

HOUSE BILL REPORT

ESHB 1054

As Amended by the Senate

Title: An act relating to establishing requirements for tactics and equipment used by peace officers.

Brief Description: Establishing requirements for tactics and equipment used by peace officers.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Johnson, J., Entenman, Dolan, Ryu, Berry, Simmons, Bateman, Kloba, Lekanoff, Duerr, Fitzgibbon, Slatter, Wylie, Ramos, Berg, Tharinger, Ramel, Ortiz-Self, Senn, Peterson, Gregerson, Valdez, Callan, Hackney, Morgan, Chopp, Cody, Ormsby, Taylor, Frame, Santos, Macri, Davis, Pollet, Bergquist and Harris-Talley).

Brief History:

Committee Activity:

Public Safety: 1/12/21, 1/22/21 [DPS].

Floor Activity:

Passed House: 2/27/21, 54-43.

Senate Amended.

Passed Senate: 4/6/21, 27-22.

Brief Summary of Engrossed Substitute Bill

- Prohibits peace officers from using chokeholds and neck restraints.
- Prohibits law enforcement agencies from acquiring or using certain types of military equipment.
- Establishes restrictions on the use of tear gas, vehicular pursuits, and firing upon moving vehicles.
- Prohibits a peace officer from seeking, and a court from issuing, a search or arrest warrant granting an express exception to the "knock and announce" rule.
- Requires law enforcement agencies to adopt policies and procedures to

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ensure that uniformed peace officers are reasonably identifiable.

- Requires the Criminal Justice Training Commission to convene a work group for the purpose of developing model policies on the use and training of canine teams.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Do not pass. Signed by 4 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Griffey.

Minority Report: Without recommendation. Signed by 1 member: Representative Young.

Staff: Kelly Leonard (786-7147).

Background:

A peace officer's use of any particular weapon or other tactic or tool is limited by the constitutional protections afforded to the public. Any use of force must be reasonable under the circumstances. Officers use various tools and equipment issued to them by individual agencies, and most agencies have policies governing the use of those tools and equipment. In addition, the basic training provided by the Criminal Justice Training Commission (CJTC) to all general authority law enforcement officers includes training on patrol procedures, firearms, and defensive tactics.

Military Surplus Program. The United States Department of Defense operates a military surplus transfer program where excess property is transferred to law enforcement agencies. Law enforcement agencies may apply to participate in the program. While participating agencies do not pay for the equipment, they are responsible for shipping, storage, and maintenance costs. The types of equipment available and requested through the program varies, including, for example, armored vehicles, helicopters, rifles, respirators, digital cameras, night vision goggles, and office equipment.

Tear Gas. The term "tear gas" refers to a group of substances that irritate mucous membranes, causing a stinging sensation in the eyes and irritating the upper respiratory tract. Tear gas is dispersed in the air through the use of sprays, fog generators, or grenades and shells. Tear gas has been used by peace officers to control or disperse crowds as well

as to control or influence the movements of armed suspects in certain settings. Tear gas typically includes chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), but other chemical irritants have also been used, including, for example, oleoresin capsicum (OC), commonly referred to as pepper spray.

Vehicular Pursuits. An officer who has authority to make an arrest may proceed in fresh pursuit of a person who is reasonably believed to have committed a violation of traffic or criminal laws or for whom the officer has an arrest warrant. When proceeding in pursuit of a suspect, the officer may violate certain rules of the road, including, for example, stop signals, speed limits, and parking restrictions. State law requires the CJTC to maintain a model policy on vehicular pursuits. The policy must include procedures for:

- supervisory control of the pursuit, if available;
- designating the primary pursuit vehicle and determining the total number of vehicles allowed to participate in the pursuit at one time;
- coordinating operations with other jurisdictions; and
- determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

All state, county, and municipal law enforcement agencies are required to adopt and implement vehicular pursuit policies. Though they are not required to adopt the model policy maintained by the CJTC, any adopted policy must include the same elements outlined above. All officers must receive training on how to conduct vehicular pursuits.

