

Barriers to Accountability for Law Enforcement Officers' Use of Excessive Force



**A Report of the
Washington Advisory Committee to the
U.S. Commission on Civil Rights**

January 2022

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

The Committee would like to acknowledge the significant contributions of Kelly McGrath, civil rights intern at the U.S. Commission on Civil Rights. This report would not have been possible without her dedication and support.

Washington Advisory Committee to the U.S. Commission on Civil Rights

The Washington Advisory Committee to the U.S. Commission on Civil Rights submits this briefing report regarding barriers to accountability for use of excessive force by law enforcement officers. The Committee submits this report as part of its responsibility to study and report on civil-rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference from March to June 2021.

The report begins with a brief background of the issue to be considered by the Committee. It then identifies primary findings as they emerged from the testimony. Finally, the Committee conveys their recommendations for addressing related civil rights concerns. This report is intended to focus specifically on barriers to holding law enforcement accountable for excessive use of force. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by majority of the Committee on December 1, 2021.

Washington Advisory Committee to the U.S. Commission on Civil Rights¹

Alexes Harris, Chair

University of Washington, Seattle

Brian Screnar, Vice Chair

Otaaki, Inc., Seattle

Kimberly Ambrose

Univ. of Washington School of Law, Seattle

Tony Benegas

Benegas Engineering PS, West Richland

Luzviminda Carpenter

Seattle Girls' School, Seattle

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Gonzaga University, Spokane

Judith Endejan

Endejan Law, LLC, Everett

Andrew Kaufmann

John Brown University, Seattle

Xyanthe Neider

Whatcom Community College, Bellingham

Conrad Reynoldson

Washington Civil & Disability Advocate, Seattle

John Safarli

Floyd, Pflueger & Ringer, Seattle

Eric Schnapper

Univ. of Washington School of Law, Seattle

¹ Names, affiliations, and locations are listed for identification purposes only.

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Executive Summary

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These committees advise the Commission on issues in their states that are within the Commission's jurisdiction.

The Washington Committee identified accountability for use of excessive force by law enforcement officers as a critical issue for ensuring that the civil rights of all Washington citizens are protected. To examine this issue, the Committee conducted five hearings in 2021: on March 15; March 17; May 17; May 19; and June 22. Transcripts of these hearings are available.² The Committee invited testimony from law enforcement agencies, law enforcement unions, the legal community, academics, advocacy organizations, and individuals directly affected by the use of excessive force. Panelists were selected to provide diverse perspectives regarding the following issues: community impact from cases of excessive force; law enforcement policies and training; collective bargaining agreements; arbitration procedures following discipline for use of excessive force; and proposals for reform of policies and procedures addressing police discipline. Several common themes emerged from the hearings, including the need for comprehensive data collection, the importance of increased transparency for the handling of police discipline cases, the perception that current procedures did not adequately protect the public from the use of excessive force, and the need to prevent appropriate disciplinary procedures related to the use of force or discrimination from being obstructed as a result of collective bargaining.

Based on the testimony offered at the hearings, the Committee prepared a report detailing its findings and recommendations. Support for these findings and recommendations are found throughout this report. On December 1, 2021, the Committee voted by majority to approve the report. The Committee recognizes that any changes to the procedures addressing alleged police misconduct will require a collaborative effort among multiple stakeholders. The Committee proposes the following:

- (1) Creation and maintenance of a national registry of officers who have been decertified as a result of misconduct;
- (2) Creation and maintenance of a database that tracks incidents of serious injury or death resulting from police action;
- (3) Formulation and dissemination by the Department of Justice of best practices for reducing the need for use of force by law enforcement officers;

² Copies of all transcripts can be found in Appendix B.

- (4) Allocation of increased resources for alternatives to the use of force, such as mental health intervention;
- (5) Exclusion from collective bargaining agreements of provisions that would obstruct the ability of law enforcement agencies to comply with federal prohibitions against excessive force or discrimination;
- (6) Narrowly tailored safeguards regarding arbitration of disciplinary action based on the use of force or discrimination, in order to assure that law enforcement agencies retain the ability to fully comply with the federal prohibitions against the excessive use of force and discrimination.

Background

Public Concern About Use of Force

For decades, communities of color have experienced the harmful consequences of police misconduct.³ Following the high profile killings of George Floyd and Breonna Taylor by police officers, the topic of police misconduct and accountability is once again at the forefront of the nation's mind.⁴ These deaths have again put a spotlight on the incidence of use of excessive force by police officers in communities of color and raise questions on how police are held accountable, as well as the ability of police agencies and the public to hold police officers accountable for any potential disparities and discrimination.

There have been a number of well-publicized incidents in which people of color were killed by law enforcement in Washington.⁵ In May 2019, Jesse Sarey, a twenty-five-year-old Cambodian man, was killed by an Auburn police officer. Officers were responding to reports of a possibly violent and agitated suspect in the area. Sarey was shot and killed within 37 seconds of the officer's arrival. Officer John Nelson has been charged with second-degree murder and first-degree assault.⁶ In 2020, Manuel Ellis, a 33-year-old Black man, died by hypoxia while restrained by four Tacoma police officers. No action was taken by local officials against the officers involved, despite criticism of their actions by the mayor of Tacoma,⁷ and serious questions about the adequacy of the investigation.⁸ Subsequently, in response to community pressure by local activists and the family of Manuel Ellis, Governor Jay Inslee ordered a new

³ Tim Burgess, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 22, 2021, transcript, p. 5 (hereafter cited as *Transcript V*); Rev. Harriett Walden, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2021, transcript, p. 19 (hereafter cited as *Transcript I*); Tim Reynon, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, May 19, 2021, transcript, p. 4 (hereafter cited as *Transcript IV*).

⁴ Elliott C. McLaughlin. "Protesters take to streets following release on bond of former officer charged in George Floyd's killing." *CNN News*. October 8, 2020. <https://www.cnn.com/2020/10/07/us/derek-chauvin-george-floyd-bail/index.html>; Elliott C. McLaughlin, Amir Vera, and Mark Morales. "Former Louisville police officer pleads not guilty to charges related to Breonna Taylor's killing." *CNN News*. September 28, 2020. <https://www.cnn.com/2020/09/28/us/breonna-taylor-arraignment-brett-hankison/index.html>.

⁵ In June 2020, Governor Jay Inslee announced a "Governor's Task Force on Independent Investigations of Police Use of Force" to review the state's system of investigating police use of force and recommend possible reforms. *Commission Task Force on Policing and Civil Rights*, Port of Seattle, <https://www.portseattle.org/page/commission-task-force-policing-and-civil-rights>.

⁶ Elaine Simmons, Impacted Family Member and Homeless Advocate, Written Testimony submitted via email to the Washington Advisory Committee to the U.S. Commission on Civil Rights (hereafter cited as *Written Testimony*).; Mike Carter. "Auburn officer charged with murder has history of using force, be it dog, fist or gun." *The Seattle Times*. August 21, 2020. <https://www.seattletimes.com/seattle-news/auburn-officer-charged-with-murder-has-history-of-using-force-be-it-dog-fist-or-gun/>.

⁷ Colin Dwyer. "Tacoma Mayor: Officers Who Arrested Manuel Ellis 'Should Be Fired And Prosecuted.'" *NPR Chicago*. June 5, 2020. <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/05/870298025/tacoma-mayor-officers-who-arrested-manuel-ellis-should-be-fired-and-prosecuted>.

⁸ Patrick Malone. "Investigation into Manuel Ellis' killing by Tacoma police flawed from the start." *Seattle Times*, September 20, 2020. Accessed November 9, 2020. <https://www.seattletimes.com/seattle-news/times-watchdog/contradictions-conflicts-of-interest-cloud-probe-of-manuel-ellis-killing-by-tacoma-police/>.

investigation and in May 2021 prosecutors charged two Tacoma police officers with second degree murder and a third officer with first degree manslaughter.⁹ John T. Williams, Daniel Covarrubias, Renee Davis, Stonechild Chiefstick, Che Taylor, Mi-Chance Gittens Dunlap, Shaun Fuhr, Otto Zehm, and Charleena Lyles all died in police interactions in Washington and their stories were shared or referenced in the course of this investigation.¹⁰

In 2011 the Department of Justice (DOJ) investigated use of force by officers of the Seattle Police Department. They found:

- The department had engaged in a “pattern or practice of excessive force that violates the Fourth Amendment to the United States Constitution” and federal laws.
- Many community members believe that the Seattle Police Department engages in discriminatory policing.¹¹
- Individuals of color were more than twice as likely as Whites to be victims of excessive force.¹² Non-Whites were 50% of the victims of excess force incidents,¹³ even though individuals of color were only 34% of the Seattle population at the time of the 2010 Census.¹⁴
- When Seattle Police Department officers use force, they do so in an unconstitutional manner 20% of the time.
- When officers use batons, it is either unnecessary or excessive 57% of the time.
- Of the excessive force cases identified, 61% of the cases involved more than one officer.
- In 2010, just 20 officers accounted for 18% of all force incidents.¹⁵
- Officers were especially likely to use unnecessary or excessive force in encounters with individuals with mental illness or under the influence of alcohol or other drugs.¹⁶ The investigation concluded that 70% of use of force cases involved individuals from these populations.¹⁷

⁹ Andy Rose. “Tacoma officers facing charges in the death of Manuel Ellis have been released on bail.” *CNN*. May 30, 2021. <https://www.cnn.com/2021/05/30/us/tacoma-officers-manuel-ellis-released-bail/index.html>.

