



City of Tukwila
**Community Services
 and Safety Committee**

- ◆ Cynthia Delostrinos Johnson, Chair
- ◆ De'Sean Quinn
- ◆ Zak Idan

Distribution:	
C. Delostrinos Johnson	Mayor Ekberg
D. Quinn	D. Cline
Z. Idan	R. Bianchi
K. Kruller	C. O'Flaherty
K. Hougardy	A. Youn
	L. Humphrey

AGENDA

MONDAY, MAY 17, 2021 – 5:30 PM

FOSTER CONFERENCE ROOM
 (6300 Building, Suite 100)

**THIS MEETING WILL NOT BE CONDUCTED AT CITY FACILITIES
 BASED ON THE GOVERNOR'S PROCLAMATION 20-28.**

**THE PHONE NUMBER FOR THE PUBLIC TO LISTEN TO THIS
 MEETING IS: 1-253-292-9750, Access Code 758631791#**

**Click here to: [Join Microsoft Teams Meeting](#)
 For Technical Support during the meeting call: 1-206-431-2179.**

Item	Recommended Action	Page
1. BUSINESS AGENDA		
a. Prosecuting Attorney presentation. <i>Aaron Walls, Walls Law Firm</i>	a. Discussion only.	Pg.1
b. An agreement for Emergency Police Communication Services with Valley Communications Center. <i>Eric Drever, Police Chief</i>	b. Forward to 5/24 C.O.W. and 6/7 Regular Mtg.	Pg.19
c. Contract amendments with Shiels Oblatz Johnsen for project management services: (1) Public Works Building Tenant Improvements Project. (2) Intergenerational Youth and Senior Center Project. <i>Rachel Bianchi, Deputy City Administrator, and Nathan Robinson, Recreation Program Specialist</i>	c. Forward to 5/24 C.O.W. and Special Mtg. Consent	Pg.31
d. Police reform/Law Enforcement Training and Community Safety Act (LETCSA) updates. <i>Eric Drever, Police Chief</i>	d. Discussion only.	Pg.47
e. Use of Force review. <i>Eric Lund, Deputy Police Chief</i>	e. Discussion only.	Pg.99
2. MISCELLANEOUS		

Next Scheduled Meeting: June 7, 2021



The City of Tukwila strives to accommodate individuals with disabilities. Please contact the City Clerk's Office at **206-433-1800** (TukwilaCityClerk@TukwilaWA.gov) for assistance.



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee
FROM: David Cline, City Administrator
CC: Mayor Ekberg
DATE: May 11, 2021
SUBJECT: Prosecution and Public Defense Services

ISSUE

During the 2021-2022 budget process and review of 2021-2022 contract for services, Councilmembers requested a presentation from the contractors that provide the City with Prosecution Services and Public Defense Services.

BACKGROUND

Prosecution Services – Planned for May 17, 2021 Committee Discussion

The Walls Law Firm has provided Prosecution Services to the City of Tukwila for many years, as a subcontractor for the Kenyon Disend law firm. In mid-2018 when Kenyon Disend discontinued providing Prosecution Services, the City contracted directly with the Walls Law Firm for the remainder of 2018 and then conducted a Request for Qualifications process from which the Walls Law Firm was selected to continue providing Prosecution Services from 2019 to the present. The contract for Prosecution Services runs concurrent with the biennial budget.

Public Defense Services – Planned for June 7, 2021 Committee Discussion

Kirshenbaum & Goss has provided Public Defense Services to the City of Tukwila for many years. Significant changes have been made to the program as Public Defense Standards were adopted by the Washington State Supreme Court effective January 1, 2015, which delineate the number of cases each attorney can handle per year and mandates that compensation include administrative and training costs. In addition to the Public Defense Standards the federal court decision, *Wilbur v. Mt. Vernon* also mandated substantial changes with new reporting and monitoring requirements. Beginning in 2013 the City has applied for and been awarded grant funds from the Washington State Office of Public Defense. These funds have allowed the City to provide interpreter services for attorney-client appointments, an investigator to gather case information, and a social services liaison to assist clients in connecting with services. The contract for Public Defense Services also runs concurrent with the biennial budget.

DISCUSSION

The May 17 presentation will walk through the process taken from the point of police contact with an individual to the conclusion of prosecution outlining the various options and outcomes throughout the process. The June 7 presentation will walk through the process taken from when public defense becomes involved in a case to the conclusion.

