



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee

FROM: Chief of Police Eric Drever

BY: Chief of Police Eric Drever

CC: Mayor Ekberg

DATE: May 10th, 2021

SUBJECT: Police Reform / LETCSA Updates

ISSUE

In both 2020 and 2021 legislative reform, focused on law enforcement, has changed how law enforcement agencies operate. The Tukwila Police Department has made changes to comply with the reform already enacted and is working to implement new policy to comply with bills that were recently passed in legislative session.

BACKGROUND

The Tukwila Police Department is partnered with neighboring agencies as part of a regional team (VIIT) for conducting independent investigations of officer involved use of deadly force. In January of 2020 the Law Enforcement Training and Community Safety Act (LETCSA) was implemented, requiring changes to how officer involved use of deadly force would be investigated. VIIT was instrumental with setting the standard for compliance with LETCSA and continues to lead by helping other agencies establish their Independent Investigative Teams. Now also, with the recent legislative session concluded, law enforcement reform is at the forefront of passed legislative bills and agencies are working diligently to establish policy that is in compliance with the new reform.

DISCUSSION

Tukwila has established itself as being fully compliant with LETCSA, along with the partnered agencies VIIT. A new bill introduced by the Governor's Office will establish a non-law enforcement independent investigative team that will take over investigations of officer involved use of deadly force. We are still waiting to see how the new team will be implemented and the impacts that it will have on the current independent investigative teams, such as VIIT. Additionally, new police reform out of the recent legislative session has mandated changes for law enforcement agencies. The Valley agencies' Chiefs and City Attorneys are meeting on May 19th to jointly work on uniform policy that will bring all agencies in compliance and allow for a shared understating and interpretation of the reform for law enforcement.

FINANCIAL IMPACT

There will be financial impacts of the new reform; however, most impacts will not be realized until we implement and monitor the changes required by the unfunded legislative mandates. The Tukwila Police Department is working with other Washington agencies and WASPC to track the financial impacts for potential reimbursement by the State,

RECOMMENDATION

Information Only

ATTACHMENTS

WAC 139-12 LETCSA

VIIT Policy

Policy Considerations from 2021 LEG Session

WASPC Reform Statement

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

Valley Independent Investigative Team

Protocol



Partnered 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

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MISSION

To thoroughly and objectively investigate the most serious incidents involving police officers, including but not limited to:

- **Officer involved shootings.**
- **In-custody deaths or life-threatening injuries.**
- **Death or life-threatening injuries of a police employee.**
- **Investigations as directed by the Board of Chiefs**

GOALS OF THE RESPONSE TEAM

- A. To promote public trust by conducting consistent professional and transparent multi-jurisdictional investigations of serious incidents involving police officers.
- B. To maximize the availability of the latest technological equipment and use of investigative techniques.
- C. To consolidate and share the skills of the most experienced supervisors and investigators.
- D. To conduct thorough investigations as expeditiously as is feasible under the circumstances.
- E. To adhere to the protocols established in the Law Enforcement Training and Community Safety Act (LETCSA) WAC 139-12.

VALLEY INDEPENDENT INVESTIGATIVE TEAM ADMINISTRATION

- A. The governing body of the Valley Independent Investigative Team (VIIT) is the Executive Board. The VIIT Executive Board is comprised of the Chiefs of Police of the participating law enforcement agencies. The Executive Board elects their Board Chair. The Chair is the primary point of contact for the VIIT Administrative Lead.
- B. From among the VIIT Partnering Agencies, the Executive Board shall designate one Assistant/Deputy Chief as the VIIT Administrative Lead. That assignment is usually a two-year rotation. The rotation time may be different as dictated by the Assistant/Deputy Chief's home agency and the Executive Board.
- C. Each participating agency shall designate one police leader from their agency to be their agency's VIIT Commander. It is desirable that selected VIIT Commanders show a keen interest in investigations, and preferably have prior investigations experience. VIIT Commanders must have mid-management level, or higher, decision-making authority.
- D. From among the VIIT Commanders, the Executive Board shall designate one Commander as the Team's Lead Commander. That assignment is usually a two-year rotation. The rotation time may be different as dictated by the Commander's home agency and the Executive Board.

TEAM MEMBERS/RESPONSIBILITIES

ADMINISTRATIVE LEAD

- A. The Administrative Lead is responsible for the administrative oversight of VIIT and managing the team's compliance with the *Law Enforcement Training and Community Safety Act* (LETCSA) {Chapter 139-12 WAC} The VIIT Administrative Lead will report regularly to the Executive Board regarding the activities of VIIT.

LEAD COMMANDER

- A. The Lead Commander has the overall responsibility to manage and coordinate assigned 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 VIIT Administrative Lead.

ASSISTANT COMMANDER

- A. The Assistant Commander shall be a member of VIIT, appointed by the Lead Commander. The responsibilities of the Assistant Commander include:
 - 1. Maintaining records of Team call-outs.
 - 2. Managing the financial transactions and records of the Team.
 - 3. Preparing the Team's annual report.
- B. In the absence of the Lead Commander, the Assistant Commander will be designated as the Lead Commander.

TEAM TRAINER

- A. The Team Trainer may either be a Supervisor or a Detective assigned to the unit by their respective agency. The Team Trainer will be responsible for:
 - 1. Arranging, coordinating, and documenting all training for the Team.
 - 2. Maintaining the Team personnel records, roster, and equipment inventory.
 - 3. Providing support to the Assistant Commander in preparing the annual report.

TEAM COMMANDERS

- A. The VIIT Commander from each agency is responsible for coordinating the personnel and administrative issues and needs of the individual team members from their agency. Team members ultimately report to their agency's Commander for personnel and labor issues, administrative matters, and personal equipment.

