



Greetings from your Executive Director:

Here is another update on “the lay of the land” and where we are this week:

Everyone, including the legislature, has admitted the police reform laws need to be addressed. The Attorney General’s Opinion [Use of “physical force” by law enforcement | Washington State](#) last week underlined that and put an exclamation point on it.

The best bill to provide balance is [Senate Bill 5919](#) Washington State Legislature that provides:

- a usable and clear definition of use of force that matches what is already being trained by the Criminal Justice Training Commission,
- the ability to stop a person who chooses to flee from a lawful detention, aligning with the standard that the U.S. Supreme Court has used for the last five decades,
- a strong requirement to balance any vehicle pursuit with the risks it creates for the public, while not requiring a “blanket” prohibition that has led to daily occurrences of brazen disregard for the law and simply not stopping because they know police can do nothing, and
- clarity and support so officers know what is expected of them while maintaining standards for accountability, consistent with the goals of reform.

SB 5919 is BY FAR the most comprehensive, balanced, and clear fix for the reform laws, period. **It is sponsored by six Democrats and three Republicans in the Senate.** It is bipartisan, it is balanced, and it is clear. This bill keeps the productive guardrails for reforms, such as the reasonable duty of care and de-escalation training and gives officers the tools to get people the help they need and provide justice for victims.

Please continue to ask your mayors, county executives, councilmembers, business leaders and others who support balanced reform and public safety to reach out to legislators and ask for SB5919 to be heard and passed with bipartisan support.

House Bill 2037 was heard by the Public Safety Committee on 1/25. WASPC supports it, as it is the best and most responsible bill dealing with use of force and investigative detentions introduced so far on the House side. It does not address pursuits or behavioral health, and we are relying on provisions in

separate bills to address those issues. Some of the most effective testimony came from local mayors who reiterated the need to make these important changes.

Whatcom County Sheriff Bill Elfo provided written testimony to the Chair, which illustrates the basic and foundational elements here:

By way of background, I have continuously worked in law enforcement for nearly 48 years and have served as the Whatcom County Sheriff for over 19 years. I am a member of the Washington State Bar (on inactive status due to serving as Sheriff).

The legitimate use of reasonable force to detain, arrest and capture criminals has long been a necessary hallmark of community safety. Last year's passage of HB 1310 restricted peace officers from using any degree of force unless "probable cause" exists to arrest, prevent an escape, or protect someone from imminent harm.

"Probable cause" is a fairly high legal standard. It represents a radical departure from long-standing court precedent authorizing temporary investigative detentions (Terry stops) under the lesser standard of "reasonable suspicion (as recognized as constitutionally permissible by both the United States and Washington State Supreme Courts). Temporary detentions based on "reasonable suspicion" often lead to evidence that establishes probable cause to believe a crime has been committed. Officers heavily relied on Terry stops to interrupt and investigate crime; protect citizens; and apprehend criminals. Temporary detentions based on "reasonable suspicion" are not constitutionally permissible as some have asserted, on the basis of "hunches" or low levels of suspicion that do not meeting the "reasonable standard" standard. Lawful detentions require an officer to have specific and articulable facts evidencing the conclusion that criminal activity may be afoot. There is a large body of case law at the state and federal levels governing the application of this constitutional standard.

The elimination of investigative detentions has had dramatic and real impacts in our community. From my perspective, the elimination of this practice has done more damage to effective and responsible crime control techniques than any other legislation I have seen over my career. It is my understanding that Washington is the only state that prohibits the use of this effective public safety strategy.

To illustrate real and potential dangers, Whatcom County deputies recently responded to a fatal shooting. Upon arrival, the decedent's wife identified her son as the shooter. The son was on the scene and admitted to shooting his stepfather but asserted that he acted in self-defense. While our review of this incident continues, it appears that the son's yet unverified claim of self-defense may have caused confusion as to whether probable cause existed to detain him pending further investigation. If it had not been for HB 1310 officers in such a situation would have clearly had the requisite "reasonable suspicion" to detain and ensure the safety of everyone. Uncertainties such as this have the potential to create substantial danger.

I heard testimony to the effect that if a person seeks to flee an investigative detention, officers can arrest the person for the crime of “obstruction.” The recent opinion of the State Attorney General cast substantial doubt on this practicality of this approach: “we conclude that the standard in Bill 1310 precludes an officer from using physical force in the context of an investigatory detention, even if the individual does not comply with the request to stop, unless one of the four situations authorizing physical force in the Bill is met.” This has also been the position of the Whatcom County Prosecuting Attorney and to the best of my knowledge, most if not all other Prosecuting Attorneys in the State. I heard it said by others in today’s hearing that law enforcement can always locate and arrest a person fleeing police at a later time (even in cases of domestic violence). This proposition borders on the absurd; is not practical; and can lead to situations where the person goes on to re-victimize the initial victim, others or evade justice.

At this point in the session, there are three options for the legislature:

- 1) Do nothing. This means they accept all of the problems; accept the new normal of de facto defunding of the police, higher crime, and more victims.
- 2) Work around the edges, do a few technical fixes, and try to distract from their lack of giving law enforcement the tools to do the job. The result is essentially the same as #1.
- 3) Provide balance that keeps the productive guardrails for reforms, such as the reasonable duty of care and de-escalation training and give officers the tools, especially a definition of use of force and the ability to detain for investigation, to get people the help they need and provide justice for victims.

Obviously, we want legislators to choose option 3 and we need to you encourage your community leaders to support that option as well.

Something I am hearing loud and clear from Sheriffs and Chiefs around the state is this: the knowledge that the police cannot intervene, conduct investigative detentions, or even have the possibility of pursuing a vehicle in most cases is creating an environment of increasingly brazen contempt for the law. Here is an example of bystander video from yesterday when [Port Orchard Police boxed in a stolen car in a parking lot.](#)

We will again hold our Friday legislative update [webinar](#) on Friday at 12:30 - we hope you can join us.

Stay Safe - Steve

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