



# *City of Tukwila*

## *Police Department*

*Allen Ekberg, Mayor*

*Eric Drever, Interim Chief of Police*

## COPCAB Meeting Agenda

12/10/20

6:30pm – 8:00pm

Virtual Meeting Via Teams Meeting

Call-in number: 253-292-9750 Conference ID: 710 934 910#

1. Introductions
2. Approval of 10/8/20 minutes
3. COPCAB Mission and Responsibilities
4. COPCAB Member Vacancies
5. Chief's updates
6. Community survey
7. Good of the order



# City of Tukwila

## Police Department

Allen Ekberg, Mayor

Eric Drever, Interim Chief of Police

## COPCAB Minutes

October 8, 2020

6:30pm – 8:00pm

Virtual Meeting Via Microsoft Teams

253-292-9750

Conference ID: 170945815##

Members present: Tosh Sharp, Jan Bolerjack, John Lindsey, Jun Castillo

Staff present: Interim Chief Eric Drever, Phi Huynh

Guest: None

- Minutes for September 10, 2020 meeting were approved
- Chief's update:
  - Staffing: Short 16 bodies due to light duty, admin leave, vacancies, background, eight frozen positions (these frozen positions won't be filled due to budget cut). One records specialist applicant is in background. The second evidence technician person will start three weeks from this day. Three officers are on light duty and two are on admin leave.
  - Justice Center: The PD and Court are all moved in. There are still punch list items that need to be completed. Holding cells are work in progress. The Justice Center is a new tool for the community.
- Law Enforcement Training and Community Safety Act (LETCSA):
  - Interim Chief Drever discussed to the group
  - I-940 passed last year - provides accountability and credibility for law enforcement (attached VIIT policy and WAC provides detailed information on the I940.
  - Each agency can supply two community members to be on the Valley Independent Investigation Team (VIIT). The Valley agencies has 12 members currently.
  - Former Chief Linton, Interim Chief Drever and Councilmember DeSean Quinn interviewed nine community members. They opted to select four members. The members are required to challenge the process and will be included in discussions during the process of conducting investigation.
  - These volunteer positions are not paid positions
  - Term limit: every 3 years, members get assessed to remain in the team
- Good of the order
  - Need school district representative – requested Chief to ask the Mayor for school members
  - Confirm that all members still want to be part COPCAB.
  - Question was asked on how COPCAB can help the Chief and PD. Chief will give more in depth answer at next meeting.
  - Chief would like members to engage and ask questions, to actively ask the community what the PD can do then bring the questions to the him. He wanted to make sure the PD provides the best possible service to the community. He would like to give the community an opportunity to challenge him. He wanted everyone working together and pushing each other.
  - SRO - how to get it back. We need to revisit.

- Need to get the survey out to for people to review. Need at least English version put up. Target audience: Tukwila community. Ask officers to hand out cards with information on how to take the survey. The survey information can be placed in the Hazelnut as well.
- Discuss survey at next meeting.

Meeting adjourned at 7:40pm.

# Valley Independent Investigative Team

## Organizational and Operational Guidelines



Auburn, Des Moines, Federal Way, Kent, Renton, Tukwila and Port of Seattle

### Member Agencies:

**Auburn Police Department**

**Des Moines Police Department**

**Federal Way Police Department**

**Kent Police Department**

**Port of Seattle Police Department**

**Renton Police Department**

**Tukwila Police Department**

**Adopted by the Executive Board on August 19, 2020**

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# PREFACE

## INTRODUCTION

The Valley Independent Investigative Team (“VIIT”) is a multi-jurisdictional team that includes the cities of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila, and the Port of Seattle. VIIT is created pursuant to Chapter 10.93 RCW, and in conformance with Chapter 139-12 WAC, for the purposes of establishing a process for the independent investigation of Incidents where the use of deadly force by a Peace Officer results in death, substantial bodily harm, or great bodily harm, as well as other Incidents as described herein. VIIT is not created to conduct administrative investigations, or to make determinations or reach opinions regarding guilt or innocence, or the efficacy of training or policies.

These guidelines are intended to provide organizational and operational guidance. It is recognized that no two Incidents are alike, and that each Incident may require a different approach and/or investigative techniques. A failure to follow these guidelines shall not result in an independent cause of action, shall not serve as a basis for liability, and shall not serve as evidence of an insufficient investigation.

## MISSION

The mission of VIIT is to independently, thoroughly and objectively investigate the most serious Incidents involving police officers, including but not limited to:

- Officer involved uses of deadly force that result in death, substantial bodily harm, or great bodily harm;
- In-custody deaths or life-threatening injuries;
- Death or life-threatening injuries of a police employee;
- Other matters as directed by the Executive Board.

## GOALS OF THE VALLEY INDEPENDENT INVESTIGATIVE TEAM

The goals of VIIT include:

- To promote public trust by establishing a system for conducting consistent, independent, professional, and transparent multi-jurisdictional investigations of serious Incidents involving police officers;
- To maximize the availability of the latest technology and equipment and the use of investigative best practices;
- To consolidate and share the skills of the most experienced supervisors and investigators of each Member Agency;
- To conduct thorough investigations as expeditiously as is feasible under the circumstances;

- When applicable, to adhere to the requirements of Chapter 10.114 RCW and Chapter 139-12 WAC.

## **PUBLIC INFORMATION REGARDING VALLEY INDEPENDENT INVESTIGATIVE TEAM**

In accordance with Chapter 139-12 WAC, the following shall be open to the public:

- The policies and operating procedures of VIIT;
- The names of the Member Agencies;
- The names of VIIT Team Administrators as set forth in Chapter 1.A below;
- The names of VIIT Team Members; and
- The names of the Non-Law Enforcement Community Representatives.



## DEFINITIONS

The following words and phrases, in their singular or plural form, shall have the meanings as set forth below:

Deadly Force: The intentional application of force by the use of firearms or any other means reasonably likely to cause death or serious physical injury.

Employing Agency: The Member Agency that employs the Peace Officer or other employee involved in a VIIT investigation.

Great Bodily Harm: Great bodily harm is defined as provided in RCW 9A.04.110.

Incident: An event for which VIIT is activated.

Involved Agency: The agency or agencies that employ(s) the Peace Officer(s) involved in the Incident.

Involved Officer: A Peace Officer whose act is reasonably believed to be a “proximate cause” of an Incident.

Lead Agency: The Member Agency that is the Employing Agency of the Lead Investigator assigned to an Incident.

LETCSA: The Law Enforcement Training and Community Safety Act as set forth in Chapter 10.114 RCW and Chapter 139-12 WAC.

Member Agency: The police/law enforcement departments and divisions of the cities of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila, and the Port of Seattle.

Peace Officer: The general authority, limited authority, and specially commissioned officers of a Member Agency, as those terms are defined in RCW 10.93.020.

