

EATONVILLE POLICE DEPARTMENT

LEGISLATIVE POLICE REFORM



PREPARED BY
CHIEF JASON LALIBERTE

JULY 2021

CONTENTS

02

INTRODUCTION

04

POLICE TACTICS

07

USE OF FORCE

09

BLAKE DECISION

10

DUTY TO INTERVENE

11

RECORDING INTERVIEWS

12

ATTORNEYS FOR JUVENILES

14

GOING FORWARD

15

CHANGES TO POLICE RESPONSE AND PROCEDURE

INTRO

This report is designed to update the Eatonville community on legislative changes pertaining to police reform and the impact that these changes could have on the delivery of police services. Some of the changes outlined in this report could be perceived as contradictory to the expectations of our community, but we must adapt to the changes laid out by the legislative body of government, which is comprised of officials who are elected by the People.

The Eatonville Police Department's (EPD) mission is to provide professional law enforcement services to its community. We will navigate these changes and continue to provide services that put the safety of all community members first. In order to provide the professional law enforcement services that our community demands and deserves, officers have selflessly sacrificed their own safety and have engaged in difficult situations with courage, honor, and integrity. The Eatonville Police Department hires professional officers who want to selflessly serve our community. Police officers perform their jobs believing that all persons have a legal obligation to comply with the law and to not resist arrest, attack a law enforcement officer, or continue to commit crimes against our community. In the town of Eatonville, we also believe in accountability for all members of our community.

Since the summer of 2020, there have been demands across the country for police reform. Those reforms call for better training and more accountability for police officers.



Although the residents of Eatonville have historically expressed overwhelming support for EPD officers, state legislation has forced our hand in adopting these reforms.

Adapting to these changes will affect 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.

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.” Themes coming out of this legislative session mandate that not every call to 911 be handled by law enforcement—while there is no other emergency contact number to call but 911. 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.

Law enforcement officers have operated for decades with the expectation that community members have an obligation to comply with the lawful orders of police officers, not resist a lawful arrest, not attack police officers and not continue acts of violence towards other community members. The accountability for community members who resist arrest or attack police officers is being shifted from community members to law enforcement officers, who are now responsible for preventing attacks and resistance through de-escalation techniques and the assistance of mental health professionals.

Washington currently ranks 50th in the nation for law enforcement officers per capita (USA Facts, 2021), with only 1.45 officers per 1,000 people (Torres, 2019). In 2019, Washington was 6 out of 10 when ranking the top 10 states with the most overworked police officers. Since at least 2019, the Eatonville Police Department, which has had the full support of the mayor and town council, has operated consistently within Washington standards, maintaining an average of 1.4 officers per 1,000 citizens.

The recently passed “use of force bill” clearly states that “it is the fundamental duty of law enforcement to preserve and protect human life.” Mandates throughout the legislation adopted this year emphasize that the police should avoid using force to protect property and situations where there is not probable cause to affect an arrest. 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 chose not to cooperate.

In the past, officers had the legal authority to detain individuals during what is commonly known as a “Terry stop,” while investigating criminal activity. Now, we have to be prepared for more challenges to police responses and investigations, since individuals who do not cooperate could undermine an investigation and ultimately require police to invest more resources.

The following is a summary of the Legislature’s new laws and how they may impact 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.

