

HOUSE BILL REPORT

HB 1064

As Reported by House Committee On:
Public Safety

Title: An act relating to law enforcement.

Brief Description: Concerning law enforcement.

Sponsors: 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:

Committee Activity:

Public Safety: 1/14/19, 1/15/19 [DPS].

Brief Summary of Substitute Bill

- Modifies Initiative Measure No. 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.

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; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Kelly Leonard (786-7147).

Background:

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.

Initiative Measure No. 940 (I-940) was filed in 2017 as an Initiative to the Legislature, and the Secretary of State certified the measure during the 2018 Regular Legislative Session. Subsequently, the Legislature passed I-940 along with a separate measure, Engrossed Substitute House Bill 3003 (ESHB 3003), which prospectively amended certain provisions of I-940 if I-940 were to pass the Legislature. In *Eyman v. Wyman*, No. 95749-5, published August 28, 2018, the Supreme Court invalidated the enactment of both measures. The Supreme Court directed the Secretary of State to certify I-940 to the ballot for approval or rejection by the voters. The initiative was approved by the voters in the November 2018 general election, and it took effect December 6, 2018.

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. This includes hosting the Basic Law Enforcement Academy as well as advanced training. The CJTC also certifies and, when necessary, decertifies officers.

Initiative 940 requires law enforcement officers to complete violence de-escalation training and mental health training through the CJTC. In developing curricula for training programs, the CJTC must consider certain specified components. These include, 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 by certain deadlines.

The CJTC must adopt rules for carrying out the training requirements. Rules must require compliance with the training requirements as a condition of maintaining officer certification.

State Criminal Law on Use of Deadly Force by Officers.

Whether a peace 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 peace officer has the same right of self-defense as others. Peace officers are also statutorily authorized to use deadly force in additional circumstances prescribed in statute. Initiative 940 provides protection against criminal liability only when the use of deadly force is authorized under the circumstances prescribed in statute and the officer meets a good faith standard.

The good faith standard is met only if the officer meets both the objective good faith test and the 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.

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. The CJTC must adopt rules requiring these 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.

Law Enforcement Duty to Render First Aid.

Initiative 940 established a state policy requiring all law enforcement personnel to render first aid to save lives. The CJTC, in consultation with certain entities, must develop guidelines for implementing the duty to render first aid. Those guidelines must: establish 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 they come into contact with, including providing or facilitating first aid as early as possible.

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 seek input from the Attorney General, law enforcement agencies, tribes, and certain community stakeholders.

Summary of Substitute 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 de-escalation tactics and less lethal alternatives are part of the decisionmaking 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 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 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 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.

Substitute Bill Compared to Original Bill:

The substitute bill makes technical corrections to session law and code references.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) House Bill 1064 (HB 1064) encompasses many years of hard work on the part of: legislators; community representatives and stakeholders; law enforcement leaders and labor organizations; and grieving families and loved ones. Getting to consensus on legislation has taken more than three years. During that time, many key stakeholders participated in the Joint Legislative Task Force on the Use of Deadly Force in Community Policing, and others participated in multiple initiative campaigns. When it began, community representatives and law enforcement were not listening to one another. There was a lot of distrust, and tensions were high. Agreement seemed impossible.

The campaign in support of I-940 was an incredible effort on the part of communities, and importantly, of the families who lost loved ones as a result of deadly force incidents. When I-940 was certified and introduced last session, it brought everyone to the table.

Although I-940 created a conflict of belief, this conflict created an urgency and a desire to listen. Law enforcement groups and community groups listened to each other. Instead of going into their corners, they tried to understand each other's concerns and goals. This process restored trust between communities and law enforcement at a critical time. Law enforcement and communities have a shared goal of safety for everyone, including officers and civilians. Law enforcement understood the concerns of communities, and it chose to engage in a collaborative effort to address those concerns. Community organizations chose to stay at the table when they did not have to. As a result, stakeholders found common ground from which the core policies of ESHB 3003 were built.