Knock and Announce Rule and No-Knock Warrants. An officer may make a nonconsensual entry into a dwelling or building in order to execute a search or arrest warrant. Prior to doing so, an officer must announce his or her identity, demand admittance, announce the purpose of their demand, and be explicitly or implicitly denied admittance. This is commonly referred to as the "knock and announce" rule.

An officer must comply with all of the elements of the "knock and announce" rule, unless there are exigent circumstances or it would otherwise be considered a useless gesture. The courts look to certain factors to determine if there were exigent circumstances, including: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is reasonably trustworthy information that the suspect is guilty; (4) whether there is strong reason to believe that the suspect is on the premises; (5) the likelihood that the suspect will escape if not swiftly apprehended; and (6) whether the entry is made peaceably.

A "no-knock warrant" is a legal term referring to a warrant where the court has provided advance authorization to enter without complying with the "knock and announce" rule. State statute neither authorizes nor prohibits "no-knock warrants."

Canine Teams. According to rules promulgated by the CJTC, all canine teams used by law

enforcement agencies must be certified and meet certain minimum standards. As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the CJTC in the category for the team's intended use. Certification remains valid for 24 months, as long as the composition and responsibility of the canine team does not change. To maintain certification active, a canine team must be evaluated prior to their certification expiration date.

Summary of Engrossed Substitute Bill:

Restrictions are established on the use of certain tactics and equipment used by peace officers and law enforcement agencies. "Peace officer" includes any general authority, limited authority, and specially commissioned Washington peace officer, and any employee, whether part-time or full-time, of a jail, correctional, or detention facility who is responsible for the custody, safety, and security of adult or juvenile persons confined in the facility. "Law enforcement agency" includes any general authority and limited authority law enforcement agency, and any state or local agency providing or otherwise responsible for the custody, safety, and security of adults or juveniles incarcerated in correctional, jail, or detention facilities.

Neck Restraints and Chokeholds. A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer. "Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway. "Neck restraint" refers to any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

Military Equipment and the Military Surplus Program. A law enforcement agency may not acquire or use any military equipment, including firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, mine-resistant ambush-protected vehicles, long range acoustic hailing devices, rockets, rocket launchers, bayonets, explosive grenades, incendiary grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

Any law enforcement agency in possession of military equipment must return the equipment to the federal agency from which it was acquired, if applicable, or destroy the equipment by December 31, 2022. However, the restrictions on military equipment do not prohibit a law enforcement agency from participating in a federal military equipment surplus program, provided that any equipment acquired through the program does not constitute military equipment.

Tear Gas. A law enforcement agency may not use or authorize its peace officers or other employees to use tear gas unless necessary to alleviate a present risk of serious harm posed by a riot, barricaded subject, or hostage situation.

Prior to deploying tear gas, the officer or employee must:

- exhaust alternatives to the use of tear gas that are available and appropriate under the circumstances;
- obtain authorization to use tear gas from the chief law enforcement officer, who must determine whether the present circumstances warrant the use of tear gas and whether available and appropriate alternatives have been exhausted;
- announce to the subject or subjects the intent to use tear gas;
- allow sufficient time and space for the subject or subjects to comply with the officer's or employee's directives; and
- announce to the subject or subjects for a second time, immediately prior to deploying tear gas, the intent to use tear gas.

"Tear gas" includes chloroacetophenone (CN), O-chlorobenzylidene malonitrile (CS), and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury. "Tear gas" does not include oleoresin capsicum (OC).

Vehicular Pursuits and Firing upon Vehicles. The requirements for the CJTC to adopt a model policy and for individual agencies to adopt policies consistent with the model policy are repealed.

A peace officer may not engage in a vehicular pursuit, unless:

- there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense or sex offense;
- the pursuit is necessary for the purpose of identifying or apprehending the person;
- under the circumstances, the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks associated with the vehicular pursuit;
- the officer has received authorization to engage in the pursuit from a supervising officer; and
- there is supervisory control of the pursuit, and the supervisor considers relevant factors affecting public safety, such as whether there are minors present in the vehicle.

