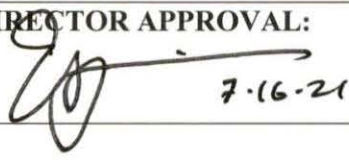


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 07/26/2021

AGENDA ITEM:	
SMART TEAM Agreement to Participate	
PREPARED BY:	DIRECTOR APPROVAL: 
Chief Erik Scairpon	
DEPARTMENT:	
Police	
ATTACHMENTS:	
Yes	
BUDGET CODE:	AMOUNT:
	0.00
SUMMARY: The Marysville Police Department has agreed to participate with the Snohomish County Multiple Agency Response Team, known as SMART. This participation allows the Marysville Police Department to be included when investigating major crimes related to police agency employees. There are no dollars associated with this partnership.	

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor or sign and execute the SMART Team Agreement so that Marysville Police can participate with the Team.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the SMART Team Agreement so that Marysville Police can participate with the Team.

MEMORANDUM OF UNDERSTANDING

The purpose of this Memorandum of Understanding is to document, by written agreement, the parties' intent to operate an independent investigation team, as defined in WAC 139-12-020, pursuant to the April 2020 SMART Protocol.

CITY OF ARLINGTON POLICE
DEPARTMENT:

Date

CITY OF BOTHELL POLICE
DEPARTMENT:

Date

CITY OF BRIER POLICE
DEPARTMENT:

Date

TOWN OF DARRINGTON POLICE
DEPARTMENT:

Date

CITY OF EDMONDS POLICE
DEPARTMENT:

Date

CITY OF EVERETT POLICE
DEPARTMENT:

Date

CITY OF GRANITE FALLS
POLICE DEPARTMENT:

Date

CITY OF GOLD BAR POLICE
DEPARTMENT:

Date

TOWN OF INDEX POLICE
DEPARTMENT:

Date

CITY OF LAKE STEVENS
POLICE DEPARTMENT:

Date

CITY OF LYNNWOOD POLICE
DEPARTMENT:

_____ Date

CITY OF MARYSVILLE POLICE
DEPARTMENT:

_____ Date

CITY OF MILL CREEK
POLICE DEPARTMENT:

_____ Date

CITY OF MONROE POLICE
DEPARTMENT:

_____ Date

CITY OF MOUNTLAKE TERRACE
POLICE DEPARTMENT:

_____ Date

CITY OF MUKILTEO POLICE
DEPARTMENT:

_____ Date

CITY OF STANWOOD POLICE
DEPARTMENT:

_____ Date

SNOHOMISH COUNTY SHERIFF'S
OFFICE:

_____ Date

CITY OF SULTAN POLICE
DEPARTMENT:

_____ Date

TOWN OF WOODWAY POLICE
DEPARTMENT:

_____ Date

SMART



Protocol



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DEFINITIONS

Best practices

For the purpose of this protocol, best practices are defined as methods, techniques, and procedures that have consistently shown by research and experience to produce superior results and are established or proposed as a standard, suitable for widespread adoption in the law enforcement profession.

Completed investigation

The final work product of the IIT for the purpose of informing the prosecuting attorney's charging decision. An independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.

Conflicts of Interest

Within seventy-two hours of the commencement of each investigation, investigators and nonlaw enforcement community representatives, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment (created by WSCJTC) will include questions about prior interactions or relationships with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and discussed by the nonlaw enforcement community representatives and the IIT commander. (The conflict of interest assessments for investigators and nonlaw enforcement community representatives will be developed at the March 2020 summit and adopted by the commission at the June 2020 meeting).

Deadly force

As set forth in RCW 9A.16.010, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

Evanescent evidence – Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or un-preserved for the arrival of the independent investigative team (IIT); identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses.

Good faith standard – As set forth in RCW 9A.16.040, "good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."

Great bodily harm

As set forth in RCW 9A.04.110, "great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

Independent investigative team (IIT)

A team of qualified and certified peace officer investigators, civilian crime scene specialists, and at least two non-law enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents. An IIT is created when multiple law enforcement agencies enter into a written agreement to investigate police use of deadly force incidents in their geographical regions. A single law enforcement agency may fulfill the independent investigative function, provided it is not the involved agency.

Initial incident response

This is the period in time immediately following a police use of deadly force incident, and prior to the arrival of the IIT, when involved agency personnel on scene and other first responders immediately take actions to render the scene safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries.

Involved agency

The agency that employs or supervises the officer(s) who used deadly force. There can be more than one "involved agency."

Law enforcement employee

This Protocol applies to employees and to certain other people affiliated with the law enforcement agencies that are members of the SMART agreement, as follows:

- Full-time, part-time, and hourly sworn and unsworn law enforcement personnel, whether on-duty or off-duty.
- Reserve law enforcement personnel who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.
- Temporary employees and volunteers, whether paid or unpaid, who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.

Law enforcement-involved fatal or Great bodily or Substantial bodily harm incident

An incident in which a Member Agency Law Enforcement Employee is a Subject Officer and

- That incident results in a fatality or Great bodily or Substantial bodily harm to another party or
- An incident in which a law enforcement officer is the recipient of a Great bodily or Substantial bodily harm or is killed.

Member Agency

Each of the agencies that enters into a written agreement to investigate police use of deadly force in their geographical region.

Necessary

As set forth in RCW 9A.16.010, "necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

Peer support

The employer agency may provide Peer Support to their law enforcement employee(s), subject to the employer agency's Peer Support policy (RCW 5.60.060) and consistent with SMART Protocol and SMART Administrative Guidelines.

Prosecutor's review

The period of time when the IIT presents a completed investigation to the prosecutor, who then reviews all the facts and makes a charging decision.

Proximate cause

A cause which, in a natural and continuous sequence, produces the serious injury or fatality, and without which cause the injury or fatality would not have occurred.

Subject officer

A Law Enforcement Employee whose use of force is reasonably believed to be a "proximate cause" of great bodily or substantial bodily injury or death to another person.

Substantial bodily harm

As set forth in RCW 9A.04.110, "substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

MISSION: TO PROVIDE EXPERT INVESTIGATIVE AID TO ALL PARTICIPATING LAW ENFORCEMENT AGENCIES

I. PURPOSE OF THE INDEPENDENT INVESTIGATION TEAM (IIT)

In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of de-escalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death.

