



**MAJOR POLICY CONSIDERATIONS
FROM THE 2021 LEGISLATIVE SESSION**
Long Version

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The 2021 legislative session brought the consideration and enactment of several major pieces of legislation significantly affecting law enforcement. This document is intended to highlight those pieces of legislation enacted by the 2021 Legislature that likely require immediate and careful consideration for law enforcement agency policies and practices.

Please do not rely on the content of this document to inform you of the content of a bill. This document contains summarized information – the content of legislation can only be known by reading the text of the legislation. The brief summaries of bills in this document are written to be relevant to law enforcement agency policy and procedure modifications. Bills will have additional law enforcement-related provisions that are important to be aware of in a context other than policy and procedure amendments.

This document is not intended to replace the WASPC End of Session Report. The WASPC End of Session Report will outline all legislation enacted by the 2021 Legislature, while this document will discuss a relatively small number of bills.

Nothing in this document should be interpreted as legal advice. WASPC does not provide legal advice. Legal advice should be sought from, and provided by, your legal advisor.

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HB 1054 - Tactics	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Use of Force • Special Weapons and Tactics • K9 • Vehicles and Equipment • Vehicular Pursuits • Uniforms • Warrants
Brief Summary:	<ul style="list-style-type: none"> • Prohibits the use of a chokehold or neck restraint in any circumstance; • Required the CJTC to convene a work group to develop a model policy for the training and use of canine teams. Requires the model policy work group to consider, at a minimum, nine specific areas. • Prohibits the use of tear gas (<i>chloroacetophenone (CN)</i>, <i>O-chlorobenzylidene malononitrile (CS)</i>, and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury, except "tear gas" does not include oleoresin capsicum (OC)), except in three circumstances: <ul style="list-style-type: none"> ○ when necessary to alleviate a present risk of serious harm posed by a riot (<i>riot is not defined in the bill</i>); ○ when necessary to alleviate a present risk of serious harm posed by a barricaded subject (<i>an individual who is the focus of a law enforcement intervention effort, has taken a position in a physical location that does not allow immediate law enforcement access, and is refusing law enforcement orders to exit</i>); or ○ when necessary to alleviate a present risk of serious harm posed by a hostage situation (<i>a scenario in which a person is being held against his or her will by an armed, potentially armed, or otherwise dangerous suspect</i>). • Prior to deploying tear gas in an authorized circumstance, the law enforcement officers must: <ul style="list-style-type: none"> ○ Exhaust available and appropriate alternatives; ○ Obtain authorization from a supervising officer; ○ Announce the intent to use tear gas; and ○ Allow sufficient time and space for the subject(s) to comply. • Prior to deploying tear gas in response to a riot that is not inside a jail, correctional, or detention facility, the law enforcement agency must both meet the aforementioned conditions and receive authorization from the highest elected official of the jurisdiction in which the tear gas is to be used (<i>the county executive in those charter counties with an elective office of county executive, however designated, and in the case of other counties, the chair of the county legislative authority. In the case of cities and towns, it means the mayor, regardless of whether the mayor is directly elected, selected by the council or legislative body pursuant to RCW 35.18.190 or 35A.13.030, or selected</i>

	<p><i>according to a process in an established city charter. In the case of actions by the Washington state patrol, it means the governor).</i></p> <ul style="list-style-type: none"> • Prohibits law enforcement agencies from using or acquiring “military equipment” as that term is defined in the bill, as of the effective date of the bill. • Requires law enforcement agencies to return or destroy any “military equipment” as that term is defined in the bill, by December 31, 2022. • Requires all law enforcement agencies to submit an inventory of “military equipment” as that term is defined in the bill, including the proposed use of the equipment, estimated number of times the equipment has been used in the prior year, and whether such use is necessary for the operation and safety of the agency or some other public safety purpose, to WASPC by November 1, 2021. Requires WASPC to submit a report of this information to the Governor and Legislature by December 31, 2021. • Requires law enforcement agencies to adopt policies and procedures to ensure that uniformed peace officers while on duty and in the performance of their official duties are reasonably identifiable. • Prohibits a law enforcement officer from engaging in a vehicular pursuit unless all of the following conditions are satisfied: <ul style="list-style-type: none"> ○ The officer has: <ul style="list-style-type: none"> ▪ probable cause that a person in the vehicle has committed or is committing a violent offense, sex offense, as those terms are defined in RCW 9.94A.030, or escape under chapter 9A.76 RCW; or ▪ reasonable suspicion a person in the vehicle has committed or is committing a driving under the influence offense pursuant under RCW 46.61.502; ○ the pursuit is necessary for the purpose of identifying or apprehending the person; ○ the person poses an imminent threat to the safety of others and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicular pursuit under the circumstances; and ○ the officer receives authorization to engage in the pursuit from a supervising officer and the supervising officer has supervisory control of the pursuit. Certain exceptions exist for jurisdictions with fewer than 10 commissioned officers. • Defines a vehicular pursuit. • Prohibits a law enforcement officer from firing a weapon at a moving vehicle, with one narrowly tailored exception. • Prohibits a law enforcement officer from seeking, and prohibits a court from issuing, a no-knock warrant.
Key Questions/Considerations:	<ul style="list-style-type: none"> • The chokehold/neck restraint prohibition does not contain any exceptions. Chokeholds and neck restraints are prohibited even where the use of deadly force is justified. This bill does not, however, in any way alter criminal law related to the right of a

