

WASPC PROPOSED BILL DRAFT

12.14.21

**HB 1054 (Chapter 320, Laws of 2021)**

**Sec. 1.** RCW 10.116.020 and 2021 c 320 s 2 are each amended to read as follows:

(1) A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer, except to protect his or her life or the life of another person.

**Commented [JM1]:** Aligns RCW 10.116.020 (1) with RCW 10.120.020(3)

(2) Any policies pertaining to the use of force adopted by law enforcement agencies must be consistent with this section.

(3) For the purposes of this section:

(a) "Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway.

(b) "Neck restraint" refers to any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

**Sec. 2.** RCW 10.116.030 and 2021 c 320 s 4 are each amended to read as follows:

(1) A law enforcement agency may not use or authorize its peace officers or other employees to use tear gas unless necessary to alleviate a present risk of serious harm posed by a: (a) Riot; (b) barricaded subject; or (c) hostage situation.

(2) Prior to using tear gas as authorized under subsection (1) of this section, the officer or employee shall:

(a) Exhaust alternatives to the use of tear gas that are available and appropriate under the circumstances;

(b) Obtain authorization to use tear gas from a supervising officer, who must determine whether the present circumstances warrant the use of tear gas and whether available and appropriate alternatives have been exhausted as provided under this section;

(c) Announce to the subject or subjects the intent to use tear gas; and

(d) Allow sufficient time and space for the subject or subjects to comply with the officer's or employee's directives.

~~(3) In the case of a riot outside of a correctional, jail, or detention facility, the officer or employee may use tear gas only after: (a) Receiving authorization from the highest elected official of the jurisdiction in which the tear gas is to be used, and (b) meeting the requirements of subsection (2) of this section.~~

**Commented [J2]:** Eliminates the separation of powers concern raised in the Lewis County lawsuit on this provision.

~~(4) For the purposes of this section:~~

(a) "Barricaded subject" means an individual who is the focus of a law enforcement intervention effort, has taken a position in a physical location that does not allow immediate law enforcement access, and is refusing law enforcement orders to exit.

~~(b) "Highest elected official" means the county executive in those charter counties with an elective office of county executive, however designated, and in the case of other counties, the chair of the county legislative authority. In the case of cities and towns, it means the mayor, regardless of whether the mayor is directly elected, selected by the council or legislative body pursuant to RCW 35.18.190 or 35A.13.030, or selected according to a process in an established city charter. In the case of actions by the Washington state patrol, it means the governor.~~

**Commented [J3]:** Eliminates the separation of powers concern raised in the Lewis County lawsuit on this provision.

~~(e)~~ "Hostage situation" means a scenario in which a person is being held against his or her will by an armed, potentially armed, or otherwise dangerous suspect.

~~(d)~~ "Tear gas" means chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury, except "tear gas" does not include oleoresin capsicum (OC).

**Sec. 3.** RCW 10.116.040 and 2021 c 320 s 5 are each amended to read as follows:

(1) A law enforcement agency may not acquire or use any ~~military prohibited~~ equipment. Any law enforcement agency in

**Commented [J4]:** Resolves confusions related to whether prohibited equipment must be obtained from the military to be prohibited.

possession of ~~military prohibited~~ equipment as of the effective date of this section shall return, ~~the equipment to the federal agency from which it was acquired, if applicable, or destroy, or otherwise dispose of~~ the equipment by December 31, 2022.

**Commented [J5]:** Resolves confusions related to whether prohibited equipment must be obtained from the military to be prohibited.

**Commented [JM6]:** Clarifies that prohibited equipment must be returned, destroyed, or otherwise disposed of (current law requires destroying any prohibited equipment not obtained via a federal agency).

~~(2) (a) Each law enforcement agency shall compile an inventory of military equipment possessed by the agency, including the proposed use of the equipment, estimated number of times the equipment has been used in the prior year, and whether such use is necessary for the operation and safety of the agency or some other public safety purpose. The agency shall provide the inventory to the Washington association of sheriffs and police chiefs no later than November 1, 2021.~~

~~(b) The Washington association of sheriffs and police chiefs shall summarize the inventory information from each law enforcement agency and provide a report to the governor and the appropriate committees of the legislature no later than December 31, 2021.~~

**Commented [JM7]:** Repeals obsolete language

(3) For the purposes of this section:

(a) "~~military Prohibited~~ equipment" means ~~firearms and ammunition~~ rifles of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

**Commented [J8]:** Resolves confusions related to whether prohibited equipment must be obtained from the military to be prohibited.

