



**National Police
Accountability Project**

*A Project of the National
Lawyers Guild*

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March 2, 2022

**Re: Please pass HB 2037 as it came out of the Senate Law &
Justice Committee**

Dear Majority Caucus Leader Billig, Ranking Minority Caucus Leader Braun, and Members of the Washington State Senate:

On behalf of the National Police Accountability Project (“NPAP”), we urge you to pass HB 2037 as it came out of the Senate Law & Justice Committee.

The Senate Law & Justice Committee voted to incorporate an amendment to HB 2037 proposed by Senator Pedersen. The relevant portion of the amended bill now reads, with added language underlined:

Officers may use physical force to the extent necessary to: “(d) Prevent a person from intentionally fleeing or stop a person who is intentionally and actively fleeing a lawful temporary investigative detention for a criminal offense, provided that the person has been given notice that he or she is being detained and is not free to leave.”

This additional language provides much-needed clarifications to the bill that are critical to protecting Washingtonians from excessive use of force by law enforcement. Accordingly, the amendment moved NPAP’s position on HB 2037 from *opposed* to *neutral*.

The Washington Association of Sheriffs & Police Chiefs (WASPC) raises unfounded concerns about these additions to HB 2037. Despite WASPC’s insistence to the contrary, the amendment does not nullify the Legislature’s stated intent of balancing the needs of law enforcement with the safety of civilians. The amended bill still empowers law enforcement officers to prevent flight from lawful detention. The amendment simply clarifies that, balancing law enforcement necessity with civilian safety, such force is appropriate when: (1) the detained individual knows they are being detained and chooses to flee, and (2) the detention is based upon reasonable suspicion of a criminal, rather than civil, offense.

These clarifications make good sense. First, limiting officers’ ability to use physical force during a detention to those suspects who are knowingly and intentionally fleeing will save lives. Consider, for example, John T. Williams, who was shot and killed by a Seattle police officer after he failed to acknowledge the officer’s brief commands.¹ Williams was hard of hearing and did not hear the

¹ Lynda V. Mapes, *10 years ago a police officer shot woodcarver John T. Williams. The grief reverberates today*, The Seattle Times (May 20, 2021) <https://www.seattletimes.com/seattle-news/10-years-ago-a-police-officer-shot-woodcarver-john-t-williams-the-grief-reverberates-today/>.

officer's commands. The officer did not identify himself as law enforcement or give Williams a warning before opening fire. The entire encounter spanned a mere 5 seconds—the officer did not give Williams a chance to comply. The text of HB 2037 as passed in the Senate Law & Justice Committee clarifies that force in this context was inappropriate. Williams did not know that he was being stopped by the police and was therefore not “intentionally and actively fleeing.” But without the amendment, HB 2037 would authorize physical force against people like Williams, paving the way for similar tragedies in the future.

Second, limiting HB 2037 to criminal investigative stops will ensure that the bill is not inadvertently leaving thousands of Washington civilians vulnerable to police use of force for minor civil infractions, like traffic violations. Officers will still be empowered to use physical force to prevent DUI suspects from fleeing, as driving under the influence is a criminal offense. Yet officers would not be allowed to use physical force where it is undeniably unnecessary, such as when attempting to stop a driver with expired tags or a broken taillight.

Finally, WASPC asserts that amended HB 2037 will make law enforcement officers reluctant to execute their duties for fear of increased liability, resulting in a net negative impact on public safety. But virtually all police departments indemnify their employees, so individual officers will never experience any personal financial consequences from any hypothetical increase in liability. Additionally, state legislatures across the country are enacting bills limiting police discretion to use force, and those states are not experiencing any unusual rises in crime rates.² Indeed, crime rates in Washington have not dramatically risen following last year's passage of HB 1310 limiting police use of force.³ Finally, WASPC adopts a misleadingly narrow definition of “public safety.” Promoting public safety includes protecting Washingtonians from unnecessary and excessive harm by law enforcement officers. It also involves building rather than undermining trust between officers and the people they serve. To the extent HB 2037 encourages more rigorous police training and greater care from police officers when interacting with civilians, the bill will have an indisputably positive impact on public safety.

We urge you to pass HB 2037 as it came out of the Senate Law & Justice Committee. Thank you for considering our input on this very important issue.

Sincerely,

Lauren Bonds, Legal Director
Keisha James, Staff Attorney
Eliana Machevsky, Legal Fellow

National Police Accountability Project

² See, e.g., CA AB 392, WI S 121, UT H 237.

³ Martina Morris, *Is crime rising in Washington?* ACLU Washington (Feb. 20, 2022) <https://www.aclu-wa.org/story/crime-rising-washington>.