



Proposed Inquest Charter Amendment

1. Background

The following proposed charter amendment is jointly submitted by the following 14 organizations:

- Asian Counseling and Referral Service
- Asian Pacific Islander Coalition of King County
- Casa Latina
- Columbia Legal Services
- Disability Rights Washington
- King County Department of Public Defense
- Loren Miller Bar Association
- Mothers for Police Accountability
- Not This Time
- OneAmerica
- Public Defender Association
- Seattle King County NAACP
- Vietnamese Community Leadership Institute
- Washington Defender Association

If you have any questions, please contact Corey Guilmette at corey.guilmette@defender.org.

a. What is an inquest?

An inquest hearing provides a public, transparent, and neutral review of any death involving a member of a King County law enforcement agency while in the performance of his or her duties. An inquest is not a trial and does not produce any judgement on liability or fault. However, an inquest shares many attributes of a trial, including that it is governed by the rules of evidence, and witnesses, including expert witnesses, are called to provide testimony, subject to attorney questioning. In an inquest hearing, a jury is selected and, based on the testimony and evidence presented, answers a series of written yes/no questions, called interrogatories.

Handout at the 4/24/19 CRC meeting from Corey Guilmette of the Public Defender Assoc. 1

In October 2018, in response to community concerns, King County Executive Dow Constantine announced significant changes to the strengthen the inquest process. Under the revised inquest rules, inquests will be conducted by an Inquest Administrator. Inquest Administrators will be selected from a pool of retired judges, and will be tasked with overseeing the inquest process and serving as a neutral decision-maker. The typical inquest will involve three attorneys: 1) a neutral attorney (drawn from a pool of pro tem attorneys) who coordinates the inquest process; 2) an attorney representing the family of the deceased individual; and 3) an attorney representing the agency employing the law enforcement member involved in the death. Additionally, although the law enforcement member is not required to participate, the member may, at his/her discretion, offer testimony and have legal representation at the inquest proceeding.

Importantly, the revised rules will expand the scope of the inquest hearing, allowing the jury to determine whether policy and training were followed. This expanded scope will help inform other decision-making processes by suggesting the need for accountability if policy or training were violated or highlighting the need to review policy and training if, despite following policy and training, a preventable death occurred.

b. Why does the charter need to be changed?

The King County Charter needs to be amended to ensure that an inquest is held when the actions of a jail staff member or corrections officer may have contributed to an individual's death. Presently the Charter requires an inquest in any death, "involving a member of the law enforcement agency of the county in the performance of the member's duties." The Charter does not define the word "involved," and, thus, is open to inconsistent application. In order to ensure consistent application, the Charter should be amended to provide greater specificity, requiring an inquest when the, "[law enforcement agency] member's actions, decisions, or failure to offer appropriate care may have contributed to an individual's death."

Inquests are of particular value when a death occurs in jail. Unlike police shootings, which receive an independent investigation through I-940, King County jail deaths receive no thorough, independent review. As a result, the inquest process offers the only opportunity for a comprehensive, independent death investigation when the actions of jail staff or officers contributed to an individual's death. Furthermore, jail death investigations are not published to the general public, making the inquest process the only public forum for families and the public to gather information about a jail death.

Forced to confront an investigative process that is closed and oftentimes incomplete, families are re-traumatized as they search unsuccessfully for information about the death of their loved one. In contrast, the inquest process allows families, through the assistance of an attorney, to directly review evidence, question witnesses, and ultimately receive the answers they are seeking through jury interrogatories. It is important that this opportunity be consistently available to all families by amending the King County Charter to offer greater specificity.

2. Current Charter Language

Section 895 Mandatory Inquests.

An inquest shall be held to investigate the causes and circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member's duties.

3. Proposed Amended Charter Language

Section 895 Mandatory Inquests.

An inquest shall be held to investigate the causes and circumstances of any death involving a member of any law enforcement agency in the county, including commissioned officers, non-commissioned staff, and agents of all local and state police forces, jails, and corrections agencies, in the performance of the member's duties. A death involves a member of any law enforcement agency when the member's actions, decisions, or possible failure to offer appropriate care may have contributed to an individual's death.

King County Charter Review Commission Subgroup Meeting Tracker

v. 4/22/19

	Pre-April 24 Commission Meeting (Organizing, early action proposal phase)		Pre-May 22 Commission Meeting (Amendment proposals phase)		Pre-June 26 Commission Meeting (Budget, Feasibility, Outreach Phase)	
<p>Regional Coordination</p> <ol style="list-style-type: none"> 1. Kinnon (C) 2. Ron (C) 3. Toby 4. Beth 5. Louise 6. Joe 7. Michael 	<p>Friday, April 12 3-5pm</p> <p>Outcomes:</p> <ul style="list-style-type: none"> • Propose adoption of language <u>aligning charter with state law</u> regarding affordable housing and selling county property below market value to Commission. (Early Action) • Issues related to regional committees requires further discussion but consensus that Regional Committees should be consolidated or reduced. • KC staff to draft language related to economic development (<u>culture, tourism, venues and sports activities, as well as parks and open space for the growing population</u>) for committee to consider. Recommends adding a preamble. (Early Action) 	<p>Tuesday, April 16 12-2pm</p> <p>Outcomes:</p>	<p>Monday, May 6</p>			
<p>Equity for All</p> <ol style="list-style-type: none"> 1. Alejandra (C) 2. Liz (C) 3. Brooks 4. Rob 5. Sung 6. Ron 7. Nat 8. Nikkita 	<p>Monday, April 15 6-8pm</p> <p>Outcomes:</p> <ul style="list-style-type: none"> • Liz to draft Memo to Commission regarding OLEO recommendations from Director, specifically in support of <u>subpoena power</u>. (Early Action) • Rob and Nikkita to draft Memo to Commission regarding inquests to clarify that <u>inquests should be performed during in-custody situations and elevating the requirement that families receive legal representation during the inquest process</u>. (Early Action) • Committee may develop proposals for additional topics regarding inquests • Rob to draft purpose statement for non-discrimination additions: <u>1) pregnancy 2) marriage status 3) military or veteran status and 4) caregiver status</u>. (Early Action) 	<p>Friday, April 19 4-5pm</p> <p>Outcomes:</p> <ul style="list-style-type: none"> • Liz to finalize Memo to Commission regarding support for OLEO's subpoena power. (Early Action) • Rob and Nikkita to finalize Memo to Commission regarding inquests a) to clarify that inquests should be performed during in-custody situations and b) elevate the requirement that families receive legal representation during the inquest process. (Early Action) <ul style="list-style-type: none"> ○ Jenny Giambattista, KC staff, to follow up with the Executive branch on behalf of the Committee to identify any concerns they may have with a proposal to conduct inquests for in-custody deaths. • Rob to present non-discrimination language proposal to the Commission. (Early Action) • Items outlined for future discussion: Workers Bill of Rights, Labor 	<p>Tuesday, May 14 6-8pm (hold)</p>	<p>Tuesday, May 21 6-8pm (hold)</p>		