**Commented [jm9]:** Fixes the unintended consequence of prohibiting the use of shotguns and less lethal firearms and associated ammunition.

(b) "Grenade" refers to any explosive grenade designed to injure or kill subjects, such as a fragmentation grenade or

antitank grenade, or any incendiary grenade designed to produce intense heat or fire. "Grenade" does not include other nonexplosive grenades designed to temporarily incapacitate or disorient subjects without causing permanent injury, such as a stun grenade, sting grenade, smoke grenade, tear gas grenade, or blast ball.

(c) "Rifles" has the same meaning as provided under RCW 9.41.010, except "rifles" does not refer to any device designed or used to deploy less lethal equipment.

**Commented [J10]:** Fixes the unintended consequence of prohibiting the use of shotguns and less lethal firearms and associated ammunition.

(d) "Machine guns" has the same meaning as defined in RCW 9.41.010. A firearm that was previously a "machine gun" that has since been permanently modified to no longer meet the capabilities of a "machine gun" as defined in RCW 9.41.010 shall not be considered a "machine gun."

**Commented [J11]:** Defines "machine gun" consistent with existing statutory definition of "machine gun" and clarifies that "machine guns" that have been modified to no longer be capable of automatic fire are not considered "machine guns." This addresses an interpretation by the Department of Enterprise Services that any firearm what was previously a "machine gun" needs to be returned or destroyed, despite the fact that it is no longer a machine gun.

(4) This section does not prohibit a law enforcement agency from participating in a federal military equipment surplus program, provided that any equipment acquired through the program does not constitute military prohibited equipment. This may include, for example: Medical supplies; hospital and health care equipment; office supplies, furniture, and equipment; school supplies; warehousing equipment; unarmed vehicles and vessels; conducted energy weapons; public address systems; scientific equipment; and protective gear and weather gear.

**Commented [J12]:** Resolves confusions related to whether prohibited equipment must be obtained from the military to be prohibited.

**Sec. 4.** RCW 10.116.060 and 2021 c 320 s 7 are each amended to read as follows:

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

**Commented [JM13]:** Replaces the term "engage in" with "conduct" to enable the changes proposed in subsection (d) of this subsection

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

**Commented [J14]:** Authorizes peace officers to engage in a vehicular pursuit based on a reasonable suspicion rather than probable cause.

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

**Commented [J15]:** Authorizes vehicular pursuits for all crimes against persons, such as DV Assault, non-DUI vehicular homicide, non-DUI vehicular assault, DV court order violation, etc.

**Commented [J16]:** Authorizes vehicular pursuits for other criminal offenses where the public safety risks of not apprehending or identifying the person are greater than the public safety risks of the pursuit, such as reckless driving, wrong way driving, bomb threats not against a person, etc.

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

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

**Commented [J17]:** Clarifies the threat requirement that a person must pose (a person who is fleeing, by definition, rarely, if ever, poses an imminent threat in relation to the underlying offense for which they are being pursued).

~~(d)(i)~~ Except as provided in ~~(d)(ii)~~ of this subsection, ~~The officer has received authorization to engage in~~ receives authorization to continue the pursuit from a supervising officer and there is supervisory control of the pursuit. The officer in consultation with the supervising officer must consider alternatives to the vehicular pursuit. The supervisor must consider the justification for the vehicular pursuit and other safety considerations, including but not limited to speed, weather, traffic, road conditions, and the known presence of minors in the vehicle, and the vehicular pursuit must be

terminated if any of the requirements of this subsection are not met.

**Commented [J18]:** Clarifies that an officer can initiate a vehicular pursuit and then seek authorization to continue it, rather than requiring permission prior to engaging in the pursuit.

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

**Commented [J19]:** Recognizes that law enforcement agencies with more than 10 officers also do not always have a supervisor on duty 24/7, and establishes standard provisions for vehicular pursuits anytime a supervisor is not on duty for any agency.

