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Approved: /s/ Dow Constantine

Type of Action: Supersedes PHL 7-1-3-EO, "Conducting Inquests in King County" December 4, 2019



**King County**

**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, as amended, provides 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; 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 order, direct, and implement the following policy and procedures for conducting an inquest, at Appendices 1 and 2.

Signed this 11<sup>th</sup> day of June 2020 at Seattle, Washington

  
Dow Constantine  
King County Executive

Attest:

  
Norm Alberg

Director, Records and Licensing Services Division, Department of Executive Services

**Appendix 1 - Conducting Inquests in King County:  
Conducting Inquests in King County**

**1.0. SUBJECT TITLE**

Conducting Inquests in King County.

**2.0. PURPOSE**

**2.1.** To establish policies and procedures for conducting reviews into the facts and circumstances of any death of an individual involving a member of any law enforcement agency within King County while in the performance of the member's duties [and/or exercise of the member's authority], and occasionally in other cases, as determined by the County Executive.

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

**2.3.** The purpose of the inquest is not to determine whether the law enforcement member acted in good faith or should be disciplined or otherwise held accountable, or to otherwise find fault, or to determine if the use of force was justified, or to determine civil or criminal liability. It is acknowledged that the facts determined in the course of the inquest may sometimes have an indirect bearing on such determinations.

**3.0. ORGANIZATIONS AFFECTED**

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

**4.0. 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 2.35A.090(B).

## **5.0. 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 of the death of an individual involving a member of any law enforcement agency within King County while in the performance of his or her duties [and/or exercise of the member's authority], and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.
- 5.4.** "Law enforcement agency" means any agency having police powers as authorized under Washington State law. For the purposes of this policy, "a member of any law enforcement agency" shall mean commissioned officers and non-commissioned staff of all local and state police forces, jails, and corrections agencies.
- 5.5.** "Attorney representing the family of the deceased" means a privately-retained or publicly funded attorney, pursuant to KC Ordinance 18652.
- 5.6.** "Rules of Evidence" means the evidentiary rules adopted by the Supreme Court of the State of Washington governing proceedings in the courts of the State of Washington, and such rules as may be adopted by the King County Hearing Examiner pursuant to KCC 20.22.
- 5.7.** "Voir dire" means an examination of a prospective panel as defined below.
- 5.8.** "In camera review" means an examination of materials by the administrator in private proceedings to rule on admissibility and use.
- 5.9.** "Panel" refers to the jury of inquest provided by Superior Court pursuant to RCW Chapter 36.24.
- 5.10.** "Administrator" means the presider of the inquest proceeding, selected from a roster approved by the County Executive, who presides over a particular inquest proceeding.

**5.11.** "Manager" means the staff assigned to oversee the inquest program, to assign an administrator and pro tem attorney to a particular inquest, to provide clerical support to the administrator and pro tem attorney, and to report annually to the County Executive.

**5.12.** "Pro tem attorney" means the pro tem attorney assigned to assist the administrator and to facilitate an inquest.

## **6.0. POLICIES**

**6.1.** There shall be an inquest into the manner, facts, and circumstances of any death of an individual involving a member of any law enforcement agency within King County while in the performance of his or her duties, [and/or exercise of the member's authority], and in any other case as occasionally determined by the County Executive where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.

**6.2.** While the term "involving" is to be construed broadly, there may be circumstances in which law enforcement's role is so minimal as to not warrant an inquest, or where for other reasons an inquest would impede the administration of justice. Factors to be considered include: whether a decision to prosecute has been made; whether the death was the result of a condition existing prior to and/or apart from the law enforcement involvement; whether the individual was in custody at the time of the death; whether the family of the deceased desires an inquest; and any other factor that touches on the connection between the manner of death and the actions of law enforcement. However, the public has a strong interest in a full and transparent review of the circumstances surrounding the death of an individual involving law enforcement, so an inquest will ordinarily be held.

**6.3.** At the discretion of the County Executive, in exceptional circumstances there may be an inquest into the causes and circumstances of a death involving an individual in King County other than a member of a law enforcement agency.

## **7.0. RESPONSIBILITIES**

**7.1.** 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 King County Prosecuting Attorney and the pro tem staff attorney shall (a) supply a complete copy of the investigative file to the manager; (b) respond to public records requests for the investigative file; and (c) issue subpoenas to witnesses and/or for records at the administrator's request.

