

117TH CONGRESS  
2D SESSION

# S. 5309

To prohibit a Federal law enforcement officer from using lethal force or less lethal force unless such force is necessary, to encourage States to adopt similar laws or policies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2022

Mr. PADILLA introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit a Federal law enforcement officer from using lethal force or less lethal force unless such force is necessary, to encourage States to adopt similar laws or policies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Police Exercising Ab-  
5 solute Care with Everyone Act of 2022” or the “PEACE  
6 Act of 2022”.

1 **SEC. 2. USE OF FORCE BY FEDERAL LAW ENFORCEMENT**  
2 **OFFICERS.**

3 (a) DEFINITIONS.—In this section:

4 (1) DEESCALATION TACTICS AND TECH-  
5 NIQUES.—The term “deescalation tactics and tech-  
6 niques” means proactive actions and approaches  
7 used by a Federal law enforcement officer to sta-  
8 bilize a situation, taking as much time as appro-  
9 priate, without using physical force or the threat of  
10 physical force, so that more options and resources  
11 are available to gain the voluntary compliance of an  
12 individual and reduce or eliminate the need to use  
13 force, including verbal persuasion, warnings, tactical  
14 techniques, slowing down the pace of an incident,  
15 waiting out a subject, creating distance between the  
16 officer and the threat, and requesting additional re-  
17 sources to resolve an incident.

18 (2) FEDERAL LAW ENFORCEMENT OFFICER.—  
19 The term “Federal law enforcement officer” has the  
20 meaning given such term in section 115 of title 18,  
21 United States Code.

22 (3) IMMINENT THREAT.—The term “imminent  
23 threat”—

24 (A) means—

25 (i) an individual creating a risk of  
26 harm to others with the present ability, op-

1           portunity, and apparent intent to imme-  
2           diately cause the harm that is threatened;  
3           and

4                   (ii) a risk that, based on the informa-  
5           tion available at the time, must be imme-  
6           diately confronted and addressed; and

7           (B) does not include merely a fear of fu-  
8           ture harm.

9           (4) LESS LETHAL FORCE; LETHAL FORCE.—

10          The terms “less lethal force” and “lethal force” have  
11          the meanings given those terms in section 1123 of  
12          title 18, United States Code, as added by this sec-  
13          tion.

14          (5) NECESSARY.—The term “necessary”, with  
15          respect to a use of force, means that a reasonable  
16          Federal law enforcement officer would objectively  
17          conclude, under the totality of the circumstances,  
18          that there was no reasonable, less harmful alter-  
19          native to the force the Federal law enforcement offi-  
20          cer used.

21          (6) PROPORTIONAL.—The term “proportional”,  
22          with respect to a use of force, means the potential  
23          harm likely to be caused through the force used by  
24          a Federal law enforcement officer does not outweigh

1 the benefit to be gained through achieving the direct  
2 and legitimate law enforcement objective.

3 (7) REASONABLE ALTERNATIVES.—The term  
4 “reasonable alternatives” means tactics and methods  
5 used by a Federal law enforcement officer to effec-  
6 tuate an arrest that do not unreasonably increase  
7 the risk posed to the law enforcement officer or an-  
8 other individual, including verbal communication,  
9 distance, warnings, deescalation tactics and tech-  
10 niques, tactical repositioning, and other tactics and  
11 techniques intended to stabilize a situation and re-  
12 duce the immediacy of a risk so that more time, op-  
13 tions, and resources can be called upon to resolve a  
14 situation without the use of force.

15 (8) TOTALITY OF THE CIRCUMSTANCES.—The  
16 term “totality of the circumstances” means all cred-  
17 ible facts known to the Federal law enforcement offi-  
18 cer leading up to and at the time of the use of force,  
19 including the actions of the individual against whom  
20 the Federal law enforcement officer uses such force  
21 and the actions of the Federal law enforcement offi-  
22 cer.