Firing upon Vehicles. A peace officer may not fire a weapon upon a moving vehicle unless necessary to protect against an imminent threat of serious physical harm resulting from the operator's or a passenger's use of a deadly weapon. A vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer.

No-Knock Warrants. An officer may not seek, and a court may not issue, a search or arrest warrant granting an express exception to the "knock and announce" rule.

Identification. Law enforcement agencies must adopt policies and procedures to ensure that uniformed peace officers while on duty and in the performance of their official duties are

reasonably identifiable. "Reasonably identifiable" means that the peace officer's uniform clearly displays the officer's name or other information that members of the public can see and the agency can use to identify the peace officer.

Canine Teams. The CJTC must convene a work group to develop a model policy for the training and use of canine teams. The CJTC must ensure that the work group is equally represented between community and law enforcement stakeholders, including certain representatives and interest groups. The model policy work group shall consider:

- training curriculum, including the history of race and policing;
- circumstances where the deployment of a canine may not be appropriate;
- circumstances where deployment of a canine on leash may be appropriate;
- strategies for reducing the overall rate of canine bites;
- circumstances where a canine handler should consider the use of tactics other than deploying a canine;
- explicitly prohibiting the use of canines for crowd control purposes;
- canine reporting protocols;
- circumstances where the use of voluntary canines and canine handlers may be appropriate; and
- identifying circumstances that would warrant the decertification of canine teams.

The CJTC must publish the model policy on its website by January 1, 2022.

EFFECT OF SENATE AMENDMENT(S):

With respect to the restrictions on the use of tear gas, the following changes are made:

- limits the use of tear gas for riots to only those incidents occurring inside a correctional, jail, or detention facility (rather than a riot occurring in any location);
- requires an officer or employee to obtain permission from a supervising officer prior to deploying tear gas (rather than from a chief law enforcement officer);
- removes the requirement for an officer or employee to provide a second warning prior to deploying tear gas; and
- adds definitions for "barricaded subject" and "hostage situation."

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With respect to the restrictions on the acquisition and use of military equipment, the following changes are made:

- removes the restriction on the acquisition and use of mine resistant ambush protected vehicles (thereby restoring the authority of law enforcement agencies to acquire and use this item);
- requires each law enforcement agency to compile an inventory of military equipment possessed by the agency, including the proposed use of the equipment, estimated number of times the equipment has been used in the prior year, and whether such use is necessary for the operation and safety of the agency or some other public safety purpose; and
- requires law enforcement agencies to provide their completed inventories to the

Washington Association of Sheriffs and Police Chiefs (WASPC) no later than November 1, 2021, and requires the WASPC to summarize the inventory information and provide a report to the Governor and the Legislature no later than December 31, 2021.

With respect to the restrictions on vehicular pursuits, the following changes are made:

- defines "vehicular pursuit" as an attempt by a uniformed peace officer in a vehicle equipped with emergency lights and a siren to stop a moving vehicle where the operator of the moving vehicle appears to be aware that the officer is signaling the operator to stop the vehicle and the operator of the moving vehicle appears to be willfully resisting or ignoring the officer's attempt to stop the vehicle by increasing vehicle speed, making evasive maneuvers, or operating the vehicle in a reckless manner that endangers the safety of the community or the officer;
- authorizes vehicular pursuits when there is a probable cause to believe that a person in the vehicle has committed or is committing an Escape offense, subject to the other limitations in the underlying bill and striking amendment;
- authorizes vehicular pursuits when there is reasonable suspicion that a person in the vehicle has committed or is committing a Driving Under the Influence-related offense, subject to the other limitations in the underlying bill and striking amendment;
- prohibits any vehicular pursuit unless the person poses an imminent threat to the safety of others, in addition to the other limitations in the underlying bill and striking amendment;
- provides that the pursuing officer must consider alternatives to a vehicular pursuit, in consultation with the supervising officer;
- requires the supervising officer to consider the justification for the vehicular pursuit and other safety considerations, including speed, weather, traffic, and road conditions (in addition to the presence of minors in the vehicle, as provided in the underlying bill);
- provides that, where a supervisor is not on duty in a jurisdiction with fewer than 10 commissioned officers, the pursuing officer will request the on-call supervisor to be notified of the pursuit and will consider the same requirements as would be imposed upon the supervisor when determining whether to engage in, or terminate, a pursuit;
- requires the pursuing officer to comply with any agency procedures for designating the primary pursuit vehicle and determining the appropriate number of vehicles permitted to participate in the vehicular pursuit and comply with any agency procedures for coordinating operations with other jurisdictions, including available tribal police departments when applicable; and
- requires a vehicular pursuit to be terminated if requirements are not met.

