

IN THESE HALLS...  
TRAINING THE GUARDIANS  
OF DEMOCRACY...

*We the People*



**Washington State  
Criminal Justice  
Training Commission**

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**Concise  
Explanatory  
Statement**

**DECEMBER 2021**

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**WAC 139-12 Independent Investigations Criteria**

*Law Enforcement Training and Community Safety Act  
Summary of rulemaking and response to comments*



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# Program Contact Information

This Concise Explanatory Statement is available on the Washington State Criminal Justice Training Commission's website at:

<https://cjtc.wa.gov/letcsa/resources-and-documents>

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## **I. Reason for Modifying the Rules**

The goal of this negotiated rulemaking period is to modify parts of Washington Administrative Code (WAC) 139-12 Law Enforcement Training and Community Safety Act – Independent Investigations Criteria. This WAC chapter implements and enforces parts of Initiative Measure No. 940 (I-940) passed in November 2018 and chapter 4, Laws of 2019 (Substitute House Bill 1064) signed into law February 2019, now referred to as the Law Enforcement Training and Community Safety Act (LETCSA). This Concise Explanatory Statement provides information about WSCJTC’s permanent rule modification in WAC chapter 139-12 regarding LETCSA and the requirements of independent investigations for law enforcement. Additionally, the Office of the Washington State Attorney General released an inquiry report regarding the I-940 independent investigations to determine “whether investigations into police use of deadly force have substantially complied with Washington’s independent investigation criteria since those requirements took effect on January 6, 2020.” The report analyzed police use of deadly force incidents and whether they complied with WAC 139-12-030. The WAC modifications also intend to address and rectify some of the findings from their inquiry report.

The Commission established criteria for independent investigations of deadly force in December of 2019. RCW 10.114.011 states that “Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard in RCW 9A.16.040 and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.”

Before WSCJTC files an adopted rule with the code reviser, the agency must prepare a Concise Explanatory Statement of the rule. Per RCW 34.05.325, the Concise Explanatory Statement shall:

1. Identify the reasons for adopting the rule;

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2. Describe the differences between the text of the proposed rule as published in the Washington State register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences; and
  3. Summarize comments received regarding the proposed rule and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

WSCJTC shall send the Concise Explanatory Statement to any person upon request.

## **II. Differences Between the Proposed Rule and Adopted Rule**

The difference between the proposed rule and the adopted rules is summarized below.

- **WAC 139-12-030 (2)(b) Transparency**

- Added “If an IIT uses their own conflict of interest form, the standards must meet or exceed the form provided by the Washington state criminal justice training commission;”
- Removed “c. Be present at the briefings with the involved agency(s) chief or sheriff;” to ensure consistency throughout the document as the limited briefings were removed in the proposed rules.

## **III. Summary of Rulemaking Activities**

Prior to submitting the CR-102 to the Code Reviser’s Office, Commission staff held four meetings with the “Statutory Stakeholders” group. The term “Statutory Stakeholders” refers to a group of representatives of stakeholder groups identified in RCW 43.101.455.

Stakeholders and community members submitted input via email and meetings. Written testimony was sent and reviewed by the Commission and WSCJTC staff ahead of the Commission meeting with public comment on the WAC rule changes.

#### IV. Comments and Input on the Proposed Rule

- COMMENT AND INPUT PERIOD

The public comment and input period for this rulemaking began on June 16, 2021 and ended December 8, 2021. Comments were received via email and mail. Input was also reviewed after hearing comments at Statutory Stakeholder and Commission Meetings.

- SUMMARY OF INPUT AND COMMENTS RECEIVED AND THE COMMISSION’S RESPONSE

Commission staff have reviewed and analyzed the input and comments received on the proposed rules in detail and have provided responses to them in the table below. The table is organized by category and illustrates where you may see the input in the rules. While this table represents a summary of input received, some individual comments may not be listed if the issue raised would be repetitive or of the same nature.

Comment Summary	
Independence	
Comment Received	Commission’s Response
<p>“Can all of that just be eliminated? Because that, to me, is very confusing and opens up the door for a whole bunch of confusion.” 07/07/2021 Statutory Stakeholder Meeting “The law does say that the investigations must remain separate.” 07/07/2021 Statutory Stakeholder Meeting “This is unprecedented to have that type of preliminary interference... It seems like we are wanting to treat police officers differently.” 07/07/2021 Statutory Stakeholder Meeting</p>	<p>WAC 139-12-030 (1)b. No information about the ongoing independent investigation of police use of deadly force will be shared with any member of the involved agency (<del>(, except limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the)</del>). <u>The administrative investigation of the involved agency must remain separate from the independent criminal investigation.</u></p>
<p>Several commenters expressed concern regarding removing the limited briefings from the rule. “Sheriffs and Chiefs need to know the</p>	<p>No action taken. The Commission took a vote on the proposed language in section 139-12-030 (1)b. and the proposed language passed.</p>