RECOMMENDATION

Information Only

ATTACHMENTS

PowerPoint Presentation
Prosecution Questions and Responses

Law Enforcement Process Prior to Prosecution



Eric Drever

Chief of Police

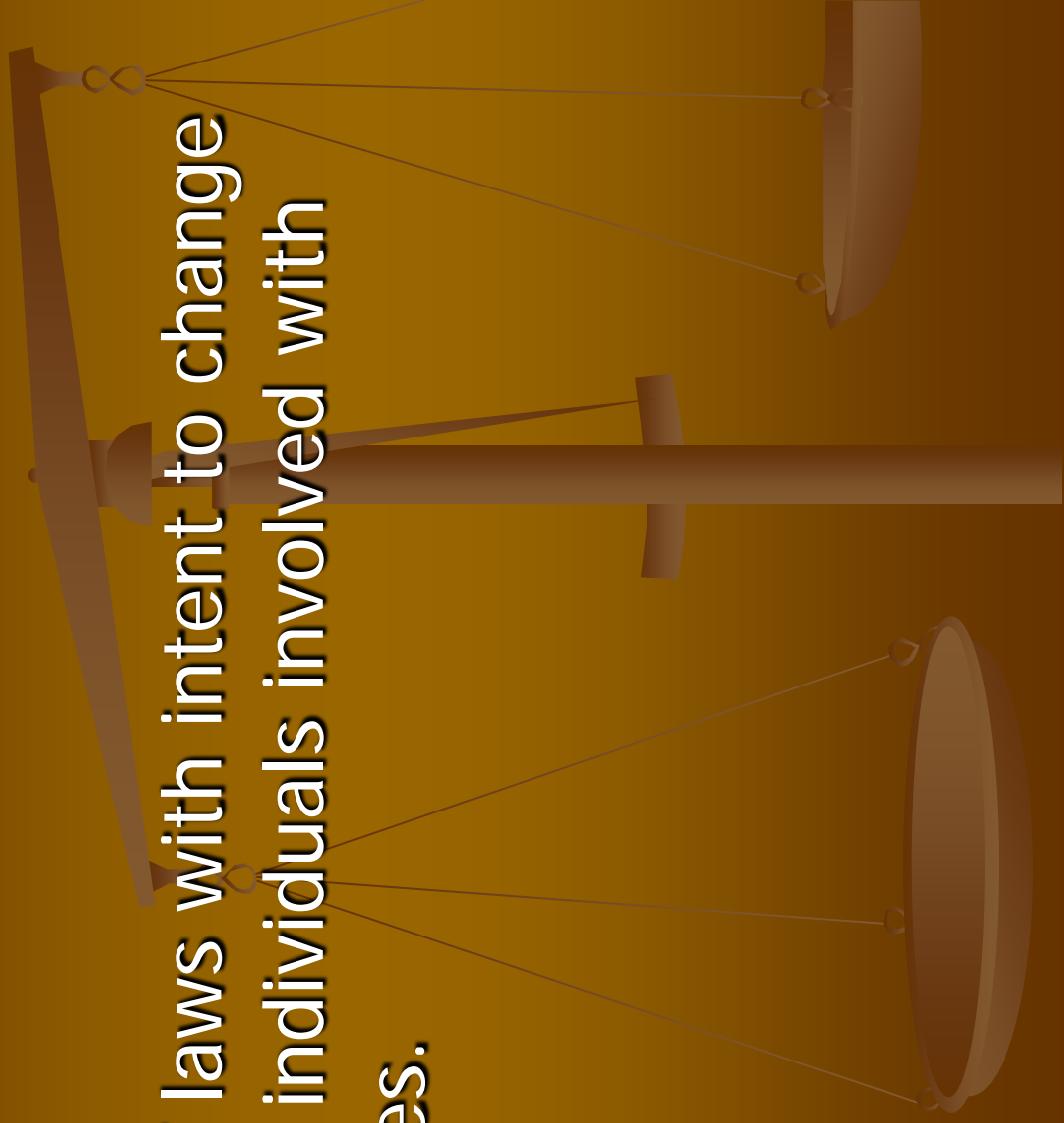
Tukwila

Partnership

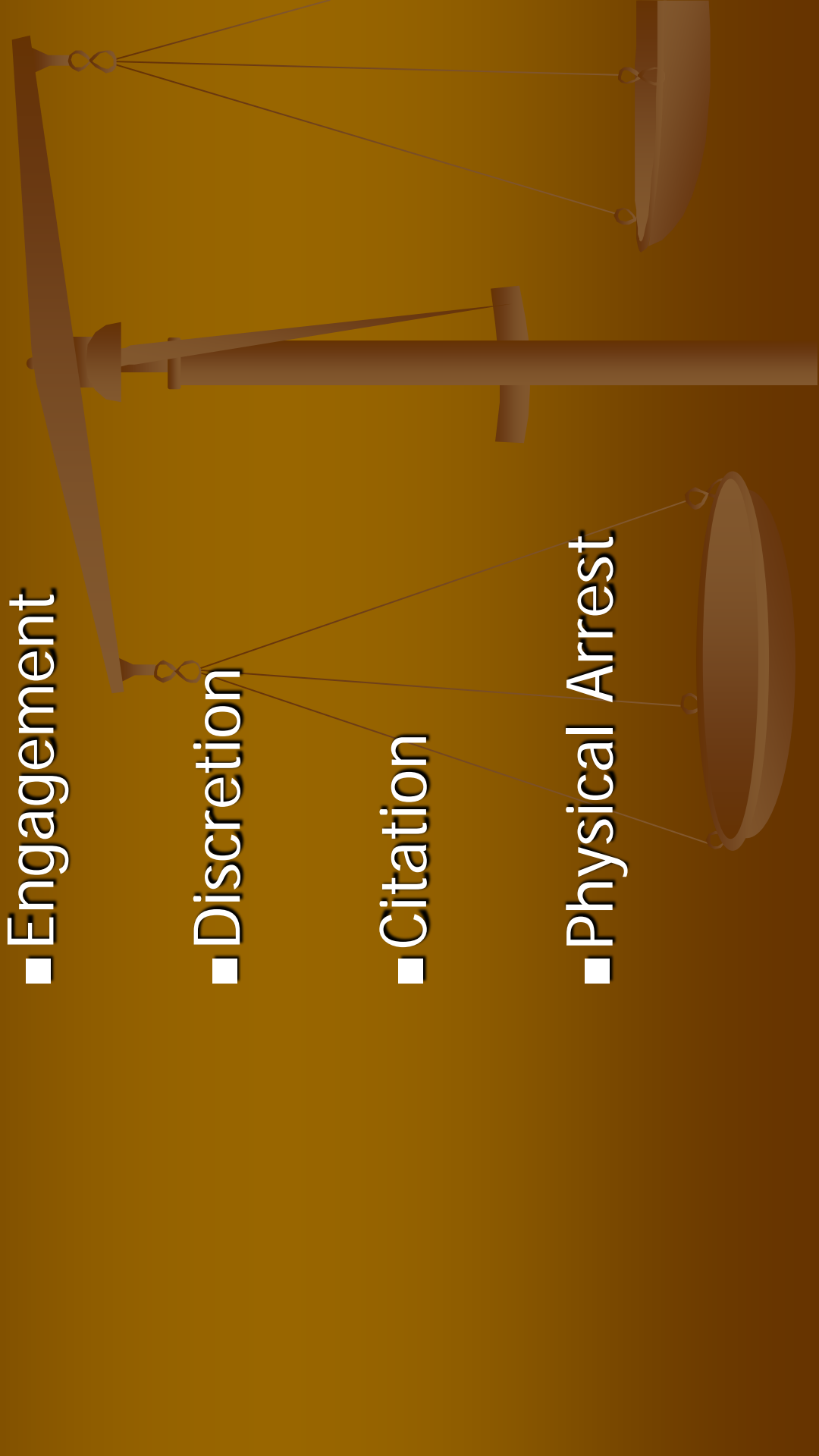
- The Tukwila Police Department and the Tukwila Prosecutor's Office work together as partners for meeting the community's needs pertaining to accountability for crimes in our community.

Role of Law Enforcement

- Enforcement of laws with intent to change the behavior of individuals involved with criminal activities.



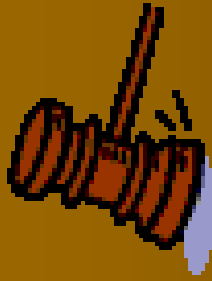
Role of Law Enforcement

- Engagement
 - Discretion
 - Citation
 - Physical Arrest
- 

Transition from PD to Prosecutor

- Citations and Physical Arrests are cases that will be forwarded to the Prosecutor's office by the Police Department, providing access to potential other diversion programs and/or resources.

The Prosecution Process in Municipal Court

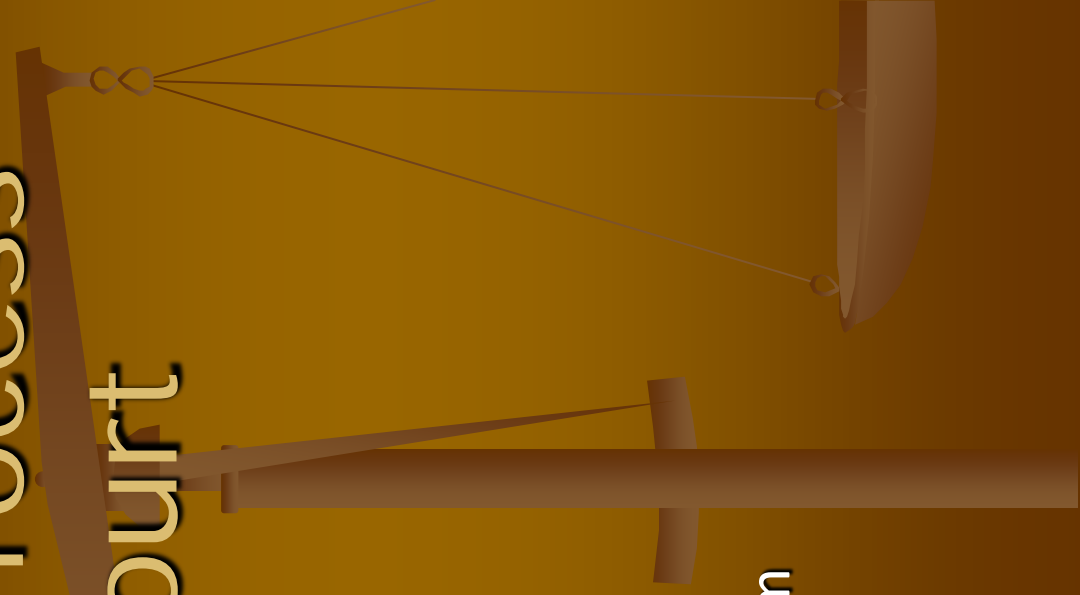


Presented By Aaron Walls

The Walls Law Firm

Prosecuting Attorney

aaron@thewallslawfirm.com



Referral from the Police; In Custody or Out of Custody

- In custody cases have a preliminary hearing the next court day for a filing decision and bail recommendation
- Out of custody cases are reviewed as received and if filed are forwarded to the court to set an arraignment hearing

Filing Decisions

- Prosecutorial standards under RCW 9.94A.411
- Is there probable cause and will there be enough evidence at trial given defenses?
- Type of crime
 - Violent, economic, or a regulatory
- Prior or pending crimes
- Chemical dependency or Mental health issues

