

SENATE BILL REPORT

ESHB 1054

As Reported by Senate Committee On:
Law & Justice, March 18, 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, 3/18/21 [DPA, DNP].

Brief Summary of Amended Bill

- Prohibits a peace officer from using chokeholds in the course of their duties; prohibits neck restraints unless necessary to protect against an imminent threat of serious physical injury or death.
- 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

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other identifiable information.

- Prohibits the court from issuing a search or arrest warrant granting an exception to the requirement that the officer provide notice of the purpose of the warrant.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy and Wagoner.

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 Amended 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 on another person in the course of their duties as a peace officer. A peace officer may not use a neck restraint on another person in the course of their duties as a peace officer unless the neck restraint is necessary to protect against an imminent threat of serious physical injury or death to the officer or another person.

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 occurring inside a correctional, jail, or detention facility; 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.

Each law enforcement agency must 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 years, and whether such use is necessary for the operation and safety of the agency or some other public safety purpose. The agency must provide the inventory to the Washington Association of Sheriffs and Police Chiefs (WASPC) no later than November 1, 2021. WASPC must summarize the inventory information and provide a report to the Governor and the appropriate committees of the legislature no later than December 31, 2021.

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 officer 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, a driving under the influence offense, or an escape;
- the pursuit is necessary for the purpose of identifying or apprehending the person;
- 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 greater than the safety risks associated with the vehicular pursuit;
- the officer has received authorization to engage in the pursuit from a supervising officer or if from a jurisdiction with fewer than ten officers, the officer has notified a supervising officer; and
- the supervisor and/or the officer considers relevant factors affecting public safety, such as whether there are minors present in the vehicle.

Vehicular pursuit is defined as an attempt by a uniformed law enforcement 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.

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.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Specifies a peace officer may not use a neck restraint unless the neck restraint is necessary to protect against an imminent threat of serious physical injury or death to the officer or another person.
- Limits the use of tear gas during a riot to a riot that occurs inside a correctional, jail, or detention facility.
- Requires each law enforcement agency to compile an inventory of military equipment possessed by the agency and provide the inventory to WASPC no later than November 1, 2021.
- Requires WASPC to summarize inventory information from agencies and submit a report to the Legislature and Governor no later than December 31, 2021.
- Adjusts requirements for vehicular pursuits, including: authorizing a vehicular pursuit when there is probable cause to believe a person has committed a driving under the influence offense or an escape; requires the person being pursued to pose an imminent threat to the safety of others; adjusts language regarding authorization and consultation of a supervising officer; requires the officer to comply with agency procedures for coordinating with other pursuing officers and jurisdictions; and defines vehicular pursuit.

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.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The*

committee recommended a different version of the bill than what was heard. PRO: The tactics in this bill are disproportionately used against populations of color and often used in discriminatory policing. Establishing consistent standards will start the daunting task of rebuilding trust with communities.

Neck restraints require extensive training and are hard to do correctly. Dogs are used against black Americans at three times the rates of other races. There should be a complete ban for officers shooting at a moving vehicle. These are tactics of war. Police should not be an occupying force. This bill will increase the quality of life for people of color.

The chemicals used in tear gas have caused an inordinate number of miscarriages this past year. Chemical weapons should not be unleashed on a civilian population. Law enforcement has abused the use of tear gas and it has been used on people beyond those engaging in a riot. These tactics escalate the risk of needless violence.

Cities have spent thousands of dollars trying to get use of force policies right. We need uniform statewide policies that value public safety.

There should not be a compromise on the ban to chokeholds and neck restraints. There is always collateral damage from the use of these tactics. Veterans are heartbroken to see military equipment used against its citizens. The community is not made safer by the use of military grade equipment.

CON: We have issues with an absolute prohibition against neck restraints. An officer's first duty is to preserve life. There are narrow situations where neck restraints should be allowed which is actually safer for the aggressor. A neck restraint is used in scenarios where the officer would have had no other choice but to use lethal force.

The more tools removed from the toolbox of an officer in between the bookends of no force and deadly force, the more likely a confrontation will end in injury or death. Take away intermediate tools, you are left with de-escalation or deadly force. The tools in between—tear gas, neck restraints, and more—are necessary.

MRAP is primarily used as a safety and rescue tool not as an offensive weapon. Many jurisdictions would not be able to have this kind of tool without the ability to get it from the military. The MRAP should be authorized to go into extremely high risk situations.

Vehicular pursuit requires a supervisor to be on staff at all times. Small agencies would like the ability to notify a supervisor of the pursuit instead of requiring authorization. Small police departments do not have ability to have a supervisor on staff at all times. The bill captures current vehicular pursuit policies, but needs a definition of pursuit. The purpose should also be expanded to allow pursuit of reasonable suspicion of intoxicated/reckless driver.

OTHER: The intent of this bill is not to make policing less safe, but to provide consistent guidelines around the state. These guidelines are reasonable and reflect current policies of many police agencies. Serving warrants is an extremely dangerous activity. Section 8 should provide more guidance as to when an officer can utilize a no-knock warrant.

Tear gas is a weapon of war. This bill allows a loophole if a police officer considers the situation to be a riot. That provision should be removed.

Police officers should be about preserving peace and safety and building trust. The use of tools of war do not promote these objectives. We should be fostering true justice and equality.

Persons Testifying: PRO: Representative Jesse Johnson, Prime Sponsor; Sharon Swanson, Association of Washington Cities; Matt Zuvich, Washington Federation of State Employees; Jada Kent, Institute for Community Leadership; Fynn Manohchompoo, Institute for Community Leadership; Fatima Chaudhary, Institute for Community Leadership; Sakara Remmu, The Washington Black Lives Matter Alliance; Paula Sardinas, Washington Build Back Black Alliance; Sonia Joseph, WCPA/mother of Giovonn Joseph McDade; Po Leipai, WCPA/cousin of Iosia Faletogo; Lisa Earl, WCPA/mother of Jackie Salyers; Nickeia Hunter, WCPA/sister of Carlos Hunter; Breean Beggs, Spokane City Council President; Elena Marie Valencia, LCA/Justice for Joshua Flores; Marco Montebalanco, Washington Fraternal Order of Police; Alina Santillan, Seattle Community Police Commission; Enoka Herat, ACLU of Washington; Leslie Cushman, Washington Coalition for Police Accountability; Michael McPhearson, WCPA/Veterans for Peace; Camilla Muldrow.

CON: Jerry Walker, Washington State PTA; Craig Meidl, Spokane PD; Eric Olsen, Spokane Police Department; James McMahan, Washington Association of Sheriffs and Police Chiefs; Jeff DeVere, Washington Council of Police and Sheriffs; Mark Brinkman, Washington Council of Police and Sheriffs; Glen Koen, Mukilteo Police Department; James McDevitt; Michael Gallagher, Brier City Councilman.

OTHER: Greg Lineberry, 38th Legislative District Democrats; Valerie Rosman, City of Brier; Jeff Myers, Chief, City of Hoquiam Police.

Persons Signed In To Testify But Not Testifying: PRO: Ann Folden, WCPA/mother of Matthew Folden.