

Changes in State Legislation: How new laws are changing the response from your Police Department and the level of service that we are able to provide.

My goal is to communicate to our community essential information before you are in need of services traditionally provided by the Anacortes Police Department. The goal has always been and will always continue to be for emergency responders to assist the most vulnerable individuals in our community.

On July 25th, 2021 several new laws passed in the most recent legislative session went into effect. In the weeks leading up to July 25th, I have worked non-stop to interpret the new laws, adjust the operating policy and procedure of the Anacortes Police Department, develop training curriculum to better assist our staff to implement the new laws during the course of their day-to-day activities. Over the course of the last two months, I have listened to multiple attorneys provide what legal insight they can offer to aid application of the new laws to common police practices, only to have many of them state that the application of some of the new statutes are unclear. I ask that you consider during the coming days these changes are new for the Police Department and community alike, and that your Police Department remains staffed with officers that care and remain committed to providing a high level of service within the boundaries that we are given by the laws of Washington State.

I also feel that it is important to highlight that many of the changes pursuant to new state laws are standards that the Anacortes Police Department has been operating under for many years as a professional and accredited law enforcement agency. The Anacortes Police Department has worked extremely hard to earn the trust of our community by hiring only the best individuals and emphasizing the importance of integrity, morals, values, and honesty as they do their work everyday to provide you the safest possible place to visit and call home.

Some elements of the new laws have little or no impact on operations for the Anacortes Police Department. It could be that we are already in compliance with the law through pre-existing policies and training required by accreditation, which we have maintained consistently beginning in 2007. A component of the new laws may regulate a practice or tool that is not something that the Anacortes Police Department utilizes such as tear gas, or military style weapons. There are other elements that will have significant change in our practices and have financial impacts such as the purchase of body worn cameras for officers as the most practical means to remain compliant with new requirements to record certain custodial interrogations during the investigatory process.

Other elements of recently passed laws are contradictory with each other and some components can be difficult to fully understand, interpret and put into practice. The majority of this letter will address two Bills of significant importance, which will become law on July 25, 2021. House Bill 1054 is referred to as the 'Tactics' bill and House Bill 1310 is referred to as the 'Use of Force' bill.

House Bill 1054 – “Tactics”:

This law includes several areas that have little impact on operations of the Anacortes Police Department. They are listed below:

- **Prohibition of no-knock warrants** (in over 21 years, I have never heard of any agency using a no-knock warrant, and is definitely not a practice for the Anacortes Police Department)
- **Regulates the use of tear gas** (not used by the Anacortes Police Department)
- **Prohibits and limits specific military surplus equipment obtained by agency** (none of the prohibited items have ever been used by the Anacortes Police Department)
- **Uniformed officers are identifiable** (all Anacortes Police Department uniformed officers wear name tags)
- **Limits the firing of a weapon at a vehicle in some situations** (Anacortes Police Department policy already included these restrictions prior to the new law).
- **Prohibits the use of chokeholds or neck restraints** (Anacortes Police Department Policy prior to the new law prohibited the use of respiratory neck restraints. In my over 21 years at the Anacortes Police Department, and as a former Use of Force Instructor, no Anacortes officer has used a vascular neck restraint.)

Other components of the Tactics bill have potential for higher impact and place limitations on the Anacortes Police Department’s ability to apprehend suspects. To better illustrate the changes, the laws as they were prior to July 25th, 2021 and the new laws under the “Tactics” bill are compared below:

Vehicle Pursuits:	
APD Policy Prior to July 25, 2021	New Law – Effective July 25, 2021
<ul style="list-style-type: none">• Suspect is an immediate threat to the public• Suspect is committing a serious felony crime• Only when the necessity of immediate suspect apprehension outweighs the danger of engaging in the pursuit	<ul style="list-style-type: none">• Only when there is probable cause to arrest the suspect for specific violent felony offenses, sex offenses, escapes from custody, or is Driving Under the Influence• The pursuit is necessary to identify or apprehend the suspect• A supervisor must approve the pursuit prior to the officer engaging in the pursuit.
A man breaks into an unoccupied home, stealing firearms, electronics and jewelry. He places the stolen items into the homeowner’s car, which he found parked in the garage. As police arrive, the suspect drives away at a high rate of speed. Officers are prohibited from entering into a pursuit with this suspect as Burglary, Theft (firearm, property and vehicle) are not violent offenses, a mandatory requirement for pursuit under the new law.	