Filing decision options



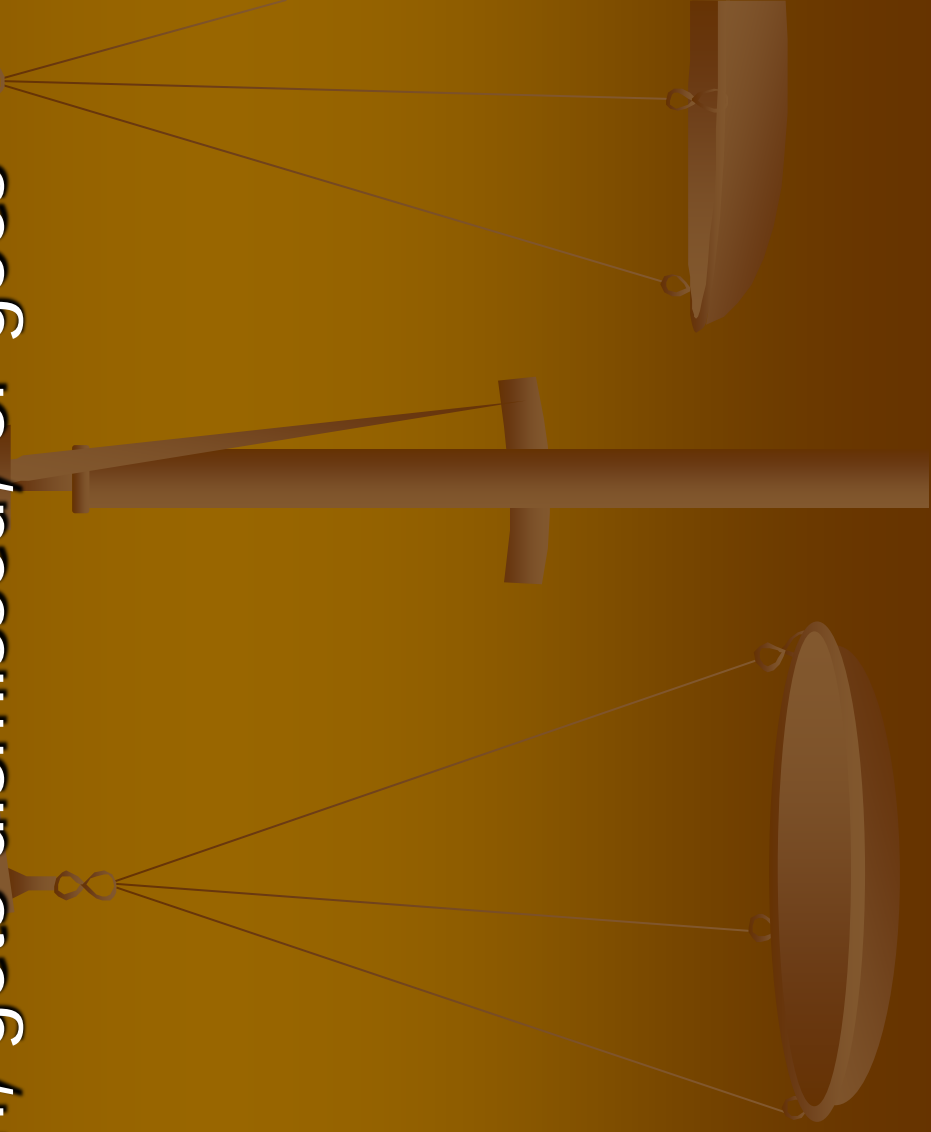
- The prosecutor can
 - decline to file charges
 - refer back for more investigation
 - refer the case to a pre-filing diversion
 - file appropriate charges

Court Procedure

- Once charges are filed an arraignment is held with an attorney, conditions are set, and the defendant is screened for appointment of an attorney
- Defense attorneys get discovery, investigates, gathers information and has their client get evaluations if necessary and negotiates with the prosecution

Case Resolution

The case is either settled with a plea or a pretrial diversion, gets dismissed, or goes to trial



City of Tukwila – Questions for City Contracted Prosecution Services

1. Please describe your firm’s philosophy/reasoning for how you make decisions on whether to file a criminal case or not?

The starting point of every referral is whether there is probable cause to believe a crime has occurred and we believe a crime occurred. The next question is whether there is or will likely be at trial sufficient admissible evidence to prove the case beyond a reasonable doubt given potential defenses. We also consider the prosecutorial standards under RCW 9.94A.411. Major factors in the decision include looking at a suspect’s prior history as well as the suspects current circumstances, whether they have other charges pending, and whether they are competent to proceed. We look at the type of crime, including whether a domestic violence crime or other crime of violence, a crime that involves danger to the public, an economic crime, or a regulatory crime. We look at whether there is a danger or risk to the public and a public benefit to prosecution. Criminal prosecutions should not be brought when no benefit is to be gained either because of evidentiary problems or a lack of ability to serve a deterrent or protective purpose.

2. Please describe your firm’s practices when encountering repeat offenders.

The most important concerns in proceeding with criminal prosecutions is the protection and restoration of victims. The next focus of prosecution should be deterrence and the reduction of recidivism. We strive to identify underlying problems and address them, or to find the correct leverage to prevent the behavior. Substance dependency is frequently an issue with repeat offenders and treatment, when complied with, can be effective. Where poverty or homelessness are issues, referrals to caseworker programs such as LEAD and connecting the defendant to housing, may be helpful. Mental health problems can also lead to repeated criminal behavior. Sometimes dealing with repeat offenders requires a combination of treatment and jail time; for instance, one option is to release a defendant directly to an inpatient treatment facility from jail. For some offenders, treatment and offers of services do not change their behavior and punishment is the only option.

3. Does your firm offer alternatives other than filing criminal cases? If so, please describe your firm’s practice and philosophy on alternatives to filing a criminal case or alternatives to resolving cases.

We use several diversion programs after a case is referred for prosecution. We use a pre-filing diversion program (Friendship house) for economic and regulatory crimes where there is little or no prior criminal history. We divert or amend certain regulatory traffic offenses post-filing in court, to assist the offenders with coming into compliance with regulatory needs. These can include licensing and titling issues. In other cases, we offer post-filing pre-trial diversions based on evidentiary or other issues. These diversions often include a treatment aspect and are monitored by our office. Sometimes they have included community mediation, for instance with an immigrant community with specific ethnocultural traditions.

4. Please describe your firm's philosophy and practice on sentencing recommendations. What type of factors do you consider?

The first issue to address in a sentence is the protection and restoration of any victim in the case. This can be accomplished with no contact orders, restitution, and at times treatment. The goal of a sentence should be deterrence and reduction of recidivism. It is important to take into consideration the defendant's circumstances and prior history, and the triggers that drive the commission of particular crimes, whether it is drugs, alcohol, mental health, anger problems, poverty, etc. If, through particular programs, a defendant can change their behavior or environment, or even get their driver's license, the result is a safer community. Our experience is that this does work. However, it is ultimately up to the defendant whether they want to help themselves. If we cannot create a safer community then we must protect the community, whether that is with jail, electronic home monitoring, or the like. In the end, a prosecutor should consider the individual facts of a case, the efficiency of caseload management and its impact on the court, and the needs of the parties, in a manner that is consistent with the City's philosophy.

Currently the most immediate issues in sentencing involve the pandemic which has restricted or foreclosed options and alternatives. The pandemic has created restrictions at every level from court hearings, trials, jail, community service, and treatment.

5. Last year there was a national awakening to the systemic problems in the criminal justice system. Do you see any problems with current practices of prosecution in Washington State? Do you believe there is room for improvement? If so, where?

There are always problems and room for improvement in any endeavor, especially a highly complex and far reaching one such as criminal justice. Systemic problems that have been highlighted in the last year include the both the disparate treatment of disadvantaged groups as well as the disparate impact that the criminal justice system has on those groups. All parts of the justice system must recognize the unconscious biases that underlie both our decisions and their effects, and we must do our part to address the systemic problems within the system. Historical and systemic issues in the criminal justice system include a lack of access to resources and programs, emphasis on fines and court income, and a focus on jail as a first choice for punishment without alternatives. Some of the most important improvements in the justice system in Washington State will need to be addressed at the State and County level where funding, systemic policy, and the more serious felony offenses and juvenile offenses are addressed. We all need to explore alternatives to criminal justice such as treatment and social worker case management systems.

In general, there needs to be more improvement on directing resources and creating systems that address the underlying causes of crime such as drug addiction, poverty, and mental health issues. Appropriate training should be emphasized that focuses on enforcing criminal justice in a fair and equitable manner.

The most pressing needs include more resources and a better delivery system for mental health, chemical dependency, and poverty case management systems. More alternatives are needed for defendants with a limited history or evidence of a changed life. A more efficient probation supervision

system that is focused on effective rehabilitation is also something we need to continue to work towards.

6. Overview of current process

Criminal cases are referred to the prosecution in two ways. In custody booking are defendants who have been arrested and held on new charges from the previous day. They are brought to court the next day and the prosecutor reviews for what charges if any are appropriate and makes a bail recommendation as to what conditions of release should be set. Out of custody referrals are sent to the prosecutor to review for what charges if any are appropriate. After reviewing a new referral, the prosecutor can refer it back to the officer for more investigation, decline to file charges, refer the case to a pre-filing diversion program, or file charges. When charges are filed the court summons the defendant to court to be arraigned and have conditions of release set. Defense attorneys are present on behalf of the court to advise defendants at each hearing and whether they are appointed in a case is reviewed when conditions of release are set.

