



CITY OF KIRKLAND
City Manager's Office
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Lorrie McKay, Intergovernmental Relations Manager
Andreana Campbell, Management Analyst

Date: April 26, 2021

Subject: 2021 STATE LEGISLATIVE PRIORITIES UPDATE #8

RECOMMENDATION:

It is recommended that the City Council receive its eighth report on the City's 2021 State Legislative Priorities (Attachment A), the final update for the regular session of 2021. This memo was prepared for presentation at the Council's May 4 meeting, but the agenda item was deferred to May 18 due to the length of the May 4 meeting.

BACKGROUND DISCUSSION:

On Sunday, April 25 the Legislature wrapped up an historic and hugely productive session. In the COVID constrained, foggy lead-up on how the legislature would conduct the 2021 session remotely, Kirkland was cautioned to hold expectations at bay. However, what lawmakers were able to accomplish in 105 days is remarkable. "(This session) has been the most innovative, having produced unprecedented and legacy making advances as all-encompassing as any session in the last 25 years," Governor Inslee said. "Washingtonians received progress on climate, progress on equity, progress on our tax system, and progress protecting our workers and families, and more."

Kirkland's adopted 2021 Legislative Priorities and Session's End Outcomes

This session, two of the City's adopted 2021 legislative priorities, TOD at WSDOT-owned facilities and residential street maintenance were deferred and will be considered in 2022. The remaining priorities included seeking funding in the capital budget for prioritized local projects, two of which were awarded funding. The City also secured funding for David Brink Park restoration that was not originally on the priority list through the Aquatic Lands Enhancement Account. Finally, while two small transportation projects were prioritized for potential transportation budget funding, they were not included in the current year transportation budget.

- **Support legislative actions that facilitate Transit-Oriented Development (TOD) for the Kingsgate Park and Ride TOD Pilot project, the I-405 & NE 85th Street Station Area and future TOD projects at other WSDOT-owned properties**
 - ❖ At its January 5, Council agreed with a recommendation from its Legislative Workgroup to pull back from advancing legislation this session and continue to work with WSDOT on developing a future proposal, ideally as WSDOT agency-request legislation.
 - ❖ Relatedly, in the update memo for Council's April 20 meeting, staff reported on an opportunity in [SB 5312](#), which concerned facilitating transit-oriented development and increasing housing inventory. SB 5312 was [amended](#) by the House Committee on Environment & Energy to extend the grant funding that the City received through passage

of HB 1923 in the 2019 session. The deadline for deliverables on the original grant expired on April 1, 2021. The amendment to SB 5312 would have extended the grant through 2025. Sadly, 5312 did not make it out of committee and while Council's Legislative Workgroup worked every angle with members of the delegation to keep the issue alive, there was not enough time (or will) to sustain support for moving the bill. It is recommended that in the interim, staff work to determine exactly what the implications are for Kirkland and any other impacted cities, and line-up the issue in advance of the 2022 session.

- **Allow Code Cities to complete local residential street maintenance projects in-house if no contractors enter a project bid**
 - ❖ At its February 2 meeting, Council agreed with a recommendation from its Legislative Workgroup to pull back from advancing legislation this session and continue to work with the Capital Projects Advisory Review Board (CPARB) on a recommendation for legislative consideration in 2022.

- **Capital budget funding for prioritized local infrastructure projects**

After achieving compromise on the 2021-23 Biennium Capital Budget, the legislature passed [SHB 1080](#) on April 24. Two of the City's priority projects, and one new parks project were included in the final capital budget, totaling \$1,788,000 in project funding for Kirkland.

 1. \$773,000 for the PKCC New Roof and Retrofitted Emergency Generator - 45th & 48th LDs
 2. \$515,000 for Non-motorized Improvements on NE 131st Way - 1st LD
 - ❖ \$500,000 for the David Brink Park Shoreline Renovation Project - 48th LDs

SHB 1080, 2021-23 Biennium Capital Budget
<p>Peter Kirk Community Center Roof and Retrofitted Emergency Generator (Kirkland) \$773,000 (page 62, line 11) NEW SECTION. Sec. 1075. FOR THE DEPARTMENT OF COMMERCE 2022 Local & Community Projects <i>[Sen. Dhingra request: \$772,500]</i></p>
<p>Extruded Curb Improvements (Kirkland) \$515,000 (page 60, line 8) NEW SECTION. Sec. 1075. FOR THE DEPARTMENT OF COMMERCE 2022 Local & Community Projects <i>[Reps. Kloba & Duerr request: \$500,000] "Nonmotorized Improvements on NE 131st Way/90th Avenue NE from 97th Avenue NE to NE 134th Street"</i></p>
<p>David Brink Park Shoreline Renovation Project (Kirkland) \$500,000 FOR THE RECREATION AND CONSERVATION OFFICE 2021-23 Aquatic Lands Enhancement Account (Attachment B) <i>[Governor's request: \$500,000]</i></p>

Kirkland's adopted 2021 Priority Coalition Advocacy Items and Session's End Outcomes

Council adopted three Priority Coalition Advocacy (PCA) items as a new segment to Kirkland's legislative agenda this session. Council's intent was to elevate important and timely legislative goals that are not Kirkland specific, and are best championed by organizations with whom the City is allied, and advocate from that angle. The 2021 issue area focus was on Housing/Homelessness, Gun Safety/Responsibility, and Police Reforms. The organizational leads on these issues were the Washington Low Income Housing Alliance, the Alliance for Gun Responsibility, and the Association of Washington Cities respectively.

While the city's position on a few PCA bills remained at "monitor" over the course of the session, council's Legislative Workgroup, following council discussion and direction, was able meaningfully participate in amendment efforts to bill language.

All of the PCA bills that the City focused on for the majority of the session were passed by both chambers. All but one of the bills was amended on the floor. The bills that were amended went through the legislature's concurrence process, offering an interesting case study in civics and the legislative process in particular.

Washington Low Income Housing Alliance's efforts for new local funding and policy tools to address homelessness and create more affordable housing

ESHB 1070 (Ryu) Modifying allowed uses of local tax revenue for affordable housing and related services to include the acquisition and construction of affordable housing and facilities - **(Yes City Priority – Yes PCA Priority)**

- Feb 25 – **House passed: 56 yeas; 42 nays**
- Mar 30 – **Senate passed: 36 yeas; 13 nays**
- ❖ April 8 – Delivered to the Governor
- ✓ April 14 – [1070 Signed by the Governor into Law](#)

Brief Summary of Engrossed Substitute House Bill 1070, as Passed Senate, March 30, 2021
(prepared by non-partisan legislative staff)

- Expands the allowable uses of revenues from the housing and related services local sales and use tax to include acquiring facilities and land for affordable housing, housing-related services, and behavioral health services.
- Expands the allowable uses of revenues from the state-shared lodging tax to include housing and facilities for homeless youth for counties with a population of at least 1.5 million.

E2SHB 1277 (Ormsby) Revenue source for eviction prevention & housing stability - **(Yes City Priority – Yes PCA Priority)**

- Mar 28 – **House passed: 57 yeas, 40 nays, 0 absent, 1 excused**
- April 5 – Heard in Ways & Means
- April 10 – Executive session scheduled but no action taken in Ways & Means
- April 12 – Executive action taken in Ways & Means
- April 13 – Passed to Rules for second reading
- April 14 – Placed on second reading
- April 24 – Amendments adopted. **Senate Passed 26 yeas, 23 nays**
- April 25 – House Concurred **Final Passage 57 yeas, 39 nays**
- April 26 – [1277, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Second Substitute House Bill 1277, as Passed Legislature, April 24, 2021 (prepared by non-partisan legislative staff)

- Establishes a \$100 surcharge on certain recorded documents to fund various housing services.
- Creates the Eviction Prevention Rental Assistance Program in the Department of Commerce (COM).
- Requires the COM to develop performance metrics for each county receiving funding from the surcharge and dedicate a portion of funding to performance-based allocations

E2SSB 5160 (Kuderer) Addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, and authorizing landlord access to state rental assistance programs - (**PCA** – Support)

- Mar 4 – **Senate passed: 29 yeas; 20 nays,**
- April 8 – Amendments adopted. **House passed: 72 yeas; 26 nays**
- April 19 – Motion to not concur in House amendments failed
– Senate Concurred **Final Passage 27 yeas, 22 nays**
- April 20 – Delivered to the Governor
- April 22 – Governor partially vetoed - sections 12 & 13 vetoed (Attachment C)
- April 22 – [5160 signed by the Governor into law](#)

Final Bill Report of Engrossed Second Substitute Senate Bill 5160, Synopsis as Enacted (Attachment D)

E2SHB 1220 (Peterson) Supporting emergency shelters and housing through local planning and development regulations. (“Support”)

- Mar 3 – **House passed; 59 yeas; 39 nays; 0 absent; 2 excused**
- April 10 – Amendments adopted. **Senate passed: 25 yeas; 24 nays**
- April 14 – House Concurred **Final Passage 57 yeas, 40 nays**
- April 22 – [1220, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Second Substitute House Bill 1220, as Passed Legislature, April 14, 2021 (prepared by non-partisan legislative staff)

- Updates the housing goals of the Growth Management Act (GMA) to include planning for and accommodating affordable housing.
- Requires GMA jurisdictions to address moderate, low, very low, and extremely low-income housing, moderate density housing options, and racially disparate impacts and displacement in the housing element of the comprehensive plan.
- Requires the Department of Commerce to provide the inventory and analysis of existing and projected housing needs required in the housing element of the comprehensive plan.
- Prohibits a city from preventing transitional housing or permanent supportive housing in zones where residential dwelling units or hotels are allowed, and from preventing indoor emergency shelters and indoor emergency housing in zones where hotels are allowed

unless the city has an ordinance authorizing such shelters and housing in a majority of zones within 1 mile of transit.

