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January 26, 2022

DELIVERED VIA EMAIL

Honorable Chair Roger Goodman
Washington State House of Representatives
436B Legislative Building
PO Box 40600
Olympia, WA 98504

Dear Chairman Goodman:

Regarding: HB 2037 – Modifying use of Force

It was a significant disappointment to not be called to testify at Tuesday morning's hearing. As a result, the committee and the viewing public were not given the opportunity to hear from our state's rank and file officers and deputies; the professionals doing the work on our streets. As you know, we have a specific and unique position on the bill when compared to the positions taken by other law enforcement focused speakers and compared to the community advocacy groups.

In summary, we believe there is a clarification that can be easily made to our statutes to restore an officer's ability to legally conduct an investigatory detention. HB 2037 does not bridge the gap. We hope you will agree to amend HB 2037 to authorize an objectively reasonable use of force when an officer has reasonable suspicion. HB 2037 is built on a false premise that an officer can rely on the crime of obstructing to use force and detain a person if, and only if, that person elects to flee. This is a precarious house of cards. Below we address why.

WACOPS testimony regarding HB 2037 –

- Last year HB 1310 limited law enforcement's authority to use physical force to only those circumstances where probable cause exists and eliminated law enforcement's authority to conduct temporary investigative detentions based on reasonable suspicion.
- The results of those changes have been significant. Throughout the legislative process last session and during the interim, WACOPS has consistently cautioned policymakers about the potential for negative impacts to public safety that would result from the implementation of 1310. And, just as we warned, Washington's Attorney General concluded that 1310 precludes an officer from using physical force in the context of an investigatory detention, even if the individual does not comply with the request to stop.

- In the recently issued Opinion, the Attorney General expressed the need to not only define use of force but also to clarify when officers are authorized to use force under 1310. HB 2037 attempts to address these concerns, but it does not go far enough to allow for officers to use force to detain persons for a temporary investigative purpose based on reasonable suspicion.
- Based on the prohibitions that have resulted with the passage of 1310, *nothing within statute* in the State of Washington expressly *authorizes law enforcement to conduct or use physical force in a temporary investigative detention*. Officers respond to calls for service and are often met with a chaotic and rapidly evolving situation. Probable cause can rarely be determined during an initial response to a 911 call without the ability to temporarily detain and investigate an Officer's or Deputy's reasonable suspicion that a crime has occurred. As a result, persons suspected of, or otherwise involved in actively committing crimes, have walked away, along with evidence that may be critical to the investigation.
- HB 2037 *does not expressly* authorize Officers to temporarily detain a person while their investigation continues based on reasonable suspicion, nor does it allow Officers to use physical force to detain without probable cause with only a narrow exception. By stripping law enforcement of this important crime-fighting tactic, the legislature has taken away one of the critical tools that has been a centerpiece of proactive community-oriented policing. Community-oriented policing has resulted in reduced crime rates for the last several decades.
- Some have argued that Officers who face this dilemma simply invoke the crime of Obstruction as a means to circumvent the effects of 1310. In this regard, if the person suspected of committing a crime refuses to stay at the scene after being given a command to stop, that the Officer now has probable cause of the crime of Obstruction and is now authorized to use force, or so the argument goes. In our view, however, this is NOT an appropriate justification and certainly not within the spirit or intent behind 1310. We submit that the Attorney General agrees with the position of WACOPS and believes that it is unlikely that a court would find a person committed Obstruction by refusing to comply with an Officer's request to stop; even assuming that the crime of Obstruction would be prosecuted in the first place, which it rarely is anyway.
- HB 2037 does not improve public safety and does not clarify the confusion brought about by 1310. To the contrary, the proposed "fixes" to 1310 that HB 2037 purport to address will only provide more confusion and are likely to generate more negative collateral impacts to public safety. As a result, complex issues will need to be addressed in future legislative sessions rather than fix the problem created by 1310 here and now.
- As the Attorney General stated in its Opinion, "First, these bills address profoundly important topics regarding policing, and issues that can literally constitute matters of life and death. Consequently, legislative clarity in this area is especially important."
- For the reasons stated, WACOPS cannot support HB 2037. WACOPS stands ready to work with the members of this Committee to provide our community members the safety and response they need, and to provide Officers with the clarity they must have to meet the public safety needs of our state.

END of testimony.

The legislature enacted a matrix of accountability laws in 2021. We encourage you to trust those new processes and allow them to shed sunshine on any misuse of force. You can, and should, authorize an objectively reasonable use of force where there is reasonable suspicion so that officers can engage in an investigatory detention as they work to either clear the person of interest, or develop probable cause for an arrest. HB 2037 stops short of the actual fix necessary to grant officers the authority needed.

Sincerely,

A handwritten signature in cursive script that reads "Teresa Taylor".

Teresa Taylor
Executive Director

CC: House Public Safety Committee