TEAM SUPERVISORS

- A. Team Supervisors shall be first-line supervisors holding the rank of Sergeant or equivalent, and shall be assigned by the Lead Commander to respond to and supervise specific components of an incident. Investigative Team Supervisors shall be selected from the VIIT member agencies.
- B. At the direction of the Lead Commander, a VIIT Supervisor shall respond to, and take direct charge of, the crime scene investigation. When multiple VIIT Supervisors respond, one will be designated as the Lead Supervisor. The Lead Commander may also assign VIIT Supervisors to oversee other investigative components as dictated by the complexity of the investigation.

INVESTIGATORS

- A. A minimum of twenty (20) Investigators should be assigned to VIIT. Investigators will work specific tasks at the direction of a VIIT Supervisor or VIIT Commander.
 - 1. One Detective will be designated as the Lead Investigator for each incident. Criteria for being designated as the Lead Investigator will follow the standard as set forth in Chapter 139-12 of the Washington Administrative Code.

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.

STAFFING

- A. Administrative Lead - 1
- B. Lead Commander – 1
- C. Assistant Commander – 1
- D. Other Commanders – 1 per VIIT Agency
- E. Investigative Supervisors – 1 per VIIT Agency
- F. Investigators – 20.

This list represents the minimum number of personnel each agency is responsible for assigning to the Valley Investigations Team. Agencies may elect to increase their assigned personnel depending on staffing and agency goals. The actual number may vary as dictated by the needs and direction of each agency's Chief of Police.

1. Auburn Police Department, 3 Detectives
2. Des Moines Police Department, 2 Detectives
3. Federal Way Police Department, 3 Detectives
4. Kent Police Department, 3 Detectives
5. Port of Seattle Police Department, 3 Detectives
6. Renton Police Department, 3 Detectives
7. Tukwila Police Department, 3 Detectives
8. Non-Commissioned Evidence Technicians (assigned at the discretion of VIIT Agency Commanders)

INVOLVED AGENCY LIAISON

At any scene, involved agency Liaisons shall be assigned to provide support to the Lead Investigator. It is preferred that the Liaisons be current Team Members or Supervisors. The Liaisons may be tasked to assist with logistics and coordinate communications between the Lead Commander, Lead Supervisor, Lead Detective, and the Involved Agency. See Appendix A-OIS Standards.

ACTIVATION

- A. The Involved Agency Chief of Police, or his/her designee, shall make the request for VIIT via their department procedures.
- B. The Administrative Lead and Lead Commander, per VIIT call-out instructions, will be notified of the request.
- C. VIIT call-out procedures will be utilized to notify VIIT members of activation.
- D. Other than filling the role as the involved agency Liaison, VIIT members from the involved agencies will not be activated or involved in the independent investigation.
- E. The Lead Commander shall assign a Lead Supervisor and Lead Investigator.
 - a. The Lead Investigator must have a *WSCJTC IIT Qualified Lead Investigator certificate* in order to be assigned as the Lead Investigator. (This requirement is waived by the WSCJTC until January 2021.)
- F. The Lead Commander will assign a family liaison to the family of the subject involved.
- G. The Lead Commander will notify the appropriate Non-Law Enforcement Community Representative of the investigation.

CONFLICT OF INTEREST

- A. A conflict of interest statement will be filled out and signed by each participating VIIT member and the non-law enforcement community member prior to being involved with each investigation.

- B. 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 72 hours of the incident.
- C. If the Administrative Lead or VIIT Lead Commander determine that a conflict of interest exists for one of the VIIT members, that member will be excluded from the investigation.

AUTHORITY

- A. Once authorization for the activation of VIIT to investigate an incident is established, VIIT shall have exclusive authority concerning the investigation of the incident.

INVOLVED AGENCY RESPONSIBILITIES

- A. The Involved Agency shall:
 - 1. Be part of the VIIT Agreement or part of a Mutual Aid Agreement.
 - 2. Ensure proper crime scene protection.
 - 3. Make the initial request for VIIT.
 - 4. Provide a liaison.
 - 5. Make all involved department personnel available to VIIT.
 - 6. Indemnify VIIT participating agencies and their employees.
 - 7. Be responsible for all reasonable investigative expenditures.
 - 8. Coordinate appropriate security measures with the Lead Commander and be responsible for the cost of security until the suspect is available for booking. It is understood that special circumstances may dictate that other non-involved agencies can provide assistance and security upon request of the Involved Agency's Chief of Police.
 - 9. Make all documents, reports, and information available to VIIT in accordance with Federal and State law.
 - 10. Allow use of space and equipment as needed by VIIT, and as allowed by law.

COSTS

- A. Each Member Agency shall be responsible for their employees' wages and associated costs. Any non-routine costs must be approved by the Involved Agency's Chief of Police or his/her designee prior to incurring the costs and, upon said approval, shall be the responsibility of the Involved Agency.

EVIDENCE STORAGE

- A. 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.

CASE FILES

- A. All original reports, statements, and other documentation should be maintained under the lead agency case number, provided by the Lead Investigator's agency to VIIT. Each agency shall be responsible for pulling 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.

TEAM ADMINISTRATIVE RECORDS

- A. Records shall be maintained of all Team activity including:
 - 1. Call-outs
 - 2. Team training
 - 3. Team Roster and contact number changes

CORE TRAINING

BASIC TRAINING

- A. The following classes, or their equivalent, are recommended for all Investigators assigned to VIIT:
 - 1. Criminal Investigation
 - 2. Basic Homicide Investigation
 - 3. Force Science Institute
 - 4. Crime Scene Investigation
 - 5. Training on Interviewing and Interrogation
 - 6. Officer Involved Shooting Investigation
 - 7. In-Custody Death Investigation
- B. Participation in these courses may be waived by the Agency VIIT Commander based upon experience of Investigators and/or on-the-job-training.