King County Charter Review Commission Subgroup Meeting Tracker

v. 4/22/19

	Action)	Agreements, Changes in Personnel System, Health, Equitable growth in King County, LBGTQ and minority issues/representation				
	Pre-April 24 Commission Meeting (Organizing, early action proposal phase)		Pre-May 22 Commission Meeting (Amendment proposals phase)	Pre-June 26 Commission Meeting (Budget, Feasibility, Outreach Phase)		
Access 1. David (C) 2. Clayton (C) 3. Brooks 4. Toby 5. Beth 6. Louise 7. Joe 8. Tim	Wednesday, April 17 6-8pm Outcome: No short-term proposals <ul style="list-style-type: none"> Group will continue further discussion related to public financing of campaigns for office. Toby and David to draft language related to ranked choice voting to propose to sub-Committee then Commission to determine if there is enough support from Commission to continue conversation. Toby and Alejandra to review charter through equity lens re: Issues related to meeting the demands of population growth and bring to sub-committee. This topic may move to the equity committee. (Alejandra will be on Equity and not Access) Subcommittee will continue further discussion related to the size of County Council in particular what increased size would solve. 		Monday, April 29 6-8pm (hold)	Monday, May 13 6-8pm (hold)		
Transparency & Accountability 1. Toby (C) 2. Sean (C) 3. Tim 4. Ron 5. Louise 6. Joe 7. Linda	Thursday, April 18 6-8pm Outcome: <ul style="list-style-type: none"> Toby to draft language related to <u>technical changes</u> of the initiative and referendum process improvement <u>ie. clarifications, votes on referendums only at primary and general elections (saves \$), size of paper, etc.</u> Potential work group to meet in future with County Elections staff. (Early Action) Tim to draft language related to the removal process for elected officials. Linda to draft language related to Sheriff (change) and Public Defender (maintain) as appointed positions. Seeking guiding from Commission before further discussion. Toby to draft language related to the charter review process (demographic and geographic diversity). KC staff drafting language related to changes to the budgeting process proposed by Executive and Councilmembers, as they are not controversial. (Early Action) 					

Objective/Goals of Equity for All Sub-Committee RE: Inquests

Date: April 15, 2019

Objective: With respect to the proposed Charter amendment for requiring representation of families in inquest hearings ("**Proposed Inquest Amendment**"), the Equity for All sub-committee of the Charter Review Commission ("**Sub-Committee**") will, with the support of King County staff and project management team:

1. Review current Charter and history of current process for inquest representation, including the topics discussed in the [Issues Paper](#) by County Staff.
2. Review current Charter and history of current requirements for inquests, including when the County is mandated to complete inquest.
3. Align language of the Charter with the language and intentions of Executive Order PHL-7-1-2-EO. As well as, provide clarifying language and definitions to ensure appropriate and equal application of the law.
4. Consider the perspective of the families of the deceased during the inquest process, members of the public, and other affected communities regarding whether the Sub-Committee should recommend the Proposed Inquest Amendment;
5. Consider the perspective of King County Councilmembers and other King County Officials regarding whether the Sub-Committee should recommend the Proposed Inquest Amendment;
6. Develop recommended language to the Charter for the Proposed Inquest Amendment, in consultation with county staff and advice from the King County Prosecutor's Office for consideration by the broader Charter Review Commission (provided the Sub-Committee agrees to recommend the Proposed Inquest Amendment).

In considering the Proposed Inquest Amendment, the goal of the Sub-Committee is to:

- Improve equitable access to legal representation for families of the deceased during inquests;
- Enhance the fidelity of the current inquest process
 - By increasing accessibility of justice;
 - Ensuring appropriate and equal application of the law;
 - And provides clarity through in Charter definitions where needed.
- Amplify the voices of families of the deceased with the goal of allowing them to feel like their voices were heard and given due consideration during the inquest process;
- Provide clarity for the County, families of decedents, advocates, and community when an inquest is required by law;
- Enshrine in the Charter a best-practice and current County ordinance that
 - Requires families of the deceased to be provided with formal representation;
 - And clearly articulates when an inquest must occur.

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King County
Metropolitan King County Council
Charter Review Commission

STAFF REPORT

Agenda Item:		Name:	Jenny Giambattista Erica Newman
Proposed No.:		Date:	February 12, 2019

SUBJECT

This staff report provides background information on the laws, policies and procedures governing inquests in King County.

SUMMARY

The authority and requirements for conducting inquests can be found in the Revised Code of Washington (RCW), King County Code, the King County Charter, and executive orders. On January 8, 2018 Executive Constantine temporarily halted all King County inquests in order to allow time to review the existing inquest policies and procedures. On October 3, 2018 the Executive signed Executive Order PHL-7-1-2 revising the policies and procedures for the inquest process. The Executive Order requires the Department of Public Defense to provide legal representation in the inquest process to families of decedents consistent with Ordinance 18652.

According to the Department of Executive Services, the inquest process is expected to resume by the end of the first quarter or beginning of the second quarter of 2019.

BACKGROUND

An inquest is 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.¹ An inquest is not a trial in the sense that no judgment on liability or fault is produced. The scope of the inquest is limited to the cause and circumstances of the death and does not address wrongdoing or whether the death could have been avoided or was justified. However, an inquest has many of the formal attributes of a trial, including that it is governed by the rules of evidence, witnesses, including expert witnesses, provide sworn testimony and are cross-examined, and a jury is selected, hears testimony, and answers interrogatories (questions) in writing.

¹Executive Order 7-1-2-EO Section 5. Inquests can also occasionally occur 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.

Legal Authority for Inquests

The authority and requirements for conducting inquests can be found in the Revised Code of Washington (RCW), King County Code, the King County Charter, and executive orders. RCW 36.24.020 (Attachment 1) authorizes any coroner², in his or her discretion, to hold an inquest to inquire into the death of a person by suspicious circumstances and provides general direction on the inquest procedure. The RCW requires Superior Court to select and summon the jury pool and maintain facilities for the inquest.

King County Code Section 2.35A.090 (Attachment 2) specifies that the chief medical examiner assumes the coroner functions authorized by RCW 36.24.020 and describes the function of the medical examiner. It also specifies that that the executive inquest function is vested in the County Executive.

In addition, Section 875 of the King County Charter states, "An inquest shall be held to investigate the causes and circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member's duties."

Timeline of Inquest Reform

Executive's Inquest Reform Review Committee (December 12, 2017)

On December 12, 2017, the Executive convened a six member King County Inquest Process Review Committee. The Inquest Review Committee was charged with reviewing and re-examining the inquest process to determine what, if any, changes could be made to improve the process both for the public and the affected parties.³

All inquests halted (January 8, 2018)

On January 8, 2018 Executive Constantine temporarily halted all King County inquests in order to allow time to review the existing inquest policies and procedures. Inquests have not yet resumed.

