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Subject: Proposed Community-Law Enforcement Inquest Agreement
Attachments: Proposed Community-Law Enforcement Inquest Agreement.docx



Proposed Community-Law Enforcement Inquest Compromise

Below are proposed inquest process revisions that may be agreed to between community groups and law enforcement. This is formatted against the backdrop of the Inquest Review Committee's proposal, with modifications to include improvements, based on previous community-law enforcement discussions. Additionally, the proposed resolution addresses the six areas identified by law enforcement at the June 20th meeting where immediate agreement could not be reached.¹ In an effort to help reach a comprehensive resolution, the community coalition was able to agree to law enforcement's suggestions in five of the six areas. These five new areas of possible agreement have been included in track changes, below.

The community coalition believes agreement on these revised rules would create a fair and effective inquest process, which addresses the concerns raised by law enforcement and which we would feel comfortable advocating for with interested community partners. The proposed package is the product of several conversations between community groups and law

¹ The six outstanding areas of law enforcement concern were:

1. Ensuring bias was only addressed in an inquest when bias was an issue of concern in the actual incident;
2. Preventing speculation about less lethal options available to officers;
3. Preventing opening and closing statements from becoming a spectacle;
4. Eliminating the ability for jurors to offer commentary beyond the scope of the interrogatories;
5. Ensuring involved law enforcement officers have the same legal rights as other parties; and
6. Allowing counsel for law enforcement officers to participate in the inquest even if the officers decline to participate (this was the only outstanding area of concern where the community coalition could not support the position of law enforcement)

enforcement and, on reflection, the revisions improve upon, refine, or address areas left open by the Inquest Review Committee's proposals in several key areas.

Accordingly, in the event that law enforcement is unable to reach internal agreement, the community coalition is still willing to support Executive Constantine in implementing the revised proposal below, even though it includes several significant concessions accommodating or responding to law enforcement concerns. In the event that law enforcement cannot reach internal agreement, the only change the Coalition would request is that the Executive restore the current practice of permitting the subpoena of involved officers and eliminate the expectation that law enforcement leadership testify (highlighted below).

Conducting Inquests in King County

1. SUBJECT TITLE:

Conducting Inquests in King County

2. PURPOSE:

To establish policies and procedures for conducting reviews into the facts and circumstances of any death of an individual involving a member of any law enforcement agency within King County while in the performance of his or her duties [and/or the exercise of his or her authority], and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.

The purpose of the Inquest is to ensure a full, fair and transparent review of any such death, and to issue findings of fact regarding the facts and circumstances surrounding the death. The review will result in the issuance of findings regarding the cause and manner of death, and whether the law enforcement member(s) acted pursuant to policy and training.

The purpose of the Inquest is not to determine whether the law enforcement member acted in good faith, should be disciplined or otherwise held accountable, or to otherwise find fault, nor to determine civil or criminal liability, although it is acknowledged that the facts determined in the course of the Inquest may sometimes have an indirect bearing on such determinations in other appropriate fora.

3. ORGANIZATIONS AFFECTED:

King County Department of Public Defense; King County Executive; King County Hearing Examiner's Office; King County Prosecuting Attorney; King County Superior Court; Medical Examiner's Office; Law Enforcement agencies within King County.

4. REFERENCES:

4.1 RCW 36.24 Counties; County Coroner

4.2 King County Charter, Section 320.20 – The Executive Branch, Powers and Duties

4.3 King County Charter, Section 895 – General Provisions: Mandatory Inquests

4.4 King County Code 2.24.110 (A)

5. DEFINITIONS

5.1 "King County Executive" or "County Executive" means the official, or the designee of the official, who is elected and serves as the County Executive of King County pursuant to Article 3 of the King County Charter.

5.2 “King County Prosecuting Attorney” means the official, or the designee of the official, who is elected and serves as Prosecuting Attorney for King County pursuant to Article XI, Section 5 of the Washington State Constitution.

5.3 “Inquest” means an administrative, fact-finding inquiry into and review of the manner, facts and circumstances in the death of an individual involving a member of any law enforcement agency within King County while in the performance of his or her duties [and/or the exercise of his or her authority], and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.

5.4 “Law enforcement agency” means any agency having police powers as authorized under Washington State law. For the purposes of this policy, “a member of any law enforcement agency” shall mean commissioned officers and non-commissioned staff of all local and state police forces, jails and corrections agencies.

5.5 “Attorney representing the family of the deceased” means a privately-retained or publicly funded attorney, pursuant to KC Ordinance 18652.