After arraignment, the defendant either is provided an attorney, hires their own, or chooses to represent themselves after the court explains the dangers of doing so. The prosecutor provides discovery to the defense. The defense reviews it and may request additional discovery such as other related reports or video from the police or businesses. The prosecutor discusses resolution of the case and may ask the defendant to take steps such as getting evaluations and makes an offer to settle the case. The defendant then decides whether to accept the offer or ask for a trial. If a trial is set the parties interview witnesses and prepare for trial. There is a readiness hearing where both parties decide if they are ready to go to trial, need more time, or, if the prosecutor is unable to proceed due to missing witnesses or other reasons, the case is dismissed. If an agreement is reached the case may be diverted in a pre-trial diversion or a plea is entered, and the defendant is sentenced.

7. Current legislative changes

The most important current legislation for prosecutors is the *Blake* fix. *Blake* was a case which held the crime of possession of drugs in Washington was void because it did not include an element of knowledge. This means that all convictions for possession of drugs is invalidated. In Municipal court this primarily only effected possession of marijuana cases as other drugs were handled as felonies in Superior Court. The fix that has passed the Legislature has added the element of knowingly, but also reduced all possession of drug crimes to misdemeanors which will now be filed in Municipal court. No additional funding was provided to accommodate this. The fix also eliminated personal drug paraphernalia charges and encourages treatment diversions for these crimes.



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: Service Level Agreement with Valley Communications

ISSUE

The Tukwila Police Department and Valley Communications desire to enter into an Agreement for the purpose of establishing level of service requirements that will apply to both parties in the provision of emergency police communications services.

BACKGROUND

As a city that formed Valley Com and along with other member cities, administers Valley Communications' ongoing operations, member city obtains and pays for Valley Communications' emergency communication services as provided for under the Valley Communications Interlocal Agreement. Due to its unique administrative status as a member city, Valley Communications and its member cities have not previously established written level of service requirements and technical expectations as they mutually implement emergency police communication services.

DISCUSSION

To clarify expectations of dispatchers, call receivers, and officers, Valley Communications and the City of Tukwila jointly seek to establish a Service Level Agreement (SLA). All member agencies are seeking approval of the same SLA with their respective member cities. The proposed SLA has been vetted through the Tukwila City Attorney's Office.

FINANCIAL IMPACT

There is no financial impact.

RECOMMENDATION

The Council is being asked to approve the Service Level Agreement with Valley Communications and consider this item at the May 24, 2021 Committee of the Whole meeting and subsequent June 7, 2021 Regular Meeting.

ATTACHMENTS

SLA

SERVICE LEVEL AGREEMENT FOR EMERGENCY COMMUNICATION SERVICES

This **SERVICE LEVEL AGREEMENT FOR EMERGENCY POLICE COMMUNICATION SERVICES** (“Agreement”) is entered into between the **VALLEY COMMUNICATIONS CENTER**, a governmental administrative agency formed pursuant to RCW 39.34.030(3) (“Valley Com”), and **[insert member city name here]**, a Washington non-charter code city (“Member City,”) and together with Valley Com, the “Parties” and each a “Party”).

RECITALS

A. Valley Com was formed pursuant to the Valley Communications Center Interlocal Agreement, as amended and restated on April 17, 2000, as it may be further amended from time to time (the “Valley Com Interlocal Agreement”), as a governmental administrative agency pursuant to chapter 39.34 RCW for the purpose of providing police, fire, and medical aid emergency communication services in south King County and surrounding regions.

B. Under the terms of the Valley Com Interlocal Agreement, Valley Com provides emergency communication services to its Member Cities (as defined in the Valley Com Interlocal Agreement) and other municipal corporations that exist within the logical, physical service area of Valley Com and that are in need of emergency communication services.

C. As a city that formed Valley Com and, along with other Member Cities, administers Valley Com’s ongoing operations, Member City obtains and pays for Valley Com’s emergency communication services as provided for under the Valley Com Interlocal Agreement. Member City operates a police department, and accordingly, partners with Valley Com in the provision of emergency police dispatch communication services.

D. Due to its unique administrative status as a Member City, Valley Com and its Member Cities have not previously established written level of service requirements and technical expectations as they mutually implement emergency police communication services.

E. The Parties desire to enter into this Agreement for the purpose of establishing level of service requirements that will apply to both Parties in the provision of emergency police communications services.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the terms and conditions set forth below, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS. The following new definitions apply to this Agreement:

“ACCESS” means “A Central Computerized Enforcement Service System”, the data system supporting all law enforcement agencies within the State of Washington and is owned and operated by the Washington State Patrol.

“APCO” means the “Association of Public-Safety Communications Officers,” an international association with State Chapters.

“CAD” means the “Computer Aided Dispatch” system owned by Valley Com.

“Call” means any request for public safety assistance, regardless of the media used to make the request, including voice, text, video, or data.

“Contract Agency,” when used in this Agreement, has the same meaning as “Subscribing Agency.”

“Mission Critical Systems” means those systems which, should they fail, would significantly delay or stop the Member City’s ability to receive an incident dispatch of a call for service from Valley Com.

“NENA” means “National Emergency Number Association.”

“Project Approval Process” means the process approved by the Valley Com Administration Board by which new initiatives become projects that Valley Com will implement.

“Valley Communications Center Standard Operating Procedures” means the list of approved and signed procedures enacted by Valley Com, as it may be amended, modified and/or restated from time to time.

2. TERM: This Agreement will take effect on the last date signed below, and shall be automatically renewed on January 1st of each year thereafter for a period of 15 years unless Member City withdraws its participation in Valley Com or Valley Com is terminated under the terms of the Valley Com Interlocal agreement, at which time this Agreement will also immediately terminate. This Agreement also may be extended by mutual agreement of the Parties.

3. VALLEY COM LEVEL OF SERVICE RESPONSIBILITIES. During the term of this Agreement, Valley Com will:

- 3.1 Maintain radio and support communications with the Member City from the time of the initial dispatch until conclusion of the emergency and provide additional assistance as needed.
- 3.2 Provide the Member City with a copy of the Valley Communications Center Standard Operating Procedures, including amendments and updates.
- 3.3 Provide access to Valley Com’s F.C.C. licensed radio system resources, subject to those

- constraints and restrictions established and imposed by the Valley Com Administration Board.
- 3.4 Receive emergency & non-emergency calls for service, interview and dispatch following Valley Com policies; 24x7x365.
 - 3.5 Collaborate with the Valley Com Operations Board when effecting changes in Valley Com practices and policies related to call interviewing and dispatching of units.
 - 3.6 Recognize the following national and/or local standards and report as performance objectives at least annually. For each standard, management will work with the Member City and Valley Com Operations Board to develop mutually agreeable strategic plans to address any gaps.
 - 3.8.1 NENA call answering standard
 - 3.8.2 APCO/NENA ANS Standard for the Establishment of a Quality Assurance and Quality Improvement Program for PSAPs
 - 3.8.3 Washington State training requirement for Telecommunicators
 - 3.7 Ensure Operations staff are appropriately trained and prepared to perform their role.
 - 3.8 Ensure that a continuity of operation plan exists, is current, and is routinely exercised.
 - 3.9 Hold Technical User Group meetings comprised of Valley Com and Member City technical staff as a forum to share information, explore solutions, and inform the technology plan.
 - 3.10 Record and retain as required by law appropriate telephone, radio and electronic communications.
 - 3.11 Provide available CAD incident data for Member City's records management and other systems.
 - 3.12 Disallow access to Member City owned systems without prior permission from the Member City.
 - 3.13 Provide Member City with prior notice of service impacting maintenance to the extent reasonable under the circumstances.
 - 3.14 In the event Valley Com becomes aware of a cyber-security breach of Valley Com's system(s), Valley Com will notify Member City as soon as reasonably possible.
 - 3.15 Route complaints and/or inquiries as to Member City personnel performance or conduct through Valley Com's chain of command to Member City's Supervisory or Management staff.
 - 3.16 Provide information, data inquiries, and other related tasks, should Member City be unable to directly access information.
 - 3.17 When practical, regularly attend Valley Police Chief meetings, Patrol Commander meetings, King County Police Chief Association meetings, and other similar regional police meetings.
 - 3.21 Because Valley Com has limited technical resources, track time spent on Member City

ad hoc work requests that are not related to an approved project, and when Valley Com believes the effort is impacting other project deliverables, the Member City will be consulted to develop a mutually agreeable work plan or other resolution.

