Seattle Office of Inspector General

State Legislative Agenda Item Compilation

10/22/20

1. State Legislative Agenda (SLA) items identified from accountability entities, expert stakeholders, news, and other reports.
2. OIG recommendations
3. OPA recommendations
4. CPC recommendations

Seattle Office of Inspector General

All SLA Items by Category

Categories are subject to interpretation.

Discipline
1. Abolish qualified immunity for police officers (federal)
2. Allow for parallel and sequential administrative and criminal investigations at the discretion of the oversight entity.
3. Create a disciplinary matrix
4. Ensure Chiefs have full authority to place an employee on leave without pay if the Chief has determined that leave without pay is necessary for employee or public safety, or security or confidentiality of law enforcement information, or otherwise to maintain the public trust.
5. For all stops by a police officer, require officers to give civilians their name, badge number, reason for the stop and a card with instructions for filing a complaint to the civilian oversight structure.
6. Modify state law to set standard of proof in SPD conduct cases
7. Prohibit a statute of limitations on the filing of complaints when the misconduct involves criminal misconduct, concealment of the misconduct, serious excessive force, or dishonesty. A statute of limitations for other, less serious misconduct should be set at no less than 5 years.
8. Prohibit allowing named or witness officers or their representatives access to investigative evidence.
9. Prohibit investigative completion deadlines that preclude discipline for serious misconduct.
10. Prohibit retribution of any kind for filing a complaint or testifying, offering evidence, etc
11. Prohibit sealing of records or excluding of records via any means (collective bargaining agreement, agency or city policy, individual settlement.)
12. Prohibit the purging or destruction of any records. Require all personnel records (not just those records related to sustained findings) to be retained for as long as the officer is employed + 7 years.
13. Prohibit the withholding of officer names from release of information. Prohibit use of constraints on release of information such as “embarrassing” or “stigmatizing”.
14. Prohibit use of accrued time (vacation, sick leave, etc.) to satisfy any disciplinary penalty that involves suspension of paid days.
15. Prohibit use of public funds to pay for an officer’s legal counsel related to allegations of misconduct (outside of representation by the City or County for litigation) and for union officers’ salaries for their union work.
16. Require ability for complainants to track the progress of their case on line or receive regular updates on progress.
17. Require allowing the filing of anonymous complaints.
18. Require audio-taping and transcription of administrative investigative interviews
19. Require investigative and disciplinary processes to be the same for all ranks.

20. Require jurisdictions to provide options to file complaints by phone, online, in writing, or in-person.
21. Require standards for Brady lists and protocols for law enforcement agencies and prosecutors
22. Require the cost of misconduct settlements to be paid out of the agency's budget instead of the City or County general fund.
23. Require the officer or union to disclose any relevant information which they are aware of during the investigative interview, or at the earliest point thereafter when they become aware of it. If not, preclude either from raising it for the first time in the due process hearing or on appeal.
Use of force standards
24. Adopt the IACP National Consensus Policy on Use of Force. Adopt statewide standards for use of force, de-escalation, reporting to supervisors, and chain of command review.
25. Chokeholds and other holds that use pressure on neck prohibited
26. Create a civil right to freedom from police violence
27. Ending qualified immunity for law enforcement officers in state court
28. Modify the WA felony murder rule to charge officers; lower standard where force is not justified
29. Prohibit dangerous practices such as chokeholds, strangleholds, hog-tying, and transporting people face-down
30. Prohibit officers from shooting at moving vehicles and from high-speed pursuit of anyone not having committed or about to commit a violent crime.
31. Prohibit use of Lexipol for departmental policies
32. Reevaluate prosecution standards surrounding reasonable use of force. Limit an officer's statutory defense to where his/her conduct in using force was reasonable, necessary to prevent death or serious injury to another, and proportional. Adopt a nonexclusive list of factors that the jury must consider in determining reasonableness. Permit a voluntary manslaughter charge like some states' "imperfect self-defense" when an officer reasonably believes that a threat exists but acts unreasonably in response.
33. Require first aid supplies in patrol vehicles and rendering aid as soon as safely possible whenever someone in custody or in interaction with police is injured or complains of injury.
34. Require officers to provide a statement when an incident occurs, without delay and without having reviewed body-worn camera video or in-car video prior to writing report or giving a statement.
35. Require that an officer's tactical conduct and decisions leading up to using force be considered in determining whether that force was necessary.
36. Require that officers give verbal warnings
37. Uniform Statewide Police Policies and Training
38. Use of force standard: clarify definition of necessary [force] so that less lethal and non-lethal are unambiguously first resort, deadly force last resort
39. Ban use of tear gas
Decertification
40. Allow the CJTC to initiate the decertification process upon the disciplinary finding, not after all appeals or litigation are concluded.
41. Amend (5) of the CJTC statute so that it prohibits the use of individual settlements, collective bargaining agreements, and memoranda of understandings that are often entered into by

