



## Summary of Initiative 940

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 940. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

### BRIEF SUMMARY

- Requires law enforcement officers to complete de-escalation training and mental health training.
- 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.
- Establishes state policy requiring law enforcement personnel to render first aid.

### BACKGROUND

#### Initiative 940

Initiative No. 940 (I-940) was filed in 2017 as an Initiative to the Legislature. Once certified, an Initiative to the Legislature is submitted to the Legislature at its next regular session, at which time the Legislature must take one of three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

During the 2018 Regular Legislative Session, the Legislature passed I-940 along with a separate measure, Engrossed Substitute House Bill (ESHB) 3003. ESHB 3003 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 and directed the Secretary of State to certify I-940 to the ballot. I-940 is, therefore, being submitted to the people for approval or rejection at the November 2018 general election.

The ballot title and ballot measure summary prepared by the Attorney General are as follows:

### **Ballot Title**

Statement of Subject: Initiative Measure No. 940 concerns law enforcement.

Concise Description: This measure would require law enforcement to receive violence de-escalation, mental-health, and first-aid training, and provide first-aid; and change standards for use of deadly force, adding a "good faith" standard and independent investigation.

Should this measure be enacted into law? Yes [ ] No [ ]

### **Ballot Measure Summary**

This measure would require all law enforcement officers in the state to receive violence de-escalation and mental health training, as developed by the criminal justice training commission. It would require law enforcement personnel to provide first-aid to save lives and require law enforcement agencies to adopt guidelines in implementing this duty. It would amend the standards for justifiable use of deadly force by law enforcement, including adding a "good faith" standard and requiring independent investigation.

### **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.

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. 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.

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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 Criminal Law on Use of Deadly Force by Peace 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 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 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 an 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.

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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 peace 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 an 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: (1) a legislatively created duty to protect a particular class of persons; (2) failure to enforce a statute; (3) failure to exercise reasonable care when engaging in volunteer rescue efforts; and (4) circumstances with a special relationship to an individual.

## **SUMMARY**

### **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;

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- 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 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

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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.

### **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.

### **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

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formerly incarcerated persons.

**Effective Date:** The initiative takes effect 30 days after the election at which it is approved.

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