¹⁰ Bible Testimony, *Transcript V*, p. 4; Reynon Testimony, *Transcript IV*, p. 4; Walden Testimony, *Transcript I*, p. 14; Pete Holmes, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, May 17, 2021, transcript, p. 16 (hereafter cited as *Transcript III*).

¹¹ United States Department of Justice Civil Rights Division and United States Attorney’s Office Western District of Washington. *Investigation of the Seattle Police Department*. December 16, 2011, p. 3. https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf

¹² Ibid.

¹³ Ibid.

¹⁴ City of Seattle Office of Planning and Community Development. *2010 Census*. <https://www.seattle.gov/opcd/population-and-demographics/decennial-census#2010>.

¹⁵ United States Department of Justice Civil Rights Division and United States Attorney’s Office Western District of Washington. *Investigation of the Seattle Police Department*. December 16, 2011. https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf.

¹⁶ Ibid.

¹⁷ Ibid.

After being sued by the Department of Justice, the Seattle Police Department agreed to a settlement and a consent decree with the DOJ.¹⁸ The provisions of the agreement focused on a need for partnership between the police department and the community through establishing the Community Police Commission, which is composed of members from the community, police officers, members from police unions, faith communities, and minority community organizations.¹⁹ The consent decree also declared that Seattle Police Department officers should be trained and encouraged to utilize de-escalation techniques, receive training on the excessive use of force and how to avoid it, the effects and proper use of less lethal weapons, and the reporting process for the use of force.²⁰ It should be noted that within the consent decree, the City of Seattle established that they do not “agree with the DOJ’s findings or conclusions,” and that the consent decree should not be construed or interpreted as the city’s admission to “violation of applicable law,” or an existence of a pattern of misconduct by Seattle Police Department officers that denies a person their rights under the constitution.²¹

Heightened attention to the use of force by police officers is not unique to the Seattle Police Department. A 2019 report from the Spokane Police Department found that between 2012 and 2018, two Spokane police officers accounted for 14% of use of force incidents in a six-year period.²² The report also found that within this six-year period, 76% of all incidents of force ended in injury to the recipient of that force.²³ For the subjects that were injured, 29% needed to be treated by EMTs and 56% had to be treated at a hospital.²⁴ Additionally, the Tacoma Police Department released a statement in June of this year that outlined their goals for the future.²⁵ These included banning chokeholds, requiring de-escalation training for their officers, and requiring officers to warn individuals before shooting their weapons.²⁶

Washington law enforcement has made some progress in improving policies and practices to limit the use of excessive force. In 2013, the Washington Criminal Justice Training Commission, which is responsible for training all law enforcement in the state, began implementing significant changes to culture and philosophy. Most notably, they adopted a “guardian” model of policing,

¹⁸ Settlement Agreement and Stipulated Proposed Order of Resolution, United States v. Seattle, No. 2:12-cv-01282 (W.D. Wash. Jul. 27, 2012),

https://www.seattle.gov/Documents/Departments/Police/Compliance/Consent_Decree.pdf.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Settlement Agreement and Stipulated Proposed Order of Resolution, United States v. Seattle, No. 2:12-cv-01282 (W.D. Wash. Jul. 27, 2012), p.9,

https://www.seattle.gov/Documents/Departments/Police/Compliance/Consent_Decree.pdf.

²² Bob Scales. *Use of Force Data from 2013 to 2018: Report Prepared for the Spokane Office of Police Ombudsman*. (Police Strategies LLC, 2019) 17-28. <https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf>.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ The Tacoma Police Department. “Tacoma Police Department Responds to Position on “8 Can’t Wait” Campaign.” The City of Tacoma.

https://www.cityoftacoma.org/UserFiles/Servers/Server_6/File/cms/Police/NewsReleases/June%2016%202020.pdf.

²⁶ *Ibid.*

which emphasizes balancing civil rights and personal liberty with safety.²⁷ Their training methodology has become a national model.²⁸ Citizen’s Initiative 940 (I-940), which passed in 2018, made significant changes to officer training, including integrating crisis intervention training, improved communication skills, mandated de-escalation training, better first aid and mental health training, and other tactics.²⁹ I-940 also added avenues for the community to be involved in the development of training curricula and lessened the burden of proof needed to prosecute an officer for improper use of deadly force.³⁰ As a part of their compliance with the consent decree Seattle Police Department has made several improvements to accountability and community input in recent years. They introduced an office of police accountability, a force review board, a community policing commission, and created a new investigatory office in the inspector general’s office.³¹

Defining Use of Force

In order to measure progress toward minimizing the use of excessive force, the term “excessive force” needs to be defined. The United States Constitution sets a minimum standard for law enforcement officers based on the Fourth Amendment’s prohibition against unreasonable search and seizure by government actors, like police.³² In both *Tennessee v. Garner* (1985) and *Graham v. Connor* (1989) the U.S. Supreme Court held that when claims are brought alleging that law enforcement used excessive force, such claims should be analyzed under the Fourth Amendment’s objective reasonableness test.³³ Assessing whether force was excessive or reasonable requires balancing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion,” which will depend on “the facts and circumstances of each particular case.”³⁴ Additionally, unjustified use of force should not disproportionately impact members of protected groups under the 1964 Civil Rights Act.³⁵ Nonetheless, because states may set a higher

²⁷ Holmes Testimony, *Transcript III*, p.22; Rahr Testimony, *Transcript I*, p. 7; Sue Rahr and Stephen K. Rice. “From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals.” *Harvard Kennedy School & National Institute of Justice*. April 2015. <https://www.ojp.gov/pdffiles1/nij/248654.pdf>.

²⁸ Solan Testimony, *Transcript III*, p. 10; Rahr Testimony, *Transcript I*, p. 7.

²⁹ Reynon Testimony, *Transcript IV*, p. 21; Rahr Testimony, *Transcript I*, p. 8; Initiative Measure No. 940 (filed May 23, 2017) https://www.sos.wa.gov/assets/elections/initiatives/finaltext_1372.pdf; HB 3003, 65th Leg., Reg. Sess. (Wash. 2018) <https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/House%20Bills/3003-S.E.pdf>.

³⁰ Burgess Testimony, *Transcript V*, p. 11; Reynon Testimony, *Transcript IV*, p. 5; Solan Testimony, *Transcript III*, p. 11; Quinn Testimony, *Transcript I*, p. 15; HB 3003, 65th Leg., Reg. Sess. (Wash. 2018), <https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/House%20Bills/3003-S.E.pdf>.

³¹ Holcomb Testimony, *Transcript IV*, p. 15; Holmes Testimony, *Transcript III*, p. 16,17, 22; Solan Testimony, *Transcript III*, p. 11; Walden Testimony, *Transcript I*, p. 14; Burgess Testimony, *Transcript V*, p. 19.

³² U.S. Const. amend. IV.

³³ Holcomb Testimony, *Transcript IV*, p.6; *Tennessee v. Garner* 471 US 1 (1985); *Graham v. Connor*, 490 US 386 (1989).

³⁴ Michael A. Foster. “Police Use of Force: Overview and Considerations for Congress.” *Congressional Research Services*. July 10, 2020. <https://sgp.fas.org/crs/misc/LSB10516.pdf>.

³⁵ Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 241 (codified at 42 U.S.C. § 1971 et seq. (2006)).

requirement for the use of force, it is difficult to obtain consistent data regarding when “excessive force” has been used.

In Washington, law enforcement officers may use reasonable force under appropriate circumstances when performing a legal duty.³⁶ Deadly force may be used when it is necessary, meets the “good faith standard” and there is probable cause to believe “that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.”³⁷ There is no state statute that defines “excessive use of force” and local police departments and sheriff’s offices in Washington have different policies defining what constitutes “excessive” use of force and what force is permissible.³⁸ Section 8.4 of the Seattle Police Department’s “Use of Force Core Principles” states that “an officer shall use only force that is objectively reasonable, necessary and proportional to the threat of resistance of a subject,” including the consideration of “the time available to an officer to make a decision” and “the training and experience of the officer.”³⁹

Because of the lack of a consistent definition of excessive force, it is difficult to obtain data that would allow a meaningful assessment of whether law enforcement officers who use excessive force are actually held accountable.

Disparities & Possible Discrimination

When establishing the scope of this project, the Committee identified specific vulnerable populations to consider when studying police use of force, including communities of color, indigenous peoples, people with disabilities, and the LGBT+ community. Black, Native American, and Latino men and boys are at the highest risk of being killed by police. Black women and Native American women also face higher risk compared with other women. Nationally, 47% of unarmed individuals killed by police were Black, four times the rate at which unarmed White people were killed by police.⁴⁰ There are 29 federally recognized tribes in Washington and 140,714 Native citizens.⁴¹

In Spokane, individuals with disabilities were involved in 15% of all use of force cases in 2013

³⁶ RCW 9A.16.020 (1979) <https://app.leg.wa.gov/rcw/default.aspx?cite=9A.16.020>.

³⁷ RCW 9A.16.040(2). In 2019, responding to concerns that there was inadequate accountability for the use of lethal force, the legislature defined “good faith” as an objective standard which considers the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated officer would have reasonably believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. RCW 9A.16.040(4).

³⁸ Strachan Testimony, *Transcript I*, p. 25; Rahr Testimony, *Transcript I*, p. 25.

³⁹ Seattle Police Department Manual, Chapter 8 § 4. September 15, 2019. <https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

⁴⁰ “Police Accountability Tool.” *Mapping Police Violence*. <https://mappingpoliceviolence.org/cities>.

