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City of Port Orchard Police Department

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Introduction

This report was completed to outline new police-related legislative enactments and the impacts they have on the community we serve. During the last several months, the Port Orchard Police Department has continued to meet with our regional partners to create a unified message and explanation of the delivery of services that will be felt throughout our State. Many of these changes take effect on July 25th, 2021. The Port Orchard Police Department's goal is to provide open and transparent communication on these changes and their potential impacts.

In May of 2021, Governor Inslee signed 13 bills into law related to law enforcement reform, referring to them as "the best, most comprehensive, most transparent, most effective police accountability laws in the United States." A common theme amongst these bills is that not every call to 911 be handled by law enforcement. Legislative mandates require more law enforcement resources be made available when making arrests and dealing with individuals demonstrating mental health illnesses or who are under the influence of drugs and/or alcohol. It is important to note that Washington State currently ranks 50th in the nation for law enforcement officers per capita (USA Facts, 2021). In 2019, Washington was 6 out of 10 when ranking the top ten states with the most overworked police officers, with Washington having the lowest ratio at 1.45 officers per 1,000 people (Torres, 2019). The Port Orchard Police Department is currently budgeted for 1.5 officers per 1,000. Nationwide, the rate is 2.4 (FBI, 2017).

Since the summer of 2020, there have been demands across the country for police reform. Those reforms call for social and racial justice and equitable policing. Adapting to these changes gives our department an opportunity to change the way we respond to some incidents. These changes might result in a phone call or a referral to a resource instead of an in-person contact with a police officer. Proactive enforcement will focus on community safety and the preservation of life.

As a community, we need to navigate the changing expectations of law enforcement together. The role of police in our society is being redefined. The model of community-oriented policing, of which I was hired under (COPS initiative, passed as part of the State's 1994 Crime Bill) once provided a police officer anytime one was requested. This has changed. Proactive efforts to prevent crime, mainly property crimes, will become fundamentally difficult if not impossible and officers may, at times, be forced to walk away from those who choose not to cooperate.

Below is a summary of four of the State Legislature's highest impact new laws and how they may affect our community. We will continue to navigate these changes while prioritizing public safety concerns. We will continue to find ways to hold those who victimize others in our community accountable. We will work to find services for those who want to address underlying issues and causes of criminal activity. Above all else, we will embrace the demands for racial and social justice so that our service is equitably provided for all community members.

Summary of Law Enforcement Reform Bills

Engrossed Substitute House Bill 1054 - Police Tactics:

The police tactics bill prohibits police from using choke holds and neck restraints. It also establishes a Criminal Justice Training Commission work group to develop training and deployment policies for the use of police canines. The Police Tactics bill restricts police use of tear gas, military equipment to include any firearm of .50 caliber or greater, vehicle pursuits, and establishes uniform standards for officers. The language of this bill seemingly contradicts the separate Use of Force bill (HB 1310), in which the State Legislature encourages officers to use less-lethal options in use of force encounters. For example, many agencies deploy less-lethal rounds from shotguns or dedicated launching platforms. While the Use of Force bill would support this less-lethal force tactic by police, the Police Tactics bill bans law enforcement from using these tools as these rounds are larger than .50 caliber. Beyond these issues, perhaps the biggest impact of this bill to the Port Orchard Community is the restriction on vehicle pursuits. While vehicle pursuits are incredibly rare, we expect an increase in the number of persons choosing to flee from a traffic stop. A “pursuit” is a police officer trying to stop a vehicle that evades the stop efforts by speed increase or evasive/reckless driving.

Under this new law, police officers may now only pursue a vehicle if:

- Section 7(a)(i)** There is probable cause to believe that a person in the vehicle has committed or is committing a violent offense or sex offense as defined in RCW 9.94A.030, or an escape under 9A.76; or
- (ii) There is reasonable suspicion that a person in the vehicle has committed or is committing a driving under the influence offense under RCW 46.61.502.

9.94A.030 Violent Offenses include:

- Class A felonies
- Manslaughter 1st and 2nd degree
- Indecent liberties if committed by forcible compulsion
- Kidnapping in the 2nd degree
- Arson in the 2nd degree
- Assault in the 1st or 2nd degree
- Extortion in the 1st degree
- Robbery in the 2nd degree
- Drive-by shooting
- Vehicular assault
- Vehicular homicide
- Escape from a detention facility
- Escape from electronic home monitoring or custody

Impacts and considerations:

- 1) The Port Orchard Police Department has not had officers trained in or authorized to use choke holds and/or neck restraint.
- 2) Up until now, individual agencies decided on their own vehicle pursuit policy, and the policies varied from jurisdiction to jurisdiction. The new requirements and restrictions will curtail most, if not all police pursuits in this state.

