



## Clark County Sheriff's Office

707 West 13th Street • PO Box 410 • Vancouver, WA 98666 • (564) 397-2366 • Fax (564) 397-2367

Chuck E. Atkins, Sheriff

### **CCSO's Review and Implementation of 2021 Police Reform Legislation – Sheriff Atkins** (July 22, 2021)

The Washington State Legislature has completed in April the most significant package of police reforms in our history of current law enforcement. A majority of these laws come into effect on Sunday, July 25, 2021. These new laws were not passed by a vote of the people, but by legislators who to varying degrees did not constructively collaborate with various law enforcement groups during the legislative process. I remain concerned that language in the new laws that appears reasonable on its face, and could make sense to the average person, is problematic for the Clark County Sheriff's Office. In addition, these reforms create challenges for our governmental partners and for citizens in ways that we will have to mitigate the best that the law allows.

Our concern is that the new legislation will have some unintentional consequences that could put the public and police officers in jeopardy. I expect that people could see a reduced police response and extended investigations as a result. I expect that despite our best efforts to the contrary, Clark County could be on a trajectory now to see the same type of increased crime and violence that larger cities are experiencing – elsewhere in Washington, Oregon, and across the country.

- The Legislature has made clear its intention to reduce police contacts and police presence and therefore reduce police use of force. This tactic will be successful, but it comes with a cost.
- The Legislature has created a new “duty to leave the scene” for law enforcement officers. In the absence of a crime or an imminent threat of death or substantial bodily harm, law enforcement officers have a duty to leave the scene. [HB 1310](#)
- As of July 25<sup>th</sup>, the legislature has changed long standing state laws, based upon common law throughout the country, on when and under what circumstances it is lawful to use force. The new laws prohibit the use of force in any circumstance otherwise – making such use of force unlawful.

If a law enforcement officer puts hands on someone to restrain them even slightly, this is a “use of force”. Prior to this new law, an officer who was able to articulate reasonable suspicion of a crime was authorized by law to use “objectively reasonable” force (as established by federal law and the US Supreme Court) as necessary to detain the person until it could be determined if they had committed a crime.

[www.clark.wa.gov/sheriff](http://www.clark.wa.gov/sheriff)

For other formats, contact the Clark County ADA Office 564.397.2322 / 711 or 800.833.6388 / ADA@clark.wa.gov

- From a practical standpoint, the former law gave deputies the authority to detain someone, and use force if necessary to temporarily detain them, based upon them matching the description of a criminal leaving the scene of a crime, at least until deputies could arrive and help determine if there had been a crime, and if it was probable that the person detained had committed that crime.
  - For example, as law enforcement responds to an armed robbery at a convenience store. A subject matching the description of the robbery suspect is seen running away as deputies are arriving. We no longer have the authority to physically stop and detain (if they resist) that individual under these new reforms. We now need enough information (probable cause to make an arrest) to detain the suspect using force (grabbing, holding, etc.) and stop him.
- As a result, the very basic aspects of how law enforcement conducts itself is changing, and a paradigm shift must take place in the process. This includes those in law enforcement, as well as those governmental and community service groups who partner with law enforcement, and those who receive the services provided by law enforcement. That is all changing, rapidly.
  - The governmental and community service groups include 911 dispatchers, fire departments, emergency medical services, child protective services, adult protective services, community mental health advocates, and homeless outreach services among many others.
- Law enforcement, over time, has become the default for almost every “emergency problem” in our community. As I have often said, “If you’re not on fire or bleeding...it becomes a law enforcement problem.” This was neither sought after nor desired, and police response and jail booking became the default for dealing with a wide variety of behaviors that at their core were not crimes or criminal conduct. This particularly relates to people experiencing substance use issues, and mental crisis. [RCW 71.05.455](#)
- Those encounters routinely involved the potential of varying levels of use of force, either to get the person to leave a place of business where they were not wanted, or to get them into health services. It is now unlawful to use force on such a person for which there is not probable cause that they have committed a crime or are an “imminent threat” of causing death or substantial bodily harm to another.
- "Imminent threat of serious physical injury or death" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