Inquest Committee issues final recommendations (March 30, 2018)

In March 2018, the Inquest Process Review Committee proposed revisions to the Executive Order. The Committee's key recommendations are summarized below:

- Maintain, but improve upon the transparency of the existing inquest process.
- Substantially limit the role of the King County Superior Court (KCSC) and King County District Court (KCDC) and that of the Prosecuting Attorney's Office.
- The King County Hearing Examiner should oversee a pool of pro tem judges and attorneys to preside over inquest.
- Clarify purpose and scope of the inquest process.

² In King County the medical examiner serves the function of the coroner.

- Expand the size of the jury and permit the jury to make meaningful observations and recommendations.
- Increase timely information to and support for decedent's families.
- Establish process for public education and for ongoing review.
- Refer participants to parallel processes to promote resolution and healing.

Ordinance requires Department of Public Defense to provide representation to families of decedents (January 29, 2018)

On January 29, 2018, the Council adopted Ordinance 18652 (Attachment 3) requiring the Department of Public Defense provide legal representation to the family participating in an inquest regardless of the income level of the family. (The ordinance specifies that representation will not be provided if the family does not wish to be represented by the department’s attorney.) The ordinance states there is a public benefit in providing publicly financed legal counsel to families of the decedents wishing to fully participate in the inquest process. The findings of an inquest help the public, family members of decedents and policy makers understand the causes and circumstances of the decedent’s death. Public financing of legal counsel for all families of decedents will better ensure each party to an inquest will have equal opportunity to participate.

For purposes of the ordinance and determining who is eligible for legal representation, “Family” is defined as follows:

“Family” refers to the group of those individuals determined by the person conducting the inquest to have a right to participate as the family of the decedent.⁴

The ordinance also required the Executive to revise any executive orders related to inquests to be consistent with the ordinance.

Proviso requirement for a plan on implementing the new process (July 9, 2018)

On July 9, 2018, the Council adopted a budget proviso as part of a 2018 supplemental budget ordinance (Ordinance 18766) restricting expenditure or encumbrance of \$130,000 of the appropriation from the Office of the Executive until the Executive transmits a plan for the new inquest process.

New inquest procedures (Executive Order PHL-7-1-2 EO) (October 3, 2018)

In October 3, 2018 the Executive signed Executive Order PHL-7-1-2 (Attachment 4) revising the policies and procedures for the inquest process. Executive staff have provided a document (Attachment 5) showing how the new inquest policies differ from the previous executive order.

Roles

Under the new policies, the King County Prosecuting Attorney will continue to make recommendations to the Executive on whether an inquest is required. An inquest

⁴ Ordinance 18652 (Lines 64-65)

administrator will act as the presider of the inquest on the Executive's behalf, rather than a KCDC judge. (Executive staff note that a pool of pro tem judges will act as inquest administrators.) Jurors will continue to be called from the KCDC and KCSC jury pool and the hearings will be conducted in Superior Court.

Scope of inquest

The Executive order narrowly expands the scope of the inquest to include questions about current department policy and training in a given jurisdiction. No speculative or prospective questions regarding a law enforcement entity's policy and training are allowed under this expansion of the scope. In addition, the jury panel may answer an interrogatory on whether or not the involved officer's actions were consistent with the given jurisdiction's department policy and training.

Officer Participation

Historically, the involved officer voluntarily testified at the inquest hearing. Under the new Executive Order, in lieu of the involved officer testifying, the lead investigator will offer testimony to the facts and circumstances of the event. The chief law enforcement officer of a given jurisdiction (or their designee) will address questions of current department policy and training. Subpoena power to compel involved officer testimony is eliminated.

DPD Participation

The Executive Order also requires the Department of Public Defense to provide legal representation to the family of the decedent, consistent with Ordinance 18652.

In custody deaths

According to Executive staff, inquests for those who have died in the custody of law enforcement have not been done since 2010. According to DAJD, in custody deaths undergo a review by DAJD, local law enforcement, the medical examiner and Jail Health. Executive staff report that they do not anticipate a change in how in-custody deaths are handled. Council staff have asked for information as to why in-custody inquests are not done.

2019-2020 Budget Appropriation (January 1, 2019)

The administrative portion of the inquest process will now be managed by the Department of Executive Services. The 2019-2020 budget included \$700,000 of General Fund⁵ to support inquest costs and authorized one FTE in the Department of Executive Services for an Inquest Process Administrator to support the pro tem staff.

Current Inquest Status (February 12, 2019)

The Department of Executive Services (DES) hired an inquest program manager in mid-January. Subsequent to the transmittal, DES has developed a high level work plan (Attachment 6) identifying the major milestones necessary to establish an inquest process and estimated completion date for each of those milestones. DES expects to have all of the administrative processes in place by March 31, 2019. At that time, DES will begin processing inquests.

⁵ Appropriated to the Internal Support Fund

As of February 12, 2019 the following inquests are pending:

Date of Event	Decedent-Last Name	Decedent-First Name	Involved Police Agency
4/20/2017	Butts	Damarius	SPD
6/10/2017	Obet	Isaiah	Auburn
6/13/2017	Le	Tommy	KCSO
6/18/2017	Lyles	Charleena	SPD
8/9/2017	Nelson	Eugene	Kent
10/31/2017	Lightfeather	Robert J.	Federal Way
12/19/2017	Tade	Curtis Elroy	Kirkland
2/19/2018	Seavers	Jason	SPD
3/11/2018	Gamez-Talavera	Karla	ICD in KCJ/DAJD
4/4/2018	Nelson	Mitchell O.	Federal Way
6/14/2018	Castellano	Marcelo A.	Redmond
8/23/2018	Peppan	Joseph	KCSO
1/1/2019	Faletogo	Iosiah	SPD
1/7/2019	Barazza-Lugo	Miguel A	Kent
2/7/2019	Doe*	John*	SPD

*Name has not been released as of 2/12/19

Options:

1. Direct staff to prepare a charter amendment for CRC consideration that would elevate the provision of a qualified attorney for family members.
2. Take no further action as many changes are currently under consideration.

ATTACHMENTS

1. RCW 36.24.020
2. King County Code Section 2.35A.090
3. Ordinance 18652
4. Executive Order PHL 7-1-2 EO
5. Summary of Revised Executive Order on Conducting Inquests
6. Inquest Administrative Process Working Timeline/Milestones

Revised Code of Washington (RCW)

RCW 36.24.020

Inquests—Jury—Venue—Payment of costs.

Any coroner, in his or her discretion, may hold an inquest if the coroner suspects that the death of a person was unnatural, or violent, or resulted from unlawful means, or from suspicious circumstances, or was of such a nature as to indicate the possibility of death by the hand of the deceased or through the instrumentality of some other person: PROVIDED, That, except under suspicious circumstances, no inquest shall be held following a traffic death.