Initiative 940 and SHB 1064 incorporated those recommendations and these WACs implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life should be at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is conducted in the same manner as a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency. SMART and IIT will be used interchangeably throughout the document.

II. GOAL OF THE INDEPENDENT INVESTIGATION TEAM (IIT)

The Snohomish County Multi Agency Response Team (SMART) is an independent investigative team (IIT) as defined in WAC 139-12-020. SMART is a team of qualified and certified peace officer investigators, civilian crime scene specialists and non-law enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents.

SMART conducts all operations in accordance with five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

- Independence
- Transparency
- Communication
- Credible process
- Credible investigators

Standards are necessary for the involved agency and the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that results in a compliant and complete investigation and builds public trust.

At the direction of the IIT commander, IIT personnel may be called upon to conduct investigations not related to police use of deadly force. (Example – Mass causality shooting).

IIT such as SMART allows agencies to maximize the availability and sharing of the latest technological equipment and techniques and consolidate and share the skills of the most experienced supervisors and investigators. This allows SMART to conduct thorough investigations in as timely a fashion as is feasible under the circumstances.

Independence is essential to the integrity and objectivity of the investigation. Maintaining independence is achieved through compliance with rules and regulations designed to prohibit undue influence, and the appearance of undue influence, by the involved agency in the investigation.

III. BOARD OF DIRECTORS

The Board of Directors of SMART shall consist of six (6) members appointed by the Snohomish County Sheriff and Police Chief's Association ("SCSPCA") as follows:

- The Snohomish County Sheriff (or representative)
- The Everett Police Chief (or representative)
- The Snohomish County Commander of the Washington State Patrol (or representative)
- A Chief of Police (or representative) from municipalities from North County (Arlington, Lake Stevens, or Marysville,).
- A Chief of Police (or representative) from municipalities from Southeast County (Monroe, Mill Creek, Bothell).
- A Chief of Police (or representative) from municipalities from Southwest County (Brier, Edmonds, Lynnwood, Mountlake Terrace, or Mukilteo).

Representatives of the Snohomish County Prosecutor's Office and the Snohomish County Medical Examiner's Office are included on the Board as non-voting advisors. For voting purposes, three (3) Board Members shall constitute a quorum. Each voting member shall serve a two (2) year term. The terms shall be staggered to provide continuity of membership. Board members may be selected to serve additional two (2) year terms without limitation.

The Chairman of the Board of Directors shall be elected by the Board at an annual meeting to be held in January of each year. The primary purpose of the meeting will be to receive a comprehensive report from the SMART Commander concerning activities of SMART over the past year, address issues pertaining to the operation and support of the Team, and address changes to the SMART Protocol. Special meetings may be called at any time by the Chairman of the Board. Special meetings may also be requested by the SMART Commander.

IV. TEAM MEMBERS / RESPONSIBILITIES

TEAM COMMAND

In order to ensure appropriate independent investigations are managed properly, Team Command will consist of a cadre of three commissioned investigative personnel. These personnel must hold the rank of Captain, Commander or commensurate rank from a participating SMART agency and be selected by the chiefs and sheriffs (SCSPCA). Each of the leaders will be assigned as Team Commander of SMART for one calendar year on a rotational basis. When not acting as Team Commander, the leaders will act as Assistant Team Commanders.

During their assignment, the Team Commander has the overall responsibility to manage and coordinate assigned incidents as well as ensure the readiness and training of the Team. The SMART Commander reports to the Board of Directors.

ASSISTANT TEAM COMMANDERS

The Assistant Commanders have a responsibility to manage and coordinate assigned incidents in the absence of the Team Commander. The Assistant Team Commanders report to the Team Commander. The Assistant Team Commanders shall not be from the same agency as the Team Commander.

ADMINISTRATIVE MANAGERS

The Administrative Managers shall be members of the SMART Team and hold the rank of a sergeant or above. The Administrative Manager shall be appointed by the Team Commander. The responsibilities of the Administrative Manager include oversight and assistance to Investigative Team Supervisors, arranging, coordinating, and documenting all training for the Team, maintaining records of Team call-outs, maintaining the Team personnel records/roster and equipment inventory, managing the financial transactions/records of the Team, and preparing the annual SMART Report. The Administrative Managers may act as the Team Commander in the absence of the Team Commander and Assistant Commanders or may be designated as such in the event Team Command has members involved in the same incident that is subject of investigation.

INVESTIGATIVE TEAM SUPERVISORS

- Investigative Team Supervisors shall have the rank of Sergeant and shall be assigned by the Team Commander to respond to and supervise the incident. In acknowledgement of the resources and experience of these agencies, one (1) Sergeant should be from the Everett Police Department Major Crimes Unit and one (1) Sergeant should be from the Snohomish County Sheriff's Office Major Crimes Unit. The team will have up to four additional sergeants available to fill the role of an Investigative Team Supervisor. If an additional supervisor(s) is needed the Team Commander shall designate an acting supervisor from within SMART.
- At the direction of the Team Commander, Investigative Team Supervisors shall respond to and take direct charge of the crime scene investigation. When multiple Investigative Team Supervisors are required, one Supervisor will be designated as the Lead.

- In the event multiple agency members are involved in the same incident that is subject of investigation, and to ensure an independent investigation, the Team Supervisor will be appointed from a non-involved agency as the Lead.

INVESTIGATORS

Investigators shall be detectives selected through the IIT selection process. Investigators shall work in two or more person teams to complete specific investigatory tasks at the direction of an IIT supervisor.

At least one investigator assigned to every investigation shall be a qualified lead investigator as determined by WAC 139.12.

QUALIFIED LEAD INVESTIGATOR

To obtain an IIT qualified lead investigator certificate, candidates must:

- Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.
- Provide proof of successful completion of the prescribed training classes (or appropriate equivalent experience):

Basic Training Classes

- Basic Homicide investigation
- Interviewing and interrogation
- LETCSA Violence de-escalation and mental health training

Note: IIT Members with two years or more of relevant, full-time criminal investigative work experience may substitute their work experience for the required Basic (Investigation) Training classes. They are still required to attend the LETCSA Training.

EVIDENCE TECHNICIANS

The Evidence Technicians shall help with documenting evidence, collecting evidence, packaging evidence, transporting evidence, data collection and other duties assigned.

