
Public Safety Committee

HB 3003

Brief Description: Relating to law enforcement.

Sponsors: Representatives Goodman and Hayes.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes an act relating to law enforcement.

Hearing Date: 3/6/18

Staff: Kelly Leonard (786-7147).

Background:

Law Enforcement Training.

The Criminal Justice Training Commission (CJTC) provides training and educational programs to law enforcement, corrections officers, and other public safety professionals in Washington. The CJTC also certifies, and when necessary de-certifies, peace officers.

Basic academy training is required of all law enforcement officers, with the exception of volunteers and reserve officers. Basic academy training covers a variety of subjects, including criminal law and procedures, traffic enforcement, cultural awareness, communication and writing skills, emergency vehicle operations, firearms, crisis intervention, patrol procedures, and criminal investigation and defensive tactics. In addition to basic training, the CJTC and the Washington State Patrol provide specialized training to commissioned officers on a range of subjects, such as crisis intervention training, and interacting with persons with a developmental disability or mental illness.

State Law on Use of Deadly Force by Law Enforcement Officers.

Deadly force is the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Whether a law enforcement officer is criminally culpable for using deadly force depends on the specific statutory crime alleged and any applicable defense, in the context of the underlying harm to the other person. A law enforcement officer has the same right of self-defense as others. Law enforcement officers are also statutorily authorized to use deadly force in additional circumstances.

Homicide or use of deadly force by a law enforcement officer does not constitute a crime if it meets the statutory standard, which provides that such force is legally justifiable in any of the following contexts: (1) when acting in obedience to the judgment of a competent court; (2) when necessarily used to overcome actual resistance to the execution of a legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or (3) when necessarily used to:

- arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;
- prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;
- prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or
- lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

In considering whether to use deadly force to arrest or apprehend any person for the commission of any offense, a peace officer must have probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if he or she is not apprehended. "Threat of serious physical harm" includes, but is not limited to, when the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening, or when there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. Under these circumstances, deadly force may also be used if necessary to prevent escape from the officer, as long as some warning is given when feasible.

In addition to delineating the circumstances where deadly force is authorized, the statutory standard specifies that a peace officer may not be held criminally liable for using deadly force when it is used without malice and with a good faith belief that the use is permitted under the statutory standard.

Initiative to the Legislature No. 940.

In 2018 the Secretary of State certified Initiative to the Legislature No. 940 (I-940). The Washington Constitution provides the framework for the Legislature to address initiatives. The Legislature may enact the initiative, in which case it becomes law. Alternatively, the Legislature may reject it or take no action, or propose an alternative, in which case the initiative along with any alternative is submitted to a vote of the people at the next general election.

I-940 contains several provisions pertaining to law enforcement, including training, rendering of first-aid, criminal liability standards for using deadly force, and investigations.

Training. I-940 requires law enforcement officers to receive violence de-escalation training and mental health training through the CJTC. In developing curricula for training programs, the CJTC must consider certain specified components. This includes, for example, de-escalation in patrol tactics, alternatives to jail booking, arrest, or citation, and alternatives to the use of

physical or deadly force so that deadly force is used only when unavoidable and as a last resort. Officers must successfully complete both training programs within the first 15 months of employment or by a date established by the CJTC.

In consultation with specified stakeholders, the CJTC must adopt rules for carrying out the training requirements. Rules must include training hour requirements, and require compliance with the training requirements as a condition of maintaining other certification.

Law Enforcement Duty to Render First Aid. I-940 provides that it is state policy that all law enforcement personnel must render first aid to save lives. In consultation with specified stakeholders, the CJTC must develop guidelines for implementing the duty to render first aid, which must:

- adopt first aid training requirements;
- assist agencies and law enforcement officers in balancing competing public health and safety duties; and
- establish that law enforcement officers have a paramount duty to preserve the life of persons whom the officer comes into direct contact with while carrying out official duties, including providing or facilitating immediate first aid to those in agency care or custody at the earliest opportunity.

Law Enforcement Use of Deadly Force. Except for circumstances where an officer uses deadly force in obedience to the judgment of a competent court, I-940 removes the protection against criminal liability for using deadly force without malice. Instead, protection against criminal liability is provided only when the use of deadly force is authorized under the current standard and the law enforcement officer meets both an objective and subjective good faith test.

The objective good faith test is met if a reasonable officer, in light of all of the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

Independent Investigations of Law Enforcement Use of Deadly Force. If deadly force results in death, great bodily harm, or substantial bodily harm, I-940 requires an independent investigation to be completed to inform the determination of whether the use of deadly force met the objective good faith standard and satisfied other applicable laws and policies. Rules adopted by the CJTC must require investigations to be carried out completely independent of the agency whose officer was involved in the use of deadly force.

If deadly force was used on a tribal member, investigative procedures must include consultation with the member's tribe and, where appropriate, sharing information with such tribe.

Criminal Justice Training Commission Rulemaking. The CJTC must adopt rules necessary for carrying out specified requirements of I-940. In carrying out rulemaking, the CJTC must seek input from the Office of the Attorney General, law enforcement agencies, tribes, and community stakeholders. Where involvement of community stakeholders is required, input must be sought from organizations advocating for: persons with disabilities; members of the lesbian, gay,

bisexual, transgender, and queer community; persons of color; immigrants; non-citizens; Native Americans; youth; and formerly incarcerated persons.

Summary of Bill:

The bill establishes that it may be known and cited as the Law Enforcement Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.