This report is designed to update you on legislative changes pertaining to police reform and the impact 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. Still, we must adapt to the changes laid out by the state legislature.

It should be noted that Washington State ranks 50th in the nation for law enforcement officers per capita (USA Facts, 2021), with only 1.4 officers per 1000 people. The Arlington Police Department’s current staffing level is consistent with the Washington State Average. In 2019, Washington State was ranked 6th of the top 10 most overworked police officers (Torres, 2019).

Historically the residents of Arlington have expressed overwhelming support for APD officers. APD’s mission has been to work in partnership with the community to provide exceptional law enforcement services toward improving the quality of life in Arlington. Officers have sacrificed their safety in engaging in difficult situations with courage, honor, and integrity to provide the professional law enforcement services our community expects and deserves.

The Arlington Police Department hires professional officers who want to serve our community selflessly. Police officers perform their duties believing that all persons have a legal obligation to comply with the law and not resist arrest, assault officers, or continue to commit crimes against our community. In addition, our citizens continue to express their beliefs in accountability for all members of the community.
In 2018 Initiative-940 (I-940) requiring more training and accountability of law enforcement was passed by voters. Although I-940 had not yet been fully initiated, or the results thereof analyzed for effect, the 2021 legislative session brought forth additional sweeping police reform legislation. This legislation was signed into law by Governor Inslee, referring to them as "the best, most comprehensive, most transparent, most effective police accountability laws in the United States." A core theme from this legislative session was the need to divert calls from 911; however, the Legislature did not identify or fund alternatives, resulting in more law enforcement resources needed to address mental illness, drug addiction, and criminal investigations.

Adapting to these changes will affect the way we respond to some incidents. For example, these changes might result in a phone call or a referral to a resource instead of in-person contact with a police officer; however, we will navigate these changes and continue to provide services that place the safety of our community members first.

Law enforcement officers have operated for decades with the expectation that community members are obligated to comply with the lawful orders of police officers, not resist arrest, nor assault police officers or continue acts of violence towards others. The accountability for those who resist arrest or assault officers appears to be shifting from those perpetrating the violence to law enforcement officers who are now responsible for preventing such through de-escalation techniques and the assistance of mental health professionals.

The recently passed 'Use of Force Bill' clearly states that "it is the fundamental duty of law enforcement to preserve and protect human life." The adopted legislation emphasizes that police should avoid using force to protect property; or in situations where there is not 'Probable Cause' to effect an arrest. This makes proactive efforts to prevent crime, mainly property crime, fundamentally difficult and at times impossible. There will be times when officers are forced to walk away when a suspect chooses not to cooperate. Where officers once had the legal authority to temporarily detain individuals while investigating crimes, they now may need to allow possibly unidentified or uncooperative subjects unfettered retreat while continuing the investigation and dedicating more resources into follow-up investigations.

The following report summarizes the Legislature's new police reform laws and how they may impact our community. As previously stated, we will continue to navigate these challenges while prioritizing public safety concerns. We will continue to find ways to hold those who victimize others accountable. We will also continue to identify services for those willing to address mental health, addiction, and criminal behavior.
This police tactics bill formally prohibits law enforcement officers from using "chokeholds" and neck restraints. However, chokeholds have never been an authorized technique except in cases where deadly force would be authorized.

When properly applied, a neck restraint, such as the Later Vascular Neck Restraint (LVNR), is a valuable tool that can render a combative subject unconscious without injury or long-term effects. Using the LVNR during a fight dramatically reduces the risk of harm to both the aggressive subject and the officer.

The elimination of the LVNR as a de-escalation tool now placed officers into a position where they may be required to use greater force to gain control of a subject to make an arrest or protect themselves.

The LVNR has routinely been misrepresented and confused with the chokehold by the media. During this past legislative session, law enforcement representatives attempted to educate legislators on the differences between the LVNR and chokeholds. They emphasized the dangers of banning the LVNR as a de-escalation technique; however, Legislators declined to amend the bill.
HB 1054 also establishes a Criminal Justice Training Commission workgroup to develop training and deployment policies for police canines.

The police tactics bill restricts law enforcement's use of tear gas. It designates non-military equipment as such, then bans law enforcement's use of the newly defined military equipment such as any firearm of .50 caliber or greater. HB 1054 restricts vehicle pursuits and establishes specific identification standards for police uniforms.

The language of this bill seemingly contradicts another bill (HB 1310), which encourages officers to use non-lethal options in "use of force" encounters. For example, police deploy less-lethal "bean-bag" rounds. While HB 1310 seems to support the less-lethal tactic of bean-bag deployment by police, HB 1054 bans the common delivery platforms used to deploy bean-bag rounds (37mm, 40mm, and 12 gauge). All of which are larger than the .50 caliber (now defined as "Military" by the Legislature).