NON-LAW ENFORCEMENT COMMUNITY REPRESENTATIVES

A minimum of two (2) Non-Law Enforcement Community Representatives will be assigned to each IIT in the following aspects:

- Participate directly in the vetting, interviewing and/ or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the non-law enforcement community representatives for review).
- Review conflict of interest statements submitted within 72 hours of the commencement of each investigation by the investigators.
- Be present at the briefings with the involved agency(s) chief or sheriff.
- Have access to the investigation file when it is completed
- Be provided a copy of all press releases and communication to the media prior to release; and
- Review notification of equipment use of the involved agency,

The non-law enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded. The binding confidentiality agreement also includes any civil cases that may arise.

Note: If the confidentiality agreement is violated, the nonlaw enforcement representative may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW, Washington State Criminal Records Privacy Act. For the purpose of this chapter, "criminal background information" is the same as "criminal history information" as defined in RCW 10.97.030(4).

LIAISON ASSIGNMENTS

In all investigations, an IIT member will be assigned as a liaison:

A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.

- A member of the IIT will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.
- If the person against whom deadly force is used, or is believed to be a member of a federally recognized tribe:
 - The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW 10.114.021.
 - A member of the IIT will be assigned as a tribal liaison within the first twenty-four hours and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.

OTHER SPECIALIZED INVESTIGATIVE RESOURCES

Specialized equipment belonging to the involved agency may not be used by the IIT unless:

- 1 - No reasonable alternative exists;
- 2 - The equipment is critical to carrying out the independent investigation; and
- 3 - The use is approved by the IIT commander.

If the equipment is used, the non-law enforcement community representatives on the IIT must be notified about: 1 - why it needs to be used; and 2 - the steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.

BILLETS

- Team Command (3)
- Administrative Managers (minimum of 2)
- Supervisors (up to 6)
- Investigators (up to 34)

- Prosecutors (up to 3)
- Evidence Technicians (up to 7)
- Non-Law Enforcement Community Representative (minimum of 2)
- Public Information Officer (up to 4)

The number and distribution of billets on SMART may only be modified by the SMART Board of Directors.

V. ACTIVATION – STANDARDS FOR AN INVESTIGATION COMPLETELY INDEPENDENT OF THE INVOLVED AGENCY

Once the involved agency personnel and/or other first responders have rendered the scene safe and provided or facilitated lifesaving first aid to persons at the scene who have life-threatening injuries, the involved agency will immediately call the IIT. Then the primary focus of the involved agency shifts to the protection and preservation of evanescent evidence in order to maintain the integrity of the scene until the IIT arrives.

- A Chief of Police, or the Sheriff, or his/her designee, shall make the request for the IIT via their dispatch center (Sno911).
- The dispatch center shall contact the IIT Commander per IIT call-out instructions.
- The IIT Commander shall assign a Supervisor as the Lead Supervisor. The Lead Supervisor shall be responsible for determining how many investigators will be needed and will initiate the team callout.

Once the IIT arrives, and the IIT commander has the appropriate resources on scene, the involved agency will relinquish control of the scene to the IIT. (The involved agency can remain on scene as a uniformed presence, to ensure the safety and security of the IIT investigators).

No member of the involved agency may participate in any way in the investigation of police use of deadly force conducted by the IIT.

Note: All officer-involved use of lethal force-based investigations will be conducted in accordance with WAC 139.12

VI. AUTHORITY

Once the IIT Commander has authorized the activation of IIT to investigate an incident as requested by the Involved Agency representative and/or the Employing Agency, the IIT Commander shall have sole and exclusive authority concerning the investigation of the incident.

- The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.
- The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.

VII. INVOLVED AND/OR EMPLOYER AGENCY RESPONSIBILITIES

- The Involved and/or Employer Agency shall be part of the IIT agreement
- The Involved Agency shall render the scene safe and provide for or facilitate lifesaving first aid.
- The Involved and/or Employer Agency shall immediately make the initial request for IIT.
- Involved
- The Involved and/or Employer Agency shall make all department personnel available to the IIT in accordance with WAC 139-12.
- Involved Agency indemnification shall be in accordance with the Washington State Mutual Aid Peace Officers Powers Act.
- The Involved and/or Employer Agency shall be responsible for all reasonable investigative expenditures. (Unexpected expenditures maybe at the cost of the involved agency).
- The Involved Agency will coordinate appropriate security measures with the IIT Commander and bear the costs of security until the suspect is available for booking.
- The Involved and/or Employer Agency shall make all documents, reports, and information available to IIT in accordance with federal and state law.

VIII. COSTS

Each Member Agency shall be responsible for their employees' wages and associated costs. Any non-routine costs must be approved by the Involved and/or Employer Agency head prior to incurring the costs and, upon said approval, shall be the responsibility of the Involved Agency.

IX. EVIDENCE STORAGE

All evidence shall be stored under the control of a non-involved IIT partner agency. In acknowledgement of the resources and experience of the Everett Police Department and the Snohomish County Sheriff's Office, priority consideration should be given to utilizing these agencies' Property Rooms, unless one or both agencies have officers involved in the use of lethal force. The Involved and/or Employer Agency shall be responsible for storage and handling costs of extraordinary items such as vehicles, HAZMAT, etc.

X. CASE FILES

- All original reports, statements, and other documentation shall be written under one case number provided by Sno911 to the IIT at the time of the callout. Once completed, those reports, statements, and any other documentation shall be turned over to the designated IIT supervisor for review and approval. The IIT supervisor will send a copy of any approved reports to the IIT lead investigator as soon as possible.
- All case file records shall be stored under the control of a non-involved IIT partner agency. In acknowledgement of the resources and experience of the Everett Police Department and the Snohomish County Sheriff's Office, priority consideration should be given to utilizing these agencies' Records Units, unless one or both agencies have officers involved in the use of lethal force.
- Copies of all case files shall be made available to the Involved agency upon completion of an IIT investigation.

XI. TEAM ADMINISTRATIVE RECORDS

Records shall be maintained of all Team activity including:

- Selection process
- Personnel history
- Call-out activity
- Team training

Note: A designated IIT Administrative Manager will be responsible for maintaining these team records.

XII. APPOINTMENT / SELECTION OF TEAM MEMBERS

Investigators assigned to an IIT are expected to have a work history free of a sustained finding of serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force.

Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:

- Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).
- Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, serious ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.
- Dishonorable behavior including, but not limited to: harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.

Note: SMART members who experience a sustained finding of misconduct as described above and/or demonstrate a pattern of sustained complaints or demonstrable bias or prejudice against community members shall be removed without cause by the SMART Commander.

APPOINTED MEMBERS

- The chiefs and sheriffs (SCSPCA) who sign a written agreement to support and participate in the IIT shall appoint:
 - The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.
 - All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.
 - The IIT supervisors shall be recommended by their agency to the IIT commander.
 - IIT Public Information Officers shall be appointed by the IIT Commander

Note: At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The chiefs and sheriffs (SCSPCA) of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s) and/or sheriff(s).

SELECTION PROCESS FOR IIT MEMBERS

- The SMART Commander shall make written notification to the Sheriff and to the Police Chiefs of SMART agencies soliciting investigators for SMART.
- Ensure all applicants meet all time, rank, and training prerequisites described in chapter 139.12.030 4.c.v WAC.
- Ensure that qualified applicants are interviewed by a panel, which includes the non-law enforcement community representatives and other members of the IIT selected by the IIT commander.
- All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.
- At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.
- The SMART Commander shall notify the Chiefs and Sheriff (SCSPCA) of the outcome of the selection process prior to notification of the selected member(s).
- All applicants shall be advised by the SMART Commander, Assistant Commander or Administrative Manager of their performance during the selection process regardless of whether or not they were selected for the SMART.

REQUIREMENTS for IIT INVESTIGATORS

- Applicants for the position of investigator must be employed by a member agency of the IIT.
- The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.
- Letter of recommendation from applicant's Chief /Sheriff or command level supervisor
- Commitment to attend quarterly training
- Willingness to be on call and reasonably available for call-outs

XIII. PERIODIC APPOINTMENT REVIEW – REMOVAL FROM TEAM

The chief or sheriff (SCSPCA) of a member agency, and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.

Members of the IIT can be removed without cause by the SMART Commander. Commander approval is required for any member wishing to voluntarily depart from the team.

XIV. TRAINING

The credibility of an individual assigned to an IIT is grounded in two elements: Training and experience in criminal investigations. Since some IIT members were chosen because of their

experience in criminal investigations, it is important to clearly define expectations for both training and experience and acknowledge the relationship between those two elements.

IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.

Civilian IIT members (i.e. crime scene investigators, evidence technicians, etc.) are not required to obtain the qualified lead investigator certificate, but the IIT leadership shall establish reasonable noncommissioned training requirements through their IIT protocol.

The CJTC will issue an "IIT qualified lead investigator certificate" to ensure that those who are assigned to a lead investigator role for an IIT meet the training requirements listed below by the end of 2020.

To obtain an IIT qualified lead investigator certificate, candidates must:

- Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.
- Provide proof of successful completion of the prescribed training classes, (or appropriate equivalent experience), listed in this chapter.

BASIC TRAINING CLASSES:

- Basic homicide investigation;
- Interviewing and interrogation;
- LETCSA Violence de-escalation and mental health training.

IIT members who have two years or more of relevant, full-time criminal investigative work experience may substitute their work experience for the required basic training classes. County sheriffs, police chiefs, and IIT commanders are encouraged to promote continuing education as a best practice for all members assigned to the IIT.

ADVANCED TRAINING CLASSES:

A minimum of eight hours of training annually may include, but is not limited to, the following criminal investigation topics:

- Advanced homicide investigation techniques;
- Advanced interviewing and interrogation;
- Officer-involved shooting investigation;
- In-custody death investigation;
- Excited delirium and positional asphyxia;
- Bloodstain pattern analysis;
- Crime scene photography/videography and

Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.

IN-SERVICE TRAINING:

- All IIT members shall receive priority registration to LETCSA training, required homicide investigations training, and recertification every three years.
- The IIT shall train as a unit at least annually (8 hours).
- Team members are expected to attend training sessions. Team members may be excused from training with written approval from a command staff member from the detective's home agency. Written notification shall also be made to the SMART Commander.

XV. EQUIPMENT

SMART member agencies shall work together to ensure the IIT has the necessary equipment to conduct a major case investigation, supporting the mission and goals of the team. Agencies shall supply each team member with necessary investigative and safety equipment.

All investigators will be provided with a SMART jacket and polo, SMART Rain Gear (pants and Jacket) paid for by their agency, and which will be returned to a team supervisor upon an investigator's disassociation with the team.

XVI. INCIDENT DEBRIEFING / KEEPING AGENCIES INFORMED

- After an IIT activation, an incident debriefing for SMART investigators will be conducted as soon as practical. The debriefing will be scheduled by the SMART Commander. The debriefing will be facilitated by a SMART sergeant. The purpose of this debriefing is to review each investigator's involvement in the case and assign out any additional tasks that may be in need of completion.
- No information about the ongoing independent investigation of police use of deadly force will be shared with any member of the involved agency, except limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the investigation.
- If the chief or sheriff of the involved agency requests that the IIT release the body cam video or other investigation information of urgent public interest, the IIT commander should honor the request with the agreement of the prosecutor of jurisdiction.
- After the SMART investigation has been completed and the file referred to the Prosecuting Attorney for review the SMART Commander will schedule a case overview meeting for the involved agency. This meeting is intended to brief the involved agency's command staff and legal department on what occurred during the incident, what investigative steps were undertaken as well as answer any questions that the involved agency may have with regards to the investigation. The lead investigator and supervisor will be responsible for presenting to the involved agency's command staff.

SMART Administrative Guidelines

I. INVOCATION OF THIS PROTOCOL

A. AUTOMATIC AND IMMEDIATE

Upon the occurrence of deadly force, Great bodily or Substantial bodily harm, this Protocol is effective upon the activation of the IIT. Such incidents may include, but are not limited to the following:

1. Intentional and accidental shootings, including police tactical incidents.
2. Vehicular collisions which result in great bodily or substantial bodily injury or fatality as that involve the use of vehicle(s) by police as a "legal intervention" technique intended to apprehend a suspect. "Legal Intervention" includes PIT maneuver, vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.
3. Vehicular collisions which involve great bodily or substantial bodily injuries or a fatality that occur during a police pursuit. The injury or fatality may be to the suspect, an officer or other third party.

