

Legal Requirements for Use-of-Deadly-Force Investigations

Recent changes in Washington law, effective January 6, 2020, now impose detailed requirements for investigations into law enforcement use-of-deadly-force incidents. These requirements apply to all investigations except as required by a federal consent decree, settlement, or court order.

These investigations must be (1) independent of the agency involved in the use of force; (2) conducted in a transparent fashion, characterized by extensive communication with the public and family of the person against whom deadly force was used; and (3) credible and performed by qualified personnel.

Independent Investigative Team (IIT) – Construction of Team

- Can consist of personnel from multiple agencies or drawn solely from one agency.
- Must include at least two non-law enforcement community representatives “who have credibility with and ties to communities impacted by police use of deadly force.” WAC 139-12-030.
- Non-law enforcement community representatives must be involved in interviewing prospective team members and making recommendations to the team commander. They must be present at briefings with the involved agency(s) chief or sheriff, have access to the completed investigation file, and receive a copy of all press releases and communication to the media prior to release.

IIT – Standards for law enforcement team members

- Must be WA-commissioned peace officers with previous experience as a detective or investigator, or have special skills or experience.
- No work history of serious misconduct, pattern of sustained complaints, dishonorable behavior (e.g., harassment, bullying or aggressive or intimidating behavior), or any “personal history of bias or prejudice against community members that may be impacted by the police use of deadly force.” WAC 139-12-030.

IIT – Operation of the team

- Brought in as soon as an agency has knowledge of an incident involving the use of deadly force.
- Agency whose personnel were involved in use of deadly force cannot be involved in investigation except under very limited circumstances.
- Must appoint a family liaison within 24 hours of getting the case to contact and communicate any significant developments and notice in advance of any press releases to the family of person against whom deadly force used.
- Must appoint tribal liaison within 24 hours of getting case if person against whom deadly force used is believed to be tribal member. Must notify tribe of all significant case developments.
- All team members must complete within 72 hours of getting the case a conflict of interest assessment to ensure no connection with officers being investigated.
- Must make available to the public: (1) Names and identities of the team members; and (2) IIT’s policies and operating procedures.
- Neither the IIT nor the agency involved in the use of force may provide to the media the “criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required” by law. WAC 139-12-030.
- Investigation must “follow accepted best practices for homicide investigations published and annually updated” by the Criminal Justice Training Commission. WAC 139-12-030.
- Provide every week a public update on the progress of the investigation, “even if there is no new progress to report.” WAC 139-12-030.
- Make information about the investigation available to the public in a manner consistent with state law when the investigation is complete.