Beyond these challenges, this bill also severely restricts vehicle pursuits. A 'pursuit' means that a person has fled from law enforcement in a vehicle requiring law enforcement to use driving tactics such as increased speed to apprehend the offender.
Under this new law, law enforcement may 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 the vehicle under the influence.

**VIOLENT OFFENSES**
- Manslaughter (1st & 2nd Degree)
- Indecent Liberties (by forcible compulsion)
- Kidnapping (2nd Degree)
- Assault (1st and 2nd Degree)
- Extortion (1st Degree)
- Robbery (2nd Degree)
- Drive-by Shooting
- Vehicular Assault
- Vehicular Homicide
- Escape from a Detention Facility
- Escape from Custody

**IMPACTS & CONSIDERATIONS**

The Arlington Police Department has updated our policy prohibiting chokeholds and neck restraints following this legislation. However, APD will continue to allow the LVNR or a chokehold in instances where a life may be in jeopardy, and deadly force would otherwise be authorized.

APD is not currently deploying our less-lethal 12 gauge shotguns that use bean-bag rounds now that they are designated as "Military" equipment. Instead, we are trying to acquire alternative less-lethal devices such as pepper-ball and bolo-wrap delivery systems. However, most Washington Law Enforcement agencies are attempting the same, which has created backorders with most manufacturers.

In the event of non-violent offenses, such as residential burglary or auto theft, police will respond to write a report, gather information and evidence, and interview persons with knowledge. Police can no longer pursue fleeing suspects or vehicles in cases that do not involve specific violent or sex offenses.
This legislation states that "the fundamental duty of law enforcement is to preserve and protect all human life." Therefore, 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 the imminent threat of bodily injury to the 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 backup 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 or is about to be committed.
IMPACTS & CONSIDERATIONS

This legislation introduces challenges for the Arlington Police Department in that we don’t currently have the staffing and resources required to arrest some individuals once they’ve demonstrated they are likely to resist arrest. Police routinely face uncertain circumstances, with nearly limitless possibilities, that can be dangerous for officers and the public. It is almost impossible to predict who will resist arrest or when. The primary challenge of this new law is that despite the uncertainty that police officers face, the use of force is only authorized in narrow circumstances (as listed in section 3-1-a).

Arlington police officers are often dispatched to medical centers or assist Fire/EMS on calls where individuals experiencing a crisis or medical events become combative. Medical staff and Fire/EMS will now need to take primary responsibility for these non-criminal calls, as this bill makes it unlawful for law enforcement to use force against a person if probable cause for their arrest does not exist.

This is highly problematic as most calls for service require police officers to detain subjects to investigate and develop probable cause for an arrest.

For example, when officers respond to domestic violence calls, probable cause for the 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 not to cooperate with the investigation and leave, force may be required to detain that person. As this bill is written, it would be unlawful for the officer to use force. Instead, the officer would need to rely on the possible charge of "obstructing," which is still being debated amongst attorneys.

Deadly force has always been clearly defined by statute, but "use of force" outside of a deadly force context has not. As a result, there is debate about the definition of "force" and how the term is being used in this new legislation. This lack of a clear definition creates an environment of subjectivity and interpretation which will vary amongst police agencies.
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 or prevent further excessive force. A peace officer shall also render aid at the earliest safe opportunity (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 misconduct, shall report such wrongdoing. The definition of wrongdoing is not clearly defined and may vary between law enforcement agencies.

Law enforcement agencies are now required to send any disciplinary decision resulting from a peace officer’s failure to intervene or failure to report the misconduct of others to the Criminal Justice Training Commission. The commission will then determine whether the officer’s conduct may be grounds for suspension or revocation of certification.

IMPACTS & CONSIDERATIONS

The Arlington Police Department has always had a policy that requires officers to intervene and report excessive force. The information will now be reported to the Criminal Justice Training Commission as required.
Following the Washington State Supreme Court decision 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.

Generally speaking, this legislation also decriminalizes the possession of drug paraphernalia.

**Impact & Considerations**

In lieu of booking a drug possession suspect into jail or referring their case to the prosecution, law enforcement officers are now required to offer suspects at least three separate referrals to drug treatment and services. After three documented referrals, police may make an arrest; however, SB 5476 also encourages prosecutors to divert simple possession charges for assessment, treatment, or other services.

"Personal use" amounts of controlled substances were not defined in this legislation. As a result, what may have previously been viewed as felony trafficking level quantities of a controlled substance are now frequently charged as a misdemeanor or dropped altogether.
Requires that any custodial interview of an adult for a felony offense, or a juvenile for any offense, be electronically recorded starting January 1, 2022. If the recording occurs within a government facility, the recordings must be audio and video recorded.