<p>basics so they can communicate to their community, and to respond to policy or training issues immediately if those are identified... These briefings provide important basic information about the incident, so the Sheriff/Chief knows what is going on in the community in which they serve. They are summary only and not detailed; the citizen representatives may attend to ensure transparency and limitation on what is shared- that is one key function of the representatives..."</p> <p>Letter to the Commission 08/31/2021</p>	
<b>Transparency</b>	
<b>Comment Received</b>	<b>Commission's Response</b>
<p>"A sheriff stopped by one day and we were talking about the work we were doing, and he said 'I was never confused about how many (representatives), I was confused about where they should come from. If an IIT comes from another region, should they bring the community representatives with them or should it be from the impacted community?' I said it should be from the impacted community." A verbal consensus check was asked, and the stakeholders present agreed with the change.</p> <p>07/19/2021 Statutory Stakeholder Meeting</p>	<p>WAC 139-12-030 (2)(b) A minimum of two nonlaw enforcement community representatives <u>from the impacted communities</u> will be assigned to each IIT.</p>
<p>"I believe they (conflict of interest statements) need to be in writing; we're doing ours in writing. You have to do them in writing. Period."</p> <p>06/16/2021 Statutory Stakeholder Meeting</p>	<p>WAC 139-12-030 (2)(b)b. Review <u>written</u> conflict of interest statements submitted within seventy-two hours of the commencement of each investigation by the investigators. <u>Agencies may use a standard conflict</u></p>

<p>“It seems like an overreach on the part of the Criminal Justice Training Commission to force agencies to use one form.” “I have had many agencies come to me with the same concern... The form is extremely broad and detailed... There is a challenge to have a form that is a one size fits all across the state.”07/19/2021 Statutory Stakeholder Meeting</p>	<p><u>of interest form developed by the Washington state criminal justice training commission. If an IIT uses their own conflict of interest form, the standards must meet or exceed the form provided by the Washington state criminal justice training commission;</u></p>
<p>Several commenters expressed concern with making the WSCJTC standard conflict of interest form discretionary. “I strongly oppose the change in the WAC to make the conflict of interest form discretionary. The need for uniformity in any documentation used to disclose conflict-of-interest, such as the form drafted by the Criminal Justice Training Commission, is necessary for obvious reasons. Manipulation of information to minimize certain work, personal or financial relationships of any officers being investigated, could result in a dishonest portrayal of facts tied to an investigation. Documentation uniformity allows for ALL pertinent or potentially pertinent information to be disclosed at the outset of an investigation, leading to a more just outcome, rather and a coverup.” Letter to the Commission 12/06/2021</p>	<p>No action taken. The Commission took a vote on the proposed language in section 139-12-030 (2)(b)b. and the proposed language passed.</p>
<p>This section was removed at the 12/08/2021 Commission meeting. It was unintentionally left in the document and approved to remove for consistency.</p>	<p>WAC 139-12-030 (2)(b)c. <del>Be present at the briefings with the involved agency(s) chief or sheriff;</del></p>



<p>“The way the confidentiality criteria are written, it scared more (community) away than anybody wanting to be involved. It needs to be reworded... If you want to get community (involved) put something out there that somebody not already friends with law enforcement would accept.” 06/16/2021 Statutory Stakeholder Meeting</p>	<p>WAC 139-12-030 (2)(b)f. <del>((If the confidentiality agreement is violated, the nonlaw enforcement representative may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW, Washington State Criminal Records Privacy Act. For the purpose of this chapter, "criminal background information" is the same as "criminal history information" as defined in RCW 10.97.030(4).))</del> <u>Any nonlaw enforcement representative or law enforcement officer found to have violated the confidentiality agreement will be subject to immediate removal from the team, as well as any future independent investigation.</u></p>
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**Credibility**

<b>Comment Received</b>	<b>Commission’s Response</b>
<p>“This language was added to make the document consistent with other proposed changes made earlier in the document on impacted communities.” “Community (in this section) would be individuals who would either offer names or were in discussion with the department informally, who could inform the process.” “This language gives opportunity for the chiefs and sheriffs and the community to come together and have some true collaboration on getting something meaningful done in the best spirit of how it can be done.” “Every sheriff is elected by the voters and every chief reports to an elected mayor or council.</p>	<p>WAC 139-12-030 (4)(c)(i) At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The chiefs <del>((and))</del>, <u>sheriffs, and community members</u> of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s) <del>((and/or))</del>, <u>sheriff(s), and community member(s).</u></p>

<p>Paying attention to the communities and reaching out to the correct or appropriate folks is something they will be held accountable to... I think this clarifies that in a very good way.”          “The chiefs, sheriffs, and community are coming together to create a process.” 07/19/2021 Statutory Stakeholder Meeting</p>	
<p>“The IIT rosters should be forwarded to WSCJTC... There should be a centralized system of choosing those individuals (community IIT members).”          06/16/2021 Statutory Stakeholder Meeting          “With regard to training, there (should) be consistent training to all of the community member representatives.” 06/16/2021 Statutory Stakeholder Meeting</p>	<p>WAC 139-12-030 (4)(c)(i) <u>The Washington state criminal justice training commission will post IIT rosters on the criminal justice training commission website from each region, which will be provided by the IITs. There shall be standardized trainings for nonlaw enforcement community representatives, including training on the requirements of the mandatory nondisclosure agreements.</u></p>
<p>Corrects the contents of the WAC with proper language.</p>	<p>WAC 139-12-030 (4)(c)(i) Ensure all applicants meet all time, rank, and training prerequisites described in <del>((chapter xxx WAC [WAC 139-12-030 (4)(c)(v)]))</del> (c)(v) of this subsection.</p>