



# King County

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## Office of Law Enforcement Oversight (OLEO)

Date: July 20, 2020

To: King County Council Law & Justice Committee

Fr: Deborah Jacobs, Director, Office of Law Enforcement Oversight

Re: Considerations for OLEO's Investigation Authority

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### **Background**

In 2015, King County voters approved an amendment to the County Charter establishing OLEO as a Charter-mandated office with investigative authority. Ordinance 2017-0139.2 updated and aligned OLEO's responsibilities with the Charter amendment.

In late 2016, the Office of Labor Relations began the process to bargain that independent investigatory power. However, the process did not benefit from clarity about the model or approach to investigations, as well as scope. With bargaining to resume in early 2021, OLEO seeks input from stakeholders on these questions to inform the next round of bargaining for independent investigations.

In this context, independent investigation refers to administrative investigations of any type of misconduct, though *not* criminal investigations of officer-involved uses of deadly force, which are investigated under the Law Enforcement Training and Community Safety Act (LETCSA).

When deadly force (or other questionable force) is used, administrative investigations determine whether the force used was justified, whether de-escalation policies were followed, if actions were consistent with training, if tactics were sound, and other important questions.

### **The Problem to be Solved: Goals Behind OLEO's Oversight**

King County's goals in establishing OLEO's oversight powers have been variously stated to:

- Bolster public confidence in the Sheriff's Office Internal Investigations Unit (IIU) misconduct investigations;
- Increase understanding, confidence, and trust between the Sheriff's Office and the public;
- Enhance integrity, transparency, and accountability in law enforcement;
- Improve the thoroughness, objectivity, and adequacy of investigations and any resultant discipline; and,

- Identify systemic problems and opportunities for improvement.<sup>1</sup>

During the King County Council hearing on Proposed Substitute Ordinance No. 2017-0139.2, held April 17, 2017, public comments regarding the legislation included:

- The need for credible, independent, thorough, unbiased investigations, requiring access to information, including subpoena power;
- The view that investigative authority would increase OLEO's credibility and provide a step to improving public/police relations, build transparency and trust, increase accountability, reduce violence, and ensure effective policing; and,
- The need for the Sheriff's Office and the community to work together to build trust.

### **Oversight Models and Authorities**

Each of the approximately 150 oversight agencies in the U.S. has a unique organizational structure and role with many performing hybrid functions, though agencies can be categorized by whether there is a primary focus on:

- Investigating police misconduct complaints;
- Monitoring and reviewing investigations conducted by law enforcement; or,
- Auditing and reviewing investigation processes and police policies, practices, and training.<sup>2</sup>

OLEO is a hybrid of all three models. To date, it has focused on monitoring and reviewing Sheriff's Office misconduct investigations, conducting systemic reviews, and making recommendations for policy and practice changes.

### **Independent Investigations: Considerations**

Civilian oversight models with independent investigative authority vary widely in structure, purpose, composition, and jurisdiction. In reviewing alternative approaches to defining and shaping the scope of OLEO's investigative authority, considerations include:

- 1. Should there be authority to make decisions regarding findings and discipline, or should the authority be limited to recommending findings and discipline?**

There are at least three parts of the complaint investigation process. First, the factual investigation itself. Next the determination based on those facts of whether policy was violated, called "Findings." And finally, the disposition regarding discipline, if any.

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<sup>1</sup> See, e.g., review of King County ordinances and labor polices to identify oversight goals reported by King County Auditor's Office, *Law Enforcement Oversight: Limited Independence, Authority & Access to Information Impede Effectiveness* (July 14, 2015).

<sup>2</sup> See information reported by the National Association for Civilian Oversight of Law Enforcement (NACOLE) on its website: [www.nacole.org](http://www.nacole.org); De Angelis, Joseph, Richard Rosenthal and Brian Buchner; *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models*, Office of Justice Programs Diagnostic Center, U.S. Department of Justice (September 2016); and Katz, Charles M. and Edward R. Maguire, *Transforming the Police: Thirteen Key Reforms*. Waveland Press (2020); p. 113-128.

The legislation provides that OLEO have authority to “Conduct an investigation of the complaint or concern and transmit the associated review, analysis and findings to the sheriff and if the investigation is about the sheriff, to the council and executive.”<sup>3</sup>

It is not clear from this provision whether OLEO’s findings are final or if the intent is for the Sheriff to have the power to make changes. For example, with certain forms of discipline, the Sheriff’s Office fills the *Loudermill* hearing role, providing an opportunity for the subject employee to present evidence contradicting the finding or proposed level of discipline. Whether OLEO would be authorized to make findings and discipline decisions or make recommendations regarding these outcomes must take into account Sheriff’s Office employees’ 14<sup>th</sup> Amendment due process rights under *Loudermill*.

