

Incarceration Prevention and Reduction Task Force Steering Committee

11:00 a.m. - 12:30 p.m., August 12, 2021, Remote-only virtual meeting

If you require special assistance to participate, please contact the County Council Office at least 96 hours in advance.

Link to join Zoom Webinar

[Link to joint Zoom Webinar](#)

Attendees will join the Zoom Webinar without audio or video controls. Webinar Host will invite attendees to speak at the appropriate time during the meeting

- Call in phone number: (253) 215-8782
- Webinar ID: 914 4810 7296
- Password: 17783

AMENDED AGENDA

Land Acknowledgement Statement: Before we begin, we acknowledge that we are gathered on the traditional and unceded territory of the Lummi, Nooksack, Samish and Semiahmoo People who have cared for and tended this land since time immemorial. Truth and acknowledgment are critical to building mutual respect and connection across all barriers of heritage and difference. We begin this effort to acknowledge what has been buried by honoring the truth. We pay respect to their elders past and present. Please take a moment to consider the many legacies of violence, displacement, migration, and settlement that bring us together here today. And please join us in uncovering such truths at any and all public events.

Packet Pages

1. Call to Order

2. Attorney General information on police reform legislation 1 – 5 *Discussion*

3. IPRTF Communications 6 – 7 *Discussion/Jill Nixon*

- Estimate hours to accomplish scope and funding
- Define initial Task Force initiatives for scope of work

4. Amendment to the IPR Task Force Rules of Procedure for purpose of decision-making 8 *Discussion/Jack Hovenier*

5. Agenda items for September 20 IPR Task Force 9 – 10 *Discussion*

6. Government Alliance on Racial Equity (GARE) Membership *Discussion/Gordon Goodwin, GARE Director*

7. Other Business

- Schedule or cancel September Steering Committee meeting

8. Public Comment

1. If you would like to speak, virtually “raise your hand.”
 - a. Online: select the Raise Hand icon
 - b. Phone: Press *9
2. When called upon to speak, unmute your microphone. Inform the Webinar Host if you would like to enable your video during your comments.
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9. Adjourn

Meeting summary of the previous meeting is included at the end of the packet for information only. Committee members may suggest changes and/or corrections to the draft summary to jnixon@co.whatcom.wa.us. Audio recordings are the official meeting record and can be found on the IPRTF and committee [website](#).

Upcoming Meetings

Visit the [Task Force website meeting calendar](#) for the most up-to-date meeting schedule

At this time, all meetings are held via remote-only Zoom Webinar

IPR TASK FORCE	BEHAVIORAL HEALTH COMMITTEE	LEGAL & JUSTICE SYSTEMS COMMITTEE	CRISIS STABILIZATION FACILITY COMMITTEE	INDEX COMMITTEE	STEERING COMMITTEE
Monthly on various Mondays 9-11 AM	Monthly, 3rd Tuesday 9:00-10:30 AM	Monthly, 2 nd Tuesday 11:30 AM – 1:00 PM	Bi-monthly, 3 rd Thursday 9:30-11:00 AM	Bi-monthly, 1 st Thursday 1:30-3:00 PM	Various Thursdays 11:00 AM-12:30 PM
August 16: Cancelled September 20 October 18 November 15 December 13	August 17 September 14 (Joint) October 19 November 16 December 14 (Joint)	September 14 (Joint) October 12 November 9 December 14 (Joint)	September 16 November 18	September 2 November 4	September 9 October 7 November 4 December 2



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

MEMORANDUM

DATE: August 2, 2021

TO: Representative Roger Goodman, Chair, House Public Safety Committee
Representative Jesse Johnson, Vice Chair, House Public Safety Committee
Washington State Legislature

FROM: Alicia O. Young, Deputy Solicitor General
Shelley Williams, Assistant Attorney General

SUBJECT: House Bill 1310

I. INTRODUCTION

The Legislature has passed several laws addressing police reform. Relevant here, Engrossed Second Substitute House Bill (Bill) 1310 addresses permissible uses of force by law enforcement and correctional officers. Recently, certain law enforcement agencies may have expressed concerns that Bill 1310 limits when peace officers may respond to certain calls, including mental health calls.

