

SENATE BILL REPORT

SI 940

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

Title: An act relating to law enforcement.

Brief Description: Concerning the use of deadly force in law enforcement.

Sponsors: People of the State of Washington.

Brief History:

Committee Activity: Law & Justice: 2/20/18, 3/07/18 [DP, DNP, w/oRec].

Brief Summary of Bill

- Requires all law enforcement officers in the state receive violence de-escalation training and mental health training.
- Establishes the duty of all law enforcement officers to render first aid to preserve the life of persons whom the officer comes into contact with while carrying out official duties.
- Establishes a good faith standard, utilizing both an objective and subjective test, to determine whether a law enforcement officer is criminally liable for the use of deadly force.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

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

Minority Report: Do not pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senator 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: 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.

Joint Legislative Task Force on the Use of Deadly Force. In 2016, the Legislature established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing (Task Force). The Legislature charged the Task Force with: reviewing laws, practices, and training programs regarding use of deadly force in Washington and other states; reviewing current policies, practices, and tools used by or otherwise available to law enforcement as an alternative to lethal uses of force; and recommending best practices to reduce the number of violent interactions between law enforcement officers and members of the public.

The Task Force membership included representatives from law enforcement, public defenders, prosecutors, civil rights groups, community representatives, and legislators. Four meetings were held in 2016. Each Task Force member was given the opportunity to submit recommendations for a vote of the Task Force membership. Fifteen recommendations were adopted by a majority of the Task Force. The Task Force published its final report to the Legislature and the Governor on December 1, 2016.

Use of Deadly Force in Washington. 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.

Standards for the Use of Deadly Force. There is no federal statute governing the use of deadly force by officers. However, the United States Supreme Court (Court) has addressed use of force issues in some notable cases involving civil claims for damages. In *Tennessee v. Garner* (1985), the Court held that a law enforcement officer may not use deadly force to prevent the escape of a fleeing suspect unless the law enforcement officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. In *Graham v. Connor* (1989), the Court held that whether a law enforcement officer uses excessive force is determined based on if the law enforcement officer was objectively reasonable in light of the circumstances confronting the law enforcement officer. These cases involved civil lawsuits filed against officers and agencies, which means the court's decisions do not address criminal culpability of law enforcement officers.

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.

Summary of Bill: Training Requirements. Beginning one year after the effective date, all law enforcement officers in the state must receive violence deescalation training and mental health training. Officers hired after the effective date must complete training within the first 15 months of employment. The CJTC must set the date by which existing officers must complete training. All officers must receive continuing violence deescalation training and mental health training pursuant to training requirements and procedures adopted by the CJTC.

Within six months after the effective date of the act, the CJTC must consult with law enforcement agencies and community stakeholders to adopt rules to carry out the training requirements required by the act. At a minimum, the rules must:

- adopt training hour requirements and curriculum for initial violence deescalation training;
- adopt training hour requirements and curriculum for initial mental health trainings;
- adopt training hour requirements and curricula for continuing trainings;
- establish means by which law enforcement officers will receive trainings; and
- require compliance with the training requirements as a condition of maintaining certification as a peace officer.

In developing curricula, the CJTC must consider including:

- deescalation in patrol tactics and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment to avoid escalating situations that lead to violence;
- alternatives to jail booking, arrest, or citation;
- implicit and explicit bias, cultural competency, and the historical intersection of race and policing;
- deescalation techniques to effectively, safely, and respectfully interact with people with disabilities and/or behavioral issues;
- shoot/don't shoot scenario training;
- alternatives to the use of physical or deadly force so deadly force is used only as a last resort;
- mental health policing, including bias and stigma; and
- using public service, including rendering of first aid.

The initial violence deescalation training must educate officers on the good faith standard for use of deadly force established by this act and how that standard advances violence deescalation goals.

The CJTC may provide trainings on its own or partner with other agencies to provide training.

Duty to Render First Aid. It is the policy of the state of Washington that all law enforcement personnel must render first aid.

Within one year of the effective date of the act, the CJTC, in consultation with relevant agencies, must develop guidelines for implementing the duty to render first aid. The guidelines 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 law enforcement officers come into contact with.

Good Faith Standard for the Use of Deadly Force. In order for the use of deadly force by a law enforcement officer to be justifiable, the officer must meet the good faith standard. A law enforcement officer will not be held criminally liable for the use of deadly force if the officer meets both an objective and subjective good faith test.

The objective test is met if a reasonable officer, in light of all 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 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.

Where the use of deadly force results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform the determination of whether the use of deadly force met the objective good faith test and satisfied other applicable laws and policies. The investigation must be carried out completely independent of the agency whose officer was involved in the use of deadly force.

The CJTC must adopt rules necessary to carry out this act within one year of the effective date. In adopting rules, the CJTC must seek input from relevant stakeholders and shall consider the use of negotiated rulemaking.

Appropriation: None.

Fiscal Note: Partial available.

