

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

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 WAC 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 has always been at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

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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.

Complete 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 un-preserved for the arrival of the independent investigation 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 that operates 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 deadly force incidents in their geographical regions. The IIT will have at least two nonlaw enforcement community representatives directly participating in the vetting and selection of investigators and review conflict of interest statements submitted by investigators at the beginning of each investigation, and additional tasks as set out in this WAC. Each agency that enters into the agreement is considered a "member agency."

Initial incident response - This is the period in time immediately following a deadly force incident when involved agency personnel on scene and other first responders immediately take actions to render the scene safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries. Then the involved agency will immediately call the IIT and 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.

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

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 affect 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 sub-

stantial 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 factors 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 public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that builds public trust.

At a future date, in order to create accountability, it is necessary to establish a process to gather and review data about uses of deadly force, and subsequent investigations, and to report data so the public can determine if the standards for independent investigations are being met and are improving public trust.

(1) **Independence.**

(a) Independence is essential to 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:

- No member of the involved agency may participate in any way in the investigation conducted by the IIT.

- No information about the ongoing independent investigation 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.

- No specialized equipment belonging to the involved agency may be used by the independent investigative team unless no reasonable alternative exists, and the equipment is critical to carrying out the independent investigation. If the equipment is used, the nonlaw enforcement community representatives on the IIT must be notified about: 1 - why it needs to be used; and 2 - the steps taken to strictly limit the role of any involved agency personnel in facilitating the use of that equipment.

(2) **Transparency.**

(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the in-

vestigation is conducted in a trustworthy manner and complies with the standards for the five listed factors.

(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 nonlaw enforcement community representatives on the IIT will be available to the public.

- A minimum of two nonlaw enforcement community representatives will be assigned to each IIT to participate in the vetting, interviewing, and selection of IIT investigators; review conflict of interest statements; be present at the briefings with the involved agency(s) chief or sheriff; have access to the investigation file when it is completed; review all press releases and communication to the media; and review notification of equipment use of the involved agency.

- The nonlaw enforcement community representatives must sign a binding confidentiality agreement at the beginning of each 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 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.

- 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 team 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. Significant requirements are set for the selection of investigators for the IIT. 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 independent investigative team arrives.

- The perimeter should 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 each year 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 law enforcement training and community safety act. 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 the supervisor and the member. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

- These requirements also apply to any "public safety" statements compelled from involved officers.

(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 includes an IIT commander, assistant or co-commander, and the logistics/administrative commander.

- At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force.

- 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 commander shall make written notification to the member agency's leadership, soliciting personnel from their respective agencies for assignment to IIT.

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 review board, which includes the nonlaw enforcement community representative advisor 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 review board the IIT commander shall consider the recommendations of the board 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.

- The applicant must have the written recommendation from their immediate supervisor.

- The agency and applicant must commit to three years of service to the IIT (excludes promotion or exigent circumstances).

- The agency and applicant shall commit to ongoing advanced investigative training.

- The agency and applicant must commit to eight hours of semianual IIT training.

- The applicant must be willing to be on call and reasonably available for call-out.

- The applicant should meet the basic training requirements identified in this chapter.

(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 CJTC will issue an "IIT qualified investigator certificate" to ensure that those who are entrusted with investigating officer involved use of deadly force incidents meet a basic training requirement listed below prior to joining an IIT. Each of the classes listed below must contain at least forty hours of instruction approved by WSCJTC. To obtain a basic IIT certificate candidates must:

- Provide proof of at least three years of uninterrupted experience as a certified peace officer.

- Provide proof of successful completion of the basic training classes listed in this chapter.

(A) Basic training classes:

- Basic homicide investigation;
- Crime scene investigation;
- Interviewing and interrogation;
- Crime scene photography/videography; and
- Violence de-escalation and mental health.

(B) Advanced training classes.

Advanced training develops and maintains competence, which improves the credibility of the team. The advanced training classes, taken before and/or during appointment to an IIT, are desirable and member agencies should make reasonable efforts to provide this training. A minimum of twenty-four 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; 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 as well as recertification every three years.
- The IIT shall train as a unit at least semiannually.

(vi) Demonstrated History of Honorable Behavior.

Investigators assigned to an IIT must have a work history free of sustained serious misconduct and/or a pattern of complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the deadly force incident.

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

- Discrimination of any type, based on protected classes identified by the equal employment opportunity commission.
- Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, 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.

Prior to each independent investigation, investigators 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 the investigator's prior interaction or relationship with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and approved by the nonlaw enforcement community representatives and the IIT commander.