



City of Seattle

Mayor Jenny A. Durkan

July 14, 2020

Dear Task Force Members:

Thank you for your ongoing work, and for your commitments to greater economic and social equity. Your recommendations will be critical to leading to actions needed urgently at the state level. Many of you unfortunately have experienced firsthand the impacts of police violence. Many of you have led reform efforts in Seattle and across the state, and your actions are critical at this moment.

I have worked with many of you for years. In the 1990s, I served as the first civilian observer to the Firearms Review Board to investigate and review the circumstances attending each discharge of a weapon by an officer. As U.S. Attorney, I led the investigation into the Seattle Police Department, which led to the Consent Decree. As Mayor, I have seen firsthand obligations of state law and collective bargaining rights, navigating “approved” policies, and the changes that we need locally and statewide.

All of us know that improvement, innovation and reform is not a destination - it is our collective responsibility to improve the system every step of the way. There are a series of laws that the City of Seattle has passed and implemented – recent and decades ago – and changes under the Consent Decree that I believe can serve as a model for policies, training, tactics, civilian oversight and accountability, reporting, and transparency. But I also recognize that some of the most important work that we can and must do have to focus on culture and fundamentally how we think about community safety including the individual who arrives when someone calls 9-1-1. The fundamental transformation of community safety will include more resources for behavioral health, domestic violence, mental health, individuals experiencing homelessness, and young people. Both Chief Carmen Best and I are committed to transforming the Seattle Police Department, and in recent weeks, we have both shared our vision to completely rethinking community safety and the police departments role, especially an armed officer.

However, as cities across the state and country rethink policing and community safety, it will take the work of every level of government. As you begin to develop input, insights and recommendations on a comprehensive package of police reforms at the statewide level, I wanted to share some initial ideas that have been driven by many in the community in Seattle. I hope the City of Seattle can be a partner in supporting your work in the coming months and support a robust transformative agenda in Olympia.

In order to implement lasting and true accountability reforms, I believe that state laws governing the collective bargaining rights of police unions must be fundamentally reviewed and changed. Below are my recommendations for statewide reform of police unions that I hope you will consider, and some initial recommendations that I believe would be significant steps toward improving policing in our state:

- **Independent Statewide Entity to Investigate and Prosecute Police Officers.** Create an independent statewide entity to investigate and prosecute police officers when their use of force results in someone's death or serious injury. Local prosecutors should not conduct fact finding hearings or initiate prosecutions of their own local law enforcement partners. There must be a built-in mechanism to keep the families of those killed informed throughout the process as well. Truly independent investigations, fact findings, and prosecutions must be done at a State level, by individuals and entities with no potential conflicts of interest; removed from local politics with the same standards and expectations applied equally across the State.
- **Uniform Statewide Inquest Process Procedures.** Create uniform statewide inquest procedures by amending the state law RCW 36.24.020 to broaden the purpose of inquest proceedings and provide clarity to meet the intent and policy goals of I-940 for police officer involved deaths. Further, propose amendments to I-940 that close loopholes and remove potential conflicts of interest in the investigation by outside law enforcement agencies related to officer-involved use of lethal force. The inquest law should provide adequate support for the families that have lost someone, including legal support during the inquest, grief counselling, and financial counselling and monetary support where they were financially dependent on the deceased.
- **Create a Uniform Licensing and Review System.** Currently, Washington State Criminal Justice Training Commission oversees both the certification and revocation of certification of officers. The Task Force should examine how any sworn police officer can be regularly licensed and certified, subject to ongoing training requirements, and subject to license suspension or revocation for specified misconduct, which should be public. A license suspension or revocation would prevent individuals from working as a police officer anywhere in the state. For example, the Washington Department of Health provides easy access to information on health care professionals in the state including nurses, physicians, or pharmacists. The site provides the health care providers license status and provides disciplinary actions taken and credentials denied for failure to meet qualifications. Creating a similar statewide site would promote public trust, uniform professional standards, and public safety. It would benefit both the community and the police. If this process remains with the WSJCTC, the Commission should include a larger balance of civilians and should have a requirement to have representation from underrepresented communities. The Commission should have oversight and a reporting requirement for full transparency on complaints, appeals process, and final decisions.
- **Transparency in Officer Misconduct.** Disciplinary records of officers who are terminated, use excessive force, or are dishonest should be transparent and available to the public and other agencies.
- **Grant Cities Subpoena Power for Civilian Police Oversight Entities.** I believe that the state should make it explicit that local jurisdictions have authority to issue administrative subpoenas to aid and abet the investigations of civilian oversight entities into individual officer police misconduct and systemic reviews of departments policies and practices. The law should also make clear the need for due process protection of anyone who is the subject of a subpoena and provide protections for a witness who comes forth with information and that it will not be held or used against them in other proceedings.

