

November 7, 2022

Sahar Fathi, Policy Director
Attorney General's Office
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Delivered Electronically

RE: Model Use of Force Policy

Dear Sahar:

The undersigned organizations would like to be on record with our full support for the Model Use of Force Policy issued by the Washington State Office of the Attorney General on July 1, 2022.

We are all very concerned about the recent uptick in police killings across the state. Between August 21, and September 22, 2022, there were 6 police killings – a rate similar to pre-RCW 10.120.020 legislation and a continuation of targeting of communities of color and people in crisis. We are committed to reducing police violence and support the Attorney General's model policy interpreting RCW 10.120.020 because it provides clear guidance to officers and will help everyone go home safely at night.

First, we want to commend the AG's office on a thorough and effective drafting process. The model policy is based on strong vetting, is clear, and it closely mirrors the law. The Attorney General's Office worked diligently to review policies, did extensive stakeholder work – including work with numerous police chiefs and sheriffs across the state, and revised and refined the document to address concerns and input. This process allowed them to establish best practices and industry standards on specific tactics and tools that align with the requirements of state law in using reasonable care. It is critical that these best practices remain in the policy. We appreciate the extensive process, and we believe the substance is beneficial for the community, and should be beneficial for law enforcement too. The model policy has bright lines, which is helpful to both the public and law enforcement in setting clear expectations. Also, the model policy aligns with legislative intent, which can be read in the footnotes to RCW 10.120.010, to preserve life, to protect against unreasonable searches and seizures, and to protect the safety of the public and of peace officers.

Second, we believe that the model policy will help reduce the amount and nature of physical force used, and to overall limit the use of deadly force. We support the inclusion of “overarching principles,” considerations, and core principles, which are supported by the legislative language and intent, and further the implementation of E2SHB 1310's purpose.¹ The determination of whether to use force is a decision-making process, and is referenced in the model policy as “critical decision making.”² Critical decision making governs all uses of physical force. It involves assessing the situation even before arriving on the scene, using de-escalation tactics and the least amount of force necessary, and ending the use of force when it is no longer needed. The focus on critical decision making is reflected in I-940 as

¹ Washington State Office of the Attorney General, “Model Use of Force Policy” (Olympia, WA: Washington State Office of the Attorney General, 2022), 1-15.

² Ibid., 4-5.

well, which requires training on alternatives to the use of physical or deadly force “so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force.”³

The tactics-based standards and restrictions in the model policy for the various force tools is extremely helpful, and reflects requirements to use the least amount of force necessary, to use force in a proportional manner, and that the agency must make less lethal alternatives available to the officer.⁴ We support the recognition in the model policy that some conduct, like using a spit hood, is a use of force, which would make it subject to reporting under an agency’s force reporting policy.⁵ We also support the prohibition on “hog tying.”⁶ This is a rational result of the statute’s standards on proportionality and duty of care. The rightful assumption is that hog-tying is never proportional and always an excessive use of force. Likewise, the model policy reflects that RCW 10.116.020 bans chokeholds and lateral vascular neck restraints.⁷

The law clearly prohibits chokeholds or lateral vascular neck restraints. It goes without saying that agencies should not be training on unlawful tactics. Senator Pedersen made the following statement during floor debate in support of the total ban on chokeholds and necks restraints:

“Six months ago, when I started to learn about these issues I was in a very different place and thought that we ought to continue to permit chokeholds and neck restraints but have them regulated as deadly force. What I have learned subsequently, is that roughly seventy percent of the time when trained officers deploy these techniques in the heat of the moment they do so incorrectly and putting in great danger the lives of community members upon whom the measures are deployed. ...I think we need to make a clear statement after what we have witnessed both in our state and across the country over the last year that this is not a safe technique, that it’s not one that we want our officers to be using, and so the striking amendment proposes a flat ban on this technique.”⁸

We also support that the current policy places the proper emphasis on whether use of physical force is “necessary,” and makes it clear that deadly force may be used only under specific circumstances, which are clearly laid out in the statute.⁹ We support the list of “deadly force” examples because it recognizes

³ Washington State Legislature, Violence de-escalation and mental health training-Adoption of Rules- Training Requirements, adopted 4 February 2019, sec.43.101.455, <https://app.leg.wa.gov/RCW/default.aspx?cite=43.101.455>.