⁴¹ “The Tribes of Washington.” *Washington Tribes*. <https://www.washingtontribes.org/the-tribes-of-washington/>.

and of such cases in 30% in 2018.⁴² There is no national database that traces the use of force against individuals with disabilities. However, a 2016 report from the Ruderman Family Foundation found that between 25% and 40% of those killed by police were individuals with disabilities.⁴³ Additionally, the report estimated that between one-third and one-half of all people killed by law enforcement officers are individuals with disabilities.⁴⁴

Incidents involving members of the LGBT+ community are particularly hard to understand and study because most agencies do not track this data. A 2013 analysis of anti-LGBT+ violence found that of the LGBT+ individuals who contacted the National Coalition of Anti-Violence Program hotline, 28% reported experiencing excessive force from police officers.⁴⁵ This study also concluded that the rate at which force was used by police against transgender individuals was higher than the rate involving cisgender individuals.⁴⁶

The Role of Police Unions

State and local government bodies and officials are responsible for taking effective measures to prevent, and where necessary correct, use of force by police that is excessive under federal, state, or local standards. However, regulating and changing policies surrounding the use of force are often complicated by state and local labor relations between law enforcement officers, their agencies, and police unions.

State law mandates that cities and counties must engage in collective bargaining with unionized public employees, including law enforcement.⁴⁷ It requires bargaining on working conditions such as hours, wages, grievance procedures, and other terms and conditions of employment.⁴⁸ Most agencies bargain with their union regarding policies which the agency might want to adopt to prevent the excessive or discriminatory use of force (e.g., de-escalation training, body cams, etc.), although it is unclear if agencies must negotiate on these topics under current law.⁴⁹ Most collective bargaining negotiations are not public, and the terms of the agreement are usually only made public once they are agreed upon by both parties.

The law also requires that procedures for disciplining unionized public employees be established

⁴² Bob Scales. *Use of Force Data from 2013 to 2018: Report Prepared for the Spokane Office of Police Ombudsman*. (Police Strategies LLC, 2019) 17-28. <https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf>.

⁴³ David M. Perry, Lawrence Carter-Long. 2016. “The Ruderman White Paper On Media Coverage Of Law Enforcement Use Of Force And Disabilities.” *Ruderman Family Foundation*. https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf.

⁴⁴ Ibid.

⁴⁵ Osman Ahmed, Chair Jindasurat. 2014. “Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013.” National Coalition of Anti Violence Programs. http://avp.org/wp-content/uploads/2017/04/2013_ncavp_hvreport_final.pdf.

⁴⁶ Ibid.

⁴⁷ Chapter 41.56 RCW, <https://app.leg.wa.gov/rcw/default.aspx?cite=41.56>.

⁴⁸ Ford Testimony, *Transcript III*, p. 7; Chapter 41.56 RCW, <https://app.leg.wa.gov/rcw/default.aspx?cite=41.56>.

⁴⁹ RCW 41.80.020. <https://apps.leg.wa.gov/rcw/default.aspx?cite=41.80.020>.

by the collective bargaining agreement.⁵⁰ Collective bargaining agreements may establish limitations on the way internal disciplinary investigations can be taken, such as by imposing deadlines or standards of proof, delaying questioning of officers about the use of force, or restricting who can conduct internal investigations.⁵¹ Police union collective bargaining agreements generally provide that the union can insist that disciplinary measures be reviewed by an arbitrator.⁵² Arbitrators review the facts, and sometimes allow new facts to be introduced by the disciplined officer; the arbitrator then confirms or overturns the discipline decision. Arbitrators have the power to reinstate officers who were released because of misconduct if they disagree with the discipline decisions or think the punishment was too harsh.⁵³ The Federal Mediation and Conciliation Service and the American Arbitrators Association are the gatekeepers for arbitration and impose basic requirements and ethical rules on their members, including a requirement to keep proceedings private unless the law requires otherwise or both parties agree.⁵⁴

One high-profile example of an arbitrator overturning the discipline of an officer found to have used excessive force is the case of former Seattle PD officer Adley Shepherd. In 2018, Officer Shepherd was filmed punching a handcuffed woman in the face and breaking her eye socket.⁵⁵ After an internal investigation Shepherd was dismissed by then-Police Chief Kathleen O'Toole, but Shepherd appealed the decision to private arbitration with the support of the Seattle Police Officers Guild.⁵⁶ Jane Wilkinson, the assigned arbitrator, agreed that Shepherd utilized excessive force,⁵⁷ but ordered that the city of Seattle reduce the officer's firing to a 15-day suspension and fully reinstate the officer following the suspension.⁵⁸ After this decision, City Attorney Pete Holmes sought a judicial review of the binding arbitration decision and Superior Court Judge John McHale vacated Wilkinson's arbitration decision.⁵⁹ The Washington Court of Appeals upheld the court's decision, finding that the "right to be free from excessive force, which finds

⁵⁰ RCW 41.56 is the Public Employees' Collective Bargaining Act.

⁵¹ *Id.*

⁵² Under certain circumstances disciplinary action against a non-unionized officer is subject to review by a government review board which applies standards at least similar to those that would be utilized by an arbitrator. For example, in the past the Seattle Police Officers' Guild's agreement with the City of Seattle stipulated "If the grievance is not settled at Step 3, the grievance may be referred to arbitration." Agreement by and between the Seattle Police Officers' Guild. Effective through December 31, 2020. Section 14.2, p. 62.

http://www.seattle.gov/documents/Departments/OPA/Legislation/SPOG_CBA_expires_12-31-20_111418.pdf.

⁵³ Ford Testimony, *Transcript III*, p. 8.

⁵⁴ Ford Testimony, *Transcript III*, p. 8.

⁵⁵ Lewis Kamb. "Judge reverses arbitrators rule reinstating Seattle police officer who punched handcuffed suspect." *Seattle Times*. August 16, 2019. Accessed October 10, 2020. <https://www.seattletimes.com/seattle-news/judge-reverses-arbitrators-rule-reinstating-seattle-police-officer-who-punched-handcuffed-suspect/>.

⁵⁶ Tim Burgess. "Lawmakers need to set statewide standards for police accountability." *Seattle Times*. October 11, 2020. <https://www.seattletimes.com/opinion/lawmakers-need-to-set-statewide-standards-for-police-accountability/>.

⁵⁷ *Ibid.*

⁵⁸ Lewis Kamb. "Judge reverses arbitrators rule reinstating Seattle police officer who punched handcuffed suspect." *Seattle Times*. August 16, 2019. Accessed October 10, 2020. <https://www.seattletimes.com/seattle-news/judge-reverses-arbitrators-rule-reinstating-seattle-police-officer-who-punched-handcuffed-suspect/>.

⁵⁹ *Ibid.*

its source in the Bill of Rights and is imposed on the states by the 14th amendment, is an explicit and dominant policy.” As a result, an arbitration decision that reinstates an officer who has engaged in excessive use of force will be overturned.⁶⁰ The Seattle Police Officers Guild appealed to the Washington Supreme Court, but review was denied on September 1, 2021.⁶¹

In Washington, as in other parts of the United States, local officials have repeatedly expressed concern that their ability to change policy surrounding accountability and officer conduct has been obstructed by state labor laws. State labor laws have received criticisms from King County Executive Dow Constantine⁶² and Mayor Durkan of Seattle,⁶³ who both expressed frustration with the collective bargaining process and the lack of balance between labor law and management. Seattle’s Community Police Commission called the arbitration process “functionally broken,” and “fundamentally flawed,” pointing out the following: police unions play a role in deciding who will act as an arbitrator, arbitrators rarely have experience in police work or accountability, and proceedings are not transparent or open to the public.⁶⁴

2021 Washington Legislative Session

In the 2021 legislative session, the Washington legislature passed the Law Enforcement Disciplinary Grievance Arbitration Act, which made changes to how arbitrators should be selected for discipline grievances.⁶⁵ Before this legislation, arbitrators were chosen by a process of striking names from a list provided by the Federal Mediation and Conciliation Services or American Arbitration Association until only one name remained.⁶⁶ This new legislation appoints a minimum of nine persons and a maximum of eighteen persons suited and qualified by training and experience to act as arbitrators for law enforcement personnel grievance arbitrations.⁶⁷ When an arbitrator is needed for police discipline grievances, one of these select arbitrators must be used. This legislation is intended to remove any incentive for arbitrators to make decisions motivated by their opportunity for future work rather than the facts of the case.⁶⁸

⁶⁰ Ford Testimony, *Transcript III*, p. 9; *City of Seattle v. Seattle Police Officers’ Guild*, 484 P. 3d 485, 495 (2021).

⁶¹ Solan Testimony, *Transcript III*, p. 12; *City of Seattle V. Seattle Police Officers’ Guild*, No. 80467-7-1 (S. Ct. Wash. Sept. 1, 2021) <https://publicola.com/wp-content/uploads/2021/09/997284-public-order-terminating-review-9-1-2021.pdf>; Lewis Kamb, “Washington state Supreme Court declines to hear Seattle police union appeal of court ruling in fired officer’s case,” *The Seattle Times*, September 3, 2021, <https://www.seattletimes.com/seattle-news/washington-state-supreme-court-declines-to-hear-seattle-police-union-appeal-of-court-ruling-in-fired-officers-case/>.

⁶² Dow Constantine. Interview by Marcie Sillmann. Radio Interview. Seattle, WA. September 1, 2020.

⁶³ Radke, Bill. “King County Executive responds to protests.” *KUOW*. KUOW.org. <https://www.kuow.org/stories/king-county-executive-responds-to-protests>

⁶⁴ Seattle Community Police Commission. “Fighting for Statewide Reforms.” City of Seattle. <http://www.seattle.gov/community-police-commission/current-issues/state-legislative-agenda/remove-arbitration-as-a-route-of-appeal-for-police-misconduct> (Accessed On: October 21, 2020).