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 safety concern.
- Equipment malfunction.

IMPACTS & CONSIDERATIONS

HB 1223 creates an additional unfunded mandate that will significantly increase local costs. The State is not assisting with the implementation of these requirements. Specifically, the purchase, deployment, use, storage, and management of body-worn cameras, audio/video equipment, or the associated public records and staffing costs to be paid directly by the City of Arlington.
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 interview; 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. In addition, this bill requires the State Office of Public Defense to provide access to attorneys for juveniles contacted by law enforcement.

**IMPACTS & CONSIDERATIONS**

There is concern for some unintended consequences of this bill, as juveniles who are already vulnerable due to their age may be recruited to participate in adult criminal enterprises such as gang activity, drug sales, and carrying weapons.

Juveniles will need access to attorneys expeditiously and the resources provided by the Office of Public Defense may be insufficient.

This legislation essentially prohibits officers from questioning any juvenile involved in any criminal activity and eliminates officer discretion and the ability to problem-solve with juveniles.
The role of police in our community changes over time. Professional policing demands that we respond to and provide the type of policing our community expects. Communities elect officials to be their voice. In this situation, State Legislators are that voice. During this past legislative session, legislators have declared "it is a fundamental duty of law enforcement to preserve and protect all human life." 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. The Legislature also prohibited law enforcement from engaging in vehicle pursuits for anything less than specific violent felony crimes.

When combining the language of these bills with the charging standards of the Snohomish County Prosecutor's Office, it can be concluded that police should find alternatives to arrest for property crimes, particularly if the arrest will require any 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. Therefore, we need to reassess the resources available to law enforcement to comply with the new legislation while still enforcing the law.

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

The men and women of the Arlington Police Department remain committed to providing professional police services to our community. However, those services may look slightly different and won’t always include face-to-face contact with a uniformed police officer.
To avoid the use of force encounters for minor property crimes, the Arlington Police Department may request the business' security personnel identify suspects and pursue civil restitution. In addition, large retailers or frequent utilizers of Arlington Police services may be referred to online reporting alternatives instead of a physical police response.

While the law sometimes requires law enforcement to serve paper copies of court orders, the Arlington Police Department has on occasion served orders as a courtesy though not legally required to do so. Process servers may complete this process. Going forward, the Arlington Police Department will only serve orders as lawfully required.

Law Enforcement is being directed to use mental health professionals for mental health-related calls. The Arlington Police Department encourages mental health facilities to have their own Mental Health Professionals (MHP's) on staff to facilitate the involuntary commitment process.

Noise complaints at multi-family housing complexes may be reported to property managers instead of police. Property managers within the City of Arlington can work with APD to resolve problems with repeat offenders. Property managers often have more authority to hold tenants accountable for their actions when neighbors are a nuisance than the police do.
Based on HB 1310, law enforcement is required to exhaust alternatives to physical force when possible. The local courts release many misdemeanor offenders (and some felony offenders) 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 City when considering an arrest for a misdemeanor crime. Therefore the Arlington Police Department **may** not make a physical arrest for certain misdemeanor cases. Some exceptions may include DUI's and DV-related offenses that require mandatory arrests.

Basic welfare checks of community members not engaged in criminal activity **will** no longer result in a police response unless circumstances suggest the person is a potential danger to themselves or others.
Arlington Police **may** no longer respond to calls of suspicious activity unless suspected criminal activity can be articulated. Alternatively, officers **may** make phone contact to ascertain more specific incident details and reevaluate as appropriate.

Arlington Police **may** no longer respond in-person to calls involving juvenile problems and civil disputes that are not criminal. Alternatively, officers **may** make phone contact and refer the involved parties to resources.

Arlington Police **may** respond to unwanted subject calls and assist in having unwanted persons removed from private property if they are trespassing. However, officers **may** not respond in person to trespass people who have left the property. Additionally, officers **shall** not respond to trespass any subject(s) when the property owner declines to assist with criminal prosecution of a criminal offense.
Arlington Police may not respond in person to calls of suspected drug activity if the required elements of a crime can’t be articulated. However, if an officer comes across controlled substances through an investigation, the substance will be booked into evidence. In lieu of booking a suspect into jail for drug possession, Washington State law enforcement is now required to offer suspects at least three separate referrals to drug treatment and services. After three such documented referrals, police may make an arrest or refer criminal charges to the prosecutor.

Arlington Police may no longer respond in person 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. However, 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 Designated Crisis Responder (DCR) or Mental Health Professionals (MHP's) if available.