**7.2.** The King County Executive shall determine whether an inquest will be held. If an inquest is to be held, the Executive shall direct an administrator conduct the inquest on the Executive's behalf. The County Executive shall also request that the King County Superior Court facilitate the inquest by supplying (a) jury, which shall be referred to as a panel; and (b) appropriate facilities, including a courtroom, bailiff, reporter, and any necessary security. The inquest shall be conducted pursuant to this Executive Order and to RCW 36.24, as amended.

## **8.0. PROCEDURES**

Action By: Prosecuting Attorney

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

**8.2.** Promptly informs the County Executive of such a death.

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

**8.4.** Upon request of the County Executive, forwards the investigative file to the manager.

**8.5.** Upon request by an administrator, issues subpoenas for witnesses and/or documents.

Action By: County Executive

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

**8.7.** If an inquest is to be held, direct the manager to proceed with the inquest.

Action By: Manager

**8.8.** Select an administrator to preside over the inquest and a pro tem staff attorney to assist.

**8.9.** Support the administrator in scheduling a pre-inquest conference and with clerical tasks.

Action By: Administrator

**8.10.** Hold a pre-inquest conference.

**8.11.** Conduct the inquest according to the procedures in Appendices 1 and 2.

Action By: Department of Public Defense

**8.12.** Assign counsel for the family of the decedent unless the family indicates they have retained other inquest counsel or do not wish to be represented by the King County Department of Public Defense. The Department of Public Defense will not be assigned in inquests where the family is to be represented by private counsel.

Action By: Superior Court

**8.13.** If an inquest is to be held, the Superior Court shall coordinate with the manager and administrator to supply a panel, recorder, and facilities pursuant to RCW 36.24.020.

## **9.0. APPENDICES**

Procedures for Conducting Inquests.

## **10.0. PRIOR ORDERS**

This Executive Order rescinds and replaces PHL 7-1-3, "Conducting Inquests in King County," dated December 4, 2019.

### **Appendix 2 - Procedures for Conducting Inquests:**

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

#### **1.0. FACILITIES/COURTROOM**

**1.1.** 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 a jury. Therefore, where requested by the County Executive, the Superior Court will coordinate with the manager to provide persons to serve as a jury of inquest ("panel") and secure appropriate facilities. The manager shall arrange the room in a manner that promotes transparency to the public and fair treatment of all participating parties.

#### **2.0. PARTICIPATING PARTIES**

**2.1.** The family of the deceased, who shall be allowed to have an attorney(s) present.

2.2. The law enforcement member(s) involved in the death, who shall be allowed to have an attorney(s) present.

2.3. The employing government department, which shall be allowed to be represented by its statutory attorney or lawfully appointed designee.

2.4. The manager, who shall assign an administrator and a pro tem attorney to assist the administrator.

2.5. An administrator, who shall preside over the inquest.

2.6. A representative appointed by the involved federally recognized Indian tribe, in the event that a death occurs on a federal Indian reservation or involves an enrolled member of a federally recognized Indian tribe.

### **3.0. ROLE OF THE ADMINISTRATOR/SCOPE OF THE INQUEST**

3.1. An administrator shall conduct the inquest. The proceedings are quasi-judicial in nature, with represented parties, and the presentation of evidence through direct and cross-examination, and subject to the Rules of Evidence. Administrators shall strive to promote an atmosphere consistent with administrative fact-finding and shall strive to minimize delay, cost, and burden to participants, while promoting fair and open proceedings. Although an inquest is not a court proceeding, administrators shall be guided by open courts principles and GR 16.

3.2. The administrator, after consultation with the participating parties, shall determine the inquest scope. Consistent with the purpose as set forth in the amended Charter, Executive Order, and Appendix 1 and 2, the inquest scope shall include an inquiry into and the panel shall make findings regarding the cause, manner, and circumstances of the death, including applicable law enforcement agency policy. The panel shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

3.3. 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 administrator. The administrator shall construe the Rules of Evidence in a manner consistent with the goal of administrative fact-finding proceedings and to promote fairness and to minimize the delays, costs, and burdens that can be associated with judicial proceedings.

### **4.0. DISCOVERY AND ADMISSIBILITY OF EVIDENCE**

**4.1.** Discoverable material shall be exchanged among: the administrator and any pro tem attorney; the attorney representing the family of the deceased; the attorney representing the jurisdiction employing the involved law enforcement member(s); and the attorney representing the involved law enforcement member(s).

