



August 19, 2021

Greetings from your Executive Director:

### **CJTC Training**

First, we sent two follow-up GTWO messages last week regarding **your concerns with the CJTC-developed training in reference to social media**. As we noted in the messages, these clarifications from CJTC do not necessarily resolve all the concerns from you or your agency members. We have communicated with our Board, and will continue to work with stakeholders on this and will keep you advised as we find out more.

### **Police Reform Legislation**

As mentioned in previous communications, we have asked the author of E2SHB 1310 and ESHB 1054, which we opposed during the session for the very reasons now being seen in the legislation, to request **opinions from the Attorney General**. We provided the representative with a narrowed [list](#) of 6 critical questions at the center of the confusion and ambiguity. We believe an Attorney General opinion speaking to these questions will help bring the different interpretations from legal advisors across the state into more uniformity.

We have been verbally notified by both the House Public Safety Chair and the Attorney General's Office that the questions were, in fact, submitted, but we have not received specific written confirmation as yet.

The questions we asked to be submitted are central to the issues we are seeing around the state with **use of force, detention, and non-criminal incidents** are:

1. ***What constitutes "physical force" pursuant to the aforementioned provision?***
2. ***Do the provisions of Chapter 324, Laws of 2021 preclude an officer from using force in the context of investigatory detention (based on reasonable suspicion and not probable cause) when it becomes apparent that an individual will not otherwise comply with the request to stop?***
3. ***Are the provisions of Chapter 71.05 RCW, Chapter 13.34 RCW, Chapter 43.185C RCW, and other statutory law or court order (civil or criminal) authorizing or directing a law enforcement officer taking a person into custody to be interpreted to authorize the officer to use force when necessary to take such person into custody?***
4. ***Is a law enforcement officer authorized to use force pursuant to the emergency aid doctrine, where there is no imminent threat of bodily injury to the officer, another person, or the person against whom force is being used? Does using force in this manner breach a legal duty to leave the scene, and would an officer's efforts constitute an exception to the Public Duty Doctrine under the rescue doctrine? Page 4 of 4 Furthermore, Section 3 (3) of Chapter 324, Laws of 2021 states: "A peace officer may***

*not use any force tactics prohibited by applicable departmental policy, this chapter, or otherwise by law, except to protect against his or her life or the life of another person from an imminent threat.” Section 2 of Chapter 320, Laws of 2021 states, in part: “A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer.”*

5. *Read together, does Section 3 (3) of Chapter 324, Laws of 2021 **authorize a law enforcement officer to use a chokehold or neck restraint to protect against his or her life or the life of another person against an imminent threat** despite the specific prohibition of such tactics in Section 2 of Chapter 320, Laws of 2021? The United States Supreme Court in *Graham v. Connor* (490 U.S. 386) established the ‘reasonably objective’ standard for the use of force by a law enforcement officer and stated “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”*
6. ***How should the terms “possible” “available” and “appropriate” in Chapter 324, Laws of 2021 be interpreted?** Should those terms be interpreted using a reasonable officer standard, their common definition, or some other means?*

Under the current law that went into effect July 25, providing real, non-inflammatory examples of these changes, what they mean, and what is occurring in our communities is a crucial step in relaying the importance of clarifying the law. Our personnel, our communities and our legislators need to understand the necessity of reducing the existing ambiguities. Clarity is needed to provide support so our officers and deputies know how to do their job within the confines of the law, and to reduce the second and third guessing that rational and hardworking members of law enforcement are experiencing. It’s important for Sheriffs and Chiefs to continue to provide examples of the tough calls our deputies and officers are making and that we are all willing to explain, define and discuss logically the scenarios that are playing out in our communities under these new laws.