II. QUESTION AND BRIEF ANSWER

1. Do the restrictions and standards in Bill 1310, section 3 prohibit a peace officer from responding to a call for assistance in a situation involving mental health crises? More specifically, do the restrictions and standards in Bill 1310, section 3 effectively prohibit a peace officer from responding to a call for assistance where the caller does not report criminal conduct?

No. Bill 1310 addresses when police may use physical force or deadly force, and provides reasonable care standards when officers use physical force. Bill 1310 does not address when law enforcement officers may respond to calls, including community caretaking calls, which do not involve criminal conduct. Washington statutes and case law recognize responding to community caretaking calls as part of a law enforcement officer's duties. Bill 1310 neither alters nor limits that authority.

III. ANALYSIS

A. Bill 1310 Addresses When Peace Officers May Use Reasonable and Necessary Force, and Provides Reasonable Care Standards When Officers Use Physical Force

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In passing Bill 1310, the Legislature stated its intent:

...

The legislature intends to address excessive force and discriminatory policing by establishing a requirement for law enforcement and community corrections officers to act with reasonable care when carrying out their duties, including using de-escalation tactics and alternatives to deadly force. Further, the legislature intends to address public safety concerns by limiting the use of deadly force to very narrow circumstances where there is an imminent threat of serious physical injury or death. It is the intent of the legislature that when practicable, peace officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.

It is the fundamental duty of law enforcement to preserve and protect all human life.¹

Relevant here, Bill 1310 addresses when an officer may use physical force:

Except as otherwise provided under this section, a peace officer may use physical force against a person when necessary to:

Protect against criminal conduct where there is probable cause to make an arrest;

[E]ffect an arrest;

[P]revent an escape as defined under chapter 9A.76 RCW; or

[P]rotect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.²

When a peace officer uses physical force, Bill 1310 requires the officer to use reasonable care and further provides reasonable care standards:

A peace officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer shall:

(a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as: Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;

¹ Laws of 2021, ch. 324, § 1 (emphasis added).

² Laws of 2021, ch. 324, § 3(1)(a).

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when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed;

(b) When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances. This includes a consideration of the characteristics and conditions of a person for the purposes of determining whether to use force against that person and, if force is necessary, determining the appropriate and least amount of force possible to effect a lawful purpose. Such characteristics and conditions may include, for example, whether the person: Is visibly pregnant, or states that they are pregnant; is known to be a minor, objectively appears to be a minor, or states that they are a minor; is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020; displays signs of mental, behavioral, or physical impairments or disabilities; is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs; is suicidal; has limited English proficiency; or is in the presence of children;

(c) Terminate the use of physical force as soon as the necessity for such force ends;

(d) When possible, use available and appropriate less lethal alternatives before using deadly force; and

(e) Make less lethal alternatives issued to the officer reasonably available for their use.

B. Bill 1310 Does Not Address a Peace Officer's Authority to Respond to Community Caretaking Calls

1. Washington courts and Washington statutes recognize that peace officers provide emergency aid unrelated to criminal investigations

The community caretaking doctrine recognizes that peace officers provide emergency aid and assistance to persons in crisis – situations that do not involve criminal conduct. The Washington Supreme Court has recognized that officers may provide aid functions under the community caretaking doctrine:

Under the community caretaking exception [to the warrant requirement], law enforcement officers may make a limited invasion of constitutionally protected privacy rights when it is necessary for officers to perform their community caretaking functions. . . . This exception recognizes that law enforcement officers are jacks of all trades and frequently engage in

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community caretaking functions that are unrelated to the detection and investigation of crime, including delivering emergency messages, giving directions, searching for lost children, assisting stranded motorists, and rendering first aid.³

Washington courts have “expanded the exception to include . . . situations involving either emergency aid or routine checks on health and safety.”⁴ Washington statutes also contemplate an officer’s involvement in the detention and/or transportation of vulnerable persons to appropriate facilities. These statutes include RCW 43.185C.260 (protective custody for children), RCW 26.44.050 (abused or neglected child), and RCW 71.05.150 and .153 (persons with behavioral health disorders). Accordingly, officers responding to mental health calls is a community caretaking function.