agencies from precluding disclosure of information to the CJTC or allowing for the destruction of records that limits available information
42. Create more safeguards/consistency concerning CJTC decertification; decertify those with sustained complaints
43. Create Uniform Licensing and Review System
44. Decertified officers should be prohibited from serving as peace officers, correctional officers, school officers, or security guards.
45. Eliminate guaranteed pensions (RCW 41.20) (any portion not funded by employee) for any officer convicted of a felony & allow for CJTC to abrogate pensions as part of mandatory decertifications.
46. Give the CJTC the power to suspend an officer's certification
47. Increase funding for CJTC to hire full time legal staff
48. Prohibit officers terminated for cause from purchasing their service weapons from their agency (as well as those who resign or retire with a pending complaint and do not fulfill an obligation to fully participate in an investigation) and also bar them from later obtaining a concealed carry license under the Law Enforcement Officers Safety Act. Concealed carry privileges should be granted under rules of LEOSA, including having retired in good standing.
49. Provide the CJTC the authority to proceed regardless of whether an arbitrator or other appellate decision-maker overturns the discipline imposed by the Chief or Sheriff or the agency settles an appeal.
50. Require agencies to report to the CJTC incidents that meet mandatory decertification criteria within 15 days of the incident and incidents that meet discretionary criteria within 15 days of a disciplinary decision. Provide for auditing of reporting to CJTC.
51. Require agencies to report to the CJTC when an officer leaves the agency to avoid discipline, whether through termination, retirement, or otherwise.
52. Set forth mandatory and discretionary decertification criteria for the CJTC.
53. Where the officer resigns or retires before the disciplinary decision is made, require each jurisdiction to proceed with the administrative investigation, issue disciplinary report, and transmit information to WSCJTC just as would be required had the officer been terminated
54. Expand the state's criteria on disqualifying misconduct to include bias, excessive force, and misdemeanors involving "moral turpitude" that breach the public trust.
Collective bargaining
55. Change collective bargaining law so the contract doesn't take precedence over state law
56. Changing the RCW to acknowledge secondary employment as an object of collective bargaining
57. Create a state law mandating that police union bargaining be open to the public
58. Create state law mandating that all bargaining concerning matters of police accountability are effects only, not decisional
59. Create statewide rules/regulations regarding police officer secondary employment
60. Eliminate Bargaining Units for SPD/Police
61. Eliminate subjects related to police accountability & discipline from collective bargaining (RCW 41.56).
62. Eliminating interest arbitration for uniform employees

63. If accountability subjects are not fully removed from collective bargaining, provide for a representative/s of civilian oversight/ community voice with contract expertise to participate in bargaining to help ensure long-standing community concerns and reforms recommended are fully realized in bargaining. And develop an approach that allows for community testimony and input prior to final ratification.
64. Require independent, civilian management of secondary (off-duty) employment assignments to eliminate favoritism and/or possibility of corruption, to ensure compliance with all policies when working in off-duty roles (such as use of force policy), to align with community values regarding appropriate roles of sworn officers, use of public funds, etc. Also, make it clear that secondary employment is not a mandatory subject of bargaining and any policies or practices related to it are at the discretion of management
65. Require jurisdictions to post online any law enforcement collective bargaining agreements, other relevant agreements related to law enforcement practices, and all policies and regulations.
66. Require that all law enforcement collective bargaining contracts include as an express intent statement that the intention of the parties is not only to represent the interest of the city/county and the union, but also the common good (the public interest), and that nothing in the contract may create obstacles to timeliness, transparency, fairness, and effectiveness of accountability or in any way diminish public trust and confidence (use similar language to PRA – that any language or provisions in the contract must be interpreted in a manner best supporting these goals)
67. Amend RCW 41.56.905 to resolve ambiguities between CBAs and local laws in favor of local laws.
Reporting
68. Adopt mandatory participation in the national Use of Force database
69. Create a state law mandating that all use of force data be made publicly available.
70. Create statewide dashboard/clearinghouse for all OIS. Mandate that all Washington State law enforcement agencies participate in a data collection effort for deaths, serious injury, or firearm discharge, by tasking a state agency to collect data and requiring agencies to enter it into the FBI program portal.
71. Make names of officers involved in police brutality a matter of public record
72. Require statewide databases (to which agencies are required to report) and agency-specific data bases with consistent information standards that are current, visible, easily accessible, and searchable for the public and media: use of force and allegations of police misconduct
73. Require the CJTC to maintain a publicly searchable database describing the names of officers and employing law enforcement agencies, all conduct investigated, certifications denied(and the reasons), notices and accompanying information provided by law enforcement agencies, including the reasons for separation from the agency, decertification or suspension actions pursued, and final disposition and the reasons therefore.
74. Statewide reporting of all police-initiated contacts
75. To ensure data quality and enhance public trust in the data, require state-level auditing of deadly force data.
Discipline - Appeals
76. A Police Chief's decision to discipline or terminate an officer should be given deference and presumed proper unless it is an abuse of discretion or arbitrary and capricious. State law