⁶⁵ RCW § 41.58.070 (2021).

⁶⁶ Ford Testimony, *Transcript III*, p. 8.

⁶⁷ RCW 41.58.070 (2021).

⁶⁸ *Id.*

Also, during this session, the legislature passed SB 5051, which broadens the list of offenses that can cause officers to lose their certification and requires better retention of officers' disciplinary records.⁶⁹ This bill is expected to make it easier to decertify officers who have a history of misconduct and keep them from escaping accountability by switching police departments.

SB 5259 was passed and requires the Office of the Attorney General to establish an advisory group to make recommendations for the design, development, and implementation of a statewide program for collecting, reporting, and publishing use of force data.⁷⁰ The bill also requires law enforcement agencies to report all instances of the use of force no later than three months after the Office of the Attorney General determines the statewide use of force data program can accept reports.

Lastly, HB 1267 creates the Office of Independent Investigations (OII) within the Office of the Governor for conducting fair and competent investigations of all deadly police use of force.⁷¹ There were several bills mentioned throughout the briefing testimony that were introduced in the 2021 legislative session focused on both arbitration and accountability for use of force, but many of these did not progress.

Overview of Testimony

The Washington Advisory Committee is composed of Washington citizens who sought to explore the issue of barriers to police accountability from an open-minded and neutral posture. During a series of online panels, the Committee heard from academic experts, community advocates, state government officials, law enforcement officers, organizers, and directly impacted individuals. The agendas, minutes, and presentation slides for these panels can be found in Appendix A. In addition, the Committee invited broad participation through written testimony. Written testimony was accepted until July 22, 2021, when the official record was closed.

The Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives. The Committee made many outreach attempts over several months to engage diverse perspectives, soliciting their participation at the public panels, through written testimony, and/or by joining a Committee meeting. The Committee was very appreciative to have participation from both law enforcement perspectives and police unions, but they wish they

⁶⁹ Monisha Harrell, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2021, transcript, p. 19 (hereafter cited as *Transcript II*); RCW 43.101.105, <https://app.leg.wa.gov/rcw/default.aspx?cite=43.101.105>; Melissa Santos. "Eight Big Things The Washington State Legislature Passed in 2021." *Crosscut*. April 26, 2021. <https://crosscut.com/politics/2021/04/eight-big-things-washington-state-legislature-passed-2021>.

⁷⁰ Chapter 10.118 RCW (2021), <https://app.leg.wa.gov/RCW/default.aspx?cite=10.118>.

⁷¹ Chapter 43.102 RCW (2021), <https://app.leg.wa.gov/RCW/default.aspx?cite=43.102>.

could have had even broader participation given the focus of this project. The Committee circulated a letter⁷² requesting specific testimony from 12 unions around the state but received no responses. Similarly, the Committee appreciates the city and county representatives that did participate, but they were not able to secure testimony from all the stakeholders invited because of availability and other timing restrictions. A full list of individuals and organizations that were invited but were unable or unwilling to participate is attached in Appendix D. The Committee also wants to acknowledge that much of the testimony focused on the urban areas of Seattle, Spokane, and Yakima, but that they believe the issue to be widespread in Washington and included rural perspectives wherever possible.

Findings

The section below communicates the observations and conclusions of the Committee based on the testimony received in the course of their investigation. While the Committee has not independently verified each assertion and are not experts on the topic at hand, a diverse and balanced selection of panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the topics at hand.

Data & Disparities

1. There are significant limitations to the data collection practices for police use of force, and therefore, it is difficult to understand trends and disparities related to use of force.⁷³
 - a. There is no federal entity that collects reliable data on police use of force.⁷⁴ Even new efforts at the federal level, such as the FBI's new database,⁷⁵ may be insufficient because they are voluntary.⁷⁶
 - b. Current data collection practices rely on officers to identify if an individual falls within a protected class and self-report any incidents of force. This reliance on officer discretion can lead to underreporting of the most useful data for tracking disparities.⁷⁷ For example, Native Americans are consistently undercounted because they are not identified by the officer as Native American and many

⁷² A copy of the letter can be found in Appendix E.

⁷³ Rahr Testimony, *Transcript I*, p. 32; Quinn Testimony, *Transcript I*, p. 27; Vaughn Testimony, *Transcript III*, p. 4; Harrell Testimony, *Transcript II*, p. 22.

⁷⁴ Edwards Testimony, *Transcript I*, p. 4; Strachan Testimony, *Transcript I*, p. 21; Quinn Testimony, *Transcript I*, p. 27; Harrell Testimony, *Transcript II*, p. 21; Salomon Testimony, *Transcript II*, p. 22; Reynon Testimony, *Transcript IV*, p. 25.

⁷⁵ FBI Criminal Justice Information Services. "National Use-of-Force Data Collection."

<https://www.fbi.gov/services/cjis/ucr/use-of-force>

⁷⁶ Edwards Testimony, *Transcript I*, p. 18.

⁷⁷ Edwards Testimony, *Transcript I*, pp. 17-18; Bart Logue Public Comment, *Transcript I*, p.33; Harrell Testimony, *Transcript II*, p. 22.

departments don't track incidents that don't result in injury reports like hair pulls, wrist locks, take-downs, etc.⁷⁸

- c. Even if departments had better data collection practices, it is unclear if they would voluntarily share the data.⁷⁹ Some panelists suggested that relying on external entities such as the media or health system might result in more reliable data.⁸⁰
 - d. The lack of consistent definitions and applications of terms like “deadly force,” “lethal force,” and/or “excessive force” create additional barriers to building a consistent and trustworthy database of use of force.⁸¹
2. Despite the limitations in data collection, there are still known disparities in the use of excessive force.
- a. Across all racial and ethnic demographics, police in Washington are killing more people per capita than the national average.⁸² Notably, both American Indian/Alaskan Native and Black people see significantly higher rates of death in police interactions than the national average.⁸³
 - b. Black men, particularly young Black men, are at the highest risk of being killed by police and are killed 2.5 times more than White men.⁸⁴ Black women are also at higher risk of being killed by police compared to other groups of women.⁸⁵
 - c. Native American men and women are also at high risk of being killed by police.⁸⁶ Fatal Encounters recorded 131 Native Americans have died by police since the beginning of 2016.⁸⁷
 - d. The Department of Justice in 2011 found that Seattle Police Department engaged in a pattern of excessive use of force and found that 20% of the uses of force exceeded constitutional limitations. They especially highlighted the high number of incidents of force against people experiencing a mental health crisis.⁸⁸

⁷⁸ Reynon Testimony, *Transcript IV*, p. 25; Bart Logue Public Comment, *Transcript I*, p.33; Harrell Testimony, *Transcript II*, p. 22.

⁷⁹ Edwards Testimony, *Transcript I*, p. 18; Reynon Testimony, *Transcript IV*, p.25; Bart Logue Public Comment, *Transcript I*, p. 33.

⁸⁰ Edwards Testimony, *Transcript I*, pp. 4-5, 18; Beggs Testimony, *Transcript II*, p. 13.

⁸¹ Edwards Testimony, *Transcript I*, p. 5; Strachan Testimony, *Transcript I*, p. 25; Bart Logue Public Comment, *Transcript I*, p. 33.

⁸² Edwards Testimony, *Transcript I*, p. 6.

⁸³ Edwards Testimony, *Transcript I*, p. 6; Edwards Testimony, *Panel I PowerPoint*, Slide 34.

⁸⁴ Edwards Testimony, *Transcript I*, p. 5; Beggs Testimony, *Transcript II*, p. 13.

⁸⁵ Edwards Testimony, *Transcript I*, p. 5; Beggs Testimony, *Transcript II*, p. 13.

⁸⁶ Edwards Testimony, *Transcript I*, p. 5; Beggs Testimony, *Transcript II*, p. 13; Reynon Testimony, *Transcript IV*, p. 4.

⁸⁷ Reynon Testimony, *Transcript IV*, p. 4; citing Fatal Encounters. *Our visualizations*. Updated January 3, 2021. https://public.tableau.com/shared/X2KCWJD25?:display_count=y&origin=viz_share_link&embed=y.

⁸⁸ Holmes Testimony, *Transcript III*, p.16.

3. Both the history of racism in the U.S. and existing implicit and explicit biases in society affect the fairness and effectiveness of policing today.
 - a. Too often police have historically been the enforcers of systemic racism against Black communities, Indigenous peoples, and other communities of color⁸⁹ and many panelists testified that police need to acknowledge that history.⁹⁰
 - b. There is a distrust and fear of police in communities of color. Many panelists testified about the fear they have for their communities and family when interacting with the police.⁹¹
 - c. Many people have implicit bias, including police officers, and law enforcement management should address and correct that bias where possible.⁹²

Training & Culture

4. Law enforcement officers are being asked to fill many roles that are outside their core competencies, including providing mental health services, responding to homelessness, and responding to addiction and substance abuse issues.⁹³ Even though officers are not trained to address these circumstances,⁹⁴ because of failures in the broader system officers are blamed for bad outcomes.⁹⁵
5. Training and improved policing policies are important elements in reducing disparities in the use of excessive force.
 - a. The Department of Justice identified training as a major contributor to the disparities in use of force in the Seattle Police Department before the consent decree. Prior to the consent decree, crisis intervention training was inadequate and

⁸⁹ Burgess Testimony, *Transcript V*, p. 5; Walden Testimony, *Transcript I*, p. 19; Reynon Testimony, *Transcript IV*, p. 4.

⁹⁰ Brown Testimony, *Transcript IV*, p. 9; Reynon Testimony, *Transcript IV*, p. 4; Edwards Testimony, *Transcript I*, p. 19.

