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**Governor's Task Force on Independent Investigations of
Police Use of Force**

Meeting Minutes

Thursday, August 20, 2020
1:00-5:00pm
Zoom Meeting

Facilitator: LueRachelle Brim-Atkins

Task Force Members Present: Emma Catague, Jordan Chaney, Livio De La Cruz, Monisha Harrell, Sanetta Hunter, Katrina Johnson, Chris Jordan, Pastor Walter Kendricks, Teri Rogers Kemp, Ben Krauss, Darrell Lowe, Nina Martinez, Brian Moreno, Kim Mosolf, Tim Reynon, Eric Richey, Pua Savusa, James Schrimpsheer, Teresa Taylor, Spike Unruh, Waldo Waldron-Ramsey

Task Force Members Absent: Jay Hollingsworth, Tyus Reed

Advisory Group Members Present: Monica Alexander, Craig Bill, Jim Bloss, Frank Cuthbertson, Rob Huss, John Hutchings, Deborah Jacobs, Ed Prince, Maria Sigüenza, Sharon Swanson, Yasmin Trudeau

Advisory Group Members Absent: Toshiko Hasegawa

Task Force Staff Present: LueRachelle Brim-Atkins, Sonja Hallum, Leah Landon, Dontae Payne

Guests: Todd Foglesong, Matt Torigian, Andrew Lah, and Joseph Martino

Welcome

LueRachelle Brim-Atkins welcomed everyone to the meeting. She added that there is no longer a chat box as now everyone can be seen with the Zoom format. She reminded everyone that the meeting was being televised via TVW and a recording would be available after the meeting. LueRachelle told participants that they were muted. Leah provided instructions on how to find the "raise your hand" function.

LueRachelle said a survey was sent earlier in the week asking if people were interested in extending the meeting time. She added that the majority were in favor of extending the meeting time, and if people do need to leave the call at 4pm that is okay and reminded people they can watch the recording later.

Review of Ground Rules

LueRachelle reviewed the ground rules the group had discussed at the previous meeting. The ground rules are available on the Governor's website.

Meeting Overview

LueRachelle invited **Sonja Hallum** to provide an overview of the meeting. Sonja said one of the previous meetings walked through the current investigative process, during the current meeting and the next few meetings though, the group will be looking at alternative systems. Leah sent a work plan to the group earlier, with more information on the upcoming meetings and their content. In the upcoming meetings the group will be hearing more about the different components of investigations, and then have time for discussion. A survey will also be sent after the meeting to allow for additional feedback. Sonja added that at the end of the meeting the group would be asked if they found the additional hour for the meeting time was valuable.

Sonja said the present meeting would start with an overview of other systems before having a panel from Ontario and San Francisco. The panelists will provide an overview of their system before taking questions from the group.

Sonja asked people to be thinking about how even though the group may decide to go the route of an entirely independent system, it will take time to implement and members should think about what changes need to be made to the current system to make it work better in the interim.

Sonja reviewed the meeting objectives:

1. Hear about approaches to investigations in different jurisdictions and identify key elements that should be considered in the improvements recommended to the Washington investigation system.
2. Engage in conversation with practitioners who are using two different types of systems, and ask questions about implementation, operations, strengths, challenges and other questions of importance to the task force.
3. Consider the alternative structures presented and provide recommendations on the system and investigators during or after the meeting. These recommendations will be compiled and presented to the group for discussion and decision-making at a later meeting.

Overview of Other Investigative Systems

LueRachelle introduced Todd Foglesong and Matt Torigian to the group and invited them to provide additional information on their backgrounds before providing their overview.

- Todd and Matt provided an overview of investigative systems in other jurisdictions and referenced the documents shared with the group prior to the meeting. These documents can be found on the Governor's website.
- **Q&A:**
 - **Kim Mosolf:** Kim said Todd mentioned when thinking about how to set up an agency and how to align them with agencies that already have credibility, and in his work has he found any entities that are aligned and have taken advantage of existing entities?

