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## Public Safety Committee

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### HB 1064

**Brief Description:** Concerning law enforcement.

**Sponsors:** Representatives Goodman, Klippert, Sells, Ryu, Orwall, Irwin, Ortiz-Self, Pellicciotti, Kirby, Appleton, Lovick, Dolan, Springer, Barkis, Santos, Griffey, Kloba, Smith, Doglio, Gregerson, Shewmake, Pollet, Tarleton, Valdez, Peterson, Fey, Stanford, Slatter, Tharinger, Hansen, Wylie and Fitzgibbon.

#### Brief Summary of Bill

- Modifies Initiative Measure No. 940, including provisions relating to training, the criminal liability standard for use of deadly force, independent investigations of deadly force incidents, and rendering of first aid.
- Requires the state to reimburse a peace officer for reasonable defense costs when he or she is found not guilty or charges are dismissed in certain circumstances.

**Hearing Date:** 1/14/19

**Staff:** Kelly Leonard (786-7147).

#### Background:

Initiative Measure No. 940 (I-940) was filed in 2017 as an Initiative to the Legislature, and the Secretary of State certified the measure during the 2018 Regular Legislative Session. Subsequently, the Legislature passed I-940 along with a separate measure, Engrossed Substitute House Bill (ESHB) 3003. ESHB 3003 prospectively amended certain provisions of I-940 if I-940 were to pass the Legislature. In *Eyman v. Wyman*, No. 95749-5, published August 28, 2018, the Supreme Court invalidated the enactment of both measures. The Supreme Court directed the Secretary of State to certify I-940 to the ballot for approval or rejection by the voters. I-940 was approved by the voters in the November 2018 general election, and it took effect December 6, 2018.

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*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.*

### 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. This includes hosting the Basic Law Enforcement Academy as well as advanced training. The CJTC also certifies and, when necessary, decertifies officers.

I-940 requires law enforcement officers to complete violence de-escalation training and mental health training through the CJTC. In developing curricula for training programs, the CJTC must consider certain specified components. These include, 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 by certain deadlines.

The CJTC must adopt rules for carrying out the training requirements. Rules must require compliance with the training requirements as a condition of maintaining officer certification.

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

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 prescribed in statute. I-940 provides protection against criminal liability only when the use of deadly force is authorized under the circumstances prescribed in statute and the officer meets a good faith standard.

The good faith standard is met only if the officer meets both the objective good faith test and the 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.

If deadly force results in death, great bodily harm, or substantial 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 CJTC must adopt rules requiring these 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.

### Law Enforcement Duty to Render First Aid.

I-940 established a state policy requiring all law enforcement personnel to render first aid to save lives. The CJTC, in consultation with certain entities, must develop guidelines for implementing the duty to render first aid. Those guidelines must: establish 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 they come into contact with, including providing or facilitating first aid as early as possible.

#### Criminal Justice Training Commission Rulemaking.

The CJTC must adopt rules necessary for carrying out specified requirements within one year after the effective date of the initiative, unless a different deadline is specified. The CJTC must seek input from the Attorney General, law enforcement agencies, tribes, and certain community stakeholders.

#### **Summary of Bill:**

The invalidated measures passed by the Legislature during the 2018 Regular Legislative Session are repealed. Certain provisions of I-940, as passed by the voters, are amended.

#### Law Enforcement Training.

Rules adopted by the CJTC must call for annual requirements for continued training. The requirement that officers comply with the training requirements as a condition of officer certification is removed. Instead, the rules must require that 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 decisionmaking process leading up to the consideration of deadly force.

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

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.

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 in 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.

#### 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. The guidelines must also 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.

#### 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; and at least one association representing law enforcement who represent traditionally underrepresented communities, including the Black Law Enforcement Association of 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:** Requested on January 11, 2019.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.