	<p>person, including a law enforcement officer, to act in defense of oneself or the defense of others.</p> <ul style="list-style-type: none">• The term “chokehold” and the term “neck restraint” are specifically and individually defined. WASPC advises agencies to pay close attention to what is, and what is not, defined as a chokehold or neck restraint when amending agency policy and training.• The CJTC model policy on canine teams is not, in and of itself, binding on any law enforcement agency. However, the CJTC does have regulatory authority over the certification of canine teams. Agencies should reasonably expect that the CJTC may consider incorporating provisions from the model policy on canine teams into the CJTC canine certification requirements.• The requirement to obtain authorization from the highest elected official prior to deploying tear gas in response to a riot that is not inside a correctional, jail, or detention facility uses language that could be misinterpreted. The language in the bill says “in the case of a riot outside of a correctional, jail, or detention facility...” Some may take the interpretation that this requirement is limited to a riot that is not inside and is in near proximity to a correctional, jail, or detention facility. WASPC is confident that this is not the intent of the Legislature in this requirement. WASPC believes the intent of the Legislature is to require approval from the highest elected official prior to deploying tear gas in response to a riot that is not inside a correctional, jail, or detention facility, without regard to the proximity to a correctional, jail, or detention facility.• The term “military equipment” in this bill should not be interpreted to be limited to equipment obtained from the military. WASPC believes that the “military equipment” term was used for political purposes and applies to any equipment listed in the definition of “military equipment” in Section 5 (3), regardless of where the equipment was obtained.• The term “violent offense” relating to vehicular pursuits may cause a misinterpretation of the requirements of the bill. That term is used as it is defined in RCW 9.94A.030, which is a much narrower list of offenses than one might otherwise presume. WASPC advises agencies to carefully review that definition and consider specifically incorporating it into agency policy on pursuits so as to not enable confusion that might lead an officer to believe a vehicular pursuit is authorized when it is not.• Some agencies encourage or permit officers to, and some agencies prohibit officers from, attempting to locate a vehicle after a vehicular pursuit has been terminated. The definition of vehicular pursuit in this bill do not appear to prohibit an officer from attempting to locate a vehicle after a vehicular pursuit has been terminated (assuming that the attempt to locate is not conducted with emergency lights and sirens activated). WASPC advises agencies to carefully consider whether to allow officers to attempt to locate a vehicle where a vehicular pursuit is prohibited under the provisions of this bill.• WASPC has identified HB 1054 as legislation that may increase local costs that are not provided for in the state budget. Such costs likely include, but may not be limited to, the cost of
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	<p>retraining officers. WASPC advises agencies to track any increased costs driven as a result of HB 1054 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.</p>
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HB 1088 – Potential Impeachment Disclosures	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Brady/Potential Impeachment Disclosures (PID) • Pre-Hire Investigations
Brief Summary:	<ul style="list-style-type: none"> • Requires each county prosecutor, in consultation with agencies representing law enforcement officers and local departments, to develop and adopt a written protocol no later than July 1, 2022 regarding: <ul style="list-style-type: none"> ○ the types of conduct that must be disclosed; ○ how Brady/PID disclosure information should be shared and maintained; and ○ what circumstances an officer may be removed from the Brady/PID list. • Requires local Brady/PID protocols to be reviewed every two years; • Requires the CJTC to provide online Brady/PID disclosure training; • Requires law enforcement agencies to report Brady/PID disclosures within 10 days; • Requires a law enforcement agency, prior to hiring an officer with previous law enforcement experience, to inquire and verify whether the officer has ever been subject to a Brady/PID disclosure. <ul style="list-style-type: none"> ○ Exempts any pre-hire process or hiring decision from RCW 10.93.150.
Key Questions/Considerations:	<ul style="list-style-type: none"> • The Court rulings in <i>Brady</i> and <i>Giglio</i> did not provide a specific timeline for the required disclosures. HB 1088 requires that Brady/PID disclosures be made <i>within</i> 10 days. Given the constitutional rights of a defendant where Brady/PID information is not timely disclosed, it may be a best practice to make Brady/PID disclosures sooner than 10 days when practicable. • It is unclear what, if any, circumstances an officer may be removed from the Brady/PID list. It may be possible to remove an officer from the Brady/PID list if the officer was placed on the list pursuant to <i>Giglio</i> and the investigation determines that the allegation was without merit. • The requirement for a law enforcement agency to inquire and verify whether a candidate with previous law enforcement experience has ever been subject to a Brady/PID disclosure is not limited to previous law enforcement experience in Washington State. • WASPC has identified HB 1088 as legislation that may increase local costs that are not provided for in the state budget. WASPC advises agencies to track any increased costs driven as a result of HB 1088 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

