

**King County Inquest  
Process Review Committee**

**Report and Recommendations**

**March 30, 2018**

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## **Acknowledgements**

The completion of this report would not have been possible without the hard work and dedication of a number of individuals.

We would like to give a special thanks to the King County Executive's staff that supported the work of the Inquest Review Committee and provided valuable research to this report, including Gail Stone, Calli Knight, and Gina Topp .

Additionally, we would also like to thank the numerous organizations and individuals who provided input into this review. Without the input of all of these organizations and individuals, and the many community members that participated, this report would not reflect the broad voices and perspectives of the people of King County.

## **Facilitator for Inquest Review Committee**

Heather Clark, Ph.D., teaches at the University of Washington in the Anthropology Department and at a local educational program called Rainier Scholars.

March 27, 2018

Dow Constantine  
King County Executive  
401 Fifth Avenue; Suite 800  
Seattle, WA 98104

Dear Executive Constantine:

The King County Inquest Process Review Committee is pleased to submit the attached Report and Recommendation.

As a committee, our mission was to determine what, if any, changes should be made to the current inquest process. The committee was also guided by the principles of transparency, community engagement, and respect for families and all those involved in the inquest process.

During the past ninety days, the committee had multiple meetings with family members, law enforcement, stakeholders and experts, as well as reviewed documents related to the current and existing process and similar processes in other jurisdictions. After considering the rich input, the committee is submitting the proposed recommendations, recognizing some can be implemented immediately to stand up the pending inquests, while some require local and/or state legislative action. The committee strongly recommends the adoption of these recommendations, as we agree that implementation would substantially improve the current inquest process.

We thank you for the privilege of serving our community with this important task. The committee also wants to recognize that you placed pending inquests on hold until our process has been completed. With that in mind, we took our charge very seriously and moved expeditiously to meet the deadline.

We would be pleased to answer any questions or provide further information as you consider our recommendations.

Sincerely,

The King County Inquest Review Process Committee

## **King County Inquest Process Review Committee Members**

**Co-chair: Fabienne “Fae” Brooks**, retired Chief of the Criminal Investigations Division with the King County Sheriff’s Office.

**Co-chair: Sandra “Sam” Pailca**, Assistant General Counsel at Microsoft, and former Director of the City of Seattle’s Office of Professional Accountability.

**Jeffrey Beaver**, a Seattle attorney at Miller Nash Graham & Dunn, and member of the Washington State Supreme Court’s Minority & Justice Commission.

**Rick Williams**, brother of John T. Williams and member of the Nitinat Band.

**Judge Dean S. Lum** of King County Superior Court.

**Devitta Briscoe**, sister of Che’ Taylor, member of Not This Time and police reform advocate.

## **Community Engagement**

Below is a list of individuals and organizations that engaged the committee as they reviewed the inquest process.

ACLU of Washington	Latina/o Bar Association of Washington
Asian Counseling and Referral Services	Legacy of Equality, Leadership and Organizing (LELO)
Asian Pacific Islander Coalition of Washington State	Loren Miller Bar Association
Attorney Kenneth Burton	Mothers for Police Accountability
Attorney Lee Covell	Mount Zion Baptist Church
Attorney Ted Buck	Muslim Association of Puget Sound
Auburn Police Department	NAMI-WA
Black Law Enforcement Association of WA (BLEAW)	National Latino Peace Officer Association - WA Chapter
BLM Seattle/KC	National Organization of Black Law Enforcement Executives (NOBLE)
Casa Latina	New Beginnings Christian Fellowship
Chief Seattle Club	Nikkita Oliver
Church Council of Greater Seattle	Not This Time
Coalition of Immigrant, Refugees, and Communities of Color	NW Immigrant Rights Project
Colectiva Legal del Pueblo	Office of Professional Accountability, Auditor
Columbia Legal Services	OneAmerica
Community Police Commission, Seattle	Open Doors for Multicultural Families
COMPAS	Para Los Niños
Damascus Baptist Church	Public Defender Association
Defenders Association	Real Change
Disability Rights Washington	Refugee Women's Alliance
El Centro de la Raza	Seattle Community Police Commission
Episcopal Diocese of Olympia (St. Marks Cathedral)	Seattle Foundation
First A. M. E. Church	Seattle Japanese American Citizens League
JACL	Seattle Medium
James Bible Law Group	Seattle/King County NAACP
Jenna Mitchell	Seattle Police Officers Guild
Judge Jim Street (ret.) KCSC & SCC	Seattle Urban League
Judge Michael Fox (ret.) KCSC	Techno-Formation Vocational Services
KC Hearing Examiner	The Butts Family
KC Office of Law Enforcement Oversight (OLEO)	The Le Family
KCPOG	The Lyles Family
Kent Police Department	The McDade Family
King County Bar Association	The Murphy Family
King County District Court	The Taylor Family
King County Police Chiefs Association (KCPCA)	United Black Christian Clergy of Washington
King County Police Officers Guild (KCPOG)	Uplift Dawah
King County Prosecutor's Office	Vietnamese Community Defender Association
KRIZ Radio	Washington State Patrol

## **Executive Summary**

There are few things more important for democratic government to get right than to ensure fair and transparent review of the death of a person at the hands of law enforcement acting in their official duties. The inquest process in King County was intended to serve that purpose, providing a public airing of the facts and circumstances surrounding such a death – often a police shooting - so that the community may make up its own mind about what happened.

It was clear to the Committee that there was near universal agreement that inquests continue to provide a valuable public and open opportunity for King County residents to understand the facts surrounding a police shooting, and that unlike many other jurisdictions which have discontinued them, Washington and King County should continue to conduct public inquests.

We also heard clearly that the community is confused by the inquest process and frustrated at its limited scope, and that families of the decedent experience a system that seems insensitive and stacked against them.

The Committee's work was guided by these themes, and by the need to balance the consensus around change against constraints imposed by due process and existing state and local law, including legislation at both levels that occurred during the Committee's work. The Committee's key recommendations are summarized below, and more fully expressed in the proposed revisions to the King County Charter and Executive Orders included in this report.

- **Maintain, but improve upon the transparency of the existing inquest process.** As a matter of open government, inquests should continue to be open to the public and the media. Proceedings should be made more readily available through publication of schedules, recording, and live-streaming. Publish information about inquest results and trends.
- **Substantially limit the role of the Superior/District Court and that of the Prosecuting Attorney's Office.** An inquest outcome does not legally establish criminal or civil liability, yet inquests were conducted in a courtroom presided over by a sitting judge, with a King County Prosecutor presenting evidence. It is little wonder that this led to widespread confusion. As explained more fully in the Report, the Committee recommends that the role of the Court be limited to supplying a jury and facilities support; and that the Prosecuting Attorney have no role in the presentation of evidence during the inquest process.
- **The King County Hearing Examiner should oversee a pool of pro tem judges/attorneys to preside over inquests.** Transition to administration by the hearing examiner will reinforce the function of the inquest as a fact-finding, administrative review, as opposed to a tribunal for fault-finding. The Executive should move promptly to solicit and secure

a team of competent, qualified individuals to serve in this capacity, and adequate staff and staff attorneys to support them.

- **Clarify purpose and scope of the inquest.** A strong source of frustration with the current process was that it had evolved to take an overly narrow, often rigid view of the scope of the inquiry. The Committee is firm that the purpose of the inquest is to ensure a full, fair and transparent review of the facts and circumstances surrounding a death, **not** to determine whether law enforcement acted in good faith or to otherwise find fault, or to determine civil or criminal liability. However, the inquest is the appropriate forum for the community – through the jury – to consider issues and express its views on the important question of how deaths in similar circumstances may be prevented. At the discretion of the hearing examiner, on a case by case basis, the scope of the inquest may be expanded to address this essential issue.
- **Expand the size of the jury and permit the jury to make meaningful observations and recommendations.** Although the jury's verdict is not binding, the inquest jury should be retained as a voice of the community. Legislative action should be proposed to increase the size of the jury from 6 to 12 to enhance public participation and achieve diverse representation. Further, the jury should be permitted to consider and speak to issues important to the public's understanding of the circumstances of the death and to the question of how to prevent deaths in similar circumstances.
- **Promulgation of procedural rules to enhance inquest proceedings.** The Committee recommends certain changes for more robust reviews. The changes are set forth more fully in the proposed revisions to the Executive Order and accompanying Procedures for Conducting Inquests. They include opportunities for streamlining the proceedings and reducing the burden on participants and the jury, providing options for opening and closing statements and witness testimony about the decedent, limitations on expert testimony, and for more active participation by juries.
- **Increase timely information to and support for decedent's families.** There was no identified process to notify decedent families of a death of a family member or to ensure they had information about the investigation and inquest process. Promptly upon notification of a death, the County Executive should appoint a liaison to the representative of the family of the decedent to offer support, timely information and coordination with law enforcement agencies, and to connect the family to available, culturally competent resources. The Committee also recommends appropriate accommodations for decedent families at the inquest proceedings.
- **Establish process for public education and for ongoing review.** The Executive should direct the Hearing Examiner to produce public information and education about the inquest process generally and about the schedules and reports on each individual inquest. The Hearing Examiner should report to the Executive annually on the operations of the inquest process, and the Executive should solicit additional reviews as

appropriate – including by this Committee – as to the effectiveness of the reforms implemented. The process established should ensure the review of trends, patterns, and conclusions to be drawn from multiple inquests over time and should identify areas for additional coordination with other police accountability agencies and systems.

- **Refer participants to parallel processes to promote resolution and healing.** The Committee recognizes that the inquest process, standing alone, is inadequate to the task of promoting understanding and healing in the wake of tragic and emotionally charged incidents. The Executive should ensure that the family of the decedent is directed to resources and processes within the County that are designed to facilitate peace and promote healing, such as, Restorative Justice circles. Where the affected parties agree to participate, these offer the potential for meaningful connection and resolution.

## **Background**

The inquest process is unique to King County and has been passed down from one administration to another.

- State law, RCW Chapter 36.24 authorizes coroners' inquests.
- Section 895 of the King County Charter requires an inquest be held to investigate the causes and circumstance of any death involving a member of law enforcement in the performance of their duties.
- King County Code Chapter 2.24 vests the holding of inquests with the County Executive. King County Executive Order PHL-7-1-1 (AEO) establishes the policies and procedures for conducting inquests.

The purpose of an inquest is to provide an open public forum, conducted by a neutral decision-maker, to shed light on the facts surrounding a death at the hands of law enforcement. A further purpose is to promote public understanding of those crucial events in our community in which law enforcement takes human life as a part of their official duties. Executive Order PHL 7-1-1 (AEO), Conducting Inquests in King County and the procedures set forth with that order exist to promote this goal. Those documents have been revised previously but have not been examined in any significant way since 2001.

## **Formation of Inquest Review Committee**

On December 12, 2017 – in response to growing community requests for such a review – King County Executive Dow Constantine established a six-member committee to review and reexamine the inquest process to determine what, if any, changes could be made to improve the process both for the public and the affected parties. Further, Executive Constantine announced that the current pending inquest proceedings would temporarily be put on hold and no further inquests would be ordered until the review committee delivered its

recommendations. The Inquest Review Committee (Committee) was charged with submitting its report and recommendations by the end of March 2018.

## **Outreach and Data Collection**

The Committee understood that many people in the community had strong feelings about the inquest process and was committed to hearing from as many individuals and stakeholders as possible about changes they wished to see. The Committee also wanted to be sure the general public had a way to provide feedback about the process and to offer specific recommendations about changes, if any.

To ensure that multiple, diverse perspectives were heard, the Committee created multiple channels of communication for individuals and/or organizations to provide their feedback and suggest changes. An Inquest Process Review webpage was created to share information with the public, and a unique email address was provided for people to submit their recommendations and feedback in writing. Several individuals chose to submit their recommendations using this method.

The committee was also dedicated to meeting with as many people as possible to hear their experiences and feedback first-hand. Between January 27, 2018 and March 5, 2018 the committee held three public focus groups: the first at the New Holly Gathering Hall in South Seattle; the second at the Tukwila Community Center in Tukwila; and the third at the Community and Event Center on Mercer Island.

In addition to these public focus groups, the committee conducted four stakeholder panel discussions: (1) with family members of decedents; (2) with representatives from law enforcement; (3) with representatives from the prosecuting attorney's office and district court judges, and (4) with other technical experts, including defense attorneys, and representatives from community police commission and local oversight agencies.

The committee also accepted invitations to attend and conduct focus groups with the general membership of two local organizations: the King County Police Chiefs Association (KCPA) and the local chapter of the National Association for the Advancement of Colored People (NAACP).

Finally, committee members contacted individuals and organizations from their own networks for one on one conversations. Altogether, approximately 204 individuals and close to 50 organizations participated in sharing their experiences, ideas and offering recommendations. Notes from each of the focus groups and panel discussions are included in the appendix.

To ensure the data collected was consistent, the committee created four guiding questions that everyone was asked to discuss. The guiding questions were:

1. What is working with the current inquest process?

2. What is not working with the current inquest process?
3. What specific changes would you make to the inquest process?
4. Who else do you think should be involved in the current inquest process?