**4.2.** Discovery materials are to be used by the attorneys solely for the inquest proceeding. 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.

**4.3.** In the event that confidential materials in the possession of any person or agency are sought for use in the inquest, the administrator, 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 administrator shall have the discretion to consider the admissibility and use of, information that may be relevant to the incident. 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.

**4.4.** The decedent's criminal history may not be introduced into evidence unless the administrator first determines that: it is directly related to the reason for an arrest, detention, or use of force (e.g. officers were arresting an individual convicted of a felony who they believed was carrying a firearm); it served as the basis for an officer safety caution (or equivalent warning) that the member(s) of the law enforcement agency was aware of prior to any use of force; or other, contemporaneous knowledge of the individual's criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat.

**4.5.** If decedent's criminal history is admitted, it must be limited to the greatest extent possible. It may only include information both actually known to officer(s) at the time, and actually forming a basis for the decision to use deadly force or the tactics in approaching the individual. It may not include the specific crime of conviction, the nature of the crime (e.g. violent or nonviolent), the deceased's incarceration history, or any other criminal charge, unless the administrator makes a specific finding of relevance to a contested issue in the inquest.

**4.6.** The disciplinary history of the law enforcement member(s) involved may not be introduced into evidence unless the administrator first determines that it is directly related to the use of force. If such information is admitted, it must be limited to the greatest extent possible.

**4.7.** Protective orders may be used to limit discovery, and the administrator may order the return of all discretionarily-ordered discovery.

## **5.0 SCHEDULE AND PRE-INQUEST CONFERENCE**



5.1. It is in the best interests of affected parties and the community to hold the inquest in a timely manner. The manager and administrator will strive for timeliness and to limit unnecessary delays; extensions shall be limited and granted only upon a showing of good cause.

5.2. The manager and administrator shall schedule a pre-inquest conference with the participating parties and may hold additional conferences if necessary. The administrator will obtain proposed witness and exhibit lists, proposed panel instructions, and inquest time estimates, and will inquire whether any special needs such as interpreters are required. The conference shall be public unless compelling circumstances require an in camera hearing, in which case the administrator must make findings of fact and conclusions of law justifying such measures under Washington law.

5.3. The administrator shall solicit proposed stipulations of fact from the participating parties and work diligently to narrow the scope of inquiry at the inquest. The administrator shall share the stipulated facts with the panel at the start of the inquest.

5.4. The administrator shall instruct the panel at the start of the inquest.

5.5. The manager shall maintain a website publishing the schedule for the inquest, stipulated facts, inquest file and, where possible, inquest recordings.

## **6.0. PANEL POOL**

The administrator shall select the panel from the regular Superior Court juror pool pursuant to RCW 36.24.020.

## **7.0. PANEL QUESTIONING (VOIR DIRE)**

7.1. The administrator shall conduct voir dire, after consultation with the participating parties.

7.2. There is no set limit to the number of panelists the administrator may excuse. Panelists may be excused for cause and/or because serving on the inquest panel will present a hardship.

## **8.0. PANEL QUESTIONS FOR PARTICIPANTS**

After all parties have had an opportunity to examine a witness, panelists are allowed to submit questions to the administrator that the panel wishes to pose to the witness. After consultation with the parties, the administrator shall determine whether to submit a question to the witness and the manner of the submission.

## **9.0. RECORDING**

The manager shall ensure that the inquest proceedings are audio recorded and that the audio recordings are made accessible to the public to the greatest extent consistent with GR 16.

#### **10.0. MEDIA GUIDELINES**

Consistent with Section 9, above, the administrator shall make the proceedings available to the public and to the media, this includes video and audio recording and still photography.

#### **11.0 ORDER OF PRESENTATION OF EVIDENCE**

**11.1.** There shall be no opening statements by the parties. The judge's introduction will include an instruction in substantially the following form: "You have been empaneled as members of a coroner's panel in the inquest. This is not a trial. The purpose of the inquest is to provide public inquiry into the causes and circumstances surrounding the death of [decedent]. It is not the purpose of this inquest to determine the criminal or civil liability of any person or agency. Your role will be to hear the evidence and answer questions according to instructions given to you at the close of the proceedings. The pro tem staff attorney's role is solely to assist the administrator in presenting the evidence. As administrator I have determined who will be called as witnesses and the issues which you will be asked to consider."