We will continue to push for clarity, ultimately through changes in the law, because nothing is as definitive as clearly written law. Seeking an Attorney General’s opinion is helpful but not as definitive. **Our questions now being submitted to the Attorney General’s Office are helpful, but also clearly illustrate the need for changes.**

To underline that point, this week, an [article](#) in the Waitsburg Times contained this, “*County Prosecutor Dale Slack said ... there was a meeting this last Thursday morning of... 37 elected prosecutors in the state, and no two of us can agree on what the laws say,*” Slack said. “*At this point, we are not even 100% sure that the Terry stop, which is kind of the cornerstone of law enforcement, exists anymore because you can’t use force or restrain somebody. If you stop someone or pull them over, and they say, ‘I don’t want to talk to you,’ you can’t stop them without probable cause.*” A Terry stop allows officers to detain a person briefly, based on reasonable suspicion of their involvement in criminal activity.

I am also passing along **useful communication involving one of our Chiefs and a legislator**. The Chief had sent the City Council cell phone video of a person experiencing behavioral health problems and officers attempting to talk to her and keep her from walking into the street. She was not committing any crime, but was creating a disturbance in the neighborhood.

Here is the **Chief's email** to Council Members:

*Good morning, Councilmembers, In case you get asked about a pretty disruptive incident in downtown this morning (and apparently we received calls on her all night). This is a woman in mental health/drug crisis. She would not rationally talk with us. Due to the new legislation in effect, we could not intervene other than to try and talk with her. Between yesterday and today, she has occupied hours of officer time. A lot of citizens were quite alarmed at this behavior. Prior to the new legislation taking effect, we would have been able to involuntarily commit her (by using minimal physical restraint) and get her some help. Instead, we could only follow her and hope she didn't get hit by a car.*

One of the Council Members contacted **their legislator, who sent this message back:**

*Hopefully we can talk soon but in the meantime here's some information that may be helpful. I think there's still some confusion about what is and isn't possible to address the needs of folks in crisis — and perhaps further legislative or AG clarification is necessary — but in the meantime please read the preliminary info from the AG's office (linked [article](#) and [full memo](#)).*

*HB 1310 does not remove the authority provided by the Involuntary Treatment Act, it merely directs officers to de-escalate FIRST, as guardians of our communities.*

Finally, here is the **Chief's response to the Legislator:**

*The Councilmember shared your response with me as part of an ongoing discussion about the new police legislation that is in place.*

*I am familiar with the document you provided to her. This Attorney General opinion is an answer to an incomplete question. Representatives Goodman and Johnson did not ask for an answer to the entire problem. Of course we have and will continue to respond to all calls for service, including those in mental health crisis. The unanswered question is "What can we do once we get there?" The new legislation clearly states the **ONLY** time law enforcement can use force.*

*An officer may use physical force upon another person when necessary to:*

*(a) **Protect against criminal conduct** where there is **probable cause** to make an arrest, or*

*(b) To **effect an arrest**, or*

*(c) **Prevent an escape** as defined under chapter 9A.76 RCW, or*

*(d) **Protect against an imminent threat of bodily injury** to the officer, another person, or the person against whom force is being used*

*Nowhere in the new law does it authorize the use of force to take someone in custody on a civil commitment (i.e. involuntary mental health treatment). If we put hands on someone that does not*

*pose an imminent threat of bodily injury OR is under arrest, we are committing a crime. Mental health cases were completely neglected in the new legislation.*

*Additionally, the opinion of the AG or a Legislator means very little. What matters is clear legislation or a clarifying court case and nobody wants to be that test case in court!*

*I hope this furthers the discussion to revisit the new legislation and I am hopeful that we can work together to come up with remedies that meet the intent of these laws, yet still allow law enforcement to conduct community caretaking functions without fear of prosecution or other sanction.*

This exchange is long but a very good example of the communications and information that is important to share, and to help us all work toward solutions. A *Crosscut* article and an advisory memo about a narrow part of the law does not resolve or definitively provide answers to the ambiguities that are a significant problem right now.

Finally, just a reminder that we post examples of policies, media messages and community resources on our Policy Bank page under “LE Resources”. If you have examples you would be willing to be added, please let us know.

**Thank you, and Stay Safe.**

- Steve