- 3.22 Avoid interaction with Member City's contractor(s) to request service which would create a financial obligation on the Member City.

4. MEMBER CITY LEVEL OF SERVICE RESPONSIBILITIES. During the term of this Agreement, the Member City will:

- 4.1 Provide and maintain written alarm response procedures, on forms acceptable to Valley Com, designating equipment and other resources to be dispatched.
- 4.2 Comply with and conform to operational policies, practices, and apparatus numbering configurations to those established by Valley Com Operations Board and/or Valley Com Administration Board; apparatus renumbering will not be implemented without consultation with Valley Com.
- 4.3 Comply with all Criminal Justice Information Services (CJIS) policies and requirements.
- 4.4 Provide reasonable notice of annexations, incorporations, changes to Member City jurisdiction boundaries and response plans to allow sufficient time for Valley Com to incorporate changes.
- 4.5 Follow the established radio communications protocols approved by the Valley Com Operations Board.
- 4.6 Train Member City personnel to be familiar with and appropriately use radio and CAD equipment.
- 4.7 Participate in the Valley Com Tech User Group meetings.
- 4.8 Follow the Project Approval Process as defined in this agreement.
- 4.9 Not commit Valley Com to an action, work or purchase without prior agreement from Valley Com.
- 4.10 Not allow Member City personnel to access Valley Com systems without prior permission from Valley Com.
- 4.11 Not interact with Valley Com's contractor(s) to request service that would create a financial obligation for Valley Com.
- 4.12 In the event the Member City becomes aware of a cyber-security breach of Member City systems that touch Valley Com systems, notify Valley Com as soon as reasonably possible.
- 4.13 Complaints and/or inquiries as to Valley Com performance or conduct will be routed through the Member City's chain of command to Valley Com's Supervisory or Management staff.

5. SYSTEMS AND SERVICES SUPPORT: The following support and service levels and obligations apply to Valley Com and the Member City:

- 5.1 Normal business hours for Valley Com technical support are Monday through Friday, 8:00 am to 4:30 pm, excluding holidays and weekends. After hours, the on-duty supervisory staff will triage issues and will call out Tech Support if required.
- 5.2 The Member City recognizes that its internal systems and connectivity may be integral to the performance of a Valley Com owned or managed system. The Member City agrees to troubleshoot issues prior to calling out Valley Com Technical staff.
- 5.3 To report issues during normal business hours, the Member City will notify Valley Com via email to support@valleycom.org or by calling the Help Desk at 253-372-1575.
- 5.4 The following definitions and response time guidelines will be used by the Member City and Valley Com, whether during or outside of normal business hours:
- Priority 1 (Mission critical) – significant delay or prohibits Member City’s ability to receive notification of a call for service. Immediate call out.
 - Priority 2 – core operations unaffected but impacts efficiency. Initial response in 12-24 hours
 - Priority 3 – inconvenient or annoying but clear workarounds exist. Initial response in 24-72 hours.
 - Priority 4 – non-emergent, non-impacting. Initial response in 72 or more hours.
- 5.5 Contacts outside normal business hours for affected systems and VCC’s response to issues are as follows:

Priority	After Hours	Systems	Notes
1 – Mission Critical Immediate Call Out	Com Room Supervisor 253-372-1490	VHF Paging Radio (See Note*)	Widespread outages, not individual radio or paging issues.
2 – Response in 12-24 hours	Com Room Supervisor 253-372-1490	WebQUERY MobileCOM NetMotion	Agency internal Tech Support available for consult.
3 – Response in 24-72 hours	253-372-1575 or Support@valleycom.org	UDS transfer to RMS Active 911** (See Note)	
4 – Response 72 or more hours	253-372-1575 or Support@valleycom.org	ESRI Dashboards	

* Radio note – Valley Com contracts with King County Radio Shops for radio maintenance. Should there be system-wide radio issues, the Valley Com supervisor will notify the Shops for response. When PSERN Operator assumes ownership of the radio system, all responsibility will transition to PSERN.

** Third party applications are governed by contracts between the vendor and Member City. Valley Com will verify CAD data is being passed to these systems but cannot address issues within these types of applications.

5.6 Future Systems and Service priorities will be mutually agreed to as part of implementation and may be added to this Agreement.

6. NEW PROJECT APPROVAL: The Parties will utilize the following project approval selection parameters and process, which were adopted by the Valley Com Administration Board on March 4th, 2016, and which are subject to further Administration Board amendments enacted after that date:

6.1 The purpose of this section 6 is to allow for a thorough review of Member City and Contract Agency requests requiring use of Valley Com resources and to assess impacts to the project schedule. Valley Com should not engage in projects without being able to make a reliable, sustainable commitment to completion of the project. Implementing this process will allow for more collaboration with Member City and reduce independent implementation, instead creating more system-wide opportunities to allow for and establish or re-assess project priorities.

6.2 For the purposes of this Section 6, the following definitions will control:

6.2.1 Project – Any operational or technical change to Valley Com. Examples include, without limitation:

- Applications requiring interface or integration to existing systems
- Introduction of stand-alone applications
- Changes in policy or practice that affect com room workflow
- Changes in service area
- Other requests as determined by Valley Com

6.2.2 Project Champion/Sponsor – single point of contact within the Requesting Agency. This person will assist in presenting the project to the stakeholder groups.

6.2.3 Project Request Document – an internal document created and used by Valley Com

6.2.4 Stakeholder Group – may include one or more of the following groups:

- Advisory Committee on Technology (ACT)
- Patrol Commanders
- Z3 Ops Chiefs
- Operating Board
- Administration Board

6.3 The Parties will utilize the following process to evaluate and decide whether to adopt

a potential new project, if requested by a Member City or Contract Agency:

6.3.1 the Member City or Contract Agency provides an introductory proposal which must include a brief description of the project, the business need, and the timeline needed for implementation. Valley Com and requesting entity's Project Sponsor will jointly review the project to determine baseline information and complete a Project Request Document.

6.3.2 Valley Com further evaluates the request to determine the following:

- Level of effort required
- Whether proposed solution meet expected outcomes
- Potential for discipline-wide/Center-wide implementation
- Whether solution introduces other issues
- Operational and technical impacts
- Estimated project timeline for implementation
- Ongoing support requirements
- Ability to support project; personnel, finance, current project schedule

6.3.3 Valley Com will then prepare and present a recommendation to Project Sponsor, reviewing results of evaluation and supporting documentation. If Valley Com determines the project proposal is feasible and warrants more consideration, Valley Com and/or the Project Sponsor will conduct further analysis to prepare a scope of work draft.

6.3.4 Valley Com and Project Sponsor will present the project proposal to appropriate stakeholder group(s) to inform them of project details including scope, cost, timelines, and impacts to schedule, if any. The stakeholder group will then make a recommendation whether to approve or not approve the project to the remaining stakeholder groups, if any, all subject to final approval from the Valley Com Administration Board, except for project requests that are minor in scope.

6.4 If Valley Com deems a project request to be minor in scope and to not adversely impact Operations, Tech Services or Valley Com's project schedule, Valley Com may opt to approve and implement the request without further process.

7. LIMITATION OF AGREEMENT. This Agreement is entered into for the benefit of the Parties to this Agreement only. The Agreement is not intended to confer any benefits on any other parties and therefore no other or third party shall be entitled to rely on the terms of this Agreement or anticipate receipt of any benefit as a result of the performance of this Agreement.

8. INDEPENDENT CONTRACTOR; RIGHTS OF VALLEY COM OVER EMPLOYEES. In providing services under this Agreement, Valley Com is an independent contractor and neither it nor its officers, nor its agents nor its employees are employees of the Member City for any

purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability.

Valley Com retains sole authority and control over its personnel, including but not limited to the authority to set standards of performance and discipline for Valley Com employees and any other matters related to control over Valley Com personnel and performance of its employees.

9. Entire Agreement. This Agreement, together with any subsequent amendments, constitutes the entire Agreement between the Parties and supersedes all prior agreements for emergency police communication services; however, in the event of a conflict between the provisions of this Agreement and the Valley Com Interlocal Agreement, the Valley Com Interlocal Agreement's terms will prevail over this Agreement. Any and all prior verbal statements made by any representative of Valley Com shall not be construed as forming a part of or altering this Agreement in any manner. This Agreement may be executed in one or more counterparts.
10. Effective Date. This Agreement will take effect on the last date signed below, with subsequent terms renewable as provided for in Section 2.