⁹¹ Reynon Testimony, *Transcript IV*, pp. 4, 23; Bible Testimony, *Transcript V*, p. 4; Vaughn Testimony, *Transcript III*, p. 3; Brown Testimony, *Transcript IV*, p. 24.

⁹² Strachan Testimony, *Transcript I*, p. 9; Brown Testimony, *Transcript IV*, p. 11; Rahr Testimony, *Transcript I*, p. 22; Edwards Testimony, *Transcript I*, p. 23.

⁹³ Reynon Testimony, *Transcript IV*, p. 16; Walden Testimony, *Transcript I*, p. 13; Strachan Testimony, *Transcript I*, pp. 9-10, 21; Quinn Testimony, *Transcript I*, p. 20; Omana Testimony, *Transcript I*, p. 31.

⁹⁴ Reynon Testimony, *Transcript IV*, p. 22; Beggs Testimony, *Transcript II*, p. 11; Holmes Testimony, *Transcript III*, p. 31; Walden Testimony, *Transcript I*, p. 13.

⁹⁵ Burgess Testimony, *Transcript V*, p. 5; Holcomb Testimony, *Transcript IV*, p. 22; Omana Testimony, *Transcript I*, p. 31; Quinn Testimony, *Transcript I*, p. 20; Holmes Testimony, *Transcript III*, p. 31; Rahr Testimony, *Transcript I*, p. 20.

voluntary.⁹⁶ Compliance training taught the “ask-tell-make” strategy of compliance.⁹⁷

- b. In recent years the Washington Criminal Justice Training Commission has made improvements to its use of force training with support from police departments and unions, including:
 - i. A minimum of eight hours of crisis intervention training, a two-hour refresher course every year, and twenty-four hours of in-service patrol tactics training for veteran officers. Additionally, 25% of patrol officers for every agency must have an additional 40 hours of crisis intervention training.⁹⁸
 - ii. Cultural competency and implicit bias training focused on cultural competency, naming communities that were impacted, naming the experiences, acknowledging the history of race and policing, and identifying potential barriers.⁹⁹
 - iii. The opportunity for community input in training requirements including the creation of the Washington State Criminal Justice Training Commission.¹⁰⁰
- c. However, additional improvements to officer training and prevention measures were identified, including raising the age of entry for police officers;¹⁰¹ requiring additional higher education;¹⁰² adopting residency requirements;¹⁰³ and further defining the tactics and policy limitations leading up to use of force.¹⁰⁴
- d. While training is important for reducing use of force, if other cultural factors are not also addressed the training will not be effective. For example, research has shown that the influence of a veteran officer assigned to work with a junior officer has the biggest impact on how the junior officer uses force.¹⁰⁵

⁹⁶ Citing United States Department of Justice Civil Rights Division and United States Attorney’s Office Western District of Washington. *Investigation of the Seattle Police Department*. December 16, 2011, p. 3.

https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf; Rahr Testimony, *Transcript I*, p. 8; Holmes Testimony, *Transcript III*, p. 16.

⁹⁷ In the Ask-Tell-Make strategy officers gain compliance by first asking subjects to comply, then forcefully demand compliance, lastly immediately use force to gain compliance; Beggs Testimony, *Transcript II*, p. 11; Holmes Testimony, *Transcript III*, p. 16; Walden Testimony, *Transcript I*, p. 13; Rahr Testimony, *Transcript I*, p. 8.

⁹⁸ Rahr Testimony, *Transcript I*, p. 8.

⁹⁹ Quinn Testimony, *Transcript I*, pp. 15-16; Rahr Testimony, *Transcript I*, p. 8.

¹⁰⁰ Rahr Testimony, *Transcript I*, p. 9; Solan Testimony, *Transcript III*, p. 10.

¹⁰¹ Vaughn Testimony, *Transcript III*, p. 6; Burgess Testimony, *Transcript V*, p. 18

¹⁰² Burgess Testimony, *Transcript V*, p. 18; Vaughn Testimony, *Transcript III*, p. 6; Brown Testimony, *Transcript IV*, p.13.

¹⁰³ Vaughn Testimony, *Transcript III*, p. 6.

¹⁰⁴ Omana Testimony, *Transcript I*, p. 12; Walden Testimony, *Transcript I*, p. 13; Strachan Testimony, *Transcript I*, p. 9.

¹⁰⁵ Edwards Testimony, *Transcript I*, p. 22; citing Marie Ouellet, Sadaf Hashimi, Jason Gravel, Andrew V. Papachristos. “Network exposure and excessive use of force: Investigating the social transmission of police misconduct. *Criminology & Public Policy*. July 31, 2019. Volume18, Issue 3 August 2019, pp. 675-704. <https://doi.org/10.1111/1745-9133.12459>; Quinn Testimony, *Transcript I*, p. 22.

6. Culture within police departments is an important aspect of accountability¹⁰⁶ but can be hard to change and/or legislate.¹⁰⁷
 - a. Departments are worried about maintaining their legitimacy and may be reluctant to be critical of their own practices or look for opportunities to improve accountability.¹⁰⁸
 - b. Private arbitration of discipline decisions negatively impacts internal culture by undermining the authority of police leadership.¹⁰⁹
 - c. Arbitration makes it hard for leadership to impose more stringent standards because arbitrators require that the severity of punishment be consistent over time.¹¹⁰
 - d. The experience of veteran police officers can have a large impact on department culture. For example, how junior officers are assigned to work with veteran officers will have a powerful impact on how an officer uses force.¹¹¹

Officer Accountability

7. More transparency is needed, both in police accountability procedures and in private arbitration proceedings. Accountability processes and decisions need to be public and accessible.¹¹²
 - a. Making arbitration public could preserve the just cause provision and the officers' right to appeal while also enhancing the legitimacy of the hearing.¹¹³
 - b. The public is asked to put a great deal of trust in police officers and in exchange expect transparency and the opportunity to scrutinize accountability measures.¹¹⁴
 - c. Both police departments and police unions have shown resistance to changes that increase transparency,¹¹⁵ including using contract negotiations to limit the

¹⁰⁶ Strachan Testimony, *Transcript I*, p. 23; Rahr Testimony, *Transcript I*, p. 9; Omana Testimony, *Transcript I*, p. 11; Quinn Testimony, *Transcript I*, p. 22.

¹⁰⁷ Rahr Testimony, *Transcript I*, p. 9; Holcomb Testimony, *Transcript IV*, p.13; Vaughn Testimony, *Transcript III*, p. 6.

¹⁰⁸ Omana Testimony, *Transcript I*, p. 11; Ford Testimony, *Transcript III*, p. 30; Bible Testimony, *Transcript V*, p. 18.

¹⁰⁹ Burgess Testimony, *Transcript V*, pp. 5-6,12,15; Levinson & Storms, *Written Testimony*; Vaughn Testimony, *Transcript III*, p. 5; Strachan Testimony, *Transcript I*, p. 28.

¹¹⁰ Salomon Testimony, *Transcript II*, p. 5; Levinson & Storms, *Written Testimony*.

¹¹¹ Edwards Testimony, *Transcript I*, p. 22; citing Marie Ouellet, Sadaf Hashimi, Jason Gravel, Andrew V. Papachristos. "Network exposure and excessive use of force: Investigating the social transmission of police misconduct. *Criminology & Public Policy*. July 31, 2019. Volume18, Issue3 August 2019. Pages 675-704. <https://doi.org/10.1111/1745-9133.12459>; Quinn Testimony, *Transcript I*, p. 22.

¹¹² Holcomb Testimony, *Transcript IV*, p. 13; Rahr Testimony, *Transcript I*, p. 26; Ford Testimony, *Transcript III*, p. 28; Gutiérrez Testimony, *Transcript III*, p. 13; Burgess Testimony, *Transcript V*, p. 14.

¹¹³ Ford Testimony, *Transcript III*, pp. 9, 20, 28.

¹¹⁴ Reynon Testimony, *Transcript IV*, p. 4, 6; Holcomb Testimony, *Transcript IV*, p.8; Judge Anne Levinson & Michele Storms, *Written Testimony* submitted via email to the Washington Advisory Committee to the U.S. Commission on Civil Rights (hereafter cited as *Written Testimony*); Bible Testimony, *Transcript V*, p. 13.

¹¹⁵ Harrell Testimony, *Transcript II*, p. 9, 10; Bible Testimony, *Transcript V*, p. 19.

disclosure of disciplinary records and prevent an officer's history of misconduct from being tracked.¹¹⁶

8. Better relationships between police and the communities they serve would enhance accountability, but current community oversight efforts are very limited in their power.
 - a. Many panelists mentioned that the relationship between police departments and the communities they serve is pivotal.¹¹⁷
 - b. The communities want to see increased accountability and want to play a part in keeping departments accountable,¹¹⁸ but many departments and unions are resistant to increased community oversight.¹¹⁹ For example, Spokane passed a ballot initiative by 70% in 2017 for increased community oversight but it has still not been implemented as of 2021 because of opposition by the union and their concerns about ongoing collective bargaining.¹²⁰
 - c. Accountability for police departments must include an element of community oversight¹²¹ which should include meaningful authority on policy making and discipline.¹²²
9. Qualified immunity¹²³ has been identified by some witnesses as a barrier to increased accountability.
 - a. Civil remedies for violations of constitutional rights add additional accountability (along with criminal sanctions and employee discipline) for the use of excessive force.¹²⁴
 - b. Because qualified immunity makes it more difficult to obtain compensation for violations of civil rights, eliminating qualified immunity might encourage improved police policies and procedures.¹²⁵

¹¹⁶ Vaughn Testimony, *Transcript III*, p. 4; Ford Testimony, *Transcript III*, p. 21; Harrell Testimony, *Transcript II*, p. 9.