5.6 “Rules of Evidence” means the evidentiary rules adopted by the Supreme Court of the State of Washington governing proceedings in the courts of the State of Washington, and such rules as may be adopted by the King County Hearing Examiner pursuant to KCC 20.22.

5.7 “Voir dire” means an examination of a prospective juror.

5.8 “In camera review” means an examination of materials by the King County Hearing Examiner in private proceedings to rule on admissibility and use.

6. POLICIES

6.1 There shall be an inquest into the manner, facts and circumstances of any death of an individual involving a member of any law enforcement agency within King County while in the performance of his or her duties, and/or the exercise of his or her authority, and in any other cases as occasionally determined by the County Executive where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees. While the term “involving” is to be construed broadly, there may be circumstances where law enforcement’s role is so minimal as to not warrant an inquest, or where for other reasons an inquest would impede the administration of justice. Factors to be considered include: whether a decision to prosecute has been made; whether the death was the result of a condition existing prior to and/or apart from the law enforcement involvement; whether the individual was in custody at the time of the death; whether the family of the deceased desire an inquest; and any other factor that touches on the connection between the manner of death and the actions of law enforcement. However, the public has a strong interest in a full and

transparent review of the circumstances surrounding the death of an individual involving law enforcement, so an inquest will ordinarily be held.

7. RESPONSIBILITIES

7.1 The King County Prosecuting Attorney shall inform the King County Executive whenever an investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated pursuant to the King County Charter. If the King County Prosecuting Attorney advises that an inquest should be initiated, the King County Prosecuting Attorney shall facilitate the review by (a) supplying a complete copy of the investigative file to the hearing examiner; (b) responding to requests for public disclosure of the investigative file; and (c) issuing subpoenas to witnesses and/or for records at the hearing examiner's request.

7.2 The King County Executive shall determine whether an inquest will be held. If an inquest is to be held, the County Executive shall request that the King County Hearing Examiner conduct the inquest on the Executive's behalf. The County Executive shall also request that the King County Superior Court facilitate the inquest by (a) supplying a jury; and (b) supplying appropriate facilities, including video/audio recording equipment and streaming. The inquest shall be conducted pursuant to this Executive Order and to RCW 36.24, as amended.

8. PROCEDURES

Action By: Prosecuting Attorney

8.1 Receives information from law enforcement agencies within King County of a death of an individual involving law enforcement that may require an inquest.

8.2 Promptly informs the County Executive of such a death.

8.3 Reviews the information and investigative file and advises the County Executive as to whether an inquest should be initiated.

8.4 Upon request of the County Executive, forwards the investigative file and documentation to the Hearing Examiner.

8.5 Upon request by the Hearing Examiner, issue subpoenas for witnesses and/or documents. **A subpoena will not be issued to any member of a law enforcement agency thought to be responsible for or involved in an individual's death.**

Action By: County Executive

8.6 Upon receipt of information involving a death that may require an inquest, promptly direct the appointment of a liaison to the representative of the family of the decedent to offer support and timely information, and to connect the family to available resources.

8.7 Upon receiving the King County Prosecuting Attorney's advisory opinion, determine whether to hold an inquest.

8.8 If an inquest is to be held, then request that the Hearing Examiner or his or her designee conduct the inquest, and that the Superior Court facilitate it.

Action By: Superior Court

8.9 If an inquest is to be held, coordinate with the Hearing Examiner to supply a jury and facilities.

Action By: Hearing Examiner

8.10 Schedule a date for the inquest and conduct the inquest according to the procedures in Appendix 9.1.

Action By: Department of Public Defense

8.11 Assign counsel for the family of the decedent unless the family indicates they have retained other counsel or do not wish to be represented by the King County Department of Public Defense.

9. APPENDICES

9.1 Procedures for Conducting Inquests.

10. PRIOR ORDERS

10.1 This Executive Order rescinds and replaces PHL 7-1-1 (AEO), "Conducting Inquests in King County," dated March 16, 2010.

Appendix 2 – Procedures for Conducting Inquests

If an inquest is to be held, the King County Hearing Examiner shall conduct the review in accordance with these procedures.

1. FACILITIES/COURTROOM

a. The inquest is an administrative hearing intended to be a fact-finding, non-adversarial process. However, the King County Superior Court administers the jury process and maintains facilities appropriate to comfortably support jurors. Therefore, where requested by the County Executive, the Superior Court will coordinate with the Hearing Examiner to secure appropriate facilities, e.g., the presiding courtroom. The Hearing Examiner shall arrange the room in a manner that promotes transparency to the public and fair treatment of all participating parties. The Hearing Examiner maintains the discretion to request separate and/or additional facilities from the County Executive. Where practicable, the facility will provide ample space for the public, private conference rooms for parties and their counsel, and a private space for family members of the deceased.

