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ENGROSSED SUBSTITUTE HOUSE BILL 3003

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State of Washington                      65th Legislature                      2018 Regular Session

By House Public Safety (originally sponsored by Representatives  
Goodman and Hayes)

READ FIRST TIME 03/06/18.

1            AN ACT Relating to law enforcement; amending RCW 43.101.---,  
2 36.28A.---, and 9A.16.040; amending 2018 c ... s 9 (uncodified);  
3 adding a new section to chapter 9A.16 RCW; adding a new chapter to  
4 Title 10 RCW; and providing a contingent effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 43.101.--- and 2018 c ... s 5 (Initiative Measure  
7 No. 940) are each amended to read as follows:

8            (1) Within six months after June 7, 2018, the commission must  
9 consult with law enforcement agencies and community stakeholders and  
10 adopt rules for carrying out the training requirements of RCW  
11 43.101.--- and 43.101.--- (sections 3 and 4, chapter . . .  
12 (Initiative Measure No. 940), Laws of 2018). Such rules must, at a  
13 minimum:

14            (a) Adopt training hour requirements and curriculum for initial  
15 violence de-escalation trainings required by chapter . . .  
16 (Initiative Measure No. 940), Laws of 2018;

17            (b) Adopt training hour requirements and curriculum for initial  
18 mental health trainings required by chapter . . . (Initiative Measure  
19 No. 940), Laws of 2018, which may include all or part of the mental  
20 health training curricula established under RCW 43.101.227 and  
21 43.101.427;

1 (c) Adopt annual training hour requirements and curricula for  
2 continuing trainings required by chapter . . . (Initiative Measure  
3 No. 940), Laws of 2018;

4 (d) Establish means by which law enforcement officers will  
5 receive trainings required by chapter . . . (Initiative Measure No.  
6 940), Laws of 2018; and

7 (e) Require compliance with chapter . . . (Initiative Measure No.  
8 940), Laws of 2018's training requirements (~~(as a condition of~~  
9 ~~maintaining certification)~~).

10 (2) In developing curricula, the commission shall consider  
11 inclusion of the following:

12 (a) De-escalation in patrol tactics and interpersonal  
13 communication training, including tactical methods that use time,  
14 distance, cover, and concealment, to avoid escalating situations that  
15 lead to violence;

16 (b) Alternatives to jail booking, arrest, or citation in  
17 situations where appropriate;

18 (c) Implicit and explicit bias, cultural competency, and the  
19 historical intersection of race and policing;

20 (d) Skills including de-escalation techniques to effectively,  
21 safely, and respectfully interact with people with disabilities  
22 and/or behavioral health issues;

23 (e) "Shoot/don't shoot" scenario training;

24 (f) Alternatives to the use of physical or deadly force so that  
25 de-escalation tactics and less lethal alternatives are part of the  
26 decision-making process leading up to the consideration of deadly  
27 force (~~(is used only when unavoidable and as a last resort)~~);

28 (g) Mental health and policing, including bias and stigma; and

29 (h) Using public service, including rendering of first aid, to  
30 provide a positive point of contact between law enforcement officers  
31 and community members to increase trust and reduce conflicts.

32 (3) The initial violence de-escalation training must educate  
33 officers on the good faith standard for use of deadly force  
34 established by chapter . . . (Initiative Measure No. 940), Laws of  
35 2018 and how that standard advances violence de-escalation goals.

36 (4) The commission may provide trainings, alone or in partnership  
37 with private parties or law enforcement agencies, authorize private  
38 parties or law enforcement agencies to provide trainings, or any  
39 combination thereof. The entity providing the training may charge a  
40 reasonable fee.

1       **Sec. 2.** RCW 36.28A.--- and 2018 c ... s 6 (Initiative Measure  
2 No. 940) are each amended to read as follows:

3       (1) It is the policy of the state of Washington that all law  
4 enforcement personnel must (~~render first aid to save lives~~) provide  
5 or facilitate first aid such that it is rendered at the earliest safe  
6 opportunity to injured persons at a scene controlled by law  
7 enforcement.

