



Washington Association of
**SHERIFFS &
POLICE CHIEFS**

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Steven D. Strachan
Executive Director

January 6, 2023

Greetings from your Executive Director:

As we head into a new year and the start of another legislative session, here are some updates for you.

First, my sincere thanks for those of you who have offered your kind thoughts and condolences on the passing of John McGrath. It is appreciated and we continue to keep his family in our thoughts.

Pre-Session Statement

This week we sent out our [Pre-Session Statement](#) outlining the priorities for WASPC decided and voted upon by you, our members. In addition, next week we will send out a short video as an additional resource to explain and define the issues for your local elected officials, legislators, and communities. Communication and relationships with your legislators is a key element in increasing understanding of these issues. As we did last year, we will again offer weekly legislative webinars to our members to provide timely updates on what is going on each week so you can be fully informed, offer your feedback, and be able to make the best decisions for your agency. The first webinar will be January 13 and if you have not already, you can register [here](#).

One of the questions we have been receiving is about data regarding pursuits and terminated pursuits. If your agency or PSAP has been collecting any sort of data on changes since the new law went into effect please share it with us at policy@waspc.org. Thanks.

Elected Leaders and Community Support

One of the key positives of the last few years has been the chorus of support for public safety from others, including Mayors, Council and Commission members, and the community. If you were not aware of it, in November Pierce County Prosecutor Mary Robnett, along with a large contingent of Pierce County Mayors,

signed a [letter](#) raising concerns about, in their words, “...a growing sense of lawlessness in our communities.” The letter is worth reading and perhaps sharing with your local elected leaders- and it belies the continuing messages from advocacy groups and some legislators that raising concerns about crime is “just pushback” from law enforcement and “fearmongering”. This past week, Crosscut, a Seattle-based media platform, published a [poll](#) in which “public safety” was exceeded only by “the economy” as an area the public wants to see as a focus in the upcoming session.

Attorney Generals’ Opinion

You may remember that Opinions were requested from the Attorney General’s Office to provide clarity for HB 1310 and HB 1054 way back when they were first passed in mid- 2021. Opinions on the first three questions were provided in January 2022 (a year ago) and now, 18 months after they were first requested by legislators, opinions on questions 4-6 were issued this past week, and are found [here](#).

We encourage you to provide these added Attorney General’s Opinions to your agency legal advisor.

Areas of apparent clarity in the Attorney General’s Opinion:

- Chokeholds/Neck Restraints (RCW 10.116.020 vs RCW 10.120.020(4)):
From the Opinion: “ESHB 1054 prohibits peace officers from using chokeholds and neck restraints, while E2SHB 1310 removes civil liability if officers use otherwise prohibited tactics, such as these, in specific circumstances. This does not mean that chokeholds and neck restraints are authorized, but rather only that officers may not face civil liability or other consequences if they have used these prohibited tactics to save human life from an imminent threat.”
- How to interpret the terms “possible,” “available,” and “appropriate” in RCW 10.120.020:
From the Opinion: “The undefined terms “possible,” “available,” and “appropriate” in E2SHB 1310 and subsequent amendments would likely be interpreted according to their plain meaning or commonly-understood definitions. Nothing in the text or legislative history of E2SHB 1310 indicates that the legislature intended to incorporate the Graham “reasonable officer” standard into the terms of the law, and in fact the legislative history indicates the opposite.”

The Attorney General’s Opinion should necessitate a conversation with your legal advisor on Question #4 – Can a peace officer use “physical force” pursuant to the [Emergency Aid Doctrine](#) if the provisions of RCW 10.120.020(1) are not met? Your legal advisor may wish to focus especially on the Analysis section under “Original page 11”.

It’s important to note, again, that this question was posed by legislators to the Attorney General’s Office on August 2, 2021. At that time, HB 1310 had been in effect for 8 days, and the Legislature wouldn’t consider or enact HB 1735 or HB 2037 for another eight months. At the time that the opinion request was submitted, there was no statutory definition of “physical force” and RCW 10.120.020(5)(a) did not yet exist. Your legal advisor may wish to consider whether both the intent and the plain language of RCW 10.120.020(5)(a) made

it clear that RCW 10.120.020 did not limit or restrict an officer's ability or responsibility to perform community caretaking or lifesaving measures.

The Opinion contains this sentence: "As we noted in our previous Opinion addressing the first three questions, the answers to your questions are extremely difficult because reasonable minds disagree about the correct legal conclusions. We provide legal answers for them here, but must acknowledge that these answers are debatable and uncertain." The confusion and need for review by your legal advisor comes against the backdrop of another bill that has been filed this year, [HB 1025](#) Washington State Legislature which is very similar to last year's HB 1202, which seeks to add more civil causes for action against law enforcement. Increasing causes for action against law enforcement while adding more potential confusion and differing interpretations of the recently passed and amended laws are not conducive to a supportive environment for our officers and deputies.

Your legal advisor may have a different take- in any case we wanted to make sure you had the most recent information.

Thanks for all you do, and stay safe!

Steve

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