HB 1089 – Audits of Independent Investigations	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none">• Independent Investigations of Law Enforcement Use of Deadly Force• Peace Officer Training & Certification
Brief Summary:	<ul style="list-style-type: none">• Authorizes the State Auditor to conduct, in cooperation with the CJTC, a process compliance audit of any deadly force investigation conducted pursuant to RCW 10.114.011.• Authorizes the State Auditor, when requested by the CJTC, to conduct an audit procedure on any law enforcement agency to ensure that the agency is in compliance with all laws, policies, and procedures governing the training and certification of peace officers employed by the agency.• Prohibits the State Auditor from charging a law enforcement agency for any costs associated with audits conducted pursuant to the bill.
Key Questions/Considerations:	<ul style="list-style-type: none">• The language authorizing process compliance audits of independent investigations appears to not be limited to independent investigations conducted after the effective date of the bill, meaning that any investigation pursuant to RCW 10.114.011 (which became effective on February 4, 2019) is subject to a process compliance audit by the State Auditor’s Office.• While HB 1089 prohibits the State Auditor from charging law enforcement agencies the cost of the audits conducted pursuant to the bill, WASPC has identified local staff time costs associated with this bill. The State Auditor assumes 1 hour of staff time by audited agencies for every 3 hours of auditor staff time. The State Auditor also assumes 300 hours of auditor time per audit – thus 100 hours of audited agency staff time per audit. Audited agency staff time funding is not provided in the state budget. WASPC advises agencies to track any increased costs driven as a result of HB 1089 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

HB 1223 – Uniform Electronic Recordation of Custodial Interrogations	
Citation:	PENDING
Effective Date:	January 1, 2022
Policy Areas Affected:	<ul style="list-style-type: none"> • Body Cameras • Interviews/Interrogations • Juveniles • Adult Felony Offenses
Brief Summary:	<ul style="list-style-type: none"> • Requires that any custodial interrogation (<i>express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstance would consider themselves in custody</i>) of an adult for a felony offense, or a juvenile of any offense, be electronically recorded. <ul style="list-style-type: none"> ○ If the custodial interrogation takes place at a jail, police or sheriff’s station, holding cell, or correctional or detention facility, the electronic recording must be both audio and video. ○ A custodial interrogation at any other location must be by audio at a minimum. • Establishes limited exceptions to the electronic recording requirement (spontaneous statements, exigent circumstances, refusal by the interviewee, interview by another jurisdiction, reasonable belief that recording is not required, reasonable belief of safety concern, and equipment malfunction). Requires written report explaining why electronic recording was not conducted if an exception applies. • Requires officers to prepare a report explaining a decision to interview a person outside a place of detention. • Limits admissibility of statements requiring electronic recording where electronic recordings were not made. • Requires law enforcement agencies to adopt and enforce policies and procedures to implement the Act, with certain topics required in the policies and procedures.
Key Questions/Considerations:	<ul style="list-style-type: none"> • HB 1223 does not specifically require law enforcement agencies to equip officers with body worn cameras. However, WASPC takes the position that the most reasonable way to comply with these requirements is to, at a minimum, equip officers with body worn cameras. Agencies may also find it necessary or appropriate to install audio/video recording devices in jails, police or sheriff’s stations, holding cells, and correctional or detention facilities. • HB 1223 contains both duplicative and contradictory provisions that will require careful review by agencies. For example, the legislation requires standards for video recording of interviews in schools and police vehicles when interviews at schools and police vehicles do not require video recording under the bill. • WASPC has identified HB 1223 as legislation that may increase local costs that are not provided for in the state budget. Specifically, the purchase, deployment, use, storage, and management of body worn cameras and other audio/video camera equipment and the associated public records costs.