- Directs GMA jurisdictions to consider certain policies that encourage the construction of accessory dwelling units to meet affordable housing goals.

ESHB 1236 (Macri) Protecting residential tenants from the beginning to end of their tenancies by penalizing the inclusion of unlawful lease provisions and limiting the reasons for eviction, refusal to continue, and termination. (**PCA** – “Support”)

- Mar 7 – **House passed; 54 yeas; 44 nays**
- April 8 – Amendments adopted. **Senate passed: 28 yeas; 21 nays**
- April 13 – House Concurred. **Final Passage 54 yeas, 44 nays**
- April 22 – [1236, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Substitute House Bill 1236, as Passed Legislature, April 13, 2021 (prepared by non-partisan legislative staff)

- Specifies exclusive causes for eviction, refusal to renew, and ending a tenancy under the Residential Landlord-Tenant Act and makes other changes to rights and remedies.

Alliance for Gun Responsibility’s recommendations for gun safety measures that promote safe and responsible gun ownership and reduce gun violence.

- **Include a Kirkland focus on amending state law as necessary, consistent with the Washington State Constitution, to prevent the visible presence of firearms from intimidating those exercising rights to assembly.**

ESSB 5038 (Kuderer) Prohibiting the open carry of certain weapons at public demonstrations and the state capitol - (**Yes City Priority – Yes PCA Priority**)

- Feb 25 – **Senate passed: 28 yeas; 20 nays; 0 absent; 1 excused**
- Mar 28 – Amendments adopted. **House passed: 57 yeas; 40 nays; 0 absent; 1 excused**
- April 20 – Senate Concurred **Final Passage 28 yeas, 21 nays**
- April 26 – [5038, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Substitute Senate Bill 5038, as Amended by House, March 28, 2021.

- Prohibits the open carry of a firearm or other weapons at or near public demonstrations, the west state capitol grounds, capitol grounds buildings, and other legislative locations.
- Provides an exception for federal, state, and local law enforcement officers.
- Makes violations of these prohibitions a gross misdemeanor

Association of Washington Cities' (AWC) Statewide Policing Reforms priority.

SSB 5066 (Dhingra) Concerning a peace officer's duty to intervene - (**Yes City Priority – Yes PCA Priority**)

- Feb 23 – **Senate passed: 28 yeas; 21 nays**
- April 7 – Amendments adopted. **House passed: 71 yeas; 27 nays**
- April 20 – Senate Concurred **Final Passage 31 yeas, 18 nays**
- April 26 – [5066, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Substitute Senate Bill 5066, As Amended by House, April 7, 2021 (prepared by non-partisan legislative staff)

- Requires a peace officer to intervene when the officer witnesses a fellow peace officer engaging in the use of excessive force.
- Requires a peace officer who observes wrongdoing by a fellow officer to report the wrongdoing to the officer's supervisor.
- Requires law enforcement agencies to adopt written policies on the duty to intervene and ensure that all law enforcement officers obtain training on the policy through the Criminal Justice Training Commission.

E2SSB 5259 (Nobles) Concerning law enforcement data collection - (**Yes City Priority – Yes PCA Priority**)

- Mar 1 – **Senate passed: 46 yeas; 2 nays; 1 absent**
- April 6 – Amendments adopted. **House passed: 97 yeas; 1 nay**
- April 14 – Senate Concurred **Final Passage 46 yeas, 2 nays, 1 excused**
- April 23 – [5259, as passed by the Legislature delivered to the Governor](#)

Final Bill Report of Engrossed Second Substitute Senate Bill 5259 (Attachment E)

ESHB 1054 (Johnson) Establishing requirements for tactics and equipment used by peace officers - (**PCA - Monitor**)

- Feb 27 – **House passed: 54 yeas; 43 nays; 1 excused.**
- April 6 – Amendments adopted. **Senate passed: 27 yeas; 22 nays**
- April 14 – House refused to concur in the Senate amendments. Conference committee appointed. Reps Johnson, Goodman, Mosbrucker
- April 19 – Senate Conference committee appointed. Sens Pedersen, Dhingra, Padden
- April 22 – Conference committee report received (Attachment F)
- April 23 – Senate adopted conf report. **Final Passage 28 yeas, 20 nays**
- April 23 – House adopted conf report. **Final Passage 55 yeas, 42 nays**
- April 26 – [1054, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Substitute House Bill 1054, As Passed Legislature, April 23, 2021
(prepared by non-partisan legislative staff)

- Prohibits peace officers from using chokeholds and neck restraints.
- Prohibits law enforcement agencies from acquiring or using certain types of military equipment.
- Establishes restrictions on the use of tear gas, vehicular pursuits, and firing upon moving vehicles.
- Prohibits a peace officer from seeking, and a court from issuing, a search or arrest warrant granting an express exception to the "knock and announce" rule.
- Requires law enforcement agencies to adopt policies and procedures to ensure that uniformed peace officers are reasonably identifiable.
- Requires the Criminal Justice Training Commission to convene a work group for the purpose of developing model policies on the use and training of canine teams.

E2SSB 5051 (Pedersen) Concerning state oversight and accountability of peace officers and corrections officers - (**PCA** - Monitor)

- Feb 25 – **Senate passed: 26 yeas; 19 nays; 1 absent; 3 excused**
- April 7 – Amendments adopted. **House passed: 54 yeas; 43 nay**
- April 21 – Senate Concurred **Final Passage 27 yeas, 22 nays**
- April 26 – [5051, as passed by the Legislature delivered to the Governor](#)

Brief Summary of Engrossed Second Substitute Senate Bill 5051, As Amended by House, April 7, 2021 (prepared by non-partisan legislative staff)

- Modifies the priorities and composition of the Criminal Justice Training Commission (CJTC).
- Expands the background investigation requirements for persons applying for peace officer, reserve officer, and corrections officer positions.
- Expands the conduct for which the certification of a peace officer or a corrections officer may be revoked.
- Requires employing agencies to report all separation and disciplinary matters regarding a certified officer to the CJTC.
- Removes confidentiality of complaints, investigations, and disciplinary actions for certified officers and requires information be maintained on a publicly searchable database

Transportation Spending Bill and Rumors of a Special Session

In late March, the House and Senate each released proposed transportation spending bills. As part of that process, Representatives Walen and Slatter as well as Senator Dhingra worked to have two small transportation projects the City had prioritized included. While both projects were included in 1564, only the rapid flashing beacon project was included in 5482. Importantly, 1564 included \$750,000 for additional legal, technical and financial analysis necessary to implement the Kingsgate

TOD pilot project as well as a \$18 Million toward the Eastrail in Bellevue. The Senate's proposal included the Eastrail funding, but not the TOD pilot project funding.

Neither of these transportation spending bills were passed by the legislature. However, funding sources of many of the new local projects listed in the spending bills was tied to the passage of the climate commitment bill ([SB 5126](#)) and to the clean fuel standards bill ([HB 1091](#)). In the waning hours of the session, the legislature did pass both of these bills and each, as passed by the Legislature, has been delivered to the Governor.

With the new transportation funding opportunity included in these bills, and with the potential of the passage of President Biden's proposed American Jobs Plan, we may see the Legislature reconvened in the months ahead to work on a statewide transportation package.

THE CITY COUNCIL'S LEGISLATIVE WORKGROUP:

The City Council's Legislative Workgroup, chaired by Deputy Mayor Arnold, has met weekly throughout the session to track the status of the City's priorities and provide support and oversight of strategies for achieving the priorities. The Workgroup also includes Mayor Sweet and Councilmember Curtis. It is staffed by the City Manager, the Intergovernmental Relations Manager and CMO's Management Analyst, with participation from Waypoint Consulting Group, the City's contracted lobbyist.

