



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Yakima Valley Special Investigations Unit – The Luis Birrueta Case

**Use of Deadly Force Incident on February 17, 2023, by the Yakima County
Sheriff's Office**

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Office of the Washington State Auditor

Pat McCarthy

January 27, 2025

Interim Chief Shawn Boyle
Yakima Valley Special Investigations Unit

Report on Use of Deadly Force Investigation Audit

Attached is the official report on our audit of the investigation into the use of deadly force on February 17, 2023, that resulted in the death of Luis Birrueta.

The audit assessed the Yakima County Sheriff's Office's and the Yakima Valley Special Investigations Unit's compliance with state laws and rules regarding independent investigations of police use of deadly force as defined in WAC 139-12-030.

Our independent audits provide essential accountability and transparency regarding police use of deadly force investigations. These audits are valuable to the Legislature, law enforcement agencies and the public in assessing police accountability efforts.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Use of Deadly Force Investigations Program Manager Michael Huynh at (564) 999-0831.

Pat McCarthy, State Auditor

Olympia, WA

cc: Monica Alexander, Executive Director, Criminal Justice Training Commission
Steve Strachan, Executive Director, Washington Association of Sheriffs and Police Chiefs
Hannah Fauchald, Assistant State Auditor

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EXECUTIVE SUMMARY

Results in Brief

Yakima Valley Special Investigations Unit (YVSIU) investigators and officers involved in the use of force incident complied with many requirements to ensure the investigation into Luis Birrueta's death was independent, transparent, credible, and communicated to the public timely, as state laws and rules require. These actions included, but were not limited to, securing the scene of the shooting, updating the family on significant developments throughout the investigation, and issuing a public update during each week of the investigation.

The audit found instances where YVSIU did not follow state regulations, as well as opportunities to improve its documentation to demonstrate compliance. Specifically, we found YVSIU did not:

- Select two community representatives to participate in the investigation. Only one was selected
- Provide Birrueta's family with advance notice of press releases in seven weeks out of the 16-week investigation, or maintain documentation it provided notice in seven other weeks
- Restrict its case file to participating YVSIU members in the first five days of the investigation
- Maintain documentation demonstrating it provided the community representative with advance copies of press releases
- Maintain documentation to demonstrate that the community representative completed a confidentiality agreement

We also did not find documentation in the case file indicating the supervisors of two witness officers directed them to not speak about the shooting until they provided statements to YVSIU.

Additionally, YVSIU's conflict of interest assessment included questions about work and social relationships with the involved officer, as well as potential biases, but it did not "meet or exceed" the Criminal Justice Training Commission's (CJTC) standard form. In past audits, we recommended the CJTC issue guidance on how an IIT's assessment could meet or exceed the requirements. The CJTC responded that IIT-developed forms need to elicit the same responses as the standard form's questions.

Recommendations

We recommend YVSIU:

- Assign two community representatives to participate in each investigation
- Provide the community representatives and the family with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so
- Ensure that access to the case file is properly limited to YVSIU members participating in the investigation as soon as possible
- Ensure community representatives sign a confidentiality agreement at the start of each police use of deadly force investigation, and maintain documentation that they did so
- Work with the CJTC to develop a conflict of interest assessment that meets or exceeds the CJTC's requirements

We recommend YVSIU's member agencies give administrative orders to involved and witness officers to not speak about the case before providing statements to YVSIU, and maintain documentation that they did so.

BACKGROUND

Use of Deadly Force Incident

The following summary of events is based on the investigation's case files:

On February 17, 2023, at about 11:30 a.m., Grandview Police officers responded to a noise complaint at an apartment complex.

Two officers arrived and heard a man, later identified as Luis Birrueta, yelling from an apartment. An officer went to the front of the apartment and saw Birrueta through a shattered window. The officer asked Birrueta how he was doing. Birrueta said he was doing good, but then grabbed a gun off a table. The officer told Birrueta to drop the gun, but he did not. The officers retreated to the parking lot and requested backup. Officers from the Sunnyside Police Department, the Yakima County Sheriff's Office, the Mabton Police Department, and the Washington State Patrol responded.

During the nearly 40-minute standoff, officers asked Birrueta to drop the gun and come outside so they could help him. Birrueta yelled at them, and fired a shot at the ground outside the broken window and another one inside his apartment. Later, Birrueta reached out of the window and waved the gun around, pointing it at the ground and the officers multiple times. Birrueta shot the ground again, and then pointed the gun at the officers. In response, Deputy John Duggan shot Birrueta once in the head.