	WASPC advises agencies to track any increased costs driven as a result of HB 1223 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060 .
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HB 1140 – Juvenile Access to Attorneys	
Citation:	PENDING
Effective Date:	January 1, 2022
Policy Areas Affected:	<ul style="list-style-type: none"> • Juveniles • Field Interviews • Investigations
Brief Summary:	<ul style="list-style-type: none"> • Requires that a law enforcement officer provide a juvenile (under the age of 18) with access to an attorney for consultation prior to a juvenile waiving any constitutional rights if the officer: <ul style="list-style-type: none"> ○ Questions a juvenile during a custodial interrogation (<i>express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstance would consider themselves in custody</i>); ○ Detains a juvenile based on probable cause of involvement in criminal activity; or ○ Requests that a juvenile consent to an evidentiary search of their person, property, dwelling, or vehicle. • Prohibits a juvenile from waiving their right to be provided access to an attorney. • Establishes limited exceptions to providing a juvenile access to an attorney. • Prohibits any statement made by a juvenile from being admissible in a court proceeding unless the juvenile was provided access to an attorney and made a knowing and voluntary waiver of their rights after consulting with an attorney, unless the statement is used for impeachment purposes or the statement was made spontaneously. • Requires the State Office of Public Defense to provide access to attorneys for juveniles contacted by law enforcement.
Key Questions/Considerations:	<ul style="list-style-type: none"> • WASPC remains concerned that the State Office of Public Defense has significantly underestimated the number of juveniles requiring access to an attorney pursuant to this bill. The State Office of Public Defense assumes that 1/3 of all statewide juvenile arrests will require access to an attorney pursuant to the bill. Furthermore it appears that there is no provision for when an attorney becomes conflicted after consulting with one of multiple juveniles associated with the same incident. • Rural agencies with limited cellular connectivity will likely experience additional logistical challenges with providing access to an attorney. • WASPC has identified HB 1140 as legislation that may increase local costs that are not provided for in the state budget. More specifically, WASPC anticipates increased costs associated with delays waiting for the Office of Public Defense to connect a juvenile with an attorney, and additional time associated with investigating suspected criminal activity resulting from a juvenile’s refusal to cooperate with an investigation. WASPC advises agencies to track any increased costs driven as a result of HB 1140 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

HB 1267 – Office of Independent Investigations	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Independent Investigations of Law Enforcement Use of Deadly Force
Brief Summary:	<ul style="list-style-type: none"> • Creates the Office of Independent Investigations within the Office of the Governor and designates the agency as a limited authority Washington law enforcement agency • Beginning on July 1, 2022, the Office of Independent Investigations is authorized to review and investigate the use of deadly force by a law enforcement officer occurring after July 1, 2022, if, at the time of the incident, the involved officer was: <ul style="list-style-type: none"> ○ on duty; or ○ off duty but: <ul style="list-style-type: none"> ▪ exercised law enforcement powers; or ▪ the incident involved equipment or other property issued to the officer in relation to his or her duties • Beginning July 1, 2023, the Office of Independent Investigations is authorized to review and investigate prior investigations of deadly force by a law enforcement officer if new evidence is brought forth that was not included in the initial investigation • Establishes certain requirements and qualifications of investigators within the Office of Independent Investigations • Designates the Office of Independent Investigations as the lead investigative body for any investigation it chooses to conduct under its jurisdiction • Requires the CJTC to give priority registration to personnel of the Office of Independent Investigations at CJTC trainings • Requires the Office of Independent Investigations to conduct analysis and research • Requires all independent investigations conducted pursuant to RCW 10.114.011 to be conducted consistent with the provisions of the bill, including independent investigations not conducted by the Office of Independent Investigations • Requires all law enforcement agencies to immediately notify the Office of Independent investigations of any incident subject to the jurisdiction of the Office of Independent Investigations • Requires that the scene of an incident subject to the jurisdiction of the Office of Independent Investigations to be relinquished to the Office of Independent Investigations, if the Office of Independent Investigations chooses to take up the investigation, once the Office of Independent Investigations arrives on scene • Creates a duty that the involved agency must comply with the requests of the Office of Independent Investigations related to investigations conducted by the Office of Independent Investigations • Requires the Office of Independent Investigations Advisory Board to assess whether the jurisdiction of the Office of Independent Investigations should be expanded to conduct investigations of other types of incidents committed by involved officers,