should provide that a Chief's decision is reviewed only on the record (new evidence cannot be introduced),and the decision must be upheld if it is supported by the record.
77. Create standards for selecting arbitrators (i.e. they must be a subject matter expert)
78. Decision-maker must defer to findings of fact (not conduct de novo review) and uphold discipline unless arbitrary and capricious;
79. Disciplinary decision may be reversed or modified only to the minimum extent necessary to address the procedural issue if needed; and required timelines to reduce the cost and time it takes for accountability so there is less incentive to settle or to delay and appeals don't go on for years.
80. Eliminate use of arbitration for police disciplinary appeals and replace with ALJ or hearing examiner (can be under umbrella of a PSCSC).
81. Remove arbitration and require appeals through a civilian oversight board to create more public transparency.
82. Require preponderance standard of review (not higher)
83. Require standards for disciplinary appeals including requiring appeals hearings to be open to the public, complainants & media
Investigations
84. All uses of deadly force must, after investigation, be referred to a statewide Special Prosecutor for review and charging decisions.
85. Attorney General May Engage in "Pattern or Practice" Investigations
86. Create Independent Statewide Entity to Investigate and Prosecute Police Officers and Uniform Inquest Procedures
87. Create statewide civilian led agency with satellite offices that investigates all deadly force.
88. Establish a new independent unit specifically for investigating law enforcement use of force that results in substantial bodily harm.
89. Require unfettered civilian oversight of and/or civilians to conduct all investigations of misconduct, including oversight/management/coordination of criminal misconduct investigations to help ensure highest quality of both administrative and criminal investigation to accomplish necessary accountability. (Prohibit limitations on oversight.)
90. Set best practice standards for conducting misconduct investigations.
Wellness/ intervention
91. Create a statutory responsibility to report and/or intervene in unreasonable violence by fellow officers
92. Officers must pass annual mental health review and PTSD evaluations
93. Require agencies to have an early intervention system.
94. Require officers to immediately report misconduct if personally observe or otherwise have knowledge.
95. Require officers to intervene where excessive force or other violations of policy are occurring.
Hiring
96. Expand veterans' preference points to include preference points for being multi-lingual or having certain community service work history (e.g., mental health, DV, sexual assault work, teaching, etc.) [Each applicant can't use more than one type of preference points.]
97. Officer background checks for membership in white supremacist groups (prohibition on hiring and/or lose commission)

98. Require all applicants to submit to a background investigation that must include a check of criminal history, any national decertification index, commission records, and all disciplinary records by any previous law enforcement or correctional employer, including the reason for separation from employment
99. Require LE personnel to have a degree. Create continuing education program on topics outside of standard training. Re-imagine the Academy
Reducing police contacts
100. Amend state law to allow non-uniformed personnel to take on more roles in law enforcement.
101. Ban police departments from using ticket or arrest quotas to evaluate the performance of police officers
102. End Policing of Minor "Broken Windows" Offenses
103. Establish and fund Mental Health Response Teams to respond to crisis situations.
Community
104. Give reparations to victims of police brutality
105. Preclude LEBOR ("Law Enforcement Bill of Rights") laws
106. Require a regular survey to gauge community perceptions and experiences with police
107. The third or fourth rotation of FTO assigns student officers to a community-based organization in the geographic precinct that the officers will be assigned to
Training
108. Enhance law enforcement agency accreditation.
109. Ensure requirements for training are aligned with best practices and enhancing community trust (e.g., de-escalation, crisis intervention, conflict resolution, implicit bias, procedural justice, engaging with diverse communities, etc.)
110. Expand basic training into a 2 year education program that incorporates classes on law, criminology, psychology, and sociology, in addition to weapons training.
Oversight
111. Grant Cities Subpoena Power for Police Misconduct and Civilian Police Oversight Entities
112. Provide for full administrative subpoena authority for investigative bodies to conduct investigations and obtain information for reviews and audits
113. Require civilian oversight entities' input in development and review of agency policies (violation of policy is the basis of misconduct). Require their input and review of any relevant collective bargaining agreements
114. Expand whistleblower anonymity to City whistleblowers.
Transparency
115. Create a daylight rule about public officials that have taken contributions by police associations, unions, etc.
116. Require new standards for officer ID (not covering badge numbers)
Budget
117. Restrict police departments from receiving more money from the general fund when they go over-budget on lawsuit payments

Seattle Office of Inspector General

October 2, 2020

OIG State Legislative Agenda Proposal

Background

To inform the Mayor's legislative agenda for the City, the Office of Inspector General (OIG) conducted a review of state-level policy proposals related to the police system's fairness and the police accountability system. OIG considered alternatives from City stakeholders, including legal experts, the ACLU, the City Attorney's Office (CAO), the Mayor's Office, the Office of Police Accountability (OPA), and the Community Police Commission (CPC), as well as national coverage of police reform efforts. OIG has suggested to the Office of Intergovernmental Relations that the City, in the development of the City's state legislative agenda, consider the following issues that impact accountability.