Appropriation: None.

Fiscal Note: Available.

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

bill is passed.

Staff Summary of Public Testimony:

(In support) The vast majority of law enforcement officers do their jobs with honor and respect to the profession; however, systemic racism exists across all institutions, including law enforcement. In many cases, bad policing is the result of policies, and there continues to be evidence of unnecessary violence producing negative outcomes, especially for communities of color. Having inconsistent standards across the state has led to confusion and distrust. Some tactics being used by law enforcement do not uphold the fundamental value of preserving and protecting human life first. These tactics are disproportionately used against black and brown communities.

House Bill 1054 (HB 1054) reduces violence by establishing statewide standards for certain tactics and equipment. The bill will ban chokeholds and neck restraints, no-knock warrants, tear gas, unleashed dogs and covering badges, and it will place restrictions on vehicular pursuits, shooting at moving vehicles, and military equipment. These are the most aggressive and violent tactics used by law enforcement. Their use constitutes a form of intentional terror and intimidation, disproportionately used against black and brown people. The state needs to do away with these harmful tactics in order to begin to rebuild trust between law enforcement and communities of color. The state can deliver true public safety that is equitable and just. This bill will reduce violence by eliminating brutal and dehumanizing tactics.

Chokeholds and vascular neck restraints should be banned. Many agencies have already banned them because improper use of these techniques is extremely dangerous. Proper use requires consistent and regular training, which most officers do not receive. This tactic is unnecessary even in the most extreme conditions.

Police dogs for apprehending persons should also be banned. This practice is barbaric and brutal; there is a history of using dogs on peaceful persons. These techniques are antiquated, and law enforcement is better than this.

Warfare is not the same as policing, and military equipment is therefore inappropriate for use by peace officers. Peace officers do not need .50 caliber weapons, grenade launchers, bayonets, or missiles. The purpose of this equipment is to use overwhelming force against an enemy, for which there will always be collateral damage. This is the nature of war. Cities and towns are not battlefields. Military veterans are outraged and heartbroken by the sight of combat weapons being deployed upon civilians. Notably, when a small jurisdiction in Washington started militarizing, it cited the increase of people of color in the area as the justification. This is racist.

There are cities in Washington in support of the approach taken in the bill. There has been great leadership in local governments on these issues, but this bill is important because it

takes on state standards. There are very few bad apples, but there are a lot of poor policies and training. The average city does not have the resources to do a sophisticated deep dive on all of these issues. Therefore, statewide standards and training are critical.

Numerous people have been unjustifiably killed by law enforcement officers in Washington. These killings involved unarmed people who merely fled or who had devices mistaken for weapons. Officers escalated situations, used excessive force and unnecessarily used deadly force, and used forceful and inappropriate language. Officers have acted recklessly and above the law. Even in an instance where officers were held civilly liable, they still got promoted within their own agency. The state needs to take steps to reduce violence and improve accountability. This a deeply personal issue. Parents, siblings, and friends have lost family members to police violence. This oppresses and demoralizes entire communities.

Law enforcement reflects our culture and our values. It is up to the people to decide the priorities of law enforcement. Law enforcement can be resistant to change, but it is time to move on. House Bill 1054 focuses on the right issues. The tactics addressed in the bill are those leading to the most injuries and deaths.