The coroner in the county where an inquest is to be convened pursuant to this chapter shall notify the superior court to provide persons to serve as a jury of inquest to hear all the evidence concerning the death and to inquire into and render a true verdict on the cause of death. Jurors shall be selected and summoned in the same manner and shall have the same qualifications as specified in chapter 2.36 RCW.

At the coroner's request, the superior court shall schedule a courtroom in which the inquest may be convened, a bailiff, reporter, and any security deemed reasonably necessary by the coroner. The coroner and the superior court shall set an inquest date by mutual agreement. The inquest shall take place within eighteen months of the coroner's request to the court. If the superior court cannot accommodate the inquest for good cause shown, the court may designate a comparable public venue for the inquest in the county.

If the superior court is unable to provide a courtroom or comparable public venue, it shall certify courtroom unavailability in writing within sixty days of the coroner's request and the inquest shall be scheduled and transferred to another county within one hundred miles of the requesting county.

The prosecuting attorney having jurisdiction shall be notified in advance of any such inquest to be held, and at his or her discretion may be present at and assist the coroner in the conduct of the same. The coroner may adjourn the inquest from time to time as he or she may deem necessary.

The costs of inquests, including any costs incurred by the superior court, shall be borne by the county in which the inquest is requested. When an inquest is transferred to another county due to unavailability of a courtroom, the county from which such inquest is transferred shall pay the county in which the inquest is held all costs accrued for per diem and mileage for jurors and witnesses and all other costs properly charged to the transferring county.

King County Code

2.35A.090 Medical examiner functions.

A. The duties and functions of medical examiner shall be performed by the prevention division of the department of health. The medical examiner shall be responsible for the administration and staffing of all programs relating to the performance of autopsies and investigations of death as authorized by the statutes of the state of Washington, except as provided by this section. The chief medical examiner, who shall be a pathologist certified in forensic pathology, shall be appointed by the director of the department. Employees performing duties and functions of or related to the medical examiner, with the exception of specifically identified exempt positions, shall be members of the King County career service.

B. The chief medical examiner shall assume jurisdiction over human remains, perform autopsies and perform such other functions as are authorized by chapter 68.50 RCW and such other statutes of the state of Washington as are applicable, except for the holding of inquests, which function is vested in the county executive. The chief medical examiner has the authorities granted under K.C.C. 2.35A.100.

C. The chief medical examiner shall institute procedures and policies to ensure investigation into the deaths of persons so specified in chapter 68.50 RCW and to ensure the public health, except for the holding of inquests, which function is vested in the county executive.

D. The notice of the existence and location of a dead body required to be given by state law shall be given to the medical examiner. The medical examiner shall be responsible for control and disposition of personal property of deceased persons under the jurisdiction of the medical examiner, which shall be transferred to the next of kin or other legal representatives of the deceased. If the transfer cannot be made because there is no known next of kin or legal representative, or the next of kin or legal representative is not available to accomplish the transfer within thirty days after the medical examiner assumes jurisdiction over the body of the deceased, the personal property shall be deposited with the King County comptroller, or transferred to an attorney pursuant to the institution of probate action.

E.1. The chief medical examiner may issue subpoenas to compel the production of medical and dental records, and other documents as are necessary for the full investigation of any case under the jurisdiction of the medical examiner from any person, organization or other entity in possession of the records or documents.

2. Subpoenas issued by the chief medical examiner shall be enforceable through the superior court.

3. In case of refusal or failure to obey a subpoena issued under this subsection E, the chief medical examiner may seek the aid of the prosecuting attorney to apply to the superior court for an order or other appropriate action necessary to secure enforcement of the subpoena.

4. Punishment for contempt for refusal or failure to comply with a subpoena issued under this subsection E. shall be as provided by chapter 36.24 RCW and other applicable laws and court rules. (Ord. 17733 § 12, 2014; Ord. 12525 § 3, 1997; Ord. 2878 § 3, 1976; Ord. 163 § 7, 1969. Formerly K.C.C. 2.24.110).



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

January 30, 2018

Ordinance 18652

Proposed No. 2018-0028.3

Sponsors Kohl-Welles, Dembowski,
Upthegrove and Gossett

1 AN ORDINANCE relating to the department of public
2 defense; requiring the department to provide legal
3 representation in the inquest process to families of
4 decedents; and adding a new section to K.C.C. chapter
5 2.60.

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings:

8 A. Section 895 of the King County Charter states, "An inquest shall be held to
9 investigate the causes and circumstances of any death involving a member of the law
10 enforcement agency of the county in the performance of the member's duties." Section
11 350.20.60 of the King County Charter establishes the department of public defense and
12 directs it to provide legal counsel to indigent individuals as required under the state and
13 federal constitutions and to foster access to justice and equity in the criminal justice
14 system, and also authorizes additional duties to be prescribed by ordinance.

15 B. Between 2012 and 2016, there have been thirty-four deaths involving a
16 member of a law enforcement agency that resulted in an inquest.

17 C. Of those thirty-four inquests, twelve families obtained legal counsel.

18 D. Families whose loved ones have been killed by a member of a law
19 enforcement agency may seek to understand through the inquest process the cause and

20 circumstances of the decedent's death.

21 E. The inquest process serves the public function of fact finding related to a death
22 and involves formal legal proceedings, discovery and examination of persons, including
23 law enforcement personnel and expert witnesses.

24 F. In King County, the function of holding inquests is vested in the executive.

25 G. The executive has adopted Executive Order PHL 7-1-1 (AEO) establishing
26 policies and procedures for the inquest process which includes the courts conducting the
27 inquest on the executive's behalf. In those policies and procedures, although the family
28 of the decedent is designated as a participating party in the inquest, a number of
29 important steps in the inquest can only be done by legal counsel representing the family.

30 H. Families not represented by legal counsel will not have the benefit of legal
31 expertise to assist them in understanding the inquest proceedings, and will not be able to
32 fully participate in the inquest process, including participating in the preinquest hearings,
33 engaging in discovery or examining witnesses at the inquest, including law enforcement
34 personnel.

35 I. The lack of legal representation may result in families not fully participating in
36 the inquest process and a less robust fact finding process.

37 NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 2.60 a
38 new section to read as follows:

39 A. There is a public benefit in providing publicly financed legal counsel to
40 families of the decedents wishing to fully participate in the inquest process. The inquest
41 process is a formal legal proceeding, involving discovery of evidence and examining of
42 witnesses, including law enforcement personnel and experts. Publicly financed legal

43 counsel will allow all families to fully and equitably participate in the inquest process
44 regardless of financial means. Inquests serve a public function of determining the cause
45 and circumstances of any death involving a member of a law enforcement agency in the
46 performance of the member's duties. The findings of an inquest help the public, family
47 members of decedents and policy makers understand the causes and circumstances of the
48 decedent's death. Public financing of legal counsel for all families of decedents will
49 better ensure each party to an inquest will have equal opportunity to participate.
50 Increasing such participation will bolster the transparency of the inquest process, thus
51 furthering the recognized public function of an inquest. Therefore, the department shall
52 provide legal representation at public expense to the family participating in an inquest,
53 regardless of the income level of the members of the family, of the person whose death is
54 the subject of an inquest investigating the causes and circumstances of death involving a
55 member of any law enforcement agency within King County under Section 895 of the
56 King County Charter or RCW 36.24.020. Representation shall not be provided if the
57 family does not wish to be represented by the department's attorneys. The legal
58 representation shall be limited to preparation for the inquest and participation during the
59 inquest and shall not include any representation for the purpose of potential related civil
60 litigation.