POLICE TACTICS

ENGROSSED SUBSTITUTE HOUSE BILL 1054

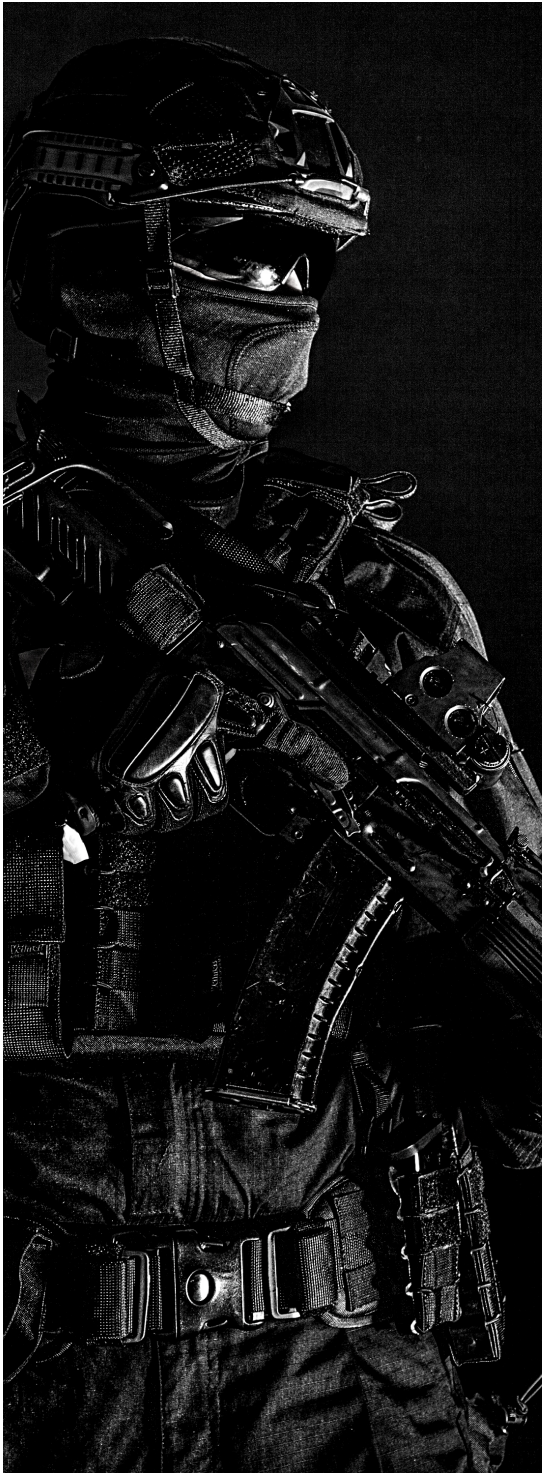


This police tactics bill formally prohibits police from using choke holds and neck restraints, even though "choke holds" have never been an authorized use of force except in cases where deadly force needs to be used.

When properly applied, a neck restraint, such as the vascular neck restraint (VNR), is an invaluable tool that can render a combative subject unconscious without any injury or long-term effects. The use of VNR during a fight greatly reduces the risk of injury to both the subject and the officer. The elimination of VNR as a de-escalation

tool now places the officer into a situation where the he/she may need to use greater force to gain control, effect an arrest, or in the worst case scenario, defend against death.

In various forms of media, the VNR is routinely misrepresented and confused with the "choke hold." During this past legislative session, law enforcement representatives attempted to educate legislators on the differences between VNR and "choke holds," and emphasized the dangers of banning VNR and not recognizing it as a de-escalation tool. Legislators declined to amend the bill.



HB1054 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), and vehicle pursuits, and establishes uniform standards for officers.

The language of this bill seemingly contradicts another bill (HB1310), which encourages officers to use non-lethal options in use of force encounters. For example, police deploy non-lethal bean bag rounds from shotguns. While HB1310 seems to support this non-lethal force tactic by police, HB1054, by some interpretations, bans police from using shotguns because shotguns are larger than .50 caliber. Police also deploy other less-lethal projectiles using 40mm single-shot launchers. Arguably, state law classifies these launchers as firearms, making their use impermissible. We say “by some interpretations” because there is still much debate amongst police agencies in our region as to whether or not shotguns and 40mm launchers are prohibited in this language.

Beyond these issues, perhaps the biggest impact this bill has on the Eatonville community is the restriction of vehicle pursuits. A “pursuit” means that a person has fled from police and an officer is using increased speed and/or driving tactics in order to stop the vehicle.

