means all facts known to
27 the peace officer leading up to and at the time of the use of force,
28 and includes the actions of the person against whom the peace officer
29 uses such force, and the actions of the peace officer.

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

33 (a) When possible, exhaust available and appropriate de-
34 escalation tactics prior to using any physical force, such as:
35 Creating physical distance by employing tactical repositioning and
36 repositioning as often as necessary to maintain the benefit of time,
37 distance, and cover; when there are multiple officers, designating
38 one officer to communicate in order to avoid competing commands;
39 calling for additional resources such as a crisis intervention team

1 or mental health professional when possible; calling for back-up
2 officers when encountering resistance; taking as much time as
3 necessary, without using physical force or weapons; and leaving the
4 area if there is no threat of imminent harm, no crime has been
5 committed, is about to be committed, or no crime is being committed;

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

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

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

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

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

32 (4) Nothing in this section prevents a law enforcement agency or
33 political subdivision of this state from adopting policies or
34 standards with additional requirements for de-escalation and greater
35 restrictions on the use of physical and deadly force than provided in
36 this section.

37 NEW SECTION. **Sec. 4.** (1) By July 1, 2022, the attorney general
38 shall develop and publish model policies on law enforcement's use of

1 force and de-escalation tactics consistent with section 3 of this
2 act.

3 (2) By December 1, 2022, all law enforcement agencies shall:
4 Adopt policies consistent with the model policies and submit copies
5 of the applicable policies to the attorney general; or, if the agency
6 did not adopt policies consistent with the model policies, provide
7 notice to the attorney general stating the reasons for any departures
8 from the model policies and an explanation of how the agency's
9 policies are consistent with section 3 of this act, including a copy
10 of the agency's relevant policies. After December 1, 2022, whenever a
11 law enforcement agency modifies or repeals any policies pertaining to
12 the use of force or de-escalation tactics, the agency shall submit
13 notice of such action with copies of any relevant policies to the
14 attorney general within 60 days.

15 (3) By December 31st of each year, the attorney general shall
16 publish on its website a report on the requirements of this section,
17 including copies of the model policies, information as to the status
18 of individual agencies' policies, and copies of any agency policies
19 departing from the model policies.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101
21 RCW to read as follows:

22 The basic training provided to criminal justice personnel by the
23 commission must be consistent with the standards in section 3 of this
24 act and the model policies established by the attorney general under
25 section 4 of this act.

26 **Sec. 6.** RCW 43.101.450 and 2019 c 1 s 3 (Initiative Measure No.
27 940) are each amended to read as follows:

28 (1) Beginning one year after December 6, 2018, all law
29 enforcement officers in the state of Washington must receive violence
30 de-escalation training. Law enforcement officers beginning employment
31 after December 6, 2018, must successfully complete such training
32 within the first (~~fifteen~~) 15 months of employment. The commission
33 shall set the date by which other law enforcement officers must
34 successfully complete such training.

35 (2) All law enforcement officers shall periodically receive
36 continuing violence de-escalation training to practice their skills,
37 update their knowledge and training, and learn about new legal
38 requirements and violence de-escalation strategies.

1 (3) The commission shall set training requirements through the
2 procedures in RCW 43.101.455.

3 (4) Violence de-escalation training provided under this section
4 must be consistent with section 3 of this act and the model policies
5 established by the attorney general under section 4 of this act.

6 (5) The commission shall submit a report to the legislature and
7 the governor by January 1st and July 1st of each year on the
8 implementation of and compliance with subsections (1) and (2) of this
9 section. The report must include data on compliance by agencies and
10 officers. The report may also include recommendations for any changes
11 to laws and policies necessary to improve compliance with subsections
12 (1) and (2) of this section.

13 NEW SECTION. **Sec. 7.** Notwithstanding provisions in this chapter
14 to the contrary, the following applies to the use of tear gas:

15 (1) A law enforcement agency may not use or authorize its peace
16 officers or other employees to use tear gas unless necessary to
17 alleviate a present risk of serious harm posed by a: (a) Riot; (b)
18 barricaded subject; or (c) hostage situation.

19 (2) Prior to deploying tear gas as authorized under subsection
20 (1) of this section, the officer or employee shall:

21 (a) Exhaust alternatives to the use of tear gas that are
22 available and appropriate under the circumstances;

23 (b) Obtain authorization to use tear gas from the supervising
24 officer, who must determine whether the present circumstances warrant
25 the use of tear gas and whether available and appropriate
26 alternatives have been exhausted as provided under this section;

27 (c) Announce to the subject or subjects the intent to use tear
28 gas; and

29 (d) Allow sufficient time and space for the subject or subjects
30 to comply with the officer's or employee's directives.

31 (3) For the purposes of this section:

32 (a) "Barricaded subject" means an individual who is the focus of
33 a law enforcement intervention effort, has taken a position in a
34 physical location that does not allow immediate law enforcement
35 access, and is refusing law enforcement orders to exit.

36 (b) "Hostage situation" means a scenario in which a person is
37 being held against his or her will by an armed, potentially armed, or
38 otherwise dangerous suspect.

1 (c) "Tear gas" means chloroacetophenone (CN), O chlorobenzylidene
2 malononitrile (CS), and any similar chemical irritant dispersed in
3 the air for the purpose of producing temporary physical discomfort or
4 permanent injury, except "tear gas" does not include oleoresin
5 capsicum (OC).

6 NEW SECTION. **Sec. 8.** RCW 10.31.050 (Officer may use force) and
7 2010 c 8 s 1031, Code 1881 s 1031, 1873 p 229 s 211, & 1854 p 114 s
8 75 are each repealed.

9 NEW SECTION. **Sec. 9.** Sections 2 through 4 of this act
10 constitute a new chapter in Title 10 RCW.

11 NEW SECTION. **Sec. 10.** Section 8 of this act is added to chapter
12 10.--- RCW (the new chapter created by section 10, chapter . . .,
13 Laws of 2021 (Engrossed Substitute House Bill No. 1054)).

14 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
15 this act, referencing this act by bill or chapter number, is not
16 provided by June 30, 2021, in the omnibus appropriations act, this
17 act is null and void."

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18 On page 1, line 2 of the title, after "officers;" strike the
19 remainder of the title and insert "amending RCW 43.101.450; adding a
20 new section to chapter 43.101 RCW; adding a new section to chapter
21 10.--- RCW; adding a new chapter to Title 10 RCW; creating new
22 sections; and repealing RCW 10.31.050."

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