⁴ Washington State Office of the Attorney General, “Model Use of Force Policy” (Olympia, WA: Washington State Office of the Attorney General, 2022), 10-13.

⁵ Ibid., 14.

⁶ Ibid.,15.

⁷ Ibid., 8.

⁸ Senator Pederson of the 43rd Legislative District speaking in support of the total ban on chokeholds, on April 6, 2021, to the Senate Floor Chamber, 67th Legislature, day 85, <https://tvw.org/video/senate-floor-debate-april-6-2021041115/>.

⁹ Washington State Office of the Attorney General, “Model Use of Force Policy” (Olympia, WA: Washington State Office of the Attorney General, 2022), 7, 10.

that a variety of force tactics and tools amount to a use of deadly force, not just firearm use.¹⁰ The law clearly relegates deadly force to a last resort in response to a threat, and even then, the threat must be immediate, and the law requires an officer to be prepared to use de-escalation before using physical force if possible, and less lethal alternatives before using deadly force. We note the mention of “active shooter” as a circumstance when an officer may take “quick action,” and that the policy does not preclude quick action.¹¹

Third, the AG’s model policy makes clear that the primary standard under Washington law for whether and how an officer can use force is the reasonable care standard, not the standard established in *Graham v. Connor*.¹² *Graham* established that the use of force against civilians constitutes a “seizure” under the Fourth Amendment. The *Graham* standard states that an officer’s use of force must be objectively reasonable under the circumstances as perceived by a reasonable officer on the scene at the time. State law in general, and RCW 10.120.020 in particular, can be and is more protective of civil rights than the *Graham* standard, because it regulates more than the 4th Amendment’s scope of searches and seizures. A purpose of RCW 10.120.020 is to regulate when and how force can be lawfully used against Washingtonians. We believe that any local agency use of force policy that relies on the *Graham* standard is not consistent with RCW 10.120.020. This is evident in the statute’s focus on de-escalation, less lethal alternatives, the requirement to use the least amount of force, to stop using force when the necessity ends, totality of the circumstances, and the distinct standards in Washington state law for physical force and deadly force.

In closing, we support the model policy because it clearly reflects the substance of the requirements in chapter 10.120 RCW. The requirement for law enforcement agencies to submit their policies pertaining to the new law, coupled with the annual reporting requirement for the Attorney General on agency policies implementing RCW 10.120.020, are a substantial part of the accountability for assuring that chapter 10.120 RCW is fully and faithfully implemented by law enforcement. We will be monitoring this piece closely and will be asking law enforcement agencies to adopt it as is or to adopt a more restrictive policy.

Thanks to you and your staff for the extensive work evident in the model policy.

Sincerely,

ACLU Washington
ADL Washington
Alliance for Gun Responsibility
A. Philip Randolph Institute, Seattle Chapter (APRI)
Asian Counseling and Referral Services
Bend the Arc – Jewish Action Seattle
The Black Collective
Black Lives Matter Seattle-King County
Centro Latino
Civil Survival Project

¹⁰ Ibid., 10.

¹¹ Ibid., 5.

¹² 490 U.S. 386 (1986).

Clark County Justice Group
Coalition on Homelessness (SKCCH)
Disability Rights Washington
El Centro de la Raza
Faith Action Network
Food Lifeline
FUSE Washington
Greater Spokane Progress
I Did The Time
Jewish Coalition for Immigrant Justice Northwest (JCIJ-NW)
Jewish Community Relations Council of the Jewish Federation of Greater Seattle
Kent Black Action Commission
Latino Civic Alliance
League of Women Voters, Washington
LULAC Washington (League of United Latin American Citizens)
MomsRising
Mothers For Police Accountability
Next Steps Washington
Northwest Immigrant Rights Project (NWIRP)
One America
Pacific Islander Community Association of Washington (PICA)
Partners for Social Change
Peace & Justice Action League of Spokane (PJALS)
Planned Parenthood Greater Washington and North Idaho (PPGWNI)
Pro Choice Washington
Riveters Collective Social Justice Committee
SEIU 775
SEIU Healthcare 1199 NW
Spokane Community Against Racism (SCAR)
Unidos Snohomish County
Urban Indians Northwest
Urban League of Metropolitan Seattle
Urban League of Tacoma
Washington Association of Criminal Defense Lawyers
Washington Coalition for Police Accountability
Washington Defender Association

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