B. OPTIONAL

1. Each Member Agency, when in the capacity of an Involved Agency or Employer Agency, may itself invoke this Protocol upon the occurrence of any sensitive or critical event involving a law enforcement employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol. Examples are as follows:
 - a. A fatality, which is not covered by this Protocol.
 - b. A law enforcement-involved incident which is not fatal or the injuries are not serious.
 - c. Any other sensitive or critical event involving a law enforcement employee where criminal conduct is a possibility to be investigated.

C. SPECIAL DEPLOYMENT

1. While formed primarily to investigate officer-involved fatalities, the IIT may be deployed for non-officer involved incidents at the discretion of the SMART Commander.
 - Responses outside of Snohomish County for agencies not party to the SMART Agreement will be considered on a case by case basis.
 - Incidents similar in nature to a mass casualty shooting.

II. INVESTIGATION AGENCIES, FORMATS, AND RESPONSIBILITIES

To properly recognize and accommodate the various interests and the various rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: (A) The criminal investigation, to be conducted by the IIT, and (B) The administrative investigation, to be conducted by the Employer Agency.

A. THE CRIMINAL INVESTIGATION

1. Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.
2. In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.
3. The criminal investigation has investigative priority over the administrative investigation and it begins immediately after an incident has occurred. The criminal investigation is performed by the IIT.
 - a. To determine presence or absence of criminal liability on the part of those involved in the incident, specifically:
 - i. To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
 - ii. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
 - iii. If criminal conduct does exist, determine the degree of crime(s), the existence of any factual or legal defenses to that crime, and the presence or absence of any factors, which could mitigate or aggravate punishment for that crime.
 - b. To provide factual information to the Employer Agency's management for its internal use. While the criminal investigators do not direct their investigative attention to administration concerns, it is recognized that the criminal investigation's results are of interest to agency management for its internal use, and those results are fully available for that purpose unless otherwise prohibited by law.

III. SCENE SECURITY

Involved Agency Uniformed personnel may remain on scene to ensure the safety and security of the IIT investigators but will have no ability to enter the crime scene or partake in any of the investigation.

IV. SCENE PROCEDURES

- A. In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.

Standards for a credible independent investigative process:

After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will:

- Secure the incident scene and maintain its integrity until the IIT arrives.
 - The perimeter must be clearly marked and protected.
 - Evanescent evidence must be located and preserved, consistent with best practices published annually by the criminal justice training commission.
 - The independent investigation will follow accepted best practices for homicide investigations published and annually updated by the WSCJTC.
- B. If a person is transported to a hospital that has sustained Great bodily or Substantial bodily harm or is deceased, an officer should accompany that person in the same vehicle in order to:
1. Collect Evanescent evidence which must be located and preserved, consistent with best practices published annually by the criminal justice training commission.
 2. Obtain a dying declaration, spontaneous statement, statement of then-existing or previous mental or physical state.
 3. Maintain custody of the person if he/she has been arrested.
 4. Provide information to medical personnel about the incident as relevant to treatment and obtain information from medical personnel relevant to the investigation.
 5. Identify relevant people, including witnesses and medical personnel.
- C. Scene Access:
1. Access to the scene(s) shall be limited to IIT investigators
 2. IIT investigators shall establish a written log as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
 3. When not needed for live-saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.

4. Within seventy-two hours of the commencement of each investigation, investigators and nonlaw enforcement community representatives, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment tool (created by WSCJTC) will include questions about prior interactions or relationships with officers being investigated, and will address social conflict, work conflict and bias. The conflict assessment will be reviewed and discussed by the nonlaw enforcement community representatives and the IIT commander.
- D. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene shall promptly see to the security and/or collection of such items following the below listed guidelines:
1. Responding supervisors/officers should not handle, remove, make safe, or secure any subject officer's weapons unless it is absolutely necessary. If the area is secure, loose weapons or instruments shall be left in place and undisturbed. See the definition for Evanescent Evidence.
 2. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
 3. If a Subject Officer still has personal possession of a weapon he/she used in the incident, it is acceptable for the Subject Officer to maintain custody and control of the weapon (handgun) on their person during this period of time, as long as an uninvolved officer/investigator is assigned to stay with the Subject Officer to ensure the weapon is not altered. This procedure shall be adhered to until IIT investigators are available to properly document the Subject Officer's outer appearance and condition of the weapon prior to collecting it.
 4. If the responding supervisor/officer for any reason determines the need to take possession of a Subject Officer's weapon or instrument prior to IIT investigators' arrival, the weapon should be photographed and documented in the condition it was found prior to being removed from the Subject Officer. The supervisor/officer should make note of the weapon's general description and condition, the appearance and location of any trace evidence adhering to it, and where the weapon or instrument was first observed by the supervisor/officer.
 5. In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety "on" or "off," has its hammer back, any apparent jamming of either fired or unfired ammunition, the location and position of the weapon's magazine (i.e., fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.
 - a. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
 - b. If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who

must make note of that fact. If the firearm's hammer is back, it may be lowered, but note must be made of that fact.

6. Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence and shall otherwise maintain the chain of evidence.
7. Whenever possible, involved "long weapons" shall be secured in a vehicle at the scene.
8. All collected weapons or instruments shall be transferred to the IIT investigators upon their arrival, along with the information required in this section.
9. Firearms that do not need to be retained in evidence, as determined by the IIT investigators, will be returned to a designated representative of the Employer Agency promptly after testing has been completed. The IIT investigators recognize that prompt return of officers' handguns is important and will return them as soon as possible.
10. Evanescent evidence must be promptly and effectively observed, recorded and then protected for subsequent collection. Evidence adhering to live participants (such as bloodstains), footprints, and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples. This may lead to the collection of the involved officer's uniform and other equipment worn at the time of the incident.
11. Except as provided in this section, weapons and instruments will not be disturbed in any way. Any handling of weapons and instruments shall be minimal, to preserve the exact state of the weapon or instrument when received.