Proximate Cause: Cause which in direct sequence, unbroken by any new independent cause, produces the death, substantial bodily injury, or great bodily harm in question and without which such death, substantial bodily injury, or great bodily harm would not have happened. There may be one or more proximate causes of a death, substantial bodily injury, or great bodily harm.

Substantial Bodily Harm: Substantial bodily harm is defined as provided in RCW 9A.04.110.

Team: The Peace officers and other personnel assigned by their Employing Agency to participate on VIIT.

Witness Officer: A Peace Officer who was on the scene of an Incident, or who has information of evidentiary value regarding an Incident.

## Chapter I: ORGANIZATION

### A. VIIT TEAM ADMINISTRATION

1. **IN GENERAL.** The administrators of VIIT shall consist of the Executive Board, the Administrative Lead, and the Lead Commander. All administrators shall be commissioned Peace Officers with previous experience in criminal investigations.
2. **EXECUTIVE BOARD.** The governing body of VIIT is the Executive Board. The Executive Board is comprised of the Chiefs of Police of the Member Agencies. The Executive Board elects their Board Chair. The Chair is the primary point of contact for the VIIT Administrative Lead.
3. **ADMINISTRATIVE LEAD.** From among the Member Agencies, the Executive Board shall designate one Assistant/Deputy Chief as the VIIT Administrative Lead. That Administrative Lead assignment is usually on a two-year rotation. The rotation time may be different as dictated by the Administrative Lead's Employing Agency and the Executive Board. The Administrative Lead is responsible for the administrative oversight of VIIT and managing the team's compliance with LETCSA, Chapter 139-12 WAC. The Administrative Lead will report regularly to the Executive Board regarding VIIT activities.
4. **LEAD COMMANDER.** From among VIIT Commanders of each Member Agency, the Executive Board shall designate one Commander as the VIIT Lead Commander. The Lead Commander assignment is usually on a two-year rotation. The rotation time may be different as dictated by the Commander's Employing Agency and the Executive Board. The Lead Commander has the overall responsibility to manage and coordinate Incidents, as well as ensure the readiness and training of the Team. The Lead Commander may delegate these tasks to the Assistant Commander or to the Team Trainer. The Lead Commander reports to the Administrative Lead.
5. **ASSISTANT COMMANDER.** The Assistant Commander shall be a member of the VIIT, appointed by the Executive Board. The responsibilities of the Assistant Commander include:
  - a. Acting in place of the Lead Commander in the absence of the Lead Commander;
  - b. Acting in place of the Lead Commander in the event an Incident involves the Lead Commander's Employing Agency;
  - c. Maintaining records of Team call-outs;
  - d. Managing the financial transactions and records of the Team;
  - e. Preparing the Team's annual report.

### B. VIIT TEAM MEMBERS/RESPONSIBILITIES

1. **TEAM TRAINER.** The Team Trainer may be either a supervisor or a detective assigned to the Team by their Employing Agency. The Team Trainer will be appointed by the Lead Commander, and will be responsible for:

- a. Arranging, coordinating, and documenting all VIIT training for Team members;
  - b. Maintaining Team personnel records related to VIIT, as well as the Team roster, and equipment inventory;
  - c. Providing support to the Assistant Commander in preparing the annual report.
- 2. TEAM COMMANDERS.** Each Member Agency shall designate one police leader from their agency to be their agency's VIIT Commander. VIIT Commanders shall have previous experience in criminal investigations, and it is desirable that selected VIIT Commanders show a keen interest in investigations. VIIT Commanders must have mid-management level, or higher, decision-making authority in their Employing Agency. The VIIT Commander from each Member Agency is responsible for coordinating the personnel and administrative issues and needs of the individual team members from their Employing Agency. Team members ultimately report to their Employing Agency's Commander for personnel and labor issues, administrative matters, and personal equipment.
- 3. TEAM SUPERVISORS.**
- a. Team Supervisors shall be first-line supervisors holding the rank of Sergeant or equivalent in their Employing Agency, and shall be assigned by the Lead Commander to respond to and supervise specific components of an Incident. Team Supervisors shall be selected by their Employing Agency, and shall be recommended to the Lead Commander.
  - b. At the direction of the Lead Commander, a Team Supervisor shall respond to, and take direct charge of, an Incident scene and investigation. When multiple Team Supervisors respond, one will be designated as the Lead Supervisor. The Lead Commander may also assign Team Supervisors to oversee other investigative components as dictated by the complexity of the Incident or investigation.
- 4. INVESTIGATORS.**
- a. A minimum of twenty (20) Investigators should be assigned to VIIT. Investigators will be employed by their employing VIIT agency as detectives. Two years of investigative experience is preferred at the time a detective becomes a VIIT Investigator.
  - b. It shall be the responsibility of the Team Commander of the Employing Agency to ensure that agency Investigators meet the requirements set forth in WAC 139-12-030(4)(c)(iii) – (v) as applicable.
  - c. The Employing Agency shall ensure compliance with WAC 139-12-030(2)(b) as well as WAC 139-12-030(4)(c)(2) which requires two Non-Law Enforcement Community Representative be involved in the selection of Investigators assigned to VIIT after January of 2021. For Investigators assigned to VIIT prior to January of 2021, each Employing Agency shall be responsible for providing information about the qualifications of those Investigators to the Non-Law Enforcement Community Representatives for review.
  - d. Investigators shall commit to participate on VIIT for three years, provided a promotion by the Employing Agency should not be withheld due to VIIT participation, and the Employing Agency will not be prohibited from transferring an Investigator on account of his or her participation on VIIT. The Chief and VIIT Commander of the Employing Agency shall review

the appointment of their VIIT investigators who have served three years for possible rotation or replacement.

- e. Investigators assigned to VIIT are expected to have a work history free of a sustained finding of serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force. Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to: (1) discrimination of any type, based on protected classes identified under RCW 49.60.030(1); (2) theft, fraud, dishonesty, and abuse of authority including, but not limited to: theft, falsifying an official police record or making a false statement, serious ACCESS violations, obtaining or disclosing confidential information, and excessive use of force; and (3) dishonorable behavior including, but not limited to harassment, bullying, aggressive or intimidating behavior, or threats of violence including domestic violence.
- f. Investigators shall be required to commit to and attend VIIT trainings as required by the Lead Commander.
- g. Investigators shall be willing to be on call, and reasonably available.
- h. Investigators will work specific tasks at the direction of a Team Supervisor or Team Commander.
- h. One Investigator will be designated as the Lead Investigator for each Incident. In accordance with WAC 139-12-030(4)(c)(v), the Lead Investigator shall meet the requirements of and obtain a "lead Investigator certificate" as available and issued by the Criminal Justice Training Center.