Under HB 1054, an Officer is required to have probable cause that the driver has committed a violent felony before a pursuit can be initiated. The only exception to this limitation is a pursuit based on reasonable suspicion of driving under the influence (DUI).

“Reasonable suspicion” was the former benchmark, which is very different from the new “probable cause” requirement. To illustrate this difference, consider this scenario: A father calls 911 to report his 12-year-old daughter was just kidnapped out of his front yard. The suspect is described as a white male driving a red truck that is speeding away northbound from the house. Officers are provided this information over the radio while responding to the call. Approaching officers encounter a red truck speeding away northbound from the location. Officers attempt a traffic stop on that vehicle and the driver flees and begins to elude the police.

Under the new legislation, officers would be prohibited from pursuing that vehicle, because they only have “reasonable suspicion” based on the information relayed from dispatch, and not “probable cause” that the driver of that vehicle committed the kidnapping. Officers would clearly have reasonable suspicion based on the totality of the circumstances such as the description, time, location, and actions, but it is not probable cause as required by the new legislation. Officers would be forced to disengage and let the suspect vehicle flee, and attempt to track down the suspect and victim later through further investigation.

Another restriction HB 1054 places on law enforcement is the requirement for an officer to receive the approval of the “supervising officer” before initiating a pursuit. When attempting to stop a suspect vehicle an officer activates their emergency overhead lights and siren to indicate to the driver to pull over. If a suspect is going to flee it is at this point the suspect will speed up and take evasive driving actions to attempt to elude. According to HB 1054, the officer must disengage and contact their supervisor to articulate the probable cause and receive approval to pursue. By the time that conversation and decision-making process has been completed, the suspect will be long gone.

It is also important to note that we cannot pursue for any misdemeanors, even mandatory arrest misdemeanor DV crimes (assault 4th DV, or violation of a No Contact Order).

- 3) The Port Orchard Police Department is utilizing our records management system to track how many vehicles fail to stop. We are also working with regional partners and Kitsap-911 to implement a new clearing code to track the number of vehicles that flee that we cannot pursue.
- 4) Limits/prohibits use of tear gas (not OC spray)
 - May still be used during calls involving hostages or barricaded subjects.
 - Very limited use in riots with the approval from the highest elected official (in our case the mayor).
- 5) Until July 25th, 2021, the Port Orchard Police Department had been equipped with 40mm less-lethal impact rounds. These de-escalation tools are designed to reduce the amount of force needed to resolve a critical incident. This legislation now prohibits any firearms or ammunition greater than .50 caliber, thus requiring us to remove these tools from our officers. We believe the intent of the legislature is for less-lethal options to be utilized in certain use of force situations, but the language of House Bill 1054 is clear. Our hope is that future legislative action will allow us to again utilize these life-saving tools.

Engrossed Second Substitute House Bill 1310 - Use of Force:

It is the intent of this legislation that “the fundamental duty of law enforcement [is] to preserve and protect all human life.” A peace officer shall use reasonable care when determining whether to use physical force and when using physical force against another person.

Section 3(1)(a): 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, or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

Section 3(2)(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, cover; when there are multiple officers, designate one as the primary communicator. Call for additional resources such as a crisis intervention team or mental health professional when possible. Call for back-up officers when encountering resistance. **Take 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.**

It is important to understand the difference between “reasonable suspicion” and “probable cause”:

- **Reasonable Suspicion** - Particularized articulable facts and circumstances that lead a reasonable and prudent police officer, based upon their training and experience, to believe criminal activity has happened, is happening, or is about to happen. Detention is based on the officer’s reasonable belief that the person being stopped may be involved in a particular crime.
 - ▶ Governed by U.S. Supreme Court case Terry v. Ohio 1968
- **Probable Cause** – Articulable facts and circumstances known to the officer that would warrant that officer to believe that 1) a specific crime has or is occurring, and that 2) the suspect is the person responsible. ***This is the threshold for an arrest.***

Impacts and considerations:

- 1) Going forward, officers are only allowed to detain someone who is experiencing a mental health crisis if they pose an “imminent threat” to themselves or others. The new law defines imminent threat as: “based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury...”

If the officer determines that the individual in crisis does not meet the requirements for an involuntary commit, and there is no criminal activity identified, HB 1310 states the officer must leave the area completely and is not allowed to remain in the area to monitor the subject.

What may this look like in the community? Officers will be detaining fewer people who are experiencing a mental health crisis and may not respond unless an “imminent threat” or criminal activity is identified.

