



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 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