2. Bill 1310’s plain language does not address nor limit a peace officer’s authority to respond to community caretaking calls

Bill 1310 does not address peace officers responding to certain calls and does not prohibit a peace officer from responding to a community caretaking call. Neither the statute’s plain language nor its expressed intent evidence any limitation on peace officers responding to community caretaking calls.

First, nothing in Bill 1310’s language addresses when law enforcement officers may respond to community caretaking calls. When statutory “language is unambiguous, [courts] give effect to that language and that language alone because [courts] presume the legislature says what it means and means what it says.”⁵ Here, Bill 1310, Section 3(1)(a) addresses when a peace officer may use physical force:

Except as otherwise provided under this section, a peace officer may use physical force against a person when necessary to: Protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape as defined under chapter 9A.76 RCW; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.⁶

Nothing in the statute’s plain language indicates that specifying permissible uses of force prohibits an officer from responding to community caretaking calls. Indeed, Section 3(1)(a) permitting physical force when necessary to “protect against an imminent threat of bodily injury to” any

³ *State v. Boisselle*, 194 Wn.2d 1, 10, 448 P.3d 19 (2019) (citations omitted) (internal quotation marks omitted).

⁴ *Id.* at 11 (citation omitted) (internal quotation marks omitted).

⁵ *Cent. Puget Sound Reg’l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 346, 376 P.3d 372 (2016) (citation omitted).

⁶ Laws of 2021, ch. 324, § 3(1)(a) (emphasis added).

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person, including the person against whom force is being used, indicates the statute anticipated that officers may respond to calls that do not involve a crime.

Second, the statutory intent of Bill 1310 is to preserve human life. A reading that the statute limits when peace officers may respond to emergency aid calls contravenes that intent. “When interpreting a statute, the court’s fundamental objective is to ascertain and give effect to the legislature’s intent.”⁷ “A statutory statement of intent can be crucial to the interpretation of a statute.”⁸ Here, Bill 1310’s statement of intent addresses “excessive force and discriminatory policing by establishing a requirement for [peace officers] to act with reasonable care when carrying out their duties[.]”⁹ Importantly, the intent statement declares “[i]t is the fundamental duty of law enforcement to preserve and protect all human life.”¹⁰ An interpretation that Bill 1310 limits or prohibits law enforcement officers from responding to calls that do not involve a crime – such as community caretaking calls to render aid – is contrary to legislative intent to preserve and protect all human life.

Accordingly, Bill 1310 does not prohibit a peace officer from responding to calls where the caller does not report criminal conduct.

IV. CONCLUSION

Bill 1310 does not prohibit peace officers from responding to community caretaking calls, including mental health calls.

Disclaimer: This is not a formal opinion of the Attorney General, but it expresses the authors’ carefully considered legal opinion. The conclusions are based on the facts summarized herein and current law. If either changes, the analysis and conclusions may change as well.

⁷ *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017) (citation omitted).

⁸ *Food Servs. of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 788, 871 P.2d 590 (1994) (footnote omitted).

⁹ Laws of 2021, ch. 324, § 1.

¹⁰ *Id.*

Draft Scope of Work for Consultant on IPRTF Communications Strategy

Outcomes: Work with the IPRTF and its Steering Committee to develop an effective communications strategy that that will inform the community about the success of current and future Task Force initiatives and raise awareness within the community of IPRTF actions, recommendations, and activities. A successful communications strategy will enhance and optimize the IPRTF's current efforts – and recommend new efforts - on: public information and outreach; consultation that requests feedback from the public, and; public participation that engages the public in informed dialog with the Task Force. In addition, the communications strategy will define:

- **WHO = Target Audience Groups**, such as policy-makers, Tribes, BIPOC community, low-income communities, individuals with lived experience in the criminal justice system, service providers, partner agencies, business owners and employees, etc.
- **WHAT = Content and messaging**, including:
 1. Targeted content and messaging about current Task Force initiatives and successes that can be distributed to the public
 2. Education for the IPRTF members & staff on how to create an effective message that is tailored to a specific audience
 3. Templates for content and outreach materials that can be used for future content/messaging.
 4. All content and messaging must use plain language, using the federal plain language guidelines. See: <https://www.plainlanguage.gov/>
- **HOW = Most effective distribution** channels, such as optimizing the use of the County website, engage in social media, speaking at events, public forums, infographics, newsletters, traditional media, and other materials, etc.