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- Todd said he does not have a good answer as he is unaware of any agencies that have done this.
- **Monisha Harrell:** Todd mentioned that he felt like we are ahead in looking at police reform work. Monisha said we have a different history and policing in America is built on a foundation of racism and we cannot ignore this. While it looks like we are ahead we are having to be more aggressive to catch up to where others are. Monisha added rates of incarceration or use of force in the first chart shown would be helpful to paint a clearer picture.
- **John Hutchings:** On page 7 of the outline supplied, there is a reference to a greater number of investigations. Is there trending change as police disengage from excessive force? John added whether we should be considering all use of force.
 - **Matt** said in short, he has no data on this, but he understands where he is coming from.
 - **Todd** added that he wants to make sure he understands the question better before responding and this is something that can be done outside of the meeting.
- **Jim Bloss:** Jim asked if sheriffs, police chiefs, and prosecutors in Canada are elected, and how can we get to a point where we have an independent system when everyone is covering for each other. **Jim** also asked if adopting an independent investigative body will enact specific change and morph into last change.
 - **Matt** said these officials are not elected in Canada.
 - The second question will be sent via email and Todd will get Jim a response.
- **Deborah Jacobs:** where are lines about roles drawn in other systems and what do you feel the best models are for giving the office independence?
 - **Todd** said the relationship varies and some organizations produce findings and recommendations, and others only produce recommendations when they do not decide to make charges. Todd added he does not feel there is a best model for ensuring the independence, this will depend on what other professions in Washington have as signs of independence.

Time ran out during for this portion of the agenda, the following questions were posed to the presenters with answers to follow the meeting.

- **Waldo Waldron-Ramsey:** Do the SIU investigators receive any anti-racist training?
- **Jordan Chaney:** Jordan said the first point of contact with the victim's family is his point of interest and asked why the SIU in Ontario does not have any requirements for this.
- **Ben Krauss:** Ben asked if Georgia was the only country that does investigations of all personnel?
 - **Todd:** Yes, that he knows of.

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Panel Presentation and Q&A

LueRachelle introduced Andrew Lah, former Managing Attorney at the San Francisco Internal Investigations Bureau and Joseph Martino, the Director of the Special Investigations Unit in Ontario to the group and asked them to provide additional information on their backgrounds before going into their overview.

- Andrew and Joseph provided brief overviews of their systems before taking questions from the group.
- **Q&A:**
 - **Chris Jordan:** Chris said Joseph mentioned duty to comply and fines and asked for more information on how this works.
 - **Joseph Martino** said the duty to comply is coming with new language in upcoming legislation. They are unsure of the impact this will have, but the legislation will make it an offense to fail to comply and upon conviction there can be several penalties. The thinking is with the penalties, there will be more compliance with requests to comply.
 - **James Schrimsher:** James asked Andrew Lah to expand on the scope of the San Francisco investigations, and asked about Garrity.
 - **Andrew** said rooms that are used have a viewing room so there is no admin there, but they can hear the interview. The scope initially is limited to the reasons they are called out, but if there are other crimes uncovered during the scope of this, they can cover those as well.
 - **James** said previous work led to the question of who takes over the work that is uncovered, is the involved agency allowed to go to a certain point?
 - **Andrew** said there is a special prosecutions unit they can collaborate with, but they do take the investigation to a certain point.
 - **Tim Reynon:** Tim asked Joseph how first nations and their members are involved, and how they communicate with sovereign nations during investigations.
 - **Joseph** said they have tried to recruit members of indigenous communities to work for the SIU. The SIU also has a first nations liaison program for use with relevant investigations. Joseph added that they have tripped up in the past, but they are always trying to learn and get better. When possible a first nations investigator is assigned to appropriate cases, and employees engage in first nations competency training.
 - **Jim Bloss:** Jim asked Andrew and Joseph if either jurisdiction had performance data that compares the current state to prior to implementation (reduction in use of force, demonstrations, etc.).
 - **Andrew** said he is not sure they have a way of tracking demonstrations, and while they have data you cannot necessarily show causation. San Francisco has not had a fatal shooting since March 2018, and we cannot show causation, but it is a good thing.
 - **Joseph** said there is no data that tracks these questions, but they do publish incident data and the SIU does track to come to an understanding of potential deterrent effects. But in short, not really.

