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Department/Issuing Agency: County Executive Office

Effective Date: July 28, 2021

Approved: /s/ Dow Constantine

Type of Action: Supersedes PHL 7-1-4-EO, "Conducting Inquests in King County" June 11, 2020



King County

WHEREAS, Revised Code of Washington (RCW) Chapter 36.24 authorizes the county coroner to summon a jury to inquire into the death of a person by suspicious circumstances; and

WHEREAS, per the Supreme Court's recent decision in *Family of Butts v. Constantine*, No. 98985-1 (July 15, 2021), determined that there are certain "mandatory duties" under (RCW) Chapter 36.24 that must be performed by either the coroner or the inquest jury; and

WHEREAS, Section 895 of the King County Charter, as amended, provides that an inquest shall be held to investigate the causes and circumstances of any death where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death; and

WHEREAS, King County Code (KCC) Chapter 2.35A created a division of the medical examiner within the Seattle-King County Department of Public Health and assigned to it most of the coroner's duties under RCW Chapter 36.24, "except for the holding of inquests, which function is vested in the County Executive" under KCC 2.35A.090.B; and

WHEREAS, the Supreme Court affirmed in *Family of Butts* that the County Executive may establish policies and procedures for conducting coroner's inquests by Executive Order, so long as there is no "direct and irreconcilable conflict" with state law; and

WHEREAS, the County Executive retains the ultimate responsibility for the exercise of the inquest power and the performance of the delegated duty.

NOW, THEREFORE, I, Dow Constantine, King County Executive, do hereby order, direct, and implement the following policy and procedures for conducting an inquest, at Appendices 1 and 2.

Signed this 28th day of July 2021.

Dow Constantine
King County Executive

Attest:

Norm Alberg

Director, Records and Licensing Services Division, Department of Executive Services

Appendix 1 - Conducting Inquests in King County: Conducting Inquests in King County

1.0. SUBJECT TITLE

Conducting Inquests in King County.

2.0. PURPOSE

- 2.1. To establish policies and procedures for conducting reviews into the facts and circumstances of any death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and occasionally in other cases, as determined by the County Executive.
- 2.2. The purpose of the inquest is to ensure a full, fair, and transparent review of any such death, and to issue findings of fact regarding the facts and circumstances surrounding the death. The review will result in the issuance of findings that satisfy the mandatory duties imposed by Chapter 36.24 RCW, as well as other determinations specified in this order, including whether the law enforcement member acted pursuant to policy and training.
- 2.3. The purpose of the inquest is to investigate a death, not to make any binding adjudicative determinations of civil or criminal liability.

3.0. ORGANIZATIONS AFFECTED

King County Department of Public Defense; King County Executive; King County Prosecuting Attorney; King County Superior Court; King County Medical Examiner's Office; King County Department of Executive Services; Law Enforcement agencies within King County.

4.0. REFERENCES

- 4.1. RCW 36.24 Counties; County Coroner.
- 4.2. King County Charter, Section 320.20 - The Executive Branch, Powers and Duties.
- 4.3. King County Charter, Section 895 - General Provisions: Mandatory Inquests.
- 4.4. King County Code 2.35A.090(B).

5.0. DEFINITIONS

- 5.1. "King County Executive" or "County Executive" means the official, or the designee

of the official, who is elected and serves as the County Executive of King County pursuant to Article 3 of the King County Charter.

- 5.2. "King County Prosecuting Attorney" means the official, or the designee of the official, who is elected and serves as Prosecuting Attorney for King County pursuant to Article XI, Section 5 of the Washington State Constitution.
- 5.3. "Inquest" means an administrative, fact-finding inquiry into and review of the manner, facts and circumstances of the death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.
- 5.4. "Law enforcement agency" means any agency having police powers as authorized under Washington State law. For the purposes of this policy, "a member of any law enforcement agency" shall include commissioned officers, noncommissioned staff and agents of any local or state police force, jail, detention facility or corrections agency.
- 5.5. "Attorney representing the family of the deceased" means a privately retained or publicly funded attorney, pursuant to KC Ordinance 18652.
- 5.6. "Rules of Evidence" means the evidentiary rules adopted by the Supreme Court of the State of Washington governing proceedings in the courts of the State of Washington, and such rules as may be adopted by the King County Hearing Examiner pursuant to KCC 20.22.
- 5.7. "Voir dire" means an examination of a prospective panel as defined below.
- 5.8. "In camera review" means an examination of materials by the administrator in private proceedings to rule on admissibility and use.
- 5.9. "Panel" refers to the jury of inquest provided by Superior Court pursuant to RCW Chapter 36.24.
- 5.10. "Administrator" means the presider of the inquest proceeding, selected from a roster approved by the County Executive, who presides over a particular inquest proceeding.
- 5.11. "Manager" means the staff assigned to oversee the inquest program, to assign an administrator and inquest program attorney to a particular inquest, to provide clerical support to the administrator and inquest program attorney, and to report annually to the County Executive.
- 5.12. "Inquest program attorney" means the inquest program attorney assigned to assist the administrator and to facilitate an inquest.