	including, but not limited to other types of in-custody deaths, and sexual assaults by law enforcement officers.
Key Questions/Considerations:	<ul style="list-style-type: none">• This bill contains a number of specific and technical provisions that will require a careful study of the bill’s language by each law enforcement agency.• The Office of Independent Investigations is authorized, but not required, to conduct investigations regarding the use of deadly force by a law enforcement officer. As a result, it is necessary for existing independent investigation teams to remain in place to conduct independent investigations of the use of deadly force by a law enforcement officer if/when the Office of Independent Investigations chooses to not take up an investigation.• It remains unclear what, if any, ability an involved agency has to conduct an investigation into the underlying conduct for which the involved officer(s) were present.

HB 1310 – Use of Force	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Use of Force • Community Caretaking
Brief Summary:	<ul style="list-style-type: none"> • Repeals RCW 10.31.050 (officer may use force) • Authorizes a law enforcement officer to use physical force when necessary to: <ul style="list-style-type: none"> ○ Protect against criminal conduct where there is probable cause to: <ul style="list-style-type: none"> ▪ make an arrest; ▪ effect an arrest; ▪ prevent an escape as defined in RCW 9A.76; or ○ Protect against an imminent threat of bodily injury to: <ul style="list-style-type: none"> ▪ the law enforcement officer; ▪ another person; or ▪ the person against whom force is being used. • Authorizes a law enforcement officer to use deadly force only when necessary (<i>under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others</i>) to protect against an imminent threat of serious physical injury or death (<i>based on the totality of the 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</i>) • Creates a duty of reasonable care for all Washington law enforcement officers that: <ul style="list-style-type: none"> ○ Requires, when possible, that an officer exhaust available and appropriate de-escalation tactics prior to using any physical force, such as: <ul style="list-style-type: none"> ▪ time, distance, and cover; ▪ calling for additional resources, including back-up officers and/or crisis intervention teams or mental health professionals; ▪ designating one officer to communicate with the subject; ▪ 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 ○ when using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances, in consideration of characteristics and conditions such as: <ul style="list-style-type: none"> ▪ pregnancy; ▪ age; ▪ signs of mental, behavioral, or physical impairments or disabilities;

	<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▪ perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs; ▪ is suicidal; ▪ limited English proficiency; or ▪ the presence of children ○ terminate the use of physical force as soon as the necessity for such force ends; ○ when possible, use available and appropriate less lethal alternatives before using deadly force; and ○ make less lethal alternatives issued to the officer reasonably available for their use. • Prohibits a law enforcement officer from using any force tactics prohibited by agency policy or law, except to protect his or her life or the life of another person from an imminent threat. • Specifies that a law enforcement agency or political subdivision of the state can adopt policies or standards that are more restrictive on the use of force than the provisions of the bill. • Requires the Attorney General to, by July 1, 2022, develop and publish a model policy on law enforcement use of force and de-escalation tactics consistent with the bill. • Requires all law enforcement agencies to: <ul style="list-style-type: none"> ○ Adopt policies consistent with the Attorney General’s model policy and submit copies of the applicable policies to the Attorney General; or ○ Provide notice to the Attorney General that the agency did not adopt policies consistent with the Attorney General’s model policy, including an explanation of how the agency’s policies are consistent with the provisions of the bill, and submit a copy of the agency’s relevant policies. • Requires any modification or repeal of a law enforcement agency’s use of force or de-escalation policy after December 1, 2022 to be submitted to the Attorney General within 60 days of such modification or repeal. • Requires the Attorney General, by December 31st of each year, to publish on its website a report of the model policy, and information as to the status of individual law enforcement agencies’ policies and copies of any agency policies departing from the Attorney General’s model policy. • Requires basic training provided by the CJTC to be consistent with the use of force requirements and limitations of the bill and the Attorney General’s model policy on the use of force and de-escalation.
<p>Key Questions/Considerations:</p>	<ul style="list-style-type: none"> • It is unclear how the Duty of Reasonable Care created in this bill intersects with the Public Duty Doctrine. WASPC advises agencies to carefully review this question with legal advisors as agencies consider policy and procedure revisions. • It is unclear how the exception to the use of prohibited tactics interacts with the prohibition on chokeholds and neck restraints in HB 1054. • WASPC has identified HB 1310 as legislation that may increase local costs that are not provided for in the state budget. Such costs likely include, but may not be limited to, the cost of