House Bill 1310 ‘Use of Force’:

The text from Section 1 of House Bill 1310 reads as follows:

“The legislature intends to address excessive force and discriminatory policing by establishing a requirement for law enforcement and community corrections officers to act with reasonable care when carrying out their duties, including using de-escalation tactics and alternatives to deadly force. Further, the legislature intends to address public safety concerns by limiting the use of deadly force to very narrow circumstances where there is an imminent threat of serious physical injury or death. It is the intent of the legislature that when practicable, peace officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.”

The majority of legislators believed that the manner in which police officers deploy force needed stronger regulation and this bill was part of that goal. Another local Police Chief was also able to locate the same data that the Legislature was using during the most recent legislative session. This data indicated there were 35 deaths associated with a law enforcement response in 2019. Officers have incredible responsibility and are trusted to make difficult decisions, often in split seconds under extreme situations.

In 2019 police officers across the State of Washington:

- *Arrested 181,000 people. 99.98% no loss of suspect life.*
- *25,000 of those arrests were for violent offenses. 99.86% no loss of suspect life.*
- *1,927 police officers were feloniously assaulted. 98.18% no loss of suspect life.*
- *Calculations estimate that over 1.6 million people in Washington have contact with a police officer, annually. Based on this estimate 99.9978% of police and community contacts are not fatal.*

HB 1310 repeals RCW 10.31.050 which outlines when an officer may use force. In place of the repealed RCW a new standard was established, outlining the situations where force may be applied. In addition, the new standard added other considerations before an officer applies force. This process is called the “reasonable care standard.” The “reasonable care standard” includes four main components:

- The are four specific areas where force is allowed by officers (shown in following table)
- There is an imminent threat
 - *Imminent Threat of serious physical injury or death means that based on the totality of 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.*
- Requirement to exhaust certain tactics prior to the use of force, when appropriate
- Consider certain personal characteristics and behaviors

Anacortes Police Policy Prior to July 25, 2021

New Law – Effective July 25, 2021

<ul style="list-style-type: none">• Only use amount of force that reasonably appears necessary• Only used for a legitimate lawful purpose• The ultimate objective is to avoid or minimize injury• Multiple factors in determine reasonable and necessary force – Court decisions	<ul style="list-style-type: none">• Force only permitted in 4 situations:<ol style="list-style-type: none">1. Protect against criminal conduct2. Effect an arrest3. Prevent an escape4. Protect against an imminent threat (defined next page)
---	---

It is also important to know that it is necessary for all factors under the imminent threat component to be present for intervention by officers. This becomes more evident when you look at the definitions of the new law and attempt to apply the new standards to the traditional mental health complaints that the Anacortes Police have commonly responded to in the past.

To give perspective, if Anacortes Police Officers were to receive a report that an individual plans to commit suicide by shooting themselves three days from now, and refuses any offers for voluntary mental health services, the officer would not be allowed to take that person to a medical facility against their will. Using the above table, note that suicide is not a crime, the suicidal person is not “escaping from custody”, and by definition there is no “immediacy” to that person’s threat.

Anacortes Police Officers have regular contact with people in our community who have limited capacity due to mental, behavioral, chemical and/or alcohol disorders. These types of calls have historically been referred to as “community caretaking.” These individuals have not committed crimes, have not escaped, and who have not met all of the prongs established in the imminent threat definition. Prior to this law, if the person was a danger to themselves or others, law enforcement could take them into protective custody and safely transport them to a medical or mental health facility for needed evaluation and treatment. Today, under the new law, an Anacortes Police Officer faced with this scenario is forced to prioritize language in the law such as “leaving the area when no crime or imminent threat is present” over his/her desire to help those that cannot or have not helped themselves.