## **5. NON-COMMISSIONED EVIDENCE TECHNICIANS.**

- a. Non-Commissioned Evidence Technicians may help with documenting, collecting, packaging, and transporting of evidence, as well as the processing of the crime scene, based on their unique training and experience. Non-Commissioned Evidence Technicians may also be involved in the collection of various data.
- b. Non-Commissioned Evidence Technicians may be assigned to VIIT at the discretion of the Commander of the Employing Agency.
- c. The Commander of the Employing Agency shall ensure the Non-Commissioned Evidence Technician meets minimum applicable standards.
- d. Non-Commissioned Evidence Technicians shall be subject to training requirements as established by the VIIT Lead Commander.

## **C. OPERATIONAL GUIDELINES**

### **1. STAFFING LEVELS.**

- a. The total staffing numbers as of August 2020 shall be as follows:

Administrative Lead - 1

Lead Commander – 1

Assistant Commander – 1  
Other Commanders – 1 per VIIT Agency  
Investigative Supervisors – 1 per VIIT Agency  
Investigators – 20

- b. The following list represents the minimum number of Investigators each agency is responsible for assigning to the Team as of August 2020. Agencies may elect to increase their assigned Investigators depending on staffing and agency goals. The actual number may vary as dictated by the needs and direction of each Member Agency's Chief of Police.

Auburn Police Department, 3 Investigators  
Des Moines Police Department, 2 Investigators  
Federal Way Police Department, 3 Investigators  
Kent Police Department, 3 Investigators  
Port of Seattle Police Department, 3 Investigators  
Renton Police Department, 3 Investigators  
Tukwila Police Department, 3 Investigators  
Non-Commissioned Evidence Technicians (assigned at the discretion of VIIT Agency Commanders)

2. **REMOVAL FROM TEAM.** The Administrative Lead may recommend the removal of a Team member to the employing agency's Chief of Police or his/her designee. The Chief of Police of the Employing Agency, or the Executive Board, shall have authority to remove any member of the Team; provided, the Executive Board shall only remove a member for cause.
3. **COSTS.** Each Member Agency shall be responsible for their employees' wages and associated costs.
4. **EVIDENCE STORAGE.** All evidence shall be stored under the control of the Lead Agency until such time the Incident has completed the legal process. Once all legal processes are complete, all evidence shall be turned over to the Involved Agency. The Involved Agency shall be responsible for storage and handling costs of extraordinary items such as vehicles, HAZMAT, etc.
5. **CASE FILES.** All original reports, statements, and other documentation should be maintained under a Lead Agency case number provided by the Lead Investigator's agency to VIIT. Each agency shall be responsible for establishing their own case number, used for document tracking purposes. Once completed, reports, statements, and any other documentation shall be turned over to the Lead Agency for inclusion in the final report. Original documentation will be turned over to the Lead Agency's Records Unit. Copies of all case files shall be made available to the Involved Agency upon completion of a VIIT investigation. This copy will be provided to the Involved Agency as an electronic file.
6. **TEAM ADMINISTRATIVE RECORDS.**

Records shall be maintained of all Team activity including:

- a. Call-outs;
- b. Team training;
- c. Team Roster and contact number changes.

## **D. TRAINING AND EQUIPMENT**

1. **BASIC TRAINING.** The following classes, or their equivalent, are recommended for all Investigators assigned to VIIT:

- a. Criminal Investigation;
- b. Basic Homicide Investigation;
- c. Force Science Institute;
- d. Crime Scene Investigation;
- e. Interviewing and Interrogation;
- f. Officer Involved Shooting Investigation;
- g. In-Custody Death Investigation;
- h. LETCSA Violence De-escalation and Mental Health Training.

Participation in these basic training courses may be waived by the Agency VIIT Commander in the event the Investigator has two years or more of relevant, full-time criminal investigative work experience.

2. **ON GOING/ADVANCED TRAINING AND CONFERENCES.** In accordance with WAC 139-12-030(4)(c)(v), Investigators shall participate in a minimum of eight hours of training annually, which may include, but is not limited to:

- a. Advanced homicide investigation techniques;
- b. Advanced interviewing and interrogation;
- c. Excited delirium and positional asphyxia;
- d. Bloodstain pattern analysis;
- e. Crime scene photography/videography;
- f. Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.

Attendance at either the Washington Homicide Investigators Associations yearly conference or the Oregon/Washington Lawman's Association conferences will satisfy the annual training requirement.

3. **IN-SERVICE TRAINING.**

- a. VIIT shall strive to maintain a Team of highly skilled and trained Investigators.
- b. VIIT will train together as a Team at least annually.
- c. Team members are expected to attend training sessions as required by the Lead Commander. Team members may be excused from training with approval from the Commander or

Supervisor from their home agency. A notation in the training record should be kept for all attendees. An attendance list will be forwarded to the Commander and Supervisor of each VIIT Agency for their tracking purposes.

#### **4. EQUIPMENT.**

- a. Member Agencies shall work together to ensure VIIT has the necessary equipment to support the VIIT mission and goals. Agencies will supply each Team member with basic safety equipment to adhere to current WISHA or OSHA blood borne pathogens rules.
- b. Specialized equipment belonging to the Involved Agency may not be used by VIIT unless: (1) no reasonable alternative exists; (2) the equipment is critical to carrying out the independent investigation; and (3) the use is approved by the VIIT Commander.
- c. If the equipment is used during the investigation of an Incident where the use of deadly force by a Peace Officer results in death, substantial bodily harm, or great bodily harm, the Non-Law Enforcement Community Representatives must be notified about: (1) why it needs to be used; and (2) the steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.
- d. The Employing Agency will provide Investigators assigned to VIIT with a jacket and a cell phone. The jacket will be an all-weather jacket with a Police logo on the front and back.
- e. A VIIT ID card will be provided to all members. The card may be FEMA compliant and will display the following information:
  1. Valley Independent Investigations Team;
  2. Member's name;
  3. Member's rank;
  4. Member's Employing Agency;
  5. Photograph of member.

### **E. NON-LAW ENFORCEMENT COMMUNITY REPRESENTATIVE**

1. **TWO REQUIRED.** In accordance with Chapter 139-12 WAC, a minimum of two Non-Law Enforcement Community Representatives, who have credibility with and ties to the communities impacted by police use of deadly force, will be assigned to VIIT for the purposes of participating in VIIT responses to Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm. It is recognized that due to the number of Member Agencies, there may be more than two Non-Law Enforcement Community Representatives assigned to VIIT.
2. **DUTIES.** At least two of the VIIT Non-Law Enforcement Community Representatives shall:
  - a. Be involved in the selection of Investigators who are assigned to VIIT after January of 2021. For Investigators assigned to VIIT prior to February 1, 2021, each Employing Agency shall provide information about the qualifications of those Investigators to the Non-Law Enforcement Community Representatives for review prior to February 1, 2021;

