
HOUSE BILL 1507

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2021 Regular Session

By Representatives Entenman, Walen, Berry, Fitzgibbon, Valdez, Dolan, Bateman, Ryu, J. Johnson, Tharinger, Ramel, Peterson, Ormsby, Duerr, Macri, Callan, Ramos, Harris-Talley, Morgan, Pollet, Santos, and Thai

Read first time 02/08/21. Referred to Committee on Public Safety.

1 AN ACT Relating to establishing a mechanism for independent
2 prosecutions of criminal conduct arising from police use of force;
3 amending RCW 43.10.232, 43.10.234, 36.27.030, and 36.27.040; adding a
4 new section to chapter 43.10 RCW; adding a new section to chapter
5 36.27 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to
8 read as follows:

9 (1) (a) The attorney general shall have concurrent authority and
10 power with the prosecuting attorneys to investigate crimes and
11 initiate and conduct prosecutions upon the request of or with the
12 concurrence of any of the following:

13 ~~((a))~~ (i) The county prosecuting attorney of the jurisdiction
14 in which the offense has occurred;

15 ~~((b))~~ (ii) The governor of the state of Washington; or

16 ~~((e))~~ (iii) A majority of the committee charged with the
17 oversight of the organized crime intelligence unit.

18 ~~((2))~~ (b) Such request or concurrence shall be communicated in
19 writing to the attorney general.

20 ~~((3))~~ (c) Prior to any prosecution by the attorney general
21 under this section, the attorney general and the county in which the

1 offense occurred shall reach an agreement regarding the payment of
2 all costs, including expert witness fees, and defense attorneys' fees
3 associated with any such prosecution.

4 (2) (a) The office of the attorney general shall have concurrent
5 authority and power with the prosecuting attorneys to investigate and
6 initiate and conduct prosecutions of crimes involving police use of
7 deadly force in the state of Washington.

8 (b) In any investigation or prosecution pursuant to this
9 subsection, the office of the attorney general may investigate and
10 prosecute related offenses and defendants. Related offenses and
11 defendants for purposes of this subsection are those offenses and
12 defendants that may be joined as provided by law or by the criminal
13 rules for the superior courts of the state of Washington. Related
14 offenses also include any criminal activity related to, or discovered
15 in the course of, the investigation of the case under the
16 jurisdiction of the incident that has a relationship to the
17 investigation.

18 (c) Nothing in this subsection affects the authority of the
19 prosecuting attorney to conduct prosecutions of crimes committed by
20 an individual who is the subject of the use of force action by the
21 involved officer.

22 (d) The authority of the office of the attorney general under
23 this subsection applies to any criminal offense involving the use of
24 deadly force by a police officer committed on or after July 1, 2022.

25 (e) For the purposes of this section, "deadly force" has the
26 meaning provided in RCW 9A.16.010.

27 **Sec. 2.** RCW 43.10.234 and 1981 c 335 s 3 are each amended to
28 read as follows:

29 (1) If both a prosecuting attorney and the attorney general file
30 an information or indictment charging a defendant with substantially
31 the same offense(s), the court shall, upon motion of either the
32 prosecuting attorney or the attorney general:

33 ~~((1))~~ (a) Determine whose prosecution of the case will best
34 promote the interests of justice and enter an order designating that
35 person as the prosecuting authority in the case; and

36 ~~((2))~~ (b) Enter an order dismissing the information or
37 indictment filed by the person who was not designated the prosecuting
38 authority.

1 (2) For purposes of designating the prosecuting authority where
2 an information or indictment has been filed by the office of the
3 attorney general pursuant to RCW 43.10.232(2), the court shall
4 prioritize the public's interest in ensuring a fair and impartial
5 prosecution and trial that is free from even the appearance of bias,
6 prejudice, or conflict of interest.

7 NEW SECTION. Sec. 3. A new section is added to chapter 43.10
8 RCW to read as follows:

9 (1) There is established within the office of the attorney
10 general an independent prosecutions unit which shall be headed by the
11 independent prosecutor appointed by the attorney general.

