

HOUSE BILL REPORT

HI 940

As Reported by House Committee On:
Public Safety

Brief Description: Law enforcement.

Sponsors: People of the State of Washington.

Brief History:

Committee Activity:

Public Safety: 2/20/18, 3/6/18 [DP].

Brief Summary of Bill

- Requires law enforcement officers to complete de-escalation training and mental health training.
- Establishes state policy requiring law enforcement personnel to render first aid.
- Modifies the criminal liability standard for law enforcement officers using deadly force.
- Requires independent investigations of certain incidents involving a law enforcement officer's use of deadly force.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: 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).

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 de-certifies, peace officers.

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.

Basic law enforcement officer training is required of all law enforcement officers, with the exception of volunteers and reserve officers. The CJTC Basic Law Enforcement Academy (BLEA) consists of a 720-hour program covering 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. Alternatively, the Washington State Patrol (WSP) maintains a separate academy for state troopers. State troopers must complete the Trooper Basic Training Class, which contains requirements and components comparable to the BLEA.

In addition to basic training, the CJTC and the WSP provide specialized training to commissioned officers on a range of subjects, such as crisis recognition and intervention, and interacting with persons with a developmental disability or mental illness.

In 2015 the state established mandatory crisis intervention training for all law enforcement officers. Crisis intervention training refers to training designed to provide tools and resources to law enforcement officers in order to respond effectively to individuals who may be experiencing an emotional, mental, physical, behavioral, or chemical dependency crisis or problem, and designed to increase the safety of both law enforcement and individuals in crisis. The CJTC is required to provide full-time law enforcement officers with a minimum of eight hours of crisis intervention training. In addition, the CJTC is directed to have 25 percent of all certified officers on patrol duties complete 40 hours of enhanced crisis intervention training by December 1, 2019.

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.

Constitutional Duties and Other Civil Liability.

Apart from criminal liability of law enforcement officers, state and local agencies may be liable for civil damages in certain circumstances where an officer's actions rise to a violation of constitutional rights. Under a federal statute commonly referred to as "section 1983," courts may impose monetary damages if a person's federal constitutional rights are violated. The Fourth Amendment of the United States Constitution (Constitution) protects citizens from excessive force by the government. In interpreting the Fourth Amendment, the United States Supreme Court has held that whether a law enforcement officer uses excessive force is determined based on if he or she was objectively reasonable in light of the circumstances confronting him or her.

The Eighth Amendment of the Constitution protects citizens from cruel and unusual punishment. The Fourteenth Amendment extends these protections to persons being detained prior to a criminal conviction. Federal and state courts have interpreted these provisions as prohibiting the government from acting with deliberate indifference to the medical needs of detained and incarcerated persons.

State and local agencies may also be civilly liable for monetary damages under the common law of torts. In general, state tort law imposes a duty upon everyone to use reasonable care when his or her actions create a foreseeable risk of harm to others. However, the public duty doctrine limits government liability for negligence unless there is a duty owed to an individual, as opposed to the general public. The public duty doctrine in turn is subject to four exceptions where liability may nonetheless arise: a legislatively created duty to protect a particular class of persons; failure to enforce a statute; failure to exercise reasonable care when engaging in volunteer rescue efforts; and circumstances with a special relationship to an individual.

Summary of Bill:

Law Enforcement Training.

All law enforcement officers must receive violence de-escalation training and mental health training through the CJTC. The de-escalation training must educate officers on the good faith standard for use of deadly force established under the initiative and how the standard advances violence de-escalation goals. In developing curricula for the training programs, the CJTC must consider the following:

- de-escalation 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 in situations where appropriate;
- implicit and explicit bias, cultural competency, and the historical intersection of race and policing;
- skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues;
- "shoot/don't shoot" scenario training;
- alternatives to the use of physical or deadly force so that deadly force is used only when unavoidable and as a last resort;
- mental health and policing, including bias and stigma; and
- using public service, including rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

The CJTC may provide the training programs, partner with private parties or law enforcement agencies, or authorize private parties or law enforcement agencies to provide the training. An entity providing training may charge a reasonable fee.