Scope of work:

- In collaboration with the Steering Committee, define the target audiences
- Identify where the target audiences in the community get their news and how they prefer to engage with local government
- Determine the most strategic communication methods for each audience, including: content (for example, the effectiveness of personal stories vs. data), outreach materials, and distribution channels.
- Evaluate the current communication efforts to determine what is working, what is not working, and what is missing

- In collaboration with the Steering Committee, define three (or four, or five, or...?) current Task Force initiatives, projects, key focus areas, activities, or messages to communicate to the target audience(s), including the public and partner agencies. Create appropriate message, content, outreach tools, and distribution channels that can be implemented and distributed immediately.
- Develop a Communications Strategy, including templates for outreach materials, that the Task Force can implement with future project/message campaigns
- Educate IPRTF members, the Steering Committee, and/or Task Force staff on best practices for creating targeted and engaging messaging and content for future outreach when new topics and initiatives arise. Steering committee would then be able to create a targeted message on a topic and direct staff to develop and deliver related content and message delivery.
- Develop a process for evaluating the success of community outreach and education efforts
- Other?

Qualifications: To be determined

INCARCERATION PREVENTION AND REDUCTION TASK FORCE MEETING RULES AND PROCEDURES

Adopted October 5, 2015
Amended February 5, 2018

Membership and Quorum

Task Force membership and terms are set by ordinance. A quorum of at least 51% of the **entire*** membership shall be present to perform official business including decision-making, motions, recommendations and elections.

Motions shall be approved if a majority or two-thirds (as required by Robert's Rules of Order) of the [Option 1: members present at a meeting OR Option 2: entire membership] votes in favor of the motion.

Proxy/Representatives

Task Force members are encouraged to designate proxies to attend and participate, with full voting rights, in any Task Force or committee meeting in their absence. Task Force members may also request Task Force approval to assign a representative to permanently represent them, with full voting rights, on any subcommittee to which they are not assigned.

Officers

Two Co-Chairs shall be elected by a simple majority of the Task Force to serve two-year terms.

Meeting Format

The meetings of the Task Force shall be open and accessible to the public and comply with the Open Public Meetings Act. Each meeting shall allow for public comment during a designated time. Robert's Rules of Order shall be followed for decision-making during meetings. The Co-Chairs shall submit a meeting agenda to the Task Force membership at least one week prior to the meeting.

Schedule of Meetings

The Task Force shall meet no less than quarterly.

Staffing

The staff support for the Task Force shall be supplied by the Whatcom County Council, County Executive's Office and Health Department as set by ordinance. Staff shall keep a written record of the Task Force meetings.

Ad-Hoc Committees

The Task Force may form and appoint ad hoc committees so long as at least two Task Force members serve on the ad hoc committee as required by ordinance.

Other Business Rules

The Task Force shall comply with the requirements of the ordinance establishing this Task Force.

****Entire membership is defined by Robert's Rules of Order as the entire number of people currently appointed or assigned to the group, not including vacant positions.***

Incarceration Prevention and Reduction Task Force

9:00 - 11:00 a.m., September 20, 2021, Remote-only virtual meeting

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[INSERT LINK]