E. The transporting and sequestering of involved officers shall be conducted as follows:

1. Subject Officers will be relieved of their duties at the scene as promptly as possible and taken to the nearest police or sheriff station/precinct unless otherwise directed by the IIT. Officer(s) not involved in the incident shall be assigned to accompany these officers, individually. Subject Officers should be driven to the station by an uninvolved officer. Witness officers should remain at the scene to brief IIT investigators. If a witness officer is impacted by the event to the extent that it would be better to remove them from the scene then the above removal protocol should be followed for the witness officer(s).
2. If circumstances prohibit removal of all witnesses and Subject Officers from the scene at once, the Subject Officers should be removed first.
3. An uninvolved officer shall remain with the Subject Officers, individually, until they can be interviewed. The sequestering officers are present to ensure the officers have privacy, that their needs are accommodated, and to maintain the integrity of each officer's later statements to investigators. They should not be present during confidential (privileged) conversations.

4. Subject Officers should not discuss the case among themselves, other witness officers, or sequestering officers.

F. CUSTODIAL DEATH SCENES

When an incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible pending interviews by IIT investigators.

V. INTERVIEWING LAW ENFORCEMENT EMPLOYEES

- A. Generally, it is the intent of IIT investigators to obtain details of any officer involved incident as soon as possible after the event by interviewing and obtaining reports/statements from Subject Officers and witness officers. Prior to going off shift all witness officers' reports/statements will be collected and reviewed by IIT investigators.
- B. IIT investigators should always give the Subject Officer the opportunity to provide a voluntary statement or give details of the incident at any point during the investigation. IIT investigators should be aware that agency policies, union agreements, and officers' constitutional rights may delay access to this statement and shall make reasonable efforts to identify and comply with these issues.
- C. In custody interviews will be conducted in accordance with all federal and state laws applicable to in custody interrogations.
- D. Subject Officer interviews should be conducted separately.
- E. Interviews should be recorded.
 1. All recordings will be retained for the period of time they are needed as evidence and, after that time, in accordance with State retention schedules.
 2. After an interview is recorded, a transcript of the recording will be prepared and reviewed by the IIT investigator who conducted the interview for content and context accuracy and any necessary corrections made.
- F. Law enforcement employees have the same rights and privileges regarding IIT interviews that any other citizen would have, including the right to consult with a representative prior to the interview and the right to have the representative present during the interview.

The representative should be allowed to consult about the facts of the incident privately with only one law enforcement employee at a time.

VI. INTOXICANT TESTING

When IIT investigators determine that a law enforcement employee's state of sobriety is relevant to the investigation, sobriety testing will be conducted in accordance with the state law.

VII. AUTOPSY

At least one member of the IIT's primary investigative team will attend autopsies as applicable.

- A. The autopsy pathologist will receive a complete briefing prior to the post-mortem examination. This briefing, which includes all information known to that time which may be relevant to the cause, manner, or means of death, shall be attended to by a least one member of the IIT's primary team and the applicable agency's evidence technician team.
- B. For autopsies conducted in Snohomish County, the Snohomish County Medical Examiner has the responsibility to document and collect all evidence.

VIII. THE PROSECUTOR'S OFFICE

The Snohomish County Prosecutor's Office has the following roles in Incident Investigations:

- A. Assist and advise the IIT on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses and search warrants.
- B. Upon completion of the SMART investigation, the completed case file will be forwarded to the prosecutor of jurisdiction to analyze the facts of the incident as well as the relevant law to determine if criminal laws were broken. If so, the case will be prosecuted in accordance with Prosecutor's Office policies and procedures and the laws of the State of Washington.

Note: If a conflict of interest arises out of the Snohomish County Prosecutor's office, the Prosecutor's office may refer the case to a local county PA's office for review. Additionally, if the lethal use of force occurs outside Snohomish County, that county where the incident occurred will have exclusive reviewing ability.

IX. REPORT WRITING

- A. When SMART is activated, dispatch will generate a SMART incident number and cross reference it with the involved agency's initial complaint. The IIT Lead Investigator will be responsible for generating a case report under the SMART ORI.
- B. All personnel involved in the initial incident and subsequent investigation shall write reports documenting their participation. This includes not only detectives assigned to SMART, but all first responders as well. All reports should be submitted under the SMART case number. (The exception to this will be the Subject Officer who may make a voluntary statement but will not complete a written report).
- C. Upon completion of a SMART detective's report, it will be his/her responsibility to get that report to the designated SMART supervisor for review and approval. As noted above, the SMART supervisor will be responsible for forwarding a copy of any approved reports to lead IIT investigator in the investigation

D. All IIT follow-up reports will be completed as soon as practical. Prompt completion and distribution of reports is essential.

E. If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

X. THE ADMINISTRATIVE INVESTIGATION

An involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the LETCSA. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA must be conducted in a manner that does not inhibit the involved agency from doing so.

XI. PUBLIC INFORMATION/MEDIA RELEASES

Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust. In order to best facilitate an open and transparent process, SMART has posted the policies and operating procedures of the IIT and the names of the members, supervisors, commanders, and nonlaw enforcement community representatives on the IIT to the Snohomish County SMART website (<https://snohomishcountywa.gov/4008/SMART-Investigations>).

To effectively communicate with media outlets, the IIT Commander will designate an IIT Public Information Officer (PIO) at all investigation scenes. The PIO serves as an information conduit to the organized media. It is imperative that the SMART PIO provide only accurate, objective and factual responses to media inquiries.

The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report. These updates are posted to the Snohomish County SMART website.

DEFINITIONS:

1. Media: Media traditionally refers to reporters, photographers, camera operators and others who are directly employed by news agencies. However, media also include "citizen journalists" who are providing news in untraditional methods.
2. PIO: The PIO is appointed by the IIT Commander and acts as a representative of SMART in official responses to the media.

DUTIES OF THE PIO:

The general duties of the PIO shall include but are not necessarily limited to:

1. Primary representative of SMART - not their affiliated agency;
2. Assist media in covering news stories at the scene of incidents;
3. Be reasonably available for on-call responses to the media;
4. Prepare and distribute news releases and weekly updates on behalf of SMART;
5. Arrange for and assist at news conferences;
6. Coordinate and authorize the release of information about victims, witnesses, and suspects;
7. Once designated, is responsible for media releases throughout the course of the SMART investigation.

Depending on the magnitude of the scene or investigation, an Assistant PIO may be necessary. The Assistant PIO will assist in the delivery of information along with the following general duties:

1. Represent SMART - not their affiliated agency;
2. Assist in composition and coordinate logistics of press releases;
3. Return media phone inquiries;
4. Arranging for and assisting at news conferences; and
5. Post incident information through electronic means.