2. PARTICIPATING PARTIES

- a. The family of the deceased, who shall be allowed to have an attorney(s) present;
- b. The law enforcement member(s), if known, who shall be allowed to have an attorney(s) present, provided that the law enforcement member(s) elect(s) to participate in the inquest proceeding and offer testimony subject to examination by the other participating parties.
- c. The employing government department may be allowed to be represented by its statutory attorney or lawfully appointed designee.
- d. The Hearing Examiner may appoint a staff attorney whose role shall be to assist the Hearing Examiner.

3.0 ROLE OF THE HEARING EXAMINER/SCOPE OF THE INQUEST

- a. The Hearing Examiner shall conduct the inquest. While the proceedings are quasi-judicial in nature, with represented parties, the presentation of evidence through direct and cross-examination and subject to the Rules of Evidence, the Hearing Examiner shall strive to promote an atmosphere consistent with administrative fact-finding and strive to minimize delays, cost, and burden to participants, while promoting fair and open proceedings. Although an inquest is not a court proceeding, the Hearing Examiner shall be guided by open courts principles and GR 16.
- b. The Hearing Examiner, after consultation with the participating parties, shall determine the scope of the Inquest. Consistent with the purpose as set forth in the amended Charter,

Executive Order, and Appendix 1, the scope of the inquest will include an inquiry into and the jury shall make findings regarding the cause, manner and circumstances of the death. Additionally, the scope of the inquest will include an inquiry into and the jury shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

The scope of the inquiry may include consideration by the jury of issues important to the public's understanding of the circumstances of the death. Therefore, as further detailed below, the jury may make observations about, for example, the potential for use of less lethal options or de-escalation techniques, actions or inaction by law enforcement that may have contributed to the perceived or actual need to use lethal force, and, if the hearing examiner determines that this is an actual issue raised with some foundation by one or more parties in the case, whether bias contributed to the outcome.

Any questions submitted to the jury concerning the potential use of less lethal options and/or de-escalation techniques shall be limited to questions that ask the jury to comment on how the incident accorded with I-940/HB 3003 de-escalation requirements, training and standards that are developed through the rulemaking process.

Commented [CG1]: This language may needed to be updated depending on the WA Supreme Court's decision on whether 1-940/HB 3003 will stand.

The jury shall only be permitted to consider whether bias contributed to the outcome of the incident if the hearing examiner determines that this is an actual issue raised with some foundation by one or more parties to the case.

c. The Rules of Evidence shall generally apply but may be supplemented and/or modified by additional rules governing administrative proceedings, at the discretion of the Hearing Examiner. The application of the Rules of Evidence are to be construed by the Hearing Examiner in a manner consistent with the goal of administrative fact-finding proceedings and to promote fairness and to minimize the delays, costs, and burden that can be associated with judicial proceedings.

4.0 DISCOVERY AND ADMISSIBILITY OF EVIDENCE

a. Discoverable material shall be exchanged among the Hearing Examiner and his or her staff and any staff attorney; the attorney representing the family of the deceased; the attorney representing the jurisdiction employing the involved law enforcement member(s), and the attorney representing the involved law enforcement member(s).

b. Discovery materials are to be used solely by the attorneys for participating in the inquest. Such materials include the police and/or agency investigative file of the incident that resulted in the death. They also include the report of the Medical Examiner, crime laboratory reports, and the names, addresses and summaries and/or copies of statements of any witnesses obtained by any party.

c. In the event that confidential materials in the possession of any person or agency are sought for use in the inquest, the Hearing Examiner, upon a prima facie showing of necessity, relevancy, and lack of an alternative source for the materials, shall examine the materials in camera. These materials may include, and the Hearing Examiner shall have the discretion to consider the admissibility and use of, information that may be relevant to the incident, e.g., the complaint, investigation, and disciplinary history of the law enforcement member(s) involved; the criminal history of the decedent; and prior interactions, if any, between the decedent and the law enforcement member(s) involved. The legal representative of the person or agency in possession of the materials shall have the right to participate in the review of these materials.

