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## Public Safety Committee

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### ESB 5919

**Brief Description:** Concerning the definition of "physical force," "necessary," and "totality of the circumstances," and the standard for law enforcement authority to use physical force and providing the authority for a peace officer to engage in a vehicular pursuit when there is reasonable suspicion a person has violated the law and the officer follows appropriate safety standards.

**Sponsors:** Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon and Wagoner.

#### Brief Summary of Engrossed Bill

- Modifies the standard for use of physical force by peace officers by defining "physical force," authorizing peace officers to use physical force to effect investigative detentions in certain circumstances, and modifying the requirement to exercise reasonable care with respect to the amount of physical force permitted under the circumstances.
- Modifies the restrictions on vehicular pursuits by allowing pursuits when there is reasonable suspicion that a person has committed or is committing a criminal offense, the person poses a public safety risk, and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicular pursuit under the circumstances, subject to additional safety and supervisory requirements.

**Hearing Date:** 2/22/22

**Staff:** Kelly Leonard (786-7147).

**Background:**

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

### State Standard for the Use of Force by Peace Officers.

In 2021 the state enacted a standard for use of force by peace officers, including separate restrictions on the use of physical force and deadly force.

*Physical Force.* Under the standard, a peace officer may use physical force against another person when necessary to:

- protect against criminal conduct where there is probable cause to make an arrest;
- effect an arrest;
- prevent an escape offense; or
- protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

*Deadly Force.* A peace officer may use deadly force against another person only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person. "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.

"Imminent 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. "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.

*Reasonable Care and Other Restrictions.* A peace officer must use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer must:

- when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force;
- when using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances, which includes a consideration of the characteristics and conditions of the 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;
- terminate the use of physical force as soon as the necessity for such force ends;
- when possible, use available and appropriate less lethal alternatives before using deadly force; and
- make less lethal alternatives issued to the officer reasonably available for his or her use.

*Agency Policies.* By July 1, 2022, the Attorney General must develop and publish model policies on use of force and de-escalation tactics consistent with the standard. By December 1, 2022, all law enforcement agencies must adopt the model policy or otherwise adopt policies consistent with the standard. Law enforcement agencies may adopt policies or standards with additional requirements for de-escalation and greater restrictions on the use of physical and

deadly force. Law enforcement agencies must provide copies of policies and additional information to the Attorney General, including any future modifications.

#### Vehicular Pursuits.

A "vehicular pursuit" refers to the 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. When engaging in a vehicular pursuit, a peace officer may violate certain rules of the road, including, for example, stop signals, speed limits, and parking restrictions.

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, sex offense or an escape offense, or there is reasonable suspicion that a person in the vehicle has committed or is committing a driving under the influence offense;
- the pursuit is necessary for the purpose of identifying or apprehending the person; and
- the person poses an imminent threat to the safety of others and 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 under the circumstances.

There are additional requirements relating to supervision of vehicular pursuits. The pursuing officer must receive authorization from a supervising officer to engage in the pursuit. The supervising officer must consider the justification for the vehicular pursuit and other safety considerations, including speed, weather, traffic, road conditions, and the known presence of minors in the vehicle. In jurisdictions with fewer than 10 commissioned officers, if a supervising officer is not on duty at the time, the pursuing officer will request the on-call supervisor be notified of the pursuit according to agency procedures. In the absence of a supervising officer in these circumstances, the pursuing officer must still comply with the same requirements and safety considerations in evaluating whether to conduct or terminate a pursuit.

A pursuing officer must 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.

#### **Summary of Bill:**

##### State Standard for the Use of Force by Peace Officers.

A definition of "physical force" is established. The definitions for "necessary" and "totality of the circumstances" are modified so as to make them broadly apply to the standard, rather than just the provisions pertaining to deadly force.

"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.

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

The authority of a peace officer to use physical force against a person, subject to the requirement to exercise reasonable care, is expanded to include circumstances where physical force is necessary to effect an investigative detention with less than probable cause if the peace officer has reasonable and articulable facts that point towards criminal activity, including when, under the totality of the circumstances, the situation escalates so that there are now facts sufficient to effectuate an arrest, whether or not an arrest is carried out.

The requirement to exercise reasonable care is modified in regard to assessing the appropriate amount of physical force. When using physical force, a peace officer must use a proportional amount of physical force necessary to overcome resistance under the circumstances. This includes a consideration of the characteristics and conditions of the 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 reasonable to effect a lawful purpose.

#### Vehicular Pursuits.

The restrictions on vehicular pursuits are modified by allowing for pursuits in additional circumstances and adjusting certain thresholds. A peace officer may not conduct a vehicular pursuit, unless:

- there is reasonable suspicion to believe that a person in the vehicle has committed or is committing a violent offense or sex offense, an escape offense, a driving under the influence offense, a crime against persons, or another criminal offense where the public safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicular pursuit under the circumstances;
- the pursuit is necessary for the purpose of identifying or apprehending the person; and
- the person poses a public safety risk and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicular pursuit under the circumstances.

The requirement to receive supervisory authorization to engage in a pursuit is removed. Instead, a peace officer must receive authorization to continue a pursuit. The alternative procedures for conducting vehicular pursuits when a supervisor is not on duty are made available to all law

enforcement agencies regardless of their number of commissioned officers.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.