Policy Proposals

1. **Improve the current statewide Police Licensing/Certification Review System.** Decertification is the most effective means of preventing a police officer who has committed serious misconduct or seriously violated public trust from continuing to work in law enforcement.
2. **Create a statutory duty for officers to intervene in and report fellow officer misconduct.** Legally mandating officers to report the misconduct of fellow officers will provide greater accountability and contribute to a culture of responsibility. A requirement to stop a peer officer from committing acts of wrongdoing could reduce serious misconduct, criminal charges against officers, and harm to human lives.
3. **Amend state law to remove barriers to allowing civilian personnel to take on more roles traditionally restricted to sworn officers.** Barriers in state law and in collective bargaining agreements prevent civilians from performing certain functions, including responding to mental health crises and investigating allegations of police misconduct.
4. **Remove subpoena authority related to oversight as a subject of collective bargaining.** While cities may exercise subpoena authority by local ordinance, that authority has been subject in some jurisdictions (including Seattle) to limitation by collective bargaining.
5. **Create an independent statewide entity to investigate and prosecute deadly use of force by police officers and conduct inquest procedures.** A statewide entity would reduce the appearance of conflicts of interest between prosecutors and police departments, and create standards for investigating serious officer criminal misconduct.

6. **Remove barriers to prosecution of police officers who engage in excessive or unjustified use of deadly force.** Reassess legal standards to limit justifiable use of deadly force to cases when the officer believes deadly force was necessary and her/his conduct was reasonable given the circumstances.
7. **Modify state law to establish a standardized burden of proof (preponderance of the evidence) in police misconduct cases and any appeal or grievance process.** State law is silent on the threshold necessary to sustain a complaint against an officer, allowing police unions to negotiate for investigations of certain types of serious misconduct impacting public trust to meet a high burden of proof.
8. **Change state public disclosure laws to allow the protection of the identify of local whistleblowers.** State law does not appear to protect the identity of local whistleblowers from public disclosure, even though state-level whistleblowers have that protection.

Seattle Office of Police Accountability

Police Union Collective Bargaining Agreements

Background

Many police union collective bargaining agreements (CBAs) include provisions that supersede local and state law, limit accountability measures, and resolve vague statutes in the union's favor. In Seattle, for example, recent CBAs raised the burden of proof for certain misconduct, tipped the disciplinary process in the police union's favor by bringing back arbitration and closed hearings, and restricted the Office of Police Accountability's operations by limiting the number of civilian investigators and their functions.

Recommendations

- Amend RCW 41.56.100 to create "effects-only" bargaining for accountability-related statutory provisions so that only provisions effecting employees, e.g., work hours, can be bargained. In the alternative, specify accountability provisions that are exempt from decisional bargaining (e.g., appellate process, disciplinary timelines, retention of officer disciplinary files).
- Include community members in bargaining teams as technical advisors. Advisors should be exempt from confidentiality to allow them to report out on the broad substance of negotiations while still maintaining overall session privacy.
- Amend RCW 41.56.905 to resolve ambiguities between CBAs and local laws in favor of local laws so that one party cannot unilaterally exploit vague CBA language to nullify legislation. Direct conflicts should resolve in favor of CBAs as representing the bargained intent of both parties.

Key Considerations

- Changes to RCW 41.56 should be specific to police officers, not all public sector employees.
- There could be strong opposition to this legislation from both political parties given labor concerns and support for public safety.

Impact

- Implement accountability policies while preserving the right of public safety unions to bargain effects.
- Ensure that accountability provisions are implemented by exempting them from decisional bargaining.
- Enhance jurisdictions' abilities to hold officers accountable for misconduct.
- Increase public trust in collective bargaining agreements through community observation of bargaining and reporting out to the public.
- Prevent unions from exploiting unclear CBA provisions to circumvent accountability.

Contact

For more information contact John Barry at 206.437.4808 or john.barry@seattle.gov.

Police Officer Decertification

Background

In Washington, officers can be stripped of their state certification if convicted of a felony or terminated for "disqualifying misconduct" such as lying or possessing/using drugs. The definition of disqualifying misconduct is narrow, meaning officers can engage in egregious behavior yet retain their certification. Law enforcement agencies are required to notify the state Criminal Justice Training Commission (CJTC) of misconduct warranting decertification, but there is no auditing to ensure prompt and accurate reporting. The CJTC cannot start decertification until after final discipline and any subsequent appeals are resolved. That incentivizes frivolous appeals because officers who were terminated for disqualifying misconduct can be hired at other agencies while their appeal is pending.

Recommendations

- Expand the state's criteria on disqualifying misconduct to include bias, excessive force, and misdemeanors involving "moral turpitude" that breach the public trust.
- Require periodic local auditing of agencies' notice of police officer terminations to the CJTC to ensure accurate and timely reporting on qualifying cases of misconduct.
- Amend RCW 43.101.105 (1)(d) to allow CJTC to begin decertification after termination and prior to appeal. Officers whose termination is overturned on appeal should be recertified.
- Fund adequate staff to address current decertification backlog at CJTC.