(Signatures on following page)

VALLEY COMMUNICATIONS CENTER
27519 108th Avenue S.E.
Kent, Washington 98030

[insert member city name here]

By: _____
Lora Ueland, Executive Director

By: _____

Print Name: _____

Its: _____

Date: _____

Date: _____



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee
FROM: Rachel Bianchi, Deputy City Administrator
Hari Ponnekanti, Public Works Director
BY: Justine Kim, Senior Project Manager, Shiels Obletz Johnsen, Inc.
CC: Mayor Allan Ekberg
DATE: May 10, 2021
SUBJECT: Public Safety Plan/Public Works Building Tenant Improvements Project
Project No. 91630601, SOJ, Contract No. 16-179, Amendment No 3
Intergenerational Youth and Senior Center Project
Project No. 92030601, SOJ, Contract No. 21-036, Amendment No 1

ISSUE

This memo requests approval of two contract amendments for Shiels Obletz Johnsen (SOJ): (a) Contract No. 16-179 Amendment No 3 to SOJ’s Tukwila Public Safety Plan Contract for Public Works Building Tenant Improvements) and (b) Contract No. 21-036 Amendment No 1 to SOJ’s Intergenerational Youth and Senior Center Contract for project management services on the current outreach phase. The expenditures associated with these tasks are anticipated and are included in the Council approved project budgets.

BACKGROUND

For the Public Works Project: The City hired SOJ to perform project management services for the Public Safety Plan. The current contract amount—including Amendment No 1—is \$3,187,614. Amendment No 2 was a no cost time extension through December 31, 2021. The table below shows the original contract breakdown of fees dedicated to each project, including Amendment No 1. The scope of work for the Public Works project included management for site selection and procurement, as well as the development of a master plan and programming efforts. Now that the Phase I tenant improvement work is underway, SOJ is requesting an amendment to complete construction management.

Table with 2 columns: Project Name and Amount. Rows include Justice Center, Fire Station 51, Fire Station 52, Fire Station 54, Public Works, and a TOTAL row.

For the Intergenerational Youth and Senior Center Project: SOJ’s initial fee and scope was for Phase I, which included the initial establishment of project schedule, assistance with procurement of the project partners, strategic exploration, and community outreach outline establishment assistance in the amount of \$39,264.00.

ANALYSIS

For the Public Works Project: SOJ has provided a proposal for Contract No 16-179 Amendment No 3. These services include assisting with the Fleets and Facilities (Heiser Building) Tenant Improvement Project Construction Administration (CA). SOJ’s efforts will be from April 2021 through February 2022, assuming the current project substantial completion date of early December 2021. This amendment also extends the contract duration through December 31, 2022.

For the Intergenerational Youth and Senior Center Project: SOJ has submitted its Contract No. 21-036 Amendment No 1 to continue working on the project. This amendment scope includes continued management of project progress, schedule, assistance with the public outreach process by the City of

Tukwila and McGranahan Architects, including the site selection process management. SOJ will also oversee programming and feasibility study efforts to be evaluated by the Council.

FISCAL IMPACT

The expenditures associated with these tasks are anticipated and are included in the Council approved project budgets.

For the Public Works Project: SOJ’s existing contract has an expected total remaining balance of approximately \$59,778.04 after the completion of the Public Safety Plan Projects (Justice Center and Fire Station 51, 52, 54). In addition, we currently carry a \$15,352.31 balance in the Public Works budget through the end of March. We can apply those two balances, which total \$75,130.35, toward the Public Works Project management to partially offset the project’s budget impact. SOJ has provided a proposed contract amendment for \$127,617.65 to perform the services in Contract No. 16-179 Amendment No 3. The total estimated cost is \$202,748.00. The table below shows the initial contract amount, the amendment amounts, and the new not-to-exceed total.

Public Safety Plan Project	
Original Contract Amount for Public Safety Plan	\$2,694,716.00
Amendment No. 1 (additional scope to all project sites)	\$492,898.00
Amendment No. 2 (no cost time extension)	\$0.00
Amendment No. 3 (PW Fleets and Facilities CA)	\$127,617.65
Total Contract Amount	\$3,315,231.65

For the Intergenerational Youth and Senior Center Project: SOJ has provided a cost of \$94,380.00 to perform the services in Contract 21-036 Amendment No 1. The estimated staffing levels for this amendment is a total amount of \$144,380.00. However, SOJ is offering to provide pro bono hours worth \$50,000 to help offset the budgetary impact while keeping the integrity of authentic public outreach process outlined for this project. The table below shows the initial contract amount, the amendment amount, and the new not-to-exceed total.

Intergenerational Youth and Senior Center Project	
Original Contract Amount	\$39,264
Amendment No. 1 (\$144,380 - \$50,000)	\$94,380
Total Contract Amount	\$133,644

Project Management Quality Assurance (PMQA) consultant Steve Goldblatt has reviewed the documents for both amendments and provides his concurrence.

RECOMMENDATION

Approve both Contract Amendment No 3 to Contract No.16-179 and Contract Amendment No 1 to Contract No. 21-036 with SOJ. Forward to May 24, 2022 Committee of the Whole and, if there is consensus at that meeting, to the Special meeting following the COW.

ATTACHMENTS

Contract Amendment No 3 to Contract #16-179 with SOJ
 SOJ proposal for services with Scope of Work and Fee

Contract Amendment No 1 to Contract #21-036 with SOJ
 SOJ proposal for services with Scope of Work and Fee



City of Tukwila

6200 Southcenter Boulevard, Tukwila WA 98188

Agreement Number:16-179(c)

CONTRACT FOR SERVICES

Amendment No. 3

Between the City of Tukwila and Shiels Oblatz Johnsen, Inc.

That portion of Contract No. 16-179 between the City of Tukwila and Shiels Oblatz Johnsen, Inc. is hereby amended as follows:

Section 1 Project Designation: The Consultant is retained by the City to perform Project Management services in connection with the project titled Tukwila Public Safety Plan and PW Fleets and Facilities Building Tenant Improvements Projects.

Section 2 Scope of Services: The Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment, and supplies.

3. Duration of Agreement; Time for Performance. This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2022, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2022 unless extension of such time is granted by writing by the City.

Section 4 Payment. The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:

Payment for the work provided by the Consultant shall be made as provided on Exhibit "A" attached hereto, provided that the total amount of payment to the Consultant shall not exceed **\$3,315,231.65** (including estimated expenses) without express written modification of the Agreement signed by the City. The total fee for additional services related to Amendment No. 3 are **\$127,617.65**.

All other provisions of the contract shall remain in full force and effect.

Dated this _____ day of _____, 2021.

CITY OF TUKWILA

CONTRACTOR

Allan Ekberg, Mayor

Brad Tong, Managing Director

ATTEST/AUTHENTICATED

APPROVED AS TO FORM

Christy O'Flaherty, MMC, City Clerk

Office of the City Attorney



May 1, 2021

Hari Ponnekanti
Director of Public Works
6200n Southcenter Blvd.
Tukwila WA 98188

Project: **Tukwila Public Works – Fleets and Facilities (Heiser Building Tenant Improvement)**

Subject: Proposal for Construction Administration Management

Dear Hari:

SOJ is please to submit our proposal to assist with the Fleets and Facilities Heiser Building Tenant Improvement Project Construction Administration.

Fee

\$127,617.65 (including \$4,500 of reimbursable expenses) for continued assistance with the management of on-going Tenant Improvement construction being executed by Lincoln Construction Company and SHKS architects. The total estimated effort is \$198,248. However, our existing contract with the City of Tukwila (contract number 16-179) is expected to have a balance of approximately \$59,778.04 after the completion of Public Safety Projects (Justice Center, Fire Station 51, 52 & 54). In addition, we currently carry a \$15,352.31 balance in the Public Works budget through the end of March. We can apply those two balances, which total \$75,130.35 toward this project's management, which will help offset the project budget impact. See attached worksheet for staffing estimates.

Duration

We are forecasting that this proposal covers our efforts from April 2021 through February 2022 assuming the project completion of achieving Substantial Completion of early December 2021 remains unchanged.

Scope of Services

- Please see attached list of Construction Administration scope of work.

We appreciate your consideration of the above and look forward to your response.