61 B. The executive shall revise any executive orders relating to inquests to reflect
62 this section within one hundred twenty days of enactment of this ordinance.

63 C. For the purposes of this section:

64 1. "Family" refers to the group of those individuals determined by the person
65 conducting the inquest to have a right to participate as the family of the decedent.

66 2. "A member of a law enforcement agency" means a commissioned officer or
67 noncommissioned staff of a local or state police force, jail or corrections agency.
68

Ordinance 18652 was introduced on 1/8/2018 and passed as amended by the Metropolitan King County Council on 1/29/2018, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Clerk of the Council



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KING COUNTY COUNCIL
CLERK

APPROVED this 5 day of FEBRUARY, 2018.



Dow Constantine, County Executive

Attachments: None



King County

Document Code No.: PHL-7-1-2-EO

Department/Issuing Agency: County Executive Office

Effective Date: October __, 2018

Approved: /s/ Dow Constantine

Type of Action: Supersedes PHL 7-1-1 (AEO), "Conducting Inquests in King County" March 16, 2010

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

WHEREAS, Section 895 of the King County Charter, 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.

Dated this 3 day of ~~October~~ October, 2018

Dow Constantine
King County Executive

ATTEST:

Norm Alberg
Director, King County Records and Licensing 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 the exercise of 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 the exercise of his or her authority], and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.

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

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

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

5.7. "Voir dire" means an examination of a prospective 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 the exercise of his or her 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. 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; except that a subpoena shall not be issued to the individual law enforcement officer who was directly involved in an individual's death while in the performance of his or her duties [and/or the exercise of his or her authority].

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 7-1-1 (AEO), "Conducting Inquests in King County," dated March 16, 2010.

Appendix 2 – Procedures for Conducting Inquests

If an inquest is to be held, the King County 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, provided that the law enforcement member(s) elect(s) to participate in the inquest proceeding.

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.

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.

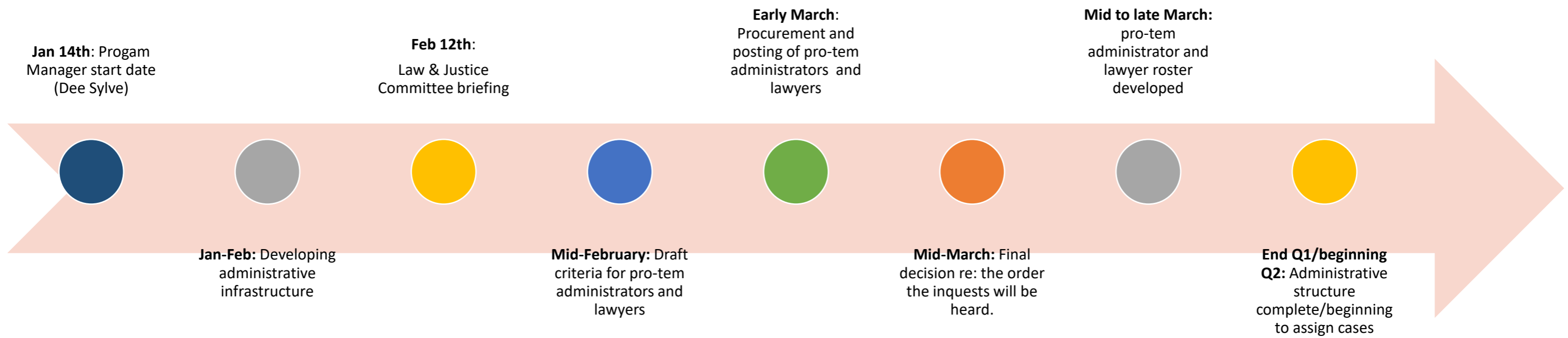
Revised Executive Order on Conducting Inquests in King County, October 3, 2018

Issue	Current Process	Executive Order
Access to Hearings	<ul style="list-style-type: none"> No recording, livestreaming, or info database is required or in existence at this time. Interrogatories and jury responses are available upon request after the hearing concludes. 	<ul style="list-style-type: none"> Staff in DES will keep an up-to-date webpage listing dates, times, and locations of upcoming inquests. Audio recordings of each inquest will be uploaded to the webpage when available. The proceedings shall also be made available to the public and the media, consistent with GR 16.
District Court	<ul style="list-style-type: none"> District Court judge presides over inquest hearing. 	<ul style="list-style-type: none"> District Court judges will no longer preside over inquest hearings in King County. Instead, a pool of pro tem judges will act as presiders.
Superior Court	<ul style="list-style-type: none"> Jurors called from joining KCDC/KCSC jury pool. District Court provides facility space bailiffs, and court reporters. Superior Court provides security as mandated by RCW. 	<ul style="list-style-type: none"> King County Superior Court will administer the jury process and maintain facilities appropriate to comfortably support jurors. Therefore, where requested by the County Executive, the Superior Court will coordinate with the Inquest Administrator to secure appropriate facilities, e.g., the presiding courtroom.
Department of Public Defense	<ul style="list-style-type: none"> Families of the deceased are not provided legal representation for the inquest hearing at county expense. However, the County Council passed an ordinance to allow families representation through DPD. 	<ul style="list-style-type: none"> Once the Executive determines that an inquest is to be held, the Manager assigns DPD to represent the family of the decedent unless the family indicates they have retained other counsel or do not wish to be represented by the King County Department of Public Defense. The Department of Public Defense will not be assigned in cases, where family is represented by private counsel.
PAO Involvement	<ul style="list-style-type: none"> PAO acts as a neutral facilitator, presents evidence, makes recommendation to hold an inquest, assembles and transmits investigative file. 	<ul style="list-style-type: none"> The Prosecuting Attorney will no longer participate in the hearing itself as a neutral facilitator. The PAO will continue to participate at an administrative/ministerial level, e.g. assembly and transmittal of the investigative file and issuing subpoenas. The PAO will also continue to make the recommendation to hold an inquest to the County Executive.
Scope of Inquest	<ul style="list-style-type: none"> Scope is limited to facts and circumstances surrounding the death. No questions of policy and training are allowed. Statements about department policy and training are only allowed through the involved officer's testimony. 	<ul style="list-style-type: none"> In addition to the facts and circumstances surrounding the death, the scope of the inquest will be narrowly expanded to include questions about current department policy and training in a given jurisdiction. No speculative or prospective questions regarding a law enforcement entity's policy and training are allowed under this expansion of the scope. In addition, the jury panel may answer an interrogatory on whether or not the involved officer's actions were consistent with the given jurisdiction's department policy and training.
Jury/Panel	<ul style="list-style-type: none"> Superior Court supplies no more than 6, and no less than 4 jurors (mandated through RCW). 	<ul style="list-style-type: none"> The jury remains an involved party in the inquest hearing, consistent with RCW.
Officer Testimony	<ul style="list-style-type: none"> Historically, the involved officer voluntarily testifies at the inquest hearing. 	<ul style="list-style-type: none"> In lieu of the involved officer testifying, the lead investigator will offer testimony to the facts and circumstances of the event. The chief law enforcement officer of a given jurisdiction (or their designee) will address questions of current department policy and training. Subpoena power to compel involved officer testimony will be eliminated.
Opening/Closing Statements	<ul style="list-style-type: none"> No opening and closing statements allowed. 	<ul style="list-style-type: none"> Each represented party will have the opportunity to make a statement of summation. Statements will be pre-written and screened by the administrator to ensure they are within the scope of the inquiry.
Expert Testimony	<ul style="list-style-type: none"> Medical Examiner (ME) testifies re: cause and manner of death. CSI detectives testify re: physical evidence at scene and what it shows, e.g., ballistics, trajectories, etc. 	<ul style="list-style-type: none"> Involved parties may call expert witnesses to speak to issues within the scope of the inquest, e.g. medical examiner, ballistics experts, experts in law enforcement policy and training.

