

Seattle Police Department

Directive

Effective Date: 11/01/21

Directive Number 21-00028

Revised Interim Policy

Military Equipment and Use of Force per House Bills 1054 and 1310

House Bills 1054 and 1310 went into effect on July 25, 2021. Directive 21-00023 announced an interim policy to address the effects of the two bills on department policy.

The purpose of this interim policy is to replace the original and include more information for clarification.

The Department acknowledges that both bills contain language that different agencies have interpreted in different ways. The Department further acknowledges that, absent the policy guidance that the legislature has directed the Attorney General to promulgate by July 2022, agencies can and do differ in their implementation of these bills in the interim.

Based on conversations and/or information provided by bill sponsors, civil rights attorneys, OPA, and crisis response advocates, SPD is confident its construction of these bills complies with both the meaning and intent of the legislative package.

Philosophy

Sworn employees should consider their role in overall community safety when deciding to use force within the policy restrictions created by House Bills 1054 and 1310.

When deciding whether to take action that may result in the use of force, the department expects officers to weigh the government interest in taking these actions against factors such as severity of the event, and overall public safety.

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With that in mind, the department encourages officers to apply their training and knowledge of state and municipal codes in deciding how best to hold offenders accountable, provide public assistance, and maintain public safety, including diversion under [RCW 10.31.110](#).

1. HB1054 and Military Equipment

HB1054 prohibits law enforcement agencies from using any "military equipment". The bill includes "firearms and ammunition of .50 caliber or greater" in its definition of military equipment. As a result:

Effective 07/25/21 at 0000 hours and until further notice, officers will not deploy with 12ga shotguns during their shifts.

Officers will store these firearms in whatever secure location the officers normally use when not on duty. Further direction will follow with respect to returning these items to the armory.

Upon discussion with the representatives of this bill, conversation with WSCJTC and OPA, the 40mm less lethal launcher was never the intended target of this legislation. Therefore, SPD views the 40mm launcher as exempt and encourages its continued use in compliance with [Policy 8.300-POL-10](#).

2. HB1310 and Use of Force

8.050 – Use of Force Definitions

Imminent Threat of Bodily Injury - For purposes of using *less than lethal force*, an imminent threat does not mean an immediate threat, it means a threat that is "ready to take place, near at hand ... hanging threateningly over one's head, or menacingly near. [See Seattle Police Department v. Demetrius Jones No. 81901-1-I (Division 1 Court of Appeals) citing State v. Janes, Washington State Supreme Court 850 P.2d 495 1993)

See also [RCW 71.05.020](#) (imminent "means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.")

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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, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

Reasonable Care – the statutorily mandated requirement that peace officers act with reasonable care when carrying out their duties and, specifically, in assessing the decision to use force and in their use of force, including de-escalation tactics and alternatives to deadly force.

Physical Force – With regard to HB1310, physical force is any force that is reasonably likely to cause injury or pain.

- Does not include de minimis force
- Does not include force that is reportable as Type I simply because of a complaint of pain or injury but as a tactic is not reasonably likely to cause injury or pain.
- Does not include pointing a firearm
- Does not include deployment of an NFDD away from a person

8.100 – De-Escalation

Reasonable Care

When possible, exhaust available and appropriate de-escalation tactics prior to using physical force.

Possible - Possible, as interpreted by the Seattle Police Department, means “when safe, feasible and without compromising law enforcement priorities.”

Appropriate - Appropriate means a decision made from the point of view of a reasonable officer at the scene, based on the officer’s training and experience, and with the information known at the time.

Some de-escalation factors to consider:

- Time, distance, and shielding;

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- Designate one officer to communicate in order to avoid competing commands;
- Call for additional resources;
- Take as much time as necessary without using physical force or weapons; (amount of time should be reasonable)
- Leave 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.

Use the least amount of physical force necessary to overcome resistance under the circumstances.

Least Amount of Force – An amount of force that is reasonable, necessary and proportional to effect the lawful purpose intended. This is an objective standard of a reasonable officer at the scene.

Necessary - means that no reasonable effective alternative to the use of force appeared to exist, and that the amount of force was reasonable to effect the lawful purpose intended.

Some considerations when using force:

- A consideration of the characteristics and conditions of a person for the purpose of determining whether to use force against that person, and
- If force is necessary, determining the appropriate and least amount of force possible to effect a lawful purpose.

Such characteristics and conditions may include that the person is:

- Visibly pregnant or states they are pregnant;
- Known to be a minor, objectively appears to be a minor, or states they are a minor;
- Known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in [RCW 74.34.020](#);
- Displaying signs of mental, behavioral, or physical impairments or disabilities;

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- Experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs;
- Suicidal, has limited English proficiency, or is in the presence of children.

Terminate the use of physical force as soon as the necessity for such force ends.

When feasible, use available and appropriate less lethal weapons before using deadly force.

8.200 – Using Force

Physical Force

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

- Protect against criminal conduct where there is probable cause to make an arrest,
- Effect an arrest,
- Prevent an escape as defined under [RCW chapter 9A.76](#), or
- Protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

Absent an imminent threat of bodily injury, HB1310 does not allow for any use of physical force to detain uncooperative subjects without probable cause to arrest.

In determining whether officers have probable cause to arrest, officers are not restricted to the facts forming the basis for the initial decision to stop. Where a subject's actions in response to an officer's efforts to detain separately establish probable cause that a crime, including Obstructing a Public Officer, is being committed, or where the subject's actions in response to an officer's efforts to detain create an imminent threat of harm, HB 1310 does not prohibit the use of reasonable, necessary, and proportional force to achieve the law enforcement purpose.

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Any force used to enforce an arrest or to detain under these circumstances must be proportional to the threat the officer is facing and/or the underlying crime they are investigating.

Officers may use reasonable, necessary, and proportional force to effect an emergent detention of a person suffering from a behavioral health disorder who presents an imminent threat of bodily injury to themselves or others.

Absent criminal conduct, an officer may not use physical force to take someone into custody for an emergent detention where the only risk is to property.

Officers may not use physical force to take someone into custody for a non-emergent civil detention order or other civil order of apprehension where the person does not present an imminent threat of bodily injury to themselves or others or where the subject has not committed a crime for which the subject may be diverted under RCW 10.31.110.

Deadly Force

A peace officer may use deadly force against another person only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person.

For purposes of Deadly Force under [RCW 10.120.020](#) the following definitions apply:

Imminent Threat of Serious Physical Injury or Death—based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

Necessary – 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.

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Totality of the Circumstances – 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.

Questions may be directed to the Policy Unit

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