ON GOING TRAINING/CONFERENCES

The following has been recommended by VIIT Command Staff for current VIIT Investigators:

- A. Regular attendance at either the Washington Homicide Investigators Associations yearly conference or the Oregon/Washington Lawman's Association conferences. Both organizations provide training on a case study basis, including lessons learned from major homicide and officer involved shooting cases.
- B. Other related training seminars, conferences, or on-going training offered by the Washington State Criminal Justice Training Commission (WSCJTC).

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 each quarter.
- C. Team members are expected to attend quarterly training sessions. 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.

APPOINTMENT/SELECTION OF TEAM MEMBERS

APPOINTED MEMBERS

- A. The Administrative Lead shall be appointed by the Executive Board
- B. Lead Commander shall be appointed by the Executive Board.
- C. The Assistant Commander shall be appointed by the Lead Commander.
- D. The Team Trainer shall be appointed by the Lead Commander.

SELECTION of VIIT TEAM MEMBERS

- A. VIIT Investigators and Non-Commissioned Evidence Technicians will be assigned to the team by their own department:
 - 1. The applicants employing agency Commander shall ensure the applicant meets minimum standards.
 - 2. Qualified applicants shall be evaluated and approved by their employing agency.
 - 3. Each agency is required to follow the requirements set forth in WAC 139-12 for selection of VIIT members, which states that the non-law enforcement community representative for that agency will participate directly in the vetting, interviewing, and/or selection of IIT investigators.

PREREQUISITES

- A. Investigators and Non-Commissioned Evidence Technicians must be from an agency that is a party to the VIIT Agreement.
- B. A commitment of three years to VIIT from the Investigator, Non-Commissioned Evidence Technician, and the Employing Agency (excludes promotion or other similar circumstance).
- C. Commitment to attend quarterly training.
- D. Willingness to be on-call and reasonably available for call-outs.
- E. Two years' experience preferred as a current or former Investigator at the time of application.

REMOVAL FROM TEAM

- A. Members of the Team may be removed upon recommendation of the Administrative Lead to the employing agency's Chief of Police or his/her designee.

EQUIPMENT

- A. VIIT member agencies shall work together to ensure VIIT has the necessary equipment to support the mission and goals of the Team. Agencies will supply each Team Member with basic safety equipment to adhere to current WISHA or OSHA Personal Protective Equipment (PPE) 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. If the equipment is used, the non-law enforcement community representatives on the VIIT 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.
- C. 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.
- D. A VIIT ID card will be provided to all members. The card may be FEMA compliant and will display the following information:
 - 1. Valley Investigations Team
 - 2. Member's name
 - 3. Member's rank
 - 4. Member's employing agency
 - 5. Photograph of member

INCIDENT REVIEW

- A. After a VIIT activation, an incident review will be conducted as soon as practical; typically, the next working day after the primary scene investigation is concluded. The review will be scheduled by the Lead Commander. The review will be facilitated by the Lead Commander or Lead Supervisor. The purpose is to review each Investigator's involvement in the case and assign any additional investigative tasks that may need to be completed. The review will be attended by the Commanders and Supervisors from each VIIT Agency involved in the investigation. If a VIIT Agency was not able to take part in the investigation, it is still recommended that they attend the review. The Lead Investigator may or may not attend this review, depending on the status of the investigation.

COORDINATING WITH INVOLVED AGENCY

- A. The Involved Agency will provide an Investigator and Supervisor to act as Liaisons.
 - 1. The Lead Investigator, Lead Supervisor, and the Liaisons will maintain contact during the investigation.

2. Each agency will ensure all communication is handled through the Liaisons, Lead Investigator, or Lead Supervisor, except for Chief-to-Chief contact regarding the incident.
- B. The Team will prepare a briefing for the Involved Agency's administration.
1. It is suggested that this briefing be completed within the first 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
 2. The non-law enforcement community representative will be invited to attend all VIIT briefings to the involved agency.
 3. This briefing should contain background information, an update on the status of the investigation, and what remains to be accomplished.
 4. This briefing should be prepared and conducted by the Lead Supervisor. It is not recommended that the Lead Investigator take this responsibility as it detracts from completion of the investigation.
 4. Under no circumstances will information be released that may compromise a VIIT investigation.
 5. After the VIIT investigation has been completed, 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, what investigative steps were taken, as well as answer any questions the Involved Agency may have about the investigation.

DEFINITIONS

INVOLVED FATAL OR INJURY INCIDENT

- A. An incident in which a Member Agency law enforcement employee is a Subject Officer and that incident results in a fatality or serious injury to another party; or
- B. An incident in which a Member Agency law enforcement employee is the recipient of a serious injury or is killed.

LAW ENFORCEMENT EMPLOYEE

- A. This Protocol applies to employees and to certain other people affiliated with law enforcement agencies that are members of the VIIT Agreement, as follows:
 1. Full-time, part-time, and hourly sworn and unsworn law enforcement personnel, whether on-duty or off-duty.
 2. Reserve law enforcement personnel who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.
 3. Temporary employees and volunteers, whether paid or unpaid, who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.

SUBJECT OFFICER

- A. A person whose act is reasonably believed to be a "proximate cause" of a fatality or serious injury to another person.

PROXIMATE CAUSE

- A. A cause which, in a natural and continuous sequence, produces an injury or fatality, and without which cause the injury or fatality would not have occurred. The ability to reasonably foresee the injury or fatality is not a factor relevant to this definition.

