

Use of Deadly Force Investigation Audits

Themes from the first year



Introduction

Use of deadly force investigation audits offer unique insight into Washington's system for reviewing police use of deadly force. The reports determine whether responding independent investigation teams complied with relevant state laws and rules, and they make recommendations to improve compliance with them in the future.

The Office of the Washington State Auditor issued the first use of deadly force investigation audit in the fall of 2022. This report explains the role of independent investigation teams. It also summarizes our first year of reporting in this area, including common areas of noncompliance, and common recommendations we make to investigation teams, involved police departments and the Criminal Justice Training Commission.

A message from the auditor



The Office of the Washington State Auditor took up a first-in-the-nation challenge – to review every [use of deadly force investigation](#) in our state. With this report, we look back at our first year of those reports.

I believe we have shown that an auditor's core values of transparency and accountability can offer new insights into this complex and important field. Like our other audits, our use of deadly force investigation audits provide the public and officials with facts. And like traditional audits, they demonstrate the powerful role an independent, outside review plays in sustaining public trust.

We compare the steps each investigation took to professional best practices and rules established by the state Criminal Justice Training Commission. This report details common issue areas and summarizes our recommendations to clarify standards and improve compliance with state rules.

With these recommendations, we can help law enforcement agencies improve their investigations and better meet the public's expectations of independent, credible and transparent investigations that are clearly communicated to the community.

The key principles of Washington's use of deadly force investigations

Independence

The involved police agency cannot have undue influence or the appearance of undue influence on the investigation.

01



Transparency

Community members can assess whether the investigation is conducted in a trustworthy manner and complies with the standards defined in state laws and rules.

02



Communication

The independent investigation team must communicate the investigation's progress to the public and family of the person killed or harmed by police use of deadly force.

03



Credibility

Use of deadly force investigations follow best practices for criminal investigations, and investigators meet necessary training requirements and demonstrate ethical behavior and impartiality.

04



These principles are established in rules adopted by the [Washington State Criminal Justice Training Commission \(CJTC\)](#). The CJTC was tasked with writing those rules as part of Initiative 940, approved by voters in 2018. In response to the same initiative, law enforcement agencies across the state created regional independent investigation teams (IITs) to investigate use of deadly force incidents.

Independent investigation teams review police use of force

Initiative 940, in part, requires investigations of police use of deadly force to be conducted by an agency completely independent of the one with the involved officer(s). Its intent was to improve their impartiality and independence by preventing people who were more likely to have a personal relationship with the involved officers from investigating the use of force.



Law enforcement agencies established regional IITs to allow investigators to respond quickly to use of deadly force incidents while keeping the involved agency out of the investigation. Washington has 17 IITs throughout the state, which are made up of command staff, detectives, and other crime scene investigators from law enforcement agencies within the given region. An IIT also includes volunteers, called community representatives, who help give the community perspective during an investigation. They are required to participate in certain processes.

Many of these teams existed in some form before recent police reform and accountability laws, including Initiative 940, and allowed law enforcement agencies to pool resources for major investigations.



Greater clarity in rules will help address noncompliance

Our audits have found that IITs and responding officers have regularly complied with the CJTC's rules and best practices. They have also identified some areas of noncompliance, where documentation in case files can be improved, or where CJTC rules need to be clarified. We made the following recommendations to address common issues with conflicts of interest assessments, public updates, officer statements and investigator backgrounds.

More detail on these issues is provided later in this report. Here are topline recommendations:

We recommend IITs:

- Require all investigators and community representatives to complete a conflict of interest assessment within 72 hours of beginning work on the investigation
- Post weekly public updates and provide the community representatives and family with advance notice of them before release to the media, and maintain documentation they did so

We recommend IIT member agencies:

- Create a transparent process for selecting community representatives
- Give administrative orders to involved and witness officers to not speak about the case before providing statements to investigators, and maintain documentation they did so

We recommend the CJTC:

- Provide guidance to IIT leadership on how to make sure investigators' backgrounds are free from misconduct or other dishonorable behavior that could jeopardize their objectivity
- Amend [WAC 139-12-030](#) to allow exceptions for required communications if families request not to be contacted
- Clarify the family communication requirements in [WAC 139-12-030](#) for instances where injured people survive and can communicate directly with IITs

Timeline: The State Auditor's Office and police accountability

2021

The Legislature gave the Office of the Washington State Auditor the authority to audit all investigations of police use of deadly force that resulted in death or serious injury.