A law enforcement officer commencing employment after the effective date of the initiative must successfully complete both training programs within the first 15 months of employment. Other law enforcement officers must successfully complete the training by a date established by the CJTC. Law enforcement officers must periodically receive continuing violence de-escalation training and mental health training for practicing relevant skills and updating their knowledge on relevant issues.

Within six months after the effective date of the initiative, the CJTC must consult with law enforcement agencies and community stakeholders and adopt rules for carrying out the training requirements. The rules must, at a minimum:

- adopt training hour requirements and a curriculum for initial violence de-escalation training;
- adopt training hour requirements and a curriculum for initial mental health training, which may include all or part of the mental health training curricula established under current training for interacting with persons with a developmental disability or mental illness as well as crisis intervention;
- adopt training hour requirements and curricula for continuing training;
- establish means by which law enforcement officers will receive the required training; and

- require compliance with the training requirements as a condition of maintaining certification.

Law Enforcement Duty to Render First Aid.

It is state policy that all law enforcement personnel must render first aid to save lives.

The CJTC, in consultation with the WSP, the Washington Association of Sheriffs and Police Chiefs, organizations representing state and local law enforcement officers, health providers and/or health policy organizations, tribes, and community stakeholders 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 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.

Guidelines must be developed within one year after the effective date of the initiative.

Law Enforcement Use of Deadly Force.

Except for circumstances where an officer uses deadly force in obedience to the judgment of a competent court, the protection against criminal liability for using deadly force without malice is removed. 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 a good faith standard. The good faith standard is met only if the officer meets both the objective good faith test 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, 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. 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 within one year after the effective date of the initiative, unless a different deadline is specified. The CJTC must consider the use of negotiated rulemaking.

In carrying out rulemaking, the CJTC must seek input from 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.

Other Provisions.

The initiative must be liberally construed to effectuate its intent, policies, and purposes. Local jurisdictions or law enforcement agencies are not precluded from enacting additional training requirements or requiring law enforcement officers to provide first aid in more circumstances.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Staff Summary of Public Testimony:

(In support) Initiative 940 (I-940) came into being as a result of the experiences of those in the community. It started with families who have lost loved ones as a result of police use of deadly force; however, the organizers of I-940 are also working in partnership with law enforcement and other community leaders. The coalition rises above any one community or ideology. The campaign is solution oriented. Initiative 940 is not a simple fix, but a critical step towards incremental change. Organizers gathered almost 360,000 signatures, symbolizing that the State of Washington is ready for this change. The citizens are ready, and prosecutors and juries are capable of handling these cases.

Initiative 940 is not an anti-law enforcement initiative. Supporters believe I-940 will improve public safety. Supporters want to improve relationships between law enforcement and communities; I-940 has brought people together with the shared goal of improving trust and decreasing violence. The public entrusts police with the power to use deadly force, and with that responsibility comes the duty to take a life only when necessary.

It used to be commonplace for children to dream of becoming policemen. Recent events and a growing distrust of law enforcement have changed this, and now agencies are struggling to find people to join the profession. The state needs to build a bridge between citizens and police. By restoring the values of community policing, communities can move forward. Initiative 940 builds on the great work at the CJTC and requires ongoing training, but more importantly, it brings communities to the table in designing the training. That process will work to repair trust. Supporters are seeking a deeper relationship with law enforcement, and they want to feel safe.

There are numerous examples of shootings, many resulting in death, where mental health training and de-escalation training could have prevented the outcome. People have been unnecessarily killed, sometimes in egregious circumstances, and others have faced frightening interactions. Many family members believe that their loved ones would still be alive if they had simply not called the police. Washington is currently an outlier with respect to its deadly force standard, making it nearly impossible to hold officers accountable. Persons with intellectual and development disabilities and persons with mental health issues are disproportionately affected by these practices. People should not be scared to interact with police. Instead, the state should craft policies and practices that inspire people to reach out to law enforcement for help. Further, people of color are also disproportionately affected. But, it does not need to be this way.

Native American communities have been especially affected by use of force incidents, and there is a historical distrust of law enforcement. Homicide is the third leading cause of death for Native Americans between the ages of 10 and 24. Native American women suffer higher rates of sexual assault, and many women are missing. Some families, however, are afraid to call the police due to the historical distrust of law enforcement. This is the beginning of repairing these relationships and moving forward.

