

# HOUSE BILL REPORT

## HB 1635

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### As Amended by the Senate

**Title:** An act relating to limiting liability arising from the use of trained police dogs.

**Brief Description:** Limiting liability arising from the use of trained police dogs.

**Sponsors:** Representatives Mosbrucker, Walsh and Eslick.

#### Brief History:

##### Committee Activity:

Community Safety, Justice, & Reentry: 2/6/23, 2/13/23 [DP].

##### Floor Activity:

Passed House: 1/31/24, 97-0.

Senate Amended.

Passed Senate: 2/29/24, 49-0.

#### Brief Summary of Bill

- Requires the Criminal Justice Training Commission to develop model standards for the training and certification of canine teams to detect fentanyl by December 1, 2024.
- Provides certain entities and their employees immunity from civil damages arising from the use of a canine to detect fentanyl, subject to specific conditions, beginning January 1, 2025.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** Do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

**Staff:** Corey Patton (786-7388).

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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 part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

In 2021 the Legislature required the Criminal Justice Training Commission (CJTC) to convene a work group to develop a model policy for the training and use of canine teams. Canine teams working in Washington must be certified according to the CJTC's adopted standards, including knowledge of and compliance with the CJTC's model policy. The CJTC's model policy includes the following:

- canine certification training requirements;
- considerations of canine deployment;
- appropriate canine deployment;
- strategies for minimizing law enforcement canine bites;
- circumstances where a canine handler should consider the use of tactics other than deploying a canine;
- prohibited use of a police canine;
- use of canines to apprehend suspects;
- agency canine team reporting protocols;
- circumstances that would warrant the decertification of canine teams; and
- circumstances where the use of voluntary canines and canine handlers may be appropriate.

Performance standards for certification vary depending on the canine team's intended use. For example, narcotics detection teams are subject to specific evaluations and performance testing with their assigned duty canine, including testing whether the canine is able to specifically pinpoint the odors of heroin, cocaine, and methamphetamine.

A law enforcement officer who has successfully completed training in police dog handling as prescribed by the CJTC and uses a police dog in the line of duty in good faith is immune from civil action for damages arising out of such use of the police dog. A "police dog" is a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

## **Summary of Bill:**

By December 1, 2024, the Criminal Justice Training Commission (CJTC) must develop model standards for the training and certification of canine teams to detect fentanyl. When developing the model standards, the CJTC must consult with experts that train canines to imprint on controlled substances, law enforcement or correctional agencies that use canines to detect controlled substances, and experts on the training of canines for use by law enforcement.

Beginning January 1, 2025, a state or local government, law enforcement agency, or any employee of a state or local government or law enforcement agency is immune from civil damages arising from the use of a canine to detect fentanyl if:

- the canine is trained and certified pursuant to the CJTC's model standards;

- the canine is being handled by a peace officer acting within the scope of his or her employment or duties; and
- the damages do not arise from gross negligence or willful or wanton misconduct.

**EFFECT OF SENATE AMENDMENT(S):**

The amended bill: (1) requires the Criminal Justice Training Commission (CJTC) to establish model standards for the training and certification of canine teams to detect fentanyl by July 1, 2025, rather than December 1, 2024; (2) expands the list of entities that the CJTC must consult with when developing its model standards to include licensed medical professionals and veterinarians with specified expertise; and (3) eliminates the provision granting immunity to a state or local government, law enforcement agency, or an employee of such entities from civil damages arising from the use of a canine to detect fentanyl, and instead provides that a state or local government or law enforcement agency is not strictly liable for damages resulting from the lawful application of a police dog.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The ease of producing fentanyl has resulted in wider proliferation in Washington. Fentanyl is an incredibly dangerous drug with devastating effects on families and communities. Fentanyl has caused numerous overdose deaths, and officers have collapsed simply from inhaling aerosolized fentanyl.

Police canines are trained for specific odor identification, and testing is done to prove a particular canine is accurate. However, canines are not currently trained or certified to detect fentanyl in Washington. Canines can be specifically trained to detect quantities of fentanyl that would be illegal to possess, so they won't give an alert when only detecting a microscopic amount. There is a pharmaceutical form of fentanyl currently available, which is sometimes used by people who have gone through cancer treatments. As such, a canine handler that detects fentanyl in that instance should be immune from liability as long as the handler is acting in good faith within the scope of his or her job. Without such safeguards, there would be a chilling effect on law enforcement.

(Opposed) None.

**Persons Testifying:** Representative Gina Mosbrucker, prime sponsor; Dave Hayes, Washington State Narcotics Investigators; James McMahan, Washington Association of

Sheriffs and Police Chiefs; and Jason Nyhus, Washington State Police Canine Association.

**Persons Signed In To Testify But Not Testifying:** None.