**2. Will OLEO have broad authority to investigate any type of complaint and regardless of whether the complaint originates internally or externally, or a narrowed focus limited to complaints filed by the public and/or limited to a category of complaints, such as allegations of misuse of force.**

Oversight agencies that are investigation-focused may “either completely replace the police internal affairs function or they may conduct investigations that parallel or duplicate the work of internal affairs.”<sup>4</sup>

The 2017 OLEO ordinance contemplates that the Sheriff’s Office will continue to process complaints, as it requires notification to OLEO regarding complaint receipt, classification, scheduled interviews, notice of completion with OLEO having an opportunity to request additional investigation, and when findings and discipline are issued.<sup>5</sup>

Thus, it is not clear if King County Council intended that OLEO and the Sheriff’s Office exercise concurrent investigative authority over complaints from both the public and those generated internally, or if authority is to be limited as to categories of complaints to be investigated by OLEO. If there is concurrent jurisdiction, protocols must be developed to avoid duplicative work, such as interviewing witnesses twice.

**3. Should OLEO’s investigative authority be exercised alongside its current review and auditing functions, be handled by an affiliate civilian oversight agency, or be developed under the leadership of a civilian managing IIU investigations inside the Sheriff’s Office?**

While the enabling legislation appears to assume that OLEO will expand its operations to assume investigative authority, it is beneficial to consider some of the advantages and disadvantages of different investigative structures. Under all three approaches to setting up a structure for investigative authority, OLEO should still retain all authority granted under King County Code 2.75.

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<sup>3</sup> King County Code 2.75.040.A.2.

<sup>4</sup> De Angeles, Joseph, Richard Rosenthal and Brian Buchner. *Civilian Oversight of Law Enforcement: Assessing the Evidence*, Office of Justice Programs Diagnostic Center, U.S. Department of Justice (October 2016), p. 24.

<sup>5</sup> King County Code 2.75.045.C.

## **Independent Investigations: Models**

### **1. Investigative unit within the existing OLEO structure**

If the investigative function is added to OLEO's current structure, OLEO could continue its auditing/monitoring function aimed at assessing Sheriff's Office polices, practices, and training, while also ensuring thorough, timely investigations of individual cases of misconduct. OLEO's existing infrastructure (e.g., internal policies and procedures, website, etc.) could be expanded to include the investigative function, though clearly personnel and space needs would require significant resources.

Bringing the investigative role into OLEO's current structure has the potential to dilute OLEO's overall impact, as it attempts to fulfill these disparate functions. This approach also does not provide for the checks and balances inherent in an oversight system that has functions separated organizationally.

For example, where auditing and investigation functions are separated, the auditing entity can sometimes more easily identify systemic trends across individual investigations, can conduct reviews without the need for a misconduct complaint to have been filed, and can periodically assess day-to-day investigation processes.

### **2. A stand-alone investigative unit outside both OLEO and the Sheriff's Office**

Assigning the investigative function to a stand-alone oversight agency would allow OLEO to continue to focus on and develop its auditing/monitoring function. Importantly, this approach provides for checks and balances in the work of the Sheriff's Office oversight. This approach facilitates the development of subject matter experts in the different processes and topics involved with auditing as opposed to investigations. However, OLEO could retain investigative authority for select cases, such as a high-profile use of force, without having the responsibility of managing day-to-day investigations.

This approach likely would be the most expensive option, requiring an entirely new infrastructure. Protocols for interactions between OLEO and a stand-alone entity would have to be developed, including how confidential investigative information could be shared.

An additional possibility for this model is that it could potentially serve other law enforcement departments in King County on a contract basis as desired.

### **3. Civilians inside the Sheriff's Office's Internal Investigations Unit with OLEO review**

Some of the advantages to this approach are similar to those for a stand-alone investigative structure. Current IIU staff could continue with the investigative function, while a new civilian manager develops policies and procedures for civilian oversight of the unit and potentially hires other civilians to assist or replace IIU sworn investigators. A mixture of sworn and civilian investigators might be more acceptable for both the public and the Sheriff's Office.

Issues concerning information access and subpoenas would be largely irrelevant under this approach. This approach likely would be the most cost-effective, as fewer new personnel would be required, at least initially, and the Sheriff's Office IIU infrastructure could be used, again, at least initially. This approach also might have the most success in meeting the goal of collaboration between the Sheriff's Office, the public, oversight practitioners, and others, building legitimacy for both policing and oversight. With OLEO continuing in its auditing/monitoring role, there would be oversight checks and balances. However, this hybrid approach can be difficult for the public to understand or see as facilitating the goal of unbiased investigations.

### **Next Steps**

OLEO seeks feedback from all stakeholders in this dialogue to help inform our approach to bargaining of independent investigations. We have a commitment to a dialogue with the King County Police Officers Guild on this topic and look forward to hearing their perspectives. We will also seek feedback from the Puget Sound Police Managers Association, which represents Captains and Majors. To the extent that the Council can create additional opportunities for obtaining feedback on this topic, OLEO appreciates and welcomes it.