The four guiding questions were sent to individual stakeholders and organizations to provide feedback, as well as asked of attendees at all of the public focus groups and panel discussions. The goal of each conversation was to hear the perspective of the individual and/or organization regarding the inquest process. In most of the discussions, while there were some differing opinions, the Committee was struck by the broad agreement in several overlapping areas.

**Question number one: “What is working with the current inquest process?”**

The committee heard on more than one occasion what is working with the current inquest process is that King County has one, acknowledging that a majority of other counties do not have any type of public hearing of the facts surrounding the death of a person at the hands of law enforcement. Another theme that surfaced was the fact that the public was permitted to attend the hearing, as opposed to the inquest process being conducted privately. There was some feedback that “nothing” or “not much” of the current inquest process is working. Law enforcement stakeholders tended to have a favorable view of the current inquest process, also noting the benefits of an open, public forum. The overarching theme for what is working was that King County has an inquest process and that the public is allowed to witness the proceedings.

**Question number two: “What is not working with the current inquest process?”**

This question garnered more responses than question number one. There were four primary themes from the collected responses:

1. Time delay of the inquest process
2. Perception that the inquest process is one-sided in favor of law enforcement
3. Inquest process is unclear
4. Unfair treatment of family members of decedents

There was no clear understanding why it took so long to begin the inquest process, in some cases up to 12-months, though it was generally noted that new King County legislation to fund representation for family members of decedents would reduce one element that contributed to delay, working around the schedules of attorneys volunteering their time *pro bono* to the families.

Comments such as “structured through law enforcement,” or “facts are one-sided, weighed toward law enforcement” illustrate the perception that the inquest process favors law enforcement. Often, people shared how confused they were by what the inquest process was, and what it was not. Acknowledging the lack of knowledge by the public regarding the inquest

process, the Committee created a ‘King County Inquests 101’ handout for distribution at each focus group. Family members of decedents and advocates for families shared how the current inquest process was not helpful to families. Some said the inquest process and proceedings were “disrespectful,” “lacked compassion,” and were condescending to families.

Interestingly, the “limited scope of the inquest” was described as something that is both working, and not working, with the current inquest process. Community members viewed the narrow scope as too constraining, as it precluded the consideration of some relevant information and restricted what the jury could opine on. At the same time, members of the law enforcement community tended to see the limited scope as a positive, as it focused on just the one incident under review.

**Question number three: “What specific changes would you make to the inquest process?”**

This question generated the most comments. It was also the question the Committee wanted to ensure it had feedback on to assist in the creation of well-rounded final recommendations. There were close to 100 comments for this question. Four primary themes surfaced:

1. Keeping the public informed
2. Expand & evaluate the roles of participants
3. More family involvement
4. More public education

While some comments were directly connected to question number two, e.g., faster timeline to begin inquest process, several other responses spoke to other issues. The interest in keeping the public informed led participants to note that while most people may not be able to attend an inquest hearing, there should be alternative ways to keep the public informed about what was happening during the proceedings, suggesting live streaming and the release of transcripts.

There were strong feelings that the role of all of the participants in their process should be evaluated. The committee received comments such as “have a completely independent investigation,” “remove the Prosecuting Attorney’s Office,” “abolish the jury,” “expand the number of jury members,” and “expand the scope of the inquest process.” Family members of victims and their advocates again expressed the need to allow them to have more involvement and support in the proceedings. Suggestions were made to “allow family members to call witnesses,” to “provide support for families beyond legal representation,” and, once again, to “have more compassion for the family.”

The theme of public education was brought up in several aspects of the process. Comments were made that directly expressed the need for the King County Executive to provide general education to the public about the purpose of an inquest. There were also comments about being educated about the outcomes of an inquest process, and family members of decedents shared they would like to be given more education prior to the inquest process.

**Question number four: “Who else do you think should be involved in the current inquest process?”**

This question was intended as a way for the committee to receive input from the public about other groups or individuals that should be included in an inquest. This question received only a few responses. Some respondents suggested a role for homeless and youth organizations, while some advocated the use of a community police model or medical examiner as viable options to strengthen the inquest process.

## **Recommended Amendments to King County Charter and Executive Orders**

The inquest process is implemented in King County through the Charter and Executive Orders. The Committee drafted proposed revisions of both to capture its recommendations summarized above. Primarily, the revisions are intended to reflect the Committee's direction to restructure the heavily judicial, law enforcement-centric proceedings to balanced, administrative proceedings that emphasize fact-finding and community expression, not ultimate outcomes.

The drafts below contemplate revisions to the Charter to update the definition of an inquest, and to the Executive Orders that lay out the procedures for conducting inquests.

### **King County Charter Section 895 – Mandatory Inquests**

***An inquest, a fact-finding administrative hearing, shall be held to find facts and review the circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member's duties or in the exercise of the member's authority.***

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### **King County Executive Order**

**Title:** Conducting Inquests in King County

**Document Code No.** \_\_\_\_\_

**Department/Issuing Agency** – King County Executive

**Date:** \_\_\_\_\_ [updating order of March 16, 2010]

**WHEREAS**, Revised Code of Washington (RCW) Chapter 36.24 authorizes the county coroner to summon a jury to inquire into the death of a person by suspicious circumstances; and

**WHEREAS**, Section 895 of the King County Charter provides, as amended, that an inquest shall be held to find facts and review the circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member's duties or in the exercise of the member's authority; and

**WHEREAS**, King County Code (KCC) Chapter 2.35A created a division of the medical examiner within the Seattle-King County Department of Public Health and assigned to it most of the coroner's duties under RCW Chapter 36.24, "except for the holding of inquests, which function is vested in the county executive" under KCC 2.35A.090.B; and

**WHEREAS**, the County Executive, in exercising the authority to hold inquests, has discretion to determine how inquest proceedings are to be conducted, and to delegate the duty of presiding over an inquest to another impartial public official, and

**WHEREAS**, the County Executive retains the ultimate responsibility for the exercise of the inquest power and the performance of the delegated duty;

**NOW, THEREFORE**, I Dow Constantine, King County Executive do hereby exercise that authority and order, direct, and implement the policy and procedures for conducting an Inquest, at appendices 1 and 2:

**DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

## **Appendix 1 - 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 a person 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 other exceptional cases as determined by the County Executive.  
  
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 may result, where applicable, in the issuance of additional observations and/or recommendations.  
  
The purpose of the Inquest is **not** to determine whether the law enforcement member acted in good faith or to otherwise find fault, nor to determine civil or criminal liability.
- 3. ORGANIZATIONS AFFECTED:**  
King County Executive; 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 a person 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 other exceptional cases as determined by the County Executive.
- 5.4 "Law enforcement agency" means any agency having police powers as authorized under Washington State law.
- 5.5 "Attorney representing the family of the deceased person" 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 KC 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 a person 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 exceptional cases as determined by the County Executive. 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. 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 police involvement; whether the individual was in custody at the time of the death; whether the family of the person 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 a person 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 may be initiated, the PAO 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 shall 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 a person 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 investigative file and documentation to the Hearing Examiner.
- 8.5 Upon request by the Hearing Examiner, issue subpoenas for witnesses and/or documents.

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 PAO'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.

## **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 may 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.
- c. The employing government department may be allowed to be represented by its statutory attorney or lawfully appointed designee, but the Hearing Examiner may exercise discretion to limit participation by additional representatives to reduce complexity, minimize delays, and promote fairness.
- 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.

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 and to the question of how to prevent future deaths in similar circumstances. Therefore, where applicable, the jury may make observations about, for example, the potential for use of less lethal options, actions or inaction by law enforcement that may contribute to the need to use lethal force, and whether bias contributed to the outcome, and may issue as a result non-binding recommendations for any additions or changes to existing law, policy, procedure or training.

*Any such observations and recommendations must be consistent with facts determined at the inquest and are to be an expression of community standards, not expert opinion.*

- c. The Hearing Examiner will, following consultation with the parties, make rulings on the admissibility of evidence, and determine who shall be called as witnesses.
- d. 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 EVID**

- 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; and the attorney representing the involved law enforcement member(s) and other participating parties.
- 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 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. 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, optimally within 90 days of the death. 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 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.

## **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 at any point during the inquest. The Hearing Examiner will make a determination on 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. ORDER OF PRESENTATION OF EVIDENCE**

- a. Opening Statements may be given by the staff attorney and/or by the participating parties at the discretion of the Hearing Examiner at the start of the inquest. Where permitted, the statements shall be consistent with the fact-finding, not fault finding, purpose of the inquest.
- b. 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.

## **12. WITNESSES AND EXPERT 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. The inquest is intended to determine facts and allow for the expression of community expectations and standards by the jury. There is thus a strong presumption against the admission of expert testimony by any expert other than the King County Medical Examiner's Office, and the Hearing Examiner should admit other expert testimony only in exceptional circumstances and where relevant to the determination of facts, such as medical testimony regarding the cause of death and existing police procedure. Expert testimony will not be permitted regarding what changes should be made to existing policy, procedure and training.
- c. 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.
- d. 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.

### **13. CLOSING STATEMENTS**

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

### **14. JURY QUESTIONS**

- a. The hearing examiner will consider whether to submit additional stipulated facts to the jury for their consideration. The Hearing Examiner will also solicit from the staff attorney and participating parties suggestions for questions to be submitted to the jury.
- 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. 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. If, at the Hearing Examiner's discretion, the jury is to consider recommendations, specifically as to changes to existing law, policy, procedure, or training, the jury should be instructed that any such recommendations are advisory, non-binding and do not carry the force of law.

## **15. FINDINGS**

- a. The Hearing Examiner will transmit the jury's findings and, where applicable, non-binding 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.

## **16. 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.

## **INQUEST – CONCLUSIONS**

The Committee firmly believes that implementation of its recommendations will strengthen and enhance the inquest process. We also recognize that these changes are not a panacea. They will not fully address some of the fundamental sources of distress, frustration and perceptions of unfairness that parties to the process and members of the community have expressed. Several deep concerns arise in areas certainly outside the control of the Committee, and largely outside the inquest process itself.

First, we want to acknowledge the strong sentiment that the committee heard from family and community members about the extent to which law enforcement “controls the narrative” following a police shooting. Individuals and groups pointed out that the police departments have direct access to the media through press conferences and official spokespersons and control the release of information to the media - often, in their view - selectively. The King County Council’s recent action to fund public defenders to represent families who cannot afford representation should help to ameliorate this concern. The Committee’s recommendation to appoint a liaison to the family may do the same.

But shootings command, as they should, significant media attention, and representatives of government, appropriately, are called upon quickly to account. Overall, we note with approval the move across the country for law enforcement agencies to release more information, and more quickly, as part of a laudable effort to be more responsive to the community. We can only urge law enforcement to take great care that information they share is accurate and balanced, and the media to take similar care in its coverage.

Next, the Committee also recognizes that there are deep concerns about how the underlying investigation of the death colors subsequent reviews, including the inquest process. The independent investigation measures contemplated by I-940/SB 3303 were motivated by a desire to inject a greater degree of independence into incident investigation and should at least partially address the concerns many express over the actual or perceived deficiencies of the police investigating themselves. The framework established under SB 3303 requires the formulation of rules and processes, and those are still being developed. It seems likely that some of the processes adopted will affect the inquest process, and perhaps even be inconsistent with some of the Committee’s recommendations. That is one of the reasons the Committee recommended an ongoing annual review process by the Hearing Examiner, and we note as well this Committee’s willingness to reconvene once SB 3303 process are in place to evaluate their impact and make additional recommendations. Meanwhile, we do expect that changes we have recommended in this report will enhance the ability of the inquest to serve not just as a passive consumer of an underlying incident investigation but as a robust, probing and public review mechanism.

In addition, the Committee points out that there are additional issues outside of its charge or outside of the County Executive’s jurisdiction. We have already referenced our recommendation that legislation be proposed to change state law to allow for the increase of the size of the inquest jury from 6 to 12. We also recommend that the County Executive contact

tribal governments to inquire if they request the Committee's assistance in setting up their own inquest process.

The Committee fully contemplates further refinement of law, policy and procedures surrounding the inquest process, and encourages continued open, constructive discussion of this important process.

The death of a person at the hands of law enforcement will always be a tragic and painful event in our community. It is our hope that over time and with the benefit of thoughtful input by an engaged citizenry, they will be less divisive and, most importantly of all, less frequent. We make these recommendations with deep respect for the parties most directly affected, including both family members of the decedents and members of the law enforcement community. The Committee stands ready to be of further service.