Key Considerations

- To decertify for bias or excessive force, the state would likely have to adopt minimum bias and force policies through legislation.
- CJTC currently has a backlog of pending decertifications and one employee handling them, meaning it will take years to process existing cases without additional funding and personnel.
- Waiting for appeals to be final means decertification proceedings often take years to even begin.

Impact

- Prevent officers who are terminated for misconduct from working at another agency.
- Increase local agency reporting of disqualifying misconduct.
- Decrease time needed to revoke certification.

Contact

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"Reasonableness" in Use of Force Prosecutions

Background

The current legal test for reasonableness in Washington state, which was adopted under I-940, largely mirrors the federal standard (*Graham v. Connor*). It focuses on the information perceived by the officer at the time of the force and assesses whether a reasonable officer, operating with that same information, would have acted similarly. While an improvement over the previously existing standard – predominantly due to the removal of the "malice" requirement – it remains deferential to officers. Even under this modified standard, it is unlikely that officers will be held accountable for unreasonable or criminal conduct.

Recommendations

- Adopt legislation (see page 2) limiting an officer's statutory defense to cases where he/she not only *believed* that force was necessary but also where his/her *conduct* in using force was reasonable.
- Require that force be necessary to prevent death or serious injury to another and proportional to the threat posed by the subject.
- Adopt a nonexclusive list of factors that the jury must consider in determining reasonableness.
- Permit a voluntary manslaughter charge like some states' "imperfect self-defense" when an officer reasonably believes that a threat exists but acts unreasonably in response.

Key Considerations

- I-940 was a compromise between activists and law enforcement, so there may be political opposition to reopening the product of a negotiated deal.
- Standard should be written in a way that (like current law) prevents the jury from using knowledge that a reasonable officer *could not* have known, avoiding 20/20 hindsight bias.

Impact

- Increase the likelihood that officers who engage in criminal or excessive use of force are held accountable.
- Build community trust in accountability and criminal justice systems.
- Positively change officer behavior by shifting the paradigm under which force is used and reviewed.

Contact

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Model Legislation[1]

a. A police officer is justified in the use of deadly force if:
    i. The officer honestly and reasonably believed deadly force was immediately necessary to protect the officer or another from the threat of death or serious bodily injury, and
    ii. The officer's actions were reasonable given the totality of the circumstances.
b. The reasonableness of an officer's beliefs and actions should be assessed from the perspective of a reasonable officer in the defendant officer's shoes.
c. The jury must consider the following factors along with any other factors it deems relevant as part of the totality of the circumstances when assessing whether the officer's beliefs and actions were reasonable:
    i. Whether the deceased or injured person was, or appeared to be, in possession of a deadly weapon or an object that could be used as a deadly weapon and refused to comply with an order to drop the object or any other order reasonably related to officer or public safety prior to being shot;
    ii. Whether the officer engaged in de-escalation measures, such as taking cover, waiting for backup, trying to calm the deceased or injured person, and/or using less lethal types of force prior to the use of the force in question, if such measures were feasible; and
    iii. Any preseizure conduct by the officer that increased the risk of a deadly confrontation.
d. In cases where an officer has been charged with murder, if the officer acted with an honest, but unreasonable, belief in the need to use deadly force or if his beliefs were reasonable but his actions unreasonable, the officer may be found not guilty of murder and guilty of voluntary manslaughter.
e. Definitions
    i. “Deadly force” constitutes force likely or intended to create a substantial risk of death or serious bodily injury.
    ii. A “deadly weapon” is an inanimate object that, as used or intended, is likely to cause death or serious bodily injury.

[1] Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-escalation, Pre-seizure Conduct, and Imperfect Self Defense*, 2018 U. Ill. L. Rev. 629 (2018).

Special Prosecutor to Review Law Enforcement Uses of Deadly Force

Background

The decision of whether to charge law enforcement officers with a crime after they use deadly force is made by the prosecutor in the jurisdiction where the incident occurred. This means that generally a charging decision is made by an agency that frequently collaborates with the employer of the officer whose conduct is under review. This can create the appearance of a conflict of interest.

Recommendations

Refer all completed criminal investigations into law enforcement use of deadly force to a single Special Prosecutor with statewide jurisdiction for charging decisions. The Special Prosecutor should:

- Be housed within the Office of the Attorney General or an independent department.
- Be appointed by the governor rather than elected, confirmed by the Senate, and subject to maximum removal protections.
- Serve a four-year, renewable term, staggered against the governor.
- Be an attorney with experience in criminal prosecution or defense and ties to communities impacted by policing.

Key Considerations

- Legislation would be required to create the office and delineate its structure and authority.
- For the office to function effectively, the legislature should create a statewide investigative entity to conduct criminal investigations of law enforcement. This office would be independent of other law enforcement and would not investigate other crimes.
- Police prosecutions are unlikely to increase because they will still be based on a law that imposes an “objective reasonableness” standard that is deferential to law enforcement.

Impact

- Reduce perceived and/or actual conflicts of interest.
- Increase public confidence in charging decisions.
- Increase transparency of independence or charging decisions.

