

National Police Accountability Project

A Project of the National Lawyers Guild

OPPOSE HB 1726 – An Act That Will Eliminate Protections Against Unlawful Use of Force
Written and Oral Testimony of National Lawyers Guild-National Police Accountability Project, Lauren Bonds, Legal Director
House Public Safety Committee – Tuesday, January 11, 2022

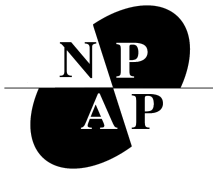
Dear Members of the Public Safety Committee,

Thank you for the opportunity to speak with you about this important issue. The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We strongly oppose the passage of HB 1726. This bill permits police officers to use force against an individual even when they do not have proof that the person committed a crime and authorizes physical force in situations where it would violate the Constitution.

In the wake of George Floyd’s murder, a number of states recognized that the vague statutory standards and piecemeal departmental policies governing a police officer’s use of force were driving police violence against the public.¹ Last year, Washington enacted HB 1310 and joined states like California, Utah, and Wisconsin in creating uniform standards that explicitly limit when force can be used.² And as new legislative sessions start across the country, states and advocates are looking to Washington as a model for how to protect the public from excessive force by law enforcement. For instance, legislators in Alabama and Maryland have borrowed elements from HB 1310 that will

¹ *Critical Issues in Policing Series: Guiding Principles on Use of Force*, POLICE EXECUTIVE RESEARCH FORUM 16, March 2016, <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>; Rachel Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1119 (2008)

² CT H6462, WI S 121, UT H 237



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limit use of force to a narrow set of situations, including where an officer would have sufficient proof to make an arrest.³

Before the HB 1310 was enacted last year, Washington police officers lacked uniform guidance on when to use force.⁴ Last year's bill created crucial clarifications and restrictions that have already demonstrably reduced police violence.⁵ While the proposed bill still provides officers with explicit limitations on permissible uses of force, it guides them in the wrong direction by authorizing physical restraint in situations that Ninth Circuit courts would deem excessive under the Fourth Amendment.

For instance, the bill permits officers to use force against an individual when they only have reasonable suspicion that a person committed a crime. Courts have consistently found that even slight physical restraints constitute excessive force when an officer only has reasonable suspicion.⁶ Similarly, relatively limited physical intrusions like pat-downs are not always authorized during a temporary investigatory detention.⁷

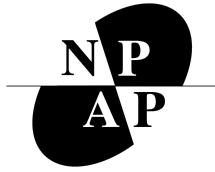
³ Alabama HB 5 (Ala. 2022); Maryland HB 139, 443rd Leg. Sess. (Md. 2021)

⁴ *Critical Issues in Policing Series: Guiding Principles on Use of Force*, POLICE EXECUTIVE RESEARCH FORUM 16, March 2016, <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> (explaining “the Supreme Court provides broad principles, but leaves it to individual police agencies to determine how to incorporate those principles into their policies and training, in order to teach officers how to perform their duties on a daily basis.”).

⁵ Kim Mosolf, *New Law Demands De-escalation, Not Abandoning People in Crisis*, ACLU of Washington, July 19, 2021, <https://www.aclu-wa.org/story/new-law-demands-de-escalation-not-abandoning-people-crisis>.

⁶ *Washington v. Lambert*, 98 F.3d 1181, 1887 (9th Cir. 1996) .

⁷ *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988)(“a lawful frisk does not always flow from a justified stop.”); *Thomas v. Dillard*, 818 F.3d 864, 876 (9th Cir. 2016)(finding an officer’s decision to pat-down a man during an investigation of domestic violence was unconstitutional where officers only had reasonable suspicion); *Jackson v. Asotin County*, 2019 U.S. Dist. LEXIS 43892 (E.D. Wash. 2019)(noting a *Terry* frisk is permissible where they have “reasonable suspicion to believe that someone he or she is investigating at close range *is armed and presently dangerous*.”).



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HB 1726 tells officers that they can use force when the Constitution says otherwise. This will not help police officers or members of the public.

Instead, it will likely create more unnecessary use of force incidents, cause more officer involved deaths, and lead to more lawsuits.

We urge you to not pass HB 1726. Thank you for the opportunity to provide comment on this important issue.