8       (2) Within one year after June 7, 2018, the Washington state  
9 criminal justice training commission, in consultation with the  
10 Washington state patrol, the Washington association of sheriffs and  
11 police chiefs, organizations representing state and local law  
12 enforcement officers, health providers and/or health policy  
13 organizations, tribes, and community stakeholders, shall develop  
14 guidelines for implementing the duty to render first aid adopted in  
15 this section. The guidelines must: (a) Adopt first aid training  
16 requirements; (b) address best practices for securing a scene to  
17 facilitate the safe, swift, and effective provision of first aid to  
18 anyone injured in a scene controlled by law enforcement or as a  
19 result of law enforcement action; and (c) assist agencies and law  
20 enforcement officers in balancing (~~competing public health and~~  
21 safety duties; and (c) establish that law enforcement officers have a  
22 paramount duty to preserve the life of persons whom the officer comes  
23 into direct contact with while carrying out official duties,  
24 including providing or facilitating immediate first aid to those in  
25 agency care or custody at the earliest opportunity)) the many  
26 essential duties of officers with the solemn duty to preserve the  
27 life of persons with whom officers come into direct contact.

28       **Sec. 3.** RCW 9A.16.040 and 2018 c ... s 7 (Initiative Measure No.  
29 940) are each amended to read as follows:

30       (1) Homicide or the use of deadly force is justifiable in the  
31 following cases:

32       (a) When a public officer applies deadly force in obedience to  
33 the judgment of a competent court; or

34       (b) When necessarily used by a peace officer meeting the good  
35 faith standard of this section to overcome actual resistance to the  
36 execution of the legal process, mandate, or order of a court or  
37 officer, or in the discharge of a legal duty; or

1 (c) When necessarily used by a peace officer meeting the good  
2 faith standard of this section or person acting under the officer's  
3 command and in the officer's aid:

4 (i) To arrest or apprehend a person who the officer reasonably  
5 believes has committed, has attempted to commit, is committing, or is  
6 attempting to commit a felony;

7 (ii) To prevent the escape of a person from a federal or state  
8 correctional facility or in retaking a person who escapes from such a  
9 facility;

10 (iii) To prevent the escape of a person from a county or city  
11 jail or holding facility if the person has been arrested for, charged  
12 with, or convicted of a felony; or

13 (iv) To lawfully suppress a riot if the actor or another  
14 participant is armed with a deadly weapon.

15 (2) In considering whether to use deadly force under subsection  
16 (1)(c) of this section, to arrest or apprehend any person for the  
17 commission of any crime, the peace officer must have probable cause  
18 to believe that the suspect, if not apprehended, poses a threat of  
19 serious physical harm to the officer or a threat of serious physical  
20 harm to others. Among the circumstances which may be considered by  
21 peace officers as a "threat of serious physical harm" are the  
22 following:

23 (a) The suspect threatens a peace officer with a weapon or  
24 displays a weapon in a manner that could reasonably be construed as  
25 threatening; or

26 (b) There is probable cause to believe that the suspect has  
27 committed any crime involving the infliction or threatened infliction  
28 of serious physical harm.

29 Under these circumstances deadly force may also be used if  
30 necessary to prevent escape from the officer, where, if feasible,  
31 some warning is given, provided the officer meets the good faith  
32 standard of this section.

33 (3) A public officer covered by subsection (1)(a) of this section  
34 shall not be held criminally liable for using deadly force without  
35 malice and with a good faith belief that such act is justifiable  
36 pursuant to this section.

37 (4) A ~~((law enforcement))~~ peace officer shall not be held  
38 criminally liable for using deadly force ~~((if such officer meets the  
39 good faith standard adopted in this section))~~ in good faith, where  
40 "good faith" is an objective standard which shall consider all the

1 facts, circumstances, and information known to the officer at the  
2 time to determine whether a similarly situated reasonable officer  
3 would have believed that the use of deadly force was necessary to  
4 prevent death or serious physical harm to the officer or another  
5 individual.

