

SENATE BILL REPORT

ESHB 1054

As of March 10, 2021

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

Committee Activity: Law & Justice: 3/11/21.

Brief Summary of Bill

- Prohibits a peace officer from using chokeholds or neck restraints in the course of their duties.
- Requires the Criminal Justice Training Commission to convene a work group and develop a model policy for training and use of canine teams.
- Establishes guidelines for when a law enforcement agency may authorize the use of tear gas.
- Prohibits law enforcement agencies from acquiring certain specified military equipment.
- Outlines limited parameters for when a peace officer may engage in a vehicular pursuit or fire upon a moving vehicle.
- Requires uniformed peace officers to clearly display the officer's name or other identifiable information.
- Prohibits the court from issuing a search or arrest warrant granting an

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exception to the requirement that the officer provide notice of the purpose of the warrant.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: Tactics and Equipment. 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. 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.

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 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 chloracetophenone (CN) and O-chlorobenzylidene malononitrile (CS), but other chemical irritants have also been used, including, for example, oleoresin capsicum (OC), commonly referred to as pepper spray.

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.

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, stop signals, speed limits, and parking restrictions. In 2003, the Legislature recognized the need for consistent education and training surrounding vehicle pursuits and tasked CJTC with developing 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 CJTC, any adopted policy must include the same elements outlined above. All officers must receive training on how to conduct vehicular pursuits.

Executing Search and Arrest Warrants. Washington law expressly authorizes an officer to break into a dwelling or building to execute a search or arrest warrant. Prior to doing so, an officer must announce their 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:

- the gravity or violent nature of the offense with which the suspect is to be charged;
- whether the suspect is reasonably believed to be armed;
- whether there is reasonably trustworthy information the suspect is guilty;
- whether there is strong reason to believe the suspect is on the premises;
- the likelihood the suspect will escape if not swiftly apprehended; and
- 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.

Summary of Bill: The provisions of this bill constitute a new chapter and apply to any general authority or limited authority law enforcement agency, and any state or local agency responsible for the custody of adult or juvenile persons in correctional or detention facilities. The term peace officer refers to any general authority or limited authority peace officer, as well as any employee 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.

Tactics and Equipment. *Chokeholds and Neck Restraints.* A peace officer may not use a chokehold or neck restraint on another person in the course of their 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.

Use of Canines. CJTC is directed to convene a workgroup to develop a model policy for training and use of canine teams. Representation on the workgroup is specified. When developing the model policy, the work group must consider:

- training curriculum, including the history of race and policing;
- circumstances where deploying a canine may not be appropriate;
- circumstances where deploying a canine on leash may be appropriate;
- strategies for reducing the overall rate of canine bites;
- circumstances where a canine handler should consider 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.

Tear Gas. A law enforcement agency may not authorize the use of tear gas unless necessary to alleviate a present risk of serious harm posed by a riot, barricaded subject, or hostage situation. Authorization to use tear gas must be provided by the chief law enforcement officer after determining all available and appropriate alternatives have been exhausted and the present circumstances warrant use of tear gas.

Prior to deploying tear gas, a peace officer must 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 directives, and announce a second time, immediately prior to deployment, the intent to use tear gas.

Chief law enforcement officer refers to the sheriff or chief for a general authority Washington law enforcement agency or the executive head of the department or agency for a limited authority Washington law enforcement agency. Tear gas refers to CN, CS, and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury, but specifically does not include OC.

Military Equipment. A law enforcement agency may not acquire or use any military equipment. Any law enforcement agency in possession of military equipment as of the effective date of this section must return the equipment to the federal agency from which it was acquired, or destroy the equipment no later than December 31, 2022.

Items which constitute prohibited military equipment are specified. A law enforcement agency is not prohibited from participating in a federal military equipment surplus program for the acquisition of equipment not defined as military equipment.

Vehicular Pursuits. A peace office may not engage in a vehicular pursuit unless all of the following apply:

- there is probable cause to believe the person 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 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.

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 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.

Executing Search and Arrest Warrants. *Reasonably Identifiable Officers.* All law enforcement agencies must adopt policies and procedures to ensure uniformed peace officer are reasonably identifiable while on duty. The peace officer's uniform must clearly display the officer's name or other information the public can use to identify the peace officer.

No Knock Warrants Prohibited. An officer may not seek and a court may not issue a search or arrest warrant granting an express exception to the requirement for the officer to provide notice of their office and purpose when executing the warrant.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.