

# 2021 Legislative Updates & Community Impacts



PRESENTED BY  
CHELAN COUNTY SHERIFF'S OFFICE



# Overview:



- ▶ Brief **overview** of several notable House and Senate Bills that were recently signed into for 2021.
- ▶ A **summary** of the impactful language and subsequent changes created by the bills.
- ▶ **Scenarios** illustrating the potential impacts of the law changes as it relates to law enforcement response and potential impacts on the community.
- ▶ **Question and Answer** session.

# SB 5476(Blake): Drug Possession



*Effective July 1, 2021*

- ▶ Amends the Uniform Controlled Substances Act to specify that **knowing** possession of a controlled substance, counterfeit substance, or legend drug without a prescription constitutes a **simple misdemeanor**.
- ▶ Encourages prosecutors to divert simple possession charges for assessment, treatment, or other services.
- ▶ **Requires law enforcement officers, in lieu of jail booking and referral to the prosecutor, to offer a referral to assessment, treatment and other services for possession charges at least twice.**
- ▶ 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.
- ▶ Officers may continue to confiscate controlled substance and submit for destruction.

# How does this potentially affect...

## Drugs in the community



- ▶ Potential for increased drug usage and distribution state wide
- ▶ Possible increase in drug paraphernalia in the community
- ▶ Possible influx of drug users from out of state in the community
- ▶ Increased number of drug users in the community in-spite of contact by LE

**What does this look like?**

# HB1310: Use of Force

Effective July 25, 2021



- ▶ Authorizes an officer to use physical force when necessary to:
  - ▶ Protect against criminal conduct when there is probable cause to make an arrest;
  - ▶ To effect an arrest;
  - ▶ To prevent escape (from custody or detention);
  - ▶ To protect against imminent threat of bodily injury to the officer, another person, or to the person against whom force is being used.
- ▶ Authorizes use of deadly force only when necessary to protect against imminent threat of serious physical injury or death.
- ▶ Prohibits officers from using any force prohibited by law except to protect his/her life or the life of another person from imminent threat.

*\*Contradicts "chokehold" ban language in 1054.\**

# Person Contacts:



- Reasonable Suspicion: *Investigative contact*
  - Particularized articulable facts and circumstances that lead a reasonable and prudent police officer, based upon their training and experience, to believe criminal activity has happened, is happening, or is about to happen. Detention is based on the officers reasonable belief that the person being stopped may be involved in that particular crime.
    - Governed by U.S. Supreme Court case Terry v. Ohio 1968
- Probable Cause: *Arrestable contact*
  - Articulable facts and circumstances known to the officer that would warrant that officer to believe that 1) a specific crime has or is occurring, and that 2) the suspect is the person responsible. ***This is the threshold for an arrest, which is a relatively high standard.***

*\*The U.S. Supreme court has not provided an explicit definition of P.C.*



# Definitions:

## "Imminent Threat of Serious Physical Injury."

Objectively reasonable standard, based on the totality of circumstances, the dangerous person has present & apparent:

1. **Ability**: having the means (strength, skill, superior numbers, or weapon) sufficient to severely hurt someone.
  2. **Opportunity**: has access to a victim / is within proximity, within the weapon's effective range, close enough to a potential victim that the means could hurt that person.
  3. **Intent**: is the person displaying, using, or threatening with their ability (weapon) in a manner that puts another person's safety in jeopardy? This element requires us to reasonably infer what the assailant is about to do.
- ...to **immediately** cause serious bodily injury to the officer or another person.



# Definitions: Physical Force



NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided under this section, a peace officer may use **physical force** against another person when necessary to effect an arrest, prevent an escape as defined under chapter 9A.76 RCW, or otherwise protect against an imminent threat of bodily injury to the peace officer or another person.

*\*Physical Force is NOT defined in the law.*

**CJTC Definition of "Physical Force:"** Any technique or tactic reasonably likely to cause transient pain and/or injury.