Under this new law, Police Officers may now only pursue a vehicle if:

There is probable cause to believe that a person in the vehicle has committed, or is committing, a **violent offense** or sex offense; or

There is reasonable suspicion that a person in the vehicle is driving under the influence

VIOLENT OFFENSES

Manslaughter (1st & 2nd degree)

Indecent Liberties (if committed by forcible compulsion)

Kidnapping (2nd degree)

Arson (2nd degree)

Assault (1st & 2nd degree)

Extortion (1st degree)

Robbery (2nd degree)

Drive-by Shooting

Vehicular Assault

Vehicular Homicide

Escape from a Detention Facility

Escape from Electronic Home Monitoring or Custody

IMPACTS & CONSIDERATIONS

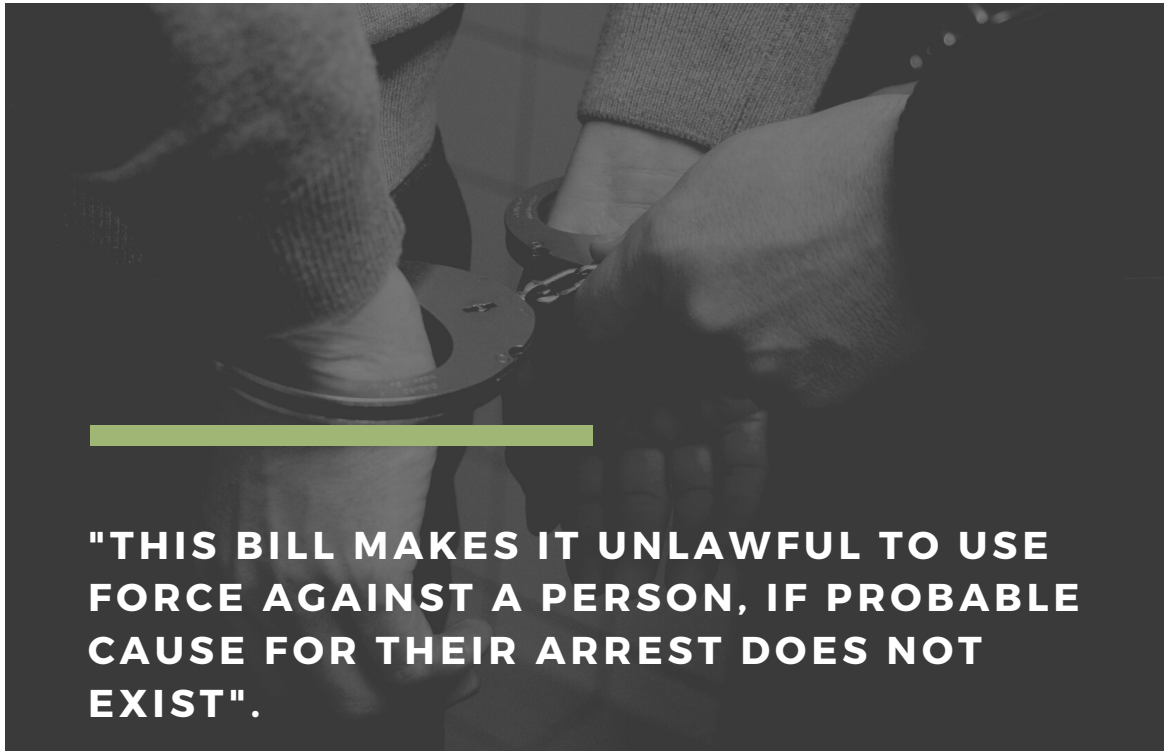
The Eatonville Police Department will be issuing the directive prohibiting choke holds and neck restraints which is now required under this legislation for all agencies; however, as a matter of Department policy, it will continue to allow the neck restraint/choke hold ONLY in instances of deadly force.

In the event of non-violent offenses, such as residential burglary or an auto theft, police will respond to write a report, gather information and evidence, and interview persons with information. Police can no longer pursue fleeing vehicle suspects in cases that do not involve specific violent or sex offenses.

The Eatonville Police Department will be developing a reporting system to collect information regarding the limits on the law enforcement response, any complaints received, and the impact on criminal enforcement.