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

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

(4) For purposes of this section, "vehicular pursuit" means an attempt by a uniformed peace officer in a vehicle equipped

with emergency lights and a siren to stop a moving vehicle where the operator of the moving vehicle appears to be aware that the officer is signaling the operator to stop the vehicle and the operator of the moving vehicle appears to be willfully resisting or ignoring the officer's attempt to stop the vehicle by increasing vehicle speed, making evasive maneuvers, or operating the vehicle in a reckless manner that endangers the safety of the community or the officer.

**HB 1310 (Chapter 324, Laws of 2021)**

**Sec. 5.** RCW 10.120.010 and 2021 c 324 s 2 are each amended to read as follows:

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

(1) "Law enforcement agency" includes any "general authority Washington law enforcement agency" and any "limited authority Washington law enforcement agency" as those terms are defined in RCW 10.93.020.

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

(3) "Peace officer" includes any "general authority Washington peace officer," "limited authority Washington peace officer," and "specially commissioned Washington peace officer" as those terms are defined in RCW 10.93.020; however, "peace officer" does not include any corrections officer or other employee of a



jail, correctional, or detention facility, but does include any community corrections officer.

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

**Commented [J20]:** Codifies the CJTC definition of "physical force" developed pursuant to HB 1310 and clarifies that physical force is pursuant to enforcing criminal law (exempting ITA, child welfare, etc from the definition).

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

**Commented [J21]:** This definition is relocated and amended to apply to the entire chapter, not just subsection 1 (b) – both physical force and deadly force.

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

**Commented [J22]:** This definition is relocated to apply to the entire chapter, not just subsection 1 (b).

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

**Commented [J23]:** Provides direction, consistent with the US Supreme Court's ruling in *Graham*, for how to interpret terms according to an objective standard which considers all facts, circumstances, and information known to the officer at the time and whether a similarly situated reasonable officer would have determined the action was appropriate, necessary, or reasonable, or the threat was imminent.

**Sec. 6.** RCW 10.120.020 and 2021 c 324 s 3 are each amended to read as follows:

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

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

(ii) effect an arrest; ~~prevent an escape as defined under chapter 9A.76 RCW;~~

(iii) prevent a person from fleeing a lawful detention by a peace officer;

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

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

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

(b) A peace officer may use deadly force against another person only when necessary to protect against an imminent threat

**Commented [J24]:** Escape, as defined in chapter 9A.76 RCW, is a criminal offense and therefore already included in the first two provisions in this subsection.

**Commented [J25]:** Allows a peace officer to use force to prevent a person from fleeing a detention reasonable suspicion-based detention.

**Commented [J26]:** Allows a peace officer to use force to take a person into custody pursuant to other state law or pursuant to a court order.

**Commented [J27]:** Allows a peace officer to use force in high-risk situations that would not otherwise be allowed. NOTE: the 9<sup>th</sup> circuit court of appeals has ruled that a peace officer pointing a firearm at a person constitutes a use of force, which is where the necessity of this provision arises.

of serious physical injury or death to the officer or another person. For purposes of this subsection (1) (b):

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

**Commented [JM28]:** Removes the requirement that an officer know a person's intent.

**Commented [J29]:** Aligns the definition of "imminent threat" to be internally consistent with its common meaning of "imminent" rather than "immediate."

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

**Commented [J30]:** This definition is relocated and modified to apply to the entire chapter, not just subsection 1 (b).

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

**Commented [J31]:** This definition is relocated to apply to the entire chapter, not just subsection 1 (b).

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

(a) When safe and feasible ~~possible~~, ~~exhaust~~ employ available and appropriate de-escalation tactics prior to using any physical force, such as: Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;

**Commented [JM32]:** Replaces the term "possible" with the more appropriate term "safe and feasible."

when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when safe and feasible possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed;

**Commented [JM33]:** Replaces the term "possible" with the more appropriate term "safe and feasible."

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

**Commented [JM34]:** Replaces the "least amount of physical force" with a "proportional amount of physical force"

**Commented [J35]:** Replaces the term "possible" with "reasonable"

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

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

**Commented [JM36]:** Replaces the term "possible" with the more appropriate term "safe and feasible."

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

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

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

**SB 5051 (Chapter 323, Laws of 2021)**

**Sec. 7.** RCW 43.101.010 and 2021 c 323 s 1 are each amended to read as follows:

When used in this chapter:

(1) "Applicant" means an individual who has received a conditional offer of employment with a law enforcement or corrections agency.

