



# 2022 SESSION REVIEW

## Reforming Police Reform

### Key changes

- Several important changes were made to 2021 police reform legislation.
- The use of physical force is now authorized during behavioral health and other community custody interventions, as well as in response to criminal conduct or to prevent an escape, take a person into custody or protect against imminent bodily injury.
- A definition for "physical force" is established as any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement.
- Limits on the use of military equipment and weapons over .50 caliber are clarified to exclude shotguns and non-lethal equipment such as bean bags.
- **No changes to vehicular pursuits standards passed.**

See attached chart for summary of 2021 and 2022 Use of Force bills

### Background

During the 2021 Session, the legislature enacted a suite of so-called police reform bills, the purpose of which, in part, was stated as establishing a uniform statewide standard for the use of force by peace officers. However, no sooner had the ink dried, particularly on [E2SHB 1310](#) (Uses of Force) and [ESHB 1054](#) (Tactics and Equipment), it became evident that rather than providing clarity to officers in the field, the opposite was true.

At the heart of the matter was genuine confusion over what constituted physical force under [E2SHB 1310](#) and when it could be employed, whether with individuals suffering from a grave mental disability and who were likely a danger to themselves or others under the involuntary treatment act (ITA), or individuals suspected of criminal conduct that had not yet risen to the threshold of probable cause. Moreover, the newly codified standard for vehicular pursuits under [ESHB 1054](#) prohibited such pursuits unless there was probable cause that a person in the vehicle had committed or was committing a violent offense or sex offense, or there was reasonable suspicion a person had committed a DUI offense.

Consequently, with reports rolling in from across the state of skyrocketing crimes against persons and property and alleged confusion by peace officers as to what standards of conduct they would be held accountable both professionally and legally, House and Senate Republicans introduced several bills to "reform police reform." Top priorities included: establishing a standard in law for physical force and when it can be used; recodifying reasonable suspicion as the threshold for both use of physical force and vehicular chases; closing the loophole on use of non-lethal weapons and ammunition of greater than .50 caliber; proposing hiring and retention bonuses for local and select state law enforcement agencies; and funding to increase the number of Basic Law Enforcement Academy (BLEA) training cohorts.

### Bills

- ✓ [House Bill 1719](#) (Bronoske) – **Use and Acquisition of Military Equipment by Law Enforcement Agencies**. Removes the prohibition on the use and acquisition of ammunition of .50 caliber or greater by law enforcement agencies. Narrows prohibition on the use and acquisition firearms of .50 caliber to apply only to rifles. Allows the use of less-lethal alternatives such as bean bags. *Passed House 95-0. Signed by Governor. Effective March 4, 2022.*

- ✓ [House Bill 1735](#) (Johnson) – **Modifying the Standard for Use of Force by Peace Officers.** Allows a peace officer to use physical force, with reasonable care, where such force is necessary to take a person into custody in circumstances involving involuntary treatment or evaluation under civil or forensic commitment laws, to take a minor into protective custody, or execute or enforce a court order. *Passed House 90-5. Signed by Governor. Effective March 4, 2022.*
- ✓ [House Bill 2037](#) (Goodman) – **Modifying the Standard for Use of Force by Peace Officers.** Addresses the use of physical force in response to criminal conduct, subject to probable cause, and includes as a threshold, "has committed, is committing, or is about to commit" a criminal offense, or to prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention. *Passed House 87-11. Signed by Governor. Effective March 17, 2022*
- ✗ [House Bill 1507](#) (Entenman) – **Independent Prosecutions of Criminal Conduct Arising from Police Use of Force.** Establishes the Office of Independent Prosecutions (OIP) as an agency within the executive branch, rather than as a unit within the AGO. Authorizes the OIP, with jurisdiction concurrent with county prosecuting attorneys, to prosecute all cases arising from an involved officer's actions that resulted in death, substantial or great bodily harm. *Died in House Public Safety Committee.*
- ✗ [House Bill 1788](#) (Robertson) – **Vehicular Pursuits.** Allows an officer to engage in a vehicular pursuit only when there is reasonable suspicion that a person in the vehicle has committed or is committing a violent offense, escape offense, or driving under the influence (DUI) offense, and unless the person in the vehicle poses an imminent threat to the safety of others. Requires supervisory oversight, evaluation of the justification for the vehicular pursuit and consideration of alternatives. *Died in House Public Safety Committee.*
- ✗ [Senate Bill 5919](#) (Padden) – **Concerning the Standard for Law Enforcement Authority to Detain or Pursue Persons.** Limits the authority to engage in pursuits to when there is reasonable suspicion that a person in the vehicle has committed or is committing a violent offense, escape offense, or driving under the influence offense. As amended on the House Floor, restores language providing that a vehicular pursuit must be necessary for the purpose of identifying or apprehending the person. *Passed House 86-12; Died in Concurrence Process.*

## Budget information

**Additional Basic Law Enforcement Training Cohorts** – The Criminal Justice Training Commission (CJTC) is provided increased appropriation in SFY 2022 and 2023, for seventy-five percent of the costs of providing 9.5 additional statewide basic law enforcement trainings in SFY 2020 and 13.5 additional trainings in SFY 2023. This provides a total of 19.5 classes in SFY 2022 and 23.5 classes in SFY 2023 (\$3,017,000 General Fund–State).