23 (b) PROHIBITION ON LESS LETHAL FORCE.—

1           (1) IN GENERAL.—A Federal law enforcement  
2 officer may not use any less lethal force unless such  
3 force—

4           (A) is the least amount of force that is  
5 necessary and proportional—

6           (i) in order to prevent an imminent  
7 threat of physical injury to the Federal law  
8 enforcement officer or another individual;  
9 or

10          (ii) to effectuate an arrest of an indi-  
11 vidual whom the Federal law enforcement  
12 officer has probable cause to believe has  
13 committed a criminal offense; and

14          (B) is used only after available and reason-  
15 able alternatives to the use of less lethal force  
16 have been exhausted.

17          (2) REQUIREMENT TO REDUCE AND CEASE THE  
18 USE OF FORCE.—With respect to the use of any less  
19 lethal force, a Federal law enforcement officer  
20 shall—

21          (A) immediately reduce such force as the  
22 threat diminishes; and

23          (B) cease the use of such force as soon  
24 as—

1 (i) the individual on whom the force is  
2 used is under the control of the Federal  
3 law enforcement officer or no longer poses  
4 a threat of physical injury to another indi-  
5 vidual; or

6 (ii) the Federal law enforcement offi-  
7 cer determines that force will no longer ac-  
8 complish, or is no longer necessary to ac-  
9 complish, a legitimate law enforcement ob-  
10 jective.

11 (c) PROHIBITION ON USE OF LETHAL FORCE.—

12 (1) IN GENERAL.—A Federal law enforcement  
13 officer may not use lethal force against an individual  
14 unless—

15 (A) such force is necessary and propor-  
16 tional as a last resort to prevent imminent and  
17 serious bodily injury or death to the Federal  
18 law enforcement officer or another individual;

19 (B) the use of such force creates no sub-  
20 stantial risk of injury to a third person; and

21 (C) the available and reasonable alter-  
22 natives to the use of such force have been ex-  
23 hausted.

24 (2) CLARIFICATION.—A Federal law enforce-  
25 ment officer may not use lethal force against an in-

1       dividual who poses a danger only to himself or her-  
2       self.

3       (d) REQUIREMENT TO GIVE VERBAL WARNING.—

4       When feasible, prior to using force against an individual,  
5       a Federal law enforcement officer shall identify himself or  
6       herself as a Federal law enforcement officer and issue a  
7       verbal warning to the individual that the Federal law en-  
8       forcement officer seeks to apprehend, which shall—

9               (1) include a request that the individual sur-  
10       render to the law enforcement officer; and

11              (2) notify the individual that the law enforce-  
12       ment officer may use force against the individual if  
13       the individual resists arrest or flees.

14       (e) GUIDANCE ON USE OF FORCE.—Not later than  
15       120 days after the date of enactment of this Act, the At-  
16       torney General, in consultation with impacted individuals,  
17       communities, and organizations, including representatives  
18       of civil and human rights organizations, victims of law en-  
19       forcement officer use of force, and representatives of law  
20       enforcement associations, shall provide guidance to Fed-  
21       eral law enforcement agencies—

22              (1) on the types of less lethal force and lethal  
23       force that are prohibited under subsections (b) and  
24       (c);

1           (2) on how a Federal law enforcement officer  
2           can assess whether the use of force is appropriate  
3           and necessary; and

4           (3) which shall account for special consideration  
5           when interacting with—

6                   (A) pregnant individuals;

7                   (B) children and youth under 21 years of  
8           age;

9                   (C) elderly individuals;

10                  (D) physically frail individuals;

11                  (E) individuals with mental, behavioral, or  
12           physical disabilities or impairments;

13                  (F) individuals experiencing perceptual or  
14           cognitive impairments due to use of alcohol,  
15           narcotics, hallucinogens, or other drugs;

16                  (G) individuals suffering from a serious  
17           medical condition; and

18                  (H) individuals with limited English pro-  
19           ficiency.

20           (f) LIMITATION ON JUSTIFICATION DEFENSE.—

21                   (1) IN GENERAL.—Chapter 51 of title 18,  
22           United States Code, is amended by adding at the  
23           end the following:



1 **“§ 1123. Limitation on justification defense for Fed-**  
2 **eral law enforcement officers.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) FEDERAL LAW ENFORCEMENT OFFICER.—  
5 The term ‘Federal law enforcement officer’ has the  
6 meaning given such term in section 115.