## **Resources Consulted**

### **INQUEST COMMITTEE DOCS**

- King County Inquest Process Review Committee (KCIPRC) Charter, December 12, 2017
- KCIPRC Public Focus Group Activity – Summary, February 10, 2018
  - Community Feedback: What is Working
  - Community Feedback: What Isn't Working
  - Community Feedback: Specific Changes
  - Community Feedback: Who Else Should be Involved
- Public Focus Group Agenda

### **STATE AND LOCAL LAWS GOVERNING INQUESTS IN KING COUNTY**

- RCW 2.36, Juries; RCW 36.24, County Coroner; RCW 10.27, Grand Juries; RCW 9A.16.040, justifiable homicide, malice standard
- King County Charter Section 895
- King County Code 2.35A.090
- King County Ordinance 18652 and Staff Report on Ordinance, Public Defense Services in Inquests
- King County Executive Order PHL 7-1-1 (AEO), March 16, 2010
- Carrick v. Locke, 125 Wn.2d 129 (1994)
- King County Office of Law Enforcement Oversight (OLEO) memo: Reviews and Investigations of KCSO Officer-Involved Shootings

### **ADDITIONAL STATE LAW AND INITIATIVE**

- Initiative 940
- Senate Bill Report SI 940
- ESHB 3003
- House Bill Report ESHB 3003 As Passed Legislature

### **PAST INQUESTS**

- In re Inquest into the death of Che Taylor
  - Taylor Family Proposed Interrogatories to the Inquest Jury (compilation of Officer and Family Questions January 25, 2017)
  - Final Interrogatories to the Inquest Jury
- In re Inquest into the death of Renee L. Davis
  - Court's Instructions to the inquest Jury
- In re Inquest into the death of Tommy Le
  - Deceased's Family's Request for Hearing on Scope of Participation
  - Involved Deputies Response to Family's Motion to Expand Inquest Rules
  - King County's Response to Family's Motion to Expand Scope of Inquest

- In re Inquest into the Death of Robert Dean Burgess, Jr.
  - Court’s Interrogatories to the Inquest Jury
- Franklin County Coroner proceedings in the matter of Antonio Zambrano-Montez
  - Coroner’s Jury Instructions
  - Juror Questionnaire
  - Transcript Aid for the Coroner’s Inquest Into the Death of Antonio Zambrano Montes

## **OTHER JURISDICTIONS**

- The inquest and the Virtues of Soft Adjudication, *Paul MacMahon*, Yale Law & Policy Review, December 22, 2014
- Ontario, Canada Coroner’s Office
  - Aid to Ontario Inquests
  - Verdict of Coroner’s Jury, Office of the Chief Coroner, Aug. 2, 2017
  - Coroner’s Act, R.S.O. 1990, Chapter C.37
  - Chief Coroner’s Rules of Procedure for Inquests, July 1, 2014
  - Chief Coroner’s Rules of Procedure for Inquests, Guidelines, July 1, 2014
- San Francisco: Report and Recommendations from the Board of Supervisors re: Medical Examiner’s Inquests
- Seattle Police Department Consent Decree, July 27, 2017
- City of Seattle Resolution 31753, police accountability, June 1, 2017

## **OTHER KING COUNTY REVIEW PROCESSES**

- King County Child Death Review Report 2012-2105, pages 5 – 8, history, purpose, and process
- King County Code 20.22, Hearing Examiner

## **ORGANIZATION RECOMMENDATIONS**

- Mothers for Police Accountability, February 26, 2018
- Black Lives Matter, March 2, 2018
- David Spohr, King County Hearing Examiner, March 1, 2018
- Community Coalition (15 organizations), March 7, 2018
- King County Office of Law Enforcement Oversight, February 28, 2018

## **Appendix A: Focus Groups and Panel Discussion Notes by Question**

Attached are the combined data collected for each of the four guiding questions.

### **1. What is working with the current inquest process?**

1. Use of subpoena
2. Public can attend
3. Media can attend
4. Not much
5. Could lead to accountability—facts can be used in civil proceeding
6. Open to public
7. Fact finding
8. In a court room
9. Nothing is working
10. The inquest is public
11. Promotes understanding between public and law enforcement
12. The inquest is public
13. Focuses on the facts
14. Promotes healing
15. It is a limited scope:
  - a. Limited just to the incident
  - b. Focuses only on officer involved deaths
16. Voluntary participation by officers
17. Transparency of officers
18. Family is able to hear the facts—forensics, ballistics...
19. One judge handling most inquests—consistency in judges
20. It's objective
21. PAO involvement
22. The cat that it's there, and is mandatory
23. Open to the public
24. The fact that it's mandatory
25. The fact that we have a process
26. Allows for cross examination
27. A public examination
28. Access for the public is valuable
29. The fact that the family has an active role to play
30. Process being challenged
31. Representation for families

32. Prosecutor receiving investigative file
33. Prosecutor can consider filing charges

## **2. What is not working with the current inquest process?**

1. Time delay between incident and inquest
2. Reluctant witnesses
3. The scope is limited to ‘facts’ and ‘circumstances’
4. Police self-investigating
5. Limits to transparency
6. One-sided process—it is scripted
7. Set up is for the police
8. How they pick the jurors from peers
9. Pick underrepresented community members
10. Confusing process
11. Incomplete
12. Structured through Law Enforcement
13. Limited scope—questions that cannot be asked.
14. Very confusing process
15. Does not respect families of police, [or] shooting victims.
16. Police control the message and the narrative from the time of the shooting.
17. Families aren’t involved
18. False narrative in the public—no consequences for spreading false information
19. Lack of representation for families
20. Lack of information—not knowing what an inquest is
21. Facts are one-sided, weigh toward law enforcement
22. PAO not actually neutral
23. Witness procedure—family cannot call witnesses
24. Jury lacks power
25. Narrative criminalizes the victim
26. Predetermined outcome because of PAO involvement
27. Lack of respect for families
28. Process takes way too long
  - a. Court schedules
  - b. Many lawyers involved which takes time
29. Perception that inquest leads to civil/criminal liability
30. Elected officials do not endorse the process—want more support from elected officials.
31. Very one-sided in favor of the police
32. “Fact finding” but feels like some facts are not allowed
33. Breaks people’s faith in justice system
34. Police investigation is biased, but seems to be taken more seriously than family’s side
35. The process seems like a façade—that the outcome is decided before the inquest

36. That officers are on paid leave during the process
37. There is no accountability piece
38. It seems like it is a PR campaign to support Police.
39. It seems biased
40. There is no compassion for the family
41. The scope of the inquest: training
42. Information, dialogue, next steps (lack of)
43. Lack of independent investigation
44. Doesn't meet the needs of the public
45. Only partial truths and no reconciliation
46. No alternative dispute resolution options
47. Truths are obscured
48. Role of the prosecutor: not neutral
49. Families feel that all other parties involved are on one side
50. Marginalization & condescension to family

**3. What specific changes would you make to the inquest process?**

1. A way to inform the public of the ongoing process
2. Live streaming on line, public submission of questions
3. Independent investigative agency
4. Expand function of medical examiner
5. Availability of experts
6. Removal of jury
7. Expand the scope to include training and procedure
8. Conflict of interest of the involvement of prosecutors office
9. Take out the prosecutor
10. More information shared
11. Statements collected by outside agency
12. Let the families/victims call witnesses
13. Report on final narrative
14. Completely independent investigation—truly independent investigation.
15. Jury should be able to ask more questions & get answers
16. Big overhaul
17. Statement of facts to public
18. Open and live streamed
19. Require footage to be shown
20. Have officer meet the family
21. Real justice
22. Coroner to hold inquest independently
23. Language accessibility
24. Truly independent investigators—not police, not prosecutor
25. Training of police to not fear public/people of color
26. Must have open and closing statements from all parties to establish a narrative
27. Jury should make recommendation/report to compel action (to state, prosecutor, police force)
28. Write the law in conjunction with I-940
29. Law must change to restrict statements that poison the jury pool
30. Executive do all statements
31. Jury should be able to make recommendations
32. Guns not allowed in courtroom
33. Officers kept on leave until the inquest process is completed
34. Opening and closing arguments/statements
35. Jury asked to consider whether officers could have used non-lethal force
36. Family should be able to depose/interview witnesses, and ask questions

37. Family should have the right to subpoena documents, records pertinent to the proceedings
38. Family should be made aware by the police department
39. Advocate for families in addition to legal counsel (case manager, intake)
40. Keep inquest process but reform it
41. Independent panel, neutral investigative body
42. Families should have attorney's
43. Jury should be allowed to make recommendation
44. Gag rule, consequences for false narratives
45. Change the law
46. Improve police training
47. Flagging the SPD consent decree
48. Officers want farther reach for transparency—now it is only for people involved but want the reach to go beyond the courtroom—which would help with the perception people have.
49. Live streaming after the fact
50. Speed up the timeline, mandated by process
51. Education from the KC Executive about the purpose of an inquest:
  - a. For general public
  - b. For families involved
52. Education on the outcome:
  - a. What it means
  - b. What it doesn't mean
53. Allow more questions to be asked
54. Conflict of interest with prosecutors
55. Separate investigation from inquest
56. Speed up the process so that inquests are not held months later
57. Give families representation
58. Increase jury size for greater chance of diversity
59. Live stream/record inquest
60. Better education to the public:
  - a. What is the scope and purpose of an inquest
  - b. Provide historical data regarding inquests
  - c. Have the information user-friendly (e.g. on a website with links).
61. Possibility of having a public grand jury to hear the inquest
62. Have an indictment process attached, some vehicle for accountability
63. Jury has the authority to decide liability
64. Faster timeline

- a. Inquest should be held within two weeks
  - b. Institute an immediate deposition of all involved parties (so details are not lost or forgotten)
65. Create a website or database of inquest findings
66. A more meaningful result aside from simply finding the facts
67. Support for families:
- a. Legal representation
  - b. Know your rights education
  - c. Institute victim advocacy/support network
  - d. More compassion for families
68. Change policies around who can call witnesses
69. Take the PAO out of the process
70. If PAO declines to prosecute, they have to answer why
71. Independent investigation party—not law enforcement, possible elected group of people.
72. Public oversight in the investigation
73. Establish escalation of force policy, rules of engagement and set a rubric
74. Expand scope of inquest to include training, state of mind...
75. Ensure that law enforcement contact the family before they speak at all in public—if policy is broken hold supervisor accountable
76. Don't let the judge be the only one to answer questions
77. Have proceedings live streamed
78. PAO should not play neutral facilitator role
79. If PAO thinks prosecution is likely, Exec should not hold inquest
80. Solidify that employer requires officer's testimony, not in fact voluntary
81. Issue of identification immunity
82. Expand scope to include training; next steps; policy
83. Live feed of proceeding
84. Expand jury size to 12
85. Jury should be abolished
86. Institute victim support services
87. Inquest be part of I-940 investigative body
88. Take the PAO out of the process
89. Institute a special master; has subpoena power, but doesn't preside over the proceeding
90. Release transcripts, recordings, etc.
91. Info, open dialogue, outcomes: public needs this
92. Institute an up-front needs assessment for families
93. Institute agency to conduct investigation

94. When scene is secured, representing agencies (for families) be contacted
95. All departments (law enforcement) must take statements before end of shift
96. Ongoing assessment of process
97. Expert services funding pool
98. Make interrogatories fact-based
99. Eradicate interrogatory about “did officer fear for his or her life.”
100. Be able to call experts in an inquest

**4. Who else do you think should be involved in the current inquest process?**

1. Youth organizations
2. Homeless organizations
3. What is too much for the police to be involved
4. Police who believe in community policing
5. How do we address gun use with police?
6. Training
7. Independent body
8. How do we change the culture?
9. Community policing model
10. Specialty with prosecutors
11. Coroners' office
12. Sheriff
13. Officers who have been involved in the process
14. Not congress
15. Currently, mothers can't testify without being removed from hearing—let them stay
16. Law enforcement should not investigate their own departments
17. Families that have been affected by the process (victims' families)
18. Officers who have been involved in the process
19. Other agencies that conduct inquests
20. Medical examiner

## **Appendix B: Focus Groups and Panel Discussion Notes by Date/Location**

Attached are the notes organized by the date of each focus group and panel discussion.