## **Federal Definition:**

Power, violence or pressure directed against an individual consisting in a physical act. Physical force is simply force applied to the body which is calculated to overcome the person's resistance. *\*Compliant Handcuffing is considered physical force by federal definition.*





# HB1310 continued: Reasonable care standard

- ▶ Officer shall use "reasonable care" when determining whether to use physical force and when using any physical force:
  - ▶ When **possible**, exhaust **available** and **appropriate** de-escalation tactics prior to using any physical force (creating physical distance, taking as much time as necessary, designating one officer to communicate, calling for additional resources, calling for back-up, **leaving the area** if there is no threat of imminent harm and no crime has been committed or is about to be committed); and
  - ▶ When using physical force, use 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 (e.g., if a minor, pregnant, vulnerable adult, displays signs of disability, experiencing cognitive impairment, has limited English proficiency); and
  - ▶ Terminate use of physical force as soon as the necessity ends; and
  - ▶ When possible, use available and appropriate less lethal alternatives before using deadly force.

# How does this potentially affect...

## Police response to in-progress crime



A **fundamental** change to police responses of in-progress criminal activity:

- ▶ Physical force not authorized for investigative detentions:
  - ▶ Deputies **MUST** prioritize establishing probable cause thus increasing the likelihood of escape by suspects.
  - ▶ Many crimes do not meet the requirements for a pursuit based upon the "violent crimes" classification
- ▶ The requirement of an "imminent" threat for the use of reasonable physical force places further limitations on a deputy's ability to detain suspects during investigations.
  - ▶ Imminent is defined as "immediate."

## What does this look like?

# How does this potentially affect...

## Community Caretaking



- ▶ Community Caretaking:
  - ▶ **Juvenile Runaways**
  - ▶ Involuntary Commitments to medical health or mental health facility
  - ▶ Welfare Checks
  - ▶ Requests for assistance from:
    - ▶ Fire and EMS
    - ▶ Civil services such as CPS
    - ▶ Humane Society

**What does this look like?**

# HB1054 - Law Enforcement Tactics:

## Vehicle Pursuits



- ▶ Authorizes pursuits only when (all four elements needed):
  - ▶ 1. Either one of the following is found:
    - ▶ PC for **violent offense, sex offense, or escape** (from custody or detention facility), or
    - ▶ Reasonable suspicion that the driver is DUI; and
  - ▶ 2. Pursuit is necessary to identify or apprehend the person; and
  - ▶ 3. The driver poses an **imminent** threat to the safety of others, and risk of failing to apprehend or identify the person is greater than the risks of vehicle pursuit; and
  - ▶ 4. Supervisor has provided authorization (Supervisor must consider justification for pursuit and safety considerations).



# What are Violent Offenses?

Defined by RCW 9.94A.030

## ▶ Included

- ▶ Class A felonies
- ▶ Conspiracy/solicitation to commit a class A felony
- ▶ Manslaughter 1<sup>st</sup> and 2<sup>nd</sup> degree
- ▶ Indecent liberties by forcible compulsion
- ▶ Kidnapping in the 2<sup>nd</sup> degree
- ▶ Arson in the 2<sup>nd</sup> degree
- ▶ Assault in the 2<sup>nd</sup> degree
- ▶ Assault of a child in the 2<sup>nd</sup> degree
- ▶ Extortion in the 1<sup>st</sup> degree
- ▶ Robbery in the 2<sup>nd</sup> degree
- ▶ Drive-by shooting
- ▶ Vehicular assault/homicide

## ▶ Notable unincluded crimes:

- ▶ Misdemeanor Assaults
  - ▶ Including Domestic Violence
- ▶ **Residential burglary** (class B felony)
- ▶ Possession of a Stolen Vehicle (class B)
- ▶ Theft of a Motor Vehicle (class B felony)
- ▶ Theft of a firearm (class B felony)
- ▶ Assault in the 3<sup>rd</sup> degree (class C felony)
- ▶ **Hate Crimes** (class C felony)
- ▶ Assault of a Child in the 3<sup>rd</sup> degree (class C felony)

