

The BPD summer 2021 issue is being replaced with a letter regarding the recent changes to laws.

Community Letter Regarding New Laws

To the Burlington Community,

The members of the Burlington Police Department have worked diligently to earn the trust of the Burlington community. This relationship was not formed by happenstance. Over time, through collaboration, the BPD team worked to meet the policing needs and expectations of our community, serving with professionalism, integrity, understanding and empathy.

We take pride in serving our residents, guests, workforce and visitors across our community. I write today, as I am concerned that some services and expectations you have of us may change. These changes could cause some to question the trust they have placed upon their police department, so I want you to know that these changes are not through the choice of BPD, but required under new laws that govern police services in our State.

Police reform was a core theme of the 2021 State of Washington legislative session. Leading up to and during the session, I corresponded many times with elected leaders as I was concerned that important decisions were being made through emotions that were rationalized in place of data and facts. Here are some excerpts from my correspondences:

“My apprehension with proposed legislation is not a fear of change or a deep-rooted belief that we have always done things a certain way”

“Trying to address the demands, needs and challenges of one community without considering the demands, needs and challenges of the other communities impacted by the decision, is simply not appropriate nor beneficial”

“I am concerned that there is a perception that certain aspects of policing require intervention and your mechanism to do this is legislation. Laws and legislation should not be the focus if the desire is to increase police and community communication, understanding and partnerships”

The 105-day session ended with the passing of numerous bills affecting the delivery of services by law enforcement. Many of these take effect on July 25, 2021. The BPD leadership team has been

busy updating our policies, procedures, and practices to ensure compliance under the new laws. Another component of this process is for us to **share with our community the changes in law and our preparation for compliance under the new laws, which may modify the level of services offered by BPD.**

Some elements of the new laws have little or no impact on BPD operations. It could be that we are already in compliance with the law through policies and training or the component regulated is not something BPD utilizes. Other elements are a significant change of practice and have financial impacts (such as the purchase of body cameras for officers as the most practical means to remain compliant). Some elements of passed laws are contradictory with each other and some components can be difficult to fully understand, interpret and put into practice.

This letter will be narrowed to address two Bills of significant importance, which will become law on July 25, 2021. House Bill 1054 is referred to as the ‘tactics’ bill and House Bill 1310 is referred to as the ‘use of force’ bill.

House Bill 1054 ‘Tactics’

This law includes several areas that have little impact on BPD operations. Two areas of higher concern included in this law is the language surrounding the use of a choke hold or neck restraint and the strictly defined reasons a police officer may engage in a vehicle pursuit.

Minimal impacts

- Prohibits no knock warrants (not used by BPD)
- Regulates the use of tear gas (not used by BPD)
- Prohibits and limits military equipment obtained by agency (none used by BPD)
- Uniformed officers identifiable (all BPD uniformed officers wear name tags)
- Limits the firing of a weapon at a vehicle in some situations (current BPD policy)

Higher impacts

Chokehold or Neck Restraint	
Current Policy	New Law - Effective July 2021
<ul style="list-style-type: none"> • BPD does not train or use neck restraints as a control technique. • Choke holds and neck restraints are only authorized in instances where deadly force is permitted to save the life of the officer or another. 	<ul style="list-style-type: none"> • Under HB 1054 Police officers may not use a chokehold or neck restraint on another person in the course of their duties. • HB 1310 allows for an exception of law if it is to protect the life of the officer or another person from an imminent threat.
<p>Two conflicting laws passed during the same session. At this time, there has been no legal solution to the contradiction.</p>	

Continued: Higher Impacts

Vehicle Pursuit	
CURRENT POLICY	NEW LAW – Effective July 2021
<ul style="list-style-type: none">• Suspect is an immediate threat to the public.• Suspect is committing serious felony.• Only when necessity of immediate apprehension outweighs the danger.	<ul style="list-style-type: none">• Only when suspect commits a violent offense, escapes or DUI.• The pursuit is necessary for identifying or apprehending the suspect• Prior to pursuing must have supervisor approval.
<p>A man breaks into an unoccupied home, stealing firearms, electronics and jewelry. He places the stolen items into the homeowner’s car, which he found parked in the garage. As police arrive, the suspect drives away at a high rate of speed. Officers are <u>prohibited</u> from entering into a pursuit with this suspect as Burglary, Theft (firearm, property and vehicle) are not violent offenses, a mandatory requirement for pursuit under the new law.</p>	

House Bill 1310 ‘Use of Force’

HB 1310, opens in part with “the legislature intends to address excessive force and discriminatory policing by establishing a requirement for law enforcement...” The majority of legislators believed that the manner in which police officers deploy force needed stronger regulation and this bill was part of that goal. A legislator shared with me the data they were referring during the session and I found that in 2019, there were 35 deaths associated with a law enforcement response. Officers have incredible responsibility and are trusted to make difficult decisions, often in split seconds under extreme situations.