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- **Sanetta Hunter:** Sanetta asked for a general idea of what the outcomes of investigations have been and how are decisions ultimately made?
 - **Joseph** said the SIU historically has 3-5% of cases with criminal charges being laid. The decision is made by the director on whether to lay charges, then it moves to prosecution.
 - **Andrew** said in San Francisco the District Attorney will make the ultimate call after receiving a recommendation from the lead investigator.
- **Emma Catague:** Emma asked how many people of color and immigrants are in the SIU, and how does the SIU deal with diverse communities and how people have different understandings of the law because of where they come from.
 - **Joseph** said the SIU website has these numbers and he can share that. With respect to diverse communities, the SIU has an outreach coordinator who works with immigrant groups.
 - **Andrew** said staffing in San Francisco is diverse and there would need to be vacancy to improve upon this. He added that there are first generation folks, but there has been some turnover.
- **Monisha Harrell:** Monisha asked how the community is involved not just from the investigative perspective but in the process... if there is an officer accused of sexual assault is there a mechanism for the community to recommend an investigation?
 - **Joseph** said the police are under a legal obligation to notify the SIU immediately if there is something that may fit the SIU. Anyone though can file a report. In addition, this is part of the outreach the SIU does. Joseph also added they have meetings each year with community partners to talk about what can be done better. The SIU does what they can, but they need to do a lot more.
- **Kim Mosolf:** Kim wanted to revisit Sanetta's question and asked if Andrew had any information on outcomes in San Francisco. Kim added that she would like to hear more on the prosecutorial decision making and asked to hear more on the transparency and potential oversight on charging decisions.
 - **Andrew** said the office sends complete files to the California Attorney General's Office and to the U.S. Civil Rights Office. The AGO has looked at some of the more high-profile cases and concurred with the findings. In terms of data, there is not much. Shooting cases are not historically prosecuted. Aside from putting the report on the website, California has a transparency law and upon request the file is open.
 - **Joseph** added that that about 3-5% of the SIU cases result in charges and the director of the SIU makes the charging decision. The director has no discretion though, if they conclude that there are grounds for a criminal offense to have occurred, they have to charge.
- **Teri Rogers Kemp:** Teri said she understands that the investigators are largely retired police officers and asked if their background is considered to ensure there is no misconduct. Teri also asked if there is ongoing bias training. Teri added that her understanding is San Francisco is a grand jury system and asked if that was correct and then asked why they went to an independent system.

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- Andrew said for inspector background they all receive background checks before coming to the unit. The presumption is that if they pass this background check there is nothing to prevent them from working there. The grand jury is used for investigative purposes, there are some instances where people do not want to provide a statement, so the grand jury is used to compel testimony. This also allows for subpoenaing evidence. In terms of motive for the creation of the unit, there were a series of troubling incidents in San Francisco where public confidence was undermined.
 - **Joseph** said the SIU does high level checks of records for investigators. In terms of ongoing bias related training, the SIU has a training coordinator and the curriculum will always contain a bias component. There are also internal checks before a report reaches the director's office, and one of the things they always look for are potential bias. Origins of the SIU is similar as it spawned from a series of controversial events that led to a task force which later created an independent body.
- **Ben Krauss:** Ben asked if there is an advocacy and support position for family members of those who were killed.
 - **Joseph** said they have an affected person coordinator, and these people are mandated to intervene and to work with families, victims, etc. and try to provide them the necessary support.
- **Jordan Chaney:** with the administrative review, what criteria is in this review? Does it include anti-racist language? Is the information on the affected person liaison in the report?
 - **Joseph** will send additional information via email. He added the administrative review is an entirely separate review.
- **Teresa Taylor:** Teresa asked how many annual investigations are being conducted each year? Additionally, do assaults on officers that incur during the process of resisting arrest get investigated, and how many officers are killed in the line of duty annually in your jurisdictions?
 - **Andrew:** in terms of how many law enforcement officers are killed, he would have to look but he believes it has not happened in some time. In terms of resisting arrest and how those charges are reviewed, this changed recently. There must be a better determination early on whether this needs to be considered and there has to be a good faith basis for charges for resisting arrest. In terms of annual cases, Andrew said he does not have the data in front of him and does not want to give an inaccurate number.
 - **Joseph:** Last year the SIU had about 320 cases, though their record number was 382 a few years ago. In terms of death of police officers in the line of duty, Joseph thinks it is a small number, but he does not have this data on hand and the SIU does not get involved in the conduct of the complainant.
- **Livio De La Cruz:** Livio asked how what the challenges are to getting investigators to scenes in a timely manner, especially in remote areas, and if you are satisfied with the agency response. Are there restrictions in place for how an investigation can proceed if the victim is also under investigation? Are there restrictions on how the department can release information to the public about the Governor's Task Force on Independent Investigations of Police Use of Force

investigation, are they allowed to make statements to the public that may justify the use of force?