FATAL OR SERIOUS INJURY

- A. For the purpose of this Protocol, fatal injury shall mean death. Serious injury shall mean bodily injury, which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

INVOLVED AGENCY

- A. The agency or agencies whose officer(s) were involved in the incident.

EMPLOYER AGENCY

- A. The agency that employs the Subject Officer(s). In many cases, the Involved Agency will also be the Employer Agency.

INVESTIGATIVE TEAM

- A. The Investigative Team is comprised of Investigators from various law enforcement agencies throughout South King County who are assigned to VIIT and whose primary responsibility is to conduct a criminal investigation of an incident.

MEMBER AGENCY

- A. A law enforcement agency who is part of the VIIT Agreement and who has reviewed and signed an acknowledgement agreeing to the terms of this Protocol.

INVOCATION OF THIS PROTOCOL

AUTOMATIC AND IMMEDIATE

- A. Upon the occurrence of a law enforcement-involved fatal or serious injury incident, this Protocol is effective upon the activation of VIIT. Such incidents may include, but are not limited to, the following:
 1. Intentional and/or accidental shootings, including police tactical incidents involving specialized response teams.
 2. Intentional and/or accidental use of any other dangerous or deadly weapon.
 3. Assaults upon law enforcement officers or assaults on other law enforcement employees who are on-duty or are acting in a law enforcement capacity.

4. Where a law enforcement officer has applied force on an individual and that individual stops breathing, either during the application of force or immediately thereafter.
5. Any fatal or serious injury to a subject in police custody.
6. Any fatal or serious injury of an inmate at any participating agency jail facility, that occurs as a result of use of force by a jail employee or law enforcement officer.
7. Vehicular collisions involving police gunfire directed at a suspect or a suspect vehicle.
8. Vehicular collisions which result in a serious injury or fatality, or that involves the use of vehicle(s) by police as a "legal intervention" technique intended to apprehend a suspect. "Legal intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.
9. Vehicular collisions that involve serious injuries or a fatality that occur during a police pursuit. The serious injury or fatality may be to the suspect, an officer, or other third party.
10. Vehicle collisions not covered by this Protocol include the following:
 - a. Off-duty, non-sworn law enforcement employees who are not, at the time of the incident, acting for an actual, apparent, or purported law enforcement purpose.
 - b. Law enforcement involved vehicle collisions that result in serious injuries or a fatality that do not involve police gunfire, legal intervention, or a pursuit.

- B. VIIT responses to agencies outside of King County or not party to the VIIT Agreement will be considered on a case-by-case basis.

SPECIAL DEPLOYMENT

- A. While formed primarily to investigate officer-involved incidents, VIIT may be deployed for non-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.

INVESTIGATION AND RESPONSIBILITIES

THE CRIMINAL INVESTIGATION

- A. The criminal investigation has investigative priority over the administrative investigation, and it begins immediately after an incident has occurred. The criminal investigation is performed by VIIT.
- B. The goal of the criminal investigation is to objectively investigate and develop all available relevant information about the incident.
- C. To determine presence or absence of criminal liability on the part of those involved in the incident, specifically:
 1. To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
 2. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
 3. If criminal conduct does exist, determine the degree of crime(s), the existence of any factual or legal defenses to that crime, and the presence or absence of any factors which could mitigate or aggravate punishment for that crime.

- D. To provide factual information to the Employer Agency's management for its internal use. While the criminal investigators do not direct their investigative attention to administration concerns, it is recognized that the criminal investigation's results are of interest to agency management for its internal use, and those results are fully available for that purpose, unless otherwise prohibited by law.
- E. VIIT shall follow the rules of law that apply to all criminal proceedings, including constitutional, statutory, and case law regarding rights which are covered by the 4th, 5th, 6th, and 14th Amendments of the United States Constitution.
- F. The investigation shall be performed in a manner that provides both the appearance and the reality of a thorough, fair, complete, and professional investigation which is free of conflicts of interest.

JURISDICTIONAL DETERMINATION

- A. Use of the VIIT is at the discretion of the Chief of Police of the Involved Officer(s). No Chief of Police is obligated to use VIIT, regardless of the circumstances involving any particular incident.
- B. In general, whenever an officer from a VIIT Agency is involved in an on-duty incident, regardless of the city in which the incident occurred, VIIT will respond and investigate. There may be circumstances when the investigation is shared concurrently with an outside agency. Since all scenarios cannot be anticipated, investigative decision-making may be decided after consultation with agency heads and VIIT Command.
- C. When officers from a single VIIT Agency or multiple VIIT Agencies are involved in an incident, VIIT conducts the investigation.
- D. When officers from a single VIIT Agency or multiple VIIT Agencies are involved in an incident outside the VIIT boundaries, VIIT conducts the investigation.
- E. If officers from a VIIT Agency and an outside agency are involved in an incident, VIIT reserves the right to conduct the investigation for the VIIT Agency's officer(s). The outside agency may or may not conduct a concurrent investigation.
- F. If outside agencies are involved in an incident within the VIIT boundaries, 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 their request for VIIT to conduct the investigation.

VEHICLE COLLISION INCIDENTS

- A. Collisions meeting the criteria outlined in this Protocol shall be investigated by the Team's criminal investigators and may be joined by collision investigation specialists. Collision investigation

specialists who join the Team have the primary responsibility for documentation, collection, and preservation of physical evidence.