Revised Executive Order on Conducting Inquests in King County, October 3, 2018

<p>Public Education and Internal Review</p>	<ul style="list-style-type: none"> No formal public information materials about inquest process. No annual (or regular) review of process. 	<ul style="list-style-type: none"> The manager within the Department of Executive Services will create and maintain a webpage with an up-to-date schedule of all inquests, any relevant findings, audio recordings of past inquests when possible, and an informational guide that outlines the inquest process. The manager will also submit a report to the County Executive at the end of each year on the operations of the inquests. The County Executive will call for a periodic review of the inquest process by an independent review committee to determine if the inquest process conforms with updated laws and is adequately meeting the principles of transparency, community engagement, and respect for all those involved in the inquest process.
<p>Restorative Justice</p>	<ul style="list-style-type: none"> County does not currently promote or provide restorative justice options/services as a parallel process to the inquest hearing. 	<ul style="list-style-type: none"> The Executive will ensure that the involved parties are directed to resources and processes within the County that are designed to facilitate peace and promote healing, such as, Restorative Justice circles. Where the affected parties agree to participate, these offer the potential for meaningful connection and resolution.
<p>Timeline</p>	<ul style="list-style-type: none"> EO requires inquest commence within 90 days of Executive’s request to the District Court. KCDC may extend the 90 days for good cause. 	<ul style="list-style-type: none"> The 90 day timeline has been removed and replaced with Appendix 2, 5.1, page 8, which provides it in the best interest of affected parties and community to hold an inquest in a timely manner and obligates the manager and administrator to limit delays and grant extensions only upon a showing of good cause.
<p>Discovery and Evidence</p>	<ul style="list-style-type: none"> Introduction of the decedent’s criminal history into evidence is not within the current scope of the inquest. 	<ul style="list-style-type: none"> 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 are arresting an individual convicted of a felony who they believe is carrying a firearm). If such information is admitted, it must be limited to the greatest extent possible and 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; that the evidence of criminal history serves as the basis for an officer safety caution (or equivalent warning); and that the member of the law enforcement agency was aware of the officer safety caution prior to any use of force; or if otherwise, contemporaneous knowledge of the individual’s criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat. If such information is admitted, it must be limited to the greatest extent possible, and may only include information both actually known to officer(s) at the time, and actually forming a basis for their decision to use deadly force or their tactics in approaching the individual.
<p>Inquest Findings</p>	<ul style="list-style-type: none"> PAO transmits jury’s answered interrogatories to the Executive. 	<ul style="list-style-type: none"> The administrator will transmit an inquest panel’s findings to the County Executive. The administrator will ensure that the findings and recommendations are published on its website in a timely manner.
<p>Interrogatories/Panel Questions</p>	<ul style="list-style-type: none"> No written explanations currently allowed from jurors. Interrogatory asking whether or not the officer feared for his or her life at the time of the incident often asked. 	<ul style="list-style-type: none"> 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. In addition, the jury panel may answer an interrogatory on whether or not the involved officer’s actions were consistent with the given jurisdiction’s department policy and training. The interrogatory asking whether or not the officer feared for his or her life at the time of the incident will no longer be asked.

Inquest Administrative Process: Working Timeline/Milestones



MEMORANDUM

To: Charter Review Commission

From: Equity for All Subcommittee, King County Charter Review Commission

Date: April 24, 2019

Re: Charter Provisions Related to the Office of Law Enforcement Oversight –
Early Recommendations to Council

This memo is intended to lay out the purpose of making certain changes to Charter Section 265 related to the Office of Law Enforcement Oversight. The subcommittee has met and discussed these changes. Our view is that a Charter amendments confirming OLEO's power to issue subpoenas be included in our early recommendations to the Council. This memo lays out more detail as to the reasons for that recommendation. We seek the full Commission's assent to this approach.

Brief History.

For more than a decade, King County has worked to improve oversight of the King County Sheriff's Office (KCSO). In 2006, the county council's Law, Justice and Human Services Committee held eleven meetings to consider civilian oversight for the sheriff's office. The committee reviewed existing systems for the resolution of complaints and other investigations of employee misconduct. The committee also reviewed the systems used by the Ombuds/Office of Citizen Complaint to evaluate, categorize, and investigate complaints against KCSO employees. Additionally, the committee received an extensive briefing on the systems in place in KCSO's Internal Investigations Unit for their review of allegations of misconduct and other complaints. Finally, committee members had several briefings from the sheriff's Blue Ribbon Panel which was charged in March 2006 to evaluate many of the areas that the committee was reviewing.

Ordinance 15611—Initial Oversight Ordinance. Based on its deliberations and review of the KCSO Blue Ribbon Panel report, the King County Council developed legislation designing a system for civilian oversight that allowed for independent civilian monitoring and evaluation of ongoing investigations. On October 9, 2006, the Council approved Ordinance 15611 regarding civilian oversight of KCSO and creating the Office of Law Enforcement Oversight (OLEO) as an independent office within the legislative branch. The legislation gave OLEO authority to review complaints and investigations that paralleled the responsibilities identified as best practices during Council deliberations and advanced by the Blue Ribbon Panel. The legislation also allowed for the creation of an oversight committee made up of members of the public to support the new office.

Shortly after the council approved Ordinance 15611 however, the King County Police Officers Guild (KCPOG) filed an unfair labor practice charge against the county. On November 19, 2007, the county and the KCPOG finalized an agreement that Ordinance

15611 would be treated as a labor policy and that this policy would need to be bargained in good faith. After which, the KCPOG dismissed its unfair labor practice charge against the county. As a consequence of this agreement, the executive took no action to implement Ordinance 15611.