12 (2) The independent prosecutions unit has the authority and
13 jurisdiction as provided under RCW 43.10.232 to investigate and
14 prosecute any alleged criminal offense committed by a police officer
15 involving the use of deadly force, as defined in RCW 9A.16.010.

16 (3) The independent prosecutor may employ and train personnel to
17 achieve the purposes of this section, including attorneys,
18 investigators, support personnel, and other personnel as the
19 independent prosecutor determines necessary.

20 (4) If the independent prosecutor determines that a criminal
21 charge is not warranted in a case, the independent prosecutor shall
22 issue a public report, and post the report on its website, that
23 includes the results of the investigation and an explanation of the
24 reasons for the decision.

25 (5) The jurisdiction of the independent prosecutions unit applies
26 to any criminal offense involving the use of deadly force by a police
27 officer committed on or after July 1, 2022.

28 **Sec. 4.** RCW 36.27.030 and 2009 c 549 s 4046 are each amended to
29 read as follows:

30 (1) When from illness or other cause the prosecuting attorney is
31 temporarily unable to perform his or her duties, the court or judge
32 may appoint some qualified person to discharge the duties of such
33 officer in court until the disability is removed.

34 (2) When any prosecuting attorney fails, from sickness or other
35 cause, to attend a session of the superior court of his or her
36 county, or is unable to perform his or her duties at such session,
37 the court or judge may appoint some qualified person to discharge the
38 duties of such session, and the appointee shall receive a

1 compensation to be fixed by the court, to be deducted from the stated
2 salary of the prosecuting attorney, not exceeding, however, one-
3 fourth of the quarterly salary of the prosecuting attorney: PROVIDED,
4 That in counties wherein there is no person qualified for the
5 position of prosecuting attorney, or wherein no qualified person will
6 consent to perform the duties of that office, the judge of the
7 superior court shall appoint some suitable person, a duly admitted
8 and practicing attorney-at-law and resident of the state to perform
9 the duties of prosecuting attorney for such county, and he or she
10 shall receive such reasonable compensation for his or her services as
11 shall be fixed and ordered by the court, to be paid by the county for
12 which the services are performed.

13 (3) In any case involving potential prosecution of a crime
14 involving use of deadly force by a police officer, where the
15 prosecuting attorney has a conflict of interest and has not either
16 transferred the case to a conflict-free special deputy prosecuting
17 attorney or to the independent prosecutions unit of the office of the
18 attorney general, the court shall order the independent prosecutions
19 unit of the office of the attorney general to discharge the
20 responsibilities of the prosecuting attorney. For the purposes of
21 this subsection, "deadly force" has the meaning provided in RCW
22 9A.16.010.

23 **Sec. 5.** RCW 36.27.040 and 2009 c 549 s 4047 are each amended to
24 read as follows:

25 (1)(a) The prosecuting attorney may appoint one or more deputies
26 who shall have the same power in all respects as their principal.
27 Each appointment shall be in writing, signed by the prosecuting
28 attorney, and filed in the county auditor's office. Each deputy thus
29 appointed shall have the same qualifications required of the
30 prosecuting attorney, except that such deputy need not be a resident
31 of the county in which he or she serves.

32 (b) The prosecuting attorney may appoint one or more special
33 deputy prosecuting attorneys upon a contract or fee basis whose
34 authority shall be limited to the purposes stated in the writing
35 signed by the prosecuting attorney and filed in the county auditor's
36 office. Such special deputy prosecuting attorney shall be admitted to
37 practice as an attorney before the courts of this state but need not
38 be a resident of the county in which he or she serves and shall not
39 be under the legal disabilities attendant upon prosecuting attorneys

1 or their deputies except to avoid any conflict of interest with the
2 purpose for which he or she has been engaged by the prosecuting
3 attorney.

4 (c) The prosecuting attorney shall be responsible for the acts of
5 his or her deputies and may revoke appointments at will.