Birrueta fell back from the window. Officers yelled at him to come out with his hands up, but he did not respond, so they used a drone to look through the window. Birrueta was lying on the ground unresponsive. Officers kicked down the apartment door, handcuffed Birrueta, and provided aid until paramedics arrived. Paramedics declared Birrueta dead at the scene.

The Yakima Valley Special Investigations Unit (YVSIU), an independent investigation team (IIT) that investigates police use of deadly force incidents in Yakima County, responded to the shooting. Investigators with the Yakima Police Department led the investigation with assistance from the Moxee and Selah police departments.

On June 6, 2023, YVSIU presented its investigation to the Yakima County Prosecutor Attorney's Office. On November 18, 2024, the YVSIU commander confirmed with the prosecutor that he had reviewed the case and that he would not file charges against Duggan.

Independent Investigation Teams

Voters approved Initiative 940 in 2018. It ensures that one of an IIT's key functions is to investigate police use of deadly force incidents. The initiative requires investigations of police use of deadly force be conducted by an agency completely independent of the one with the involved officer(s). Regional IITs allow law enforcement agencies to respond quickly to use of deadly force incidents

while keeping the involved agency out of the investigation. IITs are made up of command staff, detectives and other crime scene investigators from law enforcement agencies in a given region. An IIT also consists of volunteers, called non-law enforcement community representatives, who help give the community perspective during an investigation.

Washington has 17 IITs throughout the state. Many of these teams existed before recent police reform and accountability laws, including Initiative 940, and allowed law enforcement agencies to pool resources for major investigations. Prohibiting the involved agency from participating in these investigations was meant to improve their impartiality and independence by preventing people who are more likely to have a personal relationship with the involved officers from investigating the incident.

The initiative tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. The CJTC adopted Washington Administrative Code (WAC) 139-12-030, which requires independent use of deadly force investigations to meet four key principles:

- Independence – the involved agency cannot have undue influence or the appearance of undue influence on the investigation.
- Transparency – community members are able to assess whether the investigation is conducted in a trustworthy manner and complies with the standards defined in state laws and rules.
- Communication – the IIT must communicate the investigation’s progress to the public and family of the person killed or harmed by police use of deadly force.
- Credibility – use of deadly force investigations follow best practices for criminal investigations, and investigators meet necessary training requirements and demonstrate ethical behavior and impartiality.

Audit Objective

State law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm.

To determine whether the Yakima County Sheriff’s Office and YVSIU complied with state laws and rules in the investigation of the death of Luis Birrueta, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members, including the community representative assigned to the case. We assessed the involved agencies’ and IIT’s compliance with each of the requirements under the key principles in WAC 139-12-030. This included whether the IIT followed the CJTC’s published best practices for conducting homicide investigations.

This report outlines the steps the investigation team took to meet each of these key principles. **Appendix A** contains information about our methodology.

AUDIT RESULTS

Appendix A outlines our Office's authority and methodology for this audit. In short, state law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm. Our charge is to assess whether the investigations complied with relevant rules and laws. The audit only reviewed the investigation. It did not assess the incident itself or whether the use of force was justified.

Independence

To help ensure the investigation was conducted independently of the involved agency, YVSIU investigators assumed control of the scene upon arrival and excluded investigators from the Yakima County Sheriff's Office. The shooting occurred at about 12:15 p.m. We reviewed investigative reports and found the Grandview Police Chief requested YVSIU's response within 40 minutes of the shooting. At about 1:30 p.m., the YVSIU commander and lead investigator arrived at the apartment complex, and they assumed control of the investigation after a Sheriff's Office lieutenant briefed them.

Transparency

YVSIU selected one community representative to participate in the investigation and involved her in most of the required processes. However, WAC 139-12-030 requires IITs to include at least two community representatives in each investigation. Community representatives are volunteers, not law enforcement agency employees, who provide community perspective on key processes in use of deadly force investigations. They must complete a confidentiality agreement and have access to the completed investigation file.

YVSIU assigned one community representative to the investigation on the day of the shooting. The commander said the IIT usually only asks one representative to participate in an investigation because it has been difficult getting two representatives to respond to requests.

We spoke with the community representative assigned to this investigation. She said she met with the commander at the scene on the day of the shooting, and remembered signing a confidentiality agreement later that day. However, YVSIU could not find a copy of the signed form, so we could not confirm whether she signed one.

We also asked the representative if she knew she could access the completed case file, and she said she did. The YVSIU commander also said the entire case file is available to anyone by public records request, in accordance with state law.