- B. If the fatality or serious injury results from a collision that was an intentional use of force (i.e., use of “legal intervention techniques”) or if vehicle movement was merely incidental to a fatality or serious injury which was caused by non-vehicular means, the collision investigation specialists may be used by the Team for that phase of the investigation. The collision investigation specialists’ role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

SCENE SECURITY

- A. Each Involved Agency has initial responsibility for immediately securing the crime scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

SCENE PROCEDURES – INVOLVED AGENCY RESPONSIBILITIES

- A. Emergency life-saving measures have the first priority.
- B. If a person, who has sustained serious injuries, is transported to a hospital, an officer should accompany that person in the same vehicle in order to:
 1. Locate, preserve, safeguard, and maintain the chain of physical evidence, taking into consideration inclement weather.
 2. Obtain a dying declaration, spontaneous statement, and/or statement of then-existing or previous mental or physical state.
 3. Maintain custody of the person if he/she has been arrested.
 4. Provide information to medical personnel about the incident, as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
 5. Identify relevant people, including witnesses and medical personnel.
 6. The accompanying officer of the involved agency will be relieved by a non-involved agency as soon as is practicable.
- C. The scene(s) must be secured immediately, with a perimeter established for each scene a sufficient distance away to safeguard evidence. In most circumstances, an inner (evidence) perimeter and an outer (control) perimeter are preferable.
- D. Access to the scene(s) shall be limited to only those officials who must enter for an investigative purpose. Written reports are required from those who enter.
- E. A responding officer will be assigned to establish a written entry log, as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
- F. When not needed for live-saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.

- G. If any type of weapon or instrument was involved in the incident, the supervisor at the scene shall promptly see to the security of such items following the below listed guidelines:
1. Responding supervisors/officers should not handle, remove, make safe, or secure any Subject Officer's weapons unless it is absolutely necessary. If the area is secure, weapons or instruments shall be left in place and undisturbed.
 2. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal, if possible.
 3. If a Subject Officer still has personal possession of a weapon he/she used in the incident, the firearm should be issued a new weapon at the same time or as quickly as possible.
 4. If the responding supervisor/officer for any reason determines the need to take possession of a Subject Officer's weapon or instrument prior to the VIIT Investigators arrival, the weapon should be photographed and documented in the condition it was found prior to being removed from the Subject Officer.
 5. If a firearm is found in an unsafe condition, officers shall identify the potential hazards and inform the VIIT Investigators.
 6. Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence and shall otherwise maintain the chain of evidence.
 7. Whenever possible, the Involved Officer's shoulder-fired weapons shall be secured in a police vehicle at the scene.
 8. All collected weapons or instruments shall be transferred to the VIIT Investigators upon their arrival, along with the information required in this section.
 9. Suspect's weapons should be left, as is, at the scene and protected in place until VIIT Investigators arrive. If circumstances require removal of the weapon for safety reasons then an officer should photograph the weapon in place, collect it as is, and place it in a box. The weapon should be secured in a police vehicle until VIIT Investigators arrive.
- H. Any other physical evidence at the scene that is in danger of being contaminated, destroyed, or removed must be promptly and effectively observed, recorded, and then protected for subsequent collection. Evidence adhering to live participants (such as bloodstains), footprints, and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence are examples. This may lead to the collection of the Involved Officer's uniform and other equipment worn at the time of the incident.
- I. Except as provided in this section, weapons and instruments will not be disturbed in any way. Any handling of weapons and instruments shall be minimal, to preserve the exact state of the weapon or instrument when received.
1. Firearms that do not need to be retained in Evidence storage, as determined by the VIIT Investigators, will be returned to a designated representative of the Employer Agency promptly after testing has been completed. VIIT Investigators recognize that prompt return of the involved Officer's handguns is important, and will return them as soon as possible.
- J. The transporting and sequestering of involved Officer(s) shall be conducted as follows:
1. Subject Officer(s) will be relieved of their duties at the scene as promptly as possible and taken to their station. Officer(s) not involved in the incident shall be assigned to accompany the involved Officer(s), either in a group or individually. Subject Officer(s) should be driven to the Police Station by an uninvolved officer. Witness Officers may remain at the scene or be

transported to their Station to brief VIIT Investigators. This should be at the direction of the Witness Officer's supervisor. If a witness officer is impacted by the event to the extent that it would be better to remove them from the scene, the above removal protocol should be followed for the Witness Officer(s).

2. If circumstances prohibit removal of all witnesses and Subject Officers from the scene at once, the Subject Officer(s) should be removed first.
3. An uninvolved officer shall remain with the Subject Officer(s). The sequestering officers are present to ensure the Subject Officer(s) have privacy, that their needs are met, and to maintain and observe chain of custody over evidence worn or carried by the involved Subject Officer. This officer will document that the involved Subject Officer's clothing and equipment remained in the same condition and/or any changes that occurred prior to the items being turned over to VIIT Investigators. They should not be present during confidential (privileged) conversations.
4. Subject Officer(s) should not discuss the case among themselves, with other witness officers, or with sequestering officers.

CUSTODIAL DEATH SCENES

- A. 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.

INTERVIEWING LAW ENFORCEMENT EMPLOYEES

- A. 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.
- B. VIIT Investigators should be aware that agency policies, union agreements, and officer's constitutional rights may delay access to these statements and shall make reasonable efforts to identify and comply with these issues.
- C. VIIT Investigators do not have the authority to issue "Garrity" orders to Involved Officers. This can only be done by the Involved Officer's Agency Chief of Police or his/her designee.
- D. Before a "Garrity" order is given to an Involved Officer by his/her employer, the VIIT Investigators should be given a reasonable amount of time to talk to witnesses, review evidence, and consult on the facts of the case.
- E. Compelled statements of officers cannot be used by VIIT for the investigation and are prohibited from the investigation. If any member of VIIT 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.
- F. In custody interviews will be conducted in accordance with all Federal and State laws applicable to in custody interrogations.

- G. Involved Officers will be interviewed separately.
- H. 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.
- I. Law enforcement employees have the same rights and privileges regarding VIIT interviews that any other citizen would have, including the right to consult with a legal representative prior to the interview and the right to have the representative present during the interview.