	<p>retraining officers. WASPC advises agencies to track any increased costs driven as a result of HB 1310 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.</p>
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HB 1320 – Protection Orders	
Citation:	PENDING
Effective Date:	Sections 12, 16, 18, 25, and 36 take effect July 25, 2021; The remainder of the bill takes effect July 1, 2022
Policy Areas Affected:	<ul style="list-style-type: none">• Protection Orders• Service of Protection Orders• Surrender of firearms and other weapons• Unlawful possession of firearms• Concealed pistol licenses
Brief Summary:	<ul style="list-style-type: none">• Consolidates and amends laws governing protection orders for<ul style="list-style-type: none">○ domestic violence;○ sexual assault;○ stalking;○ anti-harassment;○ vulnerable adults; and○ extreme risk• Amends provisions relating to the recognition of Canadian DV protection orders• Revises provisions related to orders to the surrender and prohibition of weapons, revocation of concealed pistol licenses, unlawful possession of firearms, and DV no-contact orders;• Establishes responsibilities for school districts regarding students who are subject to protection orders; and• Repeals 137 existing statutes relating to protection orders
Key Questions/Considerations:	<ul style="list-style-type: none">• This is a highly technical 320-page bill that moves and combines certain statutes related to protection orders, while also making substantive changes in the process. WASPC advises a very careful and deliberate examination of this bill with agency legal advisors and subject matter experts.

SB 5051 - Decertification	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Decertification • Pre-hire screening • Officer discipline • Officer termination • Training • Reserve officers • Union negotiations
Brief Summary:	<ul style="list-style-type: none"> • Establishes criteria for mandatory CJTC de-certification of peace officers and corrections officers • Establishes criteria for discretionary CJTC de-certification of peace officers and corrections officers • Grants authority to the CJTC to suspend certification of a peace officer or corrections officer • Grants authority to the CJTC to require remedial training for a peace officer or corrections officer • Grants authority for the CJTC to receive complaints from any person • Grants authority to the CJTC to conduct investigations into allegations of improper conduct – independent of any employing agency investigation, regardless of any agency decision to discipline or not discipline, and regardless of the outcome of any arbitration or appellate decision • Grants authority to the CJTC to issue public recommendations regarding law enforcement agencies’ command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters • Expands requirements relating to pre-hire background checks for law enforcement and corrections officers • Requires specific reporting requirements by law enforcement agencies to the CJTC regarding separations of employment by peace officers and corrections officers • Requires law enforcement and corrections agencies to report the CJTC within 15 days of: <ul style="list-style-type: none"> ○ learning of the occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime; and ○ an initial disciplinary decision for alleged behavior or conduct by an officer that is noncriminal and may result in revocation of certification • Requires law enforcement and corrections agencies to have a policy requiring officers to immediately report to the agency any pending criminal charges and/or conviction, plea or other case disposition • Requires law enforcement and corrections agencies to conduct and complete disciplinary investigations into alleged misconduct when the officer subject to the investigations resigned or retired prior to the conclusion of the investigation and requires the