6 (2)(a) In any case involving potential prosecution of a crime
7 involving use of deadly force by a police officer, the prosecuting
8 attorney shall determine if recusal is necessary under the ethical
9 rules applicable to all lawyers or to preserve public confidence. In
10 making this determination, it is improper for the prosecuting
11 attorney to make a determination as to whether criminal charges shall
12 be filed or prosecuted if any of the following exist:

13 (i) The prosecuting attorney has a relationship with the police
14 officer or the police officer's employing agency, either personally
15 or professionally, such that the prosecuting attorney's decision or
16 pursuit of charges may be materially impacted;

17 (ii) The prosecuting attorney has a duty to represent the police
18 officer's employing agency in any civil action related to or arising
19 from the incident under consideration or criminally charged and the
20 prosecuting attorney's decision or pursuit of charges arising from
21 the police officer's use of deadly force may be materially impacted
22 by the duty to defend; or

23 (iii) There is a significant risk that the prosecuting attorney's
24 ability to consider, recommend, or carry out an appropriate course of
25 action will be materially limited as a result of the prosecuting
26 attorney's other responsibilities or interests.

27 (b) If the prosecuting attorney finds recusal is necessary under
28 the ethics rules or to preserve public confidence, the prosecuting
29 attorney must either transfer the case to the independent
30 prosecutions unit of the office of the attorney general within 30
31 days of receiving the case from the office of independent
32 investigations under chapter 43.--- RCW (the new chapter created in
33 section 601, chapter . . ., Laws of 2021 (House Bill No. 1267)) or
34 other investigating agency or appoint a conflict-free special deputy
35 prosecuting attorney.

36 (i) The appointment of a conflict-free special deputy prosecuting
37 attorney must be in writing signed by the prosecuting attorney and
38 must be filed in the county auditor's office. The appointment is
39 limited to the purposes stated in the writing.

1 (ii) A conflict-free special deputy prosecuting attorney must be
2 the final decision maker as to any matter identified in the
3 appointment.

4 (iii) A conflict-free special deputy prosecuting attorney may
5 only be removed for cause and with the approval of the superior
6 court.

7 (iv) A conflict-free special deputy prosecuting attorney must be
8 admitted to practice as an attorney before the courts of this state
9 but need not be a resident of the county in which he or she serves
10 and is not under the legal disabilities attendant upon prosecuting
11 attorneys or their deputies except to avoid any conflict of interest
12 with the purpose for which he or she has been engaged by the
13 prosecuting attorney.

14 (c) For the purposes of this section, "deadly force" has the
15 meaning provided in RCW 9A.16.010.

16 (3) Two or more prosecuting attorneys may agree that one or more
17 deputies for any one of them may serve temporarily as deputy for any
18 other of them on terms respecting compensation which are acceptable
19 to said prosecuting attorneys. Any such deputy thus serving shall
20 have the same power in all respects as if he or she were serving
21 permanently. The provisions of chapter 39.34 RCW shall not apply to
22 such agreements.

23 (4) The provisions of RCW 41.56.030(~~(+2)~~) (12) shall not be
24 interpreted to permit a prosecuting attorney to alter the at-will
25 relationship established between the prosecuting attorney and his or
26 her appointed deputies by this section for a period of time exceeding
27 his or her term of office. Neither shall the provisions of RCW
28 41.56.030(~~(+2)~~) (12) require a prosecuting attorney to alter the at-
29 will relationship established by this section.

30 NEW SECTION. Sec. 6. A new section is added to chapter 36.27
31 RCW to read as follows:

32 If the prosecuting attorney or conflict-free special deputy
33 prosecuting attorney appointed pursuant to RCW 36.27.040 makes a
34 determination not to file criminal charges in the case, the
35 prosecuting attorney or conflict-free special deputy prosecuting
36 attorney must refer the case and all investigative materials
37 concerning the case to the independent prosecutions unit of the
38 office of the attorney general within 30 days of the decision to not

1 file criminal charges. For the purposes of this section, "deadly
2 force" has the meaning provided in RCW 9A.16.010.

3 NEW SECTION. **Sec. 7.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 8.** If specific funding for the purposes of
8 this act, referencing this act by bill or chapter number, is not
9 provided by June 30, 2021, in the omnibus appropriations act, this
10 act is null and void.

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