INTOXICANT TESTING

- A. Law enforcement employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When VIIT Investigators determine that a law enforcement employee's state of sobriety is relevant to the investigation, they have these options:
 1. Obtain the blood and/or urine sample by valid consent.
 2. Obtain a search warrant to obtain the samples.
 3. When applicable, utilize the provisions of Title 46 RCW for vehicle driving incidents.

AUTOPSY

- A. At least one member of VIIT's primary investigative team should attend the autopsy.
- B. The autopsy pathologist will receive a complete briefing prior to the post-mortem examination. This briefing, will include all information known at that time which may be relevant to the cause, manner, or means of death.
- C. For autopsies conducted in King County, the King County Medical Examiner has the responsibility to document and collect all evidence.

THE PROSECUTOR'S OFFICE

The King County Prosecutor's Office (Prosecutor's Office) has the following roles in VIIT investigations:

- A. Assist and advise VIIT on various criminal law issues, which may arise, such as: Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses, and search warrants.

Upon completion of the VIIT investigation, the investigation report will be sent to the Prosecutor's office for review. The prosecutor's office will analyze the facts of the incident as well as relevant law to determine if criminal laws were broken.

REPORT WRITING

- A. All personnel involved in the criminal investigation shall complete reports documenting their participation. This includes investigators assigned to VIIT 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.
- B. Upon completion of a VIIT Investigator's report, it will be his/her responsibility to get that report to the designated VIIT Supervisor for review and approval.
- C. Should an Investigator's agency require them 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 OSA case number.
- D. All VIIT follow-up reports will be completed as soon as practical. Prompt completion and distribution of reports is essential.

PUBLIC INFORMATION/MEDIA RELEASES

- A. To effectively communicate with media outlets, VIIT will conduct a press release as soon as is practicable after the incident. Press releases to update the Public will then be conducted weekly until the investigation is provided to the Prosecutor's Office for review.
 - Nothing in this agreement prevents the Chief of Police of the involved agency to issue their own public statements.
- B. Prior to the release of any information to the public, a copy of the intended press release will be provided to the involved agency, non-law enforcement community representative, and the family liaison.
 - C. It is important that the Involved Agency PIO inform the media that the investigation is being conducted by the Valley Investigations Team. Specifically, VIIT asks that PIO's do NOT identify the lead agency as the investigative agency.

ACCESS TO REPORTS AND EVIDENCE

- A. Material that is created or collected at the request or direction of VIIT criminal investigators (including the Crime Lab) will be made available in a timely manner to those agencies that have a need or as allowed by law .
- B. Examples of material referenced above are:
 - 1. Reports; written and collected.
 - 2. Access to physical evidence.
 - 3. Photographs, diagrams, and videotapes.
 - 4. Audio recordings.

- C. 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.
- D. At the conclusion of the investigation, the non-law enforcement community representative will be provided access to the completed investigation report.

PUBLIC DISCLOSURE REQUESTS (PDR's)

- A. Information from Public Disclosure Requests will only be released in accordance with State law. It is desirable to provide the involved agency all reports as soon as practical, and in compliance with LETCSA.

CONFIDENTIALITY

- A. All investigations conducted by V.I.T.T. shall be treated as confidential.

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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MAJOR POLICY CONSIDERATIONS FROM THE 2021 LEGISLATIVE SESSION

CONDENSED SUMMARY VERSION

This is a summary of police reform laws passed by the Washington Legislature¹.

HB 1054 – Tactics – effective date July 25, 2021

- Prohibits the use of a chokehold or neck restraint in any circumstance.
- Prohibits no-knock warrants.
- CJTC to develop a model policy for the training and use of canine teams.
- Prohibits the use of tear gas except in three circumstances: harm posed by a riot, barricaded subject or hostage situation.
- Prior to deploying tear gas, the law enforcement officers must: exhaust available and appropriate alternatives, obtain authorization from a supervising officer, announce the intent to use tear gas; and allow sufficient time and space for the subject(s) to comply.
- Prior to deploying tear gas (for a riot outside a correctional facility), the law enforcement agency also receives authorization from the highest elected official of the jurisdiction in which the tear gas is to be used.
- Prohibits use or acquisition of “military equipment” and agencies must return or destroy any “military equipment” by December 31, 2022.
- Law enforcement agencies to submit an inventory of “military equipment”, to WASPC by November 1, 2021 WASPC to report to the Governor and Legislature by December 31, 2021.
- Requires uniformed peace officers are reasonably identifiable (e.g., name badge).
- Defines a vehicular pursuit and prohibits a vehicular pursuit unless the officer has probable cause that a crime (violent or sex offense) has/is committed and reasonable suspicion of driving under the influence, necessary for the purpose of identifying or apprehending the person, poses an imminent threat to the safety of others and the officer receives authorization to engage in the pursuit from a supervising officer
- Prohibits a law enforcement officer from firing a weapon at a moving vehicle

Key Considerations:

- Chokeholds and neck restraints are prohibited even where the use of deadly force is justified.
- The requirement to obtain authorization from the highest elected official could be misinterpreted.
- The term “violent offense” relating to vehicular pursuits may cause a misinterpretation of the requirements of the bill.

¹ **Nothing in this document should be interpreted as legal advice.** WASPC does not provide legal advice. Legal advice should be sought from, and provided by, your legal advisor.

