Council Meeting Date: September 27, 2021 **Agenda Item:** 9(a)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion on 2021 Legislative Impacts on Policing
DEPARTMENT:	City Manager's Office Police Department
PRESENTED BY:	Shawn Ledford, Police Chief
ACTION:	____ Ordinance ____ Resolution ____ Motion _X__ Discussion ____ Public Hearing

PROBLEM/ISSUE STATEMENT:

Recent events, both locally and nationally, have prompted a significant degree of interest in policy issues, as well as proposals for change, related to law enforcement. The 2021 Legislative Session was the first attempt by state law makers to respond to those calls for change. The session resulted in several pieces of police reform becoming law, as well as the Legislature adopting new legislation to address the impacts of *State v. Blake*. Several other bills addressed tactics police can use, the degree of force an officer may use, and factors that law enforcement must consider before using any degree of force, among several other sweeping changes.

Tonight, Council is scheduled to review the highlights of the 2021 Legislative Session's impact on policing to understand how day-to-day operations have changed, what pieces of legislation the City is currently seeking clarity on, and how these changes may impact the City's 2022 Legislative priorities. Shoreline Police Chief Shawn Ledford will be joined by a panel of speakers to present the updates to Council, including Jesse Anderson, King County Sheriff's Office Chief of Patrol Operations; Erin Overbey, King County Sheriff's Office Legal Advisor; and Sarah Roberts, City of Shoreline Prosecutor.

RESOURCE/FINANCIAL IMPACT:

This item has no direct financial impact.

RECOMMENDATION

No action is required at this time. Staff recommends that Council ask questions about the 2021 Legislative session impacts on policing to the panel members.

Approved by: City Manager ***DT*** City Attorney ***MK***

INTRODUCTION

Recent events, both locally and nationally, have prompted a significant degree of interest in policy issues, as well as proposals for change, related to law enforcement. On May 25, 2020, the world saw the horrific killing of George Floyd, a Black man, at the hands of a white police officer. Although much focus was put on the George Floyd killing, it is only one example of multiple recent occurrences throughout the United States of the death of a Black individual as a result of the actions of a police officer. The killing of George Floyd has sparked local, regional, and national discussions about how law enforcement systems disproportionately impact people of color as a result of systemic racist policies and practices that have existed not only in law enforcement, but in the broader criminal justice system (courts, jails, legal systems) and other areas where social and racial injustice needs to be addressed, such as housing, health, education, and financial systems and policies. These recent events have prompted a significant degree of interest in policy issues, as well as proposals for change, related to law enforcement.

A recent statement from the Washington Association of Sheriffs and Police Chiefs (WASPC) acknowledged, “We recognize the hurt, trauma, and anger caused by a history in which our profession has often failed to live up to our own ethical ideals, particularly in our relationships with Communities of Color.” WASPC acknowledges that change is necessary and supports meaningful reform and a conversation about law enforcement that focuses on transparency and accountability, reduces barriers to discipline and termination, and ensures a fair and more equitable criminal justice system.

The 2021 Legislative Session was the first attempt by state law makers to respond to those calls for change.

BACKGROUND

The 2021 Washington State Legislative Session was a 105-day “long” session, where biennial Operating, Capital, and Transportation budgets are adopted. Adjournment, also known as *sine die*, was April 26th.

Included in this session were over 100 newly enacted bills relevant to law enforcement, as well as the Legislature adopting new legislation to address the impacts of *State v. Blake*. The Legislature passed several bills that address tactics police can use, the degree of force an officer may use, and factors that law enforcement must consider before using any degree of force, among several other sweeping changes that will impact how policing is done in Shoreline.

Criminal Justice and Police Accountability

The Legislature enacted several significant changes to the operations of law enforcement and the accountability of its officers:

- HB 1054 establishes limitations and requirements for police tactics and equipment,
- HB 1310 sets new standards for use of force by law enforcement,
- SB 5051 expands background investigations for applicants of law enforcement and corrections officer positions and also broadens the grounds for officer decertification,
- SB 5066 creates a duty for law enforcement officers to intervene and report any use of excessive force by another officer,
- HB 1267 establishes a new Office of Independent Investigations for the purposes of investigating the use of deadly force by law enforcement officers,
- HB 1089 provides the State Auditor's Office with the authority to conduct compliance audits of a law enforcement agency at the conclusion of a deadly force investigation, and
- SB 5259 creates a program to gather and report data collected from law enforcement agencies.

Given the magnitude of these changes, the Legislature also allocated a total of $20 million in one-time funding to cities to assist with costs related to implementing these changes. Shoreline received $228,506 for this purpose in late July 2021. The City Manager will be making a recommendation on how to spend these funds after understanding all the associated costs the City will have for implementation.