6.0. POLICIES

- 6.1.** The public has a strong interest in a full and transparent review of the circumstances surrounding the death of an individual involving law enforcement. As such, in accord with King County Charter Section 895, there shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and in any other case as determined by the County Executive where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees. The Charter requirement for an inquest does not apply where the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death. When active criminal charges are pending against a law enforcement officer for the death of an individual, the County Executive may delay the inquest referral pending resolution of those charges in order to avoid compromising the criminal case.
- 6.2.** At the discretion of the County Executive, in exceptional circumstances there may be an inquest into the causes and circumstances of a death involving an individual in King County other than a member of a law enforcement agency.
- 6.3.** It is the Executive's intent that Administrators exercise independent decision-making authority in conducting inquest proceedings under this Executive Order. In order to maintain independence and impartiality, Administrators shall follow applicable provisions of the Code of Judicial Conduct. Attorneys participating in inquest proceedings shall be bound by the Rules of Professional Conduct.

7.0. RESPONSIBILITIES

- 7.1.** The King County Prosecuting Attorney shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated pursuant to the King County Charter. If the King County Prosecuting Attorney advises that an inquest may be initiated, the King County Prosecuting Attorney shall supply a complete copy of the available investigative file to the manager.
- 7.2.** The King County Executive shall determine whether an inquest will be held. If an inquest is to be held, the Executive shall direct an administrator to conduct the inquest on the Executive's behalf. The County Executive shall also request that the King County Superior Court facilitate the inquest by supplying (a) jury, which shall be referred to as a panel; and (b) appropriate facilities, including a courtroom, appropriate staff, and any necessary security. The inquest shall be conducted pursuant to this Executive Order and to RCW 36.24, as amended.

8.0. PROCEDURES

Action By: Prosecuting Attorney

- 8.1.** Receive information from a law enforcement agency within King County of a death of an individual involving law enforcement that may require an inquest.
- 8.2.** Promptly inform the County Executive of such a death.
- 8.3.** Review the information and the investigative file and advise the County Executive as to whether an inquest should be held.
- 8.4.** Upon request of the County Executive, forward the investigative file to the manager.

Action By: Inquest Program Attorney

- 8.5.** Upon request by an administrator, issues subpoenas for witnesses and/or documents for the inquest hearing.
- 8.6.** Upon request by an administrator, seeks issuance of pre-hearing subpoenas for witnesses and/or documents from the King County Superior Court.
- 8.7.** Assists Inquest Administrators with facilitating the inquest proceedings.

Action By: County Executive

- 8.8.** Upon receiving the King County Prosecuting Attorney's advisory opinion, determine whether to hold an inquest.
- 8.9.** If an inquest is to be held, direct the manager to proceed with the inquest.

Action By: Manager

- 8.10.** Select an administrator to preside over the inquest and an inquest program attorney to assist.
- 8.11.** Support the administrator in scheduling a pre-inquest conference and with clerical tasks.
- 8.12.** Respond to any public records requests for the program file.

Action By: Administrator

- 8.13.** Hold a pre-inquest conference.
- 8.14.** Conduct the inquest according to the procedures in Appendices 1 and 2.
- 8.15.** May stay an inquest where charges are pending against an accused person and the stay is necessary to avoid compromising the criminal case.

Action By: Department of Public Defense

- 8.16.** Assign counsel for the family of the decedent unless the family indicates they have retained other inquest counsel or do not wish to be represented by the King County Department of Public Defense. The Department of Public Defense will not be assigned in inquests where the family is to be represented by private counsel.