d. The decedent's criminal history may only be introduced into evidence in two circumstances. First, the decedent's criminal history may be introduced into evidence when it is directly related to the reason for an arrest, detention, or use of force (e.g. officers are arresting an individual convicted of a felony who they believe is carrying a firearm). If criminal history information is admitted because it is directly related to the reason for an arrest, detention, or use of force, it should be limited to the greatest extent possible. No information should be introduced into evidence concerning the specific crime of conviction, the nature of the crime (e.g. violent or nonviolent), the deceased's incarceration history, or any other criminal charge, unless the Hearing Examiner makes a specific finding of relevance to a contested issue in the inquest. Second, evidence of criminal history may be introduced if it serves as the basis for an officer safety caution (or equivalent warning), and the member of the law enforcement agency was aware of the officer safety caution prior to any use of force; or if otherwise, contemporaneous knowledge of the individual's criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat. If criminal history information is admitted for this reason, it should be limited to the greatest extent possible, and should only include information both actually known to officer(s) at the time, and actually forming a basis for their decision to use deadly force or their tactics in approaching the individual. No information regarding the type of sentence given to the deceased or any other criminal charge may be introduced into the inquest, unless the Hearing Examiner makes a specific finding of relevance to a contested issue in the inquest.

e. Protective orders may be used to limit discovery, and the Hearing Examiner may order the return of all discretionarily-ordered discovery.

5.0 SCHEDULE AND PRE-INQUEST CONFERENCE

a. It is in the best interest of affected parties and the community to hold the inquest in a timely manner. The Hearing Examiner will work to drive timeliness and limit unnecessary delays; and extensions shall be limited and granted only upon a showing of good cause, such as the parties needing additional time to prepare for the inquest, as determined by the Hearing Examiner.

b. The Hearing Examiner and staff shall schedule pre-inquest conferences with the participating parties, and will obtain proposed witness and exhibit lists, proposed jury instructions, inquest time estimates, and will inquire whether any special needs such as interpreters should be

accommodated. The conference shall be public unless compelling circumstances require an in camera hearing, in which case the Hearing Examiner must make Findings of Fact and Conclusions of Law justifying such measures under Washington law. The Hearing Examiner shall solicit proposed stipulations of fact from both parties and work diligently to narrow the scope of inquiry at the hearing. The stipulated facts may be published by the Hearing Examiner and the jury instructed at the start of the inquest.

c. The Hearing Examiner will maintain a website publishing the schedule for the inquest and, where possible, recordings of past inquests.

6.0 JURY POOL

a. Inquest jurors shall be selected from the regular Superior Court juror pool.

7.0 JURY QUESTIONING (VOIR DIRE)

a. Jury questioning (voir dire) shall be by the Hearing Examiner, after consultation with the participating parties. There is no set limit to the number of jurors who may be excused by the Hearing Examiner, and jurors may be excused for cause and/or because serving on the inquest jury will present a hardship to the juror.

8.0 JUROR QUESTIONS FOR PARTICIPANTS

a. Inquest jurors shall be allowed to submit questions they wish to pose to witnesses in writing to the Hearing Examiner after all parties have had an opportunity to examine the witness. After consultation with the parties, the Hearing Examiner will make a determination as to whether the question will be submitted to the witness and as to the manner of the submission.

9.0 RECORDING

a. The Hearing Examiner shall ensure that the inquest proceedings are recorded and that the proceedings are made accessible to the public to the greatest extent consistent with GR 16. Where possible, the inquest proceedings should be live-streamed on the internet to the public.

10. MEDIA GUIDELINES

a. Consistent with Section 9, above, the proceedings shall be made available to the public via internet live-stream.

11. INTRODUCTORY STATEMENTS

a. Prior to the beginning of the inquest proceeding, each party may submit a statement to the Hearing Examiner that outlines the evidence and testimony that the party expects will be presented to the inquest jury. Any objections to the content of a party's statement shall be

addressed at a pre-inquest conference. Prior to the testimony of witnesses or introduction of evidence, the Hearing Examiner shall read all parties'ies' statements to the jury. The Hearing Examiner may also offer introductory remarks to the jury to explain the inquest proceeding and the jury's responsibilities.

~~a. Opening Statements will be given by the staff attorney and the participating parties. The staff attorney or a participating party may decline to give an opening statement. The statements shall be consistent with the fact-finding, not fault finding, purpose of the inquest.~~

12. ORDER OF PRESENTATION OF EVIDENCE

b. The parties will each introduce their own witnesses and evidence. The Hearing Examiner, through the staff attorney, will have the first opportunity to introduce witnesses and evidence. The Hearing Examiner will make rulings on the admissibility of evidence and testimony based on the Rules of Evidence and these procedures.

c. The Hearing Examiner, after consultation with the parties, has the discretion to decide the order of presentation of evidence and witnesses. The Hearing Examiner may direct that the appointed staff attorney shall conduct the initial examination of each witness.