Our audits only review the investigation. They do not assess the incident itself or whether the use of force was justified.

2022

We contracted with subject matter experts to help us develop the program and begin the first audits.

2023

Our Office quickly gained the knowledge and expertise needed to conduct the audits with our own staff. We assembled our own team of auditors to do this work. So far, the [team](#) has published 20 reports, with an additional 14 audits in progress.

Building a new police accountability audit program: by the numbers

30

Our office met with more than 30 stakeholder groups, representing a range of viewpoints, from law enforcement associations to relatives of those killed in deadly force incidents. Our intention was to gather diverse perspectives on the program's purpose and objectives. Some groups had opposing views but agreed that the public should know whether use of deadly force investigations are being conducted independently and transparently. We continue to meet with stakeholder groups and the CJTC to listen to their feedback as the audit program becomes better established.

04

After initially contracting with subject matter experts, we gained the knowledge and expertise needed to conduct the audits internally. We assembled a team of four auditors to do this work.

11

Our audits have reviewed the work of 11 different IITs.

20

Use of deadly force investigation audits published by December 2023

14

Additional audits in progress from three other IITs.

70

Additional investigations that require an audit, as of December 2023

UDFI audits provide accountability and transparency

Our audits provide a clearer understanding of the work of regional independent investigation teams responding to incidents of police use of deadly force. Our work begins after county prosecutors either decline to pursue charges, or the resulting criminal court case is fully resolved. The civilian-led state [Office of Independent Investigations \(OII\)](#) was created in 2021 to investigate police use of deadly force. It has not begun conducting those investigations yet. However, once complete, OII cases will be audited by the State Auditor’s Office.

	<p>A law enforcement officer uses deadly force, which results in death, substantial bodily harm or great bodily harm.</p>	
	<p>The use of force is investigated by an independent investigation team (IIT) made up of detectives and other crime scene investigators from law enforcement agencies in the region where the use of force incident occurred. Agencies involved in the deadly force incident cannot send detectives to be part of the independent investigation team.</p>	
	<p>The county prosecutor reviews the IIT’s completed investigation.</p>	
	<p>The prosecutor decides whether or not to criminally charge the officer that used deadly force. These charging decisions can depend on completion of related reviews, such as a coroner’s inquest.</p>	
	<p>If the prosecutor decides not to pursue criminal charges, SAO begins review of the IIT investigation.</p>	<p>Or the prosecutor may pursue criminal charges. SAO cannot begin audit work until the resulting court case, including appeals, is completed.</p>
	<p>SAO works with law enforcement agencies and IIT’s to compare the elements of the investigation as it was conducted to the criteria outlined in rules established by the Washington State Criminal Justice Training Commission.</p> <p>Those rules are designed to ensure investigations are:</p> <ul style="list-style-type: none"> • Independent • Credible • Transparent • Communicated to the public and affected people 	
	<p>SAO issues a report that describes any rules the investigation did not follow and offers recommendations to improve compliance.</p>	

1

The community representative selection process should be transparent

Involving community representatives helps ensure transparency in independent investigations. Community representatives are volunteers, not law enforcement agency employees. They provide the community's perspective by:

- Reviewing potential conflicts of interest between IIT investigators and involved officers
- Attending any briefings with the involved agency
- Having access to the completed investigation file
- Receiving a copy of all press releases before they are sent to the media

Although almost all the investigations we reviewed included community representatives, it was not always clear how IITs selected them.

State rules ([WAC 139-12-030](#)) require that the chiefs and sheriffs of each IIT create a transparent process for soliciting names of people willing to serve as community representatives. Only a few of the IITs we have reviewed had applications or the criteria to serve as community representatives posted on their websites. The other IITs could post this information, too, to make their processes more transparent.

The criteria that sheriffs and police chiefs used to select representatives differed greatly. We spoke to many community representatives who participated in these investigations, and most described their ties to "impacted communities" as having lived in the area for a long time. Others said they were involved and well-known in their communities, and some said they were part of community organizations that serve groups disproportionately affected by police use of force.

2

Conflict of interest assessments should be complete and timely

State rules require IIT members, including the investigators and community representatives, to complete “conflict of interest” assessments within 72 hours of starting an investigation.

The assessments help determine if IIT members have any connections to the officers being investigated that would potentially impair their objectivity. The IIT commander has the discretion to remove any member from the investigation if they identify a conflict.

In eight out of the 20 investigations we reviewed, IITs did not have all of their investigators complete the conflict of interest assessment.

