

SENATE BILL REPORT

ESHB 3003

As Reported by Senate Committee On:
Law & Justice, March 7, 2018

Title: An act relating to law enforcement.

Brief Description: Concerning law enforcement.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Goodman and Hayes).

Brief History: Passed House: 3/07/18, 73-25.

Committee Activity: Law & Justice: 3/07/18 [DP, w/oRec].

Brief Summary of Bill

- Modifies provisions reflecting the law as amended by Initiative 940, including provisions relating to training, rendering first aid, the criminal liability standard for use of deadly force, and independent investigations of deadly force incidents.
- Requires the state to reimburse a peace officer for reasonable defense costs when the officer is found not guilty or charges are dismissed by reason of justifiable homicide, justifiable use of deadly force, or self-defense, for actions taken while on duty or otherwise within the scope of authority as a peace officer.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

Staff: Shani Bauer (786-7468)

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.

Background: Criminal Justice Training Commission (CJTC). The CJTC was established in 1974 for the primary purpose of providing basic law enforcement training, corrections training, and educational programs for criminal justice personnel, including commissioned officers, corrections officers, fire marshals, and prosecuting attorneys.

Basic law enforcement officer training is generally required of all full-time commissioned law enforcement employees employed in Washington. The training consists of a 720-hour program covering a wide variety of subjects, including constitutional and criminal law and procedures, criminal investigation, firearms training, and communication and writing skills. All law enforcement personnel hired, transferred, or promoted, are required to complete the core training requirements within six months unless the employee receives a waiver from the CJTC.

In 2003, the Legislature required the CJTC to offer training on law enforcement interaction with persons with a developmental disability or mental illness. The training is required to be made available to law enforcement agencies, through electronic means, for use at their convenience.

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.

Currently, homicide or the use of deadly force is justifiable if:

1. a public officer is acting in obedience to the judgment of a competent court;
2. it is necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or
3. it is necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:
 - a. 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;
 - b. to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;
 - c. to 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
 - d. to lawfully suppress a riot if the person 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 crime, the officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a threat of serious physical harm are:

- the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- 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, where, if feasible, some warning is given.

An officer is not to be held criminally liable for using deadly force without malice and with a good faith belief that such an act is justifiable. A law enforcement agency may adopt standards pertaining to its use of deadly force that are more restrictive than provided by statute.

Initiative 940. In 2018, the Secretary of State certified Initiative to the Legislature No. 940 (I-940). Initiative 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.

Procedure for Initiatives to the Legislature. Article II, Section 1, of the Washington State Constitution authorizes the initiative process, allowing the people to place a proposition on the ballot or to submit the proposed law to the Legislature. If an initiative to the Legislature is certified for sufficient signatures, the Legislature must take one of the following three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or refuse to act on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

Summary of Bill: Law as Reflected by Adopted Initiative to the Legislature No. 940. The bill amends provisions reflecting the law as amended by I-940.

Training. Rules adopted by the CJTC to implement the training requirements of I-940 are modified to require continued training to include annual training requirements. The requirement that officers comply with the training requirements as a condition of officer certification are removed. Instead, the rules must require such training be completed.

In developing training, the CJTC must include alternatives to the use of physical or deadly force so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force.

Law Enforcement Duty to Render First Aid. The policy for rendering first aid is modified. It is state policy for law enforcement personnel to provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement. The guidelines for the CJTC are also modified. Language specifying that the rendering of first aid is a paramount duty is removed. Instead, the guidelines must address best practices for securing a scene to facilitate the safe, swift, and effective provision of first aid to anyone injured in a scene controlled by law enforcement or as a result of law enforcement action; and the guidelines must assist agencies and law enforcement officers in balancing the many essential duties of officers with the solemn duty to preserve the life of persons with whom the officer comes into direct contact.

Law Enforcement Use of Deadly Force. The objective and subjective good faith tests of I-940 are removed. Instead, in order to be protected from criminal liability, the use of deadly force by a peace officer must be in good faith, where good faith is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

Independent Investigations. A law enforcement agency is exempted from the investigatory requirements established in I-940 if required by a federal consent decree, federal settlement agreement, or federal court order.