**Additive Law Enforcement Training** – The Criminal Justice Training Commission (CJTC) is also provided resources in SFY 2023, for distribution to local law enforcement agencies for training required by SHB 1735 (use of physical force by peace officers – behavioral health) and ESHB 2037 (use of force by peace officers – criminal conduct) upon enactment (\$525,000 General Fund – State, \$1,050,000 General Fund–State).

**Body Worn Camera Grants** – In the Criminal Justice Training Commission (CJTC) budget, appropriation for SFY 2023 is provided for body worn camera grants to local law enforcement agencies. The Washington Association of Sheriffs and Police Chiefs (WASPC) shall develop and implement a body worn camera grant program. The purpose of the program is to assist local law enforcement agencies with establishing and expanding body-worn camera programs (\$100,000 General Fund–State).

**USE OF FORCE STANDARD - HIGHLIGHTS**  
**From Current Law to SHB 1735 & ESHB 2037 to Merged Final Revisions**

E2SHB 1310 - Law as of July 25, 2021	SHB 1735 (Johnson)	ESHB 2037 (Goodman)	REVISED STANDARD (1735 & 2037 Enacted w/ Emergency Clause)
<b>PHYSICAL FORCE</b>			
No definition of physical force.	<i>Same as current law.</i>	<b>Defines physical force.</b> <i>Adds other definitions relating to physical force (necessary, etc.).</i>	"Physical force" means any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement. "Physical force" does not include pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury.
<b>Limits the use of physical force "when necessary" to:</b> <ul style="list-style-type: none"> <li>•Protect against criminal conduct where there is probable cause;</li> <li>•Effect an arrest;</li> <li>•Prevent an escape offense;</li> <li>•Protect against an imminent threat of bodily injury;</li> </ul>	Limits the use of physical force "to the extent necessary" in same circumstances as current law.  <i>Adds circumstances:</i> <ul style="list-style-type: none"> <li>•Take a person into custody, etc. for civil commitment/behavior health;</li> <li>•Take minor into protective custody;</li> <li>•Execute/enforce certain court orders (search warrant, taking person into custody, or when order specifies)</li> </ul>	Limits the use of physical force "to the extent necessary" in same circumstances as current law. Clarifies protecting against crime/PC.  <i>Adds circumstances:</i> <ul style="list-style-type: none"> <li>•Take a person into custody when authorized or directed by statute;</li> <li>•Prevent a person or stop a person from fleeing a lawful temporary investigative detention (if notice given).</li> </ul>	<b>Limits the use of physical force "to the extent necessary" to:</b> <ul style="list-style-type: none"> <li>•Protect against criminal offense w/ probable cause;</li> <li>•Effect an arrest;</li> <li>•Prevent an escape offense;</li> <li>•Protect against an imminent threat of bodily injury;</li> <li>•Take a person into custody, etc. for civil commitment/behavioral health;</li> <li>•Take minor into protective custody;</li> <li>•Execute/enforce certain court orders (search warrant, taking person into custody, or when order specifies);</li> <li>•Take a person into custody when authorized or directed by statute;</li> <li>•Prevent a person or stop a person from fleeing a lawful temporary investigative detention (if notice given).</li> </ul>
<b>DEADLY FORCE</b>			
Limits the use of deadly force to when necessary to protect against an <b>imminent threat</b> of serious physical injury or death.	<i>Changes "imminent" to "immediate," but retains relevant definition of term.</i>	<i>Same as SHB 1735.</i>	Limits the use of deadly force to when necessary to protect against an <b>immediate threat</b> of serious physical injury or death.
<b>REASONABLE CARE STANDARD</b>			
Requires an officer to use reasonable care when determining whether to use physical force and when using any physical force against another person.  Reasonable care includes: <ul style="list-style-type: none"> <li>•When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as certain specific tactics;</li> <li>•Use the least amount of physical force necessary to overcome resistance under the circumstances. Consider specific characteristics.</li> <li>•Terminate physical force as soon as necessity ends;</li> <li>•When possible, use available and appropriate less lethal alternatives before using deadly force.</li> </ul>	Adds deadly force to overall standard.  <ul style="list-style-type: none"> <li>•Reorganizes language. Defines de-escalation tactics &amp; modifies &amp; expands list of example tactics.</li> <li>•Same as current law.</li> <li>•Same as current law.</li> <li>•Reorganizes language.</li> </ul>	<i>Same as SHB 1735.</i>  <ul style="list-style-type: none"> <li>•Same as current law.</li> <li>•Same as current law.</li> <li>•Same as current law.</li> <li>•Same as current law.</li> </ul>	Requires an officer to use reasonable care when determining whether to use physical force <b>or deadly force</b> and when using any physical force or <b>deadly force</b> against another person. Reasonable care includes: <ul style="list-style-type: none"> <li>•When possible, use all <b>de-escalation tactics (as defined in SHB 1735) that are available and appropriate under the circumstances</b> before physical force;</li> <li>•Use the least amount of physical force necessary to overcome resistance under the circumstances. Consider specific characteristics.</li> <li>•Terminate physical force as soon as necessity ends;</li> <li>•When possible, <b>use less lethal alternatives that are available and appropriate under the circumstances</b> before using deadly force.</li> </ul>
<b>CLARIFICATIONS</b>			
	Adds language for: community caretaking & life-saving measures; responding to calls; constitutional requirements.	Adds language for constitutional requirements.	The standard does <b>NOT:</b> <ul style="list-style-type: none"> <li>•Limit or restrict a peace officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions to ensure health and safety;</li> <li>•Prevent a peace officer from responding to requests for assistance or service;</li> <li>•Permit Constitutional violations.</li> </ul>