HB 1310 – Use of Force – effective July 25, 2021

- Authorizes a law enforcement officer to use deadly force only when necessary to protect against an imminent threat of serious physical injury or death
- Requires an officer exhaust available and appropriate de-escalation tactics prior to using any physical force.
- When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances,
- Terminate the use of physical force as soon as the necessity for such force ends
- By July 1, 2022, the Attorney General will develop and publish a model policy on law enforcement use of force and de-escalation tactics
- Requires law enforcement agencies to submit their model policies to the Attorney General.
- Requires the Attorney General, by December 31st of each year, to publish on its website a report of the model policy
- Requires basic training provided by the CJTC to be consistent with the use of force requirements and limitations of the bill and the Attorney General’s model policy on the use of force and de-escalation.

Key Considerations:

- It is unclear how the Duty of Reasonable Care created in this bill intersects with the Public Duty Doctrine.
- It is unclear how the exception to the use of prohibited tactics interacts with the prohibition on chokeholds and neck restraints in HB 1054.

SB 5051 – Decertification – effective July 25, 2021

- Establishes criteria for mandatory CJTC de-certification of peace officers and corrections officers
- CJTC may conduct investigations into allegations of improper conduct – independent of any employing agency investigation,
- CJTC may issue public recommendations regarding law enforcement agencies’ command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters
- Expands requirements relating to prehire background checks
- Requires law enforcement and corrections agencies to report to CJTC within 15 days of occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime.
- Authorizes the CJTC to impose a civil penalty up to \$10,000 for the failure by an officer or an employing agency to timely and accurately report information to the CJTC
- Requires law enforcement and corrections agencies to retain personnel records for the duration of the officer’s employment plus a minimum of 10 years thereafter
- Requires the CJTC to maintain a publicly searchable, machine readable, and exportable database
- Specifies that the CJTC shall have the sole authority to provide basic law enforcement training

Key Considerations:

- There is no limitation on how long the CJTC can suspend certification.

SB 5066 – Duty to Intervene – July 25, 2021

- Requires any identifiable general authority Washington law enforcement officer who witnesses another law enforcement officer using or attempting to use excessive force to intervene to end and/or prevent the use of excessive force and report to their supervisor
- Incorporates the duty to render first aid into the newly created duty to intervene
- Prohibits law enforcement agencies from imposing discipline or retaliate in any way against a peace officer for intervening in good faith or reporting in good faith as required by the bill
- Requires law enforcement agencies to send notice to the CJTC of any disciplinary action resulting from a law enforcement officer’s failure to intervene or failure to report
- Requires the CJTC to develop a written model policy on the duty to intervene by December 1, 2021
- Requires the CJTC to provide duty to intervene training by December 31, 2023 to all law enforcement officers who completed basic law enforcement training prior to January 31, 2022

Key Considerations:

- The definition of excessive force appears to not take into consideration different perspectives from different officers on the same scene (tensing up, furtive movements, weapons, etc.).

HB 1267 – Office of Independent Investigations – effective date July 25, 2021

- Creates the Office of Independent Investigations (OII) within the Office of the Governor
- Establishes certain requirements and qualifications of investigators
- Designates the OII as the lead investigative body for any investigation it chooses to conduct under its jurisdiction
- Requires the CJTC to give priority training registration to OII personnel
- Requires the OII to conduct analysis and research
- Requires all law enforcement agencies to immediately notify the OII of any incident
- Requires that the scene of an incident subject to the jurisdiction of the OII if requested
- Requires the OII Advisory Board to assess whether the jurisdiction should be expanded to conduct investigations of other types of incidents committed by involved officers, (e.g., in-custody deaths, and sexual assaults by law enforcement officers)

Key Considerations:

- It is necessary for existing independent investigation teams to remain in place to conduct independent investigations of the use of deadly force by a law enforcement officer if/when the OII chooses to not take up an investigation.
- It remains unclear what, if any, ability an involved agency has to conduct an investigation into the underlying conduct for which the involved officer(s) were present.

HB 1089 – Audits of Investigations – effective July 25, 2021

- State Auditor with the CJTC, to conduct a process compliance audit of any deadly force investigation
- Authorizes audit procedure on any law enforcement agency to ensure that the agency follows all laws, policies, and procedures governing the training and certification of peace officers employed by the agency.
- Prohibits charging a law enforcement agency for any costs associated with audits

Key Considerations:

- Compliance audits may be conducted on investigations for several previous years.

SB 5476 – State v Blake – effective immediately and July 1, 2021

- Requires the Health Care Authority to establish a statewide substance use recovery services plan
- Requires each behavioral health administrative services organization to establish a recovery navigator program to provide community-based outreach, intake, assessment, connection to services and case management and recovery services
- Amends the Uniform Controlled Substances Act to specify that knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription constitute a simple misdemeanor
- Law enforcement officers are required, in lieu of jail booking and referral to the prosecutor, to offer a referral to assessment and services
- Modifies the drug paraphernalia statute to remove reference to paraphernalia used to test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body
- Encourages prosecutors to divert simple possession charges to assessment, treatment, or other services
- Requires basic law enforcement training to include training on interactions with persons with substance use disorders
- Appropriates approximately \$88 million for substance use disorder prevention, assessment, treatment, and recovery services

Key Considerations:

- Agencies should clarify and advise officers of their requirement to divert possession offenses in instances where treatment services are not imminently available in a particular community.
- WASPC is working to assemble a list of substance use treatment providers around the state to assist agencies in knowing what treatment services are available when diversion is required.

Other Police Reform Measures

HB 1223 – Uniform Electronic Recordation of Custodial Interrogations – effective January 1, 2020

- Requires that any custodial interrogation of an adult for a felony offense, or a juvenile of any offense, be electronically recorded.
 - must be both audio and video in cells, jails, law enforcement offices.
 - other location must be by audio at a minimum.
- Establishes limited exceptions to the electronic recording requirement and
- Limits admissibility of statements requiring electronic recording where electronic recordings were not made.