13. WITNESSES AND TESTIMONY

a. The first witness at the inquest will generally be an individual, designated by the family of the decedent, to speak to the jury about the decedent. This is intended not as character evidence, but to personalize the proceedings and allow the family an opportunity equal to that of the law enforcement agency to share information with the public.

b. Each party, including the Hearing Examiner, through the staff attorney, may proffer its own witnesses to provide testimony that aids the jury in understanding issues of specialized knowledge outside of the ordinary juror's existing knowledge (e.g. training, policy, ballistics, etc.). The Hearing Examiner will make ruling on the admissibility of such testimony based on the proposed witness's qualifications, the Rules of Evidence, and these procedures. Testimony will not be permitted regarding what changes should be made to existing policy, procedure and training.

c. The employing government department shall designate an official(s) to provide a comprehensive overview of the forensic investigation into the incident (e.g. statements collected by investigators, investigators' review of forensic evidence, physical evidence investigators collected, etc.). Additionally, the chief law enforcement officer of the involved agency or Director of the employing government department shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death; whether employees' actions related to the death were pursuant to training and policy; and any conclusions the department reached about whether the employee's actions were within policy and training.

d. The inquest is intended to be a transparent process to inform the public of the circumstances of the death of a person that involved a representative of government. As such, there is a strong presumption against the exclusion of witnesses, and relevant, non-cumulative witnesses should only be excluded by the Hearing Examiner in exceptional circumstances.

e. At the conclusion of testimony, the Hearing Examiner will solicit from the staff attorney and/or from the participating parties additional submissions of proposed stipulated facts. The Hearing Examiner will determine which, if any, proposed stipulated facts should be submitted to the jury.

14. ~~CLOSING STATEMENTS~~ STATEMENTS OF SUMMATION

a. ~~Closing statements are often helpful to contextualize testimony.~~ Closing Statements of summation will be given by the staff attorney and the participating parties. The staff attorney or a participating party may decline to give a ~~closing~~ statement of summation. Statements should be consistent with the fact-finding purpose of the inquest and should not suggest conclusions of law or bear on fault.

15. JURY QUESTIONS

a. After the conclusion of testimony, each party will submit to the Hearing Examiner proposed questions to be submitted to the jury. After consultation with the parties, the Hearing Examiner will determine which questions shall be submitted to the jury. The Hearing Examiner shall provide the Jury with the list of questions for its consideration prior to the statements of summation.

b. The Hearing Examiner will give written instructions to the jury and submit questions to be answered, subject to the limitations of Section 3 (above) and keeping in mind the purpose of an inquest. The Hearing Examiner will instruct the jury that it may not comment on fault, nor on criminal or civil liability of a person or agency.

c. Beyond these limitations, the jury shall not be confined to the stipulated facts, but may consider any testimony or evidence presented during the inquest proceeding. The jury may not consider any information it has learned outside of the inquest proceeding in answering any question or providing a written statement as outlined in Subpart F of this Section. ~~At the discretion of the Hearing Examiner after being proposed by the parties to the Hearing Examiner, and subject to the limitations of Section 3 (above), the jury may be permitted to not only answer written interrogatories, but may be permitted to add non-binding narrative observations that are agreed to by the majority of jurors. The Hearing Examiner will instruct the jury that it may not comment on fault, nor on criminal or civil liability of a person or agency.~~

d. Questions submitted to the jury shall provide three response options: "yes," "no," and "unknown." A juror shall respond "yes" when the juror believes a preponderance of the evidence supports responding to the question in the affirmative. A juror shall respond "no"

when the juror believes a preponderance of the evidence supports responding to the question in the negative. A juror shall respond "unknown" if either 1) the weight of the evidence equally supports responding to the question in the affirmative and the negative or 2) not enough evidence was presented to allow the juror to answer the question in the affirmative or the negative.

e. The jury shall deliberate and jurors shall exchange their interpretations of the evidence. However, the jury need not reach unanimity and each juror shall be instructed to answer the questions individually.

f. After every question, each juror shall have the opportunity to provide a written explanation of the juror's answer. The Hearing Examiner shall direct each juror that the juror need only provide a written explanation when the juror believes that a written explanation would provide information helpful in explaining or interpreting the juror's answer. The Hearing Examiner shall offer each juror an opportunity to request assistance in recording the juror's written explanations should the juror have difficulty doing so without assistance.

16. FINDINGS

- a. The Hearing Examiner will transmit the jury's findings and, where applicable, nonbinding recommendations, to the County Executive.
- b. The Hearing Examiner may also, at his or her discretion, issue non-binding recommendations to the County Executive.
- c. The Hearing Examiner will ensure the Findings and Recommendations are published on its website.

17. ANNUAL REVIEW

- a. The Hearing Examiner will submit a report to the County Executive at the end of each year on the operations of the inquests.