

SENATE BILL REPORT

SB 5029

As of January 16, 2019

Title: An act relating to law enforcement.

Brief Description: Concerning law enforcement.

Sponsors: Senators Frockt, Padden, Pedersen, Dhingra, Saldaña, Nguyen, Holy, Salomon, Wellman, Wilson, C., Das, Randall, Carlyle, Conway, Fortunato, Hunt, Kuderer and O'Ban.

Brief History:

Committee Activity: Law & Justice: 1/15/19.

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

Staff: Shani Bauer (786-7468)

Background: Criminal Justice Training Commission. The Criminal Justice Training Commission (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

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.

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.

Homicide or the use of deadly force is justifiable when:

- a public officer is acting in obedience to the judgment of a competent court;
- 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
- it is necessarily used by a peace officer or person acting under the officer's command and in the officer's aid to:
 1. 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;
 2. prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;
 3. 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
 4. 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. 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.

A public officer acting in obedience to the judgment of a competent court 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. Prior to the passage of Initiative 940 (I-940), this was the standard applied to all officers in determining whether to hold an officer criminally liable for the use of deadly force.

Initiative 940. In 2018, I-940 was passed by a vote of the people. I-940 contains several provisions pertaining to law enforcement, including training, rendering of first aid, criminal liability standards for using deadly force, and investigations.

Standard for criminal liability. A law enforcement officer is not to be held criminally liable for using deadly force if the officer meets the good faith standard. The good faith standard is only met if the officer meets both the objective and subjective prongs of the good faith test:

- objective test—in light of all the facts and circumstances known to the officer at the time, a reasonable officer would have believed the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual; and
- subjective test—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.

Training. Law enforcement officers must receive violence deescalation 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, deescalation 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. 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 at the earliest opportunity to those in agency care or custody.

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 decide whether the use of deadly force met the objective good faith standard and satisfied other applicable laws and policies. Rules adopted by the CJTC requires 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: Training. Rules adopted by the CJTC to implement the training requirements of I-940 are modified to require continued training and to include annual training requirements. The requirement that officers comply with training requirements as a condition of officer certification is 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 deescalation 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 so that aid 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 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. Good faith is an objective standard by which an officer 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 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 GOIA to attempt to identify the deceased person and their tribal affiliation. 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. 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 reasonable costs of their defense when they are 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 their authority as a peace officer.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: Work began on this issue in 2016 with a task force made up of several stakeholder groups. That task force came up with recommendations that were contained in I-940 and that are now in the bill before us. At the core of this bill are the changes to malice and the good faith standard for determining whether a law enforcement officer was justified in the use of deadly force. It was apparent from the beginning that Washington's law was outdated. The new standard is consistent with the objective standard that is used in virtually every jurisdiction in the country. This is the way that officer involved shootings are evaluated.

After working on this issue for so long, it is impossible not to appreciate the work that law enforcement does on our behalf. Reasonable policy changes must honor the officers that have fallen in the line of duty in service to us. At the same time, it is imperative to acknowledge the many people who have been treated unfairly and unjustly for reasons of class, racial bias, disability, and so on. These are legitimate issues and we cannot say there is no evidence of the problem. I-940 in conjunction with this bill will go a long way to finding a solution.

Passage of I-940 was a strong step for increasing community safety and police accountability. This bill builds on that step. Community trust is an integral part of the criminal justice system. Many in the community demanded investigation as the result of events in Seattle, which resulted in the consent decree, containing much the same approach as I-940. This

approach works. Seattle has begun work on crisis intervention training. Police have made over 16,000 contacts using crisis intervention and referrals to get people the help they need are up over 100 percent. Consistent training across the state through the CJTC will only improve these results.

Tribal members are impacted by excessive use of force. Indian reservations are cross-jurisdictional because government property runs across those lands. Tribes still have work to do with government and law enforcement in how to implement I-940 and SB 5029. Preventative measures are imperative.

This is a transformative time in our state. Washington has done something that they have not been able to do elsewhere in this country—bring community, government and law enforcement together. This bill is a result of listening to each other, hearing what others have to say, and bringing groups with different perspectives together. Washington is a model for the rest of the country.

The process for addressing the deadly force standard has been a long but important road. This consensus agreement will create more de-escalation training around the state. Rules for enhanced training will be developed with public input. Key stakeholders will continue to be involved in creating rules. We believe the good faith standard establishes an objective standard that is easily understood. It will also strengthen the requirement for law enforcement to notify tribes when tribes are impacted by the use of deadly force.

We are united in urging you to pass this consensus language and deliver a bill to the Governor for signature by February 1.

Police use of excessive and deadly force has been an issue for the American Civil Liberties Union going back to the 1960's. We have monitored patterns and practices of the use of deadly force. Major reforms do not always require an adversarial approach. De-escalation has been notable for creating collaborative relationships and conversations. I-940 and SB 5029 are a beginning point and not an end. The work will continue. It is important that relationships stay sound as we work through implementation, rulemaking, and training.

Anti-bias training is critical to building community trust. We are ready to move forward with the most important part of our work, which is implementation. The only thing that is standing in the way is passage of SB 5029. The initiative requires rulemaking by the CJTC with collaboration. CJTC intends on having public forums across the state. The goal is to get significant public input into rulemaking. They have an ambitious timeline with the first rules coming out in six months.

Persons Testifying: PRO: Senator David Frockt, Prime Sponsor; Jenny Durkan, Mayor, City of Seattle; Andre Taylor, Founder, Not This Time and Co-Chair, De-Escalate Washington; Toshiko Hasegawa, Executive Director, Washington State Commission on Asian Pacific American Affairs; James Rideout, Justice for Jackie; Steve Strachan, Executive Director, Washington Association of Sheriffs and Police Chiefs; Ken Thomas, President, Washington Association of Sheriffs and Police Chiefs; John Snaza, President, Washington State Sheriffs' Association; Xochitl Maykovich, Political Director, Washington CAN!; Tim Reynon, Puyallup Tribal Council Member and Co-Chair, De-Escalate Washington; Alison

Holcomb, Political Director, ACLU-WA and Co-Chair, De-Escalate Washington; Lynnette Buffington, Executive Director, Washington State Fraternal Order of Police; Marco Montebalco, President, Washington State Fraternal Order of Police; James Schrimpsheer, Vice President, Washington State Fraternal Order of Police; Larry Shannon, Government Affairs Director, Washington State Association of Justice; Craig Meidl, Chief, Spokane Police Department; Heather Villanueva, SEIU 775 and Campaign Manager, De-Escalate Washington; Monisha Harrell, Board Chair, Equal Rights Washington and Co-Chair, De-Escalate Washington; Teresa Taylor, Executive Director, Washington Council of Police and Sheriffs; Leslie Cushman, Citizen Sponsor, De-Escalate Washington; Jon Tunheim, Prosecuting Attorney, Thurston County.

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