Action By: Superior Court

8.17. If an inquest is to be held, the Superior Court shall coordinate with the manager and administrator to supply a panel, recorder, and facilities pursuant to RCW36.24.020.

9.0. APPENDICES

Procedures for Conducting Inquests.

10.0. PRIOR ORDERS

This Executive Order rescinds and replaces PHL 7-1-4, "Conducting Inquests in King County," dated June 11, 2020.

Appendix 2 - Procedures for Conducting Inquests:

If an inquest is to be held, the King County administrator shall conduct the review in accordance with these procedures.

1.0. FACILITIES/COURTROOM

1.1. The inquest is an administrative hearing intended to be a fact-finding, non-adversarial process. However, the King County Superior Court administers the jury process and maintains facilities appropriate to comfortably support a jury. Therefore, where requested by the County Executive, the Superior Court will coordinate with the manager to provide persons to serve as a jury of inquest ("panel") and secure appropriate facilities. The manager shall arrange the room in a manner that promotes transparency to the public and fair treatment of all participating parties.

2.0. PARTICIPATING PARTIES

2.1. The family of the deceased, who shall be allowed to have an attorney(s) present.

2.2. The law enforcement member(s) involved in the death, who shall be allowed to have an attorney(s) present.

2.3. The employing government department, which shall be allowed to be represented by its statutory attorney or lawfully appointed designee.

2.4. The manager, who shall assign an administrator and an inquest program attorney to assist the administrator.

2.5. An administrator, who shall preside over the inquest.

2.6. A representative appointed by the involved federally recognized Indian tribe, in the event that a death occurs on a federal Indian reservation or involves an enrolled member of a

federally recognized Indian tribe. Such representative shall be allowed to have an attorney present.

3.0.ROLE OF THE ADMINISTRATOR/SCOPE OF THE INQUEST

3.1. An administrator shall conduct the inquest. The proceedings shall be conducted as a formal proceeding, with represented parties, and the presentation of evidence through direct and cross- examination, and subject to the Rules of Evidence. Administrators shall strive to promote an atmosphere consistent with administrative fact-finding and shall strive to minimize delay, cost, and burden to participants, while promoting fair and open proceedings. Although an inquest is not a court proceeding, administrators shall be guided by open courts principles and GR 16.

3.2. The administrator, after consultation with the participating parties, shall determine the inquest scope. Consistent with the purpose as set forth in the amended Charter, Executive Order, and Appendix 1 and 2, the inquest scope shall include an inquiry into and the panel shall make findings regarding the cause, manner, and circumstances of the death, including applicable law enforcement agency training and policy. The panel shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

3.3. The Rules of Evidence shall generally apply but may be supplemented and/or modified by additional rules governing administrative proceedings, at the discretion of the administrator. The administrator shall construe the Rules of Evidence in a manner consistent with the goal of administrative fact-finding proceedings and to promote fairness and to minimize the delays, costs, and burdens that can be associated with judicial proceedings.

4.0.DISCOVERY AND ADMISSIBILITY OF EVIDENCE

4.1. Discoverable material shall be exchanged among: the administrator and any inquest program attorney; and counsel for all participating parties.

4.2. Discovery materials are to be used by the attorneys solely for the inquest proceeding. Such materials include the police and/or agency investigative file of the incident that resulted in the death. They also include the report of the medical examiner, crime laboratory reports, and the names, addresses, and summaries and/or copies of statements of any witnesses obtained by any party.

4.3. In the event that confidential materials in the possession of any person or agency are sought for use in the inquest, the administrator, upon a prima facie showing of necessity, relevancy, and lack of an alternative source for the materials, shall examine the materials in camera. These materials may include, and the administrator shall have the discretion to consider the admissibility and use of, information that may be relevant to the incident. The legal representative of the person or agency in possession of the materials shall have the right to participate in the review of these materials.

4.4. The decedent's criminal history may not be introduced into evidence unless the administrator first determines that: it is directly related to the reason for an arrest, detention, or use of force (e.g. officers were arresting an individual convicted of a felony who they believed was carrying a firearm); it served as the basis for an officer safety caution (or equivalent warning) that the member(s) of the law enforcement agency was aware of prior to any use of force; or other, contemporaneous knowledge of the individual's criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat.