### **Public Focus Group – New Holly Gathering Hall**

**January 27, 2018**

#### **Group #1**

##### **1. What is working with the current inquest process?**

- Use of subpoena
- Public can attend
- Media can attend

##### **2. What is not working with the current inquest process?**

- Time delay between incident and inquest
- Reluctant witnesses
- The scope is limited to ‘facts’ and ‘circumstances’
- Police self-investigating
- Limits to transparency

##### **3. What specific changes would you make to the inquest process?**

- A way to inform the public of the ongoing process
- Live streaming on line, public submission of questions
- Independent investigative agency
- Expand function of medical examiner
- Availability of experts
- Removal of jury
- Expand the scope to include training and procedure
- Conflict of interest of the involvement of prosecutors office

##### **4. Who else do you think should be involved in the current inquest process?**

- Youth organizations
- Homeless organizations

## **Group #2**

### **1. What is working with the current inquest process?**

- Works well to protect the police
- We actually have them, so it could be worse, if we didn't have them

### **2. What is not working with the current inquest process?**

- POC's lectured by judges in terms of their competence
- Dehumanizing the victim
- Jury not given all evidence, but that which justifies officers
- Family has no voice
- Seemed orchestrated by the criminal justice system
- Police testimony is different to their lawyers vs. family lawyer
- Police are very tight lipped—causes frustration
- Media doesn't know how to talk about inquests
- No advice on how to participate
- Jury selection—should include someone who knows family
- Families didn't get help
- Investigator visited family members at work
- Vilify victims
- Inquest held 9 months after death
- Demoralizing, humiliating
- Officers exhibit callous behavior towards family during inquest hearing (smirk, avoid eye contact)
- Families treated with no compassion, [no] acknowledgement of death

### **3. What specific changes would you make to the inquest process?**

- Prosecutor involvement makes it feel weighted towards police.
- Officers need to learn to speak with community members, not intimidate them
- Make more information available—evidence, data, police info, officer...
- Change of physical venue
- Parties (judges, prosecutors, officers...) seem to all know each other that needs to change.
- Expanded/broader evidence
- Independent investigation requirement of I-940
- Neutral hearing body
- Hearing publically—accessible via live internet video feed
- Consideration of the emotional weight on entire families of the death and then the inquest process

**4. Who else do you think should be involved in the current inquest process?**

- Victims assistance unit should be available to support families emotionally
- Families need more of a voice in the process
- Impartial hearing body

**Public Focus Group – Tukwila Community Center**  
**February 10, 2018**

**Group #1**

**1. What is working with the current inquest process?**

- Not much
- Could lead to accountability—facts can be used in civil proceeding
- Open to public
- Fact finding
- In a court room

**2. What is not working with the current inquest process?**

- One-sided process—it is scripted
- Set up is for the police
- How they pick the jurors from peers
- Pick underrepresented community members
- Confusing process
- Incomplete
- Structured through Law Enforcement
- Limited scope—questions that cannot be asked.
- Very confusing process
- Does not respect families of police, [or] shooting victims.
- Police control the message and the narrative from the time of the shooting.

**3. What specific changes would you make to the inquest process?**

- Take out the prosecutor
- More information shared
- Statements collected by outside agency
- Let the families/victims call witnesses
- Report on final narrative
- Completely independent investigation—truly independent investigation.
- Jury should be able to ask more questions & get answers
- Big overhaul
- Statement of facts to public
- Open and live streamed
- Require footage to be shown
- Have officer meet the family
- Real justice
- Coroner to hold inquest independently
- Language accessibility
- Truly independent investigators—not police, not prosecutor
- Training of police to not fear public/people of color

- Must have open and closing statements from all parties to establish a narrative
- Jury should make recommendation/report to compel action (to state, prosecutor, police force)
- Write the law in conjunction with I-940
- Law must change to restrict statements that poison the jury pool
- Executive do all statements
- Jury should be able to make recommendations

**4. Who else do you think should be involved in the current inquest process?**

- What is too much for the police to be involved
- Police who believe in community policing
- How do we address gun use with police?
- Training
- Independent body
- How do we change the culture?
- Community policing model
- Specialty with prosecutors
- Coroners' office
- Sheriff

## **Group #2**

### **1. What is working with the current inquest process?**

- Open process (to the public)
- That it exists
- That there is a jury
- Mandatory

### **2. What is not working with the current inquest process?**

- Narrative by police—unfair and taints jury pool
- Prosecutor is involved, too close with police
- Jury cannot reach meaningful conclusions with only yes/no/unknown as answer options
- It doesn't seem like the process is actually concerned with what happened
- Family's not treated with compassion

### **3. What specific changes would you make to the inquest process?**

- Jury should make recommendation
- Make time for opening/closing statements (summation) by all attorneys
- Neutral body/independent—not prosecutor to conduct investigation and inquest
- Family of victim's attorney can bring in evidence, witnesses, including experts
- Officer's history & discipline (as officer) is relevant
- Police procedures/trainings/policy is relevant
- More education to public on the process

### **4. Who else do you think should be involved in the current inquest process?**

- Neutral body to investigate
- Neutral body to conduct inquest
- Community members involvement—local
- End of process: police required to make changes to avoid future deaths

### **Group #3**

#### **1. What is working with the current inquest process?**

- The family has attorney and the information that comes out in the inquest process
- It's public and should remain public
- The police have to say what happened and have to testify and need to answer the questions
- Family can use facts discovered in process for civil case

#### **2. What is not working with the current inquest process?**

- Media can be asked to leave which limits public information
- Public can be asked to leave
- Families have not always had ability to ask question
- Officers can take the fifth amendment
- Prosecutor's Office has a conflict [of] interest by running it
- Who decides the questions and process
- Can't take in the police policy and procedures

#### **3. What specific changes would you make to the inquest process?**

- Balance needs to be included—both sides input in questions & subpoena
- Independent body running process
- Remove subjective questions such as "Officer feared for their life"
- Ability to change policy/redress/have results come from it
- Live stream
- Clear definition of purpose of proceeding

#### **4. Who else do you think should be involved in the current inquest process?**

- Impartial party—fact finding—voir dire
- Specific specialty in Public Defender's Office
- Advocate program for Guardian Ad Litem/CASA for victims
- Independent facts only/independent investigator
- Protective order to not allow police to disseminate information that criminalizes the person killed

## **Group #4**

### **1. What is working with the current inquest process?**

- Nothing
- The intent to be fact finding

### **2. What is not working with the current inquest process?**

- The Law of Malice
- Biased to the police, judges, don't treat families of victims with empathy
- Until recently, families weren't provided an attorney
- Takes too long to begin Inquest process
- Police publicizing the incident—may taint potential jury pool
- Family cannot ask questions
- Guideline for asking questions can be biased
- Judge controls the type/number of questions
- Jury hears the narrative provided by police
- The inquest process is not clearly understood by general population—could this impact how the jury makes their recommendation

### **3. What specific changes would you make to the inquest process?**

- Remove the subjective nature of 'feeling your life was in danger' as a justification for their actions
- Have an outside agency investigate—not one judge because they can be biased
- Respect and compassion
- Jury should be diverse (racially)
- Live stream
- Accessible location/neutral location
- Language services
- Not leave the decision to just the judge...have a panel
- Lawyers should subpoena their own witnesses
- Review & critique the list of questions jury can ask 12 person jury instead of 6
- A list of questions for jury—what gets a jury member excluded?

### **4. Who else do you think should be involved in the current inquest process?**

- Community organizations (e.g. Community Police Commission) —form a panel
- Coroner as part of process
- Jury—no judge to operate proceedings (panel instead)
- Victim advocates (advocates for family)

## **Group #5**

### **1. What is working with the current inquest process?**

- Open public process
- Jury

### **2. What is not working with the current inquest process?**

- Families not given a role in fact-finding
- Lack of compassion for families
- Interrogatories: need reforms
- Police policing themselves and lack of respect for families
- No comprehensive examination of all relevant info

### **3. What specific changes would you make to the inquest process?**

- Neutral body conducts investigation (not PAO) independent
- Families can work with their lawyer ahead of inquest
- Change to interrogatories
- Representation for families
- Pass I-940
- Independent coroner
- No weapons, not in uniform (police)
- Families can bring in all of their own evidence (all relevant info)
- Improve public communication
- Rights of discovery for all sides
- Training & hiring process for Law Enforcement

### **4. Who else do you think should be involved in the current inquest process?**

- No PAO or outside prosecutor
- All public
- Live feeds
- No judges
- Jury is good
- Experts on lie detection (body language)

## **Group #6**

### **1. What is working with the current inquest process?**

- Nothing
- Jury
- Open to the public/not closed
- It exists
- Mandatory
- Could lead/first step to accountability
- Family could use the facts that are determined
- Intent is to get 'facts'

### **2. What is not working with the current inquest process?**

- Delays/too long
- Based on police investigation
- Bias toward police
- Police have opportunity to publish their version—taint jury pool
- Family can't ask questions
- Judge can limit scope
- Subjective nature of 'fear for their life'
- Can't consider policy/procedure
- Family should have subpoena power
- Prosecutor has vested interest/not impartial
- Incomplete, confusing, scope limited
- Jury can't draw meaningful conclusions from 'yes' or 'no' answers
- Focus is on criminal/civil liability of officers is not on larger questions
- Police are policing themselves
- No examination of all relevant info
- Lack of compassion
- Families not given a role in the fact-finding process

### **3. What specific changes would you make to the inquest process?**

- Remove prosecutor for process
- Share more information in general with PO
- Outside agency—completely independent investigation
- Jury should have ability to ask more questions, widen their scope, write what they think happened
- Open; live-streamed
- Involve & respect the families, let them call witnesses
- Restorative justice at start of process
- Work toward actual accounts
- At end of process, we believe jury should make some kind of recommendation about what they think should happen

- Diverse jury population
- Accessible neutral location
- Review/questions submitted to jurors
- Jury of 12 instead of 6
- Panel instead of judge
- Language
- If fact finding, remove subjective questions like “did officer fear for his life?”
- Direct result
- Clarification of purpose before the live-stream
- Advocacy program (i.e. CASA)
- Resources for emotional support, mental health, someone walking them through the process and not just a legal advocate
- Change to allow more evidence (i.e. disciplinary history, training, prior weapon use)
- Are the policies appropriate? Do they make sense?
- Pass I-940
- Independent coroner
- Family' counsel should be able to make opening statements
- What about other counties?
- Questions asked at beginning determine the ‘why’
- Culturally appropriate
- Diverse juries
- Resources for families/advocacy/support at the very start of an incident
- Someone in courtroom at all times who is an expert in lie detection (i.e. body language)
- Cultural input into initial investigation and assessment (i.e. is that behavior suspicious?)
- Independence of the initial investigation
- Need to know more about the coroner/ME are independent? AG?
- Police should examine their own deficiencies/determine how to change
- Narrative has already begun— influenced by ‘corporate media’
  - Grieving families don’t have a spokesperson
  - Can’t fight during trauma
- Lies are told by police to influence the jury pool
- Officers/agencies must be held accountable
- Protection order to keep police from pushing out false narrative and demonizing the victim
- Also, is media held accountable

#### **4. Who else do you think should be involved in the current inquest process?**

- Coroner/ME
- Special expertise in the PO’s office
- Victim advocates

**PAO Questions:**

- Is the inquest process subject to bargaining?
- How does judge become coroner?
  - In King County, coroner delegates to KC Executive; Executive delegates to judge
- Will the community be able to review the recommendations of the committee?
  - We will probably submit committee recommendations, send it to Executive and public, and Executive will hear from public and adopt a plan.

**Individual Response**

**1. What is working with the current inquest process?**

- Better than nothing (i.e. better than closed coroner's process)
- Nothing works
- Open to public
- Just works for cops

**2. What is not working with the current inquest process?**

- PAO has conflict of interest
- Easily exclude info
- [No] Compassionate treatment of all family

**3. What specific changes would you make to the inquest process?**

- Independent coroner
- Treat as if I-940 passed
- Challenging interrogatories can be introduced
- Full rights of discovery for all sides
- Families can compel release of police data
- Families bring all evidence and prior consultation/planning with their lawyer

**4. Who else do you think should be involved in the current inquest process?**

- Juries seem to be acceptable
- Complete fact evaluations
  - Medical Examiner
  - Forensic
  - Photo analysis
  - Site schematics, diagrams
- Accessible to all public 'live feeds' in real time

**Panel of Family Members of Decedents**  
**February 12, 2018**

**1. What is working with the current inquest process?**

- Nothing is working
- The inquest is public

**2. What is not working with the current inquest process?**

- Families aren't involved
- False narrative in the public—no consequences for spreading false information
- Lack of representation for families
- Lack of information—not knowing what an inquest is
- Facts are one-sided, weigh toward law enforcement
- PAO not actually neutral
- Witness procedure—family cannot call witnesses
- Jury lacks power
- Narrative criminalizes the victim
- Predetermined outcome because of PAO involvement
- Lack of respect for families

**3. What specific changes would you make to the inquest process?**

- Guns not allowed in courtroom
- Officers kept on leave until the inquest process is completed
- Opening and closing arguments/statements
- Jury asked to consider whether officers could have used non-lethal force
- Family should be able to depose/interview witnesses, and ask questions
- Family should have the right to subpoena documents, records pertinent to the proceedings
- Family should be made aware by the police department
- Advocate for families in addition to legal counsel (case manager, intake)
- Keep inquest process but reform it
- Independent panel, neutral investigative body
- Families should have attorney's
- Jury should be allowed to make recommendation
- Gag rule, consequences for false narratives
- Change the law
- Improve police training

**4. Who else do you think should be involved in the current inquest process?**

There was no formal discussion specifically addressing this question; however, a few members mentioned the valuable help they received from the 'Not This Time' organization.

**Miscellaneous:** The mother of Giovonn Joseph-McDade recommended that her son's inquest be the first one heard after the recommendations are put in place.

## **Law Enforcement Panel**

**February 20, 2018**

### **1. What is working with the current inquest process?**

- Promotes understanding between public and law enforcement
- The inquest is public
- Focuses on the facts
- Promotes healing
- It is a limited scope:
  - Limited just to the incident
  - Focuses only on officer involved deaths
- Voluntary participation by officers
- Transparency of officers
- Family is able to hear the facts—forensics, ballistics...
- One judge handling most inquests—consistency in judges
- It's objective
- PAO involvement

### **2. What is not working with the current inquest process?**

- Process takes way too long
  - Court schedules
  - Many lawyers involved which takes time
- Perception that inquest leads to civil/criminal liability
- Elected officials do not endorse the process—want more support from elected officials.