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Packet Pages

- | | |
|---|-------|
| 1. Call to Order | |
| 2. Criminal Justice System Racial and Ethnic Data Collection | X - X |
| <i>Presentation and Discussion/ Dr. Alexis Harris, Professor of Sociology, University of Washington</i> | |
| 3. INDEX??? | X - X |
| <i>Discussion and Recommendation/Co-Chairs, Caleb Erickson</i> | |
| 4. Recommendations for expenditures of ARPA funds??? | X - X |
| <i>Discussion/Co-Chairs</i> | |
| 5. Committee Updates (ALL?) | |
| Steering Committee | X - X |
| Crisis Stabilization Facility Committee | X - X |
| Behavioral Health Committee | X - X |
| Legal and Justice Systems Committee | X - X |
| INDEX Committee | X - X |
| 6. Update from Jurisdictions (as needed)?? | X - X |
| <i>Information/Various Presenters</i> | |
| 7. IPRTF Acting as the Law and Justice Council (as needed) | X - X |
| <i>Action/Presenter</i> | |
| 8. Other Business | |
| 9. Public Comment | |
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DRAFT

**Incarceration Prevention and Reduction Task Force
Steering Committee
Meeting Summary for July 8, 2021**

Note: Agenda item links to YouTube video are functional at the time this meeting summary was created, however YouTube links may change. Links will not be updated. Please refer to time notation on each agenda item.

1. Call to Order

Committee Chair Barry Buchanan called the meeting to order at 11:00 a.m. The meeting was held remote-only via Zoom Webinar.

Members Present: Barry Buchanan, Arlene Feld, Stephen Gockley, Dan Hammill, Jack Hovenier, Raylene King, Mike Parker

Members Absent: Anne Deacon, Caleb Erickson, Tyler Schroeder

2. Items for next Task Force agenda ([00:01:12](#))

The committee members concurred to schedule the following items on the July 19, 2021:

- 2021 Washington State Policing Practices and Oversight Legislation

The committee members discussed potential impacts from House Bill 1310 regarding law enforcement response to behavioral health calls; status of behavioral health response program; how the IPRTF will address House Bill (HB) 1310 and other bills that came out of the legislature in the last session, and other limitations on policing; workforce and equipment shortages; incarceration rates spiking when people aren't given access to de-escalation; interpreting the legislation and implementing policy conservatively due to potential consequences to law enforcement, which resulted in law enforcement not responding to behavioral health calls if there is no crime being committed; educating the Task Force on what's happening; the need to know how local law enforcement is implementing policies, and; potentially scheduling a special IPRTF meeting in August if it's necessary to take action.

Committee members also discussed an upcoming presentation to the IPRTF in September with Dr. Alexis Harris, including:

- Dynamics used to pull data for racial equity purposes, using different tools from tools they've had available
- Guidance and instruction to help them make sure the data they are using is accurate and consistent with all races and ethnicities
- If possible, ensure Caleb Erickson and Dr. Andrew Peterson can attend

3. Process for updating IPRTF Strategic Plan ([01:00:00](#))

Committee members discussed the need to identify which topics would be assigned to each committee, or to multiple committees jointly; identifying short-, medium-, and long-term priorities; later in the fall when more pressing issues are addressed, schedule before the committees for initial review, and; frequency of joint committee meetings.

Incarceration Prevention and Reduction Task Force
Steering Committee
Meeting Summary for July 8, 2021

4. Update on Communications Strategy [\(01:07:28\)](#)

Committee members discussed a draft scope of work for a communications specialist for the Task Force:

- Including business owners and employees as a target audience
- Next step to get budget authority
- The importance of using plain language in all materials
- Whether the use of personal stories would be effective to convey the work of the Task Force
- Articulating the Task Force's purpose and values

5. Government Alliance on Racial Equity (GARE) Membership update [\(01:24:00\)](#)

Committee members discussed a recent webinar and the possibility of requesting a personalized webinar on GARE membership with the GARE membership officials for a few of the Steering Committee members, or inviting a GARE membership official to attend a future Steering Committee meeting.

6. Other Business [\(01:29:30\)](#)

The Committee members agreed to not cancel the August Steering Committee meeting, but to reschedule the meeting from August 5 to August 12. Discussion at the August meeting could be a wrap up of the July IPRTF meeting discussions.

7. Public Comment

There was no public comment.

8. Adjourn

The meeting adjourned at 12:35 p.m.