Key Considerations:

- The new law doesn't require body worn cameras which would be the most reasonable way to comply with the requirements

HB 1140 – Juvenile Access to Attorneys – effective January 1, 2022

- Requires juvenile (under the age of 18) access to an attorney for consultation prior to a juvenile waiving any constitutional rights if the officer questions a juvenile during a custodial interrogation, detains a juvenile based on probable cause of involvement in criminal activity; or requests that a juvenile consent to an evidentiary search of their person, property, dwelling, or vehicle.
- Prohibits a juvenile from waiving their right to be provided access to an attorney.
- Prohibits any statement made by a juvenile from being admissible in a court proceeding unless the juvenile was provided access to an attorney. Requires the State Office of Public Defense to provide access to attorneys for juveniles contacted by law enforcement.

Key Considerations:

- The number of juveniles requiring access is underestimated.

HB 1088 – Potential Impeachment Disclosures/"Brady List" – effective July 25, 2021

- Requires each county prosecutor, to develop and adopt a written protocol no later than July 1, 2022 regarding:
 - the types of conduct that must be disclosed,
 - how Brady/PID disclosure information should be shared and maintained, and
 - what circumstances an officer may be removed from the Brady/PID list.
- Requires local Brady/PID protocols to be reviewed every two years,
- Requires the CJTC to provide online Brady/PID disclosure training,
- Requires law enforcement agencies to report Brady/PID disclosures within 10 days,
- Requires a law enforcement agency, prior to hiring an officer with previous law enforcement experience, to inquire and verify whether the officer has ever been subject to a Brady/PID disclosure.

Key Considerations:

- It remains unclear what, if any, circumstances an officer may be removed from the Brady/PID list.

HB 1320 – Protection Orders - effective July 25, 2021 and July 1, 2022

- Consolidates and amends laws governing protection orders for domestic violence; sexual assault; stalking; anti-harassment; vulnerable adults; and extreme risk
- Amends provisions relating to the recognition of Canadian DV protection orders
- Revises provisions related to orders to the surrender and prohibition of weapons, revocation of concealed pistol licenses, unlawful possession of firearms, and DV no-contact orders.
- Establishes responsibilities for school districts regarding students who are subject to protection orders
- Repeals 137 existing statutes relating to protection orders

Key Considerations:

- This is a highly technical 320-page bill that moves and combines certain statutes related to protection orders, while also making substantive changes in the process.

SB 5055 – Grievance Arbitration Panels – effective July 25, 2021

- Establishes a rotating pool of not less than 9 and not more than 18 law enforcement grievance arbitrators at the Public Employment Relations Commission (PERC)
- Requires all grievance arbitrations involving law enforcement personnel, as defined in the bill, relating to disciplinary action, discharge, or termination to be conducted through the PERC pool of law enforcement grievance arbitrators at PERC
- Grandfathers existing collective bargaining agreements from the provisions of the bill as of July 25, 2021 from the provisions of the bill unless/until such agreement is reopened, renegotiated, or expires.

Key Considerations: None

SB 5259 – Law Enforcement Data Collection – effective July 25, 2021

- Requires the Attorney General to contract with an institution of higher education to establish and administer a Washington law enforcement use of force reporting system
- Establishes certain interactions for which use of force reporting is required
- Establishes minimum data elements to be reported for relevant interactions
- Authorizes the Attorney General to require additional interactions and data elements to be included in the use of force reporting program
- Requires all Washington law enforcement agencies to report to the program all data for all covered interactions through incident reports or other electronic means in the format and time frame established by the Attorney General

Key Considerations:

- This is legislation that may increase local costs that are not provided for in the state budget.



Washington Association of **SHERIFFS & POLICE CHIEFS**

Law Enforcement Reform Recommendations 2020-2021

Washington's law enforcement leaders acknowledge the hurt, trauma, and anger caused by a history in which our profession has often failed to live up to our own ethical ideals, particularly in our relationships with communities of color, and we recognize our responsibility to address racial inequality.

We are committed to work with policy makers, community groups, and other stakeholders to improve the public service of law enforcement in our state. Change is necessary and we support meaningful reform and a conversation about law enforcement that focuses on transparency and accountability, reduces barriers to discipline and termination, and ensures a fair and more equitable criminal justice system. We do not present these recommendations as the only credible options for reform, rather as our contribution to the larger conversation.*

Use of Force:

- Standardize the use of force policies and training centered on the cornerstone principle of the sanctity of human life.
- Require all law enforcement officers to intervene and report to their agency whenever another law enforcement officer uses excessive force.

Transparency and Accountability:

- Expand wellness, resiliency and mental health support for law enforcement and corrections officers.
- Support accreditation (best practice audits) for law enforcement and corrections agencies.
- Support civil service reforms to increase diversity and flexibility to hire and promote deputies and officers.
- Establish interventions for troubling patterns and behaviors among law enforcement officers.
- Explore models for an independent statewide deadly force investigative agency.
- Facilitate the implementation and use of body cameras.
- Provide greater authority for Chiefs and Sheriffs to dismiss officers who betray the public's trust.
- Enable de-certification of officers who use excessive force and other serious breaches of the public's trust.
- Require all Washington law enforcement agencies to submit data on the use of deadly force.

Defining the role of law enforcement:

- Establish state and local programs to build relationships and trust between law enforcement and the community.
- Establish clear expectations for state investment in programs to address mental illness, substance use, and other adverse events that are shown to increase the likelihood of future criminal justice involvement.

* *These recommendations are abbreviated summaries of the official recommendations adopted by WASPC. The full text of each recommendation, along with recommended legislation to accomplish each, are available at www.waspc.org/reforms*