(Opposed) The topics addressed in HB 1054 are worthy of discussion, consideration, and action by the Legislature. Police need to commit to making several changes to practices in order to rebuild trust with communities. The sanctity of human life should be at the cornerstone of law enforcement practices. The concerns regarding many of the tactics addressed in the bill are understandable; however, the approach taken in the bill creates unacceptable consequences and unreasonably places members of the public and law enforcement at risk of greater harm. The bill removes opportunities for de-escalation and increases the likelihood that deadly force will be used against the public. The bill does not account for the effectiveness of certain tactics in fluid situations. The state should increase the requirements and time for basic training for all law enforcement officers to address many of the concerns underpinning the bill.

Chokeholds and neck restraints are very dangerous techniques requiring consideration and training; however, the state should consider if they should be allowed in rare situations to avoid the use of deadly force. Also, this bill makes it possible for an officer to be criminally charged or lose his or her job for using a neck restraint in defense of his or her own life.

Perhaps chokeholds should be banned, but a vascular neck restraint used by a properly trained officer is an effective technique to resolve a violent altercation. Banning vascular neck restraints will require an officer to actually use more dangerous and violent techniques. Instead of the approach taken in the bill, the state should increase training requirements to increase officer competency in commanding and de-escalating situations.

While the use of canines should also be limited and deployed only according to certain procedures, the bill merely requires a leash and does not appropriately account for safe

procedures. A canine can run faster than an officer, making it possible to apprehend a fleeing murder suspect.

The CN and CS gases are primarily used for barricaded subjects, not crowd control. The courts have recently ruled that the use of these gases has been highly regulated with sufficient oversight. These gases are appropriate in limited circumstances and their use can avoid more dangerous tactics.

Prohibiting the use of armored vehicles regardless of former function is objectionable because it places officers in unnecessary danger. These vehicles are used to protect officers and citizens in active-shooter incidents and rescue situations. Further, the Legislature should be thoughtful about the scope of this bill and how it will affect law enforcement officers in various contexts. There are unique considerations for officers protecting airports, for example. Some types of equipment restricted in the bill may be crucial for protecting ports and critical infrastructure.

No-knock warrants create heightened danger to the public, but outright prohibition of no-knock warrants is not appropriate. These warrants may be necessary in rare instances involving kidnapping and trafficking, for example.

Vehicular pursuits should be restricted to a degree and the provision in the bill is similar to many department policies. However, law enforcement agencies should be able to pursue drunk drivers and other dangerous persons. The bill is unclear as to the role a supervisor is required to play in pursuits, which is concerning for small jurisdictions. Also, the data collection requirements appear to violate the Keep Washington Working Act. The provision restricting firing upon moving vehicles is overly broad. Sometimes a vehicle can be used as a deadly weapon.

There are several state law enforcement agencies left out of the bill by the limited scope of the definitions in the bill. The bill should be amended to uniformly apply to all agencies.

(Other) Certain elements of the bill align with the recommendations of experts in law enforcement. The goals underpinning the bill are important for communities, and law enforcement officers are committed to working on these issues with the Legislature.

Persons Testifying: (In support) Representative Johnson, prime sponsor; Breean Beggs, City of Spokane; Sonia Joseph, Carlos Bratcher, Michael McPhearson, Trishandra Pickup, and Fred Thomas, Washington Coalition for Police Accountability; Enoka Herat, American Civil Liberties Union and Washington Coalition for Police Accountability; and Devon Connor-Green and Sakara Remmu, Washington Black Lives Matter Alliance.

(Opposed) James McMahan, Washington Association of Sheriffs & Police Chiefs; Spike Unruh, Washington State Patrol Troopers Association; and Aliyyah Slade and Arman Barros, Teamsters 117.

(Other) James Schrimpsheer, Washington State Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying: Paula Sardinas, FMS Global Strategies and Washington Build Back Black Alliance; Sharon Swanson, Association of Washington Cities; Keith Blocker, City of Tacoma; Cathleen deSmet; Calico Goodrich; Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Peter Shellito; Kelsey Hamlin; Patrick McCormick; Dawn Land; Ryan Portmann, Puyallup Police Department; Jeff DeVere, Washington Council of Police and Sheriffs; Rob Huss, Washington State Patrol; Nathan Spiering, Spokane Police Department K9 Unit; Dave Brown, Skamania County Sheriff's Office; and Bruce Surplus, Benton County Sheriff's Office.