

SENATE BILL REPORT

SHB 1735

As of February 8, 2022

Title: An act relating to modifying the standard for use of force by peace officers but only with respect to providing that physical force may be used to the extent necessary, clarifying that deadly force may be used in the face of an immediate threat, authorizing the use of physical force to take a person into custody or provide assistance in certain circumstances involving a civil or forensic commitment, authorizing the use of physical force to take a minor into protective custody, authorizing the use of physical force to execute or enforce a court order, defining de-escalation tactics, clarifying when de-escalation tactics and less lethal alternatives must be used by a peace officer, specifying that the standard does not limit or restrict a peace officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions, and specifying that the standard does not prevent a peace officer from responding to requests for assistance or service.

Brief Description: Modifying the standard for use of force by peace officers.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Johnson, J., Rule, Wicks, Bateman, Callan, Goodman, Macri, Orwall, Ramel, Ramos, Santos, Shewmake, Wylie, Simmons and Stonier).

Brief History: Passed House: 1/28/22, 90-5.

Committee Activity: Law & Justice: 2/08/22.

Brief Summary of Bill

- Expands peace officer authority to use physical force.
- Modifies the requirement to exercise reasonable care.
- Provides that the standard for use of physical force does not limit or restrict a peace officers authority or responsibility to perform life saving or community caretaking functions.
- Provides that the standard for use of physical force does not prevent a peace officer from responding to requests for assistance or service.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Joe McKittrick (786-7287)

Background: In 2021 the Legislature enacted a standard for the use of force by peace officers. Under this 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.

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. As the terms relate to the use of deadly force:

- "necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and 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 resent and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person; and
- "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.

A peace officer must use reasonable care when determining whether and when to use physical force. The peace officer must:

- when possible, exhaust available 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 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 use.

Consistent with the standard for the use of physical force and the standard for reasonable care, by July 1, 2022, the attorney general must develop and publish model policies on use of force and de-escalation. By December 1, 2022, all law enforcement agencies must adopt policies consistent with the model policies and submit copies of the applicable policies to the attorney general. If an agency did not adopt policies consistent with the model policies, the agency must provide notice to the attorney general stating the reasons for any departures

from the model policies and an explanation of how the agency's policies are consistent with the standards for use of physical force and reasonable care. If, after December 1, 2022, a law enforcement agency modifies or repeals any policies pertaining to the use of force or de-escalation tactics, the agency shall submit notice of such action with copies of any relevant policies to the attorney general within 60 days.

Summary of Bill: The standards for when a peace officer may use physical force are amended. Along with the situations listed above, a peace officer may use physical force against a person to the extent necessary to:

- take a person into custody, transport a person for evaluation or treatment, or provide other assistance relating to mental health crisis;
- take a minor into protective custody when authorized or directed by statute;
- execute or enforce a court order authorizing or directing a peace officer to take a person into custody;
- execute a search warrant; or
- execute or enforce an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a peace officer to use physical force to execute or enforce the directive or order.

The standard for the use of deadly force is amended. A peace officer may use deadly force against another person only when necessary to protect against an immediate threat of serious physical injury or death to the officer or another person. "Immediate 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. The standard for reasonable care is amended and made applicable to the use of both physical force and deadly force. A peace officer must, when possible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force. The list of de-escalation tactics in the standard for reasonable care are removed and replaced.

"De-escalation tactics" are defined as actions used by a peace officer that are intended to minimize the likelihood of the need to use force during an incident.

Depending on the circumstances, de-escalation tactics may include, but are not limited to:

- using clear instructions and verbal persuasion;
- attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident;
- creating physical distance by employing tactical repositioning to maintain the benefit of time, distance, and cover;
- when there are multiple officers, designating one officer to communicate to avoid competing commands; and
- requesting and using available support and resources, such as a crisis intervention team, a designated crisis responder or other behavioral health professional, or back-up

officers.

A peace officer must use less lethal alternatives that are available and appropriate under the circumstances before using deadly force.

The standard for reasonable care does not limit or restrict a peace officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions to protect health and safety, and specifying that the standard does not prevent a peace officer from responding to requests for assistance or service by specified individuals and members of the public. The standard of reasonable care does not permit a peace officer to use physical force or deadly force in a manner or under such circumstances that would violate the United States Constitution or the Washington State Constitution.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: While the police reform bills passed last year were a great step forward, there do need to be some changes in reference to officers' ability to perform community care taking functions. Law enforcement should be able to use force as necessary when assisting those in mental health crisis. This bill strikes a balance between the reforms passed last year and the needs of officers.

The mental health system in Washington is severely strained and law enforcement officers are a key factor getting those who need it into involuntary treatment. This process sometimes involves a use of force, and this bill makes it clear that officers can use force for such purposes.

This bill provides important clarifications on when an officer can use reasonable force in civil instances such as a mental health crisis. This bill delivers much needed clarity to officers.

My son suffers from mental health issues, and the confusion derived from the police reform bills passed last year prevented officers from intervening to get my son the help he so desperately needed. It took a domestic violence incident to get police intervention and to get my son the help he needed.

Housing those experiencing houselessness depends on the support of law enforcement who can assist when residents are experiencing a mental health crisis. After the reform bills passed last year, officers would not involve themselves, creating a dangerous situation for

staff and residents at places that seek to provide housing. This bill is heading in the right direction, but more is needed to fix the mental health system in Washington.

Law enforcement officers must have a favorable landscape to do their jobs. Law enforcement officers are America's nobility, and they deserve better than what the Legislature has thus far provided.

While this is a good bill, Washington should continue to emphasize non-law enforcement intervention into mental health crisis. Those in crisis, and those who care for them, are often left with few options because the state does not provide enough affordable and available mental health treatment. Because we lack available mental health responders to engage those in crisis, the only option left is law enforcement officers.

Persons Testifying: PRO: Taylor Gardner, WASPC; Chief Jeff Myers, Chief of Police, City of Hoquiam; Sharon Swanson, Association of Washington Cities; Will Rice, Catholic Community Services; Julie Barrett, Conservative Ladies of Washington; Laurie Layne; Janine Burkhardt; Sheldon Beddo; Cherie Harris, Police Chief, City of Kirkland; Diane Ostrander; Austin Field, Seattle Community Police Commission; James Schrimpsheer, Washinton Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying: No one.