If the involved agency has a PIO assigned to the incident, prior to the activation of SMART, the involved agency PIO shall:

1. Notify media that the investigation will be handled by SMART and remain at the scene until a SMART PIO arrives;
2. Brief the SMART PIO on what information, if any, has been shared with the public and media;
3. Stay in contact with the SMART PIO throughout the investigation;
4. Forward media or public inquiries about the SMART investigation to the SMART PIO;

In addition, the involved agency will:

1. Advise the public of outstanding impacts or issues not directly related to the SMART investigation. This includes, but aren't limited to: Road closures, access to facilities, and updates on the status of injured law enforcement from their agency; and
2. Share SMART PIO news releases or media updates via the agency social media channel(s).

SMART PERSONNEL AUTHORIZED TO SPEAK TO THE MEDIA:

1. Whenever possible, media requests for an interview will be referred to the PIO.
2. At incidents where the media is on-scene and a PIO is not immediately available the IIT Commander or their designee may provide preliminary statements to media.
3. In the event media does not respond to the scene of a SMART investigation but contacts the affected agencies requesting information, media will be instructed to first contact the PIO assigned to the investigation.
4. The PIO will be available for callouts of a significant nature and/or breaking news events after-hours, on weekends and holidays.

CALLOUT NOTIFICATION OF THE PIO:

1. A SMART call-out necessitates the call-out of a PIO.
2. Deployable PIO's with SMART shall be responsible for ensuring the availability of at least one (1) PIO at all times.
3. Upon activation of the SMART protocol, the PIO shall respond as indicated and contact the on-scene IIT Commander.
4. The PIO will be responsible for media releases throughout the course of the SMART investigation as necessary, until the point of its completion.

RELEASE OF INFORMATION:

1. The PIO will compile information that will be released to the media.
2. Prior to the release of information, the PIO shall consult with the IIT Commander or lead investigator to ensure that the information will not compromise investigative efforts.
3. The two non-law enforcement community representatives will be provided a copy of all press releases and communication to the media prior to release.
4. Neither the involved agency nor SMART will provide 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 the Public Records Act or other applicable laws.
5. Updates and investigation status may include:
 - a. Snohomish County Medical Examiner's confirmation of cause and manner of death as well identification of decedent(s);
 - b. Updates on medical status of suspect(s), victim(s) and/or officer(s); and
 - c. Case submission to Snohomish County Prosecuting Attorney for review.

6. Information normally releasable about suspects:
 - a. The suspect's age, sex, city of residence
 - b. General details of the alleged offense
 - c. Circumstances surrounding the arrest:
 - Time and location
 - Resistance
 - Pursuit
 - Possession of weapons

7. Information not normally releasable to the media:
 - a. Suspect's name if not charged;
 - b. Information which may allow a suspect to avoid arrest or tamper with evidence;
 - c. Admissions, confessions, any statement or alibi relating to a suspect unless the alibi results in the suspect's release;
 - d. Results of investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory examinations;
 - e. Opinions about victims, witnesses, suspects, the strength of a case, or any evidence to be used;
 - f. The home address or home telephone number of any SMART member;
 - g. The name(s) of deceased person, until released by the Medical Examiner's Office;
 - h. Names of juveniles, whether victims, witnesses, or suspects;
 - i. Information that may reveal the identity of a sexual assault victim;
 - j. Names of victims and witnesses. If released, only age and gender and *must be approved* by the IIT Commander; and
 - k. Prior arrests that did not result in convictions.

8. Release of suspect photographs shall be in compliance with current RCW's and WAC's governing release of information.

9. The on-scene release of information regarding involved employees will be confined to the employee's age, gender, rank, and tenure.

10. When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state laws.

MEDIA ACCOMMODATION:

Media shall be provided fair and reasonable access to scenes of criminal investigations and other law enforcement activities:

1. Media should expect the same access to any area the public is entitled;
2. Perimeter units shall endeavor to accommodate media by establishing a safe and appropriate media staging area that does not interfere with the SMART investigation;
3. Members of the media should be greeted as soon as time permits. They should be advised:

- a. Location of media staging area
 - b. When a briefing will be provided; and
 - c. Danger or hazards they may encounter.
4. Participating agencies should not interfere with media if they do not interfere with the investigation and are in location accessible by the general public;
 5. Participating agencies members shall direct all media to park in areas that do not interfere with the SMART investigation; and
 6. Whenever the presence of media or other aircraft pose a threat to public or officer safety, or significantly hampers incident operations, a Temporary Flight Restriction (TFR) should be considered. All TFR requests should be routed through the IIT Commander and include specific information about the incident, perimeter and altitude.

TRAINING:

1. The PIO shall be a trained member of the SMART Team.
2. At a minimum, all PIO's will successfully complete a basic PIO training course and are recommended to have successfully completed advanced training courses in public information delivery.

XII. INQUESTS

In accordance with the Snohomish County Charter, and notwithstanding any provision of this protocol, the Snohomish County Medical Examiner shall have authority to determine whether an inquest will be held in any incident involving a fatal injury.

XIII. ACCESS TO REPORTS AND EVIDENCE

When the IIT and/or Prosecutor's Office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the Involved Agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires.

XIV. PUBLIC DISCLOSURE REQUESTS (PDR's)

Multiple Snohomish County agencies are involved in the investigation of a SMART incident. Each agency's detectives submit reports detailing their involvement, using the case number assigned to the SMART team by Snohomish County 911. SMART detectives will turn their original reports into the designated SMART supervisor for review and approval. After it is approved, the SMART supervisor will send a copy of the detective's report to the lead investigator, who will include it in his or her final report. *In acknowledgement of the resources and experience of the Everett Police Department and the Snohomish County Sheriff's Office, priority consideration should be given to utilizing these agencies' Public Records Unit, unless one or both agencies have officers involved in the use of lethal force.*

Note: "SMART investigations are released pursuant to RCW 42.56, which governs public records".