(2) "Commission" means the Washington state criminal justice training commission.

(3) "Criminal justice personnel" means any person who serves as a peace officer, reserve officer, specially commissioned officer, limited authority peace officer, or corrections officer.

**Commented [jm37]:** Adds specially commissioned and limited authority peace officers to the definition of "criminal justice personnel" thereby giving explicit authority (under RCW 43.101.080 (5),(7),(9)&(14) for the Criminal Justice Training Commission to establish and require training standards for those categories of officers.

(4) "Law enforcement personnel" means any person elected, appointed, or employed as a general authority Washington peace officer as defined in RCW 10.93.020.

(5) "Correctional personnel" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those individuals whose civil rights have been limited in some way by legal sanction.

(6) "Chief for a day program" means a program in which commissioners and staff partner with local, state, and federal law enforcement agencies, hospitals, and the community to provide a day of special attention to chronically ill children. Each child is selected and sponsored by a law enforcement agency. The event, "chief for a day," occurs on one day, annually or every other year and may occur on the grounds and in the facilities of the commission. The program may include any appropriate honoring of the child as a "chief," such as a certificate swearing them in as a chief, a badge, a uniform, and donated gifts such as games, puzzles, and art supplies.

(7) "Convicted" means at the time a plea of guilty, nolo contendere, or deferred sentence has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not

limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes all instances in which a plea of guilty or nolo contendere is the basis for conviction, all proceedings in which there is a case disposition agreement, and any equivalent disposition by a court in a jurisdiction other than the state of Washington.

(8) "Peace officer" has the same meaning as a general authority Washington peace officer as defined in RCW 10.93.020. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW 77.15.075 are peace officers for purposes of this chapter.

(9) "Corrections officer" means any corrections agency employee whose primary job function is to provide for the custody, safety, and security of adult persons in jails and detention facilities in the state. "Corrections officer" does not include individuals employed by state agencies.

(10) "Finding" means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred, but was consistent with law and policy; or could neither be proven or disproven.

(11) "Reserve officer" means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully

commissioned on the same basis as full-time officers to enforce the criminal laws of this state ~~and includes:~~

~~(a) Specially commissioned Washington peace officers as defined in RCW 10.93.020;~~

~~(b) Limited authority Washington peace officers as defined in RCW 10.93.020;~~

~~(c) Persons employed as security by public institutions of higher education as defined in RCW 28B.10.016; and~~

~~(d) Persons employed for the purpose of providing security in the K-12 Washington state public school system as defined in RCW 28A.150.010 and who are authorized to use force in fulfilling their responsibilities.~~

(12) "Tribal police officer" means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.

**Sec. 8.** RCW 43.101.080 and 2021 c 323 s 6 are each amended to read as follows:

The commission shall have all of the following powers:

(1) Conduct training, including the basic law enforcement academy and in-service training, and assume legal, fiscal, and program responsibility for all training conducted by the commission;

**Commented [J38]:** Corrects the definition of "reserve officer." subsection 3 of this section (above) gives explicit authority for the CJTC to establish and require training standards for specially commissioned and limited authority peace officers. Section 8 (below) adds provisions requiring that specially commissioned peace officers and limited authority peace officers are subject to background investigations. Section 9 (below) requires fingerprint-based background checks and CJTC training for educational security staff.