Oversight Legislation Modified to Address Labor Agreement. On December 8, 2008, the Council passed Ordinance 16327 approving a new five-year collective bargaining agreement between King County and the KCPOG. The new collective bargaining agreement required the county to repeal most of Ordinance 15611, eliminating the primary components of the legislation establishing the OLEO. However, also on December 8, 2008, the Council adopted Motion 12892, which reaffirmed its commitment to establishing a system of civilian oversight.

Following through on that commitment, the Council adopted Ordinance 16511 in May 2009 to establish a system of civilian oversight in accordance with the existing labor agreement. The ordinance was developed to address the adopted collective bargaining agreement while also preserving some civilian oversight capabilities for the OLEO.

Establishing a Citizen's Committee on Independent Oversight. In Ordinance 16511, the Council created an eleven member Citizen's Committee on Independent Oversight (committee) to work with OLEO. The legislation directed the committee to advise the OLEO Director on matters important to the county's diverse communities and to provide community input as needed. The Council also intended the committee to serve as a resource that represented the county's diverse population and to advise the Director on policy and public perceptions of the sheriff's office.

The Council envisioned that the committee would advance community communication that fosters accountability and public understanding of the misconduct and discipline policies, procedures and practices of the sheriff's office, as well as, other issues related to the OLEO Director's oversight responsibilities. However, Ordinance 16511 made it clear that the committee shall not review or advise the OLEO Director on individual complaints, investigations, or disciplinary actions.

Additionally, the legislation provided no direct guidance for the establishment of committee operations including, how often meetings should be convened, what level of support the committee would need from the OLEO Director, or how the committee could best support the OLEO Director in carrying out oversight requirements.

Charter Amendment and Council Action Expanding OLEO Authorities. In November, 2015, the voters of King County approved an amendment to the King County Charter that established OLEO as a charter-mandated county office within the legislative branch. This amendment, now Section 265 of the King County Charter, increased oversight responsibilities for OLEO and required that those authorities be established by ordinance.

In April 2017, the Council adopted Ordinance 18500 expanding OLEO's authorities to align with the 2015 voter approved charter amendment. Examples of the expanded powers, under Ordinance 18500, include:

- investigatory authority with subpoena powers for the office;
- complaint and concern intake responsibilities, including the authority to review KCSO complaint intake classifications;
- authorization to review policies, procedures, training, operations, et al and make recommendations prior to adoption;
- access to relevant information and crime scene authorities;
- notification requirements regarding the KCSO complaint handling process; and
- review inquests findings.

These responsibilities are currently the subject of bargaining with the KCPOG.

Subpoena Power.

The power to issue subpoenas is an established power among oversight agencies nationwide. The enabling ordinance for OLEO currently provides OLEO the power to "issue a subpoena to compel any person to appear, give sworn testimony or produce documentary or other evidence reasonable in scope and relevant to the matter under inquiry and limited to the matters associated with the authority granted under K.C.C. 2.75.040.A.2." KCC 2.75.055. The King County Charter does not currently include an explicit grant of subpoena power to OLEO.

An investigative process that could lead to discipline is a matter over which the union and the County must bargain. Even where the legislative branch enacts an ordinance related to this area, the employer must bargain with the union before its implementation. Because no agreement has yet been reached with the union to allow for subpoena power, this ordinance section has not been implemented.

Amending the Charter to include subpoena power will not change the current collective bargaining agreement, but it could help significantly with the re-negotiation of the agreement and any subsequent interest arbitration. The sub-committee believes that amending the Charter to be consistent with the ordinance is important because it will be a direct demonstration of the will of people of King County that this oversight office be empowered to gather the information it needs to be an effective oversight agency.

This, in turn, would provide parties at the negotiating table, especially the elected Sheriff and the County Executive, information as to what their constituents desire. Of course, it does not guarantee that the unions representing public safety employees will agree. In the event that the parties cannot come to an agreement in negotiations for public safety employees, like Sheriff's Deputies, the parties are bound to place the outstanding issues before an interest arbitrator. The interest arbitrator is a private person, ideally with experience in the field. That arbitrator has broad authority to impose contract terms. See RCW 49.60.465. An amendment to the Charter would demonstrate the will of this

Commission, the County Council and the voters of King County in support of subpoena power for OLEO. It hard to imagine that would not be persuasive to an interest arbitrator.

Even in the absence of a change in the outcome of collective bargaining negotiations, placing this power in the Charter would enshrine this expression of the will of the voters even if the terms of the ordinance were to be changed by a future County Council.

All committee members at the April 15 meeting agreed that this is an issue that should be placed before the Council in the early round.

ISSUE: Initiative and Referendum Process Updates and Clarifications

The Transparency and Accountability subcommittee considered the comments submitted regarding the process for initiatives and referenda in Section 230 of the charter.

ANALYSIS:

The proposals made regarding the initiative and referendum process are mostly technical and have to do with aligning the timelines in the charter with changes in state election law since the last charter update, plus other clarifications to the process, rather than substantive policy changes. The proposed changes are summarized below:

- §230.40 – Clarify that it is the *intent to file* a referendum which must be submitted before the original effective date of an ordinance, not that the *signed petitions* have to be submitted before the original effective date.
- §230.40 – Referenda should appear only at primary or general election ballots to avoid the cost of a countywide special election. Statewide referenda appear only on general election ballots, and that could be considered for the county as well.
- §230.40 – Change the number of days before an election by which the referendum must be referred to the ballot to match state election timelines (which is now three months before the election instead of 45 days). The deadline for submission of signed petitions should be far enough ahead of the referral date to allow adequate time for signature verification.
- §230.40 – Simplify the language in this section to use the term “emergency ordinance” defined in §230.30, instead of the full description “an ordinance necessary for the immediate preservation of the public peace, health or safety or for the support of county government and its existing public institutions”.
- §230.50 – Clarify that if the council adopts a submitted initiative, it may not immediately amend the ordinance in order to avoid having to put both the original language and the alternative language on the ballot.
- §230.50 -- Initiatives should appear only at primary or general election ballots to avoid the cost of a countywide special election. Statewide initiatives appear only on general election ballots, and that could be considered for the county as well.
- §230.50 – Specify what happens if the council adopts a submitted initiative between the time it is referred to the ballot and when the election is held. This could be disallowed, or the public vote could become moot, or the measure could be considered repealed if rejected by the voters.
- §230.50.10 – Clarify what it means for the county council to “take action” on an initiative proposed by cities. Is the council required to either enact or reject it? Are amendments permitted? Does it go on the ballot if rejected?