- b. Complete a conflict of interest statement prior to participating in investigations;
  - c. Review conflict of interest statements submitted within seventy-two (72) hours of the commencement of an investigation by VIIT into an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm;
  - d. Be present at the briefings with the Involved Agency(s)' Chief for Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm;
  - e. Have access to the VIIT investigation file when it is completed for Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm;
  - f. Be provided a copy of all press releases and communication to the media prior to release for Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm; and
  - g. Review notification of equipment use of the involved agency for Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm.
3. **CONFIDENTIALITY AGREEMENT.** The Non-Law Enforcement Community Representatives must sign a binding confidentiality agreement at the beginning of each Incident that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded. If the confidentiality agreement is violated, the Non-Law Enforcement Community Representatives may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW (Washington State Criminal Records Privacy Act).
4. **APPOINTMENT.** The Chief of each Member Agency intends to appoint at least one Non-Law Enforcement Community Representatives from his or her respective jurisdiction; provided, the Port of Seattle may not appoint a Non-Law Enforcement Community Representative; and provided further, the Chiefs of the other Member Agencies may appoint more than one Non-Law Enforcement Community Representatives from his or her jurisdiction. The Chief of each Member Agency shall create a transparent process for soliciting names of individuals in their respective jurisdictions and creating a roster of individuals willing to serve in this capacity. It is recognized that the Chiefs of each agency may utilize a different process for selecting the Non-Law Enforcement Community Representatives from their respective jurisdiction. The Non-Law Enforcement Community Representatives selected by each agency may be subject to the approval of the Executive Board.
5. **TERM.** The Non-Law Enforcement Community Representatives shall serve a term of three years; provided, the term may be extended by the Board, and provided further, the term may be shortened or changed in the event of a change in law, the unavailability of the Non-Law Enforcement Community Representative, or for good cause.
6. **LIST MAINTAINED.** Once selected, the Administrative Lead shall maintain a list of VIIT Non-Law Enforcement Community Representatives.
7. **RIGHTS.** Notwithstanding the appointment of Non-Law Enforcement Community Representatives, nothing herein shall require a particular Non-Law Enforcement Community



Representatives to be called to participate in a particular Incident, nothing herein will create a right of the Non-Law Enforcement Community Representatives to participate in a particular Incident, and nothing herein shall obligate an Non-Law Enforcement Community Representatives to participate in a particular Incident.

## CHAPTER II: INCIDENT RESPONSE PROTOCOL

### A. COMPLIANCE WITH LAWS

This chapter is intended to comply with Chapter 10.114 RCW and Chapter 139-12 WAC. In the event of a conflict between this protocol and the provisions of Chapter 10.114 RCW and Chapter 139-12 WAC, Chapter 10.114 RCW and Chapter 139-12 WAC shall control.

### B. INCIDENTS RESULTING IN VIIT ACTIVATION

1. **INCIDENTS.** VIIT is subject to activation upon the occurrence of the following Incidents:
  - a. An application of deadly force by a Member Agency Peace Officer while on duty that results in death, substantial bodily harm, or great bodily harm;
  - b. An application of non-deadly force by a Member Agency Peace Officer while on duty that results in death, substantial bodily harm, or great bodily harm;
  - c. When death, substantial bodily harm, or great bodily harm occurs to a subject while in the custody of a Member Agency;
  - d. The death, substantial bodily harm, or great bodily harm of an inmate at any Member Agency jail facility that occurs as a result of a use of force by a Member Agency Peace Officer or jail employee;
  - e. An accident utilizing a firearm, other deadly weapon or less lethal weapon by a Member Agency Peace Officer while on duty that results in death, substantial bodily harm, or great bodily harm;
  - f. Other incidents of an extraordinary nature involving a Member Agency Peace Officer at the discretion of the Chief of Police for the Involved Agency.
2. **NON-PEACE OFFICER INCIDENTS.** While formed primarily to investigate Peace Officer-involved Incidents, VIIT may be deployed for non-Peace Officer-involved Incidents at the request of the Involved Agency's Chief of Police or his/her designee and/or the discretion of the VIIT Executive Board.
3. **NON-MEMBER AGENCY DEPLOYMENT.** VIIT responses for Incidents only involving police officers employed by agencies other than Member Agencies will be considered on a case-by-case basis. If outside agencies are involved in an Incident within the jurisdictional boundaries of Member Agencies and no VIIT agency Peace Officers are involved, the outside agencies will conduct the investigation, unless the VIIT Executive Board Chair or Administrative Lead, after consulting with the Chief of Police of the city in which the Incident occurred, approves a request for VIIT to conduct the investigation.
4. **CONCURRENT JURISDICTION.** There may be circumstances when the investigation is shared concurrently with an outside agency. Since all scenarios cannot be anticipated, investigative decision-making may occur after consultation with VIIT administrators.

5. **OFF DUTY CONDUCT.** VIIT typically will not be responsible for investigating the off-duty suspected criminal actions of Peace Officers that occur in jurisdictions other than those of Member Agencies.

### **C. GENERAL RESPONSIBILITIES OF INVOLVED AGENCY**

**GENERAL RESPONSIBILITIES.** The Involved Agency shall:

- a. Ensure proper crime scene protection;
- b. Make the initial request for VIIT;
- c. Provide an Involved Agency Liaison;
- d. Make all involved department personnel available to VIIT as appropriate pursuant to Chapter 139-12 WAC;
- e. Be responsible for all reasonable investigative expenditures;
- f. Coordinate appropriate suspect security measures with the Lead Commander and be responsible for the cost of suspect security until the suspect is available for booking. It is understood that special circumstances may dictate that other non-Involved Agencies may provide assistance and security upon request of the Involved Agency's Chief of Police or designee;
- g. Make all documents, reports, and information available to VIIT in accordance with these protocols and Chapter 139-12 WAC;
- h. Allow use of space and equipment as needed by VIIT, and in accordance with Chapter 139-12 WAC;
- i. Contact the family of the person against whom deadly force has been used as soon as they can be located; provided if the family has not been located and notified by the time the investigation has been turned over to VIIT, VIIT may notify the family.

### **D. PROCESS FOR ACTIVATION OF VIIT**

**PROCESS FOR ACTIVATION.**

- a. The Involved Agency Chief of Police, or his/her designee, shall make the request for VIIT per his/her department procedures as soon as possible following an Incident.
- b. The Involved Agency Chief of Police, or his/her designee, shall designate an Involved Agency Liaison. Other than filling the role as the Involved Agency Liaison, VIIT Team members from the Involved Agency(s) will not be activated or involved in the independent investigation.
- c. The Administrative Lead and Lead Commander will be notified of the request.
- d. VIIT call-out procedures will be utilized to notify VIIT Team members of activation.
- e. The Lead Commander shall assign a Lead Supervisor and Lead Investigator.

## **E. INITIAL INCIDENT RESPONSE – INVOLVED AGENCY RESPONSIBILITIES**

- 1. INITIAL INCIDENT PERIOD DEFINED.** The Initial Incident Response is the period of time immediately following an Incident and prior to the arrival of VIIT, when Involved Agency personnel on scene and other first responders immediately take actions to render the scene safe and secure and provide or facilitate life-saving first aid to those with injuries. During the Initial Incident Response, it is critical that the scene is preserved to the extent possible considering the circumstances, and that evidence is not manipulated except by VIIT, except when the loss of evidence will occur unless the Involved Agency takes action to preserve it.
  
