

Seattle Community Police Commission

VIA EMAIL

September 25, 2020

Seattle Office of Intergovernmental
Relations 600 4th Ave, 5th Floor
Seattle, WA, 98124

Re: Community Police Commission's Legislative Priorities

The CPC is deeply committed to furthering the mission of uplifting and amplifying the voices of the community as it pertains to police reform and accountability. In order to be successful in our mission, the 2017 Accountability Ordinance ensured that the CPC has independent authority regarding legislative advocacy and will also be consulted as the City develops its annual legislative agenda.

The following recommendations and value statements are based on recommendations from oversight partners over the years and community feedback the CPC has received in recent months. The CPC recommends the City's legislative agenda incorporate these reforms. The CPC will continue to pursue these community priorities both in partnership with your office and through our own legislative advocacy throughout the upcoming legislative session.

Remove police accountability from the bargaining process

Police unions and their associated contracts cannot continue to stand in the way of accountability reforms that keep the community safe and are designed to combat centuries of institutional racism. Police officers are given broad authority to use deadly force and take people's liberty. Those extraordinary powers must be balanced with a strong police accountability system.

Unfortunately, police unions [around the nation](#) have used the collective bargaining process to block these accountability reforms for decades. We have seen that in Seattle as well. In 2017, dozens of community groups, the CPC, and elected officials came together to unanimously pass the landmark [Accountability Ordinance](#). However, by the end of 2018, many of those reforms, aimed at strengthening Seattle's police disciplinary system, had been [rolled back](#) by the adoption of new police contracts. In fact, the police contracts undermined police accountability so much that a federal judge found they had [violated](#) the constitutional minimums set by the Consent Decree.

Like all public employees, police should have the right to collectively bargain for things like wages and good working conditions. However, they should not be able to bargain away accountability.

Remove arbitration as a route of appeal for police misconduct

Like many places across the country, Seattle's arbitration system is broken. Currently, there are more than [80 open cases](#) in which a police officer has been found to have committed misconduct and is appealing the chief's decision through arbitration. In some of those cases, the misconduct happened five years ago, and the case remains unresolved. That backlog is only getting worse. Throughout all of 2019, only two cases were resolved through arbitration, delaying or denying justice for the victims of police misconduct.

Not only is arbitration functionally broken, but it is also a fundamentally flawed way of handling police misconduct. Under arbitration:

- police unions play a role in deciding who that arbitrator is;
- arbitrators often do not have expertise in police or police accountability work;
- the proceedings are not transparent, open to the public, or open to the media; and
- arbitrators can substitute their judgment for that of the police chief who is trying to hold their officers accountable. For example, the reinstatement of Adley Shepherd -- who the Seattle Police Department was forced to rehire because of an arbitrator's decision after he punched a handcuffed woman in the back of his squad car (this case still has not been settled despite happening in 2014).

The 2017 Accountability Ordinance addressed these flaws by ensuring disciplinary appeals would take place before a neutral three-member Public Safety Civil Service Commission (PSCSC) appeals panel or a hearing officer with subject matter expertise designated by the PSCSC. The process would have been timeline bound, hearing officers would have been appointed through a merit-based process, and the process would have been public.

Unfortunately, those reforms were given up by the City when it allowed for the continued use of arbitration and rolled back the changes to the PSCSC Commissioner qualifications and appointment process in the latest police contracts.

The [CPC raised concerns](#) about the continued use of arbitration to the federal judge overseeing the Consent Decree in 2018. In response, [the City argued](#) that arbitration "has significant advantages and it is a fundamental feature of both federal and state labor law." The [judge disagreed](#), pointing to Seattle's arbitration system as a key reason why he found the city out of compliance with the Consent Decree in terms of accountability. While the CPC believes the City already has full authority to implement the appeals system outlined in the Accountability Ordinance, the City has taken the position that changes to "state labor law" are needed to do so. Given that, securing those changes must be a priority.

Repair Washington's broken decertification system

The CPC is deeply committed to increasing the levels of police accountability and transparency regarding the decertification of individual officers and the reporting of such decertification at the state level.

The state's current decertification process leaves loopholes for a wide range of misconduct.

As Judge Anne Levinson (ret.), Seattle's former OPA Auditor, has [pointed out](#), this results in two situations that make our communities unsafe. Officers fired for misconduct at one police department are able to get jobs as police officers in other jurisdictions, moving bad police officers around the state rather than ensuring they are removed from service.

1. If jurisdictions do not request that an officer be decertified, the state does not intervene. An example Levinson points to is a current officer in Auburn who was involved in three fatal shootings since 2011 and has a history of other misconduct, however, has not been decertified by the state.

The state's current decertification criteria undermine accountability in such a way that the police officer who killed John T. Williams in 2010, which sparked a federal investigation and the eventual enactment of a Consent Decree, could not be decertified by the state and [remains in "good standing."](#)

The City should work with community advocates, oversight experts, the Association of Washington Cities, and legislators to advocate for a complete overhaul of this system and create a public database with officer certification data. That should include mandating jurisdictions to report, and have that information displayed publicly, including officers who are on so-called "[Brady Lists](#)."