When appropriate, we will continue our practice of contacting individuals in crisis and offering to assist. However, if the person does not want to interact with us and there is no imminent threat or identified crime, our officers will leave the area as directed by the new legislation.

- ▶ Other examples: Officers are dispatched to a commercial burglary alarm at 2:00 AM. When they arrive they find a door forced open. Upon searching the building, they find a suspect who flees from the structure. They have not been able to reach the business owner.

Can you run after the suspect and use physical force to detain him? **NO. You would not have probable cause without talking directly to a victim. In this case, the alarm company is not a substitute for the victim.**

- 2) If the activity being reported is not criminal, our officers and supervisors must consider the totality of the circumstances prior to responding (people in mental crisis, suicidal individuals, runaways, civil standbys, evictions, parenting plan transfers, and several others.)
- 3) Challenges to the Port Orchard Police Department include the resources that will now be needed to arrest a person who has demonstrated they are likely to resist arrest. Police routinely

face uncertain circumstances with nearly limitless possibilities for danger and risk to officers or the public. It is impossible to know or predict who will resist arrest or when. The primary challenge of this new law is that despite the uncertainty that police face, a use of force is only authorized in four narrow circumstances. Accordingly, law enforcement officers, specifically in Port Orchard, will need to respond to arrest incidents with multiple officers, potentially decreasing resources and delaying response time to other incidents.

- 4) Port Orchard Police participates in a Washington Association of Sheriff and Police Chiefs (WASPC) Grant Funded Mental Health Field Response Team Program in Kitsap County. Collaborating agencies include South Kitsap Fire Rescue, Kitsap County Sheriff's Office, Kitsap Mental Health, and our department. Once finalized, the group will field two teams of law enforcement, mental health professionals, and fire department medics. law enforcement resources with South Kitsap Fire Rescue and Kitsap Mental Health. Our primary goals are to provide crisis intervention services, refer to and promote treatment, and, when possible, avoid incarceration and hospitalization.
- 5) Port Orchard Police Officers are often dispatched to calls with a potentially combative individual experiencing medical events. Unless a crime has occurred, EMS staff will now need to take primary responsibility for these non-criminal activity related calls. In other words, assisting the fire department in restraining a combative person during a mental health crisis is no longer legal.
- 6) Port Orchard Police Officers regularly locate missing, runaway, and at-risk children. Under the new legal requirements, we are unable to take custody of these children unless they voluntarily agree to come with us.

Engrossed Senate Bill 5476—Blake Decision:

The knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription is now reduced from a felony to a simple misdemeanor. Law enforcement officers are required, in lieu of booking a drug suspect into jail and referring their case to the prosecutor, to offer the suspect a referral to assessment and addiction services under this legislation.

Generally, this legislation decriminalizes drug paraphernalia used to introduce or inject a controlled substance into the human body. The *State v. Blake* response bill also encourages prosecutors to divert simple drug possession charges to assessment, treatment, or other services.

Impacts and considerations:

- 1) In lieu of booking suspects whose sole charge is drug possession into jail, Port Orchard Officers will generally refer these cases to the Prosecutor's Office, along with providing an individual a referral for services. However, no standardized method for referrals or tracking referrals has been implemented.
- 2) The City of Port Orchard is concerned that traditional paraphernalia-related items may be more prevalent in the community. The city will reach coordinate with our public works department to

educate them on the new legislation; this may impact them as related to cleaning up litter, debris, and other hazardous items. Training and additional personal protective equipment (PPE) may be required to provide for additional safety.

- 3) The law changing from a felony to misdemeanor offense will have an impact on the overall budget related to prosecution, defense, and jail.

Substitute Senate Bill 5066 - Duty to Intervene:

Any identifiable on-duty peace officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.

Any identifiable on-duty peace officer who witnesses any wrongdoing committed by another peace officer or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing. The definition of wrongdoing varies from agency to agency and is not clearly defined.

Law enforcement agencies are required to send notice to the Criminal Justice Training Commission of any disciplinary decision resulting from a peace officer's failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105.

Impacts and considerations:

- 1) The Port Orchard Police Department has had a policy requiring officers to intervene and report excessive force for many years. Any violations of this policy are now mandated to be reported to the Criminal Justice Training Commission.

Substitute House Bill 1223 - Uniform Electronic Recordation of Custodial Interrogations:

Requires that any custodial interrogation of an adult for a felony offense, or a juvenile of any offense, be electronically recorded starting January 1, 2022. There are limited exceptions to the electronic recording requirement (spontaneous statements, exigent circumstances, refusal by the interviewee, interview by another jurisdiction, reasonable belief that recording is not required, reasonable belief of safety concern, and equipment malfunction).