- 2. MEMBER AGENCY INITIAL RESPONSE POLICIES, SOPs, TRAINING OR PRACTICES.** Member Agencies shall have policies, standard operating procedures, training, or practices that address the following:
  - a. The provision or facilitation by Peace Officers of first aid to injured persons at the scene which is rendered at the earliest safe opportunity;
  - b. General crime scene response and use of deadly force Incident response which should include:
    1. Contacting command staff and causing the activation of VIIT as soon as possible after the Incident;
    2. Assigning an Involved Agency Officer to accompany a witness or suspect who is transported to a hospital (absent a non-Involved Agency VIIT member) ;
    3. Securing the scene(s) to ensure the preservation of evidence by establishing a perimeter or perimeters and assigning an officer to record entry to and exit from the perimeter;
    4. Traffic control, if necessary;
    5. The taking of public safety statements from the involved officers (provided, the public safety statement should be disseminated to VIIT only upon approval of the County Prosecutor);
    6. The taking of photographs and/or video of the scene and individuals including Involved Officers as soon as possible after the scene is rendered safe;
    7. Separating and sequestering Involved Officers, summoning peer support, and arranging the transport of Involved Officers from the scene to a designated location;
    8. Maintaining the chain of evidence for Involved Officer weapons and items that were worn or carried by Involved Officers which should be performed in a manner that preserves the weapons and items in the same condition as immediately following use, and accurately records the weapons by type and serial number and other items;
    9. The process of identifying (with contact information) and separating witnesses;
    10. The process of identifying evanescent evidence and taking steps to record the condition of that evidence and preserve that evidence when necessary;
    11. Briefing arriving VIIT members;
    12. Transferring all collected evidence to VIIT;
    13. Handing investigation responsibilities and scene control over to VIIT;
    14. Establishing a command post when necessary;
    15. Establishing a media staging area when necessary;

16. Taking other steps necessary for the preservation of public safety, the scene and evidence.

## **F. VIIT HAS EXCLUSIVE AUTHORITY**

Once VIIT is activated to investigate an Incident, and control of the scene is turned over to VIIT, VIIT shall have exclusive authority concerning the investigation of the Incident. No member of the Involved Agency may participate in the investigation except as specifically permitted by WAC 139-12-030.

## **G. ASSIGNMENT OF NON-LAW ENFORCEMENT COMMUNITY REPRESENTATIVE**

When VIIT is activated to investigate an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, the Lead Commander will assign two Non-Law Enforcement Community Representatives to the Incident. After the Lead Commander assigns two Non-Law Enforcement Community Representatives to the Incident, the Chief of the Involved Agency may request that additional Non-Law Enforcement Community Representatives be assigned, and such request will not unreasonably be denied.

## **H. FAMILY NOTIFICATION – ASSIGNMENT AND RESPONSIBILITY OF FAMILY LIAISON**

1. **FAMILY NOTIFICATION.** When VIIT is activated to investigate an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, a family member of the person against whom deadly force was used shall be notified as soon as they are located. This initial notification may be conducted by the Involved Agency or VIIT, whichever is faster.
2. **FAMILY LIAISON.** When VIIT is activated to investigate an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, the Lead Commander will assign a Team member to serve as the Family Liaison. The Family Liaison will notify a family member of the person against whom deadly force was used as soon as they are located unless the family has already been notified by the Involved Agency. The Family Liaison shall ensure that the family, or a representative of the family's choice:
  - a. Has a reliable way to communicate directly with the Family liaison;
  - b. Is kept informed about the investigative process, even when there is nothing new to report;
  - c. Is given timely notice of significant developments in the investigation, to include advanced notification of all scheduled press releases.

3. **FAMILY AND TRIBAL LIAISON.** The same Team member may serve as both the Tribal Liaison and the Family Liaison.

## **I. ASSIGNMENT AND RESPONSIBILITY OF TRIBAL LIAISON**

1. **TRIBAL LIAISON.** When VIIT is activated to investigate an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, and VIIT has good reason to believe the deceased or individual harmed is an enrolled member of a Federally Recognized Indian Tribe (RCW 10.114.021), the Lead Commander will, within twenty-four (24)-hours of the development of that belief, assign a VIIT member to serve as the Tribal Liaison. The tribal liaison will keep the tribe (or a representative of the tribe's choice) apprised of significant developments of the investigation.
2. **TRIBAL AND FAMILY LIAISON.** The same Team member may serve as both the Tribal Liaison and the Family Liaison.
3. **GOVERNOR'S OFFICE NOTIFICATION.** The Lead Commander will also ensure that the Governor's Office of Indian Affairs is notified within twenty-four (24)-hours of when VIIT has good reason to believe that the person was an enrolled member of a federally recognized Indian tribe.

## **J. COORDINATING WITH INVOLVED AGENCY – INVOLVED AGENCY LIAISON**

When the VIIT is activated, Involved Agency Liaisons shall be assigned by the Involved Agency to provide support to the Lead Investigator. It is preferred that the Involved Agency Liaison be a current Team member or, if not a Team member, a supervisor of the Involved Agency. The Involved Agency Liaison may be tasked to assist with logistics and coordinate communications between the Lead Commander, Lead Supervisor, Lead Detective, and the Involved Agency. The Involved Agency Liaison shall not participate in the investigation, nor shall he or she have any authority or influence over the investigation.

## **K. CONFLICT OF INTEREST STATEMENTS**

For Incidents in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, a conflict of interest statement will be completed and signed by each participating Team member and the Non-Law Enforcement Community Representative prior to participating with the investigation. The conflict of interest statements will be reviewed by the VIIT Administrative Lead or VIIT Lead Commander with the Non-Law Enforcement Community Representative within seventy-two (72) hours of the Incident. Team members and Non-Law Enforcement Community Representatives with a conflict of interest will not be permitted to participate in the investigation.