¹¹⁷ Brown Testimony, *Transcript IV*, p. 10, 26; Reynon Testimony, *Transcript IV*, p. 26; Holcomb Testimony, *Transcript IV*, p. 26; Bobb Testimony, *Transcript II*, p. 7; Quinn Testimony, *Transcript I*, p. 15; Brown Testimony, *Transcript IV*, p. 11.

¹¹⁸ Gutiérrez Testimony, *Transcript III*, p. 14; Bobb Testimony, *Transcript II*, p. 7; Bible Testimony, *Transcript V*, p. 7.

¹¹⁹ Washington SB 5436 was introduced in the 2020-21 legislative session and would have removed from the collective bargaining process aspects of the role of ombuds employed by local governments for police oversight. A substitute bill passed out of committee but did not proceed further; Beggs Testimony, *Transcript II*, p. 12; Walden Testimony, *Transcript I*, p. 31.

¹²⁰ Beggs Testimony, *Transcript II*, p. 12; City of Spokane, Charter Amendment Section 129 & 130: Office of Police Ombudsman. <https://my.spokanecity.org/opendata/charter/article-16/#Section129>.

¹²¹ Holcomb Testimony, *Transcript IV*, p. 7; Reynon Testimony, *Transcript IV*, pp. 4,5; Beggs Testimony, *Transcript II*, p. 13

¹²² Holcomb Testimony, *Transcript IV*, p. 7; Bible Testimony, *Transcript V*, p. 14; Reynon Testimony, *Transcript IV*, p. 5.

¹²³ Qualified immunity is a doctrine that prevents the imposition of liability on a defendant who is alleged to have violated the civil rights of the plaintiff unless it is shown that the right in question was “clearly established” at the time of the violation. See e.g., *Webb v. Washington State University*, 15 Wash. App. 2d 505, 475 P.3d 1051 (Div. 3 2020).

¹²⁴ Burgess Testimony, *Transcript V*, p. 11.

¹²⁵ Bible Testimony, *Transcript V*, p. 9.

- c. At the same time, at least one witness believed that the fear of incurring civil liability affected the willingness of governmental officials to acknowledge wrongdoing.¹²⁶

Arbitration & Bargaining Practices

10. Currently, local governments make their own discipline decisions, negotiate their own police contracts, and establish their own collective bargaining procedures, but reform to achieve greater accountability will only be effective if implemented on a statewide or federal basis.¹²⁷
 - a. The state legislature has the authority to introduce new changes to arbitration, replace arbitration altogether, and/or alter and clarify the procedures.¹²⁸ It was unclear whether unions were open to arbitration reforms,¹²⁹ but several panelists suggested that police unions would not voluntarily bargain away their right to arbitration. Consequently, statewide action may be far more likely to effect meaningful change in the arbitration process.¹³⁰
 - b. There is no consistent use of force standard in the state and every department has its own procedures and different definitions of what is excessive.¹³¹
 - c. The decentralized system of misconduct investigation and accountability reduces the likelihood that officers and departments that violate excessive force standards will be held accountable.¹³² For example, currently officers under investigation for misconduct in one department can transfer to a neighboring department, thereby preventing the first department from arriving at a final resolution.¹³³
 - d. City and county officials are often prevented from improving accountability measures because police unions insist any change must be negotiated, but it is unclear if this is required under current Washington law.¹³⁴ This creates a wide variety of accountability policies and practices in the state and improvements in accountability measures may be sacrificed so that public officials and police unions can agree on a contract.¹³⁵

¹²⁶ Gutiérrez Testimony, *Transcript III*, p. 25.

¹²⁷ Gutiérrez Testimony, *Transcript III*, p. 24; Vaughn Testimony, *Transcript III*, p. 4; Rahr Testimony, *Transcript I*, p. 7; Omana Testimony, *Transcript I*, p.10.

¹²⁸ Holmes Testimony, *Transcript III*, p. 32; Burgess Testimony, *Transcript V*, p. 8.

¹²⁹ The Committee is grateful for the participation of Seattle Police Officers' Guild in this project and the insights they offered into the perspective of police unions. While they addressed many of the Committee's areas of focus, they did not fully address much of the scope of the project and therefore we cannot include their opinion on many topics throughout the report.

¹³⁰ Burgess Testimony, *Transcript V*, p. 10; Gutiérrez Testimony, *Transcript III*, p. 14.

¹³¹ Rahr Testimony, *Transcript I*, p. 25; Strachan Testimony, *Transcript I*, p. 25; Burgess Testimony, *Transcript V*, p. 15.

¹³² Harrell Testimony, *Transcript II*, p. 19.

¹³³ Harrell Testimony, *Transcript II*, p. 19; Gutiérrez Testimony, *Transcript III*, p. 24.

¹³⁴ Gutiérrez Testimony, *Transcript III*, p. 25; Burgess Testimony, *Transcript V*, p. 8; RCW 41.80.020.
<https://apps.leg.wa.gov/rcw/default.aspx?cite=41.80.020>

¹³⁵ Burgess Testimony, *Transcript V*, p. 15; Gutiérrez Testimony, *Transcript III*, p. 14.

11. There was broad support for increased external investigation of officers suspected of excessive force or other misconduct. Current policy and practice in the state relies almost exclusively on internal investigations.
 - a. Having an independent and unbiased body of investigators responsible for investigating both officers and departments will be more effective and increase trust in police departments.¹³⁶
 - b. Spokane’s ombudsman model allows independent investigators to monitor the internal affairs complaint process and a Use of Force Review Board makes recommendations to improve policy. But these measures don’t allow independent involvement in discipline investigations and there is no requirement for the department to provide any information to the ombudsman office.¹³⁷
 - c. The Washington legislature recently created¹³⁸ an independent investigative agency with a community-led advisory board to conduct investigations on all deadly force incidents in the state.¹³⁹
12. The right to collective bargaining is important and should be preserved and protected for law enforcement, but those rights should not eclipse the need for accountability for the violation of the rights of communities and individuals.
 - a. There are many important elements of collective bargaining that do not impinge on accountability, such as wages, benefits, many working conditions, the right to appeal discipline decisions, and sanctions for abuse by management.¹⁴⁰
 - b. Some panelists expressed concern that if protections for police officers were reduced, the labor rights of both police unions and other public employee unions would be endangered.¹⁴¹
 - c. The collective bargaining process requires a give and take between unions and management, but negotiations should not limit constitutional rights. Communities should be guaranteed constitutional, effective, and respectful policing regardless of the need to compromise on other aspects of collective bargaining.¹⁴²
 - d. There is historic precedent for limiting labor rights when the collective bargaining process attempts to violate constitutional rights. For example, when unions negotiated contracts that excluded Black workers from employment or that

¹³⁶ Beggs Testimony, *Transcript II*, p. 21; Gutiérrez Testimony, *Transcript III*, p. 13, 24; Burgess Testimony, *Transcript V*, p. 12; Bible Testimony, *Transcript V*, p. 14; Harrell Testimony, *Transcript II*, p. 26.

¹³⁷ Omana Testimony, *Transcript I*, pp. 10-11.

¹³⁸ HB1267. 67th Leg., Reg. Sess. (Wash. 2021); <http://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1267-S.PL.pdf?q=20210816131929>.

¹³⁹ Reynon Testimony, *Transcript IV*, p. 5; Harrell Testimony, *Transcript II*, p. 25.

¹⁴⁰ Harrell Testimony, *Transcript II*, p. 23; Burgess Testimony, *Transcript V*, p. 6; Holcomb Testimony, *Transcript IV*, p. 8; Levinson & Storms, *Written Testimony*; Salomon Testimony, *Transcript II*, p. 4.

¹⁴¹ Burgess Testimony, *Transcript V*, p. 15; Salomon Testimony, *Transcript II*, p. 6,14; Gutiérrez Testimony, *Transcript III*, p. 12, 23.

¹⁴² Bible Testimony, *Transcript V*, p. 17; Harrell Testimony, *Transcript II*, p. 9; Holcomb Testimony, *Transcript IV*, p. 8; Gutiérrez Testimony, *Transcript III*, p. 14; Burgess Testimony, *Transcript V*, p. 6 ; Levinson & Storms, *Written Testimony*; citing Levinson [For Real Police Accountability, Here Are Two State Laws We Must Change.](https://publicola.com/2020/09/18/for-real-police-accountability-here-are-two-state-laws-we-must-change/) [Publicola.com, September 18, 2020.](https://publicola.com/2020/09/18/for-real-police-accountability-here-are-two-state-laws-we-must-change/)

relegated Black workers to inferior jobs, the law limited their ability to use the bargaining process in that way.¹⁴³

13. Arbitrating discipline decisions can make it more difficult to hold individual officers accountable for misconduct and excessive force.

- a. In about 50% of cases discipline and discharge decisions were overturned by private arbitration.¹⁴⁴ And of those cases, 25% involved officers were terminated for use of excessive force.¹⁴⁵ It is not uncommon for arbitrators to agree that misconduct occurred, but to overturn the decision and reinstate the officer based on the harshness of the punishment.¹⁴⁶
- b. Police unions have discretion to appeal discipline decisions through arbitration or not. For example, the Seattle Police Officer's Guild has not granted a discipline appeal to the last five officers to be terminated for misconduct.¹⁴⁷
- c. The way arbitrators are selected for disciplinary appeals incentivizes arbitrators to issue decisions that satisfy both parties creating a conflict of interest that may affect their objectivity.¹⁴⁸
- d. There was a promising new law passed by the Washington Legislature to address this concern in 2021,¹⁴⁹ but many panelists had doubts about its ability to effectively address these concerns and felt that additional arbitration reforms were needed.¹⁵⁰
- e. Arbitrators do not have to consider the decision or the authority of the police officials administering the discipline. Frequently new evidence is allowed to be considered and the arbitrator has no mandate to presume the correctness of the original decision. They are effectively free to impose their own judgement.¹⁵¹

¹⁴³ Levinson & Storms, *Written Testimony*; citing *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944), <https://www.law.cornell.edu/supremecourt/text/323/192>.