# HB1054 Tactics continued:

*Effective July 25, 2021*



- ▶ Prohibits chokeholds or neck restraint (VNR or other neck restraint, hold or pressure to the neck to restrict blood flow).
- ▶ Prohibits shooting at moving vehicles unless necessary to protect against **imminent** threat of serious physical harm from operator's or passenger's use of deadly weapon. The vehicle **is not considered a deadly weapon** unless the operator is driving the vehicle as a deadly weapon.
- ▶ Prohibits use of CS/CN tear gas unless necessary to alleviate risk of serious harm posed by riot, barricaded subject, or hostage situation. Before using tear gas:
  - ▶ Officer must obtain authorization to use tear gas (supervising officer for barricaded subject or hostage situation; **Commissioner approval needed for riot**); and
- ▶ Prohibits use of military equipment (including firearms and ammunition .50 caliber or greater). *\*12 Gauge Shotgun and 40MM Launcher barrel circumferences greater than .50 caliber.\**





# How does this potentially affect...

Police response to in-progress crime involving a suspect in a fleeing vehicle.

- ▶ Vehicle Pursuits will be a **rarely utilized** tactic:
  - ▶ The list of crimes that constitute a "violent offense" is limited.
  - ▶ The imminent threat condition is a high threshold based upon law's language requiring immediacy.
  - ▶ Pursuits necessitate probable cause, thus pursuits of "suspect" vehicles are no longer allowed.

**What does this look like?**

# Other Prominent Law Changes:



## HB1267: Office of Independent Investigations: *Effective July 25, 2021*

- ▶ Designates the OII as the lead investigative body for any investigation it chooses to conduct under its jurisdiction.
- ▶ Requires a law enforcement agency to relinquish control of the scene of the incident, after which the agency may no longer participate in the investigation.

## SB 5051: Decertification: *Effective July 25, 2021*

- ▶ Authorizes the CJTC to, among other things, conduct investigations into improper conduct independent of an employing agency's investigation, require mandatory retraining, and place an officer on probation for up to two years.

## HB1140 Juvenile Access to Attorneys: *Effective January 1, 2022*

- ▶ Requires a law enforcement officer to provide a juvenile (under age 18) with access to an attorney for consultation **prior to the juvenile waiving any constitutional rights**, if the officer questions the juvenile post arrest, during detention, and/or requests consent to search.
- ▶ **Prohibits waiver of the consultation by the juvenile or their parent.**

# Redefining and determining a "response."



Deputies will now triage 911 calls:

- ▶ *Medical Triage: conduct a preliminary assessment of (patients or casualties) in order to determine the urgency of their need for treatment and the nature of treatment required.*
- ▶ **Law Enforcement Triage:** conduct a preliminary investigation of the incident in order to determine the urgency of the response and the legal authority for lawful police involvement.



# Policing Options for "RESPONSE":

when interacting with citizens, suspects, and the public.

1. Proxy Response - in lieu of in-person: Phone Call / Defer or refer to other resources
2. In-Person Response: Verbal interaction with the subject(s)
3. Provide First Aid: Community caretaking
4. Document and/or Refer: Write a report, provide a case number/ refer to prosecutor
5. Restrain/Detain: Using reasonable and necessary physical force
6. Lethal Force
7. Leave the area

# District 12 Legislators



## ► Senator Brad Hawkins

Olympia Office

107 Irv Newhouse Building

PO Box 40412

Olympia, WA 98504

(360) 786-7622

[brad.hawkins@leg.wa.gov](mailto:brad.hawkins@leg.wa.gov)

## ► Representative Mike Steele

Olympia Office

122C Legislative Building

PO Box 40600

Olympia, WA 98504

(509) 782-3436

[mike.steele@leg.wa.gov](mailto:mike.steele@leg.wa.gov)

## ► Representative Keith Goehner

Olympia Office

122C Legislative Building

PO Box 40600

Olympia, WA 98504

(509) 665-0386

[keith.goehner@leg.wa.gov](mailto:keith.goehner@leg.wa.gov)



Thank you for investing in your community.



*Questions?*