### **3. What specific changes would you make to the inquest process?**

- Flagging the SPD consent decree
- Officers want farther reach for transparency—now it is only for people involved but want the reach to go beyond the courtroom—which would help with the perception people have.
- Live streaming after the fact
- Speed up the timeline, mandated by process
- Education from the KC Executive about the purpose of an inquest:
  - For general public
  - For families involved
- Education on the outcome:
  - What it means
  - What it doesn't mean

### **4. Who else do you think should be involved in the current inquest process?**

- Officers who have been involved in the process
- Not congress

**Public Focus Group – Mercer Island Community Center**  
**February 22, 2018**

**Group #1**

**1. What is working with the current inquest process?**

- The fact that it's there, and is mandatory
- Open to the public

**2. What is not working with the current inquest process?**

- Very one-sided in favor of the police
- "Fact finding" but feels like some facts are not allowed
- Breaks peoples faith in justice system
- Police investigation is biased, but seems to be taken more seriously than family's side

**3. What specific changes would you make to the inquest process?**

- Allow more questions to be asked
- Conflict of interest with prosecutors
- Separate investigation from inquest
- Speed up the process so that inquests are not held months later
- Give families representation
- Increase jury size for greater chance of diversity
- Live stream/record inquest

**4. Who else do you think should be involved in the current inquest process?**

- Currently, mothers can't testify without being removed from hearing—let them stay
- Law enforcement should not investigate their own departments

## **Group #2**

### **1. What is working with the current inquest process?**

- Fairly transparent process—open to public, media
- Allows new information and perspectives to be heard that isn't provided in the department internal investigation/review.
- Need for a process
- Families have right to attorney (recent change)
- Inquest findings can be used for civil proceedings

### **2. What is not working with the current inquest process?**

- Process has traumatized families during multiple times (discovery, inquest, etc.)
- Lack of compassion
- Scope of questions too limited (e.g. doesn't include policy/training)
- Objectivity of prosecutors
- Trauma for officers
- Cultural competency
- Process doesn't allow for perspectives of communities of color; implicit bias
- Doesn't address areas of concern for family

### **3. What specific changes would you make to the inquest process?**

- Ask judges what they need
- Bigger jury
- Scope of information
- Reconciliation/ADR process...however, might not work because the adversarial system of cross-exam does not allow the family's voice to be heard.
- Is there a role for a jury?
- Does the county need representation? Often feels like 3-1 with officers, King County, prosecutor to family.

### **4. Who else do you think should be involved in the current inquest process?**

- For this review process ask families about potential changes and ideas once more formulated

### **Group #3**

#### **1. What is working with the current inquest process?**

- Good intent: make clear the facts

#### **2. What is not working with the current inquest process?**

- Lack of transparency
- People can't take off to see inquest
- Access, availability
- Does jury have enough diversity (African American, Hispanics, etc.)

#### **3. What specific changes would you make to the inquest process?**

- More transparency:
  - Post video of proceeding
  - Live streamed
    - Video index to find parts one wants to watch
  - Posting of evidence (w/rules for redactions)
    - Ask families for permission/input
- Larger jury for more diversity
- Odd number of jurors to prevent split decisions
- Interrogatories
  - Hear from someone (Subject matter expert) during questioning
  - Second opinion wanted
  - "Would you have done the same thing?"
  - "Would you have done the something different?"

#### **4. Who else do you think should be involved in the current inquest process?**

- The group did not have time to address this question.

**Group #4**

**1. What is working with the current inquest process?**

- That it happens
- Open public airing
- Police participate (voluntarily)

**2. What is not working with the current inquest process?**

- Public information purpose is not effective
- Prosecutor may not be independent (or appear to be)
- Trust not there
- Purpose of inquest unclear
- Appearance of bias
- Limited scope of questions

**3. What specific changes would you make to the inquest process?**

- Remove prosecutor from process
- Live stream proceedings
- More mediation organized
- Advocates involved in deciding scope
- Clarify where the [?] with criminal proceeding

**4. Who else do you think should be involved in the current inquest process?**

- 3 party mediation format
- KC Executive to do public education
- Counseling for families of victims

## **Individual**

### **1. What is working with the current inquest process?**

- Open to public
- Mandatory
- Police participation
- Multiple perspectives
- Recognition of the need for this process
- Cross examination
- Intent of the process to make clear the facts

### **2. What is not working with the current inquest process?**

- Access to the public
- Jury pool diversity
- Public information
- PAO involvement appears biased, erodes public trust
- Limited scope of interrogatories allowed
- Lack of compassion for victims' families
- Lack of availability of services/resources for families

### **3. What specific changes would you make to the inquest process?**

- Odd number of jurors
- Open interrogatories, let jurors ask questions
- Take out PAO
- Give families legal representation
- Separate investigation, third party investigator
- Offer post trauma care to involved parties
- Interpretation services
- Allowing policy questions
- Opening and closing statements for families
- Live stream, video index
- Posting evidence with rules for redaction
- Bring in subject matter experts
- Clarifying boundaries for wrongdoing
- Look at witness calling procedure

### **4. Who else do you think should be involved in the current inquest process?**

- Mediation format
- Executive Office public education on inquest

## **Individual**

### **What is working with the current inquest process?**

- Allows a different perspective to be heard that is different from an internal review
- New information surfaces that would not be seen or heard otherwise
- Recognition that a public process must take place
- Required in King County when an officer is involved in a shooting/death
- Families now have access to an attorney
- Allows for cross examination
- Information can be used in a civil suit

### **What is not working with the current inquest process?**

- Process traumatizes the family because of how it works
- Officers are traumatized as well
- The discovery process creates different decisions
- There is a lack of compassion to make sure families get through this process emotionally
- Officials should take that into account
- Interrogatories are a 'yes', 'no' or 'unknown' and don't look at policies or procedures
- The scope is not broad enough
- One judge emphasized that this process is not likely to allow training, use of force policies in the fact-finding
- The fact that a deceased did not have a knife and was shot in the back might not have come up
- The process is not consistent – prosecutor's orientation makes a difference in how the case is presented – a prosecutor wanted to allow the criminal history of the deceased in one case and in another case led by the same prosecutor, the deceased's criminal history wasn't even presented; the officer didn't know the deceased criminal history in advance, so it was concerning that it was even relevant to the inquest hearing
- Process doesn't allow for discussion about implicit bias and how that plays into the actions (Judge hasn't allowed that to be discussed)
- There is no way to address the areas of disagreement by the parties of the facts

### **What specific changes would you make to the inquest process?**

- Some way to focus early in the process on the trauma of both parties; don't wait until the after the inquest
- Hold the hearing in a space where all involved can fit comfortably
- Have spaces available for families to sit quietly when they need to destress from the information
- Implement proactive efforts related to cultural competency; reach out to families regarding necessity of interpretation
- Judge needs to explain why certain questions are not going to be addressed in this hearing
- Expand the size of the jury; currently the size can lead to lack of diversity

- Need opening and closing statements/comments from attorney for the family of the deceased (currently all that is presented is the criminal history of the deceased which is one-sided)
- Ask judges who hear inquests what direction they need to help with the process
- Should not be a court process
- A reconciliation process might be better (Alternative Dispute Resolution)
- This is the family's opportunity to tell their story on behalf of the deceased
- Is there a role for a jury?
- How to avoid the expectation of a conclusion at the end of the inquest
- Change the role of the focus  
Group prosecutor to prevent conflict of interest (Prosecutor defends county in one role and presents evidence in the inquest which might lead to liability depending on the facts presented)

**Who else do you think should be involved in the current inquest process?**

- Counselors for families
- Meditation format
- King County Executive needs to educate the public on the process
- If the inquest process changes in scope because of these recommendations, families should still be able to utilize legal counsel

**NAACP General Membership Meeting – Shiloh Missionary Baptist Church**  
**February 26, 2018**

**1. What is working with the current inquest process?**

The fact that it's mandatory.

**2. What is not working with the current inquest process?**

- The process seems like a façade—that the outcome is decided before the inquest
- That officers are on paid leave during the process
- There is no accountability piece
- It seems like it is a PR campaign to support Police.
- It seems biased
- There is no compassion for the family

**3. What specific changes would you make to the inquest process?**

- Better education to the public:
  - What is the scope and purpose of an inquest
  - Provide historical data regarding inquests
  - Have the information user-friendly (e.g. on a website with links).
- Possibility of having a public grand jury to hear the inquest
- Have an indictment process attached, some vehicle for accountability
- Jury has the authority to decide liability
- Faster timeline
  - Inquest should be held within two weeks
  - Institute an immediate deposition of all involved parties (so details are not lost or forgotten)
- Create a website or database of inquest findings
- A more meaningful result aside from simply finding the facts
- Support for families:
  - Legal representation
  - Know your rights education
  - Institute victim advocacy/support network
  - More compassion for families
- Change policies around who can call witnesses
- Take the PAO out of the process
- If PAO declines to prosecute, they have to answer why
- Independent investigation party—not law enforcement, possible elected group of people.
- Public oversight in the investigation
- Establish escalation of force policy, rules of engagement and set a rubric
- Expand scope of inquest to include training, state of mind...
- Ensure that law enforcement contact the family before they speak at all in public—if policy is broken hold supervisor accountable

- Don't let the judge be the only one to answer questions
- Have proceedings live streamed

**4. Who else do you think should be involved in the current inquest process?**

- Families that have been affected by the process (victims' families)

**UBCCW General Membership Meeting – Damascus Missionary Baptist Church**  
**February 27, 2018**

Several Committee members attend a general meeting of the United Black Christian Clergy of Washington. While all four questions were shared and discussed the majority of the meeting was spent answering general questions about the Inquest Process.

**3. What specific changes would you make to the inquest process?**

- More public education about the purpose of an inquest.
- Find a better way to control the narrative of the decedent.

**Technical Experts Panel**

**February 28, 2018**

**1. What is working with the current inquest process?**

- The fact that we have a process
- Allows for cross examination
- A public examination
- Access for the public is valuable
- The fact that the family has an active role to play
- Process being challenged
- Representation for families
- Prosecutor receiving investigative file
- Prosecutor can consider filing charges

**2. What is not working with the current inquest process?**

- The scope of the inquest: training
- Information, dialogue, next steps (lack of)
- Lack of independent investigation
- Doesn't meet the needs of the public
- Only partial truths and no reconciliation
- No alternative dispute resolution options
- Truths are obscured
- Role of the prosecutor: not neutral
- Families feel that all other parties involved are on one side
- Marginalization & condescension to family

**3. What specific changes would you make to the inquest process?**

- PAO should not play neutral facilitator role
- If PAO thinks prosecution is likely, Exec should not hold inquest
- Solidify that employer requires officer's testimony, not in fact voluntary
- Issue of identification immunity
- Expand scope to include training; next steps; policy
- Live feed of proceeding
- Expand jury size to 12
- Jury should be abolished
- Institute victim support services
- Inquest be part of I-940 investigative body
- Take the PAO out of the process
- Institute a special master; has subpoena power, but doesn't preside over the proceeding
- Release transcripts, recordings, etc.
- Info, open dialogue, outcomes: public needs this

- Institute an up-front needs assessment for families
- Institute agency to conduct investigation
- When scene is secured, representing agencies (for families) be contacted
- All departments (law enforcement) must take statements before end of shift
- Ongoing assessment of process
- Expert services funding pool
- Make interrogatories fact-based
- Eradicate interrogatory about “did officer fear for his or her life.”
- Be able to call experts in an inquest

**4. Who else do you think should be involved in the current inquest process?**

- Officers who have been involved in the process
- Other agencies that conduct inquests
- Medical examiner

**King County Inquest Process Review**  
**Invitation Panel (District Court and PAO) Summary**

**March 5, 2018**

**1. What is working with the current inquest process?**

- Public Airing of the facts
- Cooperation of law enforcement
- Attorneys are able to ask questions
- Jury
- Limited scope
- Police participate pretty fully
- Witnesses under oath, cross-examination
- Discovery process gives all parties witness interviews, etc.