¹⁴⁴ Vaughn Testimony, *Transcript III*, p. 5; Burgess Testimony, *Transcript V*, p. 6; Salomon Testimony, *Transcript II*, p. 4; citing Stephen Rushin, *Police Arbitration*, 74 Vand. L. Rev. 1023 (2021), <https://vanderbiltlawreview.org/lawreview/2021/05/police-arbitration/>.

¹⁴⁵ Burgess Testimony, *Transcript V*, p. 6; citing Stephen Rushin, *Police Arbitration*, 74 Vand. L. Rev. 1023 (2021) <https://vanderbiltlawreview.org/lawreview/2021/05/police-arbitration/>.

¹⁴⁶ Burgess Testimony, *Transcript V*, p. 5; Bobb Testimony, *Transcript II*, p. 8.

¹⁴⁷ Solan Testimony, *Transcript III*, p. 11.

¹⁴⁸ Strachan Testimony, *Transcript I*, p. 29; Burgess Testimony, *Transcript V*, p. 6; Salomon Testimony, *Transcript II*, p. 5; Harrell Testimony, *Transcript II*, pp.16, 18.

¹⁴⁹ Ford Testimony, *Transcript III*, p. 9; Bobb Testimony, *Transcript II*, p. 17; RCW 41.58.070; SB 5055, 67th Leg., Reg. Sess. (Wash. 2021), available at <https://app.leg.wa.gov/billsummary?BillNumber=5055&Year=2021&Initiative=false>.

¹⁵⁰ Vaughn Testimony, *Transcript III*, p. 5; Burgess Testimony, *Transcript V*, p. 8; Ford Testimony, *Transcript III*, p. 9.

¹⁵¹ Bobb Testimony, *Transcript II*, p. 8; Vaughn Testimony, *Transcript III*, pp. 26-27.

14. Collective bargaining and interest arbitration¹⁵² are sometimes utilized to prevent policy change that could improve police accountability policies and practices.
- a. The collective bargaining process frequently results in barriers to fair and transparent investigation of officers and undermines the department's accountability mechanism, including time limits for investigations, imposing a mandatory waiting period before interviewing officers and limiting the review of body and dashboard cameras.¹⁵³
 - b. The Seattle Police Officers Guild expressed a willingness and interest in negotiations to improve accountability but did not want to see any changes to mandatory subjects of bargaining.¹⁵⁴
 - c. In the last few years, several unions in Washington have bargained to impasse over the adoption of police reform measures¹⁵⁵ and have refused to agree to changes with clear community and city official support.¹⁵⁶
 - d. Due to the unparalleled authority of police officers to engage in state-sanctioned use of force, the accountability mechanism must also meet a higher standard and should not be subject to the same level of negotiation as other public employees.¹⁵⁷

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;¹⁵⁸ and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁵⁹ In keeping with these

¹⁵² Interest arbitration occurs when the parties are not able to resolve an issue that is a mandatory subject of bargaining; the issue is resolved by an arbitrator under RCW 41.56.450.

¹⁵³ Holcomb Testimony, *Transcript IV*, pp.8,13; Salomon Testimony, *Transcript II*, pp. 4, 6; Brown Testimony, *Transcript IV*, p. 14; Reynon Testimony, *Transcript IV*, p. 14; Vaughn Testimony, *Transcript III*, p. 4.

¹⁵⁴ Solan Testimony, *Transcript III*, p. 11.

¹⁵⁵ Levinson & Storms, *Written Testimony*; Beggs Testimony, *Transcript II*, p. 12; Spokane, WA operated under an expired contract for four years because of pushback from the police union on accountability reform. <https://www.inlander.com/spokane/spokanes-police-contract-shows-cops-and-police-reform-advocates-can-agree-it-just-might-take-a-very-very-long-time/Content?oid=21280698>; Seattle PD has been under an expired contract since January 1, 2021 and negotiations are ongoing. <https://www.seattletimes.com/seattle-news/as-negotiations-with-city-loom-seattles-police-union-has-had-an-outsized-influence-on-police-accountability-measures/>.

¹⁵⁶ Levinson & Storms, *Written Testimony*; Beggs Testimony, *Transcript II*, p. 12.

¹⁵⁷ Levinson & Storms, *Written Testimony*; Bible Testimony, *Transcript V*, p. 17; Harrell Testimony, *Transcript II*, p. 9; Holcomb Testimony, *Transcript IV*, p.8; Gutiérrez Testimony, *Transcript III*, p. 14; Burgess Testimony, *Transcript V*, p. 6.

¹⁵⁸ 45 C.F.R. § 703.2 (b).

¹⁵⁹ 45 C.F.R. § 703.2 (c).

responsibilities, and in consideration of the oral and written testimony received on this topic, the Washington Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this report and issue a formal request to Congress and the President to pass legislation to:
 - a. Prioritize injuries and deaths related to police use of force as a public health issue by requiring law enforcement related deaths and injuries be included as notifiable conditions for reporting by health care providers to the CDC or other appropriate federal agency.
2. The U.S. Commission on Civil Rights should send this report and issue a formal request to the Department of Justice to:
 - a. Implement and maintain a national registry to track decertified officers, whether rehired or retained by another law enforcement agency.
 - b. Use its authority under the Title VI and section 504 regulations to require law enforcement agency that receives federal funds to report every incident Where a death results from law enforcement action.
 - c. Use its authority under the Title VI and Section 504 regulations to require, with regard to every officer-involved death, that law enforcement agencies that receive federal funds submit a written statement from each officer with personal knowledge of the material events setting out what the officer knows.
 - d. Make available to state and local law enforcement agencies, and the public, specific recommendations regarding best practices for reducing the use of force by law enforcement officers, such as tactics for de-escalation or the utilization of mental health experts with, or instead of, law enforcement officers in appropriate circumstances. Those recommendations should draw on the Department's experience framing and enforcing consent decrees, and the successful experiences of state and local agencies with such practices.
3. The U.S. Commission on Civil Rights should send this report and issue a formal request to the Washington State Legislature and Washington Governor to pass legislation to:
 - a. Make all arbitration decisions regarding use of force available to the public and searchable.
 - b. Implement a statewide registry to track officers who were fired for misconduct whether rehired or retained by another law enforcement agency.
 - c. Allocate more mental health related funding with the goal of reducing excessive use of force by some combination of the following:
 - i. Increase the number of mental health care professionals who can respond to crises in the field that are currently being responded to by law enforcement in order to more effectively de-escalate crises and to reduce the risk of potential excessive use of force.
 - ii. Increase the mental health crisis related training and funding for law enforcement officers in order for them to more effectively de-escalate crises and to reduce the risk of excessive use of force.
 - d. Clarify that the subjects of mandatory bargaining do not include:

- i. a law enforcement agency's standard regarding the use of force;
 - ii. policies reasonably adopted by a law enforcement agency for the purpose of assuring compliance with its use of force policy, with the federal or state constitutional prohibition against the excessive use of force, or with federal or state constitutional or statutory prohibitions against discrimination; and
 - iii. a local government's ability to establish independent oversight bodies, including ombudsmen, with authority to meaningfully review excessive use of force incidents and publish their findings.
 - e. Prohibit inclusion in collective bargaining agreements of any provision which obstructs the ability of a law enforcement agency to comply, in a manner consistent with federal law, with the federal prohibition against the excessive use of force, or with the federal prohibitions against discrimination, and should specifically prohibit provisions which
 - i. postpone questioning officers about the use of force; or
 - ii. limit the participation of civilians in the review of claims of excess force or discrimination.
 - f. Adopt, with regard to disciplinary action for the excessive use of force, or discrimination against a civilian by law enforcement officers, these standards regarding arbitration of a grievance:
 - i. factual findings by the agency shall be upheld if supported by substantial evidence;
 - ii. the agency's decision as to the appropriate sanction shall only be overturned if it was a clear abuse of discretion;
 - iii. the arbitrator will not consider evidence not presented to the agency;
 - iv. the agency may establish new prohibitions, or more stringent level of sanctions, provided the affected officers are given prior notice; and
 - v. arbitrators shall be selected in a manner that avoids creating an incentive for the arbitrators to make a particular decision (such as a compromise determination) likely to increase the chances an arbitrator will be hired again in the future;

These standards should be adopted provided that an arbitrator may vacate and remand a decision to the agency if the arbitrator determines that the agency's action violated the officer's rights under the federal or state constitution to due process of law or was the result of unlawful discrimination or retaliation.
 - g. Prioritize injuries and deaths related to police use of force as a public health issue by requiring law enforcement related deaths and injuries be included as notifiable conditions for reporting by health care providers to the Washington State Department of Public Health.
4. The U.S. Commission on Civil Rights should send this report and issue a formal request to local government and municipalities and local police and sheriff's departments to:

- a. Allocate more mental health related funding with the goal of reducing excessive use of force by some combination of the following:
 - i. Increase the number of mental health care professionals who can respond to crises in the field that are currently being responded to by law enforcement in order to more effectively de-escalate crises and to reduce the risk of potential excessive use of force.
 - ii. Increase the mental health crisis related training and funding for law enforcement officers in order for them to more effectively de-escalate crises and to reduce the risk of excessive use of force.
- b. Establish meaningful community oversight boards to independently monitor police misconduct complaints.