- **Crowd Management, Demilitarization, and Use of Force Policies:** While SPD meets or exceeds national best practices with our federal court approved policies on the use of deadly force, including a chokehold ban, and requiring that officers exhaust all other options before using force, the state should require such policies be mandated. In addition, there should be a statewide mandatory reporting of officer misconduct by other officers, with penalties and discipline for non-compliance. Similarly, crowd management policy should be mandated and consistent statewide. Seattle's crowd management policy was also approved by the federal court, but we have heard from community that changes must be made. Judge Richard Jones has issued a TRO on the topic, and our accountability partners are reviewing policies and practices. But in significant events, police are drawn from multiple forces through mutual aid. Crowd control policies and techniques and the demilitarization of police should occur at the state level.
- **Consistent Policies for Training, Body Cameras, Badge Numbers and Reporting:** Every SPD officer is required to wear body cameras, have their name and badge number on display. SPD also collects data on use of force and bias policing. Seattle also requires de-escalation, crisis intervention, and implicit bias training for officers. We support statewide standards that would mandate this for all police agencies across this state on these issues that Seattle is already doing.

Police officers have the right to form a union and should be able to bargain for wages and working conditions. They should be supported in their work for our communities. But police have a unique role in society, including their ability to detain people and use lethal force against members of the public. As we have seen all too clearly, their ability to do their job and promote public safety depends on public confidence and trust.

State law controls and ties the hands of local cities in multiple ways. The most critical priority is to amend RCW 41.56 to provide jurisdictions more management discretion in implementing policies and procedures that govern police discipline, grievance and appeals while accounting for the due process rights of employees. There are critical elements to improve accountability of police officers that I am committed to at the bargaining table. However, it is critical to make changes statewide to allow police departments to make meaningful reform:

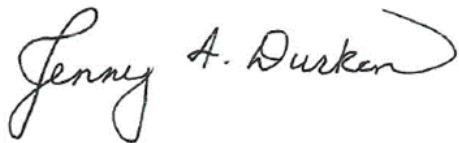
- **Deference to Police Chief on Termination and Disciplinary Decisions.** Residents and local officials trust a police chief's authority and the chief's understanding of what serves the best interest of the community and the department. A Police Chief's decision is the ultimate accountability in the police department, so his, her, or their decision to discipline or terminate an officer should be given deference and presumed proper unless it is an abuse of discretion or arbitrary and capricious. No new evidence should be allowed on appeal. Currently based on state law, the Chief can be overturned based on the current standard of de novo review or new facts that were not part of the original record.
- **Removing Arbitration and Requiring Appeals Through a Civilian Oversight Board.** State law currently requires cities to bargain the appeals process and components of the appeals process. A study by the Washington Post in 2017 reported that departments across the country are forced to rehire officers because of police union contracts guarantee an appeal of disciplinary measures through arbitration. In Seattle over the last ten years, we know there have been approximately 13 appeals to arbitration, and of those, 3 decisions completely or largely

overturned, 3 decisions upheld but reduction in discipline, and 3 settled with a reduction in discipline. If we do not change state law to remove arbitration, the City will have to bargain this issue in good faith with the union. Changing state law would allow the City to require that an appeal to the Chief's termination and discipline would go to the Public Safety Civil Service Commission (PSCSC) or civil service commission instead of an arbitrator. In the past, arbitration proceedings have been opaque, and it is difficult for the public to understand how an arbitrator makes a decision. Therefore, in the interest of public transparency, I believe appeals of the Chief's decision must be conducted by the civilian appointed Commissioners of the PSCSC and open to the public. Further the PSCSC should make its decision on the facts already in the record.

- **Transparency in Investigation and Discipline Process.** Seattle's Office of Police Accountability (OPA) should be allowed to provide greater transparency in their investigations, disciplinary recommendations, disciplinary hearings, and the appeals process. This is critical to building community trust and visibility into the conduct of officers. This may require changes in the Public Records Act to allow for full transparency.
- **Community Member to Oversee Specific Accountability Issues During Bargaining That Relate to Community Oversight and Trust.** To promote public confidence, transparency, and community oversight, I believe a community member should have a seat at the bargaining table when it relates to police discipline, investigations of misconduct, and grievance processes. The community trust is critical to providing sustained accountability and while bargaining must be in good faith and not by the public involvement, I believe the goal of a community member in bargaining is one that can and must be addressed at the state level.

The work that you will do will change the trajectory of policing in our state. Please know that I am committed to offering any resources that you may need from myself or the City of Seattle for the critical work that you are doing. In the coming weeks, we will also be conducting additional engagement and input to develop a robust City legislative agenda that will build on the work that you are doing.

Sincerely,

A handwritten signature in black ink that reads "Jenny A. Durkan". The signature is written in a cursive, flowing style.

Jenny A. Durkan
Mayor of Seattle

CC: Governor Jay Inslee