**2. What is not working with the current inquest process?**

- Public reacts based on bad information
- Timeline for inquests is too long
- Jury is problematic
- Perception that jury is judging culpability, reasonableness, etc.
- Rules need updating (GR 16)
- Limited court-room capacity
- Not enough conference space for families to use
- Ambiguity around what is and is not a public record
- No authority to subpoena witnesses
- PAO's role as assisting the court confuses the public, particularly given the fact that the PAO makes the ultimate charging decisions
- The public, including jurors want to know what's next
- Appearance of conflict for both Law Enforcement and the PAO
- The presence of jurors, lawyers and judges signal that something is being decided when it's not
- Too many lawyers participating

**3. What specific changes would you make to the inquest process?**

- Make it a purely administrative hearing with rules of procedure and evidence
- Update rules to add clarity
- Take the courts and PAO out of the process
- Eliminate the jury
- Live stream hearings through KCTV
- Protect sensitive photos and evidence under PRA investigative exception

**4. Who else do you think should be involved in the current inquest process?**

## Appendix C: Stakeholder Recommendations



### Metropolitan King County Council

David Spohr,

DATE March 1, 2018

### MEMORANDUM

TO: King County Inquest Process Review Committee  
FROM: David Spohr, Hearing Examiner  
RE: Comments for the Committee

What follows are the King County Hearing Examiner's Office comments. They in no way represent the views of the King County Council. Instead they represent examiner observations after attending the three public focus groups and considering attendee comments. We start with some context, follow with a recommendation, and close with a few questions for the Committee.

The Triangle of Satisfaction model was developed in the alternative dispute resolution field,<sup>1</sup> but we find it soundly applicable to our adversarial hearings. The core concept is that participants have three distinct but interrelated interests. The first and most obvious, Substantive Interests (such as rulings, results, verdicts), are typically the most contentious; we leave those to the Committee. Instead our comments address the other two: Emotional Interests (such as thoughts, feelings, being validated) and Process Interests (such as inclusiveness, timing, transparency).

The most consistent concerns we heard from family members who participated in past inquests was the disconnect between their *expectations* going into the inquest process and the *reality* they actually experienced, plus how lost they felt in the process. There is no cure-all, but creating a detailed, inquest-specific guide would be a start. We have created such guides for several classes of examiner cases. In crafting these, we applied the *Federal Plain Language Guidelines*' directions, such as:

- identify and write for our audience;
- develop questions our audience will have;
- organize the guide to answer those questions chronologically;

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<sup>1</sup> See, e.g., <https://viacommunityconflict.wordpress.com/2013/03/31/triangle-of-satisfaction/>.

- address a person versus a group;
- avoid legal jargon and technical terms; and
- provide sufficient white space to prevent the appearance of dense and cluttered text.

And because many of our participants have limited English proficiency, we sought and received helpful feedback from the Executive's Office of Equity and Social Justice's Inclusion Manager before publishing and translating the guides. I have attached one of our guides—which is distributed to participants and posted on our website—as an example.

Our sample guide poses and answers questions such as:

- access for people with hearing impairment/limited English proficiency/travel barriers;
- how the hearing process starts and process timing;
- examiner jurisdiction and scope;
- what to expect (and what documents are required/issued) *before* the hearing;
- how to communicate with the examiner's office;
- who can participate in the hearing process;
- what typically happens *at* the hearing;
- what rules and laws typically apply (and a link to those);
- order of hearing proceedings;
- how to present the best case;
- how the examiner ensures a fair hearing; and
- what happens *after* the hearing.

Such a guide, tailored to inquests, would not by itself eliminate the expectations/reality gap or make the lost feel found, but it would help.

Beyond a recommendation that whoever winds up presiding over the process should produce a detailed, yet easy-to-understand guide, we provide a choice few of the questions we asked ourselves after attending the sessions.

- Victims' families felt the process was compassionless and indifferent. To the extent the same victims services offered to crime victims are not currently being offered to the families of those impacted by an officer-related death, should they be?
- When we receive a case that generates a high amount of public input, we often schedule our hearing out in the affected community, to make the process more user-friendly. Is it logically feasible to hold some or all proceedings in the community most impacted by, and interested in learning about, a particular death?

- We create a webpage for each high public interest cases, to which we post information, filings, and recordings in real time, making it easier for interested persons to stay abreast. Would something similar work for high-profile inquests?
- Victims' families seem frustrated by not being able to testify about their lost loved ones. Would it enhance the feeling of being heard, achieve some catharsis, and give the grieving a "day in court"—all while not prejudicing the jury—to allow greater opportunities for such storytelling while the jury is excluded from the room?

I hope these help, and let me know if we can offer any further input.



**King County**

# HEARING EXAMINER GUIDE

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**FOR-HIRE  
DRIVER'S LICENSE APPEALS**



**David Spohr, Hearing Examiner**  
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King County Courthouse  
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Seattle, Washington 98104  
(206) 477-0860

## **Hearing Examiner Guide For-Hire Driver's License Appeals**

### **What is this guide?**

This guide summarizes the hearing examiner process for for-hire driver's license appeals. It is meant to help laypersons, and it carries no legal weight. We invite questions.

### **Who is the examiner?**

The examiner is appointed by the King County Council to hold hearings and issue decisions on appeals of King County's Records and Licensing Sections (RALS) enforcement orders regarding for-hire driver's licenses. The examiner is a neutral decision-maker, like a judge. The examiner's office works for the council, *not* for RALS.

### **How about access?**

Sign language interpretation is available, for free, by calling TDD Number (206) 296-1024. Non-English language interpreters are available, for free. For those with travel barriers, contact the examiner to discuss alternatives, like appearing by telephone. Call (206) 477-0860 or email [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov). Please make requests early in the process.

### **How do you start your appeal?**

People receiving RALS orders may decide to appeal and have the examiner hear the King County portion of the case. There is no appeal fee, but three requirements *must* be met:

1. **Timing.** The deadline to submit your appeal is 24 calendar days after RALS issues its order. When RALS personally serves it to you, the clock starts ticking that day. When RALS mails an order, the clock starts ticking on the date RALS mails it, *not* on the date you actually receive it.
2. **Delivery.** Getting your appeal statement to a post office by the deadline is *not* sufficient. RALS must actually *receive* your appeal by the deadline (and mail delivery often takes several days). Untimely appeals are not allowed—there is no flexibility. This may not seem fair, but it is the law. You can submit your appeal via:
  - mail or in-person (Monday – Friday, 8:30 a.m.–4:30 p.m.) at 500 Fourth Avenue, Room 403, Seattle, WA, 98104;



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- email to ForHireDriver@kingcounty.gov (ask RALS to confirm its receipt); or facsimile to (206) 296-4029.

**3. Content.** Your appeal statement must include:

- ✓ Either a copy of the RALS order(s) you are appealing or the RALS file number(s) and order date(s);
- ✓ A description of your interest in the case (for example, you are seeking a license);
- ✓ The error(s) you think RALS made in its order ("That infraction was dismissed" or "I pled to a lesser offense," or "\_\_\_\_ happened, but \_\_\_\_," etc.);
- ✓ Specific reason(s) why you think RALS's order(s) should be reversed ("\_\_\_\_ should not result in me losing my license," etc.) or modified ("The penalty is too high," etc.);
- ✓ How RALS's order(s) harms or would harm you ("Without a license, I \_\_\_\_"); and
- ✓ What outcome(s) you seek ("Overturn the denial," or "Reduce the fine," etc.).

While your appeal does not have to include all the evidence (like a document) you want to submit to support your appeal, it does need to include all the matters or issues you want to raise. If you are not sure about exactly what to say, make sure you still get *an* appeal, even if imperfect, delivered to RALS by the deadline.

If you get your initial appeal to RALS on time, the examiner has authority to later allow you, prior to the hearing, to modify or add to the issues you originally raised. But the examiner has *no* authority to hear an appeal if your original appeal statement did not arrive at RALS on time. **Whatever you do, make sure RALS receives your appeal by the deadline!**

Filing a timely appeal does not prevent you from resolving your case without going to a hearing. It simply preserves your right to contest RALS's order. Otherwise RALS's order becomes final and unchallengeable once the appeal deadline passes.

**What if RALS denied both a county and a Seattle license?**

The examiner only has jurisdiction over the portion of RALS's order related to your *county* license. If you wish to object to the denial of a license to pick up passengers in Seattle, you need to appeal to *Seattle*. The final page of RALS's order lists those details. Be aware, Seattle's appeal period (10 days) is much shorter than the county's (24 days).

**Is mediation a possibility?**

Mediation may be available. First check Examiner Rule V. To initiate mediation, make a written request early in the process.

**What can you expect before a hearing?**

Several weeks before a hearing, the examiner will send you a hearing notice. Read that notice carefully. It sets the day, time, and location of the hearing. It sometimes includes descriptions



of the examiner's initial interpretations of the issues for hearing and thoughts on potential resolution. It sets deadlines for amending the appeal issues (as described above) and for sending any information required *before* the hearing. Typically, the only required pre-hearing exchanges are for reports and studies (usually only RALS produces these, discussed below) and for expert witnesses (usually not applicable to for-hire license cases).

Two weeks before a hearing, RALS submits to the parties and to the examiner a report summarizing the issues and providing most or all of the documents RALS intends to offer as exhibits at the hearing. Read these carefully.

RALS's files on a case are public records; anyone wanting to review the entire file prior to the hearing may arrange this with RALS (by email to [pd.requests@kingcounty.gov](mailto:pd.requests@kingcounty.gov) or by calling (206) 263-1977). Anyone may request examiner documents as well; examiner records are usually available electronically, typically at no cost.

### **Who can participate in the appeal process?**

Normally, only RALS and the person who filed the appeal are involved in matters like scheduling a conference or hearing, setting deadlines, making or responding to motions, and deciding what evidence to present, witnesses to call, and questions to ask in a hearing.

Others with an interest in the case may request "Intervenor" status to become a party. Please review Examiner Rule X.B (link below) for information on requesting this. Intervenor requests are not automatically granted, but are reviewed on a number of specific criteria.

### **What typically happens at an appeal hearing?**

#### *Where and when?*

Hearings are usually held in the King County Courthouse in downtown Seattle. Be on time, or you may forfeit your right to participate. Very occasionally a prior hearing runs overtime and delays the next hearing's start. Please enter the room quietly (proceedings are recorded), refrain from side conversations, and turn off all phones.

#### *What are the usual issues?*

While every case is different, in general, certain items (such as omitting essential information on your application, or a conviction related to driving under the influence of alcohol) result in *mandatory* denial. Other items (like an assault conviction or several lesser driving infractions) might or might not result in a denial.

#### *Can I challenge a previous conviction or infraction?*

No. An examiner cannot reconsider what the police, prosecutor, defendant, or court should have done in a past case. You may offer an *explanation* for, or the context surrounding, a conviction or infraction, but where your record says otherwise you may not dispute that you committed it. Instead, the examiner decides whether, *given* your record plus any new information, to grant your appeal.



### ***How will the hearing go?***

1. Because RALS carries the burden of proof regarding any issues or matters you raised in your appeal, RALS speaks first. RALS offers its documents, typically only those RALS sent out two weeks before the hearing. Although examiners have a lower threshold for admitting evidence than courts do, you may offer specific objections to any documents. You may question any witness.
2. Then, it is your turn to offer testimony and any documents; RALS may raise objections and ask you questions. RALS may also question any witness(es) you present.
3. Anyone wanting to introduce any document should bring at least three copies.
4. Afterwards, each party has some time to respond to what the other party presented, followed by brief closing statements.
5. At any time, the examiner may ask questions.
6. All testimony must be under oath, which means the examiner swears in each witness.

### ***How can I present the best case?***

First, carefully read the notice or pre-hearing order the examiner sends out a few weeks before hearing. Effective testimony and argument often explain how a specific law applies to your case. Presentations can be in the form of notes, written statements, photographs, documentary records, and visual aids. Statements offered in-person (or at least by telephone) and subject to cross examination (questioning) are generally given the most consideration. You may present documents and testimony describing any efforts you have made to address the situation.

### ***What about hearing records?***

Your hearing will be recorded and you may request a copy of the recording and/or any documents. Depending on the volume of data requested, there may be a duplication cost, although the examiner's office maintains most records digitally.

### ***What happens after the hearing?***

Within ten business days (meaning weekends and holidays are excluded) after the hearing, the examiner sends you a final decision that includes findings of fact based on the hearing record and conclusions drawn from those findings. It may wholly grant the appeal, wholly deny the appeal, or do something in the middle (modify conditions, reduce fines, etc.).

Examiner decisions end with general information for how to appeal. The examiner can offer no additional instruction beyond that written information. It is an appellant's responsibility to determine and meet the exact requirements for filing an appeal.

### ***What is the proper way to communicate with our office?***

While you (or RALS) may contact the examiner with *procedural* questions, any questions/statements related to the *substance* of the appeal should be raised at a conference or hearing, or made in writing and addressed to all parties. Examiner staff screen correspondence and calls to prevent prohibited contacts to the examiner from any party.



In general, emails should be sent to [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov) and copied to [ForHireDriver@kingcounty.gov](mailto:ForHireDriver@kingcounty.gov).

#### **How does the Examiner ensure I have a fair hearing?**

Examiners are independent of RALS, and do not give any deference to RALS or any other agency. Examiners may not hear appeals where they have financial interests, have pre-judged the issues, or may appear biased by a relationship to a party or property. A person with reasonable grounds to believe an examiner might be influenced by a factor outside the record should promptly bring that concern to the examiner's attention.