	<p>employing agency to report the relevant information to the CJTC as if the officer were still employed</p> <ul style="list-style-type: none">• Prohibits law enforcement and corrections agencies from entering into any agreement or contract with an officer or union:<ul style="list-style-type: none">○ to not report conduct, delay reporting, or preclude disclosure of any relevant information, including a promise not to check the box on a CJTC notice that indicates the officer may have committed misconduct, in exchange for allowing an officer to resign or retire or for any other reason; or○ that allows the agency to destroy or remove any personnel record while the officer is employed and for 10 years thereafter• Authorizes the CJTC to impose a civil penalty up to \$10,000 for the failure by an officer or an employing agency to timely and accurately report information to the CJTC• Requires law enforcement and corrections agencies to retain personnel records for all peace officers and corrections officers for the duration of the officer’s employment plus a minimum of 10 years thereafter• Requires the CJTC to maintain a publicly searchable, machine readable, and exportable database containing the names and employing agencies of all conduct investigated, certifications denied, notices and accompanying information provided by law enforcement or corrections agencies, including the reasons for separation from the agency, decertification or suspension actions pursued and final disposition• Prohibits law enforcement agencies from considering the application for any office, place, position, or employment within the agency if the applicant has not provided the agency a document, voluntarily and knowingly signed by the applicant, that authorizes each prior employer to release any and all information related to the applicant’s employment, and further releasing and holding harmless the agency and each prior employer from any and all liability that may potentially result from the release and use of such information provided• Specifies that the CJTC shall have the sole authority to provide basic law enforcement training
Key Questions/Considerations:	<ul style="list-style-type: none">• The bill contains no limitation on how long the CJTC can suspend certification. That, coupled with the prohibition on termination of an officer based on CJTC suspension of certification, agencies should give due consideration to its disciplinary decisions in response to conduct that could result in suspension of certification of an officer.• WASPC has identified SB 5051 as legislation that may increase local costs that are not provided for in the state budget. WASPC advises agencies to track any increased costs driven as a result of SB 5051 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

SB 5055 – Grievance Arbitration Panels	
Citation:	Chapter 13, Laws of 2021
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none">• Union negotiations• Grievance arbitration
Brief Summary:	<ul style="list-style-type: none">• Establishes a rotating pool of not less than 9 and not more than 18 law enforcement grievance arbitrators at the Public Employment Relations Commission (PERC)• Requires all grievance arbitrations involving law enforcement personnel, as defined in the bill, relating to disciplinary action, discharge, or termination to be conducted through the PERC pool of law enforcement grievance arbitrators at PERC<ul style="list-style-type: none">○ Grandfathers existing collective bargaining agreements from the provisions of the bill as of July 25, 2021 from the provisions of the bill unless/until such agreement is reopened, renegotiated, or expires
Key Questions/Considerations:	None

SB 5066 – Duty to Intervene	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none"> • Duty to Intervene • Use of Force • Duty to Report • Officer Discipline
Brief Summary:	<ul style="list-style-type: none"> • Requires any identifiable general authority Washington law enforcement officer who witnesses another general authority Washington law enforcement officer using or attempting to use excessive force (<i>force that exceeds the force permitted by law or policy of the witnessing officer’s agency</i>) to, when in a position to do so, intervene to end and/or prevent the use of excessive force • Incorporates the duty to render first aid pursuant to RCW 36.28A.445 into the newly created duty to intervene • Requires any identifiable general authority Washington law enforcement officer who witnesses or has a good faith reasonable belief that another general authority Washington law enforcement officer committing wrongdoing (<i>conduct that is contrary to law or contrary to the policies of the witnessing officer’s agency, provided that the conduct is not de minimis or technical in nature</i>) to report such wrongdoing to the witnessing officer’s supervisor in accordance with the witnessing officer’s employing agency’s policies and procedures for reporting such acts committed by a peace officer • Prohibits law enforcement agencies from imposing discipline or retaliate in any way against a peace officer for intervening in good faith or reporting in good faith as required by the bill • Requires law enforcement agencies to send notice to the CJTC of any disciplinary action resulting from a law enforcement officer’s failure to intervene or failure to report • Requires the CJTC to develop a written model policy on the duty to intervene by December 1, 2021 • Requires all law enforcement agencies to adopt and implement a written duty to intervene policy by June 1, 2022 • Requires the CJTC to incorporate duty to intervene training into the basic law enforcement academy by January 31, 2022 • Requires the CJTC to provide duty to intervene training by December 31, 2023 to all law enforcement officers who completed basic law enforcement training prior to January 31, 2022
Key Questions/Considerations:	<ul style="list-style-type: none"> • Agencies and legal advisors will need to advise officers of their duty to intervene and report when responding to scenes with multiple agencies where agency policies may conflict. • The definition of excessive force appears to not take into consideration different perspectives from different officers on the same scene (tensing up, furtive movements, weapons, etc.), as such WASPC advises agencies to work closely with legal advisors to craft a duty to intervene policy that best accommodates for these different perspectives while still complying with this duty as enacted by the Legislature.