Criminal Justice and the Blake Decision

In a 5-4 decision early in the legislative session, the Washington State Supreme Court declared unconstitutional, as a violation of due process, the state's drug possession law because it criminalized passive conduct with no requirement to prove criminal intent (*State v. Blake*). Rather than move forward with no law against drug possession, the Legislature passed SB 5467, which makes possession of drugs such as LSD and heroin a misdemeanor instead of a felony and provides funding and policy direction for a transition to a more treatment-centered system for addressing substance use disorder. Some key features of this legislation include:

- The first and second time a person is caught with drugs, officers must refer the person for assessment and services rather than arresting them.
- A committee of experts will study the issue and make recommendations to the Legislature for a more permanent approach in 2023.
- $83.5 million in the budget to help state and counties manage the legal impacts of the Blake decision, and another $88.4 million to help establish the new programs. Of the $88.4 million, $4.5 million will go to help enhance municipal and district therapeutic courts.

Policing in Shoreline

Since the City of Shoreline incorporated in 1995, Shoreline has contracted for law enforcement services from the King County Sheriff's Office (KCSO). The mission of the Shoreline Police Department is "to be a trusted partner in fighting crime and improving the quality of life for our residents and guests." The KCSO contract allows contract cities, such as Shoreline, to interview and select their police chief from a list of qualified

candidates and to maintain control over policing priorities, including the degree of emphasis given to community engagement efforts.

The contract for police services is embodied in an interlocal agreement between the municipality and King County. The agreement sets forth specific details regarding chief selection, financial details (including contract cost adjustments and invoicing), services offered, processes for requesting additional services, contract oversight, dispute resolution, and contract termination. The agreement outlines the authority that may be exercised solely by the Chief, issues that require input and approval from KCSO, and issues that must be consistent between KCSO and the City. An Oversight Committee consisting of City Executives from the contract agencies, the Sheriff, a County Executive designee, and the Chair of the King County Law and Justice Committee, meets quarterly to administer the agreement.

The KCSO General Orders Manual includes the policies and procedures for delivering police services to the communities it services. The General Orders Manual is updated when there are new laws, and this must also be followed up with additional training to officers once new procedures have been established.

In 2020, Shoreline Police Department had 22,690 contacts and made 865 arrests. Out of these contacts, force, or a report of force, was used in 15 incidents. This equates to 0.06% of Shoreline Police Department contacts in 2020. A use of force report covers a broad range of force tactics. Pointing a firearm is considered a use of force, as is handcuffing someone if there's a complaint of pain. A taser application and any contact that results in a complaint of pain or injury is reported as a use of force. In the 15 Shoreline use of force incidents, three (3) resulted in a complaint of pain or injury, and in the other 12, there was no complaint of pain or injury. Of the three that did result in pain or injury, one was an officer involved shooting that resulted in death, one was a complaint of pain because of handcuffing, and one was a control hold that resulted in a complaint of chest pain.

DISCUSSION

In the 2021 legislative session, there were 100 newly enacted bills relevant to law enforcement. Some changes are significant and impact law enforcement's ability to proactively prevent crime and arrest criminals. It will take time to update KCSO policies and train officers on the impacts of the new legislation and how day-to-day police work changes. Much of the recently passed law enforcement reforms also relies on the transfer of current and historical services to non-law enforcement agencies and service providers, such as behavioral health providers and homeless services. It will likely take time for those providers to be fully able to take on this new work as well, though the Legislature does provide funding in some cases for such work to be done.

As a result of these reforms and the need for additional clarity, the public may notice changes in how law enforcement responds to calls. On the whole, the policing reforms may reduce the number of violent interactions between law enforcement and the public.

However, KCSO and the City is currently seeking additional information and clarification on some policing reforms, because as they are written they may have unintended outcomes that result in increased levels of confusion, frustration, victimization, and increased crime. If such clarification does not come from the Attorney General's Office or the courts, staff recommends Council seek clarification in the 2022 Legislative Session by adding these issues to the 2022 Legislative priorities scheduled to be discussed by Council in November 2021. The reforms and impacts to policing in Shoreline are identified in the sections below.

HB 1054 – Tactics

HB 1054 prohibits the use of chokeholds or neck restraints on another person (even where the use of deadly force is justified) and prohibits the use of a "no-knock" warrant. The bill prohibits a vehicular pursuit unless the officer has probable cause that a crime (violent or sex offence) has/is committed or that there is a reasonable suspicion of a DUI. The bill also prohibits law enforcement from acquiring or using military equipment. Additionally, the bill limits when officers can use tear gas and requires the highest-ranking elected official in a jurisdiction to authorize the use of tear gas against members of the public. Finally, the bill tasks the Criminal Justice Training Commission (CJTC) with developing a model policy and training program for police K9 units.