4.5. If decedent's criminal history is admitted, it must be limited to the greatest extent possible. It may only include information both actually known to officer(s) at the time, and actually forming a basis for the decision to use deadly force or the tactics in approaching the individual. It may not include the specific crime of conviction, the nature of the crime (e.g. violent or nonviolent), the deceased's incarceration history, or any other criminal charge, unless the administrator makes a specific finding of relevance to a contested issue in the inquest.

4.6. The disciplinary history of the law enforcement member(s) involved may not be introduced into evidence unless the administrator first determines that it is directly related to the use of force. If such information is admitted, it must be limited to the greatest extent possible.

4.7. Protective orders may be used to limit discovery, and the administrator may order the return of all discretionarily-ordered discovery.

5.0 SCHEDULE AND PRE-INQUEST CONFERENCE

5.1. It is in the best interests of affected parties and the community to hold the inquest in a timely manner. It is the goal of the Executive that an inquest hearing will proceed in front of a panel within four months of the completion of law enforcement's investigation of the death. The Executive acknowledges that as of the date of this EO's issuance there is a backlog of inquests awaiting to be commenced which may impact meeting this goal for some time. The manager and administrator will strive for timeliness and to limit unnecessary delays consistent with this goal; extensions shall be limited and granted only upon a showing of good cause.

5.2. The manager and administrator shall schedule a pre-inquest conference with the participating parties and may hold additional conferences if necessary. The administrator will obtain proposed witness and exhibit lists, proposed panel instructions, and inquest time estimates, and will inquire whether any special needs such as interpreters are required. The conference shall be public unless compelling circumstances require an in camera hearing, in which case the administrator must make findings of fact and conclusions of law justifying such measures under Washington law.

5.3. The administrator shall solicit proposed stipulations of fact from the participating parties and work diligently to narrow the scope of inquiry at the inquest. The administrator shall share the stipulated facts with the panel at the start of the inquest.

5.4. The administrator shall instruct the panel at the start of the inquest.

5.5. The manager shall maintain a website publishing the schedule for the inquest, stipulated facts, inquest file and, where possible, inquest recordings.

6.0. PANEL POOL

The administrator shall select the panel from the regular Superior Court juror pool pursuant to RCW 36.24.020.

7.0. PANEL QUESTIONING (VOIR DIRE)

7.1. The administrator shall conduct voir dire, after consultation with the participating parties.

7.2. There is no set limit to the number of panelists the administrator may excuse. Panelists may be excused for cause and/or because serving on the inquest panel will present a hardship.

8.0. PANEL QUESTIONS FOR PARTICIPANTS

After all parties have had an opportunity to examine a witness, panelists are allowed to submit questions to the administrator that the panel wishes to pose to the witness. After consultation with the parties, the administrator shall determine whether to submit a question to the witness and the manner of the submission.

9.0. RECORDING

The manager shall ensure that the inquest proceedings are audio recorded and that the audio recordings are made accessible to the public to the greatest extent consistent with GR 16.

10.0. MEDIA GUIDELINES

Consistent with Section 9, above, the administrator shall make the proceedings available to the public and to the media, this includes video and audio recording and still photography.

11.0 ORDER OF PRESENTATION OF EVIDENCE

11.1. There shall be no opening statements by the parties. The judge's introduction will include an instruction in substantially the following form: "You have been empaneled as members of a coroner's panel in the inquest. This is not a trial. The purpose of the inquest is to provide public inquiry into the causes and circumstances surrounding the death of [decedent]. It is not the purpose of this inquest to determine the criminal or civil liability of any person or agency. Your role will be to hear the evidence and answer questions according to instructions given to you at the close of the proceedings. The inquest program attorney's role is solely to assist the

administrator in presenting the evidence. As administrator I have determined who will be called as witnesses and the issues which you will be asked to consider."

11.2. The administrator through the inquest program attorney has the first opportunity to introduce witnesses and evidence. The parties may then each introduce their own witnesses and evidence.

11.3. The administrator, after consultation with the parties, decides the order of presentation of evidence and witnesses. The administrator may direct that the inquest program attorney conduct the initial examination of each witness.