Impacts and considerations:

- 1) HB 1223 will increase local costs that are not provided for in the state budget nor were any funds provided to the City of Port Orchard for implementation of these requirements. Specifically, the purchase, deployment, use, storage, and management of body worn cameras

and other audio/video camera equipment and the associated public records and staffing costs will be paid for directly by the City of Port Orchard.

- 2) The Port Orchard Police Department will be providing a proposal to Council for the purchase and deployment of body cameras. Until then, officers will be required to conduct all interrogations with an individual in the back of a patrol vehicle with their city issued cell phone or be taken to the Police Department. The Port Orchard Police Department is in the process of purchasing an upgrade to the interview room that includes the ability to record both audio and video.

Engrossed Substitute House Bill 1140 - Juvenile Access to an Attorney

HB 1140 requires that a law enforcement officer provide a juvenile (under the age of 18) with access to an attorney for consultation prior to a juvenile waiving any constitutional rights if the officer: (a) questions a juvenile during a custodial interrogation; or (b) detains a juvenile based on probable cause of involvement in criminal activity or requests that a juvenile consent to an evidentiary search of their person, property, dwelling, or vehicle.

Requires the State Office of Public Defense to provide access to attorneys for juveniles contacted by law enforcement.

Impacts and considerations:

- 1) The City is concerned that juveniles will need access to an attorney expeditiously and the resources provided by the State Office of Public Defense may be insufficient.
- 2) A contact list of attorneys has not yet been developed by the State Office of Public Defense.
- 3) This essentially ends our ability to question a juvenile involved in any type of criminal activity.

Conclusion and Steps Forward

As law enforcement officers, we have sworn an oath to uphold the Constitution and enforce the rule of law. The role of police in our community is one that changes from year to year. Professional policing demands we respond to and provide the type of policing desired by our community. "One of the main issues is the shift to what types of calls to which we can or should respond based on societal expectations, case law and liability, and the specific law changes from the last session." (WASPC Executive Director's Newsletter June 13, 2021) To maintain public trust, we will professionally implement the new laws and provide the necessary training to our staff.

To ensure we have the resources available, when necessary, we will be implementing many changes to the way we respond to calls for service. The men and women of the Port Orchard Police Department remain committed to providing professional police services to our community. Those services are just going to look a little different and will not always include face-to-face contact with a uniformed police officer. As your law enforcement leader, it is my responsibility to make sure the community members we serve are aware of the level of service the police can provide under the new laws.

What has not changed is our mission. Our core values of **Service, Honor, and Integrity** still apply, and we will continue to do the right things for the right reasons. I have included some examples below of our new operational directives.

Service of court orders: While the law sometimes requires police to serve paper copies of court orders, our agency has offered to serve orders even when not legally required, as a courtesy. This practice will be changing, and service will now be completed by process servers. Law enforcement will only serve orders if required to do so by law or court order.

Welfare Checks: Basic welfare checks of community members not engaged in criminal activity will not result with a police response unless there are other circumstances present to suggest that the person is a potential danger to themselves or others. These calls will be screened, and the response will be based on the totality of the circumstances.

Suspicious Subjects: Calls will be screened but generally officers will no longer respond to calls of suspicious activity unless there is clearly articulated criminal activity. This will include suspected drug activity.

Juvenile Problems/Civil Issues/Disputes: Officers may not respond in-person to calls involving juvenile problems and civil disputes that are not criminal. As an alternative, officers will make phone contact and refer the involved parties to resources, which will soon become available on the Port Orchard Police Department webpage.

Trespass/Unwanted Persons: Officers will respond to unwanted subject calls and may assist in having unwanted persons removed from property if they are trespassing. However, officers may not respond in person to trespass people who have already left the property. Nor will they respond in person to trespass people when the property owner declines to assist with prosecution of a criminal offense.

Suicidal Subjects: Officers may not respond to suicidal subjects who are alone, who make threats through technology or social media, or in situations where the subject can be contacted by phone and provided with resources.

Officers will respond if the subject is in an open area accessible to the public or is armed and in a structure with other family members. Officers will protect those not involved and request a crisis communicator and/or a mental health professional.

Controlled Substances: Our courts have traditionally diverted controlled substance cases to treatment at sentencing. The new adopted practice will be to place the narcotics into evidence and refer the case to a prosecutor for charges (after the first two diversions.) Generally, no physical arrests will be made solely for possession of controlled substances. Until a call is screened to confirm that actual drug activity is occurring, officers will not respond to calls where it is only suspected. This will prevent the escalation of non-criminal activity.

The Port Orchard Police Department is developing and will continue to develop a website of community resources to assist in solving issues that require assistance outside of law enforcement.



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