Many parts of the new law will not have a dramatic effect on the Anacortes Police Department. The Anacortes Police Department does not have instances where our officers have violated the rights of our citizens or have used unreasonable force on community members. Communication, has always been and will continue to be, the most effective tool that our officers have available to them. Effective communication prevents many incidents that the Anacortes Police Department responds to from evolving into a situation where the use of force by our officers becomes necessary. The necessity of effective communication is the reason that those skills are tested and assessed at multiple points in hiring and screening process when we look to hire new officers for our Police Department.

Part of House Bill 1310 is a requirement for law enforcement to use “De-escalation tactics.” De-escalation tactics are not a new concept. Anacortes Officers have historically used the same alternatives prior to physical force that are now listed as de-escalation tactics, with the exception being “leave the area if no crime has been committed or is being committed.” That option does not generally provide a resolution to the call for service that brought the police to the situation to begin with.

Under the new law and the reasonable care standard component, officers when possible, exhaust available and appropriate de-escalation tactics such as:

1. Create physical distance
2. Reposition as often as necessary
3. Single officer to communicate
4. Call additional resources such as crisis intervention or mental health
5. Call for back-up
6. Take as much time as necessary without using force
7. Leave the area if there is no threat of imminent harm and no crime has or is being committed.

It is important to note that #6 is subjective in the definition of a necessary amount of time. For example, if a subject wanted to lie down in the middle SR-20, how much time should an officer wait prior to dragging them off of the roadway to avoid collisions and the individual being ran over ? #7 changes the manner in which we respond to “community caretaking” type calls (as described above) that are not criminal and do not rise to an imminent threat.

It is also important to note that the requirements of the new laws have impacted others beyond the Police Department. The Anacortes Fire Department and emergency room staff at Island Hospital have expressed their safety concerns regarding limitations placed on Law Enforcement. The Police Department has been working with our emergency response partners in an ongoing basis to address the safety concerns of their employees. This has resulted in some modifications to how those individuals will respond to some situations in the future, but all parties including the Police Department desire to work collectively to provide safety and service to all segments of our community.

Council members recently were presented with an amendment to the 2021 budget from the city Finance Director. Part of that budget amendment was for the acquisition and implementation of Police Body Worn Cameras. I have no opposition to the concept of Police Worn Body Cameras, as I strongly believe what everyone will see if that our officers show exemplary conduct as they carry out their duties. This solution was the only means of compliance identified by Police Chiefs and Sheriffs from across the state when House Bill 1223 (HB-1223) was analyzed. HB-1223 requires certain interviews of criminal suspects to be recorded when they are in a “place of detention.” This could include the Police Department building or in a Police patrol vehicle. In discussion with State Lawmakers, they pointed out that the law did not specifically require body worn cameras. I can tell you that every Police Chief and Sheriff across the state has read HB-1223 numerous times and I have yet to hear of one that has determined their department would be able to comply with the new law without the use of Police Body Worn Cameras.

It is possible that future responses from the Anacortes Police Department may look different than what you have become accustomed to previously. You may see officers take additional time prior to acting at certain categories of call types, take no police type actions while at the scene, or simply leave the scene without resolving the incident in your eyes. Understand that those responses are based on our best interpretation and the interpretation of numerous legal advisors, of what the laws are at that time and how they apply to variables of that specific call for service.

By nature, Police Officers are willing to comply with the rules of law that are provided for them, but when those boundaries are not well defined, it makes a difficult job a bit tougher. I assure you that your Police Department remains committed to our motto: "Ensuring Public Safety, Earning Public Trust", and we are grateful for your continued support. The Anacortes Police Department is most effective when we work collaboratively with the community to solve issues, and our commitment to that has not changed.

Sincerely,

Dave Floyd

Chief of Police