In 2019 police officers across the State of Washington:

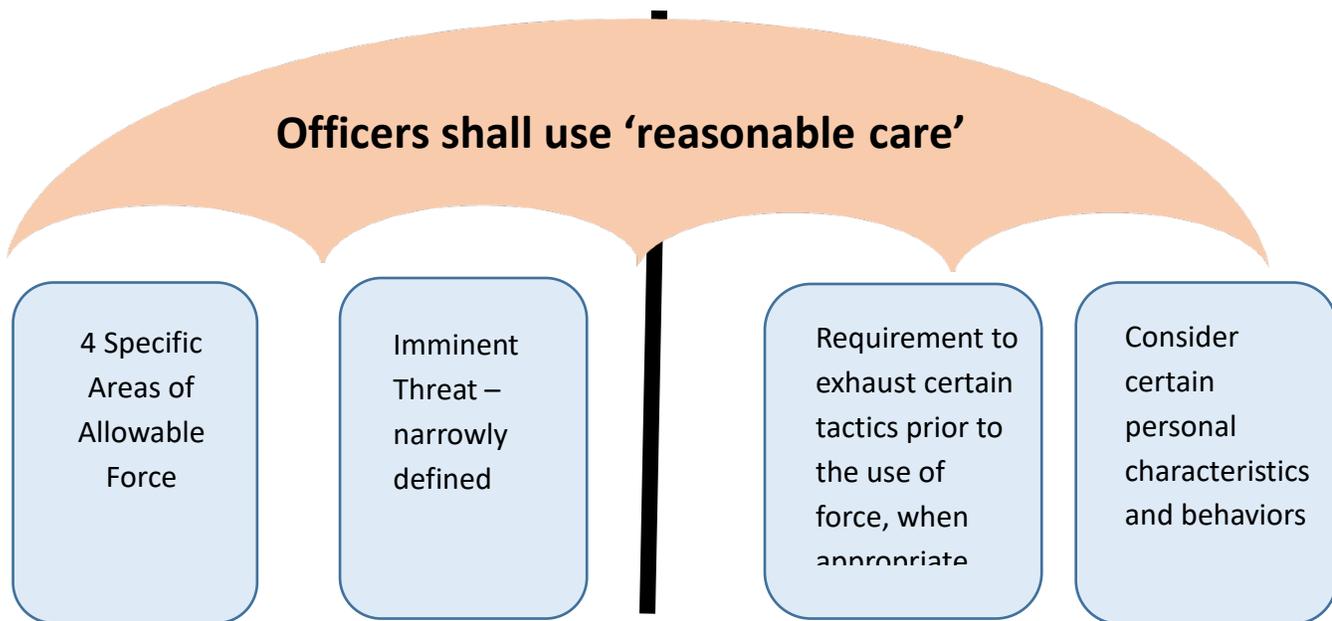
Arrested 181,000 people. 99.98% no loss of life.

25,000 of those arrests were for violent offenses. 99.86% no loss of life.

1,927 police officers were feloniously assaulted. 98.18% no loss of life.

Calculations estimate that over 1.6 million people in Washington have contact with a police officer, annually. Based on this estimate 99.9978% of police and community contacts are not fatal.

HB 1310 repeals RCW 10.31.050 which outlines when an officer may use force. In place of the repealed RCW a new standard was established, outlining the situations where force may be applied. In addition, the new standard added other considerations before an officer applies force. This process is called the ‘reasonable care standard.’



Minimal impacts

BPD officers have proven that our voice is one of the most important 'tools' we can rely on during times where people exhibit high emotions such as anger or hostility. This ability and use of good communication has prevented many incidents from rising to a situation where force becomes necessary.

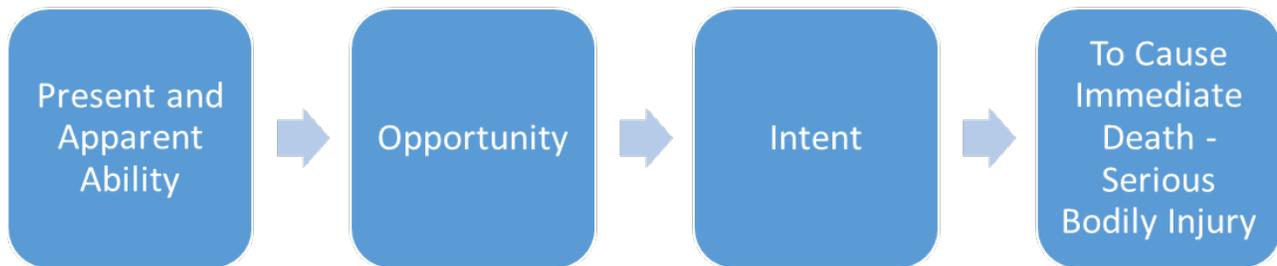
The practice of de-escalation in policing is not a new concept. Thirty years ago, de-escalation was part of the police academy training. This lengthy block of instruction was called 'interpersonal relations'. The course taught about mental and behavioral health and things to consider when faced with those encounters. What was taught in the classroom was then put to the test during scenario situations where police recruits would listen and find creative solutions to the situation at hand. Today's de-escalation may have some new terminology but the foundation of finding a conclusion using no or the least amount of force, remain the same.