The requirement for the CJTC to adopt rules requiring consultation and information sharing with tribes is removed. Instead, a statutory requirement for notice to tribes is created, which arises in circumstances where an officer's use of force results in the death of an enrolled member of a federally recognized Indian tribe. A law enforcement agency must notify the Governor's Office of Indian Affairs (GOIA) within a reasonable period of time, but not more than 24 hours after the agency has good reason to believe that the deceased person was an enrolled member of a federally recognized Indian tribe. The notice must include sufficient information for the GOIA to attempt to identify the deceased person and his or her tribal affiliation. The GOIA must establish a means to receive the notice, including outside of regular business hours, and must immediately notify the tribe of which the person was enrolled. The bill expressly provides that its provisions do not require a law enforcement agency to disclose any information that could compromise the integrity of any criminal investigation.

Criminal Justice Training Commission Rulemaking. The CJTC must consult with additional specified stakeholders when engaged in rulemaking pertaining to I-940, including: the Washington Council of Police and Sheriffs; the Washington State Fraternal Order of Police; the Council of Metropolitan Police and Sheriffs; the Washington State Patrol Troopers Association; at least one association representing law enforcement who represent traditionally underrepresented communities, including the Black Law Enforcement Association of Washington; and De-Escalate Washington.

Reasonable Defense Costs. The state must reimburse a peace officer for the reasonable costs of his or her defense when he or she is found not guilty or charges are dismissed by reason of

justifiable homicide or use of deadly force, or by reason of self-defense, for actions taken while on-duty or otherwise within the scope of his or her authority as a peace officer.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect June 8, 2018 only if I-940 is passed by a vote of the Legislature during the 2018 Regular Legislative Session and a referendum on the Initiative is not certified by the Secretary of State.

Staff Summary of Public Testimony: PRO: This bill addresses the national discussion on police use of force. It has been a very difficult discussion in which the participants have been very respectful in looking for productive solutions. These amendments strengthen and clarify the Initiative if it passes. The bill is contingent upon enactment of the Initiative. Members of the community and law enforcement are to be congratulated on the hard work they have put in. Participants are anxious for the CJTC to get to work on adopting rules and guidelines for training.

Organizations that represent law enforcement have come together to oppose I-940 with firm and respectful opposition. We are interested first and foremost in building trust and promoting public safety. Some of the provisions do not support recommendations of law enforcement. However, a lengthy campaign on I-940 will not serve to promote public trust. We want to be part of the solution and start with a constructive conversation in the community.

Too often people focus on conflicts and disagreement rather than collaboration and working together to come to reasonable solutions. HB 3003 is the outcome of a collaborative process. An initiative is an adversarial process, there is a winner and loser. But the real loss would be the loss of relationships in our community. This is an attempt to go about finding solutions in the right way.

The prosecutors' main focus has been the justification standards. The language in the House bill is a good compromise and is a standard that everyone can understand. It will not scoop in the honest mistake of an officer but also will not provide a safe haven when there is wrongdoing. There is a valid argument to be made that the initiative can be amended in this way. The process respects the referendum clause and the referendum time period. Equities always matter and this process preserves the equities on both sides. It is worth taking the risk given all of the positives.

The defense bar has been interested in this process as clients are often on the receiving end of deadly force. It is also just as likely a member will be defending that officer as well. This is a very good piece of law. The objective standard makes a lot of sense and is easier for both sides to understand. The section that mimics the self-defense statute to reimburse defense costs if the person is found not guilty is also a good addition. This encourages a thoughtful process before going forward with prosecution.

The ideals of the Initiative were good, but needed improvement. The provisions of the bill do this. Law enforcement and sheriffs and police chiefs in general have earned our respect and have acted in good faith on this issue. They are our strongest allies in the area of substance abuse prevention, violence prevention, and interacting with people who are mentally ill and when appropriate diverting them from the criminal justice system.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Steve Strachan, Washington Association Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Heather Villanueva, DeEscalate; Seth Dawson, Washington Association for Substance Abuse and Violence Prevention; Bob Cooper, Washington Defender Association, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.