#### **What rules and laws typically apply?**

It often helps to become familiar with standards governing the decision-making process, especially KCC chapters 20.22 and 6.64 and the examiner's rules:

- King County Codes: [http://www.kingcounty.gov/council/legislation/kc\\_code.aspx](http://www.kingcounty.gov/council/legislation/kc_code.aspx)
- Examiner's rules: <http://kingcounty.gov/independent/hearing-examiner/rules.aspx>

Examiners base decisions primarily on those sources and on constitutional principles and on appellate court decisions. You may call with questions. For past examiner for-hire driver's license decisions, by year, see: <https://www.kingcounty.gov/independent/hearing-examiner/case-digest/appeals/for-hire-enforcement.aspx>.



March 2, 2018

Hello,

These recommendations are from Black Lives Matter Seattle-King County (BLMSKC).

Recommendations about the review process itself:

- King County should review the inquest process on a recurring basis, at least within every five years.
- In February, BLMSKC met with Dow and asked him to share his final policy changes with the community before enacting them. This will prove the community one last chance to give feedback on the proposed solution.

Recommendations about the inquest process:

- The inquest process is ostensibly a fact-finding process, but the scope of facts today is incredibly small. Many families reported having many of their questions rejected by the judge. Specifically questions about:
  - police department policies
  - the officer's record
  - how often the officer has discharged their weapon compared to their peers
  - the history and character of the victim
- Families also reported being forced to choose between sitting in the inquest process and being able to testify on behalf of the victim. It makes family feel as though they're not allowed to defend their loved ones.
- The nature of questions allowed are limited to yes/no questions, which doesn't allow families to provide more context about a given situation. It turns the inquest more into a game, a puzzle to navigate around, rather than a truly fact-finding body.
- Families should be able to make opening and closing statements in order to contextualize the facts that have been found, to help the jury piece together what all these facts mean, and hopefully, how to avoid more unnecessary killings in the future.
- The King County Prosecutor's Office should not be involved in the inquest process, because it's a conflict of interest.
- The inquest should have 12 jurors instead of six. It's clear that officer-involved deaths disproportionately affect people of color, yet most juries are all-white. It's necessary to increase the jury size in order to increase the odds that the jury will have at least one person of color in it.

Recommendations about inquest outcomes and findings:

- Today, the inquest findings are sent to the county executive, and then what? **The inquest process must lead towards a path that can deliver justice for families of unjustified and unreasonable killings.** Initiative 940 will make it easier to prosecute law enforcement by removing their de-facto immunity, but we need to make sure that the inquest process can actually lead to criminal prosecution when necessary.
- Additionally, the inquest findings must be able to lead to changes in internal law enforcement policies and lead to disciplinary action for officers who break from that policy. Every officer-involved shooting results in departments defending their officers

who "didn't do anything wrong" and who "acted in accordance to their policies and training." **If the inquest finds that such policies are unreasonable and/or harmful to the public, then the process must somehow be able to require a change to this policy.** Similarly, if the inquest finds that an officer did not in fact comply with policy, then it must lead to some kind of disciplinary action as well. The fact that law enforcement departments are inclined to believe that they've done nothing wrong makes it all the more urgent that this process is able to either enforce change or lead to something that can enforce change in internal policies.

- Sometimes an inquest finds that law enforcement have lied about what happened. There should be consequences for deceiving the public. There should also be an effort to correct lies that have taken hold in the media. One way to achieve this is through increased transparency: **record and livestream every inquest**, so that the public can more easily access the findings.

Thank you.



## Key Changes Needed to the Inquest Process

While we appreciate that the King County inquest process, uniquely in Washington, is an avenue for public access to understand the facts and circumstances of any death that occurs due to the actions of law enforcement officers, it is widely understood that the present inquest process creates confusion and frustration for many in the community, and can be traumatic and marginalizing for the families of those killed.

The following 16 organizations and seven individuals join together to recommend nine changes that, taken together, would create a robust and transparent inquest process that addresses the issues of core concern to our communities:

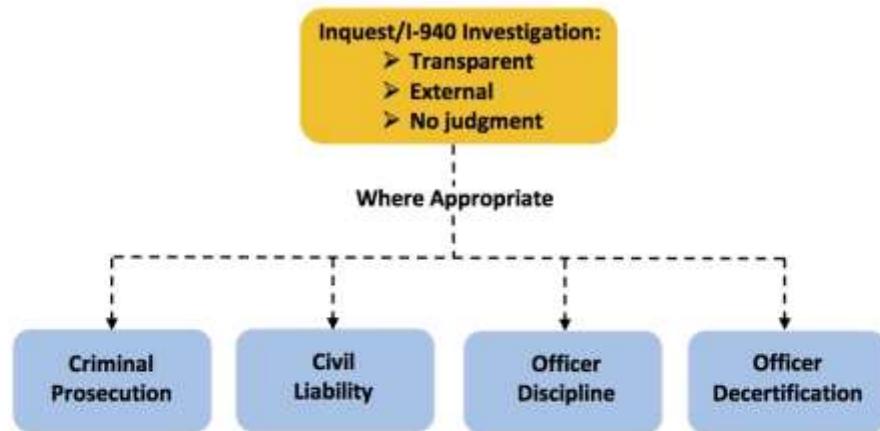
- Asian Counseling and Referral Service
- Asian Pacific Islander Coalition of Washington State
- Casa Latina
- Chief Seattle Club
- Columbia Legal Services
- Disability Rights Washington
- El Centro de la Raza
- Latina/o Bar Association of Washington
- Loren Miller Bar Association
- Not This Time
- OneAmerica
- Public Defender Association
- Real Change
- Seattle Community Police Commission
- Seattle Japanese American Citizens League
- Vietnamese Community Leadership Institute
- Washington Defender Association &
- Dianne and Michael Murphy, *Parents of Miles Murphy*
- Jay Hollingsworth, *Chair, John T. Williams Organizing Coalition*
- Jenna Mitchell, *Former inquest juror*
- Jim Street, *Retired Seattle City Councilmember and King County Superior Court Judge*
- Lee Covell, *Attorney*
- Nikkita Oliver

These nine recommendations are interrelated and should be implemented together in order to avoid unintended negative consequences. Only if these recommendations are implemented as a whole will we have an inquest process capable of addressing the concerns of our communities and restoring trust in the independent investigation that the inquest process makes possible.

**1. Inquest scope should be expanded so that it can satisfy the independent investigation requirement of I-940**

Should Initiative I-940 ("De-Escalate Washington") become law (it qualified for the November ballot and polls strongly positive statewide), it will require an independent investigation (external to the law enforcement agency involved in the deadly force case) to inform the determination of whether deadly force was used in good faith.<sup>1</sup> Presently, King County has no independent investigation to inform such a determination. The inquest process can and should be modified to meet I-940's independent investigation requirement by expanding the scope of the inquest to address how a deadly force incident comported with policy and training.

The inquest process, on its own, cannot provide direct accountability in cases of wrongful or unlawful use of deadly force. Accountability will need to come through other processes, with their own standards and decision-makers, with the authority to take various actions that many think of when we say "accountability." However, as the only independent, comprehensive investigation of the use of deadly force by law enforcement, the inquest should serve as the central body of information upon which the various accountability processes base their decisions.



<sup>1</sup> Under Initiative I-940, "good faith" is satisfied if the use of deadly force meets both an objective and subjective standard. The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

Arguably, whether an in-custody death followed from application of existing policies or training is within the scope of current inquest rules (“what happened and why” in many cases requires understanding that officers were applying their training or their understanding of policy). However, neither judges nor the King County Prosecutor have allowed such issues to be explored. Even without I-940’s requirement of an external investigation capable of allowing a determination of good faith, to advance understanding of what circumstances led to a death, the role played by training and policy must be within the scope of the inquest.

The likely adoption of I-940 only underscores the need to expand the scope of the inquest to include consideration of how training and policy affected officers’ choices and decisions. It would be needlessly costly and confusing to position the inquest process as distinct from the independent investigation likely to be required by I-940. Given that the inquest process largely involves the same witnesses, evidence, and topics as an I-940 investigation, it makes little financial sense to duplicate the inquest investigation. Additionally, having two parallel processes that could result in different outcomes would confuse any public understanding of a particular use of deadly force.

## **2. An inquest should be a robust, comprehensive examination of all relevant information**

A reformed inquest process should be comprehensive, providing the ability for all parties to directly introduce relevant witnesses and evidence, expert analysis of relevant policy and training, and summation of the evidence by the parties through opening and closing statements.<sup>2</sup> Under current rules, the parties cannot present their own witnesses or evidence, but instead may only question whichever witnesses the prosecutor decides to call to testify and rely on whatever evidence the prosecutor decides to introduce. Preventing the parties from introducing their own evidence and calling the witnesses necessary to give a full accounting of the use of deadly force by law enforcement does not aid the goal of shedding light and fulfilling exploring what occurred. In order to make sure the inquest addresses all relevant information, parties should be permitted to call their own witnesses to testify and introduce their own evidence, subject to the rules of evidence regarding relevance.

Additionally, under the current interpretation of the inquest process by judges and the King County prosecutor, no expert witnesses identified by the parties are called to testify. As a result, the only individuals able to testify about whether the use of deadly force was appropriate under policy and training (to the extent such questioning is even allowed) are the officers who used deadly force. Consequently, the inquest jury only receives a one-sided description of policy and training. In order to ensure that the jury receives a full and balanced picture, the parties should be permitted to call expert witnesses relevant to any evidence or testimony introduced in the inquest proceeding.

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<sup>2</sup> The inquest process now provides for legal representation for the following parties: the involved officers, the government entity employing the involved officers, the King County Prosecuting Attorney’s Office, and the family of the deceased.

Finally, the current process does not allow attorneys to sum up what they believe the information presented means, which makes it harder for lay audiences to understand how the pieces are related or what the significance is of some of the information that emerges through testimony. The inquest rules should be modified to permit the parties to provide a summation of what the evidence is likely to show at the beginning of the inquest proceeding and a summation of the elicited evidence at the conclusion of the proceeding.

### **3. Inquests should be conducted by a neutral hearing examiner**

Inquests must be conducted by a party who is willing and able to make impartial rulings on the scope of evidence and questioning. Judges fit this bill. Yet, when judges preside over inquests, it is difficult to avoid the assumption that a judgment is being rendered. There appears to be growing interest both in the community and among some policymakers in exploring the feasibility of the King County Hearing Examiner, a special magistrate or Executive inquest master as the officer to oversee inquests—effectively designated as the coroner for this purpose. Regardless of who is chosen to preside over an inquest, he or she should have a familiarity with the Washington Rules of Evidence, knowledge of policing and trial procedures, and experience managing a courtroom.

If inquests are not conducted by a judge, there will no longer be a right to use a King County Courtroom. In order to permit continued access to a courtroom, the King County Executive and King County Superior Court should sign a memorandum of understanding agreeing to have inquests held in the ceremonial courtroom on the ninth floor of the King County Courthouse.

### **4. The inquest jury should be permitted to reach more meaningful conclusions**

The role of the inquest jury should be modified so that the jury can reach more meaningful conclusions. Presently, the inquest jury answers a series of Yes/No questions, called interrogatories. This system causes two problems, which should be remedied. First, the current interrogatory structure, which only permits each individual juror to answer Yes/No/Unknown, prevents jurors from adequately contextualizing some of their answers.<sup>3</sup> For example, in every inquest, the jury is asked something similar to the following question: "At the time he fired his service weapon, did the officer think the deceased posed a threat of death or serious bodily injury to the officer or others." The answer to this question, which is nearly always "Yes," is commonly reported as justifying the use of force. However, the force used may not be legally justified when the officer's fear is unreasonable under the circumstances, or when the officer created the circumstance which then caused his fear. In order to avoid misleading conclusions, the inquest jury should be permitted to offer additional explanation to any inquest question in the form of a written or recorded statement.<sup>4</sup> Furthermore, each juror should be given an

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<sup>3</sup> Answers need not be unanimous among the jury. For example, for a given interrogatory, two jurors can answer "yes," three jurors can answer "no," and one juror can answer "unknown."

<sup>4</sup> This explanation should be anonymous and provided either in writing or in a transcribed statement. A juror should be permitted to edit any written or transcribed statement to ensure it is accurate and consistent with what the juror intended to express. Additionally, jurors whose primary language is not English should be permitted to

opportunity to express any opinion, question, or concern he or she has that is not necessarily related to any specific interrogatory, either through a recorded or written statement. The ability to provide additional information, unrelated to a specific interrogatory, allows each juror to share information which may not have been addressed through any specific interrogatory, helping to ensure that the inquest process does not inadvertently overlook an important issue.

Second, many of the interrogatories, which can approach 50 in number, address questions to which the answer is already known. For example, interrogatories commonly confirm the date of the use of force and the location of the use of force. These interrogatories only serve to distract from the important questions which are unresolved. Additionally, forcing the jury to address these unnecessary interrogatories needlessly wastes their time and may prevent them from spending time needed to adequately answer other interrogatories that focus on contested issues. In order to avoid this problem, the parties should be explicitly permitted to stipulate to an agreed set of factual findings which can be entered into the inquest record without needing to be submitted to the jury as interrogatories.

