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**ENGROSSED SENATE BILL 5919**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Van De Wege, Mullet, Conway, Gildon, Honeyford, Lovick, Randall, Salomon, and Wagoner

Read first time 01/20/22. Referred to Committee on Law & Justice.

1       AN ACT Relating to the definition of "physical force,"  
2 "necessary," and "totality of the circumstances," and the standard  
3 for law enforcement authority to use physical force and providing the  
4 authority for a peace officer to engage in a vehicular pursuit when  
5 there is reasonable suspicion a person has violated the law and the  
6 officer follows appropriate safety standards; amending RCW  
7 10.116.060, 10.120.010, and 10.120.020; creating a new section; and  
8 declaring an emergency.

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

10       NEW SECTION.   **Sec. 1.** The legislature recognizes clarity is  
11 necessary following the passage of Engrossed Second Substitute House  
12 Bill No. 1310, codified as chapter 10.120 RCW. The legislature  
13 recognizes and finds that RCW 10.120.020 did not prohibit  
14 investigatory detentions, known as *Terry* stops, or pat downs when,  
15 under the totality of the circumstances, such are authorized by law  
16 and of a reasonable scope and duration. It is the intent of the  
17 legislature in RCW 10.120.020 that peace officers will use the least  
18 amount of physical force necessary under the circumstances. The  
19 legislature intends to address the need for a definition of "physical  
20 force" in order to aid the attorney general's office in developing  
21 and publishing model policies to help implement chapter 10.120 RCW.

1 This definition is needed to assure that there is a uniform and  
2 consistent meaning applied throughout the state and that the criminal  
3 justice training commission is providing training to that definition.  
4 It is the fundamental duty of law enforcement to preserve and protect  
5 all human life.

6 **Sec. 2.** RCW 10.116.060 and 2021 c 320 s 7 are each amended to  
7 read as follows:

8 (1) A peace officer may not (~~engage in~~) conduct a vehicular  
9 pursuit, unless:

10 (a) ~~((i))~~ There is (~~probable cause~~) reasonable suspicion to  
11 believe that a person in the vehicle has committed or is committing a  
12 violent offense or sex offense as defined in RCW 9.94A.030, (~~or~~) an  
13 escape under chapter 9A.76 RCW (~~or~~

14 ~~(ii) There is reasonable suspicion a person in the vehicle has~~  
15 ~~committed or is committing),~~ a driving under the influence offense  
16 under RCW 46.61.502, a crime against persons offense pursuant to RCW  
17 9.94A.411, or another criminal offense where the public safety risks  
18 of failing to apprehend or identify the person are considered to be  
19 greater than the safety risks of the vehicular pursuit under the  
20 circumstances;

21 (b) The pursuit is necessary for the purpose of identifying or  
22 apprehending the person;

23 (c) The person poses (~~an imminent threat to the~~) a public  
24 safety (~~of others~~) risk and the safety risks of failing to  
25 apprehend or identify the person are considered to be greater than  
26 the safety risks of the vehicular pursuit under the circumstances;  
27 and

28 ~~((i) Except as provided in (d)(ii) of this subsection, the)~~  
29 The officer (~~has received~~) receives authorization to (~~engage in~~)  
30 continue the pursuit from a supervising officer and there is  
31 supervisory control of the pursuit. The officer in consultation with  
32 the supervising officer must consider alternatives to the vehicular  
33 pursuit. The supervisor must consider the justification for the  
34 vehicular pursuit and other safety considerations, including but not  
35 limited to speed, weather, traffic, road conditions, and the known  
36 presence of minors in the vehicle, and the vehicular pursuit must be  
37 terminated if any of the requirements of this subsection are not  
38 met (~~or~~

1       ~~(ii) For those jurisdictions with fewer than 10 commissioned~~  
2 ~~officers, if)).~~ If a supervisor is not on duty at the time, the  
3 officer will request the on-call supervisor be notified of the  
4 pursuit according to the agency's procedures. The officer must  
5 consider alternatives to the vehicular pursuit, the justification for  
6 the vehicular pursuit, and other safety considerations, including but  
7 not limited to speed, weather, traffic, road conditions, and the  
8 known presence of minors in the vehicle. The officer must terminate  
9 the vehicular pursuit if any of the requirements of this subsection  
10 are not met.

11       (2) A pursuing officer shall comply with any agency procedures  
12 for designating the primary pursuit vehicle and determining the  
13 appropriate number of vehicles permitted to participate in the  
14 vehicular pursuit and comply with any agency procedures for  
15 coordinating operations with other jurisdictions, including available  
16 tribal police departments when applicable.