Attachments: A – 4/26/21 Status update on the City's 2021 State Legislative Priorities
B – 2021-23 Aquatic Lands Enhancement Account
C – Governors partial vetoed of E2SSB 5160
D – Final Report E2SSB 5160, Synopsis as Enacted
E – Final Bill Report of Engrossed Second Substitute Senate Bill 5259
F – Conference committee report on HB 1054

City of Kirkland 2021 Legislative Priorities – Status
Updated: April 26, 2021

Attachment A

2021 Legislative Priority	Bill #	Prime Sponsor	Status
Support facilitating TOD at Kingsgate, NE 85/405 and other WSDOT-owned properties			Re-Approach with WSDOT agency lead in 2022
Support allowing Code Cities to complete local residential street maintenance projects in-house if no contractors bid			Re-Approach with CPARB in 2022
Support capital budget funding for prioritized local infrastructure projects	PSSB 5083 PSHB 1080	Sen Frockt Rep Tharinger	House & Senate Local Project Form being completed for 1. PKCC New Roof and Retrofitted Emergency Generator 2. Non-motorized Improvements on NE 131st Way > David Brink Park Shoreline Renovation Project
Concerning transportation spending	PSHB 1564 PSSB 5482	Rep Fey Sen Hobbs	1. Rapid Flashing Beacons at 7th S. & State St. 2. Sidewalks at NE 117th and 75th NE 3. Kingsgate TOD Pilot Project

2021 Priority Coalition Advocacy <i>evaluate support for proposed legislative agendas from the following organizations</i>	Bill #	Prime Sponsor	Status
Support WA Low Income Housing Alliance's efforts for new local funding and policy tools to address homelessness and create more affordable housing	SHB 1070	Rep Ryu	2/25 – House Passed 56 yeas, 42 nays 3/30 – Senate Passed 36 yeas, 13 nays 4/14 – Signed by the Governor
	SHB 1277	Rep Ormsby	3/28 – House Passed 57 yeas, 40 nays, 1 excused 4/13 – Passed to Rules 4/14 – Placed on second reading 4/24 – Amendments adopted. Senate Passed 26 yeas, 23 nays 4/25 – House Concurred Final Passage 57 yeas, 39 nays 4/26 – Delivered to the Governor
	2SSB 5160 <i>Support</i>	Sen Kuderer	3/4 – Senate Passed 29 yeas, 20 nays 4/8 – House Passed 72 yeas, 26 nays 4/19 – Motion to not concur in House amendments failed – Senate Concurred Final Passage 27 yeas, 22 nays 4/20 – Delivered to the Governor
	E2SHB 1220 <i>Support</i>	Rep Peterson	3/3 – House Passed 57 yeas, 39 nays, 2 excused 4/10 – Senate Passed 25 yeas, 24 nays 4/14 – House Concurred Final Passage 57 yeas, 40 nays, 1 excsd 4/22 – Delivered to the Governor
	SHB 1236 <i>Support</i>	Rep Macri	3/7 – House Passed 54 yeas, 44 nays 4/8 – Senate Passed 28 yeas, 21 nays 4/13 – House Concurred Final Passage 54 yeas, 44 nays 4/22 – Delivered to the Governor

City of Kirkland 2021 Legislative Priorities – Status
Updated: April 26, 2021

Attachment A

<p>Support Alliance for Gun Responsibility’s recommendations for gun safety measures that promote safe and responsible gun ownership and reduce gun violence</p> <ul style="list-style-type: none"> o Including amending state law as necessary, consistent with the WA State Constitution, to prevent the visible presence of firearms from intimidating those exercising rights to assembly. 	SSB 5038	Sen Kuderer	<p>2/25 – Senate Passed 28 yeas, 20 nays, 0 abs, 1 excsd 3/28 – House Passed 57 yeas, 40 nays, 1 excused 4/20 – Senate Concurred Final Passage 28 yeas, 21 nays 4/26 – Delivered to the Governor</p>
<p>Support Association of Washington Cities’ Statewide Policing Reforms priority.</p>	SSB 5066	Sen. Dhingra	<p>2/23 – Senate Passed 28 yeas, 21 nays 4/7 – House Passed 71 yeas, 27 nays 4/20 – Senate Concurred Final Passage 31 yeas, 18 nays 4/26 – Delivered to the Governor</p>
	E2SSB 5259	Sen. Nobles	<p>3/1 – Senate Passed 46 yeas, 2 nays, 1 absent 4/6 – House Passed 97 yeas, 1 nay 4/14 – Senate Concurred Final Passage 46 yeas, 2 nays, 1 excsd 4/23 – Delivered to the Governor</p>
	HB 1054 <i>Monitor/Support w/amendments</i>	Rep Johnson	<p>2/27 – House Passed 54 yeas, 43 nays, 1 excused 4/6 – Senate Passed 27 yeas, 22 nays 4/14 – House refused to concur in the Senate amendments. Conference committee appointed. Reps Johnson, Goodman, Mosbrucker 4/19 – Senate Conference committee appointed. Sens Pedersen, Dhingra, Padden 4/22 – Conference committee report received 4/23 – Senate adopted conf report. Final Passage 28 yeas, 20 nays 4/23 – House adopted conf report. Final Passage 55 yeas, 42 nays 4/26 – Delivered to the Governor</p>
	SSB 5051 <i>Monitor</i>	Sen Pederson	<p>2/25 – Senate Passed 26 yeas, 19 nays, 1 abs, 3 excsd 4/7 – House Senate Passed 54 yeas, 43 nays, 1 excsd 4/21 – Senate Concurred Final Passage 27 yeas, 22 nays 4/26 – Delivered to the Governor</p>

* No HIGHLIGHTS = No change in status from last update.

2021-23 Capital Budget
2021-23 Aquatic Lands Enhancement Account
LEAP Capital Document No. RCO-3.1-HB-2021
Developed April 15, 2021
(Dollars in Thousands)

Rank	Project Number	Project Name	Grant Applicant	Leg. District	Grant Request	Applicant Match	Total Project Amount	Amount Funded
1	20-1322C	Willow Creek at Marina Beach Park	Edmonds City of	21	\$500	\$4,116	\$4,616	\$500
2	20-1760D	American Lake Park Waterfront Access Upgrades	Lakewood City of	28	\$500	\$885	\$1,385	\$500
3	20-1725R	Little Squalicum Estuary	Bellingham City of	42	\$500	\$2,099	\$2,599	\$500
4	20-1709D	Fairhaven Small Watercraft Launch and Dock	Bellingham Port of	40	\$500	\$1,391	\$1,891	\$500
5	20-1653D	Kayak Point Waterfront Improvements, Phase 1	Snohomish County Parks Dept	10	\$500	\$2,506	\$3,006	\$500
6	20-1302D	Terry Pettus Park	Seattle Parks & Rec	43	\$500	\$1,240	\$1,740	\$500
7	20-1557D	Nisqually State Park-- Water Access	State Parks	2	\$500	\$2,198	\$2,698	\$500
8	20-1711D	Port of Illahee Waterfront Access Improvements	Illlahee Port of	23	\$500	\$312	\$812	\$500
9	20-1841C	California Creek Estuary Park Phase 2	Blaine-Birch Bay Park & Rec	42	\$425	\$147	\$572	\$425
10	20-1474D	Liberty Lake Regional Park Phase 1 - Water Access	Spokane Co Parks, Rec & Golf	4	\$500	\$1,400	\$1,900	\$500
11	20-1672D	Ballinger Park Viewing Platform and Nature Trails	Mountlake Terrace City of	32	\$500	\$418	\$918	\$500
12	20-1483C	Manson Bay Old Swim Hole Acquisition & Development	Manson Park & Rec District	12	\$630	\$210	\$840	\$630
13	20-1751R	Marine Park Beach Naturalization	Blaine City of	42	\$500	\$300	\$800	\$500
14	20-1758D	David Brink Park Shoreline Renovation	Kirkland City of	48	\$500	\$812	\$1,312	\$500
14	20-1819D	Expand Silverdale Float Facilities & Enhance Beach	Silverdale Port of	23	\$500	\$571	\$1,071	\$500
16	20-1530D	Marymoor Park Dock Replacement	King County Parks & Rec	48	\$500	\$642	\$1,142	\$500
17	20-1736D	Guest Restroom Facility Replacement	Kingston Port of	23	\$172	\$57	\$230	\$172
18	20-1670D	Cap Sante Marina RV Park	Anacortes Port of	40	\$500	\$651	\$1,151	\$500
					\$8,728	\$19,954	\$28,682	\$8,728



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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April 22, 2021

To the Honorable President and Members,
The Senate of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to Sections 12 and 13, Engrossed Second Substitute Senate Bill No. 5160 entitled:

“AN ACT Relating to addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.”