Many supporters of I-940 have a tremendous respect for law enforcement. Law enforcement go into situations that others do not have to. Most officers do their jobs well, and with a tremendous risk to themselves. Initiative 940 is not about disrespect—it is about providing law enforcement with the tools and training they need to do their jobs. Supporters want that for all officers.

Initiative 940 is based on best practices and the Twenty-First Century Policing Task Force. It includes mental health and de-escalation training requirements, independent investigations, first-aid requirements, consultation with community groups, and modifications to the deadly force standard. Experts know that de-escalation techniques work. Mental health training works. All of the components will result in decreased violence.

Who will lead? The nation is looking for leadership on this issue. Supporters and state leaders have the genius to solve this issue now, and to lead the nation forward. Every day people are affected by these situations, and there is an urgency for change. This not about being against law enforcement, but instead about doing what is best for everyone. The public needs legislators to act on I-940. The public voted for legislators, and it asks legislators to do what is right.

Communities and law enforcement need to continue to listen and talk to each other to work through the issues underpinning I-940. It is the responsibility of everyone to seek the greater good. At a human level, everyone wants the same thing. People want their lives to matter, and they want to be seen. Everyone deserves to go home to their loved ones each day, and the same is true for law enforcement. There is still work to be done on I-940. Please remain at the table.

Recent polling on I-940 indicates it is very likely to pass on the ballot. There is overwhelming public support. However, there is no reason for I-940 to go to the ballot. Legislators can and should act now.

(Opposed) Law enforcement groups want to work together even though there may be different perspectives on the issues. Law enforcement groups have come together to express opposition to I-940, representing 8,000 rank-and-file officers and management. Law enforcement are expressing respectful and firm opposition to I-940. Instead, the state should seek a solution to bring everyone together. This has been tough work; there is a better way forward than I-940.

The concerns do not just focus on deadly force, but there are other aspects of the initiative that need to be changed. If the goal is to reduce violence, a comprehensive approach is better. Law enforcement groups respectfully and humbly ask that state policy balance community concerns with law enforcement, who are the ones who show up when no one else will. Law enforcement is not just saying no to I-940. Organizations and leaders are working together to come up with something different.

There is no funding attached to I-940, but there is a great deal of work that needs to be done. That work requires an investment by the state. For example, de-escalation training begins with better patrol tactics. It is not check-the-box training, it is complex and comprehensive.

Many people were misled or tricked into signing I-940. Signature gatherers represented it as a measure to improve the mental health system, and hid or omitted the fact that its purpose is to prosecute police officers. However, sometimes officers need to use deadly force, though no officer wants to do so. Every officer wants to clear the call without paperwork and move onto the next. It is unclear how I-940 will help anything. How is this going to improve mental health? What about the training that already exists? The Legislature should not pass I-940, and it should pay attention to the silent majority.

Persons Testifying: (In support) Heather Villanueva, Joe Nelson, Kari Nelson, Noel Parrish, De-Escalate Washington; Elizabeth Smith, American Civil Liberties of Washington; Larry Shannon, Washington State Association for Justice; Chester Earl and Lisa Rideout-Earl, Justice for Jackie; Ivanova Smith and Kim Mosolf, Disability Rights Washington; Nina Martinez, Latino Civic Alliance; Katrina Johnson; Paola Maranan, Children's Alliance; Fe Lopez, One America; Annalesa Thomas; Michele Meaker, National Alliance on Mental Illness; Stella Sun; James Rideout, Puyallup Tribal Council; Monisha Harrell, Equal Rights Washington; Doug Baldwin; Marilyn Covarrubias; Stephanie Butts, Sonia Joseph, Andre Taylor, Devitta Briscoe, Lauren Tozzi, Gloria Butts, Darius Vann, Not This Time; Andrew Villeneuve, Northwest Progressive Institute; Judith Da Silva; Lorretta Gutierrez, Coalition of Black Trade Unionists; Earth Feather Sovereign; Fredrick Thomas; Robert Wardell, People First; and Barnett Kalikow.

(Opposed) Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Sue Rahr, Washington Criminal Justice Training Commission; and Kelly Ditrich.

Persons Signed In To Testify But Not Testifying: None.