**11.2.** The administrator through the pro tem attorney has the first opportunity to introduce witnesses and evidence. The parties may then each introduce their own witnesses and evidence.

**11.3.** The administrator, after consultation with the parties, decides the order of presentation of evidence and witnesses. The administrator may direct that the pro tem attorney conduct the initial examination of each witness.

**11.4.** The administrator shall make rulings on the admissibility of evidence and testimony based on the Rules of Evidence and these procedures.

#### **12.0 WITNESSES AND TESTIMONY**

**12.1.** Each party, including the administrator, through the pro tem staff attorney, may proffer its own witnesses to provide testimony that aids the panel in the understanding of the facts, including factual areas of experts (e.g. ballistics and forensic medical examination).

**12.2.** The administrator shall base rulings on the admissibility of such testimony on the proposed witness's qualifications, the Rules of Evidence, and these procedures. Testimony regarding changes that should be made to existing policy, procedure, and training is not permitted.

**12.3.** The employing government department shall designate an official(s) to provide a comprehensive overview of the forensic investigation into the incident (e.g., statements collected by investigators, investigators' review of forensic evidence, physical evidence collected by investigators, etc.). Additionally, the chief law enforcement officer of the

involved agency or director of the employing government department shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death but may not comment on whether employees' actions related to the death were pursuant to training and policy; or any conclusions about whether the employee's actions were within policy and training.

**12.4.** 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 until after their testimony, and relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances.

**12.5.** At the conclusion of the testimony, the administrator will solicit from the pro tem attorney and/or from the participating parties additional submissions of proposed stipulated facts. The administrator will determine which, if any, proposed stipulated facts should be submitted to the panel.

### **13.0. STATEMENTS OF SUMMATION**

The pro tem attorney and the participating parties may offer statements of summation only if preapproved by the administrator in consultation with the parties. Statements must be consistent with the fact-finding purpose of the inquest and must not suggest conclusions of law or bear on fault.

### **14.0. PANEL QUESTIONS**

**14.1.** After the conclusion of testimony, each party shall submit to the administrator proposed questions for the panel. After consultation with the parties, the administrator shall determine which questions are within the scope of the inquest and should be submitted to the panel. Prior to the statements of summation, the administrator shall provide the panel with the list of questions.

**14.2.** The inquest administrator shall give written instructions to the panel and shall submit questions to be answered, subject to the limitations of Section 3 (above) and keeping in mind the purpose of an inquest. The administrator shall instruct the panel that it may not comment on fault, or on justification-including the mental state of the involved officer(s), such as whether the officer thought the decedent posed a threat of death or serious bodily injury to the officer(s)-or on the criminal or civil liability of a person or agency.

**14.3.** Beyond these limitations, the panel shall not be confined to the stipulated facts, but may consider any testimony or evidence presented during the inquest proceeding. In answering any question, the panel may not consider any information learned outside of the inquest.

**14.4.** Questions submitted to the panel must provide three response options: "yes," "no," and "unknown." A panelist shall respond "yes" when the panelist believes a preponderance of the evidence supports responding to the question in the affirmative. A panelist shall respond "no" when the panelist believes a preponderance of the evidence supports responding to the question in the negative. A panelist shall respond

"unknown" if either (1) the weight of the evidence equally supports responding to the question in the affirmative and the negative or (2) not enough evidence was presented to allow the panelist to answer the question in the affirmative or the negative.

**14.5.** The panel shall deliberate and panelists shall exchange their interpretations of the evidence. However, the panel need not reach unanimity and each panelist shall be instructed to answer the questions individually.

**14.6.** After every question, each panelist shall have the opportunity to provide a written explanation of the panelist's answer. The administrator shall direct each panelist that the panelist need only provide a written explanation when the panelist believes that a written explanation would provide information helpful in explaining or interpreting the panelist's answer.

## **15.0. FINDINGS**

**15.1.** The manager shall transmit the panel's findings to the County Executive.

**15.2.** The manager shall ensure the findings and recommendations are published on its website along with the inquest recording.

## **16.0. ANNUAL REVIEW**

**16.1.** The manager shall submit a report to the County Executive at the end of each year on the operations of inquests:

**16.2.** The County Executive will call for a periodic review of the inquest process by an independent review committee to determine if the inquest process is conforming to updated laws and adequately meeting the principles of transparency, community engagement, and respect for all those involved in the inquest process.