Contact

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Statewide Agency to Investigate Serious & Deadly Force

Background

The public lacks confidence in law enforcement's ability to conduct unbiased criminal investigations into police uses of deadly force. While I-940 required deadly force be investigated by teams from other law enforcement agencies, recent cases have shown that these teams are not always independent. For example, the Pierce County Sheriff's Office (PCSO) investigated Manuel Ellis's death despite the involvement of a PCSO deputy, thus requiring additional review and causing a lack of public trust in the investigation. Without additional improvements, the public will continue to doubt the legitimacy of law enforcement-led investigations.

Recommendations

Create an independent, statewide agency that conducts criminal investigations into deadly force. The agency should have the following:

- Satellite offices across the state to allow quick roll-out to scenes.
- A civilian director appointed by the governor, confirmed by the State Senate, and politically insulated to the greatest extent possible (including protections against removal).
- Civilian supervisors, with possible incorporation of law enforcement as frontline investigators.
- A requirement to publish investigative files with appropriate redactions.

Key Considerations

- This would require legislation to create the agency and ensure investigations comply with I- 940.
- The agency should conduct criminal investigations and not replace a local agency's administrative review and discipline processes.
- It is unlikely that more cases against officers will be prosecuted merely because the investigations are housed within one agency; the public may therefore perceive minimal benefit.
- The new agency will not necessarily be more competent to investigate officer-involved deaths than some local agencies in Washington.

Impact

- Create uniform criminal investigation processes and procedures.
- Increase public confidence because investigators are not investigating their colleagues.
- Ensure that local agencies cannot avoid independent review of criminal investigations.

Contact

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Statewide Use of Force, De-escalation, and Reporting

Background

Currently, each law enforcement agency in Washington sets its own policies, including those related to using force. Some local agencies do not publish their internal policies governing force. Lack of consistent, rigorous, and publicly available use of force policies increases the risk that some departments will forego de-escalation tactics and use excessive force. Without a minimum statewide policy, Washingtonians may also be subjected to greater force in some jurisdictions than others.

Recommendations

- Adopt the International Association of Chiefs of Police *National Consensus Policy on Use of Force* as a statewide minimum policy, allowing local agencies to adopt more restrictive policies.
- Require that any law enforcement use of force be: 1) objectively reasonable, 2) the minimum force necessary to accomplish a law enforcement goal, and 3) proportional to the threat.
- Train and require officers to use de-escalation, e.g., allowing time to comply with instructions, using distance and shielding, and seeking verbal compliance before using force.
- Require officers who use force to report to their supervisors; require that force be documented by officers and critically reviewed by the chain of command.

Key Considerations

- Though municipalities have historically set their own law enforcement policies, the state can provide regulation via general laws governing law enforcement policy.
- Experience implementing I-940 has shown that local agencies don't always comply with state requirements. To increase compliance, consider consequences for noncompliant agencies.
- Smaller agencies may need help training, which could be done through Basic Law Enforcement Academy (BLEA) or regular post-BLEA trainings.
- For transparency and to measure compliance, local agencies should be required to publish their policies concerning use of force, de-escalation, and force reporting and review.

Impact

- Increase use of de-escalation tactics; reduce uses of force.
- Strengthen transparency and public confidence in use of force policies and data.
- Prevent confusion resulting from inconsistent use of force policies.

Contact

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Statewide Use-of-Force Database

Background

Washington State does not collect or publish standardized data on serious and deadly uses of force by law enforcement agencies. In 2019, the FBI began a national effort to collect such data, but participation is voluntary, and only about 10% of Washington law enforcement agencies are contributing.

Recommendations

Mandate that all Washington State law enforcement agencies participate in a data collection effort by tasking a state agency to collect data and requiring agencies to enter it into the FBI program portal.

- The state should collect the same data as currently required by the FBI data collection, allowing the programs to operate in parallel.
- Under the FBI program, data must be reported when a firearm is discharged and/or when an interaction results in the death or serious bodily injury of a person.
- Task a state agency with collecting the data and providing logistical and technical support to small agencies in order to facilitate program participation.

Key Considerations

- The data reporting mandate should not extend beyond instances of firearm discharge and serious/deadly uses of force. A requirement to report lower levels of force would strain large agencies that use force more frequently and have robust reporting and investigation policies.
- This could be paired with the creation of statewide investigative entity that would conduct criminal investigations of law enforcement. This office would be independent of other law enforcement and would not investigate other crimes.
- While national force reporting is aspirational, Washington can increase transparency efforts.

Impact

- Centralize the collection of local law enforcement serious and deadly use of force data.
- Bolster national use of force data collection.
- Reflect a commitment to transparency.

Contact

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Seattle
Community
Police Commission

VIA EMAIL

September 25, 2020

Seattle Office of Intergovernmental
Relations 600 4th Ave, 5th Floor
Seattle, WA, 98124

Re: Community Police Commission's Legislative Priorities

The CPC is deeply committed to furthering the mission of uplifting and amplifying the voices of the community as it pertains to police reform and accountability. In order to be successful in our mission, the 2017 Accountability Ordinance ensured that the CPC has independent authority regarding legislative advocacy and will also be consulted as the City develops its annual legislative agenda.