6 ~~(5) ((The following good faith standard is adopted for law~~  
7 ~~enforcement officer use of deadly force:~~

8 ~~(a) The good faith standard is met only if both the objective~~  
9 ~~good faith test in (b) of this subsection and the subjective good~~  
10 ~~faith test in (c) of this subsection are met.~~

11 ~~(b) The objective good faith test is met if a reasonable officer,~~  
12 ~~in light of all the facts and circumstances known to the officer at~~  
13 ~~the time, would have believed that the use of deadly force was~~  
14 ~~necessary to prevent death or serious physical harm to the officer or~~  
15 ~~another individual.~~

16 ~~(c) The subjective good faith test is met if the officer intended~~  
17 ~~to use deadly force for a lawful purpose and sincerely and in good~~  
18 ~~faith believed that the use of deadly force was warranted in the~~  
19 ~~circumstance.~~

20 ~~(d) Where the use of deadly force results in death, substantial~~  
21 ~~bodily harm, or great bodily harm, an independent investigation must~~  
22 ~~be completed to inform the determination of whether the use of deadly~~  
23 ~~force met the objective good faith test established by this section~~  
24 ~~and satisfied other applicable laws and policies.~~

25 ~~(6) For the purpose of this section, "law enforcement officer"~~  
26 ~~means any law enforcement officer in the state of Washington,~~  
27 ~~including but not limited to law enforcement personnel and peace~~  
28 ~~officers as defined by RCW 43.101.010.~~

29 ~~(7)) This section shall not be construed as:~~

30 ~~(a) Affecting the permissible use of force by a person acting~~  
31 ~~under the authority of RCW 9A.16.020 or 9A.16.050; or~~

32 ~~(b) Preventing a law enforcement agency from adopting standards~~  
33 ~~pertaining to its use of deadly force that are more restrictive than~~  
34 ~~this section.~~

35 **Sec. 4.** 2018 c ... s 9 (Initiative Measure No. 940) (uncodified)  
36 is amended to read as follows:

37 (1) Except where a different timeline is provided in ((this act))  
38 chapter . . . (Initiative Measure No. 940), Laws of 2018, the  
39 Washington state criminal justice training commission must adopt any

1 rules necessary for carrying out the requirements of (~~this act~~)  
2 chapter . . . (Initiative Measure No. 940), Laws of 2018 within one  
3 year after June 7, 2018. In carrying out all rule making under (~~this~~  
4 ~~act~~) chapter . . . (Initiative Measure No. 940), Laws of 2018, the  
5 commission shall seek input from the attorney general, law  
6 enforcement agencies, the Washington council of police and sheriffs,  
7 the Washington state fraternal order of police, the council of  
8 metropolitan police and sheriffs, the Washington state patrol  
9 troopers association, at least one association representing law  
10 enforcement who represent traditionally underrepresented communities  
11 including the black law enforcement association of Washington, de-  
12 escalate Washington, tribes, and community stakeholders. The  
13 commission shall consider the use of negotiated rule making. (~~The~~  
14 ~~rules must require that procedures under RCW 9A.16.040(5)(d) be~~  
15 ~~carried out completely independent of the agency whose officer was~~  
16 ~~involved in the use of deadly force; and, when the deadly force is~~  
17 ~~used on a tribal member, such procedures must include consultation~~  
18 ~~with the member's tribe and, where appropriate, information sharing~~  
19 ~~with such tribe.))~~

20 (2) Where (~~this act~~) chapter . . . (Initiative Measure No.  
21 940), Laws of 2018 requires involvement of community stakeholders,  
22 input must be sought from organizations advocating for: Persons with  
23 disabilities; members of the lesbian, gay, bisexual, transgender, and  
24 queer community; persons of color; immigrants; noncitizens; native  
25 Americans; youth; and formerly incarcerated persons.