The KCSO GOM already banned the use of chokeholds and neck restraints but still gave consideration to these techniques if they were a reasonable less than lethal use of force. Now these tactics are completely banned. The GOM also significantly restricted vehicle pursuits due to the safety concerns they pose in dense neighborhoods and urban areas. Vehicle pursuits were only permissible in the event of a burglary or in a situation where there was an eminent threat, such as a person driving 100 mph down Aurora Ave N, where a deputy could stop then with a type of vehicle maneuver. This is now no longer allowed by law.

Due to the bill's prohibition of military equipment, KCSO officers have turned in their less lethal shot guns. For the purposes of this bill, military equipment is defined as firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons. The less lethal shot guns KCSO were using were .50 caliber and shot bean bags. Only officers who were specially trained could use this weapon, since if they were not used as directed the officers could cause a serious or deadly injury. Officers would use these shot guns in cases where an individual could not be subdued by another non-lethal method, such as a taser, due to distance or type of clothing worn by the individual.

Other cities have not turned these weapons in, citing that they believe the intent was not to limit less lethal options for physical force and that they would rather use these to try to save someone's life. KCSO has interpreted the law as written, and therefore stopped using their less lethal shot guns. Now a KCSO officer would need to possibly transition

to a firearm where they previously would have had a less lethal shot gun as a viable option.

If there is a future case where officers would recommend the use of tear gas, the Shoreline Mayor would need to authorize it against members of the public. The law provides this further clarity on when it can be used, and the KCSO's SWAT team is available to deploy tear gas after such directive from the Mayor.

Finally, KCSO already has a model policy and training program for police K9 units that complies with the intent of HB1054. K9 units already keep dogs on lead (on a deputy-held leash) while tracking and give verbal warnings of the use of the K9 unit to suspects. There are likely no changes in policy or practice for KCSO regarding their use of K9 units in the field.

Recommendation: If the issue of using less lethal weapons is not resolved prior to the 2022 Legislative Session, staff recommends that this issue be added to the City's 2022 Legislative Priorities.

HB 1310 – Use of Force

HB 1310 creates a statewide use of force standard and establishes an expectation of "reasonable care" for officers. The use of force standard includes requirements for verbal warning and de-escalation tactics as well as a requirement that officers use the minimal degree of physical force to address a situation that requires the use of force. The bill specifies the factors an officer must consider when using force and establishes criteria for the use of lethal force. Cities retain the ability to enact more stringent use of force standards.

The KCSO GOM defines physical force as the intentional application of force through the use of physical contact that does not rise to the level of deadly force but is greater than de minimis physical contact. Physical force includes hitting or striking with any body part or an object, the use of any chemical agent, and any intentional physical interaction that could reasonably be expected to cause pain or injury. Nothing in the GOM prohibits a deputy from making an investigative detention (Terry Stop), if the suspect stops voluntarily, and conducting a pat down search for weapons (frisk) in compliance with the GOM provided that the detention and frisk does not require the use of physical force. A lawful pat down search for weapons of a compliant subject is not considered a use of force under this directive. However, if the suspect leaves, officers can no longer detain them even if they have reasonable suspicion for a crime.

By July 1, 2022, the Attorney General will develop and publish a model policy on law enforcement use of force and de-escalation tactics, and law enforcement agencies are required to submit their model policies to the Attorney General as well. The Attorney General will then publish a report of the model policy by December 31 of each year.

HB 1310 also requires basic training provided by the CJTC to be consistent with the use of force requirements and limitations of the bill and the Attorney General's model policy on the use of force and de-escalation.

Reasonable Suspicion Versus Probable Cause: As a result of HB 1310, a deputy may only use physical force when necessary to:

- Protect against criminal conduct where there is probable cause to make an arrest; or
- Effect an arrest; or
- Prevent an escape as defined in RCW 9A.76; or
- Protect against an imminent threat of bodily injury to a peace officer, another person, or the person against whom force is being used.

A deputy may use physical force when necessary to protect against criminal conduct where there is probable cause to make an arrest but probable cause for Obstructing a Law Enforcement Officer, absent other factors listed herein, shall not be used as the sole justification for using physical force.

The inclusion of probable cause is a critical piece of this change because previously officers could use reasonable suspicion instead of probable cause as the basis for their use of physical force. Probable cause is a state of mind derived from a composite of facts, circumstances, knowledge, and judgment that would persuade a cautious, but disinterested police officer to believe a crime is occurring or has occurred and the accused person is committing or had committed the crime. That state of mind is more than "mere suspicion or reasonable belief" but less than "beyond a reasonable doubt." The standard applied is that of a police officer, recognizing that officers may also consider information given to them in training or derived from police work experiences. Keep in mind that the burden of probable cause is easier to meet when applying for permission in advance from a court (e.g., warrant) to do something, than when a court looks back in judgment on police activity taken based on probable cause without prior court permission.

