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**SUBSTITUTE HOUSE BILL 2037**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Goodman and Sutherland)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to modifying the standard for use of force by  
2 peace officers, but only with respect to providing that physical  
3 force may be used to the extent necessary, clarifying that deadly  
4 force may be used in the face of an immediate threat, clarifying that  
5 physical force may be used to protect against a criminal offense when  
6 there is probable cause that a person has committed or is committing  
7 the offense, authorizing the use of physical force to prevent a  
8 person from fleeing a temporary investigative detention, authorizing  
9 the use of physical force to take a person into custody when  
10 authorized or directed by statute, providing that the standard does  
11 not permit violations to the United States Constitution or state  
12 Constitution, and defining deadly force, physical force, necessary,  
13 and totality of the circumstances; amending RCW 10.120.010 and  
14 10.120.020; creating a new section; and declaring an emergency.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

16 NEW SECTION. **Sec. 1.** (1) In 2021, the legislature passed  
17 Engrossed Second Substitute House Bill No. 1310, codified as chapter  
18 10.120 RCW, with the goal of establishing a uniform statewide  
19 standard for use of force by peace officers. Since these provisions  
20 were enacted, the complexities and nuances of police practices and  
21 applicable laws, both in statute and common law, have posed

1 implementation challenges for some police agencies. For that reason,  
2 the legislature hereby intends to provide clarification and guidance  
3 to police agencies and the public with the passage of chapter . . .  
4 (House Bill No. 1735), Laws of 2022, focusing on behavioral health  
5 and other related issues, and the additional changes in this  
6 legislation, focusing on enforcement practices as well as clarifying  
7 definitions.

8 (2) The legislature did not enact RCW 10.120.020 with the purpose  
9 of preventing or prohibiting peace officers from protecting citizens  
10 from danger. To the contrary, the legislature recognizes the  
11 importance of enforcing criminal laws and providing safety for all.  
12 Therefore, the legislature intends to provide clear authority for  
13 peace officers to use physical force to prevent persons from fleeing  
14 lawful temporary investigative detentions, also known as *Terry* stops,  
15 and to take persons into custody when authorized or directed by state  
16 law. Yet this authority is not without limits. Peace officers must  
17 exercise reasonable care when determining whether to use physical  
18 force and when using any physical force against another person. Peace  
19 officers must, when possible and appropriate, use de-escalation  
20 tactics before using physical force. Peace officers may only use  
21 force to the extent necessary and reasonable under the totality of  
22 the circumstances. This high standard of safety reflects national  
23 best practices developed and supported by police leaders across the  
24 nation. Most importantly, it strikes the appropriate balance between  
25 two important interests: The safety of the public and the peace  
26 officers who serve to protect us, and the right of the people to be  
27 secure in their persons against unreasonable searches and seizures.

28 **Sec. 2.** RCW 10.120.010 and 2021 c 324 s 2 are each amended to  
29 read as follows:

30 The definitions in this section apply throughout this chapter  
31 unless the context clearly requires otherwise.

32 (1) "Deadly force" has the same meaning as provided in RCW  
33 9A.16.010.

34 (2) "Law enforcement agency" includes any "general authority  
35 Washington law enforcement agency" and any "limited authority  
36 Washington law enforcement agency" as those terms are defined in RCW  
37 10.93.020.

38 ((+2)) (3) "Less lethal alternatives" include, but are not  
39 limited to, verbal warnings, de-escalation tactics, conducted energy

1 weapons, devices that deploy oleoresin capsicum, batons, and beanbag  
2 rounds.

3 ~~((3))~~ (4) "Necessary" means that, under the totality of the  
4 circumstances, the type and amount of physical force is reasonable to  
5 effect the legal purpose intended, and a reasonably effective  
6 alternative to the use of physical force does not appear to exist,  
7 except in the context of RCW 10.120.020(2) with respect to deadly  
8 force, "necessary" means that, under the totality of the  
9 circumstances, the use of deadly force is a reasonable and  
10 proportional response to the threat posed to the officer and others,  
11 and a reasonably effective alternative to the use of deadly force  
12 does not appear to exist.

13 (5) "Peace officer" includes any "general authority Washington  
14 peace officer," "limited authority Washington peace officer," and  
15 "specially commissioned Washington peace officer" as those terms are  
16 defined in RCW 10.93.020; however, "peace officer" does not include  
17 any corrections officer or other employee of a jail, correctional, or  
18 detention facility, but does include any community corrections  
19 officer.

20 (6) "Physical force" means any act reasonably likely to cause  
21 physical pain or injury or any other act exerted upon a person's body  
22 to compel, control, constrain, or restrain the person's movement.  
23 "Physical force" does not include pat-downs, incidental touching,  
24 verbal commands, or compliant handcuffing where there is no physical  
25 pain or injury.

26 (7) "Totality of the circumstances" means all facts known to the  
27 peace officer leading up to, and at the time of, the use of force,  
28 and includes the actions of the person against whom the peace officer  
29 uses such force, and the actions of the peace officer.