(2) Grant, deny, suspend, or revoke certification of, or require remedial training for, peace officers and corrections officers under the provisions of this chapter;

(3) Grant, deny, suspend, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process;

(4) Related to its duties under subsections (2) and (3) of this section, provide for the comprehensive and timely investigation of complaints where necessary to ensure adherence to law and agency policy, strengthen the integrity and accountability of peace officers and corrections officers, and maintain public trust and confidence in the criminal justice system in this state;

(5) Establish, by rule and regulation, curricula and standards for the training of criminal justice personnel where such curricula and standards are not prescribed by statute;

(6) Own, establish, and operate, or contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel;

(7) Review and approve or reject standards for instructors of training programs for criminal justice personnel, and ~~((to))~~ employ personnel from law enforcement agencies on a temporary basis as instructors without any loss of employee benefits to those instructors from those agencies;

(8) Direct the development of alternative, innovative, and interdisciplinary training techniques;

(9) Review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards, including continuing education;

(10) Allocate financial resources among training and education programs conducted by the commission;

(11) Purchase, lease, or otherwise acquire, subject to the approval of the department of enterprise services, a training facility or facilities and allocate training facility space among training and education programs conducted by the commission;

(12) Issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(13) Provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(14) Establish rules and regulations prescribing minimum standards relating to physical, mental, and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;

(15) Require county, city, port, or state law enforcement and corrections agencies that make a conditional offer of employment to an applicant as a fully commissioned peace

officer, a reserve officer, a specially commissioned peace officer, a limited authority peace officer, or a corrections officer to administer a background investigation in accordance with the requirements of RCW 43.101.095 to determine the applicant's suitability for employment as a fully commissioned peace officer, reserve officer, or corrections officer;

**Commented [J39]:** Requires that specially commissioned peace officers and limited authority peace officers be subject to background investigations. Reinstated from Section 7.

(16) Appoint members of a hearings panel as provided under RCW 43.101.380;

(17) Issue public recommendations to the governing body of a law enforcement agency regarding the agency's command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters;

(18) Promote positive relationships between law enforcement and the residents of the state of Washington through commissioners and staff participation in the "chief for a day program." The executive director shall designate staff who may participate. In furtherance of this purpose, the commission may accept grants of funds and gifts and may use its public facilities for such purpose. At all times, the participation of commissioners and staff shall comply with chapter 42.52 RCW and chapter 292-110 WAC;

(19) Adopt, amend, repeal, and administer rules and regulations pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

**Sec. 9.** RCW 43.43.837 and 2021 c 203 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary of the department of social and health services and the secretary of the department of children, youth, and families may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual sixteen years of age or older who: (i) Is not under the placement and care authority of the department of children, youth, and families; and (ii) resides in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department of children, youth, and families to provide services to children under RCW 74.15.030;

(c) Is an individual who is authorized by the department of social and health services to provide services to people with developmental disabilities under RCW 74.15.030; or

(d) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department of social and health services.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056.

(3) To satisfy the shared background check requirements provided for in RCW 43.216.270 and 43.20A.710, the department of children, youth, and families and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary of the department of children, youth, and families shall require a fingerprint-based background check through the Washington state patrol identification and criminal

history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law. Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department of children, youth, and families for applicant and service providers providing foster care as required in RCW 74.15.030.

(5) Any secure facility operated by the department of social and health services or the department of children, youth, and families under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(6) Service providers and service provider applicants, except for those long-term care workers exempted in subsection (2) of this section, who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the applicable department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department of social and health services or the department of children, youth, and families; and

(f) Services in, or to residents of, a secure facility under RCW 71.09.115.

(8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(9) Department of children, youth, and families service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(10) The department of social and health services and the department of children, youth, and families shall develop rules

identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(11) As a condition of hiring and continuing employment, and person employed as security by a public institution of higher education as defined in RCW 28B.10.016 and any person employed for the purpose of providing security in the K-12 Washington state public school system as defined in RCW 28A.150.010 must:

(a) undergo a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation; and

(b) successfully complete training provided or approved by the criminal justice training commission.

**Commented [J40]:** Requires fingerprint-based background checks and CJTC training for civilian educational security staff. Reinstated from Section 7.

(12) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department of social and health services, department of children, youth, and families, or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:



(i) Applying for a license or certification from the department of social and health services or the department of children, youth, and families;

(ii) Seeking a contract with the department of social and health services, the department of children, youth, and families, or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department of social and health services or department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the department of children, youth, and families for services rendered; or

(v) A department of social and health services or department of children, youth, and families applicant who will or may work in a department-covered position.

(b) "Authorized" means the department of social and health services or the department of children, youth, and families grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department of social and health services or department of children, youth, and families program; or

(iv) Work or serve in a department of social and health services or department of children, youth, and families-covered position.