## L. VIIT INVESTIGATION AND RESPONSIBILITIES

1. **CRIMINAL INVESTIGATION ONLY.** The criminal investigation conducted by VIIT shall have investigative priority over an administrative investigation conducted by the Involved Agency and it begins immediately after an Incident has occurred. VIIT has no responsibility for conducting an administrative investigation; however, it is recognized that the results of the criminal investigation may be utilized to inform an administrative investigation and other matters involving the Involved Agency; and VIIT should endeavor to conduct its investigation in a manner that does not inhibit the administrative investigation.
2. **BEST PRACTICES.** All VIIT investigations relating to deadly force by a Peace Officer that results in death, substantial bodily harm, or great bodily harm shall follow accepted best practices for homicide investigations published and annually updated by the Washington State Criminal Justice Training Center. All other investigations shall also follow best practices.
3. **GOALS OF INVESTIGATION.** The goal of the criminal investigation is to independently, thoroughly and objectively investigate the Incident by gathering and develop all available relevant information and evidence about the Incident, and to provide the information and evidence to the prosecutor for his or her use in determining the presence or absence of criminal liability on the part of those involved in the Incident and to inform any determination of whether a use of deadly force met the good faith standard established in RCW 9A.16.040. Particular attention should be paid to areas of evidence relevant to the officer's decision-making process.
4. **APPLICABLE LAWS.** VIIT shall follow the rules of law that apply to all criminal investigations and proceedings, including, but not limited to, those derived from the Constitutions of the United States and state of Washington, and applicable federal and state statutes.
5. **INDEPENDENT AND THOROUGH INVESTIGATION.** The investigation shall be performed in a manner that provides both the appearance and the reality of an independent, transparent, credible, thorough, fair, and professional investigation which is free of conflicts of interest.

## M. VEHICLE COLLISION INCIDENTS

If the Incident under investigation by VIIT involves a collision, VIIT may utilize a collision investigation specialist(s) from a VIIT agency other than the Involved Agency. Collision investigation specialists who participate in the investigation have the primary responsibility for documentation, collection, and preservation of physical evidence, and may, at the discretion of the Lead Investigator, be used to investigate the physical movement of vehicles and for collision reconstruction.

## N. CUSTODIAL DEATH SCENES

When an Incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated, if possible, pending interviews by VIIT Investigators.

## O. INTERVIEWING LAW ENFORCEMENT EMPLOYEES

1. **WITNESS OFFICERS.** Generally, it is the intent of VIIT Investigators to obtain details of any officer-involved Incident as soon as possible after the event by interviewing and obtaining reports and statements from Witness Officers.
2. **GARRITY WARNINGS.** VIIT Investigators do not have authority to issue “Garrity” warnings to the Involved Officer(s). Garrity warnings may only be issued by the Involved Officer’s employing agency Chief of Police or his/her designee. Before a “Garrity” warning is given to an Involved Officer by his/her employer, VIIT Investigators should be given a reasonable amount of time to talk to witnesses, review and collect evidence, and consult on the facts of the case.
3. **AVOIDANCE OF COMPELLED STATEMENTS.** Compelled statements of officers cannot be used by VIIT for the investigation and are prohibited from being reviewed or considered by VIIT. If any Team member receives a compelled statement, the investigator receiving the compelled statement must immediately report it to his/her supervisor and must discontinue participation in the investigation and communicating about the investigation or the Incident with Team members. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.
4. **IN CUSTODY INTERVIEWS.** In custody interviews will be conducted in accordance with all Federal and State laws applicable to in custody interrogations.
5. **SEPARATE INTERVIEWS.** Involved Officers will be interviewed separately from one another.
6. **RECORDING.** Interviews may be recorded upon agreement between the parties involved. After an interview is recorded, a transcript of the recording will be prepared and reviewed by the VIIT Investigator who conducted the interview for content and context accuracy.

## P. INTOXICANT TESTING

In the event the state of sobriety of an Involved or Witness Officer of an Involved Agency is relevant to the investigation, the VIIT Commander shall inform the Involved Agency Liaison. The Involved Agency Liaison shall, to every extent possible, facilitate testing for alcohol or drug use.



## **Q. CRIMINAL BACKGROUND INFO NOT TO BE RELEASED**

Neither the involved agency nor VIIT will provide the media with criminal background information of a person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

## **R. BRIEFING OF INVOLVED AGENCY DURING INVESTIGATION**

- 1. BRIEFING.** The VIIT Lead Agency shall prepare and conduct a briefing about the progress of the investigation for the Involved Agency's Chief. The Non-Law Enforcement Community Representatives assigned to the Incident will be invited to attend briefing for Incidents where the use of deadly force by a Peace Officer results in death, substantial bodily harm, or great bodily harm.
- 2. TIMING OF BRIEFING.** The Lead Agency should endeavor to conduct this briefing within the first seventy-two (72) hours of the Incident, in coordination with the Involved Agency's Chief of Police, and adhering to LETCSA rules on disclosure to the involved agency. This briefing should be prepared and conducted by the Lead Agency Supervisor.
- 3. NO COMPROMISE OF INVESTIGATION.** Under no circumstances will information be released that may compromise a VIIT investigation.

## **S. BRIEFING OF INVOLVED AGENCY FOLLOWING INVESTIGATION**

After the VIIT investigation has been completed, and the County Prosecutor has determined that the investigation is complete, the Lead Commander may schedule a full case review for the Involved Agency. This review is intended to brief the Involved Agency's Command Staff and Legal Department on what occurred during the Incident and what investigative steps were taken, as well as to answer any questions the Involved Agency may have about the investigation.

## **T. THE PROSECUTOR'S OFFICE**

The County Prosecutor's Office for the County in which the investigation is conducted may be utilized for assistance and advice on various criminal law issues which may arise during the investigation such as but not limited to: case development, Miranda, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses, and Garrity-related issues. Upon completion of the VIIT investigation, the investigation report will be sent to the Prosecutor's Office for review.

## U. REPORT WRITING

1. **REPORTS TO BE COMPLETED.** All personnel involved in the Incident and VIIT investigation shall complete reports documenting their participation. This includes Involved Agency personnel, VIIT Investigators, and first responders. All completed reports will be routed to the designated VIIT Supervisor. The VIIT Supervisor will provide all reports to the VIIT Lead Investigator as soon as possible.
2. **VIIT SUPERVISOR TO REVIEW.** Upon completion of a VIIT Investigator's report, it will be his/her responsibility to provide that report to the designated VIIT Supervisor for review and approval.
3. **APPLICABLE CASE NUMBER.** Should an Investigator's Employing Agency require him/her to complete a report under his/her agency's case-reporting system, that Investigator should write a report titled "Agency Assist". The Investigator's follow-up report shall be completed under the outside agency case number.
4. **REPORTS A PRIORITY.** The completion of reports prepared regarding an Incident shall be considered a priority and will be completed as soon as practical. Prompt completion and distribution of reports to appropriate personnel is essential.

## V. PUBLIC INFORMATION/MEDIA RELEASES

1. **PRESS RELEASE.** A Team member will provide public information regarding an Incident by way of press release or otherwise as soon as is practicable after the Incident. Updates to the public will then be provided weekly, even if there is no new progress to report, until the investigation is provided to the Prosecutor's Office for review.
2. **ADVANCED NOTICE TO FAMILY OF SCHEDULED PRESS RELEASE.** VIIT shall give the family of a person against whom deadly force was used and the Involved Agency advanced notice of all scheduled press releases.
3. **COPY OF PRESS RELEASE TO BE PROVIDED PRIOR TO RELEASE.** VIIT shall provide the Non-Law Enforcement Community Representative a copy of all press releases and media communications prior to release.
4. **CHIEF MAY COMMUNICATE.** WAC 139-12-030(1) recognizes that the Chief of Police of the Involved Agency, or his or her designee, may communicate with the community about the progress of the investigation or other related matters, by press release or otherwise.
5. **VIIT IDENTIFIED AS INVESTIGATIVE AGENCY.** In all communications with the public, it is important that the Lead Agency and Involved Agency inform the media that the investigation is being conducted by VIIT. Specifically, the lead investigative agency shall not be identified as the investigating agency; rather, VIIT shall be identified as the investigating agency.