Reasonable suspicion is specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct. A police officer may have reasonable suspicion that a crime is being committed if based on all of the facts and circumstances of the situation, a reasonable police officer would have the same suspicion. The police officer does not need physical evidence in order to have reasonable suspicion. Instead, the presumption of reasonable suspicion is made based on the officer's training, the circumstances of the situation, and what other officers would do in similar circumstances. If a police officer has reasonable suspicion, he may briefly stop the person involved (the person must stop voluntarily), but an officer may not make an arrest based on reasonable suspicion alone. For example, if a driver is driving erratically, swerving between lanes, and failing to stop for traffic signals, a police officer may have reasonable suspicion that the driver is drunk. The officer may pull the driver over, but the officer may not arrest the driver unless there

is further evidence of drunk driving to establish probable cause for the arrest. If after being pulled over a driver fails a sobriety test, that may provide probable cause for an officer to make a drunk driving arrest.

Before the police can arrest someone or get a search warrant, they must have probable cause to make the arrest or to conduct the search. The Fourth Amendment of the U.S Constitution references probable cause as a necessary component of a search or seizure of property and before a person is taken into police custody. Specifically, the Fourth Amendment reads:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Thus, probable cause is left to the courts. The courts have established that probable cause is a higher standard than reasonable suspicion. Probable cause "requires a showing that the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed" (*State v. Barron)*. In another case, "probable cause boils down, in criminal situations, to a simple determination of whether the relevant official, police or judicial, could reasonably believe that the person to be arrested has committed the crime" *(State v. Neeley)*. Such a determination relies on the totality of facts and circumstances known by the officer at the time of the arrest. It is "grounded on a practical, nontechnical" review of the facts. Probable cause means that the police officer not only has a suspicion that a crime has been or is being committed, but that the police officer also has actual knowledge that the crime has been or is being committed. In other words, there must be evidence that supports a police officer's suspicion that a crime has been committed before he can have a search warrant issued and/or make an arrest.

Guidance from the Criminal Justice Training Commission (CJTC) asks an officer to consider what particularized, articulable facts and circumstances exist that would lead a reasonable person to believe that a particular person did commit, or is committing, a particular crime wherein all elements of the crime are satisfied. Based on this guidance and KCSO's interpretation of HB 1310, Shoreline officers have changed how they respond to calls for services. For example, Shoreline Police recently responded to a call for service in the middle of the night by a person who saw on their security camera what appeared to be someone stealing their neighbor's catalytic converter. When police arrived, they could not detain the person because they did not have probable cause, though they did have reasonable suspicion (the description of the individual matching the description given by the person who called 911). To establish probable cause, the officers would have needed the person who called police to identify the suspect as the person they saw on their security camera or the vehicle owner to have stated that they did not ask someone fitting the suspect's description to work on their car. With no one to

confirm the suspect and the inability for the police to use physical force to detain the individual on reasonable suspicion while probable cause was determined, the individual left the scene and officers were unable to make the arrest.

KCSO is still in a period of evaluation regarding the understanding of probable cause as related to HB 1310 and their use of physical force. Ensuring that law enforcement are using a definition of probable cause aligned with the law will only happen once it is established by the courts and new case law can be referenced. There have yet to be any court cases since HB 1310 was effective. KCSO chiefs do not want their officers to be the test case for HB 1310 and have been clear that officers must no longer use reasonable suspicion as their rational for using physical force.

Duty of Reasonable Care: In addition to the implications of probable cause, the Duty of Reasonable Care created in this bill impacts an officer's ability to use physical force. Duty of Reasonable Care states that when using any force, officers shall use the least amount of force necessary to overcome resistance under the circumstances, in consideration of the characteristics and conditions such as medical condition; pregnancy; age; signs of mental, behavioral, or physical impairments of disabilities; perceptual or cognitive impairments related to substance abuse; suicidal ideations; language barrier; or the presence of children. When "possible" (safe and feasible), an officer shall exhaust available and appropriate de-escalation tactics prior to using any force, such as:

- time, distance, and cover;
- calling for additional resources, including back-up officers and/or crisis intervention teams or mental health professionals;
- designating one officer to communicate with the subject;
- taking as much time as necessary, without using physical force or weapons; and/or
- 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.

The use of physical force must be terminated as soon as the necessity for such force ends. Continual assessments by those involved are important and must be communicated so all involved know when to stop.

KCSO officials have interpreted these limitations on use of force as instructions not to engage with people until there is a threat of imminent harm or a crime has been committed, is being committed, or is about to be committed. This means officers will respond to assess the situation to determine if there is a threat of imminent harm, but if not, they often do not have a basis to take further action with a person in mental health crisis or enter a person's home without permission to conduct welfare checks unless a clear crime has been committed.

