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MEMORANDUM

DATE: August 2, 2021

TO: Representative Roger Goodman, Chair, House Public Safety Committee
Representative Jesse Johnson, Vice Chair, House Public Safety Committee
Washington State Legislature

FROM: Alicia O. Young, Deputy Solicitor General
Shelley Williams, Assistant Attorney General

SUBJECT: House Bill 1310

I. INTRODUCTION

The Legislature has passed several laws addressing police reform. Relevant here, Engrossed Second Substitute House Bill (Bill) 1310 addresses permissible uses of force by law enforcement and correctional officers. Recently, certain law enforcement agencies may have expressed concerns that Bill 1310 limits when peace officers may respond to certain calls, including mental health calls.

II. QUESTION AND BRIEF ANSWER

1. Do the restrictions and standards in Bill 1310, section 3 prohibit a peace officer from responding to a call for assistance in a situation involving mental health crises? More specifically, do the restrictions and standards in Bill 1310, section 3 effectively prohibit a peace officer from responding to a call for assistance where the caller does not report criminal conduct?

No. Bill 1310 addresses when police may use physical force or deadly force, and provides reasonable care standards when officers use physical force. Bill 1310 does not address when law enforcement officers may respond to calls, including community caretaking calls, which do not involve criminal conduct. Washington statutes and case law recognize responding to community caretaking calls as part of a law enforcement officer's duties. Bill 1310 neither alters nor limits that authority.

III. ANALYSIS

A. Bill 1310 Addresses When Peace Officers May Use Reasonable and Necessary Force, and Provides Reasonable Care Standards When Officers Use Physical Force

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In passing Bill 1310, the Legislature stated its intent:

...

The legislature intends to address excessive force and discriminatory policing by establishing a requirement for law enforcement and community corrections officers to act with reasonable care when carrying out their duties, including using de-escalation tactics and alternatives to deadly force. Further, the legislature intends to address public safety concerns by limiting the use of deadly force to very narrow circumstances where there is an imminent threat of serious physical injury or death. It is the intent of the legislature that when practicable, peace officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.

It is the fundamental duty of law enforcement to preserve and protect all human life.¹

Relevant here, Bill 1310 addresses when an officer may use physical force:

Except as otherwise provided under this section, 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;

[E]ffect an arrest;

[P]revent an escape as defined under chapter 9A.76 RCW; or

[P]rotect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.²

When a peace officer uses physical force, Bill 1310 requires the officer to use reasonable care and further provides reasonable care standards:

A peace officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer shall:

(a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as: Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;

¹ Laws of 2021, ch. 324, § 1 (emphasis added).

² Laws of 2021, ch. 324, § 3(1)(a).

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when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving 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;

(b) 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 for the purposes 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, for example, whether the person: Is visibly pregnant, or states that they are pregnant; is known to be a minor, objectively appears to be a minor, or states that they are a minor; is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020; displays signs of mental, behavioral, or physical impairments or disabilities; is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has limited English proficiency; or is in the presence of children;

(c) Terminate the use of physical force as soon as the necessity for such force ends;

(d) When possible, use available and appropriate less lethal alternatives before using deadly force; and

(e) Make less lethal alternatives issued to the officer reasonably available for their use.

B. Bill 1310 Does Not Address a Peace Officer's Authority to Respond to Community Caretaking Calls

1. Washington courts and Washington statutes recognize that peace officers provide emergency aid unrelated to criminal investigations

The community caretaking doctrine recognizes that peace officers provide emergency aid and assistance to persons in crisis – situations that do not involve criminal conduct. The Washington Supreme Court has recognized that officers may provide aid functions under the community caretaking doctrine:

Under the community caretaking exception [to the warrant requirement], law enforcement officers may make a limited invasion of constitutionally protected privacy rights when it is necessary for officers to perform their community caretaking functions. . . . This exception recognizes that law enforcement officers are jacks of all trades and frequently engage in

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community caretaking functions that are unrelated to the detection and investigation of crime, including delivering emergency messages, giving directions, searching for lost children, assisting stranded motorists, and rendering first aid.³

Washington courts have “expanded the exception to include . . . situations involving either emergency aid or routine checks on health and safety.”⁴ Washington statutes also contemplate an officer’s involvement in the detention and/or transportation of vulnerable persons to appropriate facilities. These statutes include RCW 43.185C.260 (protective custody for children), RCW 26.44.050 (abused or neglected child), and RCW 71.05.150 and .153 (persons with behavioral health disorders). Accordingly, officers responding to mental health calls is a community caretaking function.

2. Bill 1310’s plain language does not address nor limit a peace officer’s authority to respond to community caretaking calls

Bill 1310 does not address peace officers responding to certain calls and does not prohibit a peace officer from responding to a community caretaking call. Neither the statute’s plain language nor its expressed intent evidence any limitation on peace officers responding to community caretaking calls.

First, nothing in Bill 1310’s language addresses when law enforcement officers may respond to community caretaking calls. When statutory “language is unambiguous, [courts] give effect to that language and that language alone because [courts] presume the legislature says what it means and means what it says.”⁵ Here, Bill 1310, Section 3(1)(a) addresses when a peace officer may use physical force:

Except as otherwise provided under this section, 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 chapter 9A.76 RCW; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.⁶

Nothing in the statute’s plain language indicates that specifying permissible uses of force prohibits an officer from responding to community caretaking calls. Indeed, Section 3(1)(a) permitting physical force when necessary to “protect against an imminent threat of bodily injury to” any

³ *State v. Boisselle*, 194 Wn.2d 1, 10, 448 P.3d 19 (2019) (citations omitted) (internal quotation marks omitted).

⁴ *Id.* at 11 (citation omitted) (internal quotation marks omitted).

⁵ *Cent. Puget Sound Reg’l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 346, 376 P.3d 372 (2016) (citation omitted).

⁶ Laws of 2021, ch. 324, § 3(1)(a) (emphasis added).

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person, including the person against whom force is being used, indicates the statute anticipated that officers may respond to calls that do not involve a crime.

Second, the statutory intent of Bill 1310 is to preserve human life. A reading that the statute limits when peace officers may respond to emergency aid calls contravenes that intent. “When interpreting a statute, the court’s fundamental objective is to ascertain and give effect to the legislature’s intent.”⁷ “A statutory statement of intent can be crucial to the interpretation of a statute.”⁸ Here, Bill 1310’s statement of intent addresses “excessive force and discriminatory policing by establishing a requirement for [peace officers] to act with reasonable care when carrying out their duties[.]”⁹ Importantly, the intent statement declares “[i]t is the fundamental duty of law enforcement to preserve and protect all human life.”¹⁰ An interpretation that Bill 1310 limits or prohibits law enforcement officers from responding to calls that do not involve a crime – such as community caretaking calls to render aid – is contrary to legislative intent to preserve and protect all human life.

Accordingly, Bill 1310 does not prohibit a peace officer from responding to calls where the caller does not report criminal conduct.

IV. CONCLUSION

Bill 1310 does not prohibit peace officers from responding to community caretaking calls, including mental health calls.

Disclaimer: This is not a formal opinion of the Attorney General, but it expresses the authors’ carefully considered legal opinion. The conclusions are based on the facts summarized herein and current law. If either changes, the analysis and conclusions may change as well.

⁷ *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017) (citation omitted).

⁸ *Food Servs. of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 788, 871 P.2d 590 (1994) (footnote omitted).

⁹ Laws of 2021, ch. 324, § 1.

¹⁰ *Id.*