

2022 Legislative Agenda Brainstorming

Generated during the June 24, 2021 WASPC Legislative Committee Meeting

HB 1054 (Tactics)

- Amend the pursuits language to replace “probable cause” with “reasonable suspicion”
- Clarify the “uniformed officer” provision of the pursuits language
- Clarify the .50 caliber or greater provision of “military equipment”
- Authorize the use of chokeholds/LVNR where the use of deadly force is authorized

HB 1310 (Use of Force)

- Clarify the circumstances whereupon the use of force is authorized
 - Replace “probable cause” with “reasonable suspicion”
- Add language interpreting “available” “appropriate” and “possible” using a reasonable officer standard

SB 5476 (Blake)

- Establish a database to record diversions for simple possession
- Enable the prosecution of prior diverted simple possession offenses upon a third or subsequent simple possession offense
- Amend Section 6 (5) & (6) of SB 5476 to require a person diverted from a simple possession booking and referral for prosecution to stipulate to the allegation as a condition of the deferral
- Bifurcate the simple possession statute into two offenses and a definition of “personal use amount” with the current simple misdemeanor offense for those who possess under the “personal use amount” and a felony offense for those who possess in excess of the “personal use amount”

- Amend the law enforcement diversion language to instead require diversions for the first two simple possession offenses to be done by prosecutors

HB 1140 (Juvenile Access to Attorneys)

- Amend the language to require that officers make good faith attempts to connect a juvenile with an attorney, allowing officers to proceed (and the evidence admissible) if an unsuccessful good faith effort to connect the juvenile with attorney was made

Street Racing

- Authorize local jurisdictions to impound a vehicle for 30 days if the vehicle is found to have been street racing
- Authorize local jurisdictions to use photo enforcement cameras and other remote detection devices to obtain evidence of street racing

Catalytic Converter Theft

HB 1054, the tactics bill, also has the revision regarding .50 caliber firearms. We have received many questions about this, and it is another law that creates a lot of potential confusion. Below is some information from our Policy Director, James McMahan

WASPC Members:

There has been a hot topic of discussion related to the definition of “military equipment” in HB 1054 – more specifically the prohibition on “firearms and ammunition of .50 caliber or greater.” While WASPC does not give legal advice, we wanted to share our perspective and some thoughts on this topic, in the hopes that it will be helpful for you as you decide how your agency will proceed relating to this provision. This is for information only and your decision should be made with your legal advisor.

HB 1054 defines “military equipment” to include, among other things “firearms and ammunition of .50 caliber or greater.” The bill further prohibits a law enforcement agency from acquiring or using any “military equipment” as of July 25, 2021 and requires all “military equipment” to be returned or destroyed no later than December 31, 2022. We understand that law enforcement agencies may continue to possess “military equipment” between July 25, 2021, and December 31, 2022.

It is clear that there are quite a number of munitions that are .50 caliber or greater. Most shotguns meet this criteria, as do 37mm and 40mm launchers, bean bag rounds, tear gas rounds, flash bang rounds, certain door breaching equipment, among many others. Many Sheriffs and Chiefs have heard from their legal advisors that these items are therefore prohibited from being acquired or used as of July 25, 2021. They’re probably right.

WASPC, however, is confident that the Legislature did not intend to prohibit these items – particularly the less lethal munitions. It is clear throughout most of the law enforcement reform bills that the Legislature emphasized its desire that less lethal alternatives be used when there is a use of force. It would be absurd, in our opinion, that the Legislature would both encourage the use of such equipment while at the same

time prohibiting its acquisition and use. WASPC believes strongly that the Legislature intended to prohibit “sniper rifles” when it referenced “firearms and ammunition of .50 caliber or greater” and we have good reason for such belief.

This presents a difficult question: Should you continue to acquire and use equipment that meets the definition of “firearms and ammunition of .50 caliber or greater” that appears to have been inadvertently prohibited by the Legislature?

WASPC advises Sheriffs and Chiefs to not acquire or use any rifle or rifle ammunition that is .50 caliber or greater – that was clearly, in our opinion, the intent of the Legislature.

As to the question regarding firearms and ammunition of .50 caliber or greater that are not rifles .50 caliber or greater or rifle ammunition .50 caliber or greater, WASPC offers this consideration:

If you share WASPC’s good faith belief that the Legislature intended to emphasize, not prohibit, the use of less lethal tactics and equipment, and further believe that the use of such equipment embraces the position that the sanctity of human life should be the cornerstone principle of use of force policies and tactics, then it may therefore be in the interests of public safety to continue to acquire and use equipment that was likely unintentionally prohibited by the Legislature. This consideration is not without both legal and political risks, and you should weigh these potential risks against the public safety benefits.

Clearly these decisions are yours to make for your own agency. WASPC neither provides legal advice nor takes a position as to whether your decision for your agency is right or wrong. We want to make as much information available for you to make your own decision for your own agency.