SB 5259 – Law Enforcement Data Collection	
Citation:	PENDING
Effective Date:	July 25, 2021
Policy Areas Affected:	<ul style="list-style-type: none">• Use of force reporting
Brief Summary:	<ul style="list-style-type: none">• Requires the Attorney General to contract with an institution of higher education to establish and administer a Washington law enforcement use of force reporting system• Establishes certain interactions for which use of force reporting is required• Establishes minimum data elements to be reported for relevant interactions• Authorizes the Attorney General to require additional interactions and data elements to be included in the use of force reporting program• Requires all Washington law enforcement agencies to report to the program all data for all covered interactions through incident reports or other electronic means in the format and time frame established by the Attorney General
Key Questions/Considerations:	<ul style="list-style-type: none">• WASPC has identified SB 5259 as legislation that may increase local costs that are not provided for in the state budget. WASPC advises agencies to track any increased costs driven as a result of SB 5259 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

SB 5476 – State v Blake	
Citation:	PENDING
Effective Date:	<ul style="list-style-type: none">• Sections 1 through 11, and 13 through 21 take effect immediately upon the Governor’s signature• Section 12 takes effect July 1, 2021
Policy Areas Affected:	<ul style="list-style-type: none">• Controlled substances• Counterfeit substances• Legend drugs• Diversion• Substance use disorder treatment
Brief Summary:	<ul style="list-style-type: none">• Requires the Health Care Authority to establish a statewide substance use recovery services plan• Requires each behavioral health administrative services organization to establish a recovery navigator program to provide community-based outreach, intake, assessment, connection to services and case management and recovery services• Amends the Uniform Controlled Substances Act to specify that knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription constitute a simple misdemeanor<ul style="list-style-type: none">○ These provisions expire July 1, 2023• Unless law enforcement agency records reflect that a person has been diverted to referral for assessment and services two or more times previously, law enforcement officers are required, in lieu of jail booking and referral to the prosecutor, to offer a referral to assessment and services to any person subject to arrest for:<ul style="list-style-type: none">○ possession of a counterfeit substance under RCW 69.50.4011;○ possession of a controlled substance under RCW 69.50.4013;○ possession of 40 grams or less of marijuana under RCW 69.50.4014; or○ possession of a legend drug under RCW 69.41.030(2)(b)• Modifies the drug paraphernalia statute to remove reference to paraphernalia used to test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body• Encourages prosecutors to divert simple possession charges to assessment, treatment, or other services• Amends RCW 10.31.110 to incorporate substance use disorder in law enforcement diversion options, and establishes additional resources and criteria for such diversions• Requires basic law enforcement training to include training on interactions with persons with substance use disorders• Specifies that amended judgement and sentences issued pursuant to <i>State v Blake</i> are exempt from fingerprinting requirements when there are no additional offenses of conviction from the original judgement and sentence and the defendant is in custody in a correctional facility.

	<ul style="list-style-type: none">• Appropriates approximately \$88 million for substance use disorder prevention, assessment, treatment, and recovery services
Key Questions/Considerations:	<ul style="list-style-type: none">• Agencies should clarify and advise officers of their requirement to divert possession offenses in instances where treatment services are not imminently available in a particular community.• Agencies should strongly consider a cite and release approach to simple possession, given the simple misdemeanor nature of the offense, and the diversion requirements.• Whether an agency chooses to seek jail booking for simple possession offenses or not, it is advisable for agencies to consider how to document pre-arrest diversions for simple possession.• It appears that the two pre-booking diversion requirements apply to when an officer would otherwise book the individual into jail and refer them for prosecution, making the diversion requirement not applicable when the officer seeks to cite the individual and refer for prosecution without booking into jail.• WASPC is working to assemble a list of substance use treatment providers around the state to assist agencies in knowing what treatment services are available when diversion is required.• WASPC has identified SB 5476 as legislation that may increase local costs that are not provided for in the state budget. Such costs likely include, but are not limited to, documenting prior diversion efforts with an individual, coordination with diversion services, and retraining officers. WASPC advises agencies to track any increased costs driven as a result of SB 5476 for the purposes of seeking reimbursement from the state pursuant to RCW 43.135.060.

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