

HOUSE BILL REPORT

ESHB 3003

As Passed House:
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:

Committee Activity:

Public Safety: 3/6/18 [DPS].

Floor Activity:

Passed House: 3/7/18, 73-25.

Brief Summary of Engrossed Substitute Bill

- Modifies provisions reflecting the law as amended by Initiative 940, including provisions relating to training, rendering of 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 he or she 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 his or her authority as a peace officer.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Kelly Leonard (786-7147).

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:

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. The CJTC also certifies, and when necessary decertifies, peace officers.

Basic academy training is required of all law enforcement officers, with the exception of volunteers and reserve officers. Basic academy training covers a variety of subjects, including criminal law and procedures, traffic enforcement, cultural awareness, communication and writing skills, emergency vehicle operations, firearms, crisis intervention, patrol procedures, and criminal investigation and defensive tactics. In addition to basic training, the CJTC and the Washington State Patrol provide specialized training to commissioned officers on a range of subjects, such as crisis intervention training, and interacting with persons with a developmental disability or mental illness.

State Law on 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.

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.

Homicide or use of deadly force by a law enforcement officer does not constitute a crime if it meets the statutory standard, which provides that such force is legally justifiable in any of the following contexts: (1) when acting in obedience to the judgment of a competent court; (2) when necessarily used to overcome actual resistance to the execution of a legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or (3) when necessarily used 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;
- prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;
- 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
- lawfully suppress a riot if the actor 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 offense, a peace officer must have probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if he or she is not apprehended. "Threat of serious physical harm" includes, but is not limited to, when the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening, or when 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, as long as some warning is given when feasible.

In addition to delineating the circumstances where deadly force is authorized, the statutory standard specifies that a peace officer may not be held criminally liable for using deadly force when it is used without malice and with a good faith belief that the use is permitted under the statutory standard.

Initiative to the Legislature No. 940.

In 2018 the Secretary of State certified Initiative to the Legislature No. 940 (I-940). The Washington Constitution provides the framework for the Legislature to address initiatives. The Legislature may enact the initiative, in which case it becomes law. Alternatively, the Legislature may reject it or take no action, or propose an alternative, in which case the initiative along with any alternative is submitted to a vote of the people at the next general election.

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. Initiative 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. Initiative 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.

Summary of Engrossed Substitute 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.

Effective Date: The bill takes effect June 8, 2018, only if the Initiative to the Legislature No. 940 (I-940) is passed by a vote of the Legislature during the 2018 Regular Legislative Session and a referendum on I-940 is not certified by the Secretary of State. If I-940 is not approved during the 2018 Regular Legislative Session, or if a referendum on I-940 is certified by the Secretary of State, the bill is void in its entirety.

Staff Summary of Public Testimony:

(In support) House Bill 3003 (HB 3003) is about shared goals between communities and law enforcement. Community groups and law enforcement organizations have come far and have reached consensus on this measure. It has been tireless, remarkable work on all sides.

Law enforcement officers are united in their opposition to I-940; however, they kept their pledge to not just say no. Instead, they came to the table and worked together with the community to improve the provisions of the underlying initiative. Although not all law enforcement groups are supportive of every provision, there is gratitude for the process, and for the opportunity to improve I-940, if enacted. All law enforcement groups are interested in serving our communities and building trust.

The process of developing HB 3003 has been productive for everyone involved. In our polarized society, stakeholders and the public too often focus on disagreement. However, HB 3003 represents a different way. Community leaders and law enforcement have spent countless hours listening to each other. People often ask, "Why cannot reasonable people get together and work it out?" This bill shows the value of working together and reaching a compromise. This process is an important step towards reducing polarization in our state and the nation. House Bill 3003 is a better path forward.

The bill balances the expectations of the community with the role of law enforcement to protect public safety. An initiative campaign, on the other hand, is an adversarial process, with winners and losers. The end result would be damaging to relationships. House Bill 3003 brings everyone together, and it is a great example for the nation. An initiative campaign would be about "us versus them." However, this is about us, all of us, and all in it together. If the purpose of I-940 is to build trust and increase credibility, then it can achieve that with the additional passage of HB 3003.

Community groups are steadfast in their support of the policies and values encompassed in I-940, and the input of law enforcement has strengthened and clarified the intent and effect of its provisions. Supporters of I-940 want to build bridges between communities and police. The process of crafting HB 3003 was collaborative, and everyone involved sought common ground. There is a shared understanding of the urgency to move forward. This bill honors the supporters of I-940, and it should be enacted.

The objective standard for assessing criminal liability of officers is fair. It will not penalize honest mistakes. Instead, it will allow prosecutors to examine truly egregious cases. This will translate into understandable standards, and will also be a functional basis for jury instructions.

Enacting I-940 without subsequent perfecting legislation would have been a mistake. The first aid provisions did not provide sufficient flexibility for officers, and it did not account for the nature of split-second decisions. Advocates believe law enforcement officers are responsive and responsible professionals, and they are allies in the effort to address mental illness and related issues. This improves the underlying provisions, if enacted.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Heather Villanueva, De-Escalate Washington; Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Tom McBride, Washington Association of Prosecuting Attorneys; and Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

Persons Signed In To Testify But Not Testifying: None.