6. **BODY CAMERA FOOTAGE.** If the Chief of the Involved Agency requests that VIIT release body camera video or other investigation information of urgent public interest, the VIIT Commander should honor the request with the agreement of the King County Prosecutor.

## **W. ACCESS TO REPORTS AND EVIDENCE**

1. **AVAILABILITY OF REPORTS AND EVIDENCE.** Material, or copies of material, that is created or collected at the request or direction of Team members (including the crime lab results) will be made available in a timely manner to those criminal justice agencies that have a need for the material or as allowed by law. Examples of material referenced herein are:
  - a. Reports; written and collected;
  - b. Access to physical evidence;
  - c. Photographs and diagrams, and computer assisted reconstruction;
  - d. Audio and video recordings.
2. **EVIDENCE NO LONGER NEEDED.** When VIIT Investigators and/or representatives from the Prosecutor's Office conclude that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the originating agency shall be notified of that decision so it can assume responsibility for preservation of such evidence as needed or required.
3. **REPORTS AVAILABLE TO INVOLVED AGENCY.** It is desirable to provide the Involved Agency all reports as soon as practical, and in compliance with LETCSA.
4. **COMMUNITY REPRESENTATIVE ACCESS TO FINAL INVESTIGATION.** At the conclusion of an investigation involving an Incident in which a Peace Officer's application of deadly force results in death or substantial bodily harm or great bodily harm, the Non-Law Enforcement Community Representative will be provided access to the completed investigation file.

## **X. PUBLIC DISCLOSURE REQUESTS**

Records in response to a Public Records Requests will be released in accordance with state law.

## **Y. CONFIDENTIALITY**

All investigations conducted by VIIT shall be treated as confidential except as otherwise provided by law, and except as provided by this Protocol.

# VALLEY INDEPENDENT INVESTIGATION TEAM AGREEMENT

THIS AGREEMENT is made and entered into on August 19, 2020, by and between the Police Departments of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila, and the Port of Seattle.

## RECITALS

Many years ago, the Police Departments of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila, and the Port of Seattle (hereinafter "Member Agencies") created the Valley Investigations Team, now referred to as the Valley Independent Investigations Team ("VIIT"). VIIT was formed to provide a mechanism whereby South King County police agencies would not investigate their own officers' uses of deadly force.

VIIT established a team of experienced and highly qualified leadership, detectives, and others from each Member Agency to respond to incidents in which peace officers of Member Agencies use deadly force that results in death, serious bodily harm, or great bodily harm.

Years later, in 2019, the state of Washington enacted RCW 10.114.011. This statute requires that whenever 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 meets the good faith standard established in Washington law. The statute also tasked Washington's Criminal Justice Training Commission (CJTC) to establish criteria for independent investigations.

Earlier this year, the CJTC issued the criteria for independent investigations, which is set forth in Chapter 139-12 of the Washington Administrative Code. Chapter 139-12 WAC now requires agencies to establish independent investigation teams, much like VIIT, and that law enforcement agencies enter into a written agreement to investigate police uses of deadly force incidents in their geographical region.

NOW, THEREFORE, and in accordance with Chapter 139-12, the Member Agencies mutually agree as follows:

## AGREEMENT

**1. AGREEMENT.** Each Member Agency agrees and commits to support and participate in VIIT for the purposes of investigating uses of deadly force by their respective peace officers that result in death, serious bodily harm, or great bodily injury. In recognition that each incident of deadly force that arises is unique, nothing in this Agreement shall limit a Member Agency from utilizing a different agency for the purposes of conducting an independent investigation of a use of deadly force by one of its peace officers.

This Agreement constitutes the written agreement among Member Agencies to satisfy the requirement of Chapter 139-12 WAC and shall also serve as a request for assistance pursuant to a mutual law enforcement assistance agreement in accordance with Chapter 10.93 RCW.

**2. TERM.** This Agreement shall stay in effect until such time as the Member Agencies terminate the VIIT; provided, individual agencies may withdraw from VIIT with reasonable notice, and the remaining VIIT Member Agencies will continue to operate under this Agreement until such time as only one Member



**Chapter 139-12 WAC**  
**LAW ENFORCEMENT TRAINING AND COMMUNITY SAFETY ACT—INDEPENDENT**  
**INVESTIGATIONS CRITERIA (LETCSA)**

NEW SECTION

**WAC 139-12-010 Purpose.** In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of de-escalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death. Initiative 940 and SHB 1064 incorporated those recommendations and these WACs implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life should be at the heart of American

policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that 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 independent investigation is a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

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NEW SECTION

**WAC 139-12-020 Definitions. Best practices** - For the purpose of this chapter, best practices are defined as methods, techniques, and procedures that have consistently shown by research and experience to produce superior results and are established or proposed as a standard, suitable for widespread adoption in the law enforcement profession.

**Completed investigation** - The final work product of the IIT for the purpose of informing the prosecuting attorney's charging decision. 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.

**Deadly force** - As set forth in RCW 9A.16.010, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

**Evanescent evidence** - Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or unpreserved for the arrival of the independent investigative team (IIT); identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses.

**Good faith standard** - As set forth in RCW 9A.16.040, "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."

**Great bodily harm** - As set forth in RCW 9A.04.110, "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.

**Independent investigative team (IIT)** - A team of qualified and certified peace officer investigators, civilian crime scene specialists, and at least two non-law enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents. An IIT is created when multiple law enforcement agencies enter into a written agreement to investigate police use of deadly force incidents in their geographical regions. A single law enforcement agency may fulfill the independent investigative function, provided it is not the involved agency.

**Initial incident response** - This is the period in time immediately following a police use of deadly force incident, and prior to the arrival of the IIT, when involved agency personnel on scene and other first responders immediately take actions to render the scene

safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries.

**Involved agency** - The agency that employs or supervises the officer(s) who used deadly force. There can be more than one "involved agency."

**Member Agency** - Each of the agencies that enters into a written agreement to investigate police use of deadly force in their geographical region.

**Necessary** - As set forth in RCW 9A.16.010, "necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

**Prosecutor's review** - The period of time when the IIT presents a completed investigation to the prosecutor, who then reviews all the facts and makes a charging decision.

**Substantial bodily harm** - As set forth in RCW 9A.04.110, "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.

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NEW SECTION

**WAC 139-12-030 Independent investigation criteria.**

There are five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

- Independence;
- Transparency;
- Communication;
- Credible process; and
- Credible investigators.