While Section 12 attempts to provide direct financial relief to landlords as part of a larger legislative solution in E2SSB 5160, it creates an entitlement for landlords to receive rent assistance without a sufficient framework to prioritize resources to those landlords who have the greatest need. The estimated cost of Section 12 is \$2.4 billion, which is \$1.5 billion more than is currently appropriated by the state or awarded by the federal government. RCW 43.88.055 requires the Legislature to enact an operating budget that leaves a positive ending fund balance at the end of the fiscal biennium. Although the final budget will likely have a different ending fund balance than is reflected today, \$1.5 billion in additional costs could not be sustained by available fiscal resources. In order to ensure that the Legislature meets its statutory obligation to leave a positive ending fund balance at the end of the 2021-23 biennium, I am vetoing Section 12 of this bill at the request of legislative leadership.

In addition, Section 13 is largely duplicative of an early action bill that I have already signed, ESHB 1368, which provides \$2 million in grant opportunities for eligible landlords. Because of this, Section 13 creates administrative problems for the department of commerce, and may also cause confusion for landlords. As a result, again at the request of legislative leadership, I am also vetoing Section 13.

The Legislature and I agree it is important to provide resources to landlords, and to prioritize assisting those landlords who have a small number of units. If the Legislature wants to increase support for landlords who have a small number of units, I encourage the Legislature to increase funding to the program already created in the early action bill rather than creating redundant programs.

For these reasons I have vetoed Sections 12 and 13 of Engrossed Second Substitute Senate Bill No. 5160.

With the exception of Sections 12 and 13, Engrossed Second Substitute Senate Bill No. 5160 is approved.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jay Inslee", is written over a faint, light-colored rectangular stamp or watermark.

Jay Inslee
Governor

FINAL BILL REPORT

E2SSB 5160

Synopsis as Enacted

Brief Description: Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Lias, Conway, Das, Lovelett, Saldaña and Wilson, C.).

Senate Committee on Housing & Local Government

Senate Committee on Ways & Means

House Committee on Housing, Human Services & Veterans

House Committee on Appropriations

Background: Residential-Landlord Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, how and when a tenancy expires or may be terminated, and remedies for violations of the RLTA.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including:

- modifying how rent is defined and how and when landlords apply tenant payments to rent or other costs and nonpossessory fees;
- providing a uniform 14-day notice to pay or vacate with an updated summons form for landlords to use when a tenant fails to pay rent;
- modifying the tenancy reinstatement process, with limits on late fees, before a judgement is issued during an unlawful detainer action;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent;
- prohibiting access to such judicial discretion if a tenant is issued three 14-day notices to pay or vacate within the prior 12-month period; and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- requiring landlords to accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the notice to pay or vacate for nonpayment of rent expires, and to suspend any court action for seven court days after they provide necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds.

Governor's Eviction Moratorium. On March 18, 2020, Governor Inslee issued Proclamation 20-19 to prohibit a number of activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions of the eviction moratorium with the current variation, Proclamation 20-19.6, set to expire June 30, 2021.

The eviction moratorium prohibits residential landlords, manufactured housing community landlords, property managers, and property owners from:

- serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate, as applied to tenancies or other housing arrangements, such as hotel/motel or camping area stays of more than 14 days, that have expired or that will expire during the moratorium's effective period; and
- seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless, as applied to both circumstances:
 1. an affidavit to the eviction or termination of tenancy notice attests that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or
 2. at least 60 days' written notice of the property owner's intent to personally occupy the premises as a primary residence or sell the property is provided to the tenant by affidavit signed under penalty of perjury.

The current moratorium also prohibits landlords from:

- assessing, or threatening to assess, late fees for the nonpayment or late payment of rent or other charges as of February 29, 2020;
- retaliating against individuals for invoking their rights or protections under the moratorium or any other state or federal law providing rights or protections for residential dwellings, with the exception for landlords to engage in reasonable communications with tenants to explore repayment plans;
- assessing, or threatening to assess, rent or other charges for any period during which the resident's access to, or occupancy of, the dwelling was prevented as a result of COVID-19; and
- treating any unpaid rent or other charges as an enforceable debt or obligation that is owing or collectable, when nonpayment of rent or other charges resulted from COVID-19 and occurred on or after February 29, 2020, including attempts to collect,

or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means, with the exception for landlords who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

A failure to provide a reasonable repayment plan under the moratorium is a defense to any lawsuit or other attempts to collect. A landlord may engage in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. Within these communications, landlords may provide information to residents regarding financial resources, including coordinating with residents to apply for state or other rental assistance programs, and information on how to engage with them in discussions regarding reasonable repayment plans.

The moratorium also strongly encourages landlords and tenants to access services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

Eviction Resolution Pilot Program. On September 9, 2020, the Washington Supreme Court (court) issued Order No. 25700-B-639 authorizing an eviction resolution program (ERP) in the superior courts.

Six counties have been chosen to participate in the ERP pilot. Each ERP operates in accordance with the court enabling order and a standing order of the local superior court. These orders require landlords to undertake efforts to engage tenants in pre-filing resolution efforts, including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation provided by the participating Dispute Resolution Centers (DRCs). Eligible cases are those where non-payment of rent or non-compliance with previously agreed-upon payment plans are the primary reason for the decision to evict.

The stated objective of the ERP is to:

- bring all parties to the table with the assistance of qualified and trained Eviction Resolution Specialists (specialists);
- explore the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance to cure or partially cure the arrearage; and
- discover a range of other terms that might resolve the matter in a way that allows the tenant to retain housing and avoid the need for filing an unlawful detainer action.

The ERP is a two-step process. Along with a rent due notice/letter, a landlord will send notice #1, a request for a formal first meeting involving the two parties and DRC staff. Notice #1 also includes contact information of the participating DRC, rental assistance

resources, and the county tenant attorneys. Upon receipt of the rent due notice and notice #1, the tenant has 14 days to voluntarily engage in the process. If the tenant does not respond to the initial contact, the landlord sends the tenant notice #2, which is another request to engage in the ERP program. The tenant has ten days to respond to this second contact and the landlord sends a copy of notice #2 to the participating DRC.

Once a landlord and tenant voluntarily enter into the ERP process, specialists will work with both parties and external partners to resolve the issue of non-payment and future payments. If resolution cannot be achieved, formal mediation will be offered to the landlords/tenants at no cost.

The ERP process can be initiated by either the landlord or the tenant without service of a 14-day notice. If the tenant initiates or responds to a notice, the landlord is obligated to participate in the process. Once the Governor's eviction moratorium—Proclamation 20-19.6—and any of its amendments or extensions expire, the ERP will require landlords to engage in pre-litigation conciliation efforts prior to filing an unlawful detainer action.

Legal Representation for Indigent Persons. Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. A determination of indigence is to be made for any person requesting the appointment of counsel in a criminal, juvenile, involuntary commitment, dependency, or other case in which the right to counsel attaches. The indigent defense services law defines an indigent person as one who:

- receives public assistance in one of several enumerated forms;
- has been involuntarily committed to a public mental health facility;
- has an income of 125 percent or less of the federal poverty level; or
- has insufficient available funds to retain counsel.

There is no federal or state guaranteed right to legal representation for indigent tenants in unlawful detainer eviction cases. A few cities in the country implement some form of right to legal representation services for tenants, including most recently in the city of Seattle.

Office of Civil Legal Aid. The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

Manufactured/Mobile Home Landlord-Tenant Act. The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property, or in the association that owns the property.

Payment of Rent Into Court Registry. The RLTA includes an additional, optional notice for landlords to use when the unlawful detainer action is based on a tenant's nonpayment of rent. If this form is also served, the tenant must either pay the amount of rent allegedly due and owing into the court registry, or file a sworn statement denying and setting forth the reasons that the rent is owing. If the tenant fails to do one or the other, the landlord is entitled to obtain an immediate writ of restitution without further notice and without paying a bond. The tenant may seek a hearing on the merits and an immediate stay of the writ, but must prove to the court that the landlord is not entitled to possession of the property based on certain legal or equitable defenses.

Dispute Resolution Centers. Dispute Resolution Centers (DRCs) were first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation. Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee which is based upon the participant's ability to pay. DRCs handle numerous types of cases and disputes, including for landlords and tenants.

State Rental Assistance Programs. The Department of Commerce (Commerce) administers a number of rental assistance programs that serve a variety of populations depending on certain eligibility standards. Funds received from the federal CARES Act have allowed Commerce to set up an eviction rent assistance program to help qualifying households impacted by COVID-19. Funds are distributed to county grantees, such as county governments and nonprofit entities, which provide rent assistance to qualifying households.

Landlord Mitigation Program. The Landlord Mitigation Program (LMP) allows landlords to seek reimbursement for claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program by submitting such claims to Commerce. The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days of lost rental income, and up to \$5,000 in any unpaid rent and utilities and qualifying damages caused by a tenant during the tenancy. Any landlord that has screened, approved, and offered rental housing to any applicant that will be using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities.

