

## Overview of Initiative 940: to require more law enforcement training and to increase police officer liability on the use of deadly force

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This measure is on the November 6, 2018 General Election ballot in Washington as an Initiative to the legislature. If passed by voters, it would create a new law that would require (1) a good faith test to determine when the use of deadly force by police is justifiable; (2) require police to receive de-escalation of violence and mental health training; and (3) provide that police have a duty to render first aid. It would also remove the requirement that prosecutors must show that a law enforcement officer charged with assault acted with malice in order to be convicted.

A key provision in Initiative 940 would require a "good faith" test to determine when the use of deadly force by law enforcement officers is justifiable. The test would consist of two parts:

- The first part, called the objective good faith test, would be met if "a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have to be believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."
- The second part, called the subjective good faith test, would be met if "the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance."

The measure would also require an independent investigation to determine whether the use of deadly force met the good faith test's objective component.

### Controversial passage of the initiative and action by the legislature

After validation of the necessary signatures for an Initiative to the legislature, Initiative 940 was sent to the legislature for consideration during the 2018 legislative session. Under the state constitution, the legislature had three options:

1. Enact the initiative as written;
2. Take no action, in which case the initiative would go to the 2018 general election ballot;
3. Pass an alternative, in which case the original initiative and the alternative would go to the 2018 general election ballot for voters to decide.

In this instance, however, the legislature took none of these actions. Instead, lawmakers approved Initiative 940 and passed a bill (HB 3003) immediately amending the initiative. Proponents of HB 3003 argued that the bill, which among other provisions would have removed the subjective good faith test in Initiative 940, was a compromise agreed to by the parties involved, making submission to the voters of the initiative and any alternative unnecessary.

HB 3003 passed the House by a vote of 73-25, and the Senate by a vote of 25-24. Initiative 940 passed the House 55-43, and the Senate 25-24. Both measures were to take effect as law in June 2018.

In March 2018, however, a lawsuit was brought against the state arguing that the process by which Initiative 940 was amended was unconstitutional. In April, 2018 the Thurston County Superior Court rejected the legislature's action and ordered that Initiative 940 in its original form be placed on the November 6, 2018 election ballot. The state supreme court affirmed this decision in August 2018 and also ruled that the new law created by HB 3003 is void and unenforceable, concluding that the court could not compel that it be placed on the ballot as an alternative measure.

The court's action means that option 2 described above took effect. It was as if the legislature had taken no action, and Initiative 940, as originally submitted, was placed on the November 6, 2018 General Election ballot without any alternative proposal.

The legislature's action earlier this year has no effect on the issue, and it is now up to the state's voters to decide whether or not to approve Initiative 940.