17       (3) A peace officer may not fire a weapon upon a moving vehicle  
18 unless necessary to protect against an imminent threat of serious  
19 physical harm resulting from the operator's or a passenger's use of a  
20 deadly weapon. For the purposes of this subsection, a vehicle is not  
21 considered a deadly weapon unless the operator is using the vehicle  
22 as a deadly weapon and no other reasonable means to avoid potential  
23 serious harm are immediately available to the officer.

24       (4) For purposes of this section, "vehicular pursuit" means an  
25 attempt by a uniformed peace officer in a vehicle equipped with  
26 emergency lights and a siren to stop a moving vehicle where the  
27 operator of the moving vehicle appears to be aware that the officer  
28 is signaling the operator to stop the vehicle and the operator of the  
29 moving vehicle appears to be willfully resisting or ignoring the  
30 officer's attempt to stop the vehicle by increasing vehicle speed,  
31 making evasive maneuvers, or operating the vehicle in a reckless  
32 manner that endangers the safety of the community or the officer.

33       **Sec. 3.** RCW 10.120.010 and 2021 c 324 s 2 are each amended to  
34 read as follows:

35       The definitions in this section apply throughout this chapter  
36 unless the context clearly requires otherwise.

37       (1) "Law enforcement agency" includes any "general authority  
38 Washington law enforcement agency" and any "limited authority

1 Washington law enforcement agency" as those terms are defined in RCW  
2 10.93.020.

3 (2) "Less lethal alternatives" include, but are not limited to,  
4 verbal warnings, de-escalation tactics, conducted energy weapons,  
5 devices that deploy oleoresin capsicum, batons, and beanbag rounds.

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

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

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

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

29 **Sec. 4.** RCW 10.120.020 and 2021 c 324 s 3 are each amended to  
30 read as follows:

31 (1)(a) Except as otherwise provided under this section, a peace  
32 officer may use physical force against a person when necessary to:

33 (i) Protect against criminal conduct where there is probable  
34 cause to make an arrest; ((effect))

35 (ii) Effect an arrest; ((prevent))

36 (iii) Prevent an escape as defined under chapter 9A.76 RCW;

37 (iv) Effect an investigative detention with less than probable  
38 cause if the peace officer has reasonable and articulable facts that  
39 point towards criminal activity, including when, under the totality

1 of the circumstances, the situation escalates so that there are now  
2 facts sufficient to effectuate an arrest, whether or not an arrest is  
3 carried out; or ((protect))

4 (v) Protect against an imminent threat of bodily injury to the  
5 peace officer, another person, or the person against whom force is  
6 being used.

7 (b) A peace officer may use deadly force against another person  
8 only when necessary to protect against an imminent threat of serious  
9 physical injury or death to the officer or another person. For  
10 purposes of this subsection (1)(b) ((÷

11 ~~(i) "Imminent")~~, "imminent threat of serious physical injury or  
12 death" means that, based on the totality of the circumstances, it is  
13 objectively reasonable to believe that a person has the present and  
14 apparent ability, opportunity, and intent to immediately cause death  
15 or serious bodily injury to the peace officer or another person.

16 ~~((ii) "Necessary" means that, under the totality of the~~  
17 ~~circumstances, a reasonably effective alternative to the use of~~  
18 ~~deadly force does not exist, and that the amount of force used was a~~  
19 ~~reasonable and proportional response to the threat posed to the~~  
20 ~~officer and others.~~

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

25 (2) A peace officer shall use reasonable care when determining  
26 whether to use physical force and when using any physical force  
27 against another person. To that end, a peace officer shall:

28 (a) When possible, exhaust available and appropriate de-  
29 escalation tactics prior to using any physical force, such as:  
30 Creating physical distance by employing tactical repositioning and  
31 repositioning as often as necessary to maintain the benefit of time,  
32 distance, and cover; when there are multiple officers, designating  
33 one officer to communicate in order to avoid competing commands;  
34 calling for additional resources such as a crisis intervention team  
35 or mental health professional when possible; calling for back-up  
36 officers when encountering resistance; taking as much time as  
37 necessary, without using physical force or weapons; and leaving the  
38 area if there is no threat of imminent harm and no crime has been  
39 committed, is being committed, or is about to be committed;

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

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

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

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

23 (3) A peace officer may not use any force tactics prohibited by  
24 applicable departmental policy, this chapter, or otherwise by law,  
25 except to protect his or her life or the life of another person from  
26 an imminent threat.

27 (4) Nothing in this section prevents a law enforcement agency or  
28 political subdivision of this state from adopting policies or  
29 standards with additional requirements for de-escalation and greater  
30 restrictions on the use of physical and deadly force than provided in  
31 this section.

32 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of  
34 the state government and its existing public institutions, and takes  
35 effect immediately.

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