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**HOUSE BILL 1579**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Stonier, Bateman, Lekanoff, Reed, Pollet, and Macri

AN ACT Relating to establishing a mechanism for independent prosecutions within the office of the attorney general of criminal conduct arising from police use of force; amending RCW 43.10.232, 43.10.234, 36.27.030, 36.27.040, and 43.102.080; adding a new section to chapter 43.10 RCW; adding a new section to chapter 36.27 RCW; and creating a new section.

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

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

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

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

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

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

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

((~~(3)~~)) (c) Prior to any prosecution by the attorney general under this section, the attorney general and the county in which the offense occurred shall reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with any such prosecution.

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

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

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

(d) The authority of the office of the attorney general under this subsection applies to any criminal offense involving the use of deadly force by a police officer and any other investigations within the scope of the office of independent investigations.

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

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

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

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

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

(2) For purposes of designating the prosecuting authority where information or an indictment has been filed by the office of the attorney general pursuant to RCW 43.10.232(2), the court shall prioritize the public's interest in ensuring a fair and impartial prosecution and trial that is free from even the appearance of bias, prejudice, or conflict of interest. In any judicial proceeding under this subsection, in order to be designated the prosecuting authority, the county prosecuting attorney must overcome a presumption that the county prosecuting attorney has an inherent conflict of interest in any matter arising from an investigation within the scope of the office of independent investigations.

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

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

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

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

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

(5) The jurisdiction of the independent prosecutions unit applies to any criminal offense involving the use of deadly force by a police officer and any other investigations within the scope of the office of independent investigations.

(6) Where the alleged criminal offense has been committed by an officer of an agency whom the attorney general provides legal advice and representation, the attorney general must take appropriate steps to assign counsel, staff, and supervision to eliminate any appearance of or actual conflicts of interest.

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

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

(2) When any prosecuting attorney fails, from sickness or other cause, to attend a session of the superior court of his or her county, or is unable to perform his or her duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the appointee shall receive a compensation to be fixed by the court, to be deducted from the stated salary of the prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of the prosecuting attorney: PROVIDED, That in counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court shall appoint some suitable person, a duly admitted and practicing attorney-at-law and resident of the state to perform the duties of prosecuting attorney for such county, and he or she shall receive such reasonable compensation for his or her services as shall be fixed and ordered by the court, to be paid by the county for which the services are performed.

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

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

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

(b) The prosecuting attorney may appoint one or more special deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he or she serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he or she has been engaged by the prosecuting attorney.

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

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

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

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

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

(b) If the prosecuting attorney finds recusal is necessary under the ethics rules or to preserve public confidence, the prosecuting attorney must either transfer the case to the independent prosecutions unit of the office of the attorney general within 30 days of receiving the case from the office of independent investigations under chapter 43.102 RCW or other investigating agency or appoint a conflict-free special deputy prosecuting attorney.

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

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

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

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

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

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

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

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

If the prosecuting attorney or conflict-free special deputy prosecuting attorney appointed pursuant to RCW 36.27.040 makes a determination not to file criminal charges in the case, the prosecuting attorney or conflict-free special deputy prosecuting attorney must refer the case and all investigative materials concerning the case to the independent prosecutions unit of the office of the attorney general within 30 days of the decision to not file criminal charges. For the purposes of this section, "deadly force" has the meaning provided in RCW 9A.16.010.

**Sec.**  RCW 43.102.080 and 2021 c 318 s 308 are each amended to read as follows:

(1) The office has jurisdiction over, and is authorized to conduct investigations of, all cases and incidents as established within this section.

(2)(a) The director may cause an investigation to be conducted into any incident:

(i) Of a use of deadly force by an involved officer occurring after July 1, 2022, including any incident involving use of deadly force by an involved officer against or upon a person who is in-custody or out-of-custody; or

(ii) Involving prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation.

(b) This section applies only if, at the time of the incident:

(i) The involved officer was on duty; or

(ii) The involved officer was off duty but:

(A) Engaged in the investigation, pursuit, detention, or arrest of a person or otherwise exercising the powers of a general authority or limited authority Washington peace officer; or

(B) The incident involved equipment or other property issued to the official in relation to his or her duties.

(3) The director shall determine prioritization of investigations based on resources and other criteria which may be established in consultation with the advisory board. The director shall ensure that incidents occurring after the date the office begins investigating cases receive the highest priority for investigation.

(4) The investigation should include a review of the entire incident, including but not limited to events immediately preceding the incident that may have contributed to or influenced the outcome of the incident that are directly related to the incident under investigation.

(5) Upon receiving notification required in RCW 43.102.120 of an incident under the jurisdiction of the office, the director:

(a) May cause the incident to be investigated in accordance with this chapter;

(b) May determine investigation is not appropriate for reasons including, but not limited to, the case not being in the category of prioritized