
SENATE BILL 5919

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 standard for law enforcement authority to
2 detain or pursue persons; and amending RCW 10.116.060, 10.120.010,
3 and 10.120.020.

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

5 **Sec. 1.** RCW 10.116.060 and 2021 c 320 s 7 are each amended to
6 read as follows:

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

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

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

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

1 (c) The person poses ~~((an imminent threat to the))~~ a public
2 safety ~~((of others))~~ risk and the safety risks of failing to
3 apprehend or identify the person are considered to be greater than
4 the safety risks of the vehicular pursuit under the circumstances;
5 and

6 (d) ~~((i) Except as provided in (d) (ii) of this subsection, the))~~
7 The officer ~~((has received))~~ receives authorization to ~~((engage in))~~
8 continue the pursuit from a supervising officer and there is
9 supervisory control of the pursuit. The officer in consultation with
10 the supervising officer must consider alternatives to the vehicular
11 pursuit. The supervisor must consider the justification for the
12 vehicular pursuit and other safety considerations, including but not
13 limited to speed, weather, traffic, road conditions, and the known
14 presence of minors in the vehicle, and the vehicular pursuit must be
15 terminated if any of the requirements of this subsection are not
16 met(~~+~~

17 ~~((ii) For those jurisdictions with fewer than 10 commissioned~~
18 ~~officers, if)).~~ If a supervisor is not on duty at the time, the
19 officer will request the on-call supervisor be notified of the
20 pursuit according to the agency's procedures. The officer must
21 consider alternatives to the vehicular pursuit, the justification for
22 the vehicular pursuit, and other safety considerations, including but
23 not limited to speed, weather, traffic, road conditions, and the
24 known presence of minors in the vehicle. The officer must terminate
25 the vehicular pursuit if any of the requirements of this subsection
26 are not met.

27 (2) A pursuing officer shall comply with any agency procedures
28 for designating the primary pursuit vehicle and determining the
29 appropriate number of vehicles permitted to participate in the
30 vehicular pursuit and comply with any agency procedures for
31 coordinating operations with other jurisdictions, including available
32 tribal police departments when applicable.

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

1 (4) For purposes of this section, "vehicular pursuit" means an
2 attempt by a uniformed peace officer in a vehicle equipped with
3 emergency lights and a siren to stop a moving vehicle where the
4 operator of the moving vehicle appears to be aware that the officer
5 is signaling the operator to stop the vehicle and the operator of the
6 moving vehicle appears to be willfully resisting or ignoring the
7 officer's attempt to stop the vehicle by increasing vehicle speed,
8 making evasive maneuvers, or operating the vehicle in a reckless
9 manner that endangers the safety of the community or the officer.

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

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Feasible," "appropriate," "necessary," "possible,"
15 "proportional," "reasonable," "available," and "imminent" must be
16 interpreted according to an objective standard which considers all
17 the facts, circumstances, and information known to the officer at the
18 time to determine whether a similarly situated reasonable officer
19 would have determined the action was feasible, appropriate,
20 necessary, possible, proportional, reasonable, available, or
21 imminent.

22 (2) "Law enforcement agency" includes any "general authority
23 Washington law enforcement agency" and any "limited authority
24 Washington law enforcement agency" as those terms are defined in RCW
25 10.93.020.

26 ((+2)) (3) "Less lethal alternatives" include, but are not
27 limited to, verbal warnings, de-escalation tactics, conducted energy
28 weapons, devices that deploy oleoresin capsicum, batons, and beanbag
29 rounds.

30 ((+3)) (4) "Necessary" means that, under the totality of the
31 circumstances, a reasonably effective alternative to the use of force
32 does not appear to exist, and that the amount of force used was a
33 reasonable and proportional response to effect the legal purpose
34 intended or to protect against the threat posed to the officer or
35 others.

36 (5) "Peace officer" includes any "general authority Washington
37 peace officer," "limited authority Washington peace officer," and
38 "specially commissioned Washington peace officer" as those terms are
39 defined in RCW 10.93.020; however, "peace officer" does not include

1 any corrections officer or other employee of a jail, correctional, or
2 detention facility, but does include any community corrections
3 officer.

4 (6) "Physical force" means any technique or tactic used by a
5 peace officer pursuant to enforcing the criminal laws of this state
6 that is reasonably likely to cause physical injury or transient pain.

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

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

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

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

17 (ii) Effect an arrest; ((prevent an escape as defined under
18 chapter 9A.76 RCW))

19 (iii) Prevent a person from fleeing a lawful detention by a peace
20 officer;

21 (iv) Carry out any warrant or other court order authorizing or
22 directing a peace officer to take a person into custody;

23 (v) Ensure the safety of a peace officer or others when
24 encountering a person reasonably suspected of possessing firearms or
25 other dangerous weapons, or when conducting a search or other lawful
26 activity that reasonably creates a high risk of danger to the officer
27 or another person; or ((protect))

28 (vi) Protect against an imminent threat of bodily injury to the
29 peace officer, another person, or the person against whom force is
30 being used.

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

35 ~~(i) "Imminent")~~, "imminent threat of serious physical injury or
36 death" means that, based on the totality of the circumstances, it is
37 objectively reasonable to believe that a person has the present and
38 apparent ability((~~÷~~) and opportunity(~~(, and intent)~~) to

1 (~~immediately~~) imminently cause death or serious bodily injury to
2 the peace officer or another person.

3 (~~(ii) "Necessary" means that, under the totality of the~~
4 ~~circumstances, a reasonably effective alternative to the use of~~
5 ~~deadly force does not exist, and that the amount of force used was a~~
6 ~~reasonable and proportional response to the threat posed to the~~
7 ~~officer and others.~~

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

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

15 (a) When (~~possible~~) safe and feasible, (~~exhaust~~) employ
16 available and appropriate de-escalation tactics prior to using any
17 physical force, such as: Creating physical distance by employing
18 tactical repositioning and repositioning as often as necessary to
19 maintain the benefit of time, distance, and cover; when there are
20 multiple officers, designating one officer to communicate in order to
21 avoid competing commands; calling for additional resources such as a
22 crisis intervention team or mental health professional when
23 (~~possible~~) safe and feasible; calling for back-up officers when
24 encountering resistance; taking as much time as necessary, without
25 using physical force or weapons; and leaving the area if there is no
26 threat of imminent harm and no crime has been committed, is being
27 committed, or is about to be committed;

28 (b) When using physical force, use (~~the least~~) a proportional
29 amount of physical force necessary to overcome resistance under the
30 circumstances. This includes a consideration of the characteristics
31 and conditions of a person for the purposes of determining whether to
32 use force against that person and, if force is necessary, determining
33 the appropriate and least amount of force (~~possible~~) reasonable to
34 effect a lawful purpose. Such characteristics and conditions may
35 include, for example, whether the person: Is visibly pregnant, or
36 states that they are pregnant; is known to be a minor, objectively
37 appears to be a minor, or states that they are a minor; is known to
38 be a vulnerable adult, or objectively appears to be a vulnerable
39 adult as defined in RCW 74.34.020; displays signs of mental,
40 behavioral, or physical impairments or disabilities; is experiencing

1 perceptual or cognitive impairments typically related to the use of
2 alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has
3 limited English proficiency; or is in the presence of children;

4 (c) Terminate the use of physical force as soon as the necessity
5 for such force ends; and

6 (d) When ((~~possible~~)) safe and feasible, use available and
7 appropriate less lethal alternatives before using deadly force(~~(; and~~

8 ~~(e) Make less lethal alternatives issued to the officer~~
9 ~~reasonably available for their use)~~).

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

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

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