Standards are necessary for the involved agency and the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that results in a compliant and complete investigation and builds public trust.

(1) **Independence.**

(a) Independence is essential to the integrity and objectivity of the investigation. Maintaining independence is achieved through compliance with rules and regulations designed to prohibit undue influence, and the appearance of undue influence, by the involved agency in the investigation.

(b) Standards for an investigation completely independent of the involved agency:

- Once the involved agency personnel and/or other first responders have rendered the scene safe and provided or facilitated life-saving first aid to persons at the scene who have life-threatening injuries, the involved agency will immediately call the IIT. Then the primary focus of the involved agency shifts to the protection and preservation of evanescent evidence in order to maintain the integrity of the scene until the IIT arrives. Once the IIT arrives, and the IIT commander has the appropriate resources on scene, the involved agency will relinquish control of the scene to the IIT.

- No member of the involved agency may participate in any way in the investigation of police use of deadly force conducted by the IIT, with the following exception:

- Specialized equipment belonging to the involved agency may not be used by the IIT unless: 1 - no reasonable alternative exists; 2 - the equipment is critical to carrying out the independent investigation; and 3 - the use is approved by the IIT commander. If the equipment is used, the non-law enforcement community representatives on the IIT must be notified about: 1 - why it needs to

be used; and 2 - the steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.

- No information about the ongoing independent investigation of police use of deadly force will be shared with any member of the involved agency, except limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the investigation.

- If the chief or sheriff of the involved agency requests that the IIT release the body cam video or other investigation information of urgent public interest, the IIT commander should honor the request with the agreement of the prosecutor of jurisdiction.

(2) **Transparency.**

(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.

(b) Standards for the transparency of an independent investigation:

- The policies and operating procedures of the IIT will be available to the public.

- The names of the members, supervisors, commanders, and non-law enforcement community representatives on the IIT will be available to the public.

- A minimum of two non-law enforcement community representatives will be assigned to each IIT to:

- a. Participate directly in the vetting, interviewing, and/or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the non-law enforcement community representatives for review.)
- b. Review conflict of interest statements submitted within 72 hours of the commencement of each investigation by the investigators;
- c. Be present at the briefings with the involved agency(s) chief or sheriff;
- d. Have access to the investigation file when it is completed;
- e. Be provided a copy of all press releases and communication to the media prior to release; and
- f. Review notification of equipment use of the involved agency.

- The non-law enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.

- If the confidentiality agreement is violated, the non-law enforcement representative may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW, Washington State Criminal Records Privacy Act. For the purpose of this chapter, "criminal background information" is the same as "criminal history information" as defined in RCW 10.97.030(4).

- The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

- When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

### (3) **Communication.**

(a) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust.

(b) Standards for communication during an independent investigation:

- A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.

- A member of the IIT will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.

- Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

- If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:

- The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW 10.114.021.

- A member of the IIT will be assigned as a tribal liaison within the first twenty-four hours and keep the tribe (or a representative of



the tribe's choice) apprised of all significant developments of the investigation.

**(4) Credibility.**

(a) In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.

(b) Standards for a credible independent investigative process:

- After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will:

- Secure the incident scene and maintain its integrity until the IIT arrives.

- The perimeter must be clearly marked and protected.
- Evanescent evidence must be located and preserved, consistent with best practices published annually by the criminal justice training commission.

- The independent investigation will follow accepted best practices for homicide investigations published and annually updated by the WSCJTC.

- An involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the LETCSA. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA must be conducted in a manner that does not inhibit the involved agency from doing so. To accomplish this:

- The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.

- The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.

- If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

(c) The standards for credible investigators include:

(i) Appointed Members.

The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:

- The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.

- At least two non-law enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The Chiefs and Sheriffs of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s) and/or sheriff(s).

- All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.

- The IIT supervisors shall be recommended by their agency to the IIT commander.

(ii) Selection Process for IIT Members.

The IIT leadership shall:

- Ensure all applicants meet all time, rank, and training prerequisites described in chapter xxx WAC.

- Ensure that qualified applicants are interviewed by a panel, which includes the non-law enforcement community representatives and other members of the IIT selected by the IIT commander.

- All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.

- At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.

(iii) Requirements for IIT Investigators.

- Applicants for the position of investigator must be employed by a member agency of the IIT.

- The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or

investigator, or have special skills or experience necessary for the team.

(iv) Periodic Appointment Review.

The chief or sheriff of a member agency, and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.

(v) Training Requirements.

The credibility of an individual assigned to an IIT is grounded in two elements: training and experience in criminal investigations. Since some IIT members were chosen because of their experience in criminal investigations, it is important to clearly define expectations for both training and experience, and acknowledge the relationship between those two elements.

IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.

Civilian IIT members (i.e. Crime Scene Investigators, Evidence Technicians, etc.) are not required to obtain the Qualified Lead Investigator certificate, but the IIT leadership shall establish reasonable non-commissioned training requirements through their IIT protocol.

The CJTC will issue an "IIT Qualified Lead investigator certificate" to ensure that those who are assigned to a lead investigator role for an IIT meet the training requirements listed below by the end of 2020.

To obtain an IIT Qualified Lead Investigator certificate, candidates must:

- Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.

- Provide proof of successful completion of the prescribed training classes, (or appropriate equivalent experience), listed in this chapter.

(A) Basic training classes:

- Basic homicide investigation;
- Interviewing and interrogation;
- LETCSA Violence De-escalation and Mental health training.

IIT Members who have two years or more of relevant, full-time criminal investigative work experience may substitute their work experience for the required Basic Training classes. County Sheriffs, Police Chiefs, and IIT Commanders are encouraged to promote continuing education as a best practice for all members assigned to the IIT.

(B) Advanced training classes.

A minimum of eight hours of training annually may include, but is not limited to, the following criminal investigation topics:

- Advanced homicide investigation techniques;
- Advanced interviewing and interrogation;
- Officer-involved shooting investigation;
- In-custody death investigation;
- Excited delirium and positional asphyxia;
- Bloodstain pattern analysis;
- Crime scene photography/videography and
- Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.

(C) In-service training.

- All IIT members shall receive priority registration to LETCSA training, required homicide investigations training, and recertification every three years.

- The IIT shall train as a unit at least annually.

(vi) Demonstrated History of Honorable Behavior.

Investigators assigned to an IIT are expected to have a work history free of a sustained finding of serious misconduct and/or a

pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force.

Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:

- Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).
- Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, serious ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.
- Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.

(vii) Conflicts of Interest.

Within 72-hours of the commencement of each investigation, investigators and non-law enforcement community representatives, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment (created by WSCJTC) will include questions about prior interactions or



relationships with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and discussed by the non-law enforcement community representatives and the IIT commander. The conflict of interest assessments for investigators and non-law enforcement community representatives will be developed at the March 2020 summit and adopted by the Commission at the June 2020 meeting.

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