Communication

YVSIU followed some of the communication requirements in the WAC. The WAC requires the involved agency or IIT notify the family of the person who was killed or injured by the use of force and update them on significant developments. The IIT must also post weekly public updates on the investigation's progress, even if there is no new information to report. Community representatives and the family must receive advance notice of these press releases.

After the shooting, Birrueta's relatives came to the scene and spoke with YVSIU investigators. The family confirmed Birrueta lived in the apartment where the shooting occurred. The commander assigned a family liaison on the day of the shooting, and the liaison spoke with Birrueta's family that day. We found the liaison communicated with the family frequently during the investigation and updated them on significant developments.

YVSIU issued a public update during each week of the investigation, but did not provide Birrueta's family with notice of press releases during seven weeks of the 16-week investigation. The commander said he forgot to give the family advance notice in the early weeks of the investigation, but emailed them an advance copy in the remaining weeks. YVSIU did not have documentation showing that it notified the family in seven of the remaining weeks, so we were unable to determine if the family received notice in those weeks. We were also unable to determine if the community representative received advance copies of press releases. The case file did not include any documentation of the representative receiving advance copies, but she said YVSIU emailed her an advance copy of each release.

The Yakima County Sheriff's Office and YVSIU did not provide criminal background information about Birrueta to the media. The WAC prohibits IITs and involved agencies from providing to the media criminal background information about the person who was killed or injured by police use of deadly force. We reviewed each press release, online news articles, and the social media profiles of the Yakima County Sheriff's Office and the Yakima Police Department, and did not find any indication that either the involved agency or YVSIU provided criminal background information to the media.

Credibility

Crime Scene Investigation

The involved agency and responding agencies secured the scene of the shooting. The officers put up crime scene tape, guarded the scene's perimeter, and maintained an entry and exit log to the scene.

Investigators located and preserved evidence from the shooting. Investigators photographed the scene and mapped it with a scanner. They collected evidence, including Birrueta's gun and seven shell casings.

Investigators photographed Duggan at the Yakima County Sheriff's Office and the three witness officers at the Grandview Police Department. Investigators also counted the remaining rounds in all their firearms.

The team collected body-worn camera footage from Sheriff's deputies and Grandview police officers, including Duggan and two witness officers. Investigators also collected video footage from a neighbor whose home surveillance system recorded Birrueta being shot.

Interviewing Involved Officers and Witnesses

After the shooting, a witness officer removed Duggan from the scene, but we were unable to determine if any of the witness officers discussed the case with each other before they provided statements to YVSIU investigators. The CJTC's best practices require involved officers to be separated and removed from the scene, and they prohibit involved and witness officers from discussing the case with any other witnesses until they provide statements to the IIT.

After the shooting, a witness officer removed Duggan from the immediate scene and assigned a peer support officer to stay with him. The peer support officer transported Duggan to the Sheriff's Office where he waited to be contacted by YVSIU investigators. Body-worn camera footage showed that the three witness officers stayed near the scene, and they were around each other for several minutes before being taken away. Uninvolved officers drove two of the witnesses together to the Grandview Police Department and the other to the Sheriff's Office. Most of the body-worn camera footage did not include audio, so we were unable to determine if the witness officers discussed the case while on scene or enroute to the police station.

On the day of the shooting, the Yakima County Sheriff's Office sent an administrative leave letter to Duggan and one witness deputy; they both declined to provide a statement at that time. The letter included orders to the deputies to not discuss the incident with anyone besides their attorneys and guild representative. About five weeks after the shooting, investigators interviewed Duggan and the witness deputy. The interviews were audio recorded.

The two other witness officers agreed to interviews on the night of the shooting.

Before the shooting, officers evacuated people in homes around Birrueta's apartment to keep them safe from potential gunfire. However, one witness told a State Patrol trooper providing scene security that he saw parts of the incident leading up to the shooting, and was willing to provide a statement to investigators. The trooper provided the person's information to YVSIU investigators.

Case File Integrity

The case file was not restricted to only YVSIU investigators at the start of the investigation. During an active investigation, the WAC requires an IIT's case file to be restricted from everyone except for IIT members involved with the investigation. YVSIU requested to restrict the case file to IIT members involved in the investigation on the day of the shooting. However, it was not restricted until five days later because an IT employee was not available. We reviewed access logs for the Birrueta investigation and found that a sergeant at the Zillah Police Department and a detective

with the Grandview Police Department accessed the case before the restrictions were put in place. The sergeant could not recall the reason why he accessed the case. The detective said one of Birrueta's family members came to the police department and he only would have accessed the case to give her the case number for a public records request.

