



July 31 2021

Greetings from your Executive Director:

I know that each of you continues to train, enact policies, manage expectations, and communicate about all of the changes in the new laws which went into effect July 25. WASPC continues to work to help find solutions to concerns presented to law enforcement and communities.

As we have sent out to you before, on July 1, we requested the sponsors of the legislation to ask the Washington Attorney General for clarification on 19 specific questions related to ambiguities in HB 1054 and HB 1310. A link to that communication, and a follow up, are here: [July 1, 2021](#) and [July 19, 2021](#). Keep in mind that only certain identified entities, such as legislators, can statutorily request an Attorney General's opinion. While we believe that the only way to properly address the unintended consequences, conflicting provisions of law, and ambiguities is by legislative action to change the law, we are hopeful that an Attorney General's Opinion can be helpful in establishing a unified understanding of what has already been enacted. We understand that an Attorney General's Opinion does not carry the weight of law, but it's the best option we have available until the Legislature reconvenes. We will advise if and when the opinion is officially requested.

There has also been a lot of discussion about response to behavioral health calls, and the difficult policy decisions required of the agency and the individual officers and deputies. The impacts of the new police reform laws have dominated the news this past week. Across the state, Chiefs and Sheriffs have been working in their communities to help the public understand these significant changes. Unfortunately, there are others accusing law enforcement of misinterpreting the laws and purposefully not responding to calls. This battle of differing narratives is not constructive to our goal of good public policies and clarity, so our teams know what is expected and how to do the job. It is important to highlight that these interpretations are driven by your legal advisors. Across the state, legal advisors agree that comments, statements, and interpretations by advocates, legislators, or others have no legal effect on what the law says or how agencies must abide by it.

There is one area that some agencies have interpreted to mean they can't respond when there is no suspicion of criminal activity and no threat of physical harm. To be clear, no agency is prohibited from responding to any call for service in HB 1310 or any other statute. The decision by a law enforcement agency to respond, or not, should be made on a case-by-case basis with consideration of available resources and agency priorities.

This interpretation appears to come from a provision in HB 1310 (now cited as Chapter 324, Laws of 2021) relating to the Duty of Reasonable Care – specifically Section 3 (2)(a). There is language at the end of that subsection (a) that reads “and leaving the area if there no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed.”

After exploration of this issue, here are some considerations for you to review with your legal advisor. We also note that WASPC's opinion carries no weight of law, WASPC does not give legal advice,

and Sheriffs and Chiefs make their own decisions for their own agencies after consulting with their own legal advisors-- always.

1. Agencies are not prohibited by Chapter 324, Laws of 2021, or any other statute (recently enacted or not) from responding to any call for service. What an officer is allowed to do while on scene is now substantially different, but we see nothing that prohibits or otherwise limits the ability for an officer to respond to any call for service.
2. Agencies might, on a case-by-case determination, choose not to respond. For example, if there are more pending calls than officers available to respond to them and the other pending calls each have a higher public safety need, agencies will likely choose to not respond to the crisis call, for example, in order to be able to respond to those higher priority calls.
3. Agencies should be careful about making a policy-level determination to not respond to certain calls for service – crisis calls, welfare checks, and civil standbys/assists being the most commonly cited examples. Making such a determination in advance, and not on a case-by-case basis could subject an agency to an allegation of violating the Public Duty Doctrine; speak with your legal advisor.
4. Agencies should, after considering available resources and agency priorities, attempt to respond to calls even when there is no suspicion of criminal activity and no threat of imminent harm. Many agencies have adopted a "Respond, assess and depart if appropriate" approach.
5. Again, depending on your legal advisor and their interpretation, an officer may only be required to leave the scene if there is no suspicion of criminal activity, no threat of imminent harm and the officer is contemplating the use of physical force. Section 3 (1) of that same newly enacted law establishes four circumstances where a peace officer can lawfully use force. The first three circumstances all require probable cause of a crime, and the fourth requires an imminent threat of bodily injury. One interpretation would indicate that Section 3 (1) together with Section 3 (2)(a) relating to the duty to leave, it appears as if the duty to leave the area would only apply when an officer was contemplating the use of force where such use of force is not lawful (no PC for criminal activity and no threat of imminent harm).

We will continue to provide as much information (not legal advice) as we can in this dynamic and challenging environment, with your legal advisors providing the best legal guidance to each of you. If your agency's legal advisor has provided you with written legal advice or guidance that supports an interpretation that your agency is specifically prohibited or somehow limited in what calls you can respond to, James McMahan is interested in seeing that interpretation and asks that, if you're willing and able, to email that written advice/guidance to him at james@waspc.org

There has also been much discussion about the intent of the legislature to allow use of force on ITAs and behavioral health calls. Some of that discussion has centered around the statement that because the enabling language of ITAs was not repealed, that it means there is no ambiguity. It is worth noting that we advocated for several amendments to police reform measures in the 2021 legislative session. Many of the amendments we supported sought to avoid the types of confusion, ambiguity, and conflict we are experiencing today, including whether or not the legislation would allow a law enforcement officer to use force to carry out an involuntary detention for a person in crisis (ITA). Most of the amendments we sought, like the one on involuntary commitments, were rejected by the Legislature.

Below are two examples of WASPC supported amendments:

Proposed amendment in the Senate Law & Justice Committee - [Amendment text](#) and [Video](#)

Proposed amendment on the Senate floor - [Amendment text](#) and [Video](#).

Big picture- the challenges keep coming, and managing these changes externally and internally are as difficult as ever. We continue to support balanced and positive reform as long as it supports public safety. Among all the news stories and the coverage over the past week, I was very impressed with the very balanced, informative, and thoughtful coverage done by the Associated Press in this [story](#) in which the author writes, "Washington State is embarking on a massive experiment in police reform." It's a good overview of where we are- and as leaders we will continue to work to achieve some better level of balance.

In the midst of all this, last week Sheriff Atkins' team at the Clark County Sheriff's Office lost Sergeant Jeremy Brown to a line of duty death. The memorial service for Sergeant Jeremy Brown will commence at 1:00 pm on Tuesday, August 3rd, 2021. Location for the service is:

Ilani Casino Resort
1 Cowlitz Way
Ridgefield, WA 98642

The service will be open to the public. Here is a [link](#) to the procession preceding the memorial service.

In speaking with Sheriffs and Chiefs these past few weeks, it is clear to me that these challenges weigh on our agencies, the people and families who work for you, and each of us. Please make sure you are taking care of yourselves, those close to you, and your well-being. We will continue to work together on these challenges- public safety is too important. Again, thank you for all you do...

Stay Safe,

- Steve