(c) "Secretary" means the secretary of the department of social and health services.

(d) "Secure facility" has the meaning provided in RCW 71.09.020.

(e) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department of social and health services or the department of children, youth, and families to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department of social and health services or department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the

department of children, youth, and families for services rendered.

**Sec. 10.** RCW 43.101.105 and 2021 c 323 s 9 are each amended to read as follows:

(1) To help prevent misconduct, enhance peace officer and corrections officer accountability through the imposition of sanctions commensurate to the wrongdoing when misconduct occurs, and enhance public trust and confidence in the criminal justice system, upon request by an officer's employer or on its own initiative, the commission may deny, suspend, or revoke certification of or require remedial training for, an officer as provided in this section. The commission shall provide the officer with written notice and a hearing, if a hearing is timely requested by the officer under RCW 43.101.155. Notice and hearing are not required when a peace officer voluntarily surrenders certification.

(2) The commission must deny or revoke the certification of an applicant or officer if the applicant or officer:

(a) (i) Has been convicted of:

(A) A felony offense;

(B) A gross misdemeanor domestic violence offense;

(C) An offense with sexual motivation as defined in RCW 9.94A.030;

(D) An offense under chapter 9A.44 RCW; or

(E) A federal or out-of-state offense comparable to an offense listed in (a) (i) (A) through (D) of this subsection (2); and

(ii) (A) The offense was not disclosed at the time of application for initial certification; or

(B) The officer was a certified peace officer or corrections officer at the time of the offense; and

(iii) The offense is not one for which the officer was granted a full and unconditional pardon; and

(iv) The offense was not adjudicated as a juvenile and the record sealed;

(b) Has been terminated by the employing agency or otherwise separated from the employing agency after engaging in, or was found by a court to have engaged in, the use of force which resulted in death or serious injury and the use of force violated the law;

(c) Has been terminated by the employing agency or otherwise separated from the employing agency after witnessing, or found by a court to have witnessed, another officer's use of excessive force and:

(i) Was in a position to intervene to end the excessive use of force and failed to do so; or

(ii) Failed to report the use of excessive force in accordance with agency policy or law;

(d) Has been terminated by the employing agency or otherwise separated from the employing agency after knowingly making, or found by a court to have knowingly made, misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or corrections officer including, but not limited to, committing perjury, filing false reports, hiding evidence, or failing to report exonerating information. This subsection

(2) (d) does not apply to representations made in the course and for the purposes of an undercover investigation or other lawful law enforcement purpose; or

(e) Is prohibited from possessing weapons by state or federal law or by a permanent court order entered after a hearing.

(3) The commission may deny, suspend, or revoke certification or require remedial training of an applicant or officer if the applicant or officer:

(a) Failed to timely meet all requirements for obtaining a certificate of basic law enforcement or corrections training, a certificate of basic law enforcement or corrections training equivalency, or a certificate of exemption from the training;

(b) Was previously issued a certificate through administrative error on the part of the commission;

(c) Knowingly falsified or omitted material information on an application to the employer or for training or certification to the commission;

(d) Interfered with an investigation or action for denial or revocation of certification by:

(i) Knowingly making a materially false statement to the commission;

(ii) Failing to timely and accurately report information to the commission as required by law or policy; or

(iii) In any matter under review or investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness;

(e) Engaged in a use of force that could reasonably be expected to cause physical injury, and the use of force violated the law or policy of the officer's employer;

(f) Committed sexual harassment as defined by state law;

(g) Through fraud or misrepresentation, has used the position of peace officer or corrections officer for personal gain;

(h) Engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religion, creed, color, national origin, immigration status, disability, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status;

(i) Has affiliation with one or more extremist organizations;

(j) Whether occurring on or off duty, has:

(i) Been found to have committed a felony, without regard to conviction;

(ii) Engaged in a pattern of acts showing an intentional or reckless disregard for the rights of others, including but not limited to violation of an individual's constitutional rights under the state or federal constitution or a violation of RCW 10.93.160;

(iii) Engaged in unsafe practices involving firearms, weapons, or vehicles which indicate either a willful or wanton disregard for the safety of persons or property; or

(iv) Engaged in any conduct or pattern of conduct that:  
Fails to meet the ethical and professional standards required of a peace officer or corrections officer; disrupts, diminishes, or otherwise jeopardizes public trust or confidence in the law enforcement profession and correctional system; or demonstrates an inability or unwillingness to uphold the officer's sworn oath to enforce the constitution and laws of the United States and the state of Washington;

(k) Has been suspended or discharged, has resigned or retired in lieu of discharge, or has separated from the agency after the alleged misconduct occurred, for any conduct listed in this section; or

(l) Has voluntarily surrendered the person's certification as a peace officer or corrections officer.