Officials in the Washington State Attorney General's Office have refuted claims by law enforcement agencies that the legislation prevents them from responding to non-criminal calls. Assistant Attorney General Shelley Williams and Deputy Solicitor General

Alicia O. Young issued a memo in response to a request from Rep. Jesse Johnson (Federal Way) and Rep. Roger Goodman (Kirkland) asking for clarification in response to multiple law enforcement agencies interpreting the law in the same way as KCSO. "Washington statutes and case law recognize responding to community caretaking calls as part of a law enforcement officer's duties," the memo reads in part. "Bill 1310 does not prohibit peace officers from responding to community caretaking calls, including mental health calls." The memo calls specific attention to language in HB 1310 that permits officers to use force when necessary to "protect against an imminent threat of bodily injury" to the officer, person in question, or someone else. "[That language] indicates the statute anticipated that officers may respond to calls that do not involve a crime," the memo says. The Attorney General's memo, however, is not a formal advisory opinion.

Until such time as more clarity exists, KCSO officers will respond differently than they historically have to welfare checks and mental health calls where there is no imminent threat or crime. For example, there was a recent call for service to a suicidal female who had slit both her wrists. When officers arrived, she told them she did not want anything to do with them and locked herself in her apartment stating they would need a warrant for her to come out. No knife was present and imminent threat could not be determined even after a call to off-duty command staff. Officers removed themselves from the immediate area after attempting to make contact with her, at which time the female came outside to start arguing with her boyfriend. She collapsed and became unconscious. Her boyfriend picked her up and brought her to officers pleading for them to help her now that she could not resist. Officers began lifesaving measures including calling for an aide car, which brought her to a hospital where she was treated for excessive blood loss. Had she not come outside and collapsed with officers nearby she might have died. Prior to HB 1310, officers would have kicked in the apartment door immediately after she went inside and probably would have needed to use physical force to restrain her. She would have then been transported by an aide care to the hospital. She would have been rendered first aid as soon as it was safe to do so and would likely not have suffered as much blood loss as she did.

Recommendation: Preserving the sanctity of human life is at the heart of HB 1310. If further clarification does not come before the 2022 Legislative Session, staff recommends working with the Washington Association of Sheriffs and Police Chiefs (WASPC) to develop recommendations for the legislature to consider clarifying HB 1310 with the intent of providing police with the tactics needed to arrest suspects of crimes and serve the most vulnerable members of the community.

SB 5051 – Decertification

SB 5051 requires departments to conduct broader background checks for officers before hiring them, including checking with previous departments for any discipline history or misconduct investigations. It also expands civilian representation on the CJTC and requires the commission to maintain a publicly searchable database of officers, what agency they work for, what conduct has been investigated and the disposition. SB 5051 also broadens the grounds for officer decertification. Decertification is the process

by which a State authority determines that an individual should not be allowed to continue exercising the duties and privileges of a law enforcement officer.

While some believe broadening the grounds for decertification to be a potentially powerful mechanism for ensuring integrity in law enforcement, it is already showing signs of impacting proactive policing among officers across Washington State. Officers are reluctant to make a mistake and are unclear as to what actions would be subject them to decertification. Where supervisors historically used the standard of if an officer acted in good faith, it is now unclear if "acting in good faith" would be considered. Officers acting in good faith would receive corrective action, such as counseling, additional training, written reprimand, and discipline. The threat of decertification is significant, as officers do not know if a violation of one of the new legislative measures or existing laws would lead to decertification. Officers and their law enforcement agencies are unwilling to be the test case to help clarify this issue and therefore are waiting for calls for service rather than engage in proactive policing.

Recommendation: Along with clarifying the use of force standards in HB 1310, staff recommends that the legislature clarify their intent for the change in standards for officer decertification and advocate for use of a standard for an officer acting in good faith.

SB 5066 – Duty to Intervene

SB 5066 require law enforcement officers to intervene if they witness another officer using excessive force in an encounter. The legislation also provides training for officers through the CJTC and requires law enforcement agencies to have written policies on the new duty to intervene.

The KCSO GOM already covered an officer's duty to intervene and duty to report misconduct. The GOM states that any identifiable, on-duty KCSO commissioned personnel who witnesses another peace officer using, or attempting to use, excessive force against another person shall, when in a position to do so, intervene to stop the use of excessive force and prevent the further use of excessive force. For purposes of this directive, "identifiable" means wearing a uniform or other clothing and/or accessories that make the person easily identifiable as a law enforcement officer. These interventions can be verbal but may also be physical. Commissioned personal who witness any wrongdoing committed by another peace officer or has a good faith reasonable belief that another peace officer has committed wrongdoing, shall report such wrongdoing to their immediate supervisor or another supervisor if their immediate supervisor is unavailable. This extends to reporting officers from other agencies, though excludes federal law enforcement officers or federally commissioned tribal police officers, regardless of whether such conduct is allowed under that agency's policy.

HB 1267 – Office of Independent Investigations

The Legislature passed HB 1267, establishing the Office of Independent Investigations (OII) within the Governor's Office. The purpose of the office is to conduct fair, thorough, transparent, and competent investigations of police use of force and other incidents involving law enforcement. The OII will be staffed by a director as well as an

investigator, as chosen by the director. The two will be classified as limited authority police officers with the ability to investigate any case within the jurisdiction of the OII. Beginning July 1, 2022, the OII is authorized to conduct investigations of deadly force cases occurring on or after July 1, 2022, including in-custody or out-of-custody deadly force incidents.

KCSO is already subject to the intent of HB 1267 through the Office of Law Enforcement Oversite (OLEO) which was created in 2006 after the recommendation of King County Sheriff's Blue Ribbon Panel, whose authority has expanded in the years since its founding. There is likely little impact to the KCSO due to this change.

HB 1089 – Audits of Investigations

HB 1089 provides the State Auditor's Office with the authority to conduct compliance audits of a law enforcement agency at the conclusion of a deadly force investigation. The Auditor can conduct audits to determine if agencies are compliant with all applicable state laws, policies, and procedures.

KCSO is already subject to the intent of HB 1267 through the Office of Law Enforcement Oversite (OLEO) which was created in 2006 after the recommendation of King County Sheriff's Blue Ribbon Panel, as stated in relation to HB 1267.

SB 5259 – Law Enforcement Data Collection and Reporting

SB 5259 creates a program at Washington State University (WSU) to gather and report data collected by law enforcement agencies. The bill expands the kind of data and incidents that must be collected. The intent to creating a statewide data collection program that creates a publicly accessible database to track metrics is to help to promote openness, transparency, and accountability; build stronger police-community relations; improve trust and confidence in policing services; evaluate specific areas of concern such as biased policing and excessive force; and ultimately improve the quality of policing services. It is currently unknown what kind of funding will be available for police departments to comply with the data collection and reporting to the statewide program and if the statewide program will be funded well enough to meet the bill's intent.

Recommendation: Staff will be following the WSU program development and funding model as well as the requirements of police departments. Depending on available funding, staff may recommend that the Council advocate for KCSO to provide more funding for the WSU program to ensure KCSO compliance.

SB 5476 – *State v. Blake*

On Feb. 25, 2021, the Washington Supreme Court issued a decision declaring the state's main drug possession statute RCW 69.50.4013(1) unconstitutional and "void." The ruling occurred in a case known as *State v. Blake*. In 2016, Shannon Blake was arrested in Spokane and convicted of simple drug possession. Blake argued that she did not know there was a baggie of methamphetamine in the jeans she had received from a friend. The court ruled that the statute violated the due process clause of the

constitution. Without any mental state requirement, the law criminalized "unknowing" drug possession and people could be arrested and convicted even if they did not realize they had drugs in their possession. The majority concluded, "The legislature's police power goes far, but not that far."

The repercussions to the Supreme Court decision include the invalidation of simple drug possession convictions for nearly 100 individuals incarcerated and nearly 7,000 individuals who were sentenced to community supervision on a simple possession conviction. It also calls for the potential resentencing for nearly 2,600 individuals incarcerated and nearly 3,900 individuals who are serving community supervision on a simple possession and an additional conviction(s).

Other matters remain unclear, including whether Legal Financial Obligations (LFOs) that were paid by those convicted of simple possession must be reimbursed. The King County District Court (KCDC) is viewing the decision as retroactive and is attempting to determine what the impact to cities like Shoreline will be if this is the case. However, there an issue with whether counties have the necessary data related to LFOs to process reimbursements. Data collection systems have changed numerous times since the *Blake* statute was put in place in 1971, and it is unknown if documentation exists regarding the amount of LFO ordered, the amount paid, and the amount paid related strictly to *Blake*. Who the burden of proof of payment belongs to – the person convicted or the courts – will significantly influence the decision's financial impact on cities. The expected monetary impact of the ruling is significant, with the Washington State Association of Counties estimating that it will be a "$100 million issue" statewide. This is in large part because of the potential LFO repayment but also due to potential resentencing, which is occurring at a time when courts are already backlogged because of the disruption caused by the COVID-19 pandemic.

Several bills were introduced to amend the unconstitutional statute with technical "fixes." Ultimately the Legislature passed SB 5476, which recriminalizes drug possession, although makes it a misdemeanor instead of a felony. Additionally, before an individual can be charged with a crime, they must be diverted to services at least twice. These changes to the law will only be in effect until July 1, 2023, unless the legislature or voters change the law again. This is accomplished via a procedure called a sunset clause. If the law is not changed, simple drug possession for controlled substances would become non-criminal again in July 2023 as a result of the *Blake* decision. Possession of drug paraphernalia is decriminalized with no sunset provision. SB 5476 also provides new funding for services and diversion. It tasks the Washington State Health Care Authority with convening an advisory committee and creating rules for a "plan" on how to provide services to people with substance use disorders.

Diversion and Criminal Penalties: The legislation requires law enforcement officers who encounter an individual in possession of a controlled substance to offer a diversion to seek a substance use disorder assessment and treatment services. The first two interactions by law enforcement must result in such a diversion. Further contacts allow the officer to offer diversion but does not mandate that the officer do so. If an officer

arrests and pursues a misdemeanor charge, the prosecutor is not required to prosecute. The prosecutor may offer diversion or move forward with prosecution.

An immediate challenge faced by law enforcement agencies implementing the *Blake* decision was tracking diversions offered to individuals. Since the decision, Washington State Patrol's SECTOR system has been made available to law enforcement agencies to track diversion attempts for narcotics possession statewide. SECTOR is the same system all Washington State law enforcement agencies use for traffic citations and to document collisions. Individuals contacted in Shoreline will be referred to the Washington Recovery Help Line and be given an referral card with the agency's contact information. Deputies will document encounters with individuals and include, if known, if the diversion referral is a first or second diversion for an individual. This report will then be included in SECTOR.

This is a significant change from previous practice by KCSO deputies in Shoreline and now includes the Shoreline City Prosecutor instead of the King County Prosecutor's Office. Previously KCSO deputies would arrest an individual who was in possession of a controlled substance. They would provide probable cause documentation to the King County Prosecutor, who, after reviewing the documentation, would determine whether or not to charge the individual with a felony, which was prosecuted by King County. This shift changes not only the process, but also the workload for and costs incurred by cities since it is now a misdemeanor. Cities now bear the cost burden of prosecution, potential jail time, and court costs (both traditional and potential alternative sentencing courts) as a result of this legislation.

The ability to charge an individual with a misdemeanor for possession of a controlled substance will expire July 1, 2023, and state law will automatically revert to whatever the law states on that date. This gives time for the committee to make recommendations on how to address the long-term impacts of *Blake*, which are due by December 2022, and allows the 2023 Legislature time to enact the recommendations. It is unclear as to whether a local government can pass its own criminal drug possession laws. The Legislation has clear authority to pass legislation that clarifies state laws related to substance abuse disorders, which local governments would have to follow.

Further complications to policing drug activity generally and in relation to *Blake* is other legislation passed by the Legislature. For example, without being able to stop and detain an individual by using physical force (such as using handcuffs on an uncooperative suspect), an officer may be unable to document a diversion or check for previous diversions and therefore be unable to arrest an individual for possession of a controlled substance because the individual will not provide identification to the officer. While the Legislature may be attempting to connect individuals with treatment before prosecution, the unintended consequences of HB1310 would prevent officers from forwarding charges to the prosecutor in some cases. Some individuals contacted by Shoreline Police are already refusing to give the officer their name, which prevents the officer from documenting a diversion. While the individual police are making contact with may not be concerned with this, Shoreline residents reporting such activity may be.

Substance Abuse Treatment Investments: The Washington State Health Care Authority (HCA) is charged with establishing a recovery services advisory committee to create a substance use recovery services plan. The purpose of the plan is to implement measures to assist those with a substance use disorder in accessing outreach, treatment, and recovery support services that are low-barrier, person-centered, informed by people with lived experience, and culturally and linguistically appropriate. Additionally, the committee must make recommendations regarding the appropriate criminal legal system response, if any, to possession of controlled substances. It must also make recommendations regarding the collection and reporting of data that identifies the number of people law enforcement officers and prosecutors engage with regarding drug possession, and the design of a mechanism for referring people with a substance use disorder, or who display problematic behaviors resulting from substance use, to supportive services. A final plan is due to the Legislature by December 1, 2022.

The HCA will also establish several other plans and programs, including:

- A comprehensive statewide substance misuse prevention plan. As a part of this plan, the HCA must administer a competitive grant process for existing local community efforts to prevent substance misuse. The plan must be completed by January 1, 2024.
- A grant program to provide treatment for low-income individuals with substance use disorder who are not eligible for Medicaid. Grant distribution must begin by March 1, 2022.
- A grant-based homeless outreach stabilization transition program. Grant distribution must begin by March 1, 2022.
- Funding for behavioral health administration services organizations to establish recovery navigator programs. These programs will provide community-based outreach, intake, assessment, connection to services, and, as needed, long-term intensive case management and recovery coaching services to individuals with substance use disorders.
- An expanded recovery support services program that increases regional access to recovery services for substance use disorder such as housing, employment training, recovery coaching, and legal support.

It is currently unclear if people currently receiving treatment or due to receive treatment through the criminal legal system will lose access to these services. Some drug court participants are no longer subject to court supervision and therefore could lose access to those services, since the underlying charges will be dismissed. However, efforts are being made to ensure that individuals who want services can access them through other non-criminal channels. That said, the non-criminal channels are already being hit extremely hard and are experiencing service delays due to staffing shortages and budget cuts. Individuals impacted by this situation are being encouraged to reach out to the service providers they have been working with or contact the Washington Recovery Help Line.

Officer Training: By July 1, 2022, the Criminal Justice Training Commission must develop new training for law enforcement officers on how to manage interactions with people they encounter with substance use disorders, including referral to treatment and recovery services as they are available. The training will be incorporated into the curriculum at the Basic Law Enforcement Academy.

Funding for Cities' Implementation: In addition to the $83.5 million in the state's budget to help the state and counties manage the legal impacts of the *Blake* decision, SB 5476 includes another $88.4 million to help establish the new programs outlined above. Of that $88.4 million, $4.5 million will go to the Administrative Office of the Courts (AOC) to help enhance municipal and district therapeutic courts. AOC opened a grant program for this purpose on September 7, 2021, and will close it on September 28, 2021. AOC expects the average grant award to be $200K. King County District Court is not anticipating applying at this time for their existing therapeutic court services. There are no direct appropriations to cities to offset the costs of diversion and prosecution.

Recommendation: The Association of Washington Cities is collecting information from member cities and closely monitoring updates on this issue. Staff recommends that the City follow the Association of Washington Cities work on this issue and possibly adopt all or some of their 2021 Legislative Priorities related to clarifications needed for implementing the *Blake* decision. Staff is also recommending that the City work with other North King County Cities to seek state funding for substance abuse treatment facilities and/or access to substance abuse treatment programs for residents of Shoreline and other North King County cities.

Association of Washington Cities 2022 Legislative Committee Recommendation

AWC's Legislative Priorities Committee met over the summer and recently wrapped up its work to recommend a set of 2022 legislative priorities for the AWC Board's consideration. The Board will consider the committee's recommendations at its September 24 meeting and take final action to adopt 2022 priorities.

The Legislative Priorities Committee considered more than two dozen issues. It ultimately recommended three as 2022 priorities, along with a host of issues deemed significant (one step down from priority). Included as significant were the *Blake* decision and law enforcement use of force. AWC's draft recommendations are as follows:

> *Blake* decision – Advocate for direct funding for cities to administer diversion programs related to misdemeanor drug possession cases handled by city law enforcement and now adjudicated in municipal courts, as well as Medication-Assisted Treatment (MAT) services, therapeutic courts, and a diversion tracking database.
>
> Law enforcement use of force – Support clarification of the civil standards for use of force requirements so law enforcement can better understand the state requirements and know when they can use force to intervene in a situation, including a mental health crisis where a crime is not being committed.

AWC plans to share the final list of priorities and significant issues, as adopted by the AWC Board of Directors, in October.

KCSO Current Challenges

In the face of these changes, KCSO if facing a number of other challenges that make implementation of these legislative changes even more difficult. The current Sheriff is in the last months of their term and will be replaced by a yet to be determined leader appointed by the King County Executive, which leads to a vacuum of executive leadership in the KCSO and no clear direction and implementation regarding these changes. Officer vacancies are at an all-time high with little to no hiring of new recruits occurring. While KCSO intends to fully comply with the legislation and work with officers to implement, it will take time to ensure that officers are receiving the correct training and support to understand how to conduct their day-to-day police work under these new laws.

SUMMARY

The 2021 Legislative Session resulted in many, sometimes conflicting, attempts at police reform in Washington State. Many of these bills will bring greater transparency to policing, which may help with future reforms and training to address racial bias of officers that impact those who are Black, Indigenous, and/or other Person of Color. Others have unintended consequences that, without further clarity, will likely continue to have the chilling effect on policing that cities like Shoreline have already seen. This is caused by the high volume of legislative changes, coupled with the lower bar for police officer decertification and lack of clarity needed by officers to do their day-to-day work. A reasonable officer who wants to do the right thing and not make a mistake is now waiting to receive a call for service or only get involved when a clear crime has been committed rather than proactively police where they may run afoul of the new legislation. No officer wants to be the test case for the new legislation where they could not only be decertified but could also be charged with a crime.

The City Council has the opportunity to influence the 2022 Legislative session to allow for less lethal weapons; to clarify use of physical force tactics in community policing (response to mental and behavioral health calls); to possibly advocate for full funding of data collection and reporting of police incidents; and to seek state funding for substance abuse treatment facilities and/or access to substance abuse treatment programs.

COUNCIL GOAL(S) ADDRESSED

This work addresses Council Goal 5, Action Step 4 from the Council's adopted 2021-2023 Council Goals and Work Plan:

> ***Goal 5****: Promote and enhance the City's safe community and neighborhood programs and initiatives*

Action Step 4: *Support efforts to improve public safety by incorporating best practices and model policies for use of force, de-escalation training and police accountability*

RESOURCE/FINANCIAL IMPACT

This item has no direct financial impact.

RECOMMENDATION

No action is required at this time. Staff recommends that Council ask questions about the 2021 Legislative session impacts on policing to the panel members.