

# SENATE BILL REPORT

## SHB 1064

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As Passed Senate, January 30, 2019

**Title:** An act relating to law enforcement.

**Brief Description:** Concerning law enforcement.

**Sponsors:** House Committee on Public Safety (originally sponsored by 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, Fitzgibbon, Jinkins, Macri, Bergquist, Chambers, Graham, Frame and Reeves).

**Brief History:** Passed House: 1/24/19, 98-0.

**Committee Activity:** Bill not heard in a Senate committee.

**Floor Activity:**

Passed Senate: 1/30/19, 47-0.

### Brief Summary of Bill

- Modifies Initiative 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.

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**Staff:** Tim Ford (786-7423)

**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.

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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.*

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 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 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 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 the tribe.

*Criminal Justice Training Commission Rulemaking.* The CJTC must adopt rules necessary for carrying out specified requirements of I-940. The CJTC must seek input from the Office of the Attorney General, law enforcement agencies, tribes, and community stakeholders to carry out rulemaking. 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; noncitizens; Native Americans; youth; and formerly incarcerated persons.

**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 deescalation tactics and less lethal alternatives are part of the decision making 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. Law enforcement are not required 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 rendering 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 reasonable costs of their defense when the peace officer 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 officer's scope of authority.

**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.