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

Staff Summary of Public Testimony: PRO: We believe I-940 will positively impact communities in Washington State. As a state, we entrust police officers with the ability to use deadly force. It is a responsibility to take life only when necessary. Washington's law is an outlier and makes it nearly impossible to hold law enforcement accountable when an officer's actions are not appropriate. This initiative prioritizes trainings and adjusts standards to bring Washington in line with the rest of country. Additional training and independent investigations should result in decreased violence and better safety for all.

It is important that officers have the training to deal with a person with disabilities. We do not want people with disabilities to be afraid to ask for help. There is a huge stigma to mental illness. Increasing training hours will ensure that more of these stories end with individuals being connected with necessary services instead of languishing in the criminal justice system. Law enforcement's lack of understanding in dealing with a person with a mental illness can escalate a situation and make it worse.

The use of deadly force has a lasting impact on the community. There are people who would still be alive today if this law were in place a few years ago. De-escalation tactics were not used. We need to start bridging the gaps between communities and policing.

This initiative is good for kids and promotes racial equity. Minorities are policed in a way that increases the risk of use of deadly force. This initiative is a down payment on our future. Building critical trust in our institutions so that children believe they are inside the circle of fairness and protection.

Minority communities want a deeper relationship with law enforcement and want to be able to access law enforcement when needed. I-940 is a solution oriented collaborative approach with buy-in from communities. It is not meant to be the final fix but a step toward incremental change.

This topic is of vital importance to our country, but is a hard conversation to have. The hardest work is sometimes the most important. Washington has the opportunity to demonstrate to the rest of the country what it is like to come to the table and stay at the table until you get to a resolution. Everyone wants to feel like their life matters and everyone deserves to be able to go home to the ones that they love. There is still work to be done, the legislation should be moved forward with the shared responsibility to continue the dialogue.

Police officers are public servants. As a teacher, I am a public servant as well. I receive ongoing training and it makes me a better person and better teacher. Police deal with a myriad of situations and better training can only help them.

Many, many hours have been put into this initiative. With all of the hours spent, it is unfair to change the initiative. The legislature should follow the lead of 360,000 people who have told you how they feel, and adopt the initiative as is.

The only thing that really protects police officers is the trust of the public. That is what this process has been designed to promote. We respect the extraordinarily difficult job the police have to do. I-940 is designed to give law enforcement the tools so that the public can again have faith in the police.

CON: Many people have very different opinions on this initiative. Law enforcement is expressing respectful, but firm opposition. We want to find a solution that brings everyone together and acknowledge everyone's perspective. I-940 is not the best approach to reduce violent interactions with law enforcement. We hope there is a legislative solution with a better way to meet the policy goals. Law enforcement is asked to be the ultimate problem solver and shows up when no one else will.

Many people were misled into signing the petition for I-940 by being led to believe they were signing to improve mental health laws in the state. Signature gatherers did not disclose that the law would be used to prosecute police officers in circumstances where they are required to use deadly force. De-escalation training is already in place. No police officer responds to a call hoping to fight for their life. The officer sincerely hopes they can clear the call without any paperwork and move on.

OTHER: There is no funding attached to I-940 and a great deal of work that needs to be done. The CJTC needs a commitment to investment if it is going to train officers. De-escalation starts with proper patrol tactics. Many problems are rooted in the tactical approach. This is complicated training and will take a great deal of commitment and follow through. Deep consideration for the funding is needed.

Persons Testifying: PRO: Heather Villanueva, De-Escalate Washington; Joseph Nelson, De-Escalate Washington; Kari Nelson, De-Escalate Washington; Noel Parrish, De-Escalate Washington; Elizabeth Smith, American Civil Liberties of Washington; Larry Shannon, Washington State Association for Justice; Chester Earl, Justice for Jackie; Lisa Earl-Rideout, Justice for Jackie; Ivanova Smith, Self Advocates in Leadership; Kim Mosolf, Disability Rights Washington; Nina Martinez, Latino Civic Alliance; Katrina Johnson, Family of Charleena Lyles; James Rideout, Puyallup Tribe of Indians; Monisha Harrell, Equal Rights Washington; Doug Baldwin, citizen; Marilyn Covarrubias, citizen; Stephanie Butts, Not This Time; Sonia Joseph, Not This Time; Andre Taylor, Not This Time; Devitta Briscoe, Not This Time; Lauren Tozzi, Not This Time; Gloria Butts, Not This Time; Darius Vann, Not This Time; Andrew Villeneuve, Northwest Progressive Institute; Judith Da Silva, citizen; Lorretta Gutierrez, Coalition of Black Trade Unionists; Earth Feather Sovereign, citizen; Fredrick Thomas, citizen; Robert Wardell, People First; Barnett Kalikow, citizen; Diana Stadden, The Arc of Washington.

CON: Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Kelly Ditrich, citizen.

OTHER: Sue Rahr, Washington Criminal Justice Training Commission.

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