The following recommendations and value statements are based on recommendations from oversight partners over the years and community feedback the CPC has received in recent months. The CPC recommends the City's legislative agenda incorporate these reforms. The CPC will continue to pursue these community priorities both in partnership with your office and through our own legislative advocacy throughout the upcoming legislative session.

Remove police accountability from the bargaining process

Police unions and their associated contracts cannot continue to stand in the way of accountability reforms that keep the community safe and are designed to combat centuries of institutional racism. Police officers are given broad authority to use deadly force and take people's liberty. Those extraordinary powers must be balanced with a strong police accountability system.

Unfortunately, police unions around the nation have used the collective bargaining process to block these accountability reforms for decades. We have seen that in Seattle as well. In 2017, dozens of community groups, the CPC, and elected officials came together to unanimously pass the landmark Accountability Ordinance. However, by the end of 2018, many of those reforms, aimed at strengthening Seattle's police disciplinary system, had been rolled back by the adoption of new police contracts. In fact, the police contracts undermined police accountability so much that a federal judge found they had violated the constitutional minimums set by the Consent Decree.

Like all public employees, police should have the right to collectively bargain for things like wages and good working conditions. However, they should not be able to bargain away accountability.

Remove arbitration as a route of appeal for police misconduct

Like many places across the country, Seattle's arbitration system is broken. Currently, there are more than 80 open cases in which a police officer has been found to have committed misconduct and is appealing the chief's decision through arbitration. In some of those cases, the misconduct happened five years ago, and the case remains unresolved. That backlog is only getting worse. Throughout all of 2019, only two cases were resolved through arbitration, delaying or denying justice for the victims of police misconduct.

Not only is arbitration functionally broken, but it is also a fundamentally flawed way of handling police misconduct. Under arbitration:

- police unions play a role in deciding who that arbitrator is;
- arbitrators often do not have expertise in police or police accountability work;
- the proceedings are not transparent, open to the public, or open to the media; and
- arbitrators can substitute their judgment for that of the police chief who is trying to hold their officers accountable. For example, the reinstatement of Adley Shepherd -- who the Seattle Police Department was forced to rehire because of an arbitrator's decision after he punched a handcuffed woman in the back of his squad car (this case still has not been settled despite happening in 2014).

The 2017 Accountability Ordinance addressed these flaws by ensuring disciplinary appeals would take place before a neutral three-member Public Safety Civil Service Commission (PSCSC) appeals panel or a hearing officer with subject matter expertise designated by the PSCSC. The process would have been timeline bound, hearing officers would have been appointed through a merit-based process, and the process would have been public. Unfortunately, those reforms were given up by the City when it allowed for the continued use of arbitration and rolled back the changes to the PSCSC Commissioner qualifications and appointment process in the latest police contracts.

The CPC raised concerns about the continued use of arbitration to the federal judge overseeing the Consent Decree in 2018. In response, the City argued that arbitration "has significant advantages and it is a fundamental feature of both federal and state labor law." The judge disagreed, pointing to Seattle's arbitration system as a key reason why he found the city out of compliance with the Consent Decree in terms of accountability. While the CPC believes the City already has full authority to implement the appeals system outlined in the Accountability Ordinance, the City has taken the position that changes to "state labor law" are needed to do so. Given that, securing those changes must be a priority.

Repair Washington's broken decertification system

The CPC is deeply committed to increasing the levels of police accountability and transparency regarding the decertification of individual officers and the reporting of such decertification at the state level.

The state's current decertification process leaves loopholes for a wide range of misconduct.

As Judge Anne Levinson (ret.), Seattle's former OPA Auditor, has pointed out, this results in two situations that make our communities unsafe. Officers fired for misconduct at one police department are able to get jobs as police officers in other jurisdictions, moving bad police officers around the state rather than ensuring they are removed from service.

1. If jurisdictions do not request that an officer be decertified, the state does not intervene. An example Levinson points to is a current officer in Auburn who was involved in three fatal shootings since 2011 and has a history of other misconduct, however, has not been decertified by the state.

The state's current decertification criteria undermine accountability in such a way that the police officer who killed John T. Williams in 2010, which sparked a federal investigation and the eventual enactment of a Consent Decree, could not be decertified by the state and remains in "good standing."

The City should work with community advocates, oversight experts, the Association of Washington Cities, and legislators to advocate for a complete overhaul of this system and create a public database with officer certification data. That should include mandating jurisdictions to report, and have that information displayed publicly, including officers who are on so-called "Brady Lists."

Institute truly independent investigations

For Initiative 940, passed by 60 percent of Washington voters, to truly live up community expectations, there is a need to have true statewide independent investigations of police killings. A system in which law enforcement investigates neighboring law enforcement agencies does not create community trust and does not improve on the many flaws Washington State has identified with investigations of police killings.