7 “(2) LESS LETHAL FORCE.—The term ‘less le-  
8 thal force’ means any force that is less than lethal  
9 force.

10 “(3) LETHAL FORCE.—The term ‘lethal force’  
11 means any force that creates a substantial risk of  
12 causing death or serious bodily injury, including—

13 “(A) the discharge of a firearm;

14 “(B) a maneuver that restricts blood or ox-  
15 ygen flow to the brain, including chokeholds,  
16 strangleholds, neck restraints, neck-holds, and  
17 carotid artery restraints; and

18 “(C) the use of a weapon of less lethal  
19 force in a manner that creates a substantial  
20 risk of death or serious bodily injury, including  
21 repeated or prolonged discharges of an elec-  
22 tronic control weapon and firing a kinetic im-  
23 pact projectile weapon at the head of an indi-  
24 vidual.

25 “(b) USE OF FORCE.—It is not a defense to an of-  
26 fense under section 1111 or 1112 that the use of less le-

1 that force or lethal force by a Federal law enforcement  
2 officer was justified if—

3 “(1) the use of use of such force by the officer  
4 was inconsistent with section 2 of the Police Exer-  
5 cising Absolute Care with Everyone Act of 2022; or

6 “(2) the actions of the officer, leading up to  
7 and at the time of the use of the force, contributed  
8 to the necessity of the use of such force.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-  
10 tions for chapter 51 of title 18, United States Code,  
11 is amended by inserting after the item relating to  
12 section 1122 the following:

“1123. Limitation on justification defense for Federal law enforcement offi-  
cers.”.

13 **SEC. 3. LIMITATION ON THE RECEIPT OF FUNDS UNDER**  
14 **THE EDWARD BYRNE MEMORIAL JUSTICE AS-**  
15 **SISTANCE GRANT PROGRAM.**

16 (a) LIMITATION.—A State or unit of local govern-  
17 ment, other than an Indian Tribe, may not receive funds  
18 that the State or unit of local government would otherwise  
19 receive under subpart 1 of part E of title I of the Omnibus  
20 Crime Control and Safe Streets Act of 1968 (34 U.S.C.  
21 10151 et seq.) (commonly known as the “Edward Byrne  
22 Memorial Justice Assistance Grant Program”) for any fis-  
23 cal year in which the State or unit of local government  
24 does not have in effect a law, with respect to the use of

1 force by law enforcement officers of the State or unit of  
2 local government, that is consistent with section 2 of this  
3 Act and section 1123 of title 18, United States Code, as  
4 determined by the Attorney General.

5 (b) SUBSEQUENT ENACTMENT.—If funds described  
6 in subsection (a) are withheld from a State or unit of local  
7 government pursuant to that subsection and the State or  
8 unit of local government subsequently enacts or puts in  
9 place a law described in that subsection and demonstrates  
10 substantial efforts to enforce such law, the State or unit  
11 of local government shall be eligible, in the fiscal year after  
12 the fiscal year during which the State or unit of local gov-  
13 ernment demonstrates such substantial efforts, to receive  
14 the total amount that the State or unit of local govern-  
15 ment would have received during each fiscal year for which  
16 funds were withheld, not to exceed the total that such  
17 State or unit of local government would have received for  
18 a 5-year period.

19 (c) GUIDANCE.—Not later than 120 days after the  
20 date of enactment of this Act, the Attorney General, in  
21 consultation with impacted individuals, communities, and  
22 organizations, including representatives of civil and  
23 human rights organizations, individuals against whom a  
24 law enforcement officer used force, and representatives of  
25 law enforcement associations, shall make guidance avail-

1 able to States and units of local government on the criteria  
2 that the Attorney General will use in determining whether  
3 the State or unit of local government has in place a law  
4 described in subsection (a).

5 (d) APPLICATION.—This section shall apply to the  
6 first fiscal year that begins on or after the date that is  
7 1 year after the date of the enactment of this Act, and  
8 to each fiscal year thereafter.

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