We did not find evidence that any YVSIU members received prohibited information during the investigation. The WAC prohibits IIT members from remaining on an investigation if they receive compelled information that could contaminate the investigation.

Conflicts of Interest

YVSIU complied with most of the requirements to assess potential conflicts of interest between involved officers and IIT members. The WAC requires all involved IIT investigators and community representatives to complete a conflict of interest assessment within 72 hours of starting an investigation. This assessment is supposed to include questions on work and social relationships with the involved officer, as well as potential biases that could affect their objectivity. The WAC also requires IITs to use the CJTC's standard conflict of interest form or create one that meets or exceeds its standards.

All YVSIU investigators, as well as the community representative, completed conflict of interest assessments on the day of the shooting. The commander and the community representative reviewed the investigators' completed forms later that day. One investigator indicated he had a social relationship with Duggan. The commander and community representative spoke with the investigator about the conflict, and decided it would not affect the investigator's objectivity in this case.

YVSIU's conflict of interest assessment did not meet or exceed the CJTC's standards. YVSIU developed its own form that included some questions about potential biases and social and work relationships with the officer involved. In past audits, we recommended the CJTC issue guidance to clarify how an IIT's conflict of interest assessment can meet or exceed the requirements in the WAC when an IIT does not use the CJTC's standard form. The CJTC responded that IIT-developed forms need to elicit the same responses as the standard form's questions. YVSIU's conflict of interest form did not include some key areas. For example, the form did not include any questions regarding biased, racist or xenophobic material on investigators' social media accounts, or if they received any gifts from the involved officer.

RECOMMENDATIONS

We recommend YVSIU:

- Assign two community representatives to participate in each investigation
- Provide the community representatives and the family with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so
- Ensure that access to the case file is properly limited to YVSIU members participating in the investigation as soon as possible
- Ensure community representatives sign a confidentiality agreement at the start of each police use of deadly force investigation, and maintain documentation that they did so
- Work with the CJTC to develop a conflict of interest assessment that meets or exceeds the CJTC's requirements

We recommend YVSIU's member agencies give administrative orders to involved and witness officers to not speak about the case before providing statements to YVSIU, and maintain documentation that they did so.

INDEPENDENT INVESTIGATION TEAM RESPONSE



Yakima Valley Special Investigations Unit

Audit Response

January 21st, 2025

RE: 23SIU001

23SIU006

YVSIU Team Audit

As the Commander of the Yakima Valley Special Investigations Unit (YVSIU), I am responsible for the investigations conducted while in this role. I have reviewed the recommendations provided by the State Auditor's Office and am confident they did not impact the integrity of the investigations. The investigations were conducted by competent, professional detectives and officers. They provided the elected Yakima County Prosecutor with the information needed to evaluate the facts of the case in an impartial, professional manner.

In reviewing the recommendations, I accept responsibility for the areas of non-compliance and will work with the new YVSIU Commander to improve the processes used by the team in future investigations.

Interim Chief Shawn Boyle

APPENDIX A: AUTHORITY, SCOPE, OBJECTIVE AND METHODOLOGY

Authority

In 2018, Washington voters passed Initiative 940, which, in part, required investigations of police use of deadly force be conducted by an agency completely independent of one with the involved officer. It tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. In 2019, the CJTC created a workgroup, including stakeholders from community groups and law enforcement agencies, to adopt rules for independent investigations. The rules were outlined in Washington Administrative Code (WAC) 139-12-030 and took effect in January 2020.

The rules were designed to help ensure investigations are independent, transparent, credible and communicated timely to the public and affected people. The rules define the elements of an independent investigation, and explain the duties of the involved agency and independent investigation team (IIT) after police use deadly force that results in death, substantial bodily harm or great bodily harm. In 2021, the Legislature amended state law (RCW 43.101.460) to require our Office audit investigations into police use of deadly force to ensure compliance with the new rules.

Scope

This audit assessed whether the Yakima County Sheriff's Office and the Yakima Valley Special Investigations Unit (YVSIU) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Luis Birrueta. It reviewed whether the law enforcement agencies met the criteria for independent investigations as outlined in WAC 139-12-030.

By law, the audit only reviewed the investigation. It did not review the use of deadly force incident nor assess whether the use of force was justified.

Objective

This audit examined whether the Yakima County Sheriff's Office and YVSIU complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Yakima County Sheriff's Office and YVSIU complied with state laws and rules regarding independent investigations of police use of deadly force, we reviewed investigative files related to the case and interviewed IIT members. We interviewed IIT members to understand their investigative process and how they documented their procedures and findings. We also spoke to the IIT's community representatives to confirm whether they were involved in required processes of the investigation. In the case files, we searched for evidence demonstrating the IIT followed the legal requirements. We also reviewed training records from the CJTC and member police agencies.

