

COMPLETELY INDEPENDENT INVESTIGATIONS

As mandated by I-940 and ESHB 3003

What is I-940

I-940 is an initiative to the legislature that was adopted by the legislature on March 8th. I-940 takes effect on June 7, 2018.

I-940 changes state law on justifiable use of deadly force and addresses police training and practices related to use of deadly force.

What is ESHB 3003

- The legislature amended I-940 and those amendments are effective June 8, 2018. The amendments clarified a handful of provisions.
- The requirement for a completely independent investigation was moved from a subsection in RCW 9A.16.040 to a standalone section in Title 10 RCW.

I-940's Deadly Force Reform Framework

- Professionalism and best practices (de-escalation training, mental health training, first aid training);
- Sanctity of life (requirement to render first aid and use deadly force only when necessary and in good faith);
- Rule of law (removes de facto immunity and applies an objective good faith test to officer use of deadly force)
- Attention to community values and expectations; and
- Impartial determination of facts (completely independent investigations.)

Values – Transparency and Credibility

The goal of a “completely independent investigation” is to:

- Remove bias and influence.
- Address conflicts of interest.
- Create an appearance of fairness.

Completely Independent

- From ESHB 3003

The investigation must be completely independent of the agency whose officer was involved in the use of deadly force.

Completely Independent - Words matter

- **Completely Independent Investigations**
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- com·plete·ly
- *adverb*
- totally; utterly
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- Independent
- *adjective*
- free from outside control; not depending on another's authority.
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- Investigation
- *noun*
- formal or systematic examination or research.

Completely Independent Investigation (Text from ESHB 3003)

NEW SECTION. Sec. 5. Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

Key words – Good faith – objective

RCW 9A.16.040

As amended by ESHB 3003

(4) A peace officer shall not be held criminally liable for using deadly force 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.

General Benchmarks for this Standard

Final Report of the President's Task Force on 21st Century Policing May 2015

The Report calls for “external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.”

- https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

General Benchmarks for this Standard

Amnesty International Police Use of Deadly Force in the United States. June 2015

AIUSA calls for “independent, impartial, and transparent investigation”

- <https://www.amnestyusa.org/reports/deadly-force-police-use-of-lethal-force-in-the-united-states/>

General Benchmarks for this Standard

Police Executive Research Forum: Thirty Guiding Principles on Police Use of Deadly Force. March 2016.

Principle 12.

- PERF calls for “All critical police incidents resulting in death or serious bodily injury should be reviewed by specially trained personnel.”
- <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>

What it is not.

- Community Oversight
- Disciplinary Hearings
- Professional Accountability
- Internal review

What it is.

“an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.”

This is essentially a forensic examination and meant to provide information on whether the use of deadly force comported with law, training and policy, and would have been perceived as necessary by a similarly situated reasonable officer with the same training and policy directives

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Deadly force subject to the investigation

“where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm”

RCW 9A.04.110

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

Context of the investigation

What do we mean by “forensic review” in the context of whether the use of deadly force met the “good faith” standard?

- Examination of “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.”