- **Joseph** said getting to the scene is a constant challenge, police services are under a legal obligation to preserve the scene pending SIU arrival. One of the things that helps is the system of “as-needed investigators” who are placed throughout the province of Ontario. Sometimes it can take hours to respond, or it may take days, it is a constant challenge. Joseph added that he is not satisfied, but they do get there as soon as they can. There are a couple of restrictions, the officer involved must be segregated while they do their notes and they are prevented from speaking to each other pending their interview with the SIU. Restrictions in terms of police departments investigating injury, he is not aware of any. The SIU is the lead investigator though and would need to clear any investigative inquiry and this has improved the situation. Regarding release of information, under the SIU framework, police services are precluded from making any statement regarding the investigation currently with the SIU. If it is separate from the SIU investigation though, they can talk about that. Additionally, in Ontario, officers cannot consult with their lawyer prior to submitting notes.
- **Andrew** said the expectation is that investigators are at the scene in less than an hour, though every incident is different. In terms of what happens with an officer, the weapon is seized, photographs are taken and as much as can be documented is done. They also try to sequester the officer, though they can work with their lawyer. In terms of restricting the department, the department will have a town hall with the community where the incident happened within 10 days. This can involve statements, body cam footage, etc. The police departments are separate agencies and they may not be able to control what they do.
- **Teri Rogers Kemp:** In either jurisdiction’s opinion, do you believe the independent investigation unit has affected law enforcement’s behavior and its approach to individual incidents? Has it lowered police officer involved shooting or serious bodily harm?
 - **Andrew** said it is hard to know, there has not been a fatal shooting in almost 2.5 years, but we do not know causation. The officers and agencies know there will be scrutiny, so we like to think the accountability has played a part in the decrease in the number of fatal shootings, but it cannot be said definitively.
 - **Joseph** added that they have not done the systematic analyses that would allow this question to be answered. They do have data and write reports and make these available to those who want to do research.
- **Chris Jordan:** Chris asked if there are barriers in investigations that are created by labor unions and collective bargaining agreements, and when there is an investigation that has not reached the level of criminal but other actions may be taken, how does this look?
 - **Joseph** said in terms of barriers from labor unions, there are none formally, the legislation is clear, and this take precedence over any Governor’s Task Force on Independent Investigations of Police Use of Force

collective bargaining agreements. Regarding misconduct short of criminal misconduct, it is yea or nay on criminal charges. They may refer to conduct that is problematic, but this is all outlined in the report. Other bodies will look at misconduct short of criminal. It does not mean all is well if they do not lay charges, there may be other issues that are not the SIU's responsibility.

- **Andrew** reiterated this, saying San Francisco has referred cases and not laying charges is not a stamp of approval for the officer's behavior. They have sent cases over to the DPA for policy violations, and they can run the administrative case from there. It is not unheard of to have administrative misconduct but not criminal misconduct. Regarding unions, San Francisco has a powerful police union and it is not unheard of that the union is notified of an incident before the IIB. They are at the scene right away and this takes on several different forms and has been the subject of a lot of push back. There has been discussion around whether police unions can fund prosecutorial elections as well.
- **Ben Krauss:** Ben asked Joseph if the SIU originally started with the 8 different categories of use of force or if this expanded over time.
 - **Joseph** said the legislation has remaining intact since inception, but the upcoming legislation may make some changes. The new legislation will give the mandate to investigate all firearm discharges at a person.

Discussion on Potential Recommendations

Task Force and Advisory Group members were called on and asked to one or multiple of the following questions. LueRachelle also reminded members that a survey would be sent after the meeting with these questions so additional feedback can be provided. She also reiterated that there will be other opportunities for discussions around recommendations.

1. Which is the preferred structure for the investigating body:
 - a. Should the investigative body be housed within the employing agency using a firewall to protect its confidentiality and autonomy;
 - b. nested within a larger external agency; or
 - c. organized as a separate legal entity?
 2. What matters more to guarantee independence, the appointment process for the director, the recruitment for staff, or other factors?
 3. What skills, credentials, and prior experiences must investigators possess?
 4. Should the investigators be civilian, current law enforcement, former law enforcement or some combination of each?
 5. How do organizations that serve a large geographic area ensure a timely response to local incidents and the preservation of evidence?
- **Monisha Harrell:** Monisha asked if this would go out in a survey so we can baseline where the group is at. There are a couple of items we can talk about, but it might be more fruitful to talk about the items we have the most disagreement on.

