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**SENATE BILL 5029**

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**State of Washington 66th Legislature 2019 Regular Session**

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

AN ACT Relating to law enforcement; amending RCW 43.101.--- and 36.28A.---; amending 2019 c ... s 9 (uncodified); reenacting and amending RCW 9A.16.040; adding new sections to chapter 10.114 RCW; adding a new section to chapter 9A.16 RCW; repealing RCW 10.114.010, 10.114.020, 9A.16.045, 43.101.450, 43.101.452, 43.101.455, and 36.28A.445; repealing 2018 c 10 s 3 and 2018 c 11 s 7; repealing 2018 c 10 ss 4, 8, 9, and 10 and 2018 c 11 ss 1, 2, 8, 9, 10, and 11 (uncodified); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 43.101.--- and 2019 c ... s 5 (Initiative Measure No. 940) are each amended to read as follows:

(1) Within six months after December 6, 2018, the commission must consult with law enforcement agencies and community stakeholders and adopt rules for carrying out the training requirements of RCW 43.101.--- and 43.101.--- (sections 3 and 4, chapter . . . (Initiative Measure No. 940), Laws of 2019). Such rules must, at a minimum:

(a) Adopt training hour requirements and curriculum for initial violence de-escalation trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2019;

(b) Adopt training hour requirements and curriculum for initial mental health trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2019, which may include all or part of the mental health training curricula established under RCW 43.101.227 and 43.101.427;

(c) Adopt annual training hour requirements and curricula for continuing trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2019;

(d) Establish means by which law enforcement officers will receive trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2019; and

(e) Require compliance with chapter . . . (Initiative Measure No. 940), Laws of 2019 training requirements ((~~as a condition of maintaining certification~~)).

(2) In developing curricula, the commission shall consider inclusion of the following:

(a) 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;

(b) Alternatives to jail booking, arrest, or citation in situations where appropriate;

(c) Implicit and explicit bias, cultural competency, and the historical intersection of race and policing;

(d) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities and/or behavioral health issues;

(e) "Shoot/don't shoot" scenario training;

(f) 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 ((~~is used only when unavoidable and as a last resort~~));

(g) Mental health and policing, including bias and stigma; and

(h) 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.

(3) The initial violence de-escalation training must educate officers on the good faith standard for use of deadly force established by chapter . . . (Initiative Measure No. 940), Laws of 2019 and how that standard advances violence de-escalation goals.

(4) The commission may provide trainings, alone or in partnership with private parties or law enforcement agencies, authorize private parties or law enforcement agencies to provide trainings, or any combination thereof. The entity providing the training may charge a reasonable fee.

**Sec.**  RCW 36.28A.--- and 2019 c ... s 6 (Initiative Measure No. 940) are each amended to read as follows:

(1) It is the policy of the state of Washington that all law enforcement personnel must ((~~render first aid to save lives~~)) 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.

(2) Within one year after December 6, 2018, the Washington state criminal justice training commission, in consultation with the Washington state patrol, 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, shall develop guidelines for implementing the duty to render first aid adopted in this section. The guidelines must: (a) Adopt first aid training requirements; (b) 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 (c) assist agencies and law enforcement officers in balancing ((~~competing public health and safety duties; and (c) 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~~)) the many essential duties of officers with the solemn duty to preserve the life of persons with whom officers come into direct contact.

**Sec.**  RCW 9A.16.040 and 2019 c ... s 7 (Initiative Measure No. 940) are each reenacted and amended to read as follows:

(1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer applies deadly force in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer meeting the good faith standard of this section 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

(c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid:

(i) 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;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;

(iii) To 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

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace 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. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) 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, provided the officer meets the good faith standard of this section.

(3) A public officer covered by subsection (1)(a) of this section shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) A ((~~law enforcement~~)) peace officer shall not be held criminally liable for using deadly force ((~~if such officer meets the good faith standard adopted in this section~~)) 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.

(5) ((~~The following good faith standard is adopted for law enforcement officer use of deadly force:~~

~~(a) The good faith standard is met only if both the objective good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met.~~

~~(b) The objective good faith test is met if a reasonable officer, in light of all 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.~~

~~(c) 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.~~

~~(d) Where the use of deadly force results in death, substantial bodily harm, or great 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 established by this section and satisfied other applicable laws and policies.~~

~~(6) For the purpose of this section, "law enforcement officer" means any law enforcement officer in the state of Washington, including but not limited to law enforcement personnel and peace officers as defined by RCW 43.101.010.~~

~~(7)~~)) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

**Sec.**  2019 c ... s 9 (Initiative Measure No. 940) (uncodified) is amended to read as follows:

(1) Except where a different timeline is provided in ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2019, the Washington state criminal justice training commission must adopt any rules necessary for carrying out the requirements of ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2019 within one year after December 6, 2018. In carrying out all rule making under ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2019, the commission shall seek input from the attorney general, law enforcement agencies, 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, tribes, and community stakeholders. The commission shall consider the use of negotiated rule making. ((~~The rules must require that procedures under RCW 9A.16.040(5)(d) be carried out completely independent of the agency whose officer was involved in the use of deadly force; and, when the deadly force is used on a tribal member, such procedures must include consultation with the member's tribe and, where appropriate, information sharing with such tribe.~~))

(2) Where ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2019 requires involvement of community stakeholders, 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.