- The new law does not allow for use of force for enforcing civil orders for taking persons into custody for their health or welfare, for example.
  - The terminology of “Use of force” is typically associated with lethal, or deadly force. Use of force can also be forcing someone onto a gurney to be transported to a hospital, mental health, or substance use treatment center.
  - Forcing a runaway child into a patrol car to be returned home, or to a hospital, or other treatment center.
  - These are examples where it is unlawful for law enforcement officers to use force.
- Law enforcement officers determined to have used force unlawfully can now be de-certified by the state, absent the involvement of their Police Chief or Sheriff.
- If police officers have a duty to leave the scene, absent a crime, or imminent threat of death or substantial bodily injury – then police administrators, supervisors and dispatchers must seriously consider whether it is appropriate to send a police officer to such a call. A police officer who remains on-scene of a call, absent a crime or threat of imminent death or substantial bodily injury, is violating the law and is subject to being de-certified by the state.
- New laws establish criteria for mandatory and discretionary de-certification and suspension of peace officers (and corrections officers) for what we consider to be the potential of errors in judgement, and mistakes, as opposed to intentional bad faith acts, decisions, or intentional excessive use of force.
- Several police agencies in the state that adopted policies regarding the new law, have already reported numerous incidents indicating an inability to provide services to those on drugs or in mental crisis, and reduced public safety, because of the new law.
- In some instances, police are being called back to a scene, perhaps repeatedly, for their not having had the lawful authority to resolve the situation the first time - delivering the person in crisis to treatment for example, because it’s unlawful to use force for such a purpose under the new law.
- This creates a drain on already limited resources. As an anti-law enforcement sentiment has swept the country, law enforcement officers are leaving the profession in unprecedented numbers, many of them retiring early, or just going and getting new jobs, often at the urging of their spouses or significant others. This has occurred with Clark County deputies.
- Our agency, like many across the country and the state, are at critically low staffing shortages already, and having difficulty recruiting new hires as it was. The Washington Association of Sheriffs and Police Chiefs recently distributed a

[www.clark.wa.gov/sheriff](http://www.clark.wa.gov/sheriff)

For other formats, contact the Clark County ADA Office 564.397.2322 / 711 or 800.833.6388 / ADA@clark.wa.gov

report reflecting that Washington state is 51<sup>st</sup> out of 50 states (when you include Washington DC) in the staffing metric of officers-per-thousand residents. Clark County is the lowest in the state of Washington at .65 officer-per-thousand.

- This staffing shortage may be further exacerbated by the new “Duty of Care” doctrine created with the policing reform laws. This creates a higher standard of avoiding the use of force, in part by requiring deputies to request back-up deputies in effort to minimize the need for use of force. This will likely result in more deputies attending to fewer calls. Doing so reduces further the number of available deputies to respond to other calls, while at the same time angering some in the community who will object to an increased number of deputies as a “show of force”.

Resulting changes to how the Clark County Sheriff’s Office operates:

- Call response: If there is no outward appearance of a crime, and no threat of “imminent” harm, supervisors/sergeants must consider the totality of circumstances prior to allowing units to respond. Calls which historically included a police response, but may no longer include people in mental crisis, suicidal individuals, Involuntary Treatment Act/Mental Health Pickups, runaways, civil standbys, evictions, parenting plan transfers, assist fire/ems with resistant or struggling/resistive patients, etc. These are all examples where there is no crime, and typically no threat of “imminent harm of death or substantial bodily harm.” For example, RCW 71.05.455 states, “...law enforcement officers are not mental health professionals. It is the intent of the legislature that mental health incidents are addressed by mental health professionals.” The Legislature’s intent is very clear. They do not want law enforcement officers present at non-criminal events.
  - For example, a person in mental crisis, shouting on a street corner, even if openly waving a stick at the air is not committing a crime. They do not represent a threat of “imminent” harm of death or substantial bodily injury, in the legal sense as defined by the law.
- Sergeants will need to continuously evaluate what their deputies should/should not respond to, if the matter is not criminal, and there is no threat of imminent harm, the new law requires the deputy to leave the scene.
- This significantly impacts “community caretaking” efforts that our deputies have engaged in for decades. We will work diligently at identifying alternate resources for people calling for assistance in such circumstances, trying to steer them to help where it may be otherwise available.
- We will also look to handle more calls by phone, which means people will not see deputies responding in person as often as they may be accustomed.

[www.clark.wa.gov/sheriff](http://www.clark.wa.gov/sheriff)

For other formats, contact the Clark County ADA Office 564.397.2322 / 711 or 800.833.6388 / ADA@clark.wa.gov

Clark County Sheriff's deputies have a long history of routinely and repeatedly putting their lives on the line, literally running into buildings, business, or other places upon hearing gunshots, or believing that a husband is trying to kill his wife, or that an armed murder suspect is hiding inside. We have a long history of protecting and safeguarding ALL of our community members in this way, regardless of race, gender, sexual preference or any other characteristic. We have and do risk our lives for the community, much more frequently than what most people can imagine.

Law Enforcement is still a NOBLE profession. Detractors have painted the industry with a very broad brush, seeking to vilify each and every police officer/deputy – regardless of individual gender, race, honesty, integrity, courage, heroism or decades of commendable service. We recognize most of our citizens still support us and how we serve them. Our MISSION has not changed – “to protect and safeguard the community.” We will continue to perform our duties with pride, courage, and diligence; free of bias or discrimination – but our operational procedures MUST change – as dictated by the legislature. We will continue to adjust our operational procedures in the weeks and months to come as we gain greater insight and understanding into the expectations of us from our community, the Courts, the Legislature, and our governmental business partners.

[www.clark.wa.gov/sheriff](http://www.clark.wa.gov/sheriff)

For other formats, contact the Clark County ADA Office 564.397.2322 / 711 or 800.833.6388 / ADA@clark.wa.gov