The following steps are noted to provide general guidance for responding to PDR's, and may be subject to change, should circumstances dictate:

- A. **Receipt of PDR for SMART records – Response – Notification to SMART Commander.** Any time a law enforcement agency or the Snohomish County Prosecuting Attorney's Office receives a public disclosure request (PDR) requesting SMART investigation records, that agency will respond to the request per their department guidelines and as required by public records statutory obligations.
- B. **Response to PDR for SMART records.** Upon receipt of a notification of a PDR from another agency, the Everett Police Department's Public Records Manager/Officer, SCSO Public Records Manager, or uninvolved SMART agency Public Records Manager, will be notified *immediately*, to ensure that all public disclosure requests are responded to within public records statutory obligations. Any agency receiving a PDR is still required to respond to the requestor(s) per their department guidelines and as required by public records statute(s). The agency receiving the public records request will advise the requestor that they should contact the Everett Police Department's Public Records Unit Manager/Officer, who serves as the SMART Public Records Officer and who will respond to the requestor with a complete copy of the entire SMART investigation being requested. *(If Everett is involved, the PDR request will fall to SCSO or another uninvolved Public Records Unit that is a part of SMART).*
- C. **SMART PDR Review Team - Representatives.** The SMART Public Records Team representatives will consist of the Public Records Manager/Officer for the Everett Police Department and the Snohomish County Sheriff's Office's Public Records Manager. The public records team will respond to all requests for SMART investigations which includes all investigative materials which include all digital media (photographs, video and audio recordings) It should be noted that there may be a need to include additional members to the SMART Public Records Team (representatives from the Involved agency, prosecutor's office, and lead investigator agency), but that will occur only as the incident or situation dictates, and will be at the discretion of the SMART Commander.
- D. **SMART PDR Review Team – Review – Notification to Third Party Agencies – Opportunity to Review Proposed Response and Copies to Third Party Agencies.** The Everett Police Public Records Manager/Officer in coordination with the Snohomish County Sheriff's Office Public Records Manager will review the entire SMART case file to determine which documents and information are exempt from public disclosure per public records statute(s). If the SMART case file contains reports generated using any non-SMART case numbers, those agencies will be given the opportunity to review the SMART PDR Review Team's proposed response and seek

an injunction or other court order barring the requestor from obtaining the third party agency's report, if appropriate.

- E. **SMART PDR Review– Agency Assist Reports.** All agencies that have detectives assigned to SMART will have their personnel submit case reports using the SMART case number, and not their own agency case number. The original reports should be routed to the designated SMART supervisor, and subsequently housed in the Everett Police Department Records Unit, unless the Everett Police Department is the involved agency. If an agency requires that their personnel initiate a police report using their own case number, then it is highly recommended that the report be entitled "Agency Assist," and any narrative simply refer to the designated SMART case report. An agency in possession of an Agency Assist report making reference to a SMART investigation is required to respond to any PDR's per public records statute(s). As noted in 'B' above, an agency receiving a PDR for a SMART investigation may refer the requestor to the Everett Police Department if that agency possesses no relevant records.
- F. **Timelines.** The Everett Police Department's Public Records Manager/ Officer, SCSO Public Records Manager, or any uninvolved Public Records SMART member agency, will strive to process all PDR's for SMART case files in an expeditious fashion within the public records statutory requirement(s) and state an anticipated release date that may include advising the requestor that it may receive the requested records via installments, due to voluminous and complex materials encompassing a SMART investigation. Factors such as length of the reports, notification of affected third parties and legal action contesting disclosure may all impact the ability to meet this target.

XV. CONFIDENTIALITY

SMART investigators, including SMART PIO's, shall not share information considered "Confidential" with individuals other than SMART investigators or Non-law enforcement community representatives.

A. Information considered confidential:

1. Documents related to a SMART investigation.
2. Verbal statements or conversations related to a SMART investigation.
3. Information that would compromise an investigation.

B. Information not considered confidential:

1. Ongoing weekly media releases.
2. SMART protocols
3. SMART roster
4. Information cleared by the SMART Commander for release.
5. Limited briefings provided to the Involved agency Chief or Sheriff as defined by WAC 139-12-030.

Community First

M E M O R A N D U M



DATE: June 1, 2021
TO: SCSPCA for Dissemination to all Personnel & Labor Attorneys
FROM: Captain Doug Jeske
RE: SMART Responses to OIS/Uses of Force & Collection of Evidence

This memorandum is being written to explain changes in how evidence will be collected from officers who are involved in uses of force where SMART responds to investigate. As you are aware, Initiative 940 was passed into law and became effective January 2020 as codified by WAC 139. The WAC established a requirement that Independent Investigation Teams (IIT) investigate police uses of force which result in death, great bodily harm, or substantial bodily harm.

The WAC listed five major criteria to establish public trust in an IIT investigation, independence, transparency, communication, a credible process, and credible investigators. To that end, SMART has modified its protocols to ensure compliance with the WAC. The changes to the SMART protocols were reviewed by the SMART board of directors and adopted by all signatories to the current SMART protocols.

Despite the best efforts to comply with the WAC, some unforeseen changes are envidible particularly as the law is continually reviewed and adjustments made to be complaint with it. Most of the changes enacted, will go unnoticed by the involved officer(s). However, there is one change that will be obvious to the involved officer(s). This memo is intended to address that change.

In the past, when officers were involved in an incident where SMART took the lead in the investigation, SMART detectives were assigned to gather evidence from the involved officer(s). Past practice was to photograph the officer(s) and collect items of evidence that might be on their person, including articles of clothing, equipment, and firearms. The standard practice was to simply ask or demand that those items be relinquished to the SMART detective(s) absent any written consent or search warrant. The aforementioned practice fails to recognize the privacy interest of the officer(s) involved and is outside of the best practice for obtaining evidence in a criminal investigation.

In consultation with numerous Snohomish County deputy prosecuting attorneys and with the agreement of the SMART agency chiefs of police and the Sheriff, the process of obtaining evidence from involved officers from this time forward will include a written and signed

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• ADAM FORTNEY
SHERIFF

**SNOHOMISH COUNTY
SHERIFF'S OFFICE**

• JEFF BRAND
UNDERSHERIFF

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consent to search form from the involved officer(s) or in the absence of that form, a search warrant. This policy change recognizes and respects the privacy rights of the involved officer(s) and ensures that those rights are not violated. Furthermore, it also ensures that the best practice for obtaining evidence is followed. Which in turn, will build needed public trust that the SMART team is conducting a truly independent, objective, and credible investigation.

The objective of any SMART investigation is to follow the law, follow the evidence, and provide the prosecuting attorney an unbiased and impartial investigation. If you have any questions please feel free to contact Captain Bryan Keller or myself.

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