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**SUBSTITUTE HOUSE BILL 1735**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

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

1        AN ACT Relating to modifying the standard for use of force by  
2 peace officers but only with respect to providing that physical force  
3 may be used to the extent necessary, clarifying that deadly force may  
4 be used in the face of an immediate threat, authorizing the use of  
5 physical force to take a person into custody or provide assistance in  
6 certain circumstances involving a civil or forensic commitment,  
7 authorizing the use of physical force to take a minor into protective  
8 custody, authorizing the use of physical force to execute or enforce  
9 a court order, defining de-escalation tactics, clarifying when de-  
10 escalation tactics and less lethal alternatives must be used by a  
11 peace officer, specifying that the standard does not limit or  
12 restrict a peace officer's authority or responsibility to perform  
13 lifesaving measures or perform community caretaking functions, and  
14 specifying that the standard does not prevent a peace officer from  
15 responding to requests for assistance or service; amending RCW  
16 10.120.010 and 10.120.020; creating a new section; and declaring an  
17 emergency.

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

19        NEW SECTION.        **Sec. 1.**        (1) In 2021, the legislature passed  
20 Engrossed Second Substitute House Bill No. 1310, codified as chapter  
21 10.120 RCW, with the goal of establishing a uniform statewide

1 standard for use of force by peace officers. The standard emphasizes  
2 the importance of exercising reasonable care and preserving and  
3 protecting human life. However, the complexities and nuances of  
4 police practices and applicable laws, both in statute and common law,  
5 have posed implementation challenges for some police agencies. For  
6 that reason, the legislature hereby recognizes the urgent need to  
7 provide clarification and guidance for police agencies and the  
8 public.

9 (2) The legislature intends for peace officers to continue  
10 performing the critical role of supporting those in crisis and  
11 assisting vulnerable members of our communities. The legislature does  
12 not intend to prevent or prohibit peace officers from protecting  
13 citizens from danger. The legislature recognizes that peace officers  
14 can and do perform these responsibilities while also maintaining the  
15 highest standards of safety and reasonable care expressed in RCW  
16 10.120.020.

17 (3) While the newly established civil standard in RCW 10.120.020  
18 is unique insofar as it is codified in state law, it represents  
19 national best practices developed by police leaders across the  
20 nation. The legislature does not intend to abrogate the criminal  
21 liability protections afforded to peace officers in chapter 9A.16  
22 RCW. Instead, the legislature hereby reaffirms its intent to  
23 establish RCW 10.120.020 as a distinct and more restrictive civil  
24 standard to inform the policies and practices applicable to all peace  
25 officers operating within state agencies and local governments. The  
26 legislature recognizes the profoundly important role peace officers  
27 have in protecting communities, and further recognizes that  
28 implementing and enforcing these best practices will improve public  
29 safety for all persons across the state.

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

32 The definitions in this section apply throughout this chapter  
33 unless the context clearly requires otherwise.

34 (1) "De-escalation tactics" refer to actions used by a peace  
35 officer that are intended to minimize the likelihood of the need to  
36 use force during an incident. Depending on the circumstances, "de-  
37 escalation tactics" may include, but are not limited to: Using clear  
38 instructions and verbal persuasion; attempting to slow down or  
39 stabilize the situation so that more time, options, and resources are

1 available to resolve the incident; creating physical distance by  
2 employing tactical repositioning to maintain the benefit of time,  
3 distance, and cover; when there are multiple officers, designating  
4 one officer to communicate in order to avoid competing commands;  
5 requesting and using available support and resources, such as a  
6 crisis intervention team, a designated crisis responder or other  
7 behavioral health professional, or back-up officers.

8 (2) "Law enforcement agency" includes any "general authority  
9 Washington law enforcement agency" and any "limited authority  
10 Washington law enforcement agency" as those terms are defined in RCW  
11 10.93.020.

12 ~~((+2))~~ (3) "Less lethal alternatives" include, but are not  
13 limited to, verbal warnings, de-escalation tactics, conducted energy  
14 weapons, devices that deploy oleoresin capsicum, batons, and beanbag  
15 rounds.

16 ~~((+3))~~ (4) "Peace officer" includes any "general authority  
17 Washington peace officer," "limited authority Washington peace  
18 officer," and "specially commissioned Washington peace officer" as  
19 those terms are defined in RCW 10.93.020; however, "peace officer"  
20 does not include any corrections officer or other employee of a jail,  
21 correctional, or detention facility, but does include any community  
22 corrections officer.

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

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

28 (a) Protect against criminal conduct where there is probable  
29 cause to make an arrest; ~~((effect))~~

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

31 (c) Prevent an escape as defined under chapter 9A.76 RCW; ~~((ex~~  
32 protect))

33 (d) Take a person into custody, transport a person for evaluation  
34 or treatment, or provide other assistance under chapter 10.77, 71.05,  
35 or 71.34 RCW;

36 (e) Take a minor into protective custody when authorized or  
37 directed by statute;

38 (f) Execute or enforce a court order authorizing or directing a  
39 peace officer to take a person into custody;

1 (g) Execute a search warrant;

2 (h) Execute or enforce an oral directive issued by a judicial  
3 officer in the courtroom or a written order where the court expressly  
4 authorizes a peace officer to use physical force to execute or  
5 enforce the directive or order; or

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

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

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

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

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

28 ~~((2))~~ (3) REASONABLE CARE. A peace officer shall use reasonable  
29 care when determining whether to use physical force or deadly force  
30 and when using any physical force or deadly force against another  
31 person. To that end, a peace officer shall:

32 (a) When possible, ~~((exhaust available and appropriate de-~~  
33 ~~escalation tactics prior to using any physical force, such as:~~  
34 ~~Creating physical distance by employing tactical repositioning and~~  
35 ~~repositioning as often as necessary to maintain the benefit of time,~~  
36 ~~distance, and cover; when there are multiple officers, designating~~  
37 ~~one officer to communicate in order to avoid competing commands;~~  
38 ~~calling for additional resources such as a crisis intervention team~~  
39 ~~or mental health professional when possible; calling for back-up~~  
40 ~~officers when encountering resistance; taking as much time as~~

1 ~~necessary, without using physical force or weapons; and leaving the~~  
2 ~~area if there is no threat of imminent harm and no crime has been~~  
3 ~~committed, is being committed, or is about to be committed)) use all  
4 de-escalation tactics that are available and appropriate under the  
5 circumstances before using physical force;~~

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

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

24 (d) When possible, use ~~((available and appropriate))~~ less lethal  
25 alternatives that are available and appropriate under the  
26 circumstances before using deadly force; and

27 (e) Make less lethal alternatives issued to the officer  
28 reasonably available for ~~((their))~~ his or her 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) Limits or restricts a peace officer's authority or  
35 responsibility to perform lifesaving measures or perform community  
36 caretaking functions to ensure health and safety including, but not  
37 limited to, rendering medical assistance, performing welfare checks,  
38 or assisting other first responders and medical professionals;

39 (b) Prevents a peace officer from responding to requests for  
40 assistance or service from first responders, medical professionals,

1 behavioral health professionals, social service providers, designated  
2 crisis responders, shelter or housing providers, or any member of the  
3 public;

4 (c) Permits a peace officer to use physical force or deadly force  
5 in a manner or under such circumstances that would violate the United  
6 States Constitution or state Constitution; or

7 (d) Prevents a law enforcement agency or political subdivision of  
8 this state from adopting policies or standards with additional  
9 requirements for de-escalation and greater restrictions on the use of  
10 physical and deadly force than provided in this section.

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

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