

November 4, 2019

TO: Sue Rahr, Executive Director, Washington State Criminal Justice Training Commission
FROM: Community Stakeholders
SUBJECT: Draft WAC Rules - Independent Investigations of Police Use of Deadly Force

Director Rahr,

We are writing to identify additional language changes and note areas of concern in response to the draft WAC rules you shared on October 23rd.

But before doing that, we want to recognize the work done by you and your staff. We appreciate the participation of the CJTC in all ten of the community forums we hosted across the State between September 11th and October 3rd. We also appreciate your flexibility in scheduling meetings and gathering input pursuant to the CJTC's statutory duties to consult with the community and other stakeholders.

The community is committed to transformation and change, and we are keenly aware that this does not happen overnight, or through one piece of legislation. We are here for the long haul. While I-940 was historic in many ways, it is the intentional requirement to listen to a diverse array of community voices that is a model for going forward. Central to reimagining systems of justice and the relationship between community and police is the inclusion and centering of people who are directly impacted.

On August 2nd we sent you a memo outlining our initial take on the framework for the draft rule. Since then we provided markups of your rough drafts, submitted our own version of the proposed WAC, sent you a proposal for selecting community members of the investigation team, and shared a handout framing the overarching values for independent investigations. Based on your October 23 draft, it is evident that a great deal of our input was considered and is reflected in the draft. Thank you.

To recap, throughout the development of the proposed WAC, we have asked for: a purpose statement, key definitions, clear separation between the involved agency and the investigators, assessment of conflicts of interest to manage independence, an evaluation of bias and character to manage credibility, acknowledgment of the differences between the administrative and the criminal investigation, controls around communication, prioritization of providing first aid, inclusion and notification of tribal governments, and a strong role for community in the overall process.

The following are requests for editing to address our remaining concerns:

Clear Separation

On page 2, under “Initial incident response,” the final sentence can be misread to give the “involved agency” the authority to decide when to relinquish control of the scene. We recommend the following edit to address this:

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 as soon as requested. The involved agency may be asked by the IIT to continue to provide outside perimeter control subject to available IIT resources.

Community Representatives

We agree with the philosophy in the October 23 draft that community involvement is essential to transparency and credibility. While this draft doesn’t get the community “inside the tape,” in the interview room, or examining evidence, it does provide a degree of access and increased transparency, and a significant role at some critical moments of the investigation.

The October 23 draft places all authority to appoint the community representatives with the sheriffs and chiefs who are part of the geographical team. As we have shared, and as you know, *we cannot support this approach*. We ask the following changes at the top of page 6, first bullet, so that the community’s affirmative role in identifying the candidates for community representatives is clear, and so that there is a consistent method to be used in the IITs.

- At least two nonlaw enforcement community representatives who have credibility with and ties to the communities impacted by police use of deadly force. The nonlaw enforcement representatives must be recommended by community stakeholders and be individuals who agree to serve in this role. At the first annual summits conducted on each side of the state pursuant to WAC 139-11-050, the Director will solicit input from sheriffs, police chiefs, and the community members described in WAC 139-11-050(1) on proposed methods for compiling, updating, and making publicly available regional lists of nonlaw enforcement representatives. The Director will decide on and implement a method within six months following the latter of the first annual summits conducted on each side of the state.

Fair and Impartial

We support the involvement of the community representatives in the “Conflicts of Interest” assessment. And, we worry that their lack of access to background material will hamper the community representatives’ ability to probe the veracity of the applicant’s answers. Likewise, in the section on “Demonstrated History of Honorable Behavior” we have concerns that the work history will be unavailable to the community representatives, and perhaps even the IIT commander, to ascertain whether the individual was properly vetted by local law enforcement agencies who recommend applicants to the IIT.

We request the following provision be added to page 6, (ii) Selection Process for IIT Members, second bullet:

- Ensure that qualified applicants are interviewed by a review board, which includes the nonlaw enforcement community representatives ~~advisor~~ and other members of the IIT selected by the IIT commander. The review board shall have access to the applicant's relevant training records, social media accounts, chronological record of law enforcement work history demonstrating relevant experience, record of sustained misconduct findings and discipline, and affiliations with any group identified as a hate group, such as white nationalists.

Protected Classes

On page 7, we request that instead of referring to the equal employment opportunity commission, which is a federal agency, that the WAC refer to the Washington State law on "Freedom from Discrimination – Declaration of Civil Rights" under RCW 49.60.030. That change would simply be:

- Discrimination of any type, based on protected classes identified ~~by the equal employment opportunity commission~~ under RCW 49.60.030 (1).

Feedback Loop

We see a lot of value in the Annual Summits and request that the experiences under this WAC be part of the review taking place each year at the two summits.

We recommend adding a subsection (3)(c), at the top of page 5, that reads:

(c) The Criminal Justice Training Commission shall review the independent investigations that took place the prior calendar year, identify any trends, other notable data, concerns, best practices, and gather community and family input as part of the annual report referenced in WAC 139-11-050.