
SENATE BILL 5029

State of Washington

66th Legislature

2019 Regular Session

By Senators Frockt, Padden, Pedersen, Dhingra, Saldaña, Nguyen, Holy, Salomon, Wellman, Wilson, C., Das, Randall, and Carlyle

Prefiled 12/19/18.

1 AN ACT Relating to law enforcement; amending RCW 43.101.--- and
2 36.28A.---; amending 2019 c ... s 9 (uncodified); reenacting and
3 amending RCW 9A.16.040; adding new sections to chapter 10.114 RCW;
4 adding a new section to chapter 9A.16 RCW; repealing RCW 10.114.010,
5 10.114.020, 9A.16.045, 43.101.450, 43.101.452, 43.101.455, and
6 36.28A.445; repealing 2018 c 10 s 3 and 2018 c 11 s 7; repealing 2018
7 c 10 ss 4, 8, 9, and 10 and 2018 c 11 ss 1, 2, 8, 9, 10, and 11
8 (uncodified); and declaring an emergency.

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

10 **Sec. 1.** RCW 43.101.--- and 2019 c ... s 5 (Initiative Measure
11 No. 940) are each amended to read as follows:

12 (1) Within six months after December 6, 2018, the commission must
13 consult with law enforcement agencies and community stakeholders and
14 adopt rules for carrying out the training requirements of RCW
15 43.101.--- and 43.101.--- (sections 3 and 4, chapter . . .
16 (Initiative Measure No. 940), Laws of 2019). Such rules must, at a
17 minimum:

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

1 (b) Adopt training hour requirements and curriculum for initial
2 mental health trainings required by chapter . . . (Initiative Measure
3 No. 940), Laws of 2019, which may include all or part of the mental
4 health training curricula established under RCW 43.101.227 and
5 43.101.427;

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

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

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

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

17 (a) De-escalation in patrol tactics and interpersonal
18 communication training, including tactical methods that use time,
19 distance, cover, and concealment, to avoid escalating situations that
20 lead to violence;

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

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

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

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

29 (f) Alternatives to the use of physical or deadly force so that
30 de-escalation tactics and less lethal alternatives are part of the
31 decision-making process leading up to the consideration of deadly
32 force (~~(is used only when unavoidable and as a last resort)~~);

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

34 (h) Using public service, including rendering of first aid, to
35 provide a positive point of contact between law enforcement officers
36 and community members to increase trust and reduce conflicts.

37 (3) The initial violence de-escalation training must educate
38 officers on the good faith standard for use of deadly force
39 established by chapter . . . (Initiative Measure No. 940), Laws of
40 2019 and how that standard advances violence de-escalation goals.

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

6 **Sec. 2.** RCW 36.28A.--- and 2019 c ... s 6 (Initiative Measure
7 No. 940) are each amended to read as follows:

8 (1) It is the policy of the state of Washington that all law
9 enforcement personnel must (~~render first aid to save lives~~) provide
10 or facilitate first aid such that it is rendered at the earliest safe
11 opportunity to injured persons at a scene controlled by law
12 enforcement.

13 (2) Within one year after December 6, 2018, the Washington state
14 criminal justice training commission, in consultation with the
15 Washington state patrol, the Washington association of sheriffs and
16 police chiefs, organizations representing state and local law
17 enforcement officers, health providers and/or health policy
18 organizations, tribes, and community stakeholders, shall develop
19 guidelines for implementing the duty to render first aid adopted in
20 this section. The guidelines must: (a) Adopt first aid training
21 requirements; (b) address best practices for securing a scene to
22 facilitate the safe, swift, and effective provision of first aid to
23 anyone injured in a scene controlled by law enforcement or as a
24 result of law enforcement action; and (c) assist agencies and law
25 enforcement officers in balancing (~~competing public health and~~
26 ~~safety duties; and (c) establish that law enforcement officers have a~~
27 ~~paramount duty to preserve the life of persons whom the officer comes~~
28 ~~into direct contact with while carrying out official duties,~~
29 ~~including providing or facilitating immediate first aid to those in~~
30 ~~agency care or custody at the earliest opportunity)) the many
31 essential duties of officers with the solemn duty to preserve the
32 life of persons with whom officers come into direct contact.~~

33 **Sec. 3.** RCW 9A.16.040 and 2019 c ... s 7 (Initiative Measure No.
34 940) are each reenacted and amended to read as follows:

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

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

1 (b) When necessarily used by a peace officer meeting the good
2 faith standard of this section to overcome actual resistance to the
3 execution of the legal process, mandate, or order of a court or
4 officer, or in the discharge of a legal duty; or

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

8 (i) To arrest or apprehend a person who the officer reasonably
9 believes has committed, has attempted to commit, is committing, or is
10 attempting to commit a felony;

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

14 (iii) To prevent the escape of a person from a county or city
15 jail or holding facility if the person has been arrested for, charged
16 with, or convicted of a felony; or

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

19 (2) In considering whether to use deadly force under subsection
20 (1)(c) of this section, to arrest or apprehend any person for the
21 commission of any crime, the peace officer must have probable cause
22 to believe that the suspect, if not apprehended, poses a threat of
23 serious physical harm to the officer or a threat of serious physical
24 harm to others. Among the circumstances which may be considered by
25 peace officers as a "threat of serious physical harm" are the
26 following:

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

30 (b) There is probable cause to believe that the suspect has
31 committed any crime involving the infliction or threatened infliction
32 of serious physical harm.

33 Under these circumstances deadly force may also be used if
34 necessary to prevent escape from the officer, where, if feasible,
35 some warning is given, provided the officer meets the good faith
36 standard of this section.

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

1 (4) A ~~((law enforcement))~~ peace officer shall not be held
2 criminally liable for using deadly force ~~((if such officer meets the~~
3 ~~good faith standard adopted in this section))~~ in good faith, where
4 "good faith" is an objective standard which shall consider all the
5 facts, circumstances, and information known to the officer at the
6 time to determine whether a similarly situated reasonable officer
7 would have believed that the use of deadly force was necessary to
8 prevent death or serious physical harm to the officer or another
9 individual.

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

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

15 ~~(b) The objective good faith test is met if a reasonable officer,~~
16 ~~in light of all the facts and circumstances known to the officer at~~
17 ~~the time, would have believed that the use of deadly force was~~
18 ~~necessary to prevent death or serious physical harm to the officer or~~
19 ~~another individual.~~

20 ~~(c) The subjective good faith test is met if the officer intended~~
21 ~~to use deadly force for a lawful purpose and sincerely and in good~~
22 ~~faith believed that the use of deadly force was warranted in the~~
23 ~~circumstance.~~

24 ~~(d) Where the use of deadly force results in death, substantial~~
25 ~~bodily harm, or great bodily harm, an independent investigation must~~
26 ~~be completed to inform the determination of whether the use of deadly~~
27 ~~force met the objective good faith test established by this section~~
28 ~~and satisfied other applicable laws and policies.~~

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

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

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

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

1 **Sec. 4.** 2019 c ... s 9 (Initiative Measure No. 940) (uncodified)
2 is amended to read as follows:

3 (1) Except where a different timeline is provided in ~~((this act))~~
4 chapter . . . (Initiative Measure No. 940), Laws of 2019, the
5 Washington state criminal justice training commission must adopt any
6 rules necessary for carrying out the requirements of ~~((this act))~~
7 chapter . . . (Initiative Measure No. 940), Laws of 2019 within one
8 year after December 6, 2018. In carrying out all rule making under
9 ~~((this act))~~ chapter . . . (Initiative Measure No. 940), Laws of
10 2019, the commission shall seek input from the attorney general, law
11 enforcement agencies, the Washington council of police and sheriffs,
12 the Washington state fraternal order of police, the council of
13 metropolitan police and sheriffs, the Washington state patrol
14 troopers association, at least one association representing law
15 enforcement who represent traditionally underrepresented communities
16 including the black law enforcement association of Washington,
17 tribes, and community stakeholders. The commission shall consider the
18 use of negotiated rule making. ~~((The rules must require that~~
19 ~~procedures under RCW 9A.16.040(5)(d) be carried out completely~~
20 ~~independent of the agency whose officer was involved in the use of~~
21 ~~deadly force; and, when the deadly force is used on a tribal member,~~
22 ~~such procedures must include consultation with the member's tribe~~
23 ~~and, where appropriate, information sharing with such tribe.))~~

24 (2) Where ~~((this act))~~ chapter . . . (Initiative Measure No.
25 940), Laws of 2019 requires involvement of community stakeholders,
26 input must be sought from organizations advocating for: Persons with
27 disabilities; members of the lesbian, gay, bisexual, transgender, and
28 queer community; persons of color; immigrants; noncitizens; native
29 Americans; youth; and formerly incarcerated persons.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.114
31 RCW to read as follows:

32 Except as required by federal consent decree, federal settlement
33 agreement, or federal court order, where the use of deadly force by a
34 peace officer results in death, substantial bodily harm, or great
35 bodily harm, an independent investigation must be completed to inform
36 any determination of whether the use of deadly force met the good
37 faith standard established in RCW 9A.16.040 and satisfied other
38 applicable laws and policies. The investigation must be completely
39 independent of the agency whose officer was involved in the use of

1 deadly force. The criminal justice training commission must adopt
2 rules establishing criteria to determine what qualifies as an
3 independent investigation pursuant to this section.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.114
5 RCW to read as follows:

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

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 9A.16
24 RCW to read as follows:

25 (1) When a peace officer who is charged with a crime is found not
26 guilty or charges are dismissed by reason of justifiable homicide or
27 use of deadly force under RCW 9A.16.040, or by reason of self-
28 defense, for actions taken while on duty or otherwise within the
29 scope of his or her authority as a peace officer, the state of
30 Washington shall reimburse the defendant for all reasonable costs,
31 including loss of time, legal fees incurred, and other expenses
32 involved in his or her defense. This reimbursement is not an
33 independent cause of action.

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

37 (3) Whenever the issue of justifiable homicide, justifiable use
38 of deadly force, or self-defense under this section is decided by a

1 judge, or whenever charges against a peace officer are dismissed
2 based on the merits, the judge shall consider the same questions as
3 must be answered in the special verdict under subsection (4) of this
4 section.

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

- | | | |
|----|----|-------------------------------------|
| 10 | | answer |
| 11 | | yes or no |
| 12 | 1. | Was the defendant on duty or |
| 13 | | otherwise acting within the scope |
| 14 | | of his or her authority as a peace |
| 15 | | officer? |
| 16 | 2. | Was the finding of not guilty based |
| 17 | | upon justifiable homicide, |
| 18 | | justifiable use of deadly force, or |
| 19 | | self-defense? |

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

25 NEW SECTION. **Sec. 8.** The following acts or parts of acts are
26 each repealed:

- 27 (1) 2018 c 10 s 3 and 2018 c 11 s 7 (Initiative Measure No. 940);
- 28 (2) 2018 c 10 s 4 (uncodified) and 2018 c 11 s 9 (Initiative
29 Measure No. 940) (uncodified);
- 30 (3) RCW 10.114.010 (Independent investigation—Adoption of rules)
31 and 2018 c 10 s 5;
- 32 (4) RCW 10.114.020 (Death of member of recognized Indian tribe—
33 Notice) and 2018 c 10 s 6;
- 34 (5) RCW 9A.16.045 (Justifiable homicide or use of deadly force by
35 peace officer—Reimbursement of defendant for costs—Special verdict)
36 and 2018 c 10 s 7;
- 37 (6) 2018 c 10 s 8 (uncodified);

- 1 (7) 2018 c 10 s 9 (uncodified);
2 (8) 2018 c 10 s 10 (uncodified);
3 (9) 2018 c 11 s 1 (Initiative Measure No. 940) (uncodified);
4 (10) 2018 c 11 s 2 (Initiative Measure No. 940) (uncodified);
5 (11) RCW 43.101.450 (Violence de-escalation training) and 2018 c
6 11 s 3 (Initiative Measure No. 940);
7 (12) RCW 43.101.452 (Mental health training) and 2018 c 11 s 4
8 (Initiative Measure No. 940);
9 (13) RCW 43.101.455 (Violence de-escalation and mental health
10 training—Adoption of rules—Training requirements) and 2018 c 10 s 1
11 & 2018 c 11 s 5 (Initiative Measure No. 940);
12 (14) RCW 36.28A.445 (Duty to provide or facilitate first aid—
13 Development of guidelines) and 2018 c 10 s 2 & 2018 c 11 s 6
14 (Initiative Measure No. 940);
15 (15) 2018 c 11 s 8 (Initiative Measure No. 940) (uncodified);
16 (16) 2018 c 11 s 10 (Initiative Measure No. 940) (uncodified);
17 and
18 (17) 2018 c 11 s 11 (Initiative Measure No. 940) (uncodified).

19 NEW SECTION. **Sec. 9.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately.

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