30 **Sec. 3.** RCW 10.120.020 and 2021 c 324 s 3 are each amended to  
31 read as follows:

32 ~~(1)((a))~~ PHYSICAL FORCE. Except as otherwise provided under  
33 this section, a peace officer may use physical force against a person  
34 ~~((when))~~ to the extent necessary to:

35 (a) Protect against ~~((criminal conduct where there is probable~~  
36 ~~cause to make an arrest; effect))~~ a criminal offense when there is  
37 probable cause that the person has committed, is committing, or is  
38 about to commit the offense;

39 (b) Effect an arrest; ~~((prevent))~~

1 (c) Prevent an escape as defined under chapter 9A.76 RCW; (~~to~~  
2 protect)

3 (d) Prevent a person from fleeing or stop a person who is  
4 actively fleeing a lawful temporary investigative detention, provided  
5 that the person has been given notice that he or she is being  
6 detained and is not free to leave;

7 (e) Take a person into custody when authorized or directed by  
8 statute; or

9 (f) Protect against an imminent threat of bodily injury to the  
10 peace officer, another person, or the person against whom force is  
11 being used.

12 ~~((b)-A))~~ (2) DEADLY FORCE. Except as otherwise provided under  
13 this section, a peace officer may use deadly force against another  
14 person only when necessary to protect against an (~~imminent~~)  
15 immediate threat of serious physical injury or death to the officer  
16 or another person. For purposes of this subsection ~~((1)(b))~~:

17 ~~((i) "Imminent")~~ "Immediate threat of serious physical injury or  
18 death" means that, based on the totality of the circumstances, it is  
19 objectively reasonable to believe that a person has the present and  
20 apparent ability, opportunity, and intent to immediately cause death  
21 or serious bodily injury to the peace officer or another person.

22 ~~((ii) "Necessary" means that, under the totality of the~~  
23 ~~circumstances, a reasonably effective alternative to the use of~~  
24 ~~deadly force does not exist, and that the amount of force used was a~~  
25 ~~reasonable and proportional response to the threat posed to the~~  
26 ~~officer and others.~~

27 ~~(iii) "Totality of the circumstances" means all facts known to~~  
28 ~~the peace officer leading up to and at the time of the use of force,~~  
29 ~~and includes the actions of the person against whom the peace officer~~  
30 ~~uses such force, and the actions of the peace officer.~~

31 ~~(2))~~ (3) REASONABLE CARE. A peace officer shall use reasonable  
32 care when determining whether to use physical force and when using  
33 any physical force against another person. To that end, a peace  
34 officer shall:

35 (a) When possible, exhaust available and appropriate de-  
36 escalation tactics prior to using any physical force, such as:  
37 Creating physical distance by employing tactical repositioning and  
38 repositioning as often as necessary to maintain the benefit of time,  
39 distance, and cover; when there are multiple officers, designating  
40 one officer to communicate in order to avoid competing commands;

1 calling for additional resources such as a crisis intervention team  
2 or mental health professional when possible; calling for back-up  
3 officers when encountering resistance; taking as much time as  
4 necessary, without using physical force or weapons; and leaving the  
5 area if there is no threat of imminent harm and no crime has been  
6 committed, is being committed, or is about to be committed;

7 (b) When using physical force, use the least amount of physical  
8 force necessary to overcome resistance under the circumstances. This  
9 includes a consideration of the characteristics and conditions of a  
10 person for the purposes of determining whether to use force against  
11 that person and, if force is necessary, determining the appropriate  
12 and least amount of force possible to effect a lawful purpose. Such  
13 characteristics and conditions may include, for example, whether the  
14 person: Is visibly pregnant, or states that they are pregnant; is  
15 known to be a minor, objectively appears to be a minor, or states  
16 that they are a minor; is known to be a vulnerable adult, or  
17 objectively appears to be a vulnerable adult as defined in RCW  
18 74.34.020; displays signs of mental, behavioral, or physical  
19 impairments or disabilities; is experiencing perceptual or cognitive  
20 impairments typically related to the use of alcohol, narcotics,  
21 hallucinogens, or other drugs; is suicidal; has limited English  
22 proficiency; or is in the presence of children;

23 (c) Terminate the use of physical force as soon as the necessity  
24 for such force ends;

25 (d) When possible, use available and appropriate less lethal  
26 alternatives before using deadly force; and

27 (e) Make less lethal alternatives issued to the officer  
28 reasonably available for their use.

29 ~~((3))~~ (4) A peace officer may not use any force tactics  
30 prohibited by applicable departmental policy, this chapter, or  
31 otherwise by law, except to protect his or her life or the life of  
32 another person from an imminent threat.

33 ~~((4))~~ (5) Nothing in this section ~~((prevents))~~:

34 (a) Permits a peace officer to use physical force or deadly force  
35 in a manner or under such circumstances that would violate the United  
36 States Constitution or state Constitution; or

37 (b) Prevents a law enforcement agency or political subdivision of  
38 this state from adopting policies or standards with additional  
39 requirements for de-escalation and greater restrictions on the use of  
40 physical and deadly force than provided in this section.

1        NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect immediately.

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