The LMP also includes landlord claims for reimbursement in unlawful detainer cases where

judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs, including any unpaid portion of the judgment after the tenant defaults on a court ordered payment plan. This additional use of the LMP is more commonly known and referred to as the tenancy preservation program (TPP).

Summary: Residential Landlord-Tenant Act—Generally. For rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium:

- a landlord may not report to a prospective landlord a tenant's nonpayment of such rent or an unlawful detainer action resulting from nonpayment of such rent; and
- a prospective landlord may not take an adverse action based on a prospective tenant's nonpayment of such rent.

A landlord may not impose late fees or other charges for a tenant's nonpayment of rent that became due between March 1, 2020, and six months following the Governor's eviction moratorium.

A landlord or prospective landlord may not deny, discourage application for, or otherwise make unavailable any rental dwelling unit based on a tenant's or prospective tenant's medical history, including any prior or current exposure or infection to the COVID-19 virus. A landlord or prospective landlord may also not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request.

Any landlord or prospective landlord in violation of the aforementioned prohibitions and requirements is liable for two and one-half times the monthly rent, with court costs and attorneys' fees. The court must determine the penalty amount in order to deter future violations.

For one year following expiration of the Governor's eviction moratorium, if a tenant demonstrates an ability to pay to reinstate the tenancy through the TPP, the prohibition on a tenant from seeking relief to reinstate the tenancy if they have been provided three or more pay or vacate notices within 12 months does not apply, and any reimbursement to the landlord under the TPP may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

The Governor's eviction moratorium in Proclamation 20-19.6 is declared to end on June 30, 2021. "Public health emergency" is defined as Governor Proclamation 20-05 and its amendments. "Tenant" is defined to include persons residing in transient lodging, such as hotels/motels or camping areas as primary dwellings, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel or motel or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel or motel or camping area has provided the individual with a seven-day eviction notice, which must provide certain legal-aid resource information, and does not include occupants of homeless mitigation sites or persons entering onto land without the permission of the owner or lessor.

Any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

Repayment Plans. If a tenant has remaining unpaid rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer tenants a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges owed. If the tenant fails to accept the terms of a reasonable repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action subject to any requirements under the ERP. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the LMP or proceed with an unlawful detainer action subject to any requirements under the ERP. During any unlawful detainer proceeding, the court must consider the tenant's circumstances, including any decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding. It is a defense to an unlawful detainer action if the landlord did not offer a repayment plan. The tenant and landlord may continue to seek rental assistance to reduce or eliminate any unpaid rent balance to the extent available funds exist from public, private, or nonprofit rental assistance programs.

Any repayment plan entered into by the landlord and tenant must:

- begin no sooner than 30 days after the plan is offered;
- cover rent only and not legal fees, late fees, or other charges;
- allow for payment from any source of income, including benefits, assistance or subsidy programs, or from pledges by non-profits, churches, religious institutions, or governmental entities;
- not include provisions or be conditioned on:
 1. the tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the agreement;
 2. a requirement that the tenant apply for or provide proof of receipt of governmental benefits; and
 3. the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

Landlord Mitigation Program. A landlord is eligible to file a reimbursement claim under the LMP up to \$15,000 for any unpaid rent that accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium, when the tenant being low-income or resource-limited or experiencing hardship has voluntarily vacated or abandoned the tenancy, but not if vacation is due to an unlawful detainer action based on nonpayment of such rent. A landlord is also eligible to file a reimbursement claim under the LMP up to \$15,000 for any remaining rent after the tenant defaults on a repayment plan as long as the tenancy has not been terminated at the time of reimbursement. After reimbursement under either type of claim, the landlord may not take legal action or pursue a

collection action against the tenant for damages or to seek any remaining unpaid rent accrued between March 1, 2020, and six months following expiration of the Governor's eviction moratorium.

For funds deposited into the LMP account, Commerce must prioritize allowable costs related to claim reimbursements for landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program.

Eviction Resolution Pilot Program. The administrative office of the courts (AOC), subject to the availability of amounts appropriated, must contract with DRCs within or serving each county to establish a two-year, statewide court-based eviction resolution pilot program (ERP) operated in accordance with Washington supreme court order no. 25700-B-639 and any standing judicial order of the individual superior court. The ERP must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action. Before filing an unlawful detainer action for nonpayment of rent, the landlord must provide a 14-day pay or vacate notice and an additional notice to the tenant informing them of the ERP. The landlord must retain proof of service or mailing of the additional notice. The additional notice to the tenant must provide at least the following information regarding the eviction resolution pilot program:

- contact information for the local DRC;
- contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;
- the following statement: "The Washington State Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";
- the name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and
- the following statement: "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local DRC serving the area where the property is located.

The AOC may also establish and produce other notice forms and requirements as necessary to implement the ERP. A landlord must secure a certification of participation with the ERP by the appropriate DRC before an unlawful detainer action for nonpayment of rent may be heard by the court.

Any superior court, in collaboration with the DRC located within or serving the same county, participating in the ERP must report annually to the Administrative Office of the

Courts (AOC) beginning January 1, 2022, until January 1, 2023, on the following:

- the number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;
- the number of referrals made to DRCs;
- the number of nonpayment of rent cases resolved by the ERP;
- how many instances the tenant had legal representation, either at the conciliation stage or formal mediation stage;
- the number of certifications issued by DRCs and filed by landlords with the court; and
- any other information that relates to the efficacy of the ERP.

By July 1, 2022, until July 1, 2023, the AOC must provide an annual report to the Legislature summarizing the ERP report data shared by the superior courts and DRCs.

Legal Representation of Indigent Tenants. The court must appoint an attorney for an indigent tenant in any unlawful detainer proceeding subject to the availability of amounts appropriated. Prioritization on the provision of legal representation services must be in those counties in which the most evictions occur and to indigent tenants who are disproportionately at risk of eviction. "Indigent" is defined as any person:

- receiving assistance from certain public and medical benefits programs; or
- with an annual income, after taxes, at 200 percent or below of the federally established poverty level.

OCLA is responsible for implementation of the indigent tenant's right to legal representation services and for the administration of program funds, and the state must pay the costs of such legal representation services. OCLA must contract with attorneys and other agencies to implement legal representation services for indigent tenants within appropriated amounts. Within 90 days of the effective date of the act, OCLA must also submit to the Legislature and Administrative Office of the Courts a plan outlining full implementation of the legal representation services program within 12 months of the effective date of the act.

The uniform 14-day pay or vacate notice for nonpayment of rent is updated to inform tenants of the legal representation mandate and related contact information for qualifying low-income renters, general information regarding DRC services, as well as state and local rental assistance programs as listed on the Office of the Attorney General's website. Upon expiration of the ERP:

- a landlord must provide the 14-day notice to the DRC located within or serving the county of tenancy;
- DRCs are encouraged to notify the housing justice project or Northwest Justice Project located within or serving the county in which the DRC is located, as appropriate, once the 14-day notice is received from the landlord; and
- it is a defense to an unlawful detainer eviction if a landlord does not provide the notice to the appropriate DRC.

The eviction summons is also updated to inform tenants of the legal representation mandate for indigent tenants and to provide general information regarding DRC services.

State Rental Assistance Programs. Commerce must authorize landlords an opportunity to apply to certain state rental assistance programs, if feasible, and establish necessary application and eligibility requirements and any conditions on the receipt of funds. Until March 31, 2022, Commerce must also provide rental assistance directly to a landlord on behalf of an indigent tenant who is unable to:

- access the ERP because it is not available in the region where the property is located or it is not accepting new claims; or
- obtain legal representation under the new legal representation program for indigent tenants.

Through a 2021-23 fiscal biennium appropriation of \$7,500,000 from the state fiscal recovery fund, Commerce must develop a landlord grant assistance program to provide grants to eligible landlords for up to 80 percent of unpaid rental arrears during the Governor's eviction moratorium, and adopt rules as necessary to implement the program.

To be eligible under the program, a landlord must:

- apply for a grant or have a property manager or management company apply on behalf of the landlord;
- be the sole investor in the property from which rental arrears are sought;
- not own more than ten dwelling units from which rental payments are received; and
- provide proof of property ownership and a statement under penalty of perjury that the unpaid rent was not paid by the tenant, through an emergency rental assistance program, through the LMP, or through any other means.

Grant eligibility under the program does not constitute an entitlement, but Commerce will disburse funds to eligible landlords within 60 days of application submission while maintaining a waitlist when eligible applications exceed the appropriated funds. Commerce must also report to the appropriate legislative committees by September 30, 2023, on the number of grants issued and total funds provided under the program, the number of eligible applicants who did not receive grants and the total amount of unpaid grants due to lack of funds, and the number of ineligible applicants with reasons for ineligibility. A landlord who receives a grant under the program may not take legal action or pursue a collection action against the tenant for damages or unpaid rent attributable to the same tenancy.