Institute truly independent investigations

For Initiative 940, passed by 60 percent of Washington voters, to truly live up community expectations, there is a need to have true statewide independent investigations of police killings. A system in which law enforcement investigates neighboring law enforcement agencies does not create community trust and does not improve on the many flaws Washington State has identified with investigations of police killings.

In 2017, by [resolution](#), the City asked the CPC to create and staff an independent taskforce to make recommendations about how independent investigations should work in Seattle. The Serious and Deadly Force Investigation Taskforce (SDFIT), which included community members who had lost family members to police violence, police accountability advocates, and current and former law enforcement, made [15 recommendations](#) last year. That included two for statewide reforms:

1. Establish an investigative unit in the State Attorney General's Office to conduct criminal investigations of serious and deadly uses of force.
2. Establish a state-level entity to review all closed investigations statewide. That includes reviewing all closed investigations for flaws and be a clearinghouse for all investigative reports and data statewide.

The CPC recommends the City of Seattle push for both of these reforms while we await the findings and contributions of the [Governor's Task Force on Independent Investigations of Police Use of Force](#) on this issue.

Ban tear gas in Washington State

Tear gas is a weapon [banned in war](#) by the Chemical Weapons Convention. It's indiscriminate and police have no control over whether it hits protesters exercising their First Amendment rights or [babies sleeping in their homes](#). [Thousands of health officials](#) have warned us that it exacerbates the Coronavirus pandemic. The other health effects are not even known because, as a weapon of war, it has only been studied, if at all, on the male population. However, protesters, journalists, and bystanders exposed to it have [reported abnormal menstrual cycles](#).

For these and many other reasons, it is clear -- tear gas must be banned in Washington State. All three of Seattle's police accountability agencies (CPC, OIG, and OPA) [recommended](#) in June that SPD stop using tear gas against protesters. The City has also passed [legislation banning tear gas](#), among other things, which the [CPC fully supports](#). Meanwhile, the [Washington State Patrol](#) has suspended its use of tear gas. Now is the time to make sure these weapons are not available for use at the discretion of police in Washington State.

End Qualified Immunity

Qualified immunity has shielded police officers who break the law for decades. Now is the time to ensure our state laws end it. Originally conceived to protect government employees from frivolous lawsuits, a series of broad court decisions since the 1960s has warped that idea into a system where it is now nearly impossible to hold police officers liable, allowing them to violate constitutional rights with impunity.

Even many federal judges believe these protections have gone too far. Earlier this year, while being forced to find an officer was protected by qualified immunity, Federal Judge Carlton Reeves said, "Judges have invented a legal doctrine to protect law enforcement officers from having to face any consequences for wrongdoing. The doctrine is called 'qualified immunity.' In real life, it operates like absolute immunity."

A system of true police accountability cannot exist side by side with legal protections that shield police from liability for their misconduct. Washington State should join [Colorado](#) in ensuring there is a way for victims of police violence and misconduct to hold police officers liable when their constitutional rights are violated.

Strengthen requirements for officers to intervene when they witness police misconduct

George Floyd died, in part, because officers who were witnessing police misconduct did not intervene and save his life. The CPC is deeply committed to ensuring that officers act in the best interest of community members during all interactions. This includes encouraging officers to intervene when their colleagues are committing misconduct. Washington should create a statewide baseline policy that requires all law enforcement agencies in the state to have strong policies requiring all officers on-scene to intervene when they witness misconduct or mistakes being made. State law should also allow individual agencies to go above and beyond state requirements. The victims of police misconduct should also be able to bring civil lawsuits against bystander officers who do not intervene.

However, we acknowledge that simply adopting policies and highlighting federal law will not be enough. This will require a change in culture. To aid in that, the state has opted to join the [Active Bystandership for Law Enforcement Project](#) (Project ABLE). The program, which comes

from the Georgetown Law Innovative Police Program, builds off academic research and on-the-ground experience to become an effective, yet active bystander.

To be Project ABLE certified, law enforcement agencies and state academies must meet [ten standards](#), including gaining community support for the training; ensuring strong written anti-retaliation policies are in place so interveners are not punished; and mandating agencies have a meaningful officer wellness program. WSCJTC has recently begun the “train the trainer” process which will prepare SPD to train new recruits to be active bystanders. What is unknown is the status of the training for current officers and how this training effort will impact local departments.

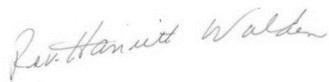
Ensure community is represented on the WSCJTC

The Washington State Criminal Justice Training Commission (WSCJTC) has broad powers to decide how law enforcement is regulated, trained, and certified statewide. However, the overwhelming majority of the commission’s voting members are current law enforcement, leading to a situation where law enforcement is regulating itself. Only three of the 16 seats on the commission are designated for community members.

We witnessed this system fail last year. After 60 percent of Washington voters approved Initiative 940 requiring independent investigations of police killings, the rules for how independent investigations would work were ultimately decided by the WSCJTC. What they approved [did not meet community expectations](#). That is one of the reasons why that issue has still not been settled, and the Governor has had to create yet another commission to advise him how to properly implement independent investigations.

In order to truly implement a community-centered model of policing, Seattle should advocate for at least 50 percent of the WSCJTC’s voting members to be non-law-enforcement community members.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police
Commission



Prachi Dave, Co-Chair
Community Police
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Rev. Aaron Williams, Co-Chair
Community Police Commission