(4) In addition to the penalties set forth in subsection (3) of this section, the commission may require mandatory retraining or placement on probation for up to two years, or both. In determining the appropriate penalty or sanction, the commission shall consider: The findings and conclusions, and the basis for the findings and conclusions, of any due process hearing or disciplinary appeals hearing following an investigation by a law enforcement agency regarding the alleged misconduct, if such hearing has occurred prior to the commission's action; any sanctions or training ordered by the employing agency regarding the alleged misconduct; and whether the employing agency bears any responsibility for the situation.

(5) The commission shall deny certification to any applicant who lost certification as a result of a break in service of more than 24 consecutive months if that applicant failed to comply

with the requirements set forth in RCW 43.101.080 (15) and 43.101.095(2).

(6) The fact that the commission has suspended an officer's certification is not, in and of itself, a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(7) Any suspension or period of probation imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(8) A law enforcement agency may not terminate a peace officer based solely on imposition of suspension or probation for a period of 90 days or less by the commission. This subsection does not prohibit a law enforcement agency from terminating a peace officer based on the underlying acts or omissions for which the commission took such action.

**Commented [J41]:** Allows a law enforcement agency to terminate a law enforcement officer who has had their peace officer certification suspended for more than 90 days.

(9) Any of the misconduct listed in subsections (2) and (3) of this section is grounds for denial, suspension, or revocation of certification of a reserve officer to the same extent as applied to a peace officer, if the reserve officer is certified pursuant to RCW 43.101.095.

(10) Notwithstanding any other provision of this chapter, the commission must not deny, revoke, or suspend certification if the commission finds, by a preponderance of the evidence, that the conduct that would otherwise subject the officer to denial, revocation or suspension was made in good faith and in the interests of public safety.

**Commented [J42]:** Prohibits denial, revocation, or suspension of certification for an officer who acts in good faith and in the interests of public safety (such as an officer who uses less-lethal firearms that exceed .50 caliber, an officer who uses reasonable force to carry out an ITA where there is not an imminent threat of bodily harm, or an officer who fails to intervene against an officer who does either of the aforementioned).

**SB 5066 (Chapter 321, Laws of 2021)**



**Sec. 11.** RCW 10.93.190 and 2021 c 321 s 1 are each amended to read as follows:

(1) Any identifiable on-duty peace officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.

(2) Any identifiable on-duty peace officer who witnesses any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing to the witnessing officer's supervisor or other supervisory peace officer in accordance with the witnessing peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

(3) A member of a law enforcement agency shall not discipline or retaliate in any way against a peace officer for intervening in good faith or for reporting wrongdoing in good faith as required by this section.

(4) A law enforcement agency shall send notice to the criminal justice training commission of any disciplinary decision resulting from a peace officer's failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105.

(5) For purposes of this section:

(a) "Excessive force" means force that exceeds the force permitted by law ~~or policy of the witnessing officer's agency.~~

(b) "Peace officer" refers to any general authority Washington peace officer.

(c) "Wrongdoing" means conduct that is contrary to law ~~or contrary to the policies of the witnessing officer's agency,~~ provided that the conduct is not de minimis or technical in nature.

**Commented [jm43]:** Removes the likelihood of an officer being duty-bound to intervene against an officer of another agency due solely to different policies among different agencies.

**Commented [J44]:** Removes the likelihood of an officer being duty-bound to report wrongdoing against an officer of another agency due solely to different policies among different agencies.

**Sec. 12.** This act is remedial and retroactive, and applies to all actions occurring on or after July 25, 2021, and all actions occurring on or after the effective date of this act.

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

-END-