In 2017, by resolution, the City asked the CPC to create and staff an independent taskforce to make recommendations about how independent investigations should work in Seattle. The Serious and Deadly Force Investigation Taskforce (SDFIT), which included community members who had lost family members to police violence, police accountability advocates, and current and former law enforcement, made 15 recommendations last year. That included two for statewide reforms:

1. Establish an investigative unit in the State Attorney General's Office to conduct criminal investigations of serious and deadly uses of force.
2. Establish a state-level entity to review all closed investigations statewide. That includes reviewing all closed investigations for flaws and be a clearinghouse for all investigative reports and data statewide.

The CPC recommends the City of Seattle push for both of these reforms while we await the findings and contributions of the Governor's Task Force on Independent Investigations of Police Use of Force on this issue.

Ban tear gas in Washington State

Tear gas is a weapon banned in war by the Chemical Weapons Convention. It's indiscriminate and police have no control over whether it hits protesters exercising their First Amendment rights or babies sleeping in their homes. Thousands of health officials have warned us that it exacerbates the Coronavirus pandemic. The other health effects are not even known because, as a weapon of war, it has only been studied, if at all, on the male population. However, protesters, journalists, and bystanders exposed to it have reported abnormal menstrual cycles.

For these and many other reasons, it is clear -- tear gas must be banned in Washington State. All three of Seattle's police accountability agencies (CPC, OIG, and OPA) recommended in June that SPD stop using tear gas against protesters. The City has also passed legislation banning tear gas, among other things, which the CPC fully supports. Meanwhile, the Washington State Patrol has suspended its use of tear gas. Now is the time to make sure these weapons are not available for use at the discretion of police in Washington State.

End Qualified Immunity

Qualified immunity has shielded police officers who break the law for decades. Now is the time to ensure our state laws end it. Originally conceived to protect government employees from frivolous lawsuits, a series of broad court decisions since the 1960s has warped that idea into a system where it is now nearly impossible to hold police officers liable, allowing them to violate constitutional rights with impunity.

Even many federal judges believe these protections have gone too far. Earlier this year, while being forced to find an officer was protected by qualified immunity, Federal Judge Carlton Reeves said, "Judges have invented a legal doctrine to protect law enforcement officers from having to face any consequences for wrongdoing. The doctrine is called 'qualified immunity.' In real life, it operates like absolute immunity."

A system of true police accountability cannot exist side by side with legal protections that shield police from liability for their misconduct. Washington State should join Colorado in ensuring there is a way for victims of police violence and misconduct to hold police officers liable when their constitutional rights are violated.

Strengthen requirements for officers to intervene when they witness police misconduct

George Floyd died, in part, because officers who were witnessing police misconduct did not intervene and save his life. The CPC is deeply committed to ensuring that officers act in the best interest of community members during all interactions. This includes encouraging officers to intervene when their colleagues are committing misconduct. Washington should create a statewide baseline policy that requires all law enforcement agencies in the state to have strong policies requiring all officers on-scene to intervene when they witness misconduct or mistakes being made. State law should also allow individual agencies to go above and beyond state requirements. The victims of police misconduct should also be able to bring civil lawsuits against bystander officers who do not intervene.

However, we acknowledge that simply adopting policies and highlighting federal law will not be enough. This will require a change in culture. To aid in that, the state has opted to join the Active Bystandership for Law Enforcement Project (Project ABLE). The program, which comes

from the Georgetown Law Innovative Police Program, builds off academic research and on-the-ground experience to become an effective, yet active bystander.

To be Project ABLE certified, law enforcement agencies and state academies must meet ten standards, including gaining community support for the training; ensuring strong written anti-retaliation policies are in place so interveners are not punished; and mandating agencies have a meaningful officer wellness program. WSCJTC has recently begun the "train the trainer" process which will prepare SPD to train new recruits to be active bystanders. What is unknown is the status of the training for current officers and how this training effort will impact local departments.

Ensure community is represented on the WSCJTC

The Washington State Criminal Justice Training Commission (WSCJTC) has broad powers to decide how law enforcement is regulated, trained, and certified statewide. However, the overwhelming majority of the commission's voting members are current law enforcement, leading to a situation where law enforcement is regulating itself. Only three of the 16 seats on the commission are designated for community members.

We witnessed this system fail last year. After 60 percent of Washington voters approved Initiative 940 requiring independent investigations of police killings, the rules for how independent investigations would work were ultimately decided by the WSCJTC. What they approved did not meet community expectations. That is one of the reasons why that issue has still not been settled, and the Governor has had to create yet another commission to advise him how to properly implement independent investigations.

In order to truly implement a community-centered model of policing, Seattle should advocate for at least 50 percent of the WSCJTC's voting members to be non-law-enforcement community members.

Sincerely,

Rev. Harriett Walden, Co-Chair
Community Police Commission

Prachi Dave, Co-Chair
Community Police Commission

Rev. Aaron Williams, Co-Chair
Community Police Commission