



MAJOR POLICY CONSIDERATIONS FROM THE 2021 LEGISLATIVE SESSION

CONDENSED SUMMARY VERSION

This is a summary of police reform laws passed by the Washington Legislature¹.

HB 1054 – Tactics – effective date July 25, 2021

- Prohibits the use of a chokehold or neck restraint in any circumstance.
- Prohibits no-knock warrants.
- CJTC to develop a model policy for the training and use of canine teams.
- Prohibits the use of tear gas except in three circumstances: harm posed by a riot, barricaded subject or hostage situation.
- Prior to deploying tear gas, the law enforcement officers must: exhaust available and appropriate alternatives, obtain authorization from a supervising officer, announce the intent to use tear gas; and allow sufficient time and space for the subject(s) to comply.
- Prior to deploying tear gas (for a riot outside a correctional facility), the law enforcement agency also receives authorization from the highest elected official of the jurisdiction in which the tear gas is to be used.
- Prohibits use or acquisition of “military equipment” and agencies must return or destroy any “military equipment” by December 31, 2022.
- Law enforcement agencies to submit an inventory of “military equipment”, to WASPC by November 1, 2021 WASPC to report to the Governor and Legislature by December 31, 2021.
- Requires uniformed peace officers are reasonably identifiable (e.g., name badge).
- Defines a vehicular pursuit and prohibits a vehicular pursuit unless the officer has probable cause that a crime (violent or sex offense) has/is committed and reasonable suspicion of driving under the influence, necessary for the purpose of identifying or apprehending the person, poses an imminent threat to the safety of others and the officer receives authorization to engage in the pursuit from a supervising officer
- Prohibits a law enforcement officer from firing a weapon at a moving vehicle

Key Considerations:

- Chokeholds and neck restraints are prohibited even where the use of deadly force is justified.
- The requirement to obtain authorization from the highest elected official could be misinterpreted.
- The term “violent offense” relating to vehicular pursuits may cause a misinterpretation of the requirements of the bill.

¹ Nothing in this document should be interpreted as legal advice. WASPC does not provide legal advice. Legal advice should be sought from, and provided by, your legal advisor.

HB 1310 – Use of Force – effective July 25, 2021

- Authorizes a law enforcement officer to use deadly force only when necessary to protect against an imminent threat of serious physical injury or death
- Requires an officer exhaust available and appropriate de-escalation tactics prior to using any physical force.
- When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances,
- Terminate the use of physical force as soon as the necessity for such force ends
- By July 1, 2022, the Attorney General will develop and publish a model policy on law enforcement use of force and de-escalation tactics
- Requires law enforcement agencies to submit their model policies to the Attorney General.
- Requires the Attorney General, by December 31st of each year, to publish on its website a report of the model policy
- Requires basic training provided by the CJTC to be consistent with the use of force requirements and limitations of the bill and the Attorney General’s model policy on the use of force and de-escalation.

Key Considerations:

- It is unclear how the Duty of Reasonable Care created in this bill intersects with the Public Duty Doctrine.
- It is unclear how the exception to the use of prohibited tactics interacts with the prohibition on chokeholds and neck restraints in HB 1054.

SB 5051 – Decertification – effective July 25, 2021

- Establishes criteria for mandatory CJTC de-certification of peace officers and corrections officers
- CJTC may conduct investigations into allegations of improper conduct – independent of any employing agency investigation,
- CJTC may issue public recommendations regarding law enforcement agencies’ 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
- Expands requirements relating to prehire background checks
- Requires law enforcement and corrections agencies to report to CJTC within 15 days of occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime.
- Authorizes the CJTC to impose a civil penalty up to \$10,000 for the failure by an officer or an employing agency to timely and accurately report information to the CJTC
- Requires law enforcement and corrections agencies to retain personnel records for the duration of the officer’s employment plus a minimum of 10 years thereafter
- Requires the CJTC to maintain a publicly searchable, machine readable, and exportable database
- Specifies that the CJTC shall have the sole authority to provide basic law enforcement training

Key Considerations:

- There is no limitation on how long the CJTC can suspend certification.