Payment of Rent Into Court Registry. The additional, optional notice for landlords to use in nonpayment of rent cases, instructing tenants with unpaid rent to pay into the court registry the amount of rent allegedly owed or file a sworn statement denying that rent is owing, is eliminated.

Residential-Landlord Tenant Act—Miscellaneous. Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer eviction action in which the tenant

agrees to pay any amount other than for rent due or rent to retain the tenancy, pay any amount more than statutory judgment limits, or waives any rights afforded to the tenant under the court exercise of judicial discretion in nonpayment of rent cases or under the RLTA is void and unenforceable.

Licensed assisted living facilities, nursing homes, and adult family homes, and registered continuing care retirement communities are exempt from the provisions of the act.

Application to the Manufactured/Mobile Home Landlord-Tenant Act. Provisions relating to the legal representation services mandate for indigent tenants and the eviction summons form are applied to unlawful detainer actions for MHLTA tenancies.

Votes on Final Passage:

Senate	29	20	
House	72	26	(House amended)
Senate	27	22	(Senate concurred)

Effective: The bill contains an emergency clause and takes effect immediately.

FINAL BILL REPORT

E2SSB 5259

Brief Description: Concerning law enforcement data collection.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Nobles, Carlyle, Darneille, Das, Dhingra, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Pedersen, Randall, Robinson, Saldaña, Stanford, Wellman and Wilson, C.; by request of Attorney General).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Public Safety
House Committee on Appropriations

Background: There are two types of law enforcement agencies in the state—general authority law enforcement agencies and limited authority law enforcement agencies. "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. This includes, for example, county sheriffs, municipal police departments, the Washington State Patrol, and the Department of Fish and Wildlife.

"Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas. This includes, for example, the Department of Corrections, Department of Natural Resources, Department of Social and Health Services, Gambling Commission, and Liquor and Cannabis Board.

Law enforcement officers are authorized to use deadly force under certain circumstances. This includes, for example, when necessarily used to apprehend or arrest a person who poses a threat of serious physical harm to the officer or others. In each circumstance, the officer must have a good faith belief that the act is justifiable according to certain statutory requirements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Law enforcement officers must complete basic and advanced training to obtain and maintain certification. With the passage of Initiative 940 in 2018, officers are also required to complete de-escalation training. Officers must be trained on alternatives to the use of physical or deadly force so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force.

Great bodily harm and substantial bodily harm are both defined in the Washington Criminal Code. Substantial bodily harm is when a person sustains temporary, but substantial disfigurement or loss of function. Great bodily injury is when a person sustains injury which is likely to cause death or which causes significant permanent disfigurement or loss of function.

Summary: Statewide Use of Force Data Program Advisory Group. The Office of the Attorney General (AGO) must establish an advisory group to assist with the design, development, and implementation of a statewide use of force data program. The advisory group must contain:

- at least three representatives from local nongovernmental organizations or advocacy groups with a focus on or expertise in the use and role of data as it relates to interactions between law enforcement and the community;
- at least three representatives from law enforcement agencies or organizations representing the interests of law enforcement in interacting with and utilizing program data; and
- at least one representative from the private or public sector with experience in data collection programs.

An advisory group member whose participation in the advisory group may be hampered by financial hardship may apply for a stipend in an amount not to exceed \$100 for each day the member attends an official meeting of the advisory group or performs duties approved by the AGO.

The advisory group must submit recommendations to the AGO by April 1, 2022, on the following subjects:

- how to prioritize the implementation of the reporting, collection, and publication of use of force data reports;
- additional data to be collected on interactions between law enforcement officers and the public;
- practices for law enforcement agencies to collect and report data;
- practices for the public to report relevant information, including correcting misreported data; and
- practices for public, law enforcement, and academic access and use of program data that must include, at a minimum: (1) public online access to deidentified raw or refined data using an established open data standard; (2) public online access to dashboards that summarize and analyze data; (3) interactive data visualization tools

designed for law enforcement agencies and other entities; (4) the ability to extract data in order to standardize data across multiple agencies; (5) protection and removal of all personally identifiable information; (6) semiannual reports published on the website and submitted to the Legislature and Governor by June 1st and December 1st of each year; (7) quality improvement, including periodical input from stakeholders; (8) analytical dashboards with individual officer details for use as a risk management tool; (9) agency level comparative dashboards; and (10) incorporation of available historical data to identify long-term patterns.

The AGO must review and approve or reject the recommendations, with consideration for the following:

- available funding;
- prioritizing the implementation of the reporting, collection, and publication of use of force data reports;
- the public's interest in transparent, expedient access to information; and
- the institutional operations and demands of law enforcement.

The AGO may not approve any recommendation that would disclose information that would jeopardize an active criminal investigation, confidential informant, or intelligence information. The advisory group may revise any rejected recommendations for reconsideration by the AGO.

The provision creating the advisory group expires on January 1, 2023.

Contracted Institution of Higher Education. The AGO must engage in a competitive procurement process to contract with a Washington private or public institution of higher education to implement the statewide use of force data program. Advisory group members may participate in the development of the request for proposal and the review and evaluation of responsive bidders but may not participate or bid in the competitive procurement. The contracted institution of higher education must provide appropriate training to its staff, including training on racial equity issues.

Reporting Obligations of Law Enforcement Agencies. Each general or limited authority law enforcement agency must report each incident where an officer employed by the agency used force and any of the following occurred:

- a fatality in connection with the use of force;
- great bodily harm in connection with the use of force;
- substantial bodily harm in connection with the use of force; or
- an officer: (1) discharged a firearm at or in the direction of a person; (2) pointed a firearm at a person; (3) used a chokehold or vascular neck restraint; (4) used an electronic control weapon against a person; (5) used oleoresin capsicum spray against a person; (6) discharged a less lethal shotgun or other impact munitions at or in the direction of a person; (7) struck a person using an impact weapon or instrument; (8) used any part of their body to physically strike a person; (9) used a vehicle to

intentionally strike a person or vehicle; or (10) deployed or had control of a canine that bites a person.

Each agency must submit the reports on its officers' use of force no later than three months after the AGO determines the statewide use of force data program can accept reports. Reports must be submitted in accordance with the requirements of the statewide use of force data program and include:

- the date, time, and location of the incident;
- the name of the officer's employer;
- the type of force used by the officer;
- the type of injury sustained by the person the officer's force was used against;
- the type of injury sustained by the officer, if any;
- whether the person was armed or unarmed;
- whether the person was believed to be armed;
- the type of weapon the person possessed, if any;
- the age, gender, race, and ethnicity of the person and the officer, if known;
- the name of the officer, if known;
- the person's tribal affiliation, if applicable and known;
- whether the person exhibited any signs of a potential mental health condition or substance use;
- the officer's years of service;
- the reason for the initial contact between the officer and the person;
- whether any minors were present, if known;
- the name of the entity conducting an independent investigation of the incident, if applicable;
- whether dashboard or body worn camera footage was recorded for the incident;
- the number of officers and suspects who were present when force was used; and
- any additional data required by the statewide use of data program.

Votes on Final Passage:

Senate	46	2	
House	97	1	(House amended)
Senate	46	2	(Senate concurred)

Effective: The bill contains several effective dates. Please refer to the bill.

RECEIVED

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10:15 AM

Laura Bell

Attachment F

SECRETARY OF THE SENATE

CONFERENCE COMMITTEE REPORT

Bill No: ESHB 1054

Date: 4/22/2021 09:00 AM

Prepared by: Tim Ford

Includes "New Item": Y

Mme. Speaker:

Mr. President:

We of your Conference Committee, to whom was referred ESHB 1054, establishing requirements for tactics and equipment used by peace officers, have had the same under consideration and we recommend that:

All previous amendments not be adopted and that the attached striking amendment S-2968.3 be adopted

and that the bill do pass as recommended by the Conference Committee.

Member	Recommend	Do Not Recommend	Not Present or Not Voting
Representative Goodman	X		
Representative Johnson	X		
Representative Mosbrucker	X		
Senator Dhingra	X		
Senator Padden	X		
Senator Pedersen	X		

*A Conference Committee Report must be recommended by a majority of the Conference Committee members of each chamber.

Comparison of House, Senate, and Proposed Conference Committee Version of ESHB 1054

Brief Summary:

Establishes parameters and requirements for law enforcement tactics and equipment including:

- Chokeholds and neck restraints;
- Training and use of canine teams;
- Use of tear gas;
- Acquisition of military equipment;
- Vehicular pursuits and firing upon moving vehicles;
- No knock warrants.