- §230.60 – Petitions should be allowed on 8.5x11 paper, but allowed paper size is defined in county code rather than the charter. Should it be mandated in the charter? Or could this be a recommendation to the council for a code change?
- §230.70 – Clarify what happens if signature verification on a referendum petition (including possible legal challenges) takes longer than the allowed 45 days before the effective date of the ordinance – does the referendum fail, or is the period extended until verification is completed?
- §230.75 – The requirement for a two-thirds supermajority vote to amend or repeal an ordinance that was submitted as an initiative should also apply when the initiative is enacted by the council and not only when it is enacted by the voters.

RECOMMENDATION:

The subcommittee agreed that it is possible for a workgroup, including county elections staff and other stakeholders, to develop the proposed updates and clarifications to address these issues quickly enough to be submitted to the council for consideration in 2019. The subcommittee recommends that the Commission undertake this effort.

ISSUE: Should there be a process to remove county elected officials for cause?

The Transparency and Accountability subcommittee considered whether there should be a process defined in the Charter for removing county elected officials for specific reasons that would render them incapable or unfit to continue in office.

ANALYSIS:

- Research by the Prosecutor found no prohibitions in state law that would prevent establishing a process or using that process to remove a county elected official except for Superior and District Court Judges. A separate state process for removal of judges already exists.
- The City of Seattle Charter does have a provision for removal of the Mayor for “any willful violation of duty, or for the commission of an offense involving moral turpitude”. Removal of the Mayor requires a hearing and two thirds vote of the City Council. Members of the City Council may also be removed for cause after a hearing and a two thirds vote of the City Council.
- Many other local jurisdictions across the country also have processes for removal of elected officials. Those processes vary in significant ways as do the standards for removal.

DISCUSSION:

- The subcommittee discussed recent local examples in Seattle and King County when the fitness of elected officials to continue in office were a matter of public debate. In the case of Seattle, the Council was considering invoking its Charter authority to remove the Mayor until he resigned.
- In the case of King County, a process for removal of an elected official does not exist and when the question of official misconduct by the previous Sheriff was raised, the County Council had neither the power to investigate or to remove that official from office.
- The possibility of removal of an elected official is an extremely serious issue and more research and discussion of the standard and process for removal is required to ensure the protection of the rights of the accused official and the integrity of the government’s relationship with the voters.

ACTION ITEM: The subcommittee recommends the Charter Review Commission continue work on a charter amendment for consideration in 2020 that would provide a process to remove elected officials for cause. Issues that must be addressed are defining the standard of misconduct or malfeasance that must be met for removal and the hearing process and voting procedures.

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ISSUE: Which county positions should be elected or appointed.

The Transparency and Accountability subcommittee considered whether the following should be appointed or elected positions: prosecutor; assessor; director of elections; public defender; and sheriff.

ANALYSIS:

- **Prosecutor** – State law requires that the prosecutor be elected.
- **Assessor** - Assessors are currently elected in all other counties in Washington. There is no legal prohibition preventing an appointed assessor; however, the subcommittee did not identify any compelling reasons for making assessor an appointed position.
- **Director of elections** – The subcommittee concluded that continuing this position as an elected one improves public confidence in the integrity and accuracy of elections.
- **Public defender** – Although it is a close question, the subcommittee does not recommend a charter amendment to create an elected public defender. Currently candidates for public defender are recruited and selected by the Public Defense Advisory Board, then a finalist from that group is chosen by the executive and confirmed by the council. (King County Charter Section 350.20.61).

Giving the public defender “parity” with the prosecutor would be an important symbol of the critical functions performed by the public defender. On balance, however, the burdens of running for election and re-election do not appear to forward the goals of an independent public defender and adequately funded public defender office. Among other concerns, the most qualified person for the job may not be willing to run for office in the first instance, or may not have the political skills to win a contested election, or may be hindered in making unpopular decisions based on re-election concerns.

- **Sheriff** - The subcommittee recommends development of a charter amendment returning the sheriff to an appointed position (appointed by the executive and confirmed by the council). The sheriff was an appointed position prior to 1997. In 1997, a charter amendment making the position an elected office was passed by 57% of the voters. There have been a total of five elected sheriffs since 1998. The sheriff is required to be a registered voter in King County to be qualified to run for election.

After discussing the pros and cons of an elected versus appointed sheriff, the subcommittee concluded that an appointed sheriff would better serve the county at this time because:

- Integrity, impartiality and professionalism are promoted by removing politics from the office of sheriff.
- Current laws foster transparency and access to information in a manner that was not true when concerns about corruption led to an elected sheriff.

- The candidate pool would be national rather than restricted to registered King County voters. Experienced, qualified law enforcement professionals would be more likely to apply for an appointed position.
- The sheriff could be removed for cause if needed; currently there is no process for doing so other than a contested election.
- The sheriff's department would avoid internal negative effects from an election between two internal candidates.

ACTION ITEM: The subcommittee is willing to continue to work on a charter amendment returning the position of sheriff to an appointed position. **The question from the subcommittee to the full commission is whether the commission would like to pursue this issue further, as either a 2019 or 2020 recommendation to the Council.**

ISSUE: Charter Review and Amendment Process Updates

The Transparency and Accountability subcommittee considered the comments regarding the charter review and amendment process, which is defined in §800 of the charter.

ANALYSIS:

The key issues appear to be how to ensure that future commissions reflect the diverse demographics of the county as well as geographic diversity. In addition, an update is needed regarding the timeline for submission of charter amendments to the ballot.

It would be difficult and probably undesirable for the charter to specify hard requirements (such as quotas) for diversity of the commission. However, there could be a general statement of principle that the council and executive should seek to have the commission be diverse regarding the various protected classes mentioned in Section 840 of the charter (“sex, race, color, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age”), in proportions similar to the population of the county. Additional classes could also be considered, such as family status, economic status, political preference or affiliation, honorably-discharged veteran or military status, or the use of a trained dog guide or service animal, although we should be mindful of the confusion that could be caused by having multiple divergent such lists in the charter.

There is already some geographic distribution on the Charter Review Commission because the charter requires at least one commissioner to be appointed from each council district. One comment recommended that at least one commissioner reside in the unincorporated area of the county, which is not currently required although nothing prevents it from being done; there could be another statement of principle encouraging appointments to the commission roughly proportional to the population of the incorporated and unincorporated areas. One comment suggested that each council member be allowed to directly appoint one commissioner, although this desire has been addressed in the current and some previous commissions by allowing each council member to *nominate* a commissioner. Further geographic diversity could be accomplished by requiring two commissioners from each council district.

It is also necessary to change the timeline for submission of charter amendments to the ballot to match current state requirements. State law requires ballot measure resolutions to be submitted to the elections office at least three months before the election, but the charter currently specifies 45 days. This should be corrected in consultation with the elections director. The requirement could be made generic so that the number of days is not explicit but instead a reference is made to state law so that future changes to state law are automatically accommodated.

RECOMMENDATION:

The consensus of the subcommittee was that these changes are simple enough that they could possibly be proposed for 2019, but that the matter is not urgent because it will be 10 years until the next commission is convened. The subcommittee therefore recommends that this issue be deferred for submission to the council for consideration to go on the ballot in 2020.

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