26 NEW SECTION. **Sec. 5.** Except as required by federal consent  
27 decree, federal settlement agreement, or federal court order, where  
28 the use of deadly force by a peace officer results in death,  
29 substantial bodily harm, or great bodily harm, an independent  
30 investigation must be completed to inform any determination of  
31 whether the use of deadly force met the good faith standard  
32 established in RCW 9A.16.040 and satisfied other applicable laws and  
33 policies. The investigation must be completely independent of the  
34 agency whose officer was involved in the use of deadly force. The  
35 criminal justice training commission must adopt rules establishing  
36 criteria to determine what qualifies as an independent investigation  
37 pursuant to this section.

1        NEW SECTION.     **Sec. 6.**    Whenever a law enforcement officer's  
2 application of force results in the death of a person who is an  
3 enrolled member of a federally recognized Indian tribe, the law  
4 enforcement agency must notify the governor's office of Indian  
5 affairs. Notice by the law enforcement agency to the governor's  
6 office of Indian affairs must be made within a reasonable period of  
7 time, but not more than twenty-four hours after the law enforcement  
8 agency has good reason to believe that the person was an enrolled  
9 member of a federally recognized Indian tribe. Notice provided under  
10 this section must include sufficient information for the governor's  
11 office of Indian affairs to attempt to identify the deceased person  
12 and his or her tribal affiliation. Nothing in this section requires a  
13 law enforcement agency to disclose any information that could  
14 compromise the integrity of any criminal investigation. The  
15 governor's office of Indian affairs must establish a means to receive  
16 the notice required under this section, including outside of regular  
17 business hours, and must immediately notify the tribe of which the  
18 person was enrolled.

19        NEW SECTION.     **Sec. 7.**    A new section is added to chapter 9A.16  
20 RCW to read as follows:

21        (1) When a peace officer who is charged with a crime is found not  
22 guilty or charges are dismissed by reason of justifiable homicide or  
23 use of deadly force under RCW 9A.16.040, or by reason of self-  
24 defense, for actions taken while on duty or otherwise within the  
25 scope of his or her authority as a peace officer, the state of  
26 Washington shall reimburse the defendant for all reasonable costs,  
27 including loss of time, legal fees incurred, and other expenses  
28 involved in his or her defense. This reimbursement is not an  
29 independent cause of action.

30        (2) If the trier of fact makes a determination of justifiable  
31 homicide, justifiable use of deadly force, or self-defense, the judge  
32 shall determine the amount of the award.

33        (3) Whenever the issue of justifiable homicide, justifiable use  
34 of deadly force, or self-defense under this section is decided by a  
35 judge, or whenever charges against a peace officer are dismissed  
36 based on the merits, the judge shall consider the same questions as  
37 must be answered in the special verdict under subsection (4) of this  
38 section.

1 (4) Whenever the issue of justifiable homicide, justifiable use  
2 of deadly force, or self-defense under this section has been  
3 submitted to a jury, and the jury has found the defendant not guilty,  
4 the court shall instruct the jury to return a special verdict in  
5 substantially the following form:

6 answer

7 yes or no

- 8 1. Was the defendant on duty or  
9 otherwise acting within the scope  
10 of his or her authority as a peace  
11 officer? .....
- 12 2. Was the finding of not guilty based  
13 upon justifiable homicide,  
14 justifiable use of deadly force, or  
15 self-defense? .....

16 (5) Nothing in this section precludes the legislature from using  
17 the sundry claims process to grant an award where none was granted  
18 under this section or otherwise where the charge was dismissed prior  
19 to trial, or to grant a higher award than one granted under this  
20 section.

21 NEW SECTION. **Sec. 8.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 9.** Sections 5 and 6 of this act constitute a  
26 new chapter in Title 10 RCW.

27 NEW SECTION. **Sec. 10.** This act takes effect June 8, 2018, only  
28 if chapter . . . (Initiative Measure No. 940), Laws of 2018, is  
29 passed by a vote of the legislature during the 2018 regular  
30 legislative session and a referendum on the initiative under Article  
31 II, section 1 of the state Constitution is not certified by the  
32 secretary of state. If the initiative is not approved during the 2018  
33 regular legislative session, or if a referendum on the initiative is



1 certified by the secretary of state, this act is void in its  
2 entirety.

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