ACLU Washington

New Law Demands De-escalation, Not Abandoning People in Crisis

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During the 2021 legislative session, Washington law makers passed **HB 1310**, a new law governing when and how police can use force against members of the public. The law creates an expectation for officers to de-escalate and requires police to exercise care in the use of any force, in order to reduce violence and prioritize the sanctity of life. However, some law enforcement agencies in Washington are dangerously misinterpreting the new law. They claim that newly-enacted HB 1310 means they can no longer respond to or assist people experiencing a behavioral health crisis.**[1]**

These police agencies have raised worthwhile questions about society's over-reliance on police to respond to behavioral health crisis. However, their claims and actions around the specific effects of HB 1310 are incorrect and harmful, putting the most vulnerable among us at risk. In reality, this new law foregrounds sanctity of life and supports the use of different tools for law enforcement, to ensure the safety of our most vulnerable communities.

HB 1310 Does Not Prevent Police from Responding to Crisis Calls

Law enforcement has raised questions about whether the law requires officers to leave the scene, or not show up at all, if a person in crisis is not committing a crime. The new **law(http://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1310-S2.SL.pdf?q=20210709102101)** limits when officers are authorized to use force to, among other circumstances, when a crime is being committed or if there is an immediate threat of harm to the person or others. This was in response to the many incidents of police violence against people who were not committing a crime at all (like **John T. Williams** or **Manny Ellis**) or who were killed while in crisis and needing help (like **Billy Langfitt**, or **Daniel Covarrubias**). The law emphasizes de-escalation rather than confrontation in responding to members of the public, and includes an illustrative list of de-escalation tactics, "such as: creating physical distance…, avoid[ing] competing

commands; calling for additional resources such as crisis intervention teams… and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed."

Some police departments have pointed to the last tactic, leaving the scene, as a *requirement* to not respond to incidents. In a letter, the Washington Sheriffs and Police Chiefs asked whether police are required to leave where "information known to the officer indicates that there is a high likelihood of the use of physical force and no threat of imminent harm and no [probable cause] of criminal activity."

This approach, of assuming that an incident with someone in crisis will result in violence rather than de-escalation, is what the law sought to change. It is choosing to be a **warrior** rather than a guardian. The suggested de-escalation tactics are based on nationally recognized best practices and on current officer training, and recognizes that each incident will require a case-by-case approach. The language of the law is clear that these are a non-exhaustive list of examples of de-escalation, and that no individual example is a requirement or mandate. The expectation is that officers will use their training to diffuse a situation.

The law does not prevent officers from going to the scene even when a crime is not being committed; it does require them to use reasonable care when engaging with people, even those in crisis. Choosing not to show up, because an officer may not be able to use violence, is an unfortunate choice that these departments are making, but it is not mandated by the new law.

HB 1310 Does Not Prohibit Officers from Detaining Someone Deemed an Imminent Risk

Under existing **law** (RCW 71.05.153), if someone is in crisis and "presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled," a Designated Crisis Responder (DCR) is authorized to order them to be detained on an emergency basis. This law also authorizes law enforcement to detain the person under the DCR's order, despite the person's objections, and take them to a health care facility. This process is known as emergency involuntary commitment.

However, a growing number of police departments are either refusing to assist in these detentions or even to show up on these calls at all.

Absolutely nothing in HB 1310 limits or prevents police ability to accompany a DCR on a visit to assess someone's wellbeing. Yet many DCRs have told Disability Rights Washington that police officers are doing just that, blaming HB 1310 and leaving mental health professionals and people in crisis holding the bag.

Responding without police backup might be fine for the majority of crisis calls in which a person is either stabilized on site or agrees to go to a hospital. For those rare cases in which someone is in such crisis that a DCR fears for the person's safety, in the absence of community-based alternatives, the police are effectively telling the person in crisis and their family that it's their problem. Deal with it.

RCW 71.05.153 authorizes police to assist mental health professionals when

someone in crisis has risen to a level of imminent danger. Nothing in HB 1310 prevents police from assisting in detaining and transporting a person to a hospital when a DCR has deemed that person an imminent risk under RCW 71.05. HB 1310 does not revoke law enforcement's authority to detain someone pursuant to a DCR's order. Moreover, the new law allows for reasonable force "to protect against an imminent threat" of harm, which is also required in order for a DCR to order an emergency detention.

Taken together, these provisions of RCW 71.05 and HB 1310 tell an officer that if a DCR has decided that a person presents an imminent risk of serious harm to themselves or others, the police officer may assist in detaining that person, using reasonable force if necessary. They do not have to take that person to jail since officers have broad discretion to seek mental health treatment for individuals in lieu of arrest under RCW 10.31.110. More often than not, officer assistance simply involves placing the person in handcuffs or helping to get a person into an ambulance or the back of a police car for transport to the hospital.

Finally, if it is liability these officers are concerned with, they should be reassured by the clear criminal and civil liability protection under existing **law** which already immunizes police when carrying out DCR-directed detentions unless they act without reasonable care (which would also violate HB 1310).

HB 1310 Emphasizes De-escalation in Crisis Situations, and it is Working.

The Sedro-Woolley police department recently posted on its Facebook page about an incident they claimed showed the problems posed by HB 1310.**[2]** They described a young man in crisis whom the officers and mental health professional had to spend two hours de-escalating. They regret that they could not "quickly subdue him" and use emergency room resources for treatment. Nowhere in their post do they note that if they thought the person was an imminent risk, they could have called a DCR to order an emergency detention with police assistance. They did not make an arrest and instead focused on de-escalating the situation – good for them.

This situation was de-escalated and — as the Sedro-Woolley Facebook post concluded — "No one got hurt." To this we say: well done. A reduction in use of force, especially with people in behavioral health crisis, was precisely the intention of HB 1310. Sedro-Woolley claims it was a waste of resources to have to spend several hours de-escalating and avoiding use of force. We see it as achieving what should be everyone's goal: the preservation of life and reduction of harm in police interactions.

We agree that there remain gaps in our crisis response system. We need more mental health professional responders, more crisis triage facilities, more peer support specialists, and better preventative and long-term community-based care. It is critical to reduce the instances of armed response to people who are in crisis. Those services would have likely reduced Sedro-Woolley's officer time on scene helping the young man. We are committed to working with service providers and responders to address these gaps.

What we do not support is law enforcement weaponizing reform at the risk of harm

to our most vulnerable community members. Ultimately, if further clarification or action is necessary on this important new law, let us reach that outcome in a way that continues to prioritize the sanctity of life.

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[1] See, e.g., Daniels, C. (2021, June 22), "New law limiting police use of force in Washington may make mental health response more difficult." King 5 News. **https://www.king5.com/article/news/politics/sedro-woolley-police-question-house-bill-1310-use-of-force-law-washington/281-3448d9b5-2949-42cd-ae0d-95cfc23c0dda**; (2021, June 21), "Police say it's hands off for some mental health cases after use of force law change. Oregon Public Broadcasting. **https://www.opb.org/article/2021/06/21/police-say-it-s-hands-off-for-some-mental-health-cases-after-use-of-force-law-change/**.
[2] Sedro-Woolley Police Department, Description of Incident on June 8, 2021, *Facebook*, June 9, 2021, **https://www.facebook.com/SedroWoolleyPoliceDepartment/**.

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