

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1064

66th Legislature
2019 Regular Session

Passed by the House January 24, 2019
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate January 30, 2019
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1064** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1064

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By House Public Safety (originally sponsored by 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)

READ FIRST TIME 01/17/19.

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

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

9 **Sec. 1.** RCW 43.101.455 and 2019 c 1 s 5 (Initiative Measure No.
10 940) are each reenacted and amended to read as follows:

11 (1) Within six months after December 6, 2018, the commission must
12 consult with law enforcement agencies and community stakeholders and
13 adopt rules for carrying out the training requirements of RCW
14 43.101.450 and 43.101.452. Such rules must, at a minimum:

15 (a) Adopt training hour requirements and curriculum for initial
16 violence de-escalation trainings required by (~~this act~~) chapter 1,
17 Laws of 2019;

18 (b) Adopt training hour requirements and curriculum for initial
19 mental health trainings required by (~~this act~~) chapter 1, Laws of
20 2019, which may include all or part of the mental health training
21 curricula established under RCW 43.101.227 and 43.101.427;

1 (c) Adopt annual training hour requirements and curricula for
2 continuing trainings required by (~~this act~~) chapter 1, Laws of
3 2019;

4 (d) Establish means by which law enforcement officers will
5 receive trainings required by (~~this act~~) chapter 1, Laws of 2019;
6 and

7 (e) Require compliance with (~~this act's~~) chapter 1, Laws of
8 2019 training requirements (~~as a condition of maintaining~~
9 ~~certification~~).

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

12 (a) De-escalation in patrol tactics and interpersonal
13 communication training, including tactical methods that use time,
14 distance, cover, and concealment, to avoid escalating situations that
15 lead to violence;

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

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

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

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

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

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

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

32 (3) The initial violence de-escalation training must educate
33 officers on the good faith standard for use of deadly force
34 established by (~~this act~~) chapter 1, Laws of 2019 and how that
35 standard advances violence de-escalation goals.

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

1 **Sec. 2.** RCW 36.28A.445 and 2019 c 1 s 6 (Initiative Measure No.
2 940) are each reenacted and amended to read as follows:

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

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

28 **Sec. 3.** RCW 9A.16.040 and 2019 c 1 s 7 (Initiative Measure No.
29 940) are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) A ~~((law enforcement))~~ peace officer shall not be held
38 criminally liable for using deadly force ~~((if such officer meets the
39 good faith standard adopted in this section))~~ in good faith, where
40 "good faith" is an objective standard which shall consider all the

1 facts, circumstances, and information known to the officer at the
2 time to determine whether a similarly situated reasonable officer
3 would have believed that the use of deadly force was necessary to
4 prevent death or serious physical harm to the officer or another
5 individual.

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

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

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

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

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

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

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

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

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

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

37 (1) Except where a different timeline is provided in ((this act))
38 chapter 1, Laws of 2019, the Washington state criminal justice
39 training commission must adopt any rules necessary for carrying out

1 the requirements of (~~this act~~) chapter 1, Laws of 2019 within one
2 year after December 6, 2018. In carrying out all rule making under
3 (~~this act~~) chapter 1, Laws of 2019, the commission shall seek input
4 from the attorney general, law enforcement agencies, the Washington
5 council of police and sheriffs, the Washington state fraternal order
6 of police, the council of metropolitan police and sheriffs, the
7 Washington state patrol troopers association, at least one
8 association representing law enforcement who represent traditionally
9 underrepresented communities including the black law enforcement
10 association of Washington, tribes, and community stakeholders. The
11 commission shall consider the use of negotiated rule making. (~~The~~
12 ~~rules must require that procedures under RCW 9A.16.040(5)(d) be~~
13 ~~carried out completely independent of the agency whose officer was~~
14 ~~involved in the use of deadly force; and, when the deadly force is~~
15 ~~used on a tribal member, such procedures must include consultation~~
16 ~~with the member's tribe and, where appropriate, information sharing~~
17 ~~with such tribe.))~~

18 (2) Where (~~this act~~) chapter 1, Laws of 2019 requires
19 involvement of community stakeholders, input must be sought from
20 organizations advocating for: Persons with disabilities; members of
21 the lesbian, gay, bisexual, transgender, and queer community; persons
22 of color; immigrants; noncitizens; native Americans; youth; and
23 formerly incarcerated persons.

24 NEW SECTION. Sec. 5. A new section is added to chapter 10.114
25 RCW to read as follows:

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

37 NEW SECTION. Sec. 6. A new section is added to chapter 10.114
38 RCW to read as follows:

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

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

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

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

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

38 (4) Whenever the issue of justifiable homicide, justifiable use
39 of deadly force, or self-defense under this section has been

1 submitted to a jury, and the jury has found the defendant not guilty,
2 the court shall instruct the jury to return a special verdict in
3 substantially the following form:

4 answer
5 yes or no

- 6 1. Was the defendant on duty or
7 otherwise acting within the scope
8 of his or her authority as a peace
9 officer?
- 10 2. Was the finding of not guilty based
11 upon justifiable homicide,
12 justifiable use of deadly force, or
13 self-defense?

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

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

- 21 (1) 2018 c 10 s 3 and 2018 c 11 s 7 (Initiative Measure No. 940);
- 22 (2) 2018 c 10 s 4 (uncodified) and 2018 c 11 s 9 (Initiative
23 Measure No. 940) (uncodified);
- 24 (3) RCW 10.114.010 (Independent investigation—Adoption of rules)
25 and 2018 c 10 s 5;
- 26 (4) RCW 10.114.020 (Death of member of recognized Indian tribe—
27 Notice) and 2018 c 10 s 6;
- 28 (5) RCW 9A.16.045 (Justifiable homicide or use of deadly force by
29 peace officer—Reimbursement of defendant for costs—Special verdict)
30 and 2018 c 10 s 7;
- 31 (6) 2018 c 10 s 8 (uncodified);
- 32 (7) 2018 c 10 s 9 (uncodified);
- 33 (8) 2018 c 10 s 10 (uncodified);
- 34 (9) 2018 c 11 s 1 (Initiative Measure No. 940) (uncodified);
- 35 (10) 2018 c 11 s 2 (Initiative Measure No. 940) (uncodified);
- 36 (11) 2018 c 11 s 3 (Initiative Measure No. 940);
- 37 (12) 2018 c 11 s 4 (Initiative Measure No. 940);

- 1 (13) 2018 c 10 s 1 & 2018 c 11 s 5 (Initiative Measure No. 940);
2 (14) 2018 c 10 s 2 & 2018 c 11 s 6 (Initiative Measure No. 940);
3 (15) 2018 c 11 s 8 (Initiative Measure No. 940) (uncodified);
4 (16) 2018 c 11 s 10 (Initiative Measure No. 940) (uncodified);
5 and
6 (17) 2018 c 11 s 11 (Initiative Measure No. 940) (uncodified).

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

11 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

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