APPENDIX B: WAC 139-12-030 COMPLIANCE SUMMARY

Independence

Requirement	Compliant?
The involved agency and/or other first responders will provide or facilitate first aid at the scene if necessary.	Yes
The involved agency will relinquish control of the scene.	Yes
The involved agency will not participate in the investigation.	Yes
Any specialized equipment belonging to the involved agency will be approved by the community representatives and the independent investigation team (IIT) commander before it is used in the investigation.	Not applicable
No information about the ongoing independent investigation of police use of deadly force will be shared with any member of the involved agency.	Yes
The IIT commander will honor requests from the involved agency to release body cam video or other investigation information of urgent public interest.	Not applicable

Transparency

Requirement	Compliant?
A minimum of two non-law enforcement community representatives will be assigned to the IIT investigation.	No
The community representatives will:	
<ul style="list-style-type: none"> Review conflict of interest statements submitted within 72 hours of the commencement of each investigation 	Yes
<ul style="list-style-type: none"> Have access to the investigation file when it is completed 	Yes
<ul style="list-style-type: none"> Be provided a copy of all press releases and communication sent to the media prior to release 	Unable to determine
<ul style="list-style-type: none"> Review notification of equipment use of the involved agency 	Not applicable
The community representatives will sign a confidentiality agreement at the beginning of the investigation.	Unable to determine
The IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.	Yes
When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state law.	Yes

Communication

Requirement	Compliant?
A family member of the person against whom deadly force has been used will be notified of the incident as soon as possible.	Yes
The IIT will assign a family liaison within the first 24 hours of the investigation.	Yes
The family liaison will keep the family informed about all significant developments in the investigation.	Yes
The family liaison will give the family advanced notice of all scheduled press releases.	No
Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.	Yes
The involved agency will notify the Governor's Office of Indian Affairs (GOIA) in accordance with RCW 10.114.021 if the person against whom deadly force is used is a member of a federally recognized tribe.	Not applicable
A member of the IIT will be assigned as a tribal liaison within the first 24 hours and keep the tribe (or a representative of the tribe's choice) informed about all significant developments of the investigation.	Not applicable

Credibility

Requirement	Compliant?
The involved agency and other first responders will secure the incident scene and maintain its integrity until the IIT arrives.	Yes
The involved agency and other first responders will locate and preserve evanescent evidence.	Yes
The independent investigation will follow these accepted best practices for homicide investigations published and annually updated by the Washington State Criminal Justice Training Center (CJTC):	
<ul style="list-style-type: none"> The on-scene venue agency will ensure that until all statements have been taken, involved and witness officers shall not discuss the case with any other witnesses. 	Unable to determine
<ul style="list-style-type: none"> The involved agency or first responders will separate involved officer(s) and remove them from the immediate scene. 	Yes
<ul style="list-style-type: none"> The IIT will obtain statements from subjects and witnesses. Audio and/or video recording is preferred and should be attempted. 	Yes
<ul style="list-style-type: none"> Interviews of involved officers should follow the policies of their individual agency, collective bargaining agreement and case law. 	Yes
<ul style="list-style-type: none"> Interviews with emergency medical personnel, fire department personnel, and first responding officers should address conditions at the incident scene. 	Yes
<ul style="list-style-type: none"> The IIT will canvass the immediate area for potential witnesses who have not come forward and obtain information or statements as available. 	Yes
<ul style="list-style-type: none"> In the event of death, consult with the coroner or medical examiner at the scene and at, or subsequent to, the autopsy. A member of the IIT must attend the autopsy and take all appropriate investigative steps, consistent with other criminal investigations. 	Yes
<ul style="list-style-type: none"> Until the case file is delivered to the prosecutor, access to the IIT case file should be restricted to the IIT members involved. 	No
If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation.	Not applicable
Within 72 hours of starting the investigation, investigators and community representatives must complete a “conflict of interest” assessment tool regarding any connection to the officers being investigated.	Yes
The conflict of interest form should assesses work and social conflicts and biases. If an IIT uses its own conflict of interest form, the standards must meet or exceed the CJTC’s standard form.	No
The IIT commander will review the conflict of interest assessment within 72 hours of the start of the investigation.	Yes
The community representatives and the IIT commander will discuss the conflict of interest assessments.	Yes

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