



ISSUE BRIEF

Police Reform

The debate

In 2020, national attention has focused on the COVID-19 pandemic and urban unrest calling for law enforcement reforms. In the wake of the deaths of George Floyd and others, advocates have turned to the streets to protest for police reform. Many of these gatherings have turned violent against law enforcement, even resulting in the unauthorized occupation of the East Precinct of Seattle (known as “CHOP” or “CHAZ”). Throughout the nation, as well as in Washington State, there have been calls for fundamental change in law enforcement policies, particularly regarding use of force. In the upcoming 2021 legislative session, advocates, law enforcement groups, and legislators will be tasked with discussing police reform. Use of force by law enforcement has been central to these conversations: when it should be used, how to eliminate disproportionate use against certain population groups, and how to maintain transparency and accountability for law enforcement. While Washington has been a leader in law enforcement reforms, some stakeholders may feel that the new policies do not go far enough. However, many also feel that the law does not protect law enforcement enough, who can be confronted with violence on a daily basis. Few professions require someone to put their life on the line and make split-second decisions that impact people’s lives, all to keep our families and communities safe.

Background

While police reform has gained attention nationally in 2020, Washington state has been working on this issue for the past several years. After years of stakeholder and legislative discussions, Initiative 940 was submitted as an initiative to the legislature in 2017. Initiative 940 contained sweeping police reforms, including trainings, a paramount duty obligation for law enforcement to provide first aid, and a new use of force standard. Key stakeholders came together to negotiate a bill (HB 3003) that would prospectively amend Initiative 940. In 2018, the legislature passed both I-940 and HB 3003. The court later invalidated the enactment of both measures based on the unconstitutional process the legislature took in prospectively amending the initiative with HB 3003. Initiative 940 was placed on the ballot and passed by the voters in November 2018. Stakeholders and legislators came together again to support HB 1064 which contained the same substantive provisions as HB 3003. In 2019, the legislature passed HB 1064. Together, Initiative 940 as amended by HB 1064, provided the following reforms:

I. Training

- Required that law enforcement must complete de-escalation training and mental health training.
- Did not require training as a condition of maintaining certification.

II. First Aid

- Provided in law that there is a balance of essential duties of law enforcement with the solemn duty to preserve the life of persons with whom the officer comes into direct contact.
- Provided that it is the duty of law enforcement to provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at the scene controlled by law enforcement.

III. Use of Deadly Force Criminal Liability Standard

- Created a single objective good faith test for the use of deadly force
- The new objective standard states: 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.

IV. Independent Investigations of Use of Deadly Force

- Required independent investigations of the use of deadly force, but allows the Criminal Justice Training Commission (CJTC) to determine what “independent” means.
- Exempts law enforcement departments subject to federal court order or consent decree to conduct investigations internally.

V. Miscellaneous Provisions

- Required CJTC to consult in rulemaking with law enforcement labor unions and at least one association representing law enforcement officers who represent traditionally underrepresented communities including Black Law Enforcement Association of WA, and De-Escalate WA.
- Created a new process for law enforcement reimbursement of defense costs in certain circumstances.

What to expect in the 2021 session

In the wake of the 2020 events involving use of force, community groups, law enforcement associations and legislators will likely come together again to discuss law enforcement reforms. Some of the proposals may include:

**Note: This list is not exhaustive, but highlights potential major policies that may be proposed.*

- Defunding – One of the most talked about and controversial proposals is to defund the police. As there is no common policy, “defunding” can mean anything from complete elimination of police to a reduction in the budget for police. Typical policy proposals to reduce police funding are accompanied with proposals to reallocate funds to community outreach, mental health and chemical dependency treatment, housing and other programs. Defunding is largely a local municipal or county decision, not a state decision.
- Protest response policies- bans on tear gas, plain clothes officers, stun grenades, etc.
- Limitations on use of military grade equipment-
- Alterations to use of force standards
- Eliminate qualified immunity and creating civil liability for officers who engage in misconduct
- Decertification of an officer after misconduct
- Independent investigations of use of force through a new state agency with an oversight board of appointed community members
- Peer accountability- requiring officers to intervene where they observe misuse of force amongst their peers
- Enhanced training and mental health services for law enforcement officers
- Reform civil service entry requirements to attempt to attract more diverse law enforcement officer candidates
- Labor reforms, including changes to binding interest arbitration for law enforcement unions

Alongside state and local proposals, federal proposals have been introduced in Congress. For example Congressional House Democrats introduced the Justice in Policing Act of 2020 which would: 1) establish a national standard for the operation of police departments; 2) mandate data collection on police encounters; 3) reprogram existing funds to invest in transformative community-based policing programs; and 4) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations. Other federal proposals may be introduced as well.

Stakeholders

- Washington Council of Police & Sheriffs (WACOPS): <https://www.wacops.org/>
- Washington Association of Sheriffs & Police Chiefs (WASPC): <https://www.waspc.org/>
- Washington Fraternal Order of Police (WAFOP): <https://www.wafop.com/>
- Washington State Patrol Troopers Association (WSPTA): <https://www.wspta.org/>
- Council of Metropolitan Police & Sheriffs (COMPAS): <https://compas-wa.org/>
- Deescalate Washington & Community Advocates
- Disability Rights Washington (DRW): <https://www.disabilityrightswa.org/collaborations/de-escalate-washington/>
- Criminal Justice Training Commission: <https://www.cjtc.wa.gov/letcsa/about-letcsa>