#### **5. The inquest jury should include 12 jurors to improve jury decision-making and reduce racial bias**

The inquest jury should be expanded from six jurors (the current jury size) to 12 jurors in order to increase the probability of empaneling a diverse jury. Research has shown that more diverse juries are less prone to racial bias, less likely to make errors and more likely to base decisions on facts. A 2006 study found that when compared to an all-white jury, a diverse jury cited more case facts, made fewer errors, and was more likely to discuss racism.<sup>5</sup> Another study found that the presence of even one black juror eliminated racial disparities in conviction rates of white and black defendants.<sup>6</sup>

#### **6. Modify the role of the King County Prosecuting Attorney's Office in inquest proceedings**

The King County Prosecuting Attorney's Office (KCPAO) should not actively participate in inquest proceedings, as KCPAO participation creates the appearance of a conflict of interest. Presently the KCPAO's role is to "assist the court in presenting the evidence." The prosecutor does this by conducting the initial examination of all witnesses. However, since prosecutors routinely work closely with police officers in criminal prosecutions, community members and

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author or record their statement in their chosen language and have it translated into English for the inquest record.

<sup>5</sup> Sommers, Samuel R. "On racial diversity and group decision making: Identifying multiple effects of racial composition on jury deliberations." *Journal of personality and social psychology* 90.4 (2006): 597.

<sup>6</sup> Shamaena Anwar, Patrick Bayer, Randi Hjalmarsson; The Impact of Jury Race in Criminal Trials, *The Quarterly Journal of Economics*, Volume 127, Issue 2, 1 May 2012, Pages 1017–1055,

families often have the impression that prosecutors are not neutral in inquest proceedings. Compounding these concerns, when a death involves a member of the King County Sheriff's Office or a King County Jail employee, the KCPAO is also the entity responsible for defending the County in a wrongful death lawsuit. In these situations, when the KCPAO simultaneously defends the actions of law enforcement in a civil suit and serves as a neutral party in the inquest proceeding, their involvement in the inquest heightens the appearance of a conflict of interest, without necessarily adding a necessary function. It is not clear why the Court or hearing examiner cannot conduct the proceedings directly, with the lawyers representing family, officers and municipality proposing questions and asking other questions not posed by the hearing officer.

If the King County Prosecuting Attorney's Office no longer participates actively in the inquest, some practical considerations will need to be addressed. The KCPAO currently handles the logistics of conducting the inquest, such as arranging for evidence to be present during the proceeding and distributing the police investigation files and other discovery to the parties. This responsibility could likely be absorbed by the King County Hearing Examiner or an Executive inquest office. Additionally, two considerations support maintaining a limited role for the KCPAO—making a recommendation to the County Executive as to whether an inquest should be held. First, after consultation with the family about their wishes in light of any possible immunity issues, the KCPAO should be able to recommend against an inquest if, upon reviewing the initial investigative materials, it determines that probable cause exists for prosecution. In such an event, proceeding with the inquest could needlessly complicate a prosecution by creating immunity concerns.<sup>7</sup> Second, one of the virtues of the current inquest process is that it enables the internal police investigation materials to become public record, since they are in the possession of the KCPAO. In order to ensure that these materials remain public record, they should still enter into the custody of the KCPAO.

#### **7. The inquest proceeding should be publicly-accessible via live internet video feed**

If inquests are to provide the public with an accounting of the use of deadly force by law enforcement, they must actually be publicly accessible. Although inquest rules were originally well-intended to provide maximum public access via in-person attendance and video re-broadcast by television stations, the rules should be updated to keep pace with changes in technology and the way the public accesses information. Permitting live internet streaming of inquest proceedings would be a very small departure from the current practice, which permits live streaming via television. However, this small change would increase transparency by allowing the public to access the proceedings on-demand, either live or via a recorded video published each day. Live streaming would also allow the public to access the proceeding in its raw form, rather than just through the selected clips broadcast on the local news. In doing so, it

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<sup>7</sup> It can be argued that certain lines of questioning in an inquest—especially those based upon compelled officer statements shortly after the use of force—immunize officers from possible criminal prosecution. As a result, when the KCPAO believes probable cause exists before an inquest is initiated, prosecution is likely best advanced by foregoing the inquest process. In such cases, the I-940 Investigation could be provided under the direction of the Prosecutor's Office that is exploring or pursuing criminal charges.

would permit members of the public to draw their own conclusions, free from any potential claims of inaccurate or selective reporting.

**8. The inquest process should treat families more compassionately**

Many families who have participated in an inquest have reported that the process made them feel excluded or marginalized. Families have expressed concerns that officers (both those involved in the inquest and those attending as members of the public) are often given a comfort room they can spend time in during breaks in the inquest. However, families often receive no such courtesy. Additionally, in some cases, the courtrooms chosen for inquests have been too small to comfortably hold all family members and friends who might wish to attend the inquest. Efforts should be made to ensure that families are comfortable in the inquest proceeding, offering the same considerations to families in inquests as are offered to victims and their families in a criminal trial.

Judges presiding over inquests have also often pre-emptively admonished families and others who felt close to the person killed not to disrupt the proceedings – despite the absence of any evidence that disruption was planned. Almost without exception, families have approached these proceedings in a dignified and respectful fashion, and the warning from the Court about proper behavior has been insulting and infused with implicit bias. Guidelines for the judicial role or hearing officer role in inquests should clearly direct judges not to prejudge the parties or to communicate an expectation of inappropriate behavior until and unless that concern is clearly warranted.

Finally, inquests are routinely subject to extra security precautions, absent any reasonable justification, leaving families with the impression that they are believed to be safety threats. In order to access the inquest courtroom, all individuals routinely have to go through two security checkpoints—the normal security checkpoint to enter the courthouse and a special security checkpoint outside the inquest courtroom. There is no reason a second checkpoint is necessary, absent some specific intelligence about a particular threat pertaining to the inquest case. Other courtrooms, such as criminal and civil courtrooms, do not have their own second checkpoint, even when their subject matter involves violent harm or death.

**9. Inquests should be accessible to all members of the public, applying principles of cultural competency**

All members of the public should be able to access the inquest proceeding. Upon request, members of the public should be provided translation services. King County should advertise to the public that these services are available upon request because members of the public will likely be unaware of this option. Additionally, immediately after the County Executive calls for an inquest, the family of the deceased should be contacted to determine whether culturally competent services should be provided and whether translation services are needed.

If you have any questions or comments, please contact:

Corey Guilmette  
Attorney  
Public Defender Association  
[Corey.guilmette@defender.org](mailto:Corey.guilmette@defender.org)  
(206) 641-5334



## King County

### Office of Law Enforcement Oversight

206-263-8870 | Fax: 206-296-1675  
[oleo@kingcounty.gov](mailto:oleo@kingcounty.gov) | [www.kingcounttv.gov/oleo](http://www.kingcounttv.gov/oleo)

**Date:** February 28, 2018

**To:** Inquest Working Group Members

**From:** Deborah Jacobs, Director, Office of Law Enforcement Oversight

**Re:** Inquest Recommendations

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My name is Deborah Jacobs. I am the Director of the King County Office of Law Enforcement Oversight. OLEO, as we call the office, represents the public's interests in accountability of the King County Sheriff's Office. OLEO has two specific duties that relate to the inquest process:

- To review and report on individual inquests and/or conduct systemic reviews related to the findings of inquests.
- To conduct independent investigations of incidents involving the King County Sheriff's Office. However, this authority is currently in the collective bargaining process and has not yet been realized.

What I think works with the current inquest process is that, unlike many jurisdictions, *we have one*. The existence and use of inquests demonstrates a desire to meet the public's interest in robust review of incidents in which members of the public are killed by police use of force. It also allows for cross-examination, which can uncover additional facts or perspectives that would not normally be included in administrative reviews.

With respect to areas for improvement of the process, I will share a couple very specific examples of things that could be improved, and then suggest reasons to look at the bigger picture.

For example, in the inquest for the KCSO shooting of Renee Davis, a 23-year old mother who police called upon for a wellness check after she threatened suicide, the topic of training was not permitted in the inquest. However, a key concern in the case was whether deputies did enough to de-escalate before confronting Davis in her bedroom. It would have been relevant to community concerns if the inquest included whether the officers in that incident

had had the benefit of the 40-hour Crisis Intervention Training or considered other alternatives and if not, why not.

Another example, in the inquest for the KCSO shooting of Mi'Chance Dunlap-Gittens, the topic of pre-force tactics was excluded from the inquest proceeding. In this matter, a key concern was whether KCSO used appropriate tactics in the lead-up to the shooting. It's something on which KCSO's own reviews disagreed. The inclusion of pre-force tactics would have been relevant to consideration of this shooting.

These issues both reflect limitations on the scope of inquests.

However, in thinking about shortcomings of the inquest process, it's important to look beyond the courts to the constellation of accountability in police-involved deaths, and what the public most needs to have further confidence in law enforcement officers. To my mind, the public most wants: **information, open dialogue and outcomes**. Inquests will never satisfy the public unless either it, or it combined with other accountability measures, meets these needs.

With respect to the need for **information**, having independent investigations – as OLEO is in fact charged to do – is critical to transparency. Often, the public has little faith in police internal reviews and investigations. Having external, professional investigations of shooting deaths can bridge a critical trust gap.

In addition, police departments across King County should have shared minimum standards for how use of force incidents are internally reviewed. For me, this isn't as much about whether an officer is accused of misconduct or found guilty on such charges – though that is also a critical piece of accountability. Rather, the concern is that review of uses of force be robust, consistent, credible and transparent. This speaks to the public's need for more **open dialogue**. The public yearns to see depth of contemplation of these incidents, how they happened, and how they can be prevented for the future. In the Sheriff's Office, use of force reviews are currently directly tied to the fate of the officers, which results in a context of defense rather than a context of lessons learned and prevention. My office would gladly work with the county to identify model review procedures for all King County police departments to consider adopting.

With respect to **outcomes**, there are many places to look for improvements. One big missing piece is an established reconciliation process for those who seek understanding and healing. Our office spearheaded a successful alternative dispute resolution session between members of the Sheriff's Office and members of the Vietnamese American community in response to the KCSO shooting of Tommy Le last summer. Incorporating expectations for alternative dispute resolution into the constellation of use of force review brings the "reconciliation" piece of "truth and reconciliation." It also does a lot to bridge understanding between public and police.

I won't repeat some of the excellent suggestions made by others throughout this process, but a couple other issues we think are important to improve inquest process are:

- An upfront needs assessment for the family of the deceased with respect to representation, translation services, physical accessibility, as well as the family's basic comprehension of the inquest process and their rights within it.
- The assignment of an attorney immediately after the incident - even if it later turns out the family does not qualify for public defense - to represent them until they can hire a private attorney. This is critical for making sure they can timely conduct their own investigation of the incident if needed.
- Another question is whether King County itself really needs to be "represented" during an inquest. It seems this involvement relates to preserving any interest for a civil suit. If that is the purpose, then King County's participation affects the balance of represented interests. For families, it can feel like a three against one dynamic, with the Police Guild, King County, and the Prosecutor being on the other side of their interests. It can also convey to the public that King County itself is not about transparency or accountability because the attorney orientation largely appears to side with the officer's actions.

Thank you for including me in this important process and considering these recommendations. Two of OLEO's key duties relate closely to the inquest process, and we appreciate your interest in our perspective.



February 26, 2018

TO: King County Inquest Review Committee

Mothers for Police Accountability wishes to add its voice to your committee's consideration of potential changes to the inquest process in our county. We have over the past 27 years been involved with numerous inquests into the circumstances surrounding in-custody deaths. While we are not "experts" in this area, we offer the following for your consideration:

- Retain the inquest jury as a fundamental democratic institution. We believe that the jury might have more credibility if it is conducted in Superior rather than District Court and that retired judges could possibly be used to conduct the inquests. The number of jurors should be officially expanded to eight.
- Clarify the purpose of the inquest as a limited non-adversarial inquiry into the "causes and circumstances" of the death. It is not an inquiry into whether the involved officers acted in "good faith" or "reasonably." That is for other forums. Therefore, expert witnesses, opening statements and closing arguments are unnecessary.
- Enhance the credibility of the testimony by allowing cross examination rather than simply follow up questions. Cross examination should include questioning about use of force training and policies. It would help the jury "judge credibility and determine the significant factual issues involved in the inquest."
- Allow attorneys for all parties to summarize the evidence before the jurors deliberate. The jury is now left to its own devices to figure out what all the evidence means. Allowing the parties to present their versions of the facts would improve community trust in the jury's final factual determinations.
- Consider utilizing some kind of restorative justice process for the community either before or after an inquest. Mothers conducted a Restorative Healing Circle at the Garfield Community Center in 2016 after a number of controversial shootings. It was well-attended by police officers and community members and respectfully gave each of those present a chance to voice their concerns in a structured setting.

Thank you all for your service to the citizens of Martin Luther King Jr. County.

Rev. Harriet Walden, Executive Director  
Lynne Wilson, Attorney and Board Secretary