11.4. The administrator shall make rulings on the admissibility of evidence and testimony based on the Rules of Evidence and these procedures.

12.0 WITNESSES AND TESTIMONY

12.1. Each party, including the administrator, through the inquest program attorney, may proffer its own witnesses to provide testimony that aids the panel in the understanding of the facts, including factual areas of experts (e.g. ballistics and forensic medical examination).

12.2. The administrator shall base rulings on the admissibility of such testimony and/or limitations to such testimony on the proposed witness's qualifications, the Rules of Evidence, and these procedures. Testimony regarding changes that should be made to existing policy, procedure, and training will generally not be permitted on relevance grounds.

12.3. The employing government department shall designate an official(s) to provide a comprehensive overview of the forensic investigation into the incident (e.g., statements collected by investigators, investigators' review of forensic evidence, physical evidence collected by investigators, etc.). Additionally, the chief law enforcement officer of the involved agency or director of the employing government department or the designee of such chief/director shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death.

12.4. The inquest is intended to be a transparent process to inform the public of the circumstances of the death of a person that involved a representative of government. As such, there is a strong presumption against the exclusion of witnesses until after their testimony, and relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances.

12.5. At the conclusion of the testimony, the administrator will solicit from the inquest program attorney and/or from the participating parties additional submissions of proposed stipulated facts. The administrator will determine which, if any, proposed stipulated facts should be submitted to the panel.

13.0. STATEMENTS OF SUMMATION

The inquest program attorney and the participating parties may offer statements of summation only if preapproved by the administrator in consultation with the parties. Statements must be consistent with the fact-finding purpose of the inquest.

14.0. PANEL QUESTIONS

14.1. After the conclusion of testimony, each party shall submit to the administrator proposed questions for the panel. After consultation with the parties, the administrator shall determine which questions are within the scope of the inquest and should be submitted to the panel. Prior to the statements of summation, the administrator shall provide the panel with the list of questions.

14.2. The inquest administrator shall give written instructions to the panel and shall submit questions to be answered, subject to the limitations of Section 3 (above), Chapter 36.24 RCW, and keeping in mind the purpose of an inquest. At a minimum, per RCW 36.24.070, the panel must render a verdict setting out who was killed, when, where, how, by whom, and whether that killing was by criminal means. If the jury finds that the killing was by criminal means, the jury must identify who is guilty thereof, if known. The panel shall also make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

14.3. Beyond these limitations, the panel shall not be confined to the stipulated facts but may consider any testimony or evidence presented during the inquest proceeding. In answering any question, the panel may not consider any information learned outside of the inquest.

14.4. Whenever possible, questions submitted to the panel must provide three response options: "yes," "no," and "unknown." A panelist shall respond "yes" when the panelist believes a preponderance of the evidence supports responding to the question in the affirmative. A panelist shall respond "no" when the panelist believes a preponderance of the evidence supports responding to the question in the negative. A panelist shall respond "unknown" if either (1) the weight of the evidence equally supports responding to the question in the affirmative and the negative or (2) not enough evidence was presented to allow the panelist to answer the question in the affirmative or the negative.

14.5. The panel shall deliberate and panelists shall exchange their interpretations of the evidence. However, the panel need not reach unanimity and each panelist shall be instructed to answer the questions individually.

14.6. After every question, each panelist shall have the opportunity to provide a written explanation of the panelist's answer. The administrator shall direct each panelist that the panelist need only provide a written explanation when the panelist believes that a written explanation would provide information helpful in explaining or interpreting the panelist's answer.

15.0. FINDINGS

15.1. The manager shall transmit the panel's findings to the County Executive and to the King County Prosecuting Attorney's Office.

15.2. The manager shall ensure the findings and recommendations are published on its website along with the inquest recording. Such findings and recordings shall be accessible via the website for a minimum of one year from the date of the panel's inquest findings and should be retained beyond that time pursuant to the Washington State retention guidelines.

16.0. ANNUAL REVIEW

16.1. The manager shall submit a report to the County Executive at the end of each year on the operations of inquests.

16.2. The County Executive will call for a periodic review of the inquest process by an independent review committee to determine if the inquest process is conforming to updated laws and adequately meeting the principles of transparency, community engagement, and respect for all those involved in the inquest process.