The Supreme Court decision to invalidate ESHB 3003 for procedural reasons was unfortunate from the perspective of law enforcement. While law enforcement leaders and labor groups subsequently opposed I-940 at the ballot, they did so respectfully and with the intent to advocate for passage of the provisions in ESHB 3003. Stakeholders were on different sides of the ballot initiative, but with the same objectives in mind.

The success of I-940 was based on a bottom-up, grassroots campaign. More than 60 percent of Washingtonians voted in favor of I-940, providing a mandate to move forward with its core policies. However, HB 1064 is the next step in solidifying I-940. Some community advocates may wonder why HB 1064 is important after a perceived victory on the ballot. However, it is critical for law enforcement to participate in these reforms. The policies in I-940 will be more successful if law enforcement officers are part of the process.

House Bill 1064, which contains the provisions of ESHB 3003, is not a compromise. To the contrary, it is a historic consensus agreement brought about by the hard work of collaboration and listening. The bill clarifies and strengthens I-940 while supporting the underlying policy goals of the communities who campaigned for it. At the same time, HB 1064 provides a better framework for implementation by law enforcement.

Law enforcement groups support HB 1064. Community organizations, including those that campaigned for I-940, also support HB 1064. This has been a long road, but an important one. The consensus agreement—and most importantly, the process of getting to it—makes Washington an example for the nation. The bill is not a magical solution. There are still areas where stakeholders disagree, but now they are prepared to keep working together towards the same goals. In fact, it is critical for the Legislature to pass the bill as soon as possible in order for implementation to start without further delay.

There are several key policy issues in I-940 and HB 1064: the standard for use of deadly force, independent investigations, tribal notification, and training.

The new standard for use of deadly force, as clarified by the bill, provides a clear and objective standard that can be understood by law enforcement officers.

Independent investigations of deadly force incidents will restore accountability and public confidence in law enforcement. If an investigation is not independent, then the public will not trust its outcome, even if it is done well. Law enforcement and communities have a shared interest in objective, independent investigations.

Tribes have been especially affected by past deadly force incidents. Moving forward, tribal notification procedures are critical. Including tribes in the process of implementation will ensure tribal jurisdiction and culture are respected and reflected in any new policies and practices.

The consensus agreement will expand access to de-escalation training throughout the state and allow such training to be developed with input from community groups, law enforcement, and the public. This collaborative effort is critical to the success of any new training requirements—trainees will gain more from it if they believe in it. Washington's law enforcement officers want to lead the nation in training, and they need the resources and tools to do so.

Several provisions require rulemaking by the CJTC. The CJTC is already preparing to move forward with rulemaking for investigations, first aid, and training. State rulemaking laws and the provisions of I-940 will create a tight timeline over the next year. Despite this, there will be several opportunities for review and public comment before the CJTC adopts any final rules. The CJTC is using an inclusive public process reaching out to both sides of the state. The CJTC will also be streaming meetings and creating an Internet portal to receive public comments. The bridges built through HB 1064 will be critical to successful collaborative rulemaking.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Kim Mosolf, Disability Rights Washington; James Rideout and Chester Earl, Justice for Jackie; Andre Taylor, Not This Time and De-Escalate Washington; Ken Thomas and Steve Strachan, Washington Association of Sheriffs and Police Chiefs; John Snaza, Washington State Sheriffs' Association; Xochitl Maykovich, Washington CAN!; Toshiko Hasegawa, Washington State Commission on Asian Pacific American Affairs; Tim Reynon, Puyallup Tribal Council and De-Escalate Washington; Teresa Taylor, Chris Tracy, and Jeff DeVere, Washington Council of Police and Sheriffs; Monisha Harrell, Equal Rights Washington and De-Escalate Washington; Larry Shannon, Washington State Department of Justice; Alison Holcomb, American Civil Liberties Union of Washington and De-Escalate Washington; Lynnette Buffington, Marco Montebianco, and James Shrimpsher, Washington State Fraternal Order of Police; Jon Tunheim, Washington Association of Prosecuting Attorneys; Leslie Cushman, De-Escalate Washington; and Sue Rahr, Washington State Criminal Justice Training Commission.

Persons Signed In To Testify But Not Testifying: None.