Topic	House Version (ESHB 1054)	Senate Version (S-2234.E) (As Passed Senate on 4/6/2021)	Proposed Conference Striking Amendment (S-2968.3)
Authorized use of tear gas - Section 4			
Situations when tear gas may be used Section 4(1)	May only be used as necessary to alleviate a present risk of serious harm posed by a riot, barricaded subject, or hostage situation.	May only be used as necessary to alleviate a present risk of serious harm posed by a riot <u>inside a correctional, jail, or detention facility</u> ; barricaded subject; or hostage situation.	House language retained. Page 3, line 11
Prior to deploying tear gas, the officer or employee must: Section 4(2)	(1) Exhaust available and appropriate alternatives; (2) Obtain authorization from the chief law enforcement officer; (3) Announce the intent to use tear gas; (4) Allow sufficient time and space for subjects to comply; (5) Announce the intent to use tear gas a second time.	(1) Exhaust available and appropriate alternatives; (2) Obtain authorization from <u>a supervising officer</u> ; (3) Announce the intent to use tear gas; (4) Allow sufficient time and space for subjects to comply.	Senate language retained.

Comparison of House, Senate, and Proposed Conference Committee Version of ESHB 1054

Topic	House Version (ESHB 1054)	Senate Version (S-2234.E) (As Passed Senate on 4/6/2021)	Proposed Conference Striking Amendment (S-2968.3)
Additional requirements	Not included	Not included	In the case of a riot outside of a correctional, jail, or detention facility, the officer or employee may use tear gas only after: (a) Receiving authorization from the highest elected official of the jurisdiction in which the tear gas is to be used, and (b) meeting the requirements of subsection (2) of this section. Page 3, line 24
Defined terms. Section 4(3)	Defines "chief law enforcement officer" and "tear gas."	Defines "barricaded subject," "hostage situation," and "tear gas."	Senate language retained with added definition of "highest elected official" Page 3, line 34
Acquisition of military equipment - Section 5			
Inventory Section 5(2)	Not addressed	Requires law enforcement agencies to compile an inventory of military equipment and provide the inventory to WASPC no later than November 1, 2021.	Senate language retained.
Definition of "military equipment" Section 5(3)	Includes firearms and ammunition .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft tanks, mine resistant ambush protected vehicles, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.	Removes "mine resistant ambush protected vehicles" from definition.	Senate language retained.
Vehicular pursuits - Section 7			

Comparison of House, Senate, and Proposed Conference Committee Version of ESHB 1054

Topic	House Version (ESHB 1054)	Senate Version (S-2234.E) (As Passed Senate on 4/6/2021)	Proposed Conference Striking Amendment (S-2968.3)
A peace officer may not engage in a vehicular pursuit, unless:			
Section 7(1)(a)	There is probable cause to believe a person has committed or is committing a violent offense or sex offense.	(i) There is probable cause to believe a person has committed or is committing a violent offense, sex offense, <u>or escape; or</u> (ii) <u>There is reasonable suspicion a person has committed or is committing a driving under the influence offense.</u>	Senate language retained.
Section 7(1)(b)	The pursuit is necessary for the purpose of identifying or apprehending the person;	Unchanged	Senate language retained.
Section 7(1)(c)	Under the circumstances, the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks associated with the vehicular pursuit;	<u>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;</u>	Senate language retained.

Comparison of House, Senate, and Proposed Conference Committee Version of ESHB 1054

Topic	House Version (ESHB 1054)	Senate Version (S-2234.E) (As Passed Senate on 4/6/2021)	Proposed Conference Striking Amendment (S-2968.3)
Section 7(1)(d)	The officer has received authorization to engage in the pursuit from a supervising officer, there is supervisory control of the pursuit, and the supervisor considers relevant factors affecting public safety such as whether there are minors present in the vehicle.	<p>(i) The officer has received authorization to engage in the pursuit from a supervising officer and there is supervisory control of the pursuit. The officer, in consultation with the supervising officer, must consider alternatives to the vehicular pursuit. The supervisor must consider the justification for the vehicular pursuit and other safety considerations, including but not limited to speed, weather traffic, road conditions, and the known presence of minors in the vehicle. The pursuit must be terminated if any of the requirements are not met.</p> <p>(ii) For jurisdictions with fewer than 10 officers, the officer must request an on-call supervisor be notified of the pursuit. The officer is responsible for considering alternatives and safety considerations.</p>	Senate language retained.
<p>Coordination with other vehicles</p> <p>Section 7(2)</p>	Not addressed	A pursuing officer must comply with agency procedures for designating the primary pursuit vehicle and the appropriate number of vehicles permitted to participate in the pursuit and comply with any agency procedures for coordinating operations with other jurisdictions, including available tribal police departments.	Senate language retained.

Comparison of House, Senate, and Proposed Conference Committee Version of ESHB 1054

Topic	House Version (ESHB 1054)	Senate Version (S-2234.E) (As Passed Senate on 4/6/2021)	Proposed Conference Striking Amendment (S-2968.3)
Definition of "vehicular pursuit" Section 7(4)	Not defined.	Definition included.	Senate language retained.

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By Conference Committee

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Law enforcement agency" includes any "general authority
7 Washington law enforcement agency" and any "limited authority
8 Washington law enforcement agency," as those terms are defined in RCW
9 10.93.020, and any state or local agency providing or otherwise
10 responsible for the custody, safety, and security of adults or
11 juveniles incarcerated in correctional, jail, or detention
12 facilities. "Law enforcement agency" does not include the national
13 guard or state guard under Title 38 RCW or any other division of the
14 United States armed forces.

15 (2) "Peace officer" includes any "general authority Washington
16 peace officer," "limited authority Washington peace officer," and
17 "specially commissioned Washington peace officer" as those terms are
18 defined in RCW 10.93.020, and any employee, whether part-time or
19 full-time, of a jail, correctional, or detention facility who is
20 responsible for the custody, safety, and security of adult or
21 juvenile persons confined in the facility.

22 NEW SECTION. **Sec. 2.** (1) A peace officer may not use a
23 chokehold or neck restraint on another person in the course of his or
24 her duties as a peace officer.

25 (2) Any policies pertaining to the use of force adopted by law
26 enforcement agencies must be consistent with this section.

27 (3) For the purposes of this section:

28 (a) "Chokehold" means the intentional application of direct
29 pressure to a person's trachea or windpipe for the purpose of
30 restricting another person's airway.

1 (b) "Neck restraint" refers to any vascular neck restraint or
2 similar restraint, hold, or other tactic in which pressure is applied
3 to the neck for the purpose of constricting blood flow.

4 NEW SECTION. **Sec. 3.** (1) The criminal justice training
5 commission shall convene a work group to develop a model policy for
6 the training and use of canine teams.

7 (2) The criminal justice training commission must ensure that the
8 work group is equally represented between community and law
9 enforcement stakeholders, including the following: Families who have
10 lost loved ones as a result of violent interactions with law
11 enforcement; an organization advocating for civil rights; a statewide
12 organization advocating for Black Americans; a statewide organization
13 advocating for Latinos; a statewide organization advocating for Asian
14 Americans, Pacific Islanders, and Native Hawaiians; a federally
15 recognized tribe located in Washington state; a community
16 organization from eastern Washington working on police
17 accountability; a community organization from western Washington
18 working on police accountability; a community organization serving
19 persons who are unhoused; the faith-based community with advocacy on
20 police accountability; an emergency room doctor with relevant
21 experience; Washington association of sheriffs and police chiefs;
22 Washington state patrol; Washington fraternal order of police;
23 Washington council of police and sheriffs; Washington state patrol
24 troopers association; council of metropolitan police and sheriffs;
25 teamsters local 117; and Washington state police canine association.

26 (3) The model policy work group shall consider:

27 (a) Training curriculum, including the history of race and
28 policing;

29 (b) Circumstances where the deployment of a canine may not be
30 appropriate;

31 (c) Circumstances where deployment of a canine on leash may be
32 appropriate;

33 (d) Strategies for reducing the overall rate of canine bites;

34 (e) Circumstances where a canine handler should consider the use
35 of tactics other than deploying a canine;

36 (f) Explicitly prohibiting the use of canines for crowd control
37 purposes;

38 (g) Canine reporting protocols;

1 (h) Circumstances where the use of voluntary canines and canine
2 handlers may be appropriate; and

3 (i) Identifying circumstances that would warrant the
4 decertification of canine teams.

5 (4) The criminal justice training commission shall publish the
6 model policy on its website by January 1, 2022.

7 (5) This section expires July 1, 2022.

8 NEW SECTION. **Sec. 4.** (1) A law enforcement agency may not use
9 or authorize its peace officers or other employees to use tear gas
10 unless necessary to alleviate a present risk of serious harm posed by
11 a: (a) Riot; (b) barricaded subject; or (c) hostage situation.