Sincerely,

Justine Kim
Partner / SOJ
Cc: File

Construction Phase Scope of Work

1. Owner's Representative - will represent the Owner at all times on project matters.
3. Contracts - administer the contracts to be executed between Owner and a contractor.
5. Observation of the Construction Work - observe the progress of the construction and document findings in a written monthly Field Report.
6. Inspections - perform regular on-site observations of construction contractor's work as frequently as necessary and take other actions in coordination with the Architect and any special inspectors to protect the Owner's interests.
8. Meetings - attend weekly OAC meetings.
9. Schedule - review construction contractor's schedule for compliance with the contract requirements to confirm that it is generally realistic to meet the schedule. Will monitor the construction contractor's progress in meeting the project schedule.
10. Budget - regularly monitor Owner's construction budget for the Project, identify variances between actual and estimated construction costs, advise the Owner, and counsel the Owner concerning any action that should be taken.
11. Changes - recommend appropriate changes to the work, review and analyze requests for changes and submit recommendations to the Owner, assist in negotiations with the contractor, assist in negotiating contractor's proposals, prepare change orders for signatures of CPM, the Architect, and for final authorization by the Owner.
13. Contractor and A/E Claims - assist in reviewing, analyzing, and processing contractor and A/E change orders and make recommendations to the Owner concerning a contractor who is not performing in accordance with the applicable construction contract.

14. Consultants and Testing - If required or requested by Owner, assist the Owner in selecting and retaining the professional services of surveyors, soils engineers, special consultants, and testing laboratories and shall coordinate their services.
16. Contractor Submittals - oversee maintaining of a log of the shop drawings submitted by the Contractor to the Architect for review and approval. The CPM receive copies of all pertinent (Owner's) submittals from the Contractors and facilitate the Owner's review completeness and coordinate with the architects.
18. Project Records - maintain record copy of all construction contracts, drawings, specifications, addenda, change orders, other modifications and other documents that are associated with the construction contracts or work.
21. Owner-Furnished Equipment - ensure proper coordination between furnishings, fixtures and equipment (FF&E) that are part of the Project and building systems to support FF&E conditions and requirements. Where appropriate, the CPM shall assist Owner staff in overall coordination of FF&E delivery and installation among the contractors and FF&E vendors.
23. Nonconforming Work - bring defect (nonconforming work with the construction contract), the to the attention of Architect (if appropriate) and Owner. Assist in identifying the problem and recommend a solution.
24. Punch List Work - coordinate with the Architect and Owner consultants to develop a punch list(s), and coordinate with the Contractor a schedule for completion. Determine all "punch list" work is complete prior to recommending approval of final payment.
25. Substantial Completion - Oversee and manage the construction contractors to achieve substantial completion of the project by the date agreed upon by contractor and Owner in the construction contract.
26. Commissioning - Coordinate commissioning activities with the Owner's Commissioning Agent, and the contractor. Facilitate scheduling of operation and maintenance training sessions for systems and equipment.
27. Closeout - Facilitate obtaining keys and a copy of all warranties, guarantees, manuals, and related documents and deliver them to Owner's staff.
28. Schedule of Values and Contractor Applications for Payment - Review and determine construction contractor's schedule of values is reasonable. Review the progress of construction with the contractor, observe work in place and properly stored materials on a monthly basis, and evaluate the percentage complete of each construction activity shown in the Applications for Payment.

29. Permits - will assist Owner in obtaining building occupancy permits.
30. Lien Releases - before recommending final payment, obtain the releases of claims and liens required by the construction contract.
31. Warranty Inspections - will administer all warranty and maintenance related requests. Approximately eleven months after Final Acceptance of the facilities, coordinate an inspection with Owner, A/E, and contractor to assist Architect in identifying and reporting any defects in the work that should be corrected.



Public Works Fleet and Facilities - Construction Administration

5/4/2021

		2021 \$ Rates												Total Hrs
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total Hrs	
Rates are 2021 \$														
Justine Kim	Est. Hours	32	32	32	32	32	32	32	32	20	10	10	296	\$68,672
	Billing Rate: \$232/hour	\$	232											
Paul Schlachter	Est. Hours	48	48	48	48	48	48	48	48	48	20	20	472	\$91,096
	Billing Rate: \$193/hour	\$	193											
Adam Strutyński	Est. Hours	10	10	10	10	10	10	10	10	10	0	0	90	\$13,680
	Billing Rate: \$152/hour	\$	152											
Matt Strutyński	Est. Hours	30	30	30	30	30	30	30	30	30	20	20	310	\$24,800
	Billing Rate: \$80/hour	\$	80											

Equivalent FTE: **\$198,248**

Reimbursable Expenses: 500 500 500 500 500 500 500 500 500 500 500 0 0 0 \$4,500

Total: **\$202,748**
 Existing Contract Balance: **\$75,130.35**
 Contract Amendment: **\$127,617.65**



CONTRACT FOR SERVICES

Amendment No. 1

Between the City of Tukwila and Shiels Oblatz Johnsen, Inc.

That portion of Contract No. 21-036 between the City of Tukwila and Shiels Oblatz Johnsen, Inc. is hereby amended as follows:

Section 1 Project Designation: The Consultant is retained by the City to perform Project Management services in connection with the project titled Tukwila Intergenerational Youth and Senior Center Project.

Section 2 Scope of Services: The Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment, and supplies.

Section 4 Payment. The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:

Payment for the work provided by the Consultant shall be made as provided on Exhibit "A" attached hereto, provided that the total amount of payment to the Consultant shall not exceed **\$133,644** (including estimated expenses) without express written modification of the Agreement signed by the City. The total fee for additional services related to Amendment No. 1 are **\$94,380**.

All other provisions of the contract shall remain in full force and effect.

Dated this _____ day of _____, 2021

CITY OF TUKWILA

CONSULTANT

Allan Ekberg, Mayor

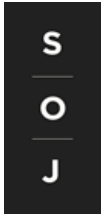
Brad Tong, Managing Director

ATTEST/AUTHENTICATED

APPROVED AS TO FORM

Christy O'Flaherty, MMC, City Clerk

Office of the City Attorney



May 1, 2021

Rachel Bianchi
Deputy City Administrator
6200n Southcenter Blvd.
Tukwila WA 98188

Project: **Tukwila International Blvd. (TIB) Neighborhood Teens and Senior Center (TSC) Project**

Subject: Proposal for PHASE II – Contract amendment for Public Outreach, Programming and Feasibility study management

Dear Rachel:

SOJ is please to submit our contract amendment proposal to continue to assist with the new City of Tukwila's TIB Neighborhood Teens and Senior Center project, as described below.

Fee

\$94,380 for continued management of project progress, schedule, assistance with public outreach process by the City of Tukwila and McGranahan Architects, including the site selection process management. Please see the estimated staffing levels showing the total amount of \$144,380 on the attached spreadsheet. In addition, SOJ is pleased to inform you that our firm is committed to contributing our Pro Bono hours (\$50,000 worth) toward realizing the authentic community engagement that will help inform the TSC project. Our existing contract amount is \$39,264, and this proposed amendment of \$94,380 will bring the new total contract amount to \$133,644.

Duration

We are forecasting that this proposal covers our efforts from April 2021 through January 2022 closely adhering to the current project schedule to complete the work by end of this year.

Scope of Services

PHASE II scope of services will include:

- Manage and update project schedule for the public outreach and project programming efforts over the next 8 or 9 months.
- Assist with refining approaches to public outreach to ensure community voice leads design and program direction.
- Assist with website design and management of regular updates to content.
- Assist with public site selection process and reporting to the council of progress.
- Manage the A/E team's performance throughout the project duration.
- Oversee program development and feasibility analysis and assist with presentation to council.

We appreciate your consideration of the above and look forward to your response.

Sincerely,



Justine Kim
Partner / SOJ
Cc: File



TIB Neighborhood Teens and Senior Center - Public Outreach and Programming

4/26/2021

		2021\$ Rates											
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan		
Rates are 2021\$													
Justine Kim	Est Hours												
	Billing Rate: \$232/hour	32	32	32	32	32	32	32	32	32	32	320	\$74,240
Ben Franz-Knight	Est Hours												
	Billing Rate: \$227/hour	20	20	20	20	20	20	20	20	20	20	200	\$45,400
Adam Strutynski	Est. Hours												
	Billing Rate: \$152/hour	4	4	4	4	4	4	4	4	4	4	40	\$6,080
Paige McGehee	Est. Hours												
	Billing Rate: \$83/hour	12	12	12	12	12	12	12	12	12	12	120	\$9,960
Matt Strutynski	Est. Hours												
	Billing Rate: \$80/hour	4	4	4	4	4	4	4	4	4	4	40	\$3,200

Equivalent FTE:

\$138,880

Reimbursable Expenses 500 500 500 500 500 500 500 500 500 500 500 500 500

Total: \$144,380
 Pro Bono Credit: \$50,000
 Contract Amendment: \$94,380



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.