In most instances, those investigators began participating in the investigation after the initial response, and the IIT commander neglected to require them to fill out the form. However, in 10 of the 19 investigations that had community representatives, the community representatives did not fill out a form either. In all these cases, the IIT commanders told us that they did not think it was a requirement, in part because the community representatives are responsible for reviewing the officers’ assessments.

In addition, many of the IITs’ conflict of interest forms did not address all the components required by WAC. Most of the forms would include questions about whether the member had a work or social relationship with the involved officer, but few had questions about potential biases that could affect their objectivity. Almost all the IITs have since adopted a version of the CJTC’s standard conflict of interest form.

3

Better definitions of misconduct and dishonorable behavior

To help improve the credibility of these investigations, the WAC requires IIT investigators have work histories free of serious misconduct or patterns of complaints, and personal histories free of “bias or prejudice against community members that may be impacted by police use of deadly force.”

Several IITs did not have a distinct process to screen their investigators for these behaviors. Many IIT commanders said they know the investigators on their teams, so they would be aware of any serious issues. Others said that the investigators would not be detectives within their departments if they exhibited any behavior that could be considered serious misconduct or demonstrable bias.

We recommended that the CJTC provide guidance to IIT leadership on how to make sure investigators’ backgrounds are free from misconduct or other dishonorable behavior that could jeopardize their objectivity.

The CJTC’s updated [best practices for investigations](#), published in September 2023, require:

- IIT commanders to determine whether each member is free from sustained misconduct or bias no later than 72 hours after an investigation begins.
- Yearly audits to determine if any members have sustained misconduct allegations.
- Immediate removal of IIT members who have sustained misconduct.

Three out of the 11 IITs we reviewed had already implemented processes in which chiefs or sheriffs sign annual attestations confirming their investigators did not have past misconduct or demonstrable bias.

The CJTC should provide guidance that better defines disqualifying actions. State rules include examples of what constitutes serious misconduct and bias, such as discrimination, theft, dishonesty, abuse of authority, excessive force, harassment and domestic violence. However, IIT commanders may have different interpretations of whether a particular action falls into these categories.

4

Clarify requirements for weekly public updates and family notifications

To increase the transparency of investigations and to ensure progress is communicated to the public, state rules require an IIT to post, at minimum, weekly public updates on the investigation's progress. These are required even if there is no new information to report.

In several instances, we found teams missed one to a few weeks of public updates, usually at the beginning or the middle of an investigation.

In addition, the community representatives and the family of the person killed or injured by the use of force are supposed to receive advance notice of each press release. This was the most common area of noncompliance, with 16 of the 20 investigations not meeting this requirement. In some instances, team commanders thought they made all the required notices, but failed to maintain documentation they did so.

Another area of confusion was the requirement to notify the family of those injured by police use of force. Some commanders said that injured people should be able to decide whether to tell their family about developments in the case, and did not think it was right or necessary for the investigation team to do so.

State rules do not distinguish between cases in which people survive or are killed by police use of deadly force. In those audit reports, we recommended the CJTC clarify family communication requirements in [WAC 139-12-030](#) for instances where injured people survive and can communicate with investigators themselves.

In a few instances, investigators said the family asked not to receive notifications. In those audit reports, we recommended the CJTC allow exceptions for required communications at a family's request.

5

Preserve the credibility of involved officer and witness interviews

The credibility of statements from officers and witnesses is critical in independent investigations. Although not the responsibility of the IIT, one requirement outlined in the CJTC's best practices is to prevent involved and witness officers from discussing the case with each other until the investigation team takes their statements. This requirement is also reflected in most agency policies.

However, we have found that involved agencies' incident reports often do not document orders not to discuss the case. Many investigation team commanders said it is common practice among police departments to give those orders, but it is not their responsibility to ensure involved agency supervisors do so, or that they document it.

We have recommended IIT member agencies give these directives and document that they did so in incident reports. Since interviews with involved officers often occur days or weeks after the use of force, it is important for the involved agency to document that it has taken steps to prevent officers and witnesses from discussing the case with each other.



Next steps: new audits will review officers' training and certification

In the coming year, our Office will continue to audit use of deadly force investigations that have occurred since January 2020.

In addition to authorizing these audits, the Legislature passed a law allowing the CJTC to request our Office perform compliance audits of law enforcement agencies to determine if they are following laws, policies and procedures regarding the training or certification of police officers. The CJTC has approached our Office with some proposals, and we will likely start performing these audits in 2024.

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