- **LueRachelle** asked where Monisha feels the greatest distance may be. Monisha said she doesn't think anyone feels it should be a body housing within an existing agency, and can this be removed from the table?
- **Monisha** said she would urge the group to investigate this as a separate legal entity with independence.
- **Sonja Hallum** said these are questions we do need answers to, and it will be sent out via survey, but members are also invited to ask whatever questions they do have.
- **Todd Foglesong:** Todd asked to hear from Andrew and Joseph on what they think the structure of the agency should be.
 - **Andrew** said in his personal opinion, the further you can remove the agency, the more independent you can make it and the better off you will be. There will also be issues if the group wants to coordinate and have both civil and administrative investigations under one umbrella.
 - **Joseph** said he hesitates to offer and recommendations, but in their experience, independence really is the key.
- **Darrell Lowe:** agrees it should be a separate legal entity, as this will lend transparency and independence. The hiring of the director and staff is critical as you do not want it to become political. Credentials and prior experience should be like any other job, these should be identified and there are some already provided in I-940 that could be used. Darrell added it should be a mix of both former law enforcement and civilians. As far as geographic aspects, a separate legal entity this would have to be considered when discussing structure and staffing. Darrell feels having current law enforcement can be a point of contention for families and the community, so the agency should only have former law enforcement.
- **Waldo Waldron-Ramsey:** Waldo said it should be a separate legal entity. Waldo asked Joseph what ideas he has had about reaching distant places in a timely manner.
 - **Joseph** said Ontario is a large area with different time zones and getting to remote locations can be a challenge. Most cases fall within the greater Toronto area, and they can get there quickly. In cases where they cannot respond quickly, they rely on local police and the as-needed investigators. There has been talk of satellite offices but there are resource issues.
- **Jordan Chaney:** Jordan said he is fully behind what Joseph says and the further we get into independence the better it will be. There is also value though in keeping some law enforcement entities and agencies involved in the process. Jordan added he feels a sense of solidarity with some of these agencies. If there is any law enforcement involved in the agency we create, they must have a background in critical race theory and be prepared to have the difficult conversations. People do not want to acknowledge that their bias is impeding justice.
- **Yasmin Trudeau:** The Medicaid Fraud unit in the AGO was given limited commission status because they were having some issues with investigations. Yasmin asked if San Francisco or Ontario have had any similar issues with their civilian investigators.
 - **Joseph** said in Ontario no one at the SIU is a police officer but they have been conferred the status of Peace Officer so they can apply for search warrants, etc. to obtain evidence so they do not need the help of a sworn police officer.

- **Andrew** said their investigators are also peace officers and can do the same things, they just are not law enforcement.
- **Chris Jordan:** Chris said it should be an independent agency and added that if there is an advantage in the beginning of having partnerships and alignments with other agencies could be advantageous, but it does need to be completely independent from police and sheriffs. The agency should be able to search and seize, compel testimony, have access to records, recommend disciplinary action, and should have the power to escalate its jurisdiction. In Ontario they have to be notified any time an incident occurs, it is insane that the WA AGO is trying to pull things together, this agency should be equipped with all power possible. Additionally, the agency should be grounded in non-law enforcement personnel.
- **Jim Bloss:** Jim said he seconds Chris' comments and what it looks like we are considering is SIU on steroids. There should be no elected officials and a separate legal entity. Jim said SIU seems to be a preferred model, but some earlier comments said people misunderstand what they are doing. Jim asked Joseph what he would suggest for Washington. What do you not have that you think would be useful?
 - **Joseph** said a nice thing about a narrow mandate is it is narrow, and it is clear what you are to do. Resources are always an issue, but they are very focused. People need to understand what you can and can't do so public expectations do not get out of hand.
- **Rob Huss:** Rob asked Joseph about the instances where it can take a lot of time to get the investigative unit to a scene, in these instances, have you already vetted local law enforcement personnel to ensure the protection of the scene and to do the basic structures of what needs to occur?
 - **Joseph** says they do not "vet" the officials, they just rely on the local police service to preserve the scene using best practice and techniques pending their arrival. In consultation with police, they may ask for certain things to be protected and preserved. Joseph added that the SIU has their own forensic investigators which makes a world of difference.
- **Ben Krauss:** Ben said there should be consideration of all police use of force incidents, not just deadly force. Regarding #3, investigators should be able to audit courses at the CJTC.
- **Livio De La Cruz:** Livio said former law enforcement should be able to serve in the role as long as work is done to define the requirements. Investigators that are civilian should also have the appropriate powers. In addition, we should ensure timely response to various scenes.

Closing Comments and Adjournment

LueRachelle reminded everyone that a survey would be coming out after the meeting. She also asked people to participate in the poll on the screen asking whether the additional meeting hour was valuable.