



August 12th, 2021

The Honorable Robert Ferguson
Attorney General of the State of Washington
PO Box 40100
Olympia, Washington 98504-0100

Dear Attorney General Ferguson:

We are requesting an Attorney General Opinion regarding the legal standards for use of physical force by peace officers.

During the 2021 Regular Session, the Legislature passed Engrossed Second Substitute House Bill (E2SHB) 1310 with the goal of establishing a uniform statewide standard that emphasizes the importance of exercising reasonable care and preserving and protecting human life. While many of the concepts contained in the legislation are already common practice for peace officers, the complexities and nuances of police practices and applicable laws, both in statute and common law, are posing implementation challenges for some law enforcement agencies. For that reason, the Washington Association of Sheriffs and Police Chiefs is requesting additional clarification and guidance. Therefore, we respectfully request answers to the following questions:

1. What constitutes "physical force" in the context of the standard in E2SHB 1310?
2. Does the standard in E2SHB 1310 preclude an officer from using physical force in the context of an investigatory detention (based on reasonable suspicion and not probable cause) when it becomes apparent that an individual will not otherwise comply with the request to stop?
3. In light of the standard in E2SHB 1310, are the provisions of Chapter 71.05 RCW, Chapter 13.34 RCW, Chapter 43.185C RCW, and other statutes and court orders (civil or criminal) authorizing or directing a law enforcement officer to take a person into custody to be interpreted as authorizing the officer to use physical force when necessary for that purpose?
4. In light of the standard in E2SHB 1310, is a law enforcement officer authorized to use physical force pursuant to the emergency aid doctrine, where there is no "imminent threat of bodily injury to the officer, another person, or the person against whom force is being used"? Does using

physical force in this manner breach a legal duty to leave the scene, and would an officer's efforts constitute an exception to the Public Duty Doctrine under the rescue doctrine?

5. Read together, does section 3(3) of E2SHB 1310 effectively authorize a law enforcement officer to use a chokehold or neck restraint "to protect against his or her life or the life of another person from an imminent threat" despite the specific prohibition of such tactics in section 2 of Engrossed Substitute House Bill 1054 (2021)?
6. How should the terms "possible," "available," and "appropriate" in section 3 of E2SHB 1310 be interpreted? Should those terms be interpreted according to their common definitions or according to the "reasonable officer" standard established under *Graham v. Connor*, 490 U.S. 386 (1989), which provides that "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"?

Answers to these questions will assist agencies with interpreting recent legislation and provide for consistent implementation across the State of Washington. It is possible that you may receive similar or duplicate questions from other persons requesting an Attorney General Opinion, and as such, we recognize that consolidating such requests may be appropriate under the circumstances. Thank you for taking the time to issue a formal opinion on these pressing matters.

Sincerely,



Representative Roger Goodman
Chair, House Public Safety Committee
45th Legislative District



Representative Jesse Johnson
Vice Chair, House Public Safety Committee
30th Legislative District