[]

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.

[]

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.

[]



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*



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: Use of Force Review

ISSUE

With the goal of providing transparency and accountability to the public regarding the Tukwila Police Department's use of force, the Police Department has created a Use of Force Review Board that will review all use of force by the department.

BACKGROUND

For accreditation purposes and best practices in law enforcement, the Tukwila Police Department conducts an annual review and analysis of all use of force by the members of the department. The review consists of acquiring stats and tracking use of force throughout the calendar year. That collected information is then analyzed by the Deputy Chief of Police, who then prepares a report regarding the analysis. The report is then forwarded to the Chief of Police for review and inclusion with accreditation proofs.

DISCUSSION

With honoring the intent behind police reform efforts to provide transparency and accountability, the Tukwila Police Department has taken the initiative to establish a Use of Force Review Board. The Board consists of TPD Use of Force Experts, TPD Administration, and Community Members that are selected as part of our Independent Investigation Team for officer involved use of deadly force. The Board reviews each use of force individually for compliance with Department policy, training, and appropriate level of force used. The review helps to identify areas where the department can improve their training, processes, and means for accountability. The Deputy Chief will then prepare a summary of the findings of the Board for presentation to the Chief of Police, who will subsequently present the findings to Council. Once presented to Council, the reports will be published for the public.

FINANCIAL IMPACT

There is no financial impact at this time for implementing this program.

RECOMMENDATION

Information Only

ATTACHMENTS

Use of Force Review Memorandum
Use of Force Review Board Memorandum



City of Tukwila

Police Department

Allen Ekberg, Mayor

Eric Drever, Interim Chief of Police

MEMORANDUM

TO: Eric Drever, Interim Chief
FROM: Eric Lund, Acting Deputy Chief
DATE: February 3, 2021
SUBJECT: 2020 Use of Force Statistics and Analysis

Attached are statistics for the year 2020 concerning the department's use of force applications. The following is an analysis of the statistics to determine if there is any training, equipment, policy issues, or trends that need to be addressed.

All uses of force have been documented in AIM (Administrative Investigations Management) since 2018. All uses of force are required to be reported by the officer that uses force. A sergeant may be required by policy to respond to the scene. For each use of force reported, the sergeant will complete a review of the officer's report, view any body worn camera (BWC) video, and forward his/her recommendations to the division commander. The commander will also review the use of force by reviewing the same documents and BWC videos. The commander will forward his/her review to the Deputy Chief. The Deputy Chief will read the reviews of the sergeant and commander and determine if the use of force was within policy and reasonable. If there are any policy violations or other inconsistencies, the Deputy Chief can escalate the use of force review to an internal investigation. Each use of force is reviewed by multiple levels of the organization.

This data is entered into AIM (Administrative Investigations Management). According to the statistics, there were 54 uses of force in the year 2020. This is a 15% reduction in use of force incidents from 2019 (64) and a 35% reduction from use of force incidents in 2018 (84). To further contrast, 2016 had a total of 260 use of force incidents reported, which was the year prior to Tukwila PD purchasing and deploying body worn cameras. In four years, use of force incidents have **decreased 79%**. Other changes that Tukwila PD has made that contributed to the reduction is increased training in de-escalation, patrol tactics, and crisis intervention training related to mental illness.

In each incident, an officer can use several types of force depending on the circumstances and behavior or the subject. Low level uses of force were the highest total force applications. This includes the officer using physical strength, take downs, counter-joint moves, or strikes and/or punches. 72% of the use of force incidents involved at least some physical strength or control. The numbers for low-level uses of force in 2020 were very similar to the numbers in 2019.

Regarding higher level uses of force, the TASER was deployed 5 times (9%). There was one application each of VNR, OC Spray, and 40mm less lethal (all 1.8%). It should be noted that VNR use was suspended by Chief Linton in June of 2020 and was -restricted to use only during a lethal force encounter (The VNR application in 2020

occurred in March.) There were 9 applications of VNR in 2019. This represents a nearly 90% reduction in VNR applications. TASER applications remained similar (5 vs 4). OC Spray and 40mm less lethal usage were both 0 in 2019 but increased to 1 application each in 2020.

The number of subjects that were reported to be armed with a weapon or have immediate access to a weapon increased in 2020 to 16% of all incidents. In 2019, the percentage was 5%.

Overall, the number of subjects that were reported to have injuries after a use of force reduced from 37% in 2019 to 31% in 2020, a 6% reduction.

In analyzing the statistics, I did not identify any unusual or emerging trends, aside from the aforementioned reduction in the use of higher levels of force. I also did not identify any equipment or training issues that may have an impact or change any future use of force totals. I do not recommend any changes to the current policies regarding use of force that would have an impact on these statistics or that needs to be addressed.



City of Tukwila

Police Department

Allan Ekberg, Mayor
Eric Drever, Chief of Police

MEMORANDUM

TO: Eric Drever, Chief of Police
FROM: Eric Lund, Deputy Chief
DATE: April 6, 2021
SUBJECT: 2020 Use of Force Review

The Tukwila Police Department conducted a review of the use of force incidents that occurred in 2020. The review was led by Acting Deputy Chief Lund. The review occurred over 3 separate days over Microsoft Teams (due to COVID). The review included a PowerPoint presentation explaining department policies, training and some basic level explanations of force and common terms that are used in law enforcement. Department members that participated were Officer Eric Hines, Detective Erik Kunsmann, and Sergeant Isaiah Harris, who all have extensive training and knowledge in defensive tactics.

The department has several community representatives that had already been selected to participate with the Valley Independent Investigative Team. The participants were Sean Goode, Sharon Myklebust, Allan Howard, and Ross Dworman. The review consisted of a basic overview of the incident which included the type of call, type of force used, injuries sustained, how the use of force was reviewed, and the disposition for the report. If body-worn camera footage was available, a clip of the force used was shown to the group. After the video was shown, the community reps were encouraged to ask questions about each incident.

We spent approximately 6 hours reviewing all 54 use of force incidents from 2020. The meetings took place on February 23, March 9, and March 16, 2021. The discussions were very informative and there was a high level of participation and interaction.

Some of the questions and comments that were asked:

- Many of the use of force incidents involved the crime of shoplifting where the offenders ran. One of the community reps had concerns about force being used for property crimes and the amount of time officers spent dealing with shoplifting calls.

- One of the incidents involved a male suspect in crisis, who stopped breathing. An AED was brought to the scene by one of the officers and it did not have a battery in it. The community rep asked about our process to ensure that AED's were properly maintained so that they are ready to deploy.
- One of the reps commented that he was pleased to see our officers show compassion after using force.
- It was also noted that they were happy to see that there were multiple levels of review by supervisors and command staff.

When an officer records an interaction with the public, they are required to assign a category to it. Depending on the category, the amount of time the video is recorded changes. These retention periods were created in accordance with state guidelines:

- Misdemeanor – 5 years
- Felony – 8 years
- Infraction – 26 weeks
- Other – 26 weeks
- Death Investigation – 99 years

There was an issue that was discovered when the review was being prepared and it involved the retention period for certain videos. It was discovered that some of the incidents where force was used involved people that were in crisis or might not have necessarily committed a crime. The officers were labeling the videos as "Other" in accordance with policy at the time. The issue was that video was being automatically deleted in 26 weeks when labeled "Other". This could be problematic if there was any legal action related to the force used. Several of the body camera videos had been automatically deleted prior to the Use of Force Review being prepared.

To fix this issue, the department created a "Use of Force" label. The retention period for "Use of Force" is set at 8 years. Now, when any force is used, officers are required to label the video "Use of Force" and that video will be retained in accordance with state guidelines.

Another issue that was found, was that some uses of force had not been reviewed at all. These incidents were reassigned to sergeants to conduct reviews and complete the process.

Overall, the review was very positive and encouraging, especially the participation by the community representatives.

The department is already planning to conduct a review of use of force incidents that occurred in the first quarter of 2021. This should occur in late April or early May.