NEW SECTION. **Sec.**  A new section is added to chapter 10.114 RCW to read as follows:

Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

NEW SECTION. **Sec.**  A new section is added to chapter 10.114 RCW to read as follows:

Whenever a law enforcement officer's application of force results in the death of a person who is an enrolled member of a federally recognized Indian tribe, the law enforcement agency must notify the governor's office of Indian affairs. Notice by the law enforcement agency to the governor's office of Indian affairs must be made within a reasonable period of time, but not more than twenty-four hours after the law enforcement agency has good reason to believe that the person was an enrolled member of a federally recognized Indian tribe. Notice provided under this section must include sufficient information for the governor's office of Indian affairs to attempt to identify the deceased person and his or her tribal affiliation. Nothing in this section requires a law enforcement agency to disclose any information that could compromise the integrity of any criminal investigation. The governor's office of Indian affairs must establish a means to receive the notice required under this section, including outside of regular business hours, and must immediately notify the tribe of which the person was enrolled.

NEW SECTION. **Sec.**  A new section is added to chapter 9A.16 RCW to read as follows:

(1) When a peace officer who is charged with a crime is found not guilty or charges are dismissed by reason of justifiable homicide or use of deadly force under RCW 9A.16.040, 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, the state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action.

(2) If the trier of fact makes a determination of justifiable homicide, justifiable use of deadly force, or self-defense, the judge shall determine the amount of the award.

(3) Whenever the issue of justifiable homicide, justifiable use of deadly force, or self-defense under this section is decided by a judge, or whenever charges against a peace officer are dismissed based on the merits, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) of this section.

(4) Whenever the issue of justifiable homicide, justifiable use of deadly force, or self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, the court shall instruct the jury to return a special verdict in substantially the following form:

|  |  |  |  |
| --- | --- | --- | --- |
|  | | | answer yes or no |
|  | 1. | Was the defendant on duty or otherwise acting within the scope of his or her authority as a peace officer? | . . . . . |
|  | 2. | Was the finding of not guilty based upon justifiable homicide, justifiable use of deadly force, or self-defense? | . . . . . |

(5) Nothing in this section precludes the legislature from using the sundry claims process to grant an award where none was granted under this section or otherwise where the charge was dismissed prior to trial, or to grant a higher award than one granted under this section.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)2018 c 10 s 3 and 2018 c 11 s 7 (Initiative Measure No. 940);

(2)2018 c 10 s 4 (uncodified) and 2018 c 11 s 9 (Initiative Measure No. 940) (uncodified);

(3)RCW 10.114.010 (Independent investigation—Adoption of rules) and 2018 c 10 s 5;

(4)RCW 10.114.020 (Death of member of recognized Indian tribe—Notice) and 2018 c 10 s 6;

(5)RCW 9A.16.045 (Justifiable homicide or use of deadly force by peace officer—Reimbursement of defendant for costs—Special verdict) and 2018 c 10 s 7;

(6)2018 c 10 s 8 (uncodified);

(7)2018 c 10 s 9 (uncodified);

(8)2018 c 10 s 10 (uncodified);

(9)2018 c 11 s 1 (Initiative Measure No. 940) (uncodified);

(10)2018 c 11 s 2 (Initiative Measure No. 940) (uncodified);

(11)RCW 43.101.450 (Violence de-escalation training) and 2018 c 11 s 3 (Initiative Measure No. 940);

(12)RCW 43.101.452 (Mental health training) and 2018 c 11 s 4 (Initiative Measure No. 940);

(13)RCW 43.101.455 (Violence de-escalation and mental health training—Adoption of rules—Training requirements) and 2018 c 10 s 1 & 2018 c 11 s 5 (Initiative Measure No. 940);

(14)RCW 36.28A.445 (Duty to provide or facilitate first aid—Development of guidelines) and 2018 c 10 s 2 & 2018 c 11 s 6 (Initiative Measure No. 940);

(15)2018 c 11 s 8 (Initiative Measure No. 940) (uncodified);

(16)2018 c 11 s 10 (Initiative Measure No. 940) (uncodified); and

(17)2018 c 11 s 11 (Initiative Measure No. 940) (uncodified).

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**