Appendix

A. Panel Agendas, Minutes, and Presentation Slides

- a. March 15, 2021, Online Panel
- b. March 17, 2021, Online Panel
- c. May 17, 2021, Online Panel
- d. May 19, 2021, Online Panel
- e. June 22, 2021, Online Panel

B. Hearing Transcripts

- a. March 15, 2021, Online Panel Transcript (AKA Transcript I)
- b. March 17, 2021, Online Panel Transcript (AKA Transcript II)
- c. May 17, 2021, Online Panel Transcript (AKA Transcript III)
- d. May 19, 2021, Online Panel Transcript (AKA Transcript IV)
- e. June 22, 2021, Online Panel Transcript (AKA Transcript V)

C. Written Testimony

D. List of Individuals and Organizations Invited, but Declined to Participate

E. Letter Requesting Written Comment from Washington Police Unions

Appendix A – Panel Agendas, Minutes, and Presentation Slides

Meeting Minutes & Presentation Slides can be accessed at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL0V4Y2Vzc2l2ZSBVc2Ugb2YgRm9yY2UvQXBwZW5kaXggQQ%3D%3D

Panel 1 Agenda

Monday, March 15, 2021 at 10:00am

- I. Welcome & Opening Remarks**
- II. Panelist Remarks**
 - a. Frank Edwards, Rutgers University
 - b. Sue Rahr, Washington Criminal Justice Training Commission
 - c. Steven Strachan, Washington Association of Sheriffs and Police Chiefs
 - d. Luvimae Omana, Spokane Deputy Ombudsman
 - e. Rev. Harriett Walden, Mothers for Police Accountability
 - f. De'Sean Quinn, Deadly Use of Force Legislative Task Force
- III. Q & A**
- IV. Public Comment**
- V. Adjournment**

Panel 2 Agenda

Wednesday, March 17, 2021 at 10:00am

- I. Welcome & Opening Remarks**
- II. Panelist Remarks**
 - a. Senator Jesse Salomon, Washington State Senator
 - b. Merrick Bobb, Seattle Police Monitor
 - c. Monisha Harrell, Equal Rights Washington
 - d. Breean Beggs, Spokane City Council President
- III. Q & A**
- IV. Public Comment**
- V. Adjournment**

Panel 3 Agenda

Monday, May 17, 2021 at 10:00am

- I. Welcome & Opening Remarks
- II. Panelist Remarks
 - a. Elizabeth Ford, Seattle University School of Law
 - b. Lea B. Vaughn, University of Washington Law School
 - c. Dulce Gutiérrez, Washington State Labor Council
 - d. Mike Solan, Seattle Police Officers Guild
 - e. Pete Holmes, City of Seattle
- III. Q & A
- IV. Public Comment
- V. Adjournment

Panel 4 Agenda

Wednesday, May 19, 2021 at 10:00am

- I. Welcome & Opening Remarks
- II. Panelist Remarks
 - a. Tim Reynon, Puyallup Tribal Member, Washington Coalition for Police Accountability
 - b. Alison Holcomb, ACLU Washington
 - c. Carmen Best, Ret. Seattle Police Chief
 - d. James Bible, James Bible Law Group
 - e. Marlon Brown, Black Lives Matter Seattle
- III. Q & A
- IV. Public Comment
- V. Adjournment

Panel 5 Agenda

Tuesday, June 22, 2021 at 3:00pm

- I. Welcome & Opening Remarks
- II. Panelist Remarks
 - a. James Bible, James Bible Law Group
 - b. Tim Burgess, Former Seattle Police Officer & City Council Member
- III. Q & A
- IV. Public Comment
- V. Break
- VI. Committee Business Meeting

Appendix B – Hearing Transcripts

March 15, 2021, Online Panel Transcript (AKA Transcript I)

March 17, 2021, Online Panel Transcript (AKA Transcript II)

May 17, 2021, Online Panel Transcript (AKA Transcript III)

May 19, 2021, Online Panel Transcript (AKA Transcript IV)

June 22, 2021, Online Panel Transcript (AKA Transcript V)

Documents found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL0V4Y2Vzc2l2ZSBVc2Ugb2YgRm9yY2UvQXBwZW5kaXggQg%3D%3D

Appendix C – Written Testimony

All written testimony can be found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL0V4Y2Vzc2l2ZSBVc2Ugb2YgRm9yY2UvQXBwZW5kaXggQy9Xcm10dGVuI FRlc3RpbW9ueQ%3D%3D

Testimony submitted by:

Alison Holcomb

Elaine Simons

Elizabeth Ford

Judge Anne Levinson & Michele Storms

Justin Ericksen

Lea B. Vaughn

Luvimae Omana

Pete Holmes

Steven Strachan

Tim Burgess

Tim Reynon

Appendix D – List of Individuals and Organizations Invited, but Declined to Participate

This is a list of all the participants that were invited to participate in the project either through testimony at one of the public panels or through written testimony. Invitations were declined for a variety of reasons. If you would like additional information about any of these individuals or organizations you can email the Committee’s Designated Federal Officer, Brooke Peery, at bpeery@usccr.gov.

Kevin Richey, Spokane Valley Police Department Precinct Commander/Assistant Police Chief,
Washington Council of Police & Sheriff’s Board of Directors

Bellevue Police Management Association

Benjamin Levin, Colorado Law

Carmen Best, Former Seattle Police Chief

Emma Catague, Member of the Community Police Commission, Member of Serious and Deadly Force
Investigation Taskforce

Everett Police Officer's Association

Hillary McClure, Seattle Police Officers Guild

Judge Anne Levinson, Former independent oversight auditor for Seattle’s police accountability system

Kennewick Police Officer's Benefit Association

Olympia Police Guild

Renton Police Officer's Guild

Seattle Police Officers Guild

Spokane Police Guild

Stephen Rushin, Loyola University

Tacoma Police Union

Tom McLane, Spokane Attorney and Mediator

Vancouver Police Officers Guild

Washington State Fraternal Order of Police

Yakima Police Patrolman's Association

Appendix E – Letter Requesting Written Comment from Washington Police Unions



U.S. Commission on Civil Rights – Washington State Advisory Committee Written Testimony Request:

The Washington State Advisory Committee to the [U.S. Commission on Civil Rights](https://www.usccr.gov/) is sending out a request for Washington-based unions to submit written testimony to aid in their current investigation on accountability for police use of force. Written testimony is a vital part of the Committee's investigation and is used to inform policy recommendations that are developed from the Committee's report.

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission on civil rights issues in their states that are within the Commission's jurisdiction.

The bi-partisan, Washington State Advisory Committee is undertaking an investigation on racial disparities in the excessive use of police force, barriers to police accountability and how these topics relate to the legal processes and transparency practices of Washington-based police unions. The Committee strives to gather balanced testimony in all its projects to develop robust and fully informed recommendations. Thus far, the Committee has heard testimony regarding this issue from elected officials, police monitors, police ombudsman staff, academic experts, community accountability organizations, and police organization representatives. However, the perspective of police union representatives is vital to achieving balanced testimony for the Washington State Advisory Committee's report.

If you are interested in providing written testimony to the Washington State Advisory Committee, please send your responses to the below questions to Brooke Peery at bpeery@usccr.gov by **Friday, June 18th**. The Committee has generated the following questions to guide your testimony. Some of these questions were inspired by testimony already gathered. Please answer all the questions that you feel qualified to address, but do not feel that you need to address each one in its entirety.

1. How do police unions differ from labor unions? Why do you believe police unions are necessary? Are police unions unique from other labor unions? If yes, how? How would you describe the relationship between police unions and police agencies?
2. Do you think police officers and law enforcement agencies need greater accountability for use of force incidents and/or disparities on who use of force is disproportionately used on? If so, what would you recommend to improve accountability?
3. If stronger police accountability policies were implemented or altered what effect, if any, would that have on the ability of officers to carry out their duties? What positive effects, if any, would you anticipate from greater accountability?
4. What are the professional standards expected of police union arbitrators? How are they recruited and trained?

5. In what circumstances would a police union include an arbitrator for police misconduct and discipline decisions? How does an arbitrator benefit the accountability process from a union perspective? Are records of arbitration decisions on police misconduct and use of force cases accessible to the public? What factors do you consider when selecting an arbitrator?
6. Within an investigation of an officer who is fired for misconduct or excessive use of force, who has the final authority on deciding the outcome? Can a police chief's decision to fire a police officer for misconduct or excessive use of force be overturned by the decision of an arbitrator? Can an arbitrator's decision regarding an investigation of a police officer's excessive use of force or misconduct be overturned by a police chief?
7. Would it be helpful if the state or federal government were to devise model (but not mandatory) use of force and de-escalation practices and standards that city or county law enforcement agencies might adopt or adapt to local conditions? Do you think current use of force and de-escalation practices and standards are sufficient? Are there any existing standards that have proved effective? What improvements would you recommend?
8. What effects, if any, would increased record keeping for all use of force incidents, not just lethal uses of force, have on law enforcement agencies? Do you think law enforcement agencies could be more transparent with data and demographic trends related to use of force?
9. What do you think the balance should be between collective bargaining, labor law and public interest in correcting or preventing police use of excessive force? How can that balance be established?
10. What recommendations do you have to strengthen the critical relationships/partnerships between communities, law enforcement agencies and police unions? Do you anticipate barriers to increased community oversight? If yes, please describe these barriers. What possibilities do you see in strengthening these relationships/partnerships?
11. What factors are considered by police unions while determining whether a use of force policy should be implemented or changed by a police agency? Why are these factors important?