USE OF FORCE

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1310



"THIS BILL MAKES IT UNLAWFUL TO USE FORCE AGAINST A PERSON, IF PROBABLE CAUSE FOR THEIR ARREST DOES NOT EXIST".

This legislation states that "the fundamental duty of law enforcement 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.

IMPACTS & CONSIDERATIONS

This legislation introduces challenges for the Eatonville Police Department because of the resources that will now be needed to arrest a person who has demonstrated that he/she is likely to resist arrest. Police routinely face uncertain circumstances, with nearly limitless possibilities, that can be dangerous for officers and the public. It is nearly impossible to predict who will resist arrest or when. The primary challenge of this new law is that, despite this uncertainty that police officers face, use of force is only authorized in four narrow circumstances (as listed above in section 3-1-a).

Eatonville Police Officers are often dispatched to provide security on calls where a potentially combative individual is experiencing a medical event. Medical staff will now need to take primary responsibility for these non-criminal calls.

This bill makes it unlawful to use force against a person if probable cause for their arrest does not exist. It The Washington State Association of Sheriffs and Police Chiefs (WASPC) opines that the charge of "obstructing a police officer" can be utilized in the absence of probable cause and in the most appropriate circumstances; but they caution officers against overusing or abusing this charge. The circumstances must be thoroughly documented and supported within the "obstructing a police officer" statute.

This is extremely problematic as a majority of the calls for service require police officers to detain subjects in order to conduct an investigation and develop probable cause for an arrest.

For example, when officers respond to domestic violence calls, probable cause for arrest of the primary aggressor is often not determined until a thorough investigation can be completed. This includes conducting interviews and viewing evidence. If a subject chooses to leave and not cooperate with the investigation, force may be required in order to detain that person. As the bill is written, it would be unlawful for the officer to use force. The officer would need to rely on the "obstructing" statute, which is still being debated amongst attorneys.

Deadly force has always been clearly defined in statute, but use of force, outside of deadly force, has not. There is debate about the definition of "force," and how the term is being used in the new legislation. The lack for formal definition creates an environment of subjectivity and interpretation, which can vary amongst police agencies.

BLAKE DECISION

ENGROSSED SENATE BILL 5476

Following a decision from the State Supreme Court in *State v. Blake*, the knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription has been reduced from a felony to a simple misdemeanor. In lieu of booking a drug possession suspect into jail and referring their case to the prosecutor, law enforcement officers are now required to offer the suspect a referral to drug treatment and services.

Generally speaking, this legislation also decriminalizes the possession of drug paraphernalia (ex: needles, pipes, straws).

The *State v. Blake* response bill also encourages prosecutors to divert simple drug possession charges to assessment, treatment, or other services.

IMPACTS & CONSIDERATIONS

In lieu of booking suspects, whose sole charge is drug possession, into jail, Eatonville officers will generally refer these cases to the prosecutor's office, and will also provide a referral for drug treatment.

The Eatonville Police Department is working with other local law enforcement agencies to develop a referral and tracking system to help individuals access services and to also hold people accountable for crimes under this legislation.

"Personal use" amounts are not defined by legislation and can vary greatly.

A subject who was recently arrested by EPD was in possession of 96 grams of methamphetamine. Prosecutors were not able to charge the subject with felony possession, due to SB5476, and the charge was reduced to a misdemeanor. The charges were subsequently dropped.

DUTY TO INTERVENE

SUBSTITUTE SENATE BILL 5066

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.

IMPACTS & CONSIDERATIONS

For at least the last 10 years, the Eatonville Police Department has a policy on the books that requires officers to intervene and report excessive force. The information will now be reported to the Criminal Justice Training Commission.

RECORDING INTERVIEWS

SUBSTITUTE HOUSE BILL 1223



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 & CONSIDERATIONS

HB 1223 creates an additional unfunded mandate that will increase local costs. We will not receive any funds for the implementation of these requirements. Specifically, the purchase, deployment, use, storage, and management of body worn cameras; as well as other audio/video camera equipment and the associated public records and staffing costs will be paid for directly by the Town of Eatonville.