Higher impacts

Use of Force	
Current Policy	New Law - Effective July 2021
<ul style="list-style-type: none"> Only use amount of force that reasonably appears necessary Only used for a legitimate lawful purpose The ultimate objective is to avoid or minimize injury Multiple factors in determine reasonable and necessary force – Court decisions 	<ul style="list-style-type: none"> Force only permitted in 4 situations: <ol style="list-style-type: none"> 1. Protect against criminal conduct 2. Effect an arrest 3. Prevent an escape 4. Protect against an imminent threat (defined next page)

Imminent Threat - of serious physical injury or death means that based on the totality of 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.

All factors must be present in order to apply any force under the imminent threat prong.



In example, officers are called to check the welfare of a person sleeping on a picnic table in the park. The person tells the officers that they were resting and planning how they would commit suicide later that evening. The person tells the officers that they live 6 blocks away and that later tonight they will walk home and then intentionally take a lethal overdose of medication. This person refuses voluntary services and will not go get help as they are set on suicide.

Suicide is not a crime, the person has not escaped and the standard of imminent threat is not met as there is no opportunity to cause immediate death. Officers are not permitted to use force to intervene.

Additional Requirements

If a situation does allow force to be used, “a peace officer shall, when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force”.

De-escalation (House Bill 1310)	
CURRENT POLICY	NEW LAW – Effective July 2021
<ul style="list-style-type: none"> BPD policy mandates training in de-escalation, which provides options and considerations for officers to use as the necessity of force is continually evaluated. 	<p>Reasonable care includes officers, when possible, exhaust available and appropriate de-escalation tactics such as:</p> <ol style="list-style-type: none"> 1. Create physical distance 2. Reposition as often as necessary 3. Single officer to communicate 4. Call additional resources such as crisis intervention or mental health 5. Call for back-up 6. Take as much time as necessary without using force 7. Leave the area if there is no threat of imminent harm and no crime has or is being committed.
<p>The clear message with the passing of laws is a desire for law enforcement to slow down, not engage, wait, create distance, assess and reassess as necessary. #6 is subjective. If someone is standing on the Boulevard how long is a reasonable amount of time to wait before they are taken into custody? #7 changes the manner in which we respond to community caretaking type calls that are not criminal and do not rise to an imminent threat.</p>	

BPD has regular contact with people in our community who have limited capacity due to mental, behavioral, chemical and/or alcohol issues. People, who have not committed crimes, have not escaped and who have not met all of the prongs established in the imminent threat definition. Prior to this law, if the person was a danger to themselves or others, law enforcement could take them into protective custody and safely transport them to a medical or mental health facility for evaluation and treatment. Today, under new law, a BPD officer is put in a predicament challenging their desire to help those that cannot or have not helped themselves against language in the law such as ‘leaving the area when no crime or imminent threat is present.’

Conclusion

There are several other new laws concerning law enforcement (officer body cameras, juvenile interviews, police certification and others) which I will cover on a future date. One law, SB 5259 allows for the development of a statewide reporting system in order to track use of force and other

data that can be used to help shape the future of law enforcement by making informed decisions. I support a reporting system as I wrote in one of the letters to our elected leaders:

“I would support a reporting system, with well-defined parameters, so data across the State could be captured and remain consistent. This system would allow for better tracking and information retrieval. This would help law enforcement towards our efforts of being more transparent. It would be useful for law enforcement as a training aid and would be useful as we have discussions with our community about the evolution of policing”

BPD officers and staff have discussed the new laws and our delivery of service. We have worked with Burlington Fire to fill some of the gaps in service. BPD will continue to do community outreach and follow our mission: “with community partnerships we strive to enhance the quality of life through professional policing”.

Please understand that if our response looks different such as responding with more officers, are slower to respond, take little or no action, or leave a scene, it is not by mistake. These actions will be determined based on our best interpretation of the laws and the variables of the call for service.

Thank you for your continued and future support. Please know that the members of BPD are committed to working alongside you, as we collaborate and determine the future of police services in our community.

Sincerely,

Michael Luvera

Chief of Police