OPA Auditor and CPC Recommendations for State Legislative Action Related to Police Accountability
October 18, 2017

1. **OPA Auditor Recommendation issued in Semi-Annual Report, January 19, 2014**
   CPC Accountability System Recommendation issued April 24, 2014

   Revise RCW 43.101.010(8) Definition of Disqualifying Misconduct to broaden the grounds for revocation of officer certification so that officers who violate the law or engage in serious misconduct cannot later be employed in a sworn capacity.

   State law requires that a peace officer be certified by the Washington State Criminal Justice Training Commission (WSCJTC). RCW 43.101.095. The WSCJTC may only revoke certification based on a finding that the officer was convicted of a felony or has been discharged for disqualifying misconduct and the discharge is final. RCW 43.101.105. Discharged for disqualifying misconduct means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement, (iii), the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination. RCW 43.101.010. Allowing revocation only under these circumstances does not prohibit officers fired for misconduct not falling within these parameters from later working for a different agency as a sworn officer after they had been terminated, no matter how egregious or unprofessional the misconduct. For example, if an officer was fired for committing a crime while off-duty but it did not involve dishonesty, controlled substances, or a revocation of the right to possess a firearm, the officer is not now de-certified. Similarly, if there was no criminal conviction or a knowing false statement made during the investigative process that was the sole reason for the termination, but the administrative investigation proved serious misconduct up to and including violations of law, the officer is not now de-certified. Other states allow de-certification if an officer was terminated from the force or resigned in lieu of termination due to felony or misdemeanor violations of criminal law, whether or not convicted, and due to serious violations of department rules or regulations, such as physical or verbal abuse, substance abuse, and sexual misconduct. These grounds should be a basis for de-certification in Washington State.

   Revise RCW 43.101.105 Denial or Revocation of Peace Officer Certification to allow the WSCJTC to initiate revocation once the agency issues a final Sustained finding instead of waiting until after all administrative appeals are done. This will allow the WSCJTC to revoke certification if after appeal the misconduct, but not the termination, is upheld. SPD policy should also require the Chief of Police to formally request de-certification whenever an officer is terminated from employment after a Sustained finding.

2. **OPA Auditor Summary of Issues Draft, December 27, 2014**
   OPA Auditor Recommendation issued in Semi-Annual Report, July 20, 2015
   CPC Position issued in Press Release, February 12, 2015

   ***Note: There were many more detailed recommendations than this high level overview regarding specific needed statutory and policy changes that were discussed with the Mayor's Office, SPD, and others throughout 2015.**

   The use of body-worn cameras by police can be a helpful accountability tool, but their use in Washington State will have greater impact on privacy then perhaps elsewhere in the country since Washington State's Public Records Act (RCW 42.56) allows for broader public access to information than many other jurisdictions.

   Therefore, it is important, with respect to the use of body-worn cameras, that the law be amended as necessary to preserve governmental transparency, while protecting individual privacy rights. This is a complex area for legislative deliberation that should address the purposes to which such footage may be used both officially and by members of the public and whether any exemptions to disclosure should be adopted. The laws that may be subject to legislative action related to these issues include RCW 42.56, Public Records Act and RCW 9.73, Violating Right of Privacy. Other related issues concern police department policy, which may need to be revised to address which sworn personnel must use body-worn cameras; the extent of discretion allowed in filming; and whether officers may have access to video prior to writing reports.

3. **CPC Recommendation issued in Letter to Joint Legislative Task Force on the Use of Deadly Force, November 18, 2016**

   Revise RCW 9A.16.040 (Justifiable Homicide or Use of Deadly Force by Public Officer, Peace Officer, Person Aiding) to reflect best practices developed by the Police Executive Research Forum (PERF) and the President's Task Force on 21st Century Policing.

   a. Principle #1: "The sanctity of human life should be at the heart of everything an agency does". *Drafting approach: All uses of deadly force, except capital punishment, are restricted to situations where the threat is reasonably understood to be imminent and the use of deadly force is reasonably understood to be necessary. Provide that use of deadly force is justified where an officer has a reasonable belief of an imminent threat of death or serious physical harm to the officer or a third party and the deadly force is necessary to prevent death or serious physical harm. Provide clear definitions of "imminent," "necessary," and "reasonable belief," making it clear that the latter term encompasses and protects an officer who makes an honest mistake.*

   b. Principle #2: "Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor". *Drafting approach: Use "sanctity of life" as the backdrop and add requirements that protect police, the public, and suspects. Add the word "imminent" and "reasonably believes" throughout. Revise the definition of "necessary" to make clear that use of force should be a last resort and reference de-escalation and less lethal alternatives. Remove the "malice" and "good faith" defense. Clearly define "imminent" and "reasonably believes." Require a warning in all situations unless a warning is futile.*

   c. Principle #3: "Police use of force must meet the test of proportionality". *Drafting approach: The revised definition of "necessary" will connect the proportionality principle to the threat presented.*

   d. Principle #4: "Adopt de-escalation as formal agency policy". *Drafting approach: Add "de-escalation" to the definition of "necessary."*

   e. Principle #8: "Shooting at vehicles must be strictly prohibited". *Drafting approach: Prohibit shooting at vehicles unless the suspect is using deadly force aside from the moving vehicle itself.*

   f. Principle #9: "Prohibit use of deadly force against individuals who pose a danger only to themselves". *Drafting approach: Existing law uses the phrase "harm to others" or "third party". Make this consistent throughout RCW 9A.16.040.*