SB 5066 – Duty to Intervene – July 25, 2021

- Requires any identifiable general authority Washington law enforcement officer who witnesses another law enforcement officer using or attempting to use excessive force to intervene to end and/or prevent the use of excessive force and report to their supervisor
- Incorporates the duty to render first aid into the newly created duty to intervene
- Prohibits law enforcement agencies from imposing discipline or retaliate in any way against a peace officer for intervening in good faith or reporting in good faith as required by the bill
- Requires law enforcement agencies to send notice to the CJTC of any disciplinary action resulting from a law enforcement officer's failure to intervene or failure to report
- Requires the CJTC to develop a written model policy on the duty to intervene by December 1, 2021
- Requires the CJTC to provide duty to intervene training by December 31, 2023 to all law enforcement officers who completed basic law enforcement training prior to January 31, 2022

Key Considerations:

- The definition of excessive force appears to not take into consideration different perspectives from different officers on the same scene (tensing up, furtive movements, weapons, etc.).

HB 1267 – Office of Independent Investigations – effective date July 25, 2021

- Creates the Office of Independent Investigations (OII) within the Office of the Governor
- Establishes certain requirements and qualifications of investigators
- Designates the OII as the lead investigative body for any investigation it chooses to conduct under its jurisdiction
- Requires the CJTC to give priority training registration to OII personnel
- Requires the OII to conduct analysis and research
- Requires all law enforcement agencies to immediately notify the OII of any incident
- Requires that the scene of an incident subject to the jurisdiction of the OII if requested
- Requires the OII Advisory Board to assess whether the jurisdiction should be expanded to conduct investigations of other types of incidents committed by involved officers, (e.g., in-custody deaths, and sexual assaults by law enforcement officers)

Key Considerations:

- It is necessary for existing independent investigation teams to remain in place to conduct independent investigations of the use of deadly force by a law enforcement officer if/when the OII chooses to not take up an investigation.
- It remains unclear what, if any, ability an involved agency has to conduct an investigation into the underlying conduct for which the involved officer(s) were present.

HB 1089 – Audits of Investigations – effective July 25, 2021

- State Auditor with the CJTC, to conduct a process compliance audit of any deadly force investigation
- Authorizes audit procedure on any law enforcement agency to ensure that the agency follows all laws, policies, and procedures governing the training and certification of peace officers employed by the agency.
- Prohibits charging a law enforcement agency for any costs associated with audits

Key Considerations:

- Compliance audits may be conducted on investigations for several previous years.

SB 5476 – State v Blake – effective immediately and July 1, 2021

- Requires the Health Care Authority to establish a statewide substance use recovery services plan
- Requires each behavioral health administrative services organization to establish a recovery navigator program to provide community-based outreach, intake, assessment, connection to services and case management and recovery services
- Amends the Uniform Controlled Substances Act to specify that knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription constitute a simple misdemeanor
- Law enforcement officers are required, in lieu of jail booking and referral to the prosecutor, to offer a referral to assessment and services
- Modifies the drug paraphernalia statute to remove reference to paraphernalia used to test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body
- Encourages prosecutors to divert simple possession charges to assessment, treatment, or other services
- Requires basic law enforcement training to include training on interactions with persons with substance use disorders
- Appropriates approximately \$88 million for substance use disorder prevention, assessment, treatment, and recovery services

Key Considerations:

- Agencies should clarify and advise officers of their requirement to divert possession offenses in instances where treatment services are not imminently available in a particular community.
- WASPC is working to assemble a list of substance use treatment providers around the state to assist agencies in knowing what treatment services are available when diversion is required.

Other Police Reform Measures

HB 1223 – Uniform Electronic Recordation of Custodial Interrogations – effective January 1, 2020

- Requires that any custodial interrogation of an adult for a felony offense, or a juvenile of any offense, be electronically recorded.
 - must be both audio and video in cells, jails, law enforcement offices.
 - other location must be by audio at a minimum.
- Establishes limited exceptions to the electronic recording requirement and
- Limits admissibility of statements requiring electronic recording where electronic recordings were not made.

Key Considerations:

- The new law doesn't require body worn cameras which would be the most reasonable way to comply with the requirements

HB 1140 – Juvenile Access to Attorneys – effective January 1, 2022

- Requires juvenile (under the age of 18) access to an attorney for consultation prior to a juvenile waiving any constitutional rights if the officer questions a juvenile during a custodial interrogation, detains a juvenile based on probable cause of involvement in criminal activity; or requests that a juvenile consent to an evidentiary search of their person, property, dwelling, or vehicle.
- Prohibits a juvenile from waiving their right to be provided access to an attorney.
- Prohibits any statement made by a juvenile from being admissible in a court proceeding unless the juvenile was provided access to an attorney. Requires the State Office of Public Defense to provide access to attorneys for juveniles contacted by law enforcement.

Key Considerations:

- The number of juveniles requiring access is underestimated.

HB 1088 – Potential Impeachment Disclosures/"Brady List" – effective July 25, 2021

- Requires each county prosecutor, to develop and adopt a written protocol no later than July 1, 2022 regarding:
 - the types of conduct that must be disclosed,
 - how Brady/PID disclosure information should be shared and maintained, and
 - what circumstances an officer may be removed from the Brady/PID list.
- Requires local Brady/PID protocols to be reviewed every two years,
- Requires the CJTC to provide online Brady/PID disclosure training,
- Requires law enforcement agencies to report Brady/PID disclosures within 10 days,
- Requires a law enforcement agency, prior to hiring an officer with previous law enforcement experience, to inquire and verify whether the officer has ever been subject to a Brady/PID disclosure.

Key Considerations:

- It remains unclear what, if any, circumstances an officer may be removed from the Brady/PID list.

HB 1320 – Protection Orders - effective July 25, 2021 and July 1, 2022

- Consolidates and amends laws governing protection orders for domestic violence; sexual assault; stalking; anti-harassment; vulnerable adults; and extreme risk
- Amends provisions relating to the recognition of Canadian DV protection orders
- Revises provisions related to orders to the surrender and prohibition of weapons, revocation of concealed pistol licenses, unlawful possession of firearms, and DV no-contact orders.
- Establishes responsibilities for school districts regarding students who are subject to protection orders
- Repeals 137 existing statutes relating to protection orders

Key Considerations:

- This is a highly technical 320-page bill that moves and combines certain statutes related to protection orders, while also making substantive changes in the process.

SB 5055 – Grievance Arbitration Panels – effective July 25, 2021

- Establishes a rotating pool of not less than 9 and not more than 18 law enforcement grievance arbitrators at the Public Employment Relations Commission (PERC)
- Requires all grievance arbitrations involving law enforcement personnel, as defined in the bill, relating to disciplinary action, discharge, or termination to be conducted through the PERC pool of law enforcement grievance arbitrators at PERC
- Grandfathers existing collective bargaining agreements from the provisions of the bill as of July 25, 2021 from the provisions of the bill unless/until such agreement is reopened, renegotiated, or expires.

Key Considerations: None

SB 5259 – Law Enforcement Data Collection – effective July 25, 2021

- Requires the Attorney General to contract with an institution of higher education to establish and administer a Washington law enforcement use of force reporting system
- Establishes certain interactions for which use of force reporting is required
- Establishes minimum data elements to be reported for relevant interactions
- Authorizes the Attorney General to require additional interactions and data elements to be included in the use of force reporting program
- Requires all Washington law enforcement agencies to report to the program all data for all covered interactions through incident reports or other electronic means in the format and time frame established by the Attorney General

Key Considerations:

- This is legislation that may increase local costs that are not provided for in the state budget.