The Eatonville Police Department is working with the town council to obtain and deploy body cameras.

ATTORNEYS FOR JUVENILES

ENGROSSED SUBSTITUTE HOUSE BILL 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 & CONSIDERATIONS

We are concerned that a potential unintended consequence of this bill may be that juveniles, who are already vulnerable due to their age, may be recruited to participate in adult criminal enterprises, such as gang activity, drugs sales and carrying weapons.

The Town is also concerned that juveniles will need access to an attorney expeditiously and the resources provided by the Office of Public Defense may be insufficient.

Essentially, we are now prohibited from questioning any juvenile involved in any type of criminal activity.

It possibly eliminates officer discretion and the ability to problem solve with the juvenile.

WHAT CAN I DO

AS A MEMBER OF THE COMMUNITY?

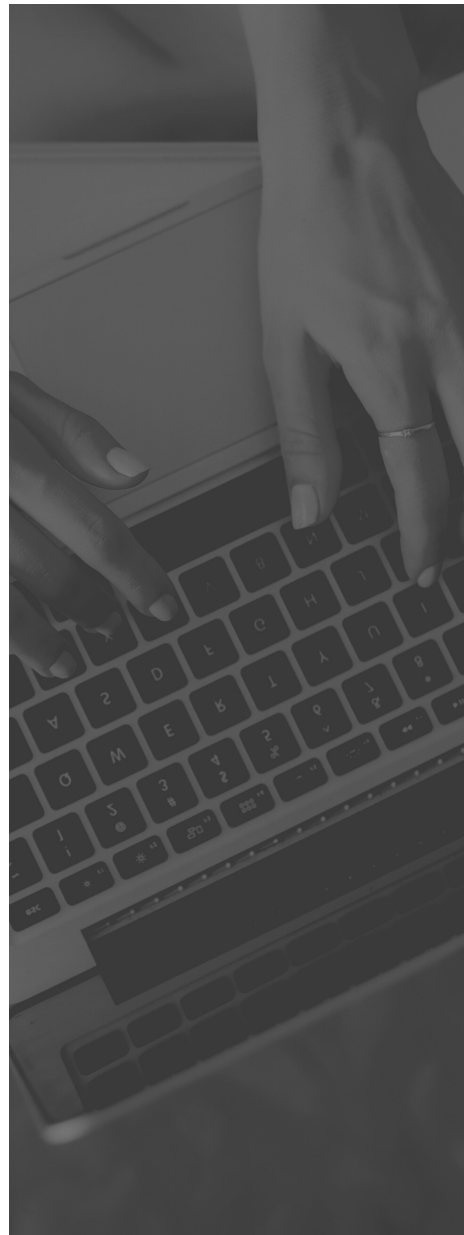
**SHARE YOUR CONCERNS
WITH YOUR LEGISLATORS**

**INCREASE YOUR AWARENESS
OF CRIMINAL ACTIVITY**


**TAKE STEPS TO REDUCE
YOUR RISK OF BECOMING A
VICTIM**

**BE AWARE OF THE
LEGISLATIVE CHANGES**

**CONTACT EPD IF YOU HAVE
QUESTIONS**



GOING FORWARD



The role of police in our community changes over time. Professional policing demands that we respond to and provide the type of policing that is demanded by our community. Communities elect officials to be their voice. In this situation, state legislators are that voice. During this past legislative session, legislators have declared that "it is a fundamental duty of law enforcement to preserve and protect all human life" and they have restricted the use of physical force to incidents where there is an imminent threat of bodily harm to a peace officer or another person. Legislation also prohibits law enforcement from engaging in vehicle pursuits for anything less than a violent felony crimes.

When combining the language of these bills with the charging standards of the Pierce County Prosecutor's Office, it can be concluded that police should find alternatives to arrest for property crimes if making that arrest is going to result in a use of force.

While law enforcement officers are expected to use professional conduct with all contacts, it is impossible to predict when someone might resist a lawful arrest, physically assault a law enforcement officer, or continue criminal acts against others in our community. We need to reassess the resources that are available to law enforcement in order to comply with the new legislation while still enforcing the law.

To ensure we have the resources available when necessary, we will be researching changes to the way we respond to calls for service. We will be consulting with our partnering agencies and collaborating on best practices.

The men and women of the Eatonville Police Department remain committed to providing professional police services to our community. Those services may look a little different and won't always include face-to-face contact with a uniformed police officer.

CHANGES TO POLICE RESPONSE AND PROCEDURE

THEFT/SHOPLIFT UNDER \$250

In an attempt to avoid use of force encounters for minor property crimes, the Eatonville Police Department may request the business' security personnel identify suspects and pursue civil restitution.

SERVICE OF COURT ORDERS

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

INVOLUNTARY COMMITTALS

Officers are being directed to use mental health professionals for mental health related calls. We may encourage mental health facilities to have their own DCR or DMHP on staff to facilitate the involuntary commitment process.

MISDEMEANOR CRIMES

Based on House Bill 1310, officers are required to exhaust alternatives to physical force, when possible. Many misdemeanor offenders (and some felony offenders also) are released by the local courts without bail after their arrest for the offense or a warrant for failing to appear in court. This places a disproportionate amount of risk on the officer, agency, and the Town when considering an arrest for a misdemeanor crime; therefore, the Department may not make physical arrests in certain misdemeanor cases. Exceptions include DUIs and DV-related offenses that require mandatory arrests.

WELFARE CHECKS

Basic welfare checks of community members not engaged in criminal activity may not result with a police response unless there are other circumstances that suggest the person is a potential danger to themselves or others.

SUSPICIOUS SUBJECTS/CARS

Officers may no longer respond to calls of suspicious activity unless there is clearly articulated criminal activity. This will include suspected drug activity.

JUVENILES & CIVIL DISPUTES

Officers may no longer respond in-person to calls involving juvenile problems and civil disputes that are not criminal. As an alternative, officers may make phone contact and refer the involved parties to resources.

TRESPASSING & UNWANTED PERSONS

Officers may 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. They may not respond in person to trespass people when the property owner declines to assist with prosecution of a criminal offense.



SUICIDAL SUBJECTS

Officers may no longer 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 may 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

The newly adopted practice will be to place the narcotics into evidence, refer the subject to a treatment center/resources and/or refer the case to a prosecutor for possible charges. Generally, no physical arrests will be made solely for controlled substances. Officers may not respond to calls of suspected drug activity. This will prevent the escalation of non-criminal activity.

TRAFFIC ENFORCEMENT

Amid the push for equity related to traffic enforcement, an emphasis may be placed on violations that are an overall threat to public safety such as excessive speed, impaired driving, and traffic light violations, instead of equipment and registration violations.

NOISE COMPLAINTS

Noise complaints at multi-family housing complexes may be reported to property managers instead of the police. Property managers within the town have the ability to work with EPD officers to resolve problems with repeat offenders. Property managers have more authority to hold tenants accountable for their actions when they are a nuisance to neighbors than the police do.

REFERENCES

Lofstrom, B. M. (2021, February). *Public Policy Institute of California*. Retrieved from <https://www.ppic.org/publication/law-enforcement-staffing-in-california/>

Torres, K. (2019, February 20). *Safewise*. Retrieved from The 10 States with the Most Overworked Police Officers : <https://www.safewise.com/blog/the-most-overworked-police-officers-by-state/>

USA Facts. (2021, April 28). *USA FACTS*. Retrieved from Police Departments in the US Explained: <https://usafacts.org/articles/police-departments-explained/>

YOUR LEGISLATORS

Senator Jim McCune (R)

2nd Legislative District
360-786-7602

Representative Andrew Barkis (R)

2nd Legislative District
360-584-9846

Representative J.T. Wilcox (R)

2nd Legislative District
253-329-5194