12 (2) Prior to using tear gas as authorized under subsection (1) of
13 this section, the officer or employee shall:

14 (a) Exhaust alternatives to the use of tear gas that are
15 available and appropriate under the circumstances;

16 (b) Obtain authorization to use tear gas from a supervising
17 officer, who must determine whether the present circumstances warrant
18 the use of tear gas and whether available and appropriate
19 alternatives have been exhausted as provided under this section;

20 (c) Announce to the subject or subjects the intent to use tear
21 gas; and

22 (d) Allow sufficient time and space for the subject or subjects
23 to comply with the officer's or employee's directives.

24 (3) In the case of a riot outside of a correctional, jail, or
25 detention facility, the officer or employee may use tear gas only
26 after: (a) Receiving authorization from the highest elected official
27 of the jurisdiction in which the tear gas is to be used, and (b)
28 meeting the requirements of subsection (2) of this section.

29 (4) For the purposes of this section:

30 (a) "Barricaded subject" means an individual who is the focus of
31 a law enforcement intervention effort, has taken a position in a
32 physical location that does not allow immediate law enforcement
33 access, and is refusing law enforcement orders to exit.

34 (b) "Highest elected official" means the county executive in
35 those charter counties with an elective office of county executive,
36 however designated, and in the case of other counties, the chair of
37 the county legislative authority. In the case of cities and towns, it
38 means the mayor, regardless of whether the mayor is directly elected,
39 selected by the council or legislative body pursuant to RCW 35.18.190

1 or 35A.13.030, or selected according to a process in an established
2 city charter. In the case of actions by the Washington state patrol,
3 it means the governor.

4 (c) "Hostage situation" means a scenario in which a person is
5 being held against his or her will by an armed, potentially armed, or
6 otherwise dangerous suspect.

7 (d) "Tear gas" means chloroacetophenone (CN), O-chlorobenzylidene
8 malononitrile (CS), and any similar chemical irritant dispersed in
9 the air for the purpose of producing temporary physical discomfort or
10 permanent injury, except "tear gas" does not include oleoresin
11 capsicum (OC).

12 NEW SECTION. **Sec. 5.** (1) A law enforcement agency may not
13 acquire or use any military equipment. Any law enforcement agency in
14 possession of military equipment as of the effective date of this
15 section shall return the equipment to the federal agency from which
16 it was acquired, if applicable, or destroy the equipment by December
17 31, 2022.

18 (2) (a) Each law enforcement agency shall compile an inventory of
19 military equipment possessed by the agency, including the proposed
20 use of the equipment, estimated number of times the equipment has
21 been used in the prior year, and whether such use is necessary for
22 the operation and safety of the agency or some other public safety
23 purpose. The agency shall provide the inventory to the Washington
24 association of sheriffs and police chiefs no later than November 1,
25 2021.

26 (b) The Washington association of sheriffs and police chiefs
27 shall summarize the inventory information from each law enforcement
28 agency and provide a report to the governor and the appropriate
29 committees of the legislature no later than December 31, 2021.

30 (3) For the purposes of this section:

31 (a) "Military equipment" means firearms and ammunition of .50
32 caliber or greater, machine guns, armed helicopters, armed or armored
33 drones, armed vessels, armed vehicles, armed aircraft, tanks, long
34 range acoustic hailing devices, rockets, rocket launchers, bayonets,
35 grenades, missiles, directed energy systems, and electromagnetic
36 spectrum weapons.

37 (b) "Grenade" refers to any explosive grenade designed to injure
38 or kill subjects, such as a fragmentation grenade or antitank
39 grenade, or any incendiary grenade designed to produce intense heat

1 or fire. "Grenade" does not include other nonexplosive grenades
2 designed to temporarily incapacitate or disorient subjects without
3 causing permanent injury, such as a stun grenade, sting grenade,
4 smoke grenade, tear gas grenade, or blast ball.

5 (4) This section does not prohibit a law enforcement agency from
6 participating in a federal military equipment surplus program,
7 provided that any equipment acquired through the program does not
8 constitute military equipment. This may include, for example: Medical
9 supplies; hospital and health care equipment; office supplies,
10 furniture, and equipment; school supplies; warehousing equipment;
11 unarmed vehicles and vessels; conducted energy weapons; public
12 address systems; scientific equipment; and protective gear and
13 weather gear.

14 NEW SECTION. **Sec. 6.** All law enforcement agencies shall adopt
15 policies and procedures to ensure that uniformed peace officers while
16 on duty and in the performance of their official duties are
17 reasonably identifiable. For purposes of this section, "reasonably
18 identifiable" means that the peace officer's uniform clearly displays
19 the officer's name or other information that members of the public
20 can see and the agency can use to identify the peace officer.

21 NEW SECTION. **Sec. 7.** (1) A peace officer may not engage in a
22 vehicular pursuit, unless:

23 (a) (i) There is probable cause to believe that a person in the
24 vehicle has committed or is committing a violent offense or sex
25 offense as defined in RCW 9.94A.030, or an escape under chapter 9A.76
26 RCW; or

27 (ii) There is reasonable suspicion a person in the vehicle has
28 committed or is committing a driving under the influence offense
29 under RCW 46.61.502;

30 (b) The pursuit is necessary for the purpose of identifying or
31 apprehending the person;

32 (c) The person poses an imminent threat to the safety of others
33 and the safety risks of failing to apprehend or identify the person
34 are considered to be greater than the safety risks of the vehicular
35 pursuit under the circumstances; and

36 (d) (i) Except as provided in (d) (ii) of this subsection, the
37 officer has received authorization to engage in the pursuit from a
38 supervising officer and there is supervisory control of the pursuit.

1 The officer in consultation with the supervising officer must
2 consider alternatives to the vehicular pursuit. The supervisor must
3 consider the justification for the vehicular pursuit and other safety
4 considerations, including but not limited to speed, weather, traffic,
5 road conditions, and the known presence of minors in the vehicle, and
6 the vehicular pursuit must be terminated if any of the requirements
7 of this subsection are not met;

8 (ii) For those jurisdictions with fewer than 10 commissioned
9 officers, if a supervisor is not on duty at the time, the officer
10 will request the on-call supervisor be notified of the pursuit
11 according to the agency's procedures. The officer must consider
12 alternatives to the vehicular pursuit, the justification for the
13 vehicular pursuit, and other safety considerations, including but not
14 limited to speed, weather, traffic, road conditions, and the known
15 presence of minors in the vehicle. The officer must terminate the
16 vehicular pursuit if any of the requirements of this subsection are
17 not met.

18 (2) A pursuing officer shall comply with any agency procedures
19 for designating the primary pursuit vehicle and determining the
20 appropriate number of vehicles permitted to participate in the
21 vehicular pursuit and comply with any agency procedures for
22 coordinating operations with other jurisdictions, including available
23 tribal police departments when applicable.

24 (3) A peace officer may not fire a weapon upon a moving vehicle
25 unless necessary to protect against an imminent threat of serious
26 physical harm resulting from the operator's or a passenger's use of a
27 deadly weapon. For the purposes of this subsection, a vehicle is not
28 considered a deadly weapon unless the operator is using the vehicle
29 as a deadly weapon and no other reasonable means to avoid potential
30 serious harm are immediately available to the officer.

31 (4) For purposes of this section, "vehicular pursuit" means an
32 attempt by a uniformed peace officer in a vehicle equipped with
33 emergency lights and a siren to stop a moving vehicle where the
34 operator of the moving vehicle appears to be aware that the officer
35 is signaling the operator to stop the vehicle and the operator of the
36 moving vehicle appears to be willfully resisting or ignoring the
37 officer's attempt to stop the vehicle by increasing vehicle speed,
38 making evasive maneuvers, or operating the vehicle in a reckless
39 manner that endangers the safety of the community or the officer.

1 **Sec. 8.** RCW 10.31.040 and 2010 c 8 s 1030 are each amended to
2 read as follows:

3 (1) To make an arrest in criminal actions, the officer may break
4 open any outer or inner door, or windows of a dwelling house or other
5 building, or any other (~~inclosure~~ ~~[enclosure]~~) enclosure, if, after
6 notice of his or her office and purpose, he or she be refused
7 admittance.

8 (2) An officer may not seek and a court may not issue a search or
9 arrest warrant granting an express exception to the requirement for
10 the officer to provide notice of his or her office and purpose when
11 executing the warrant.

12 NEW SECTION. **Sec. 9.** RCW 43.101.226 (Vehicular pursuits—Model
13 policy) and 2003 c 37 s 2 are each repealed.

14 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act
15 constitute a new chapter in Title 10 RCW."

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By Conference Committee

16 On page 1, line 2 of the title, after "officers;" strike the
17 remainder of the title and insert "amending RCW 10.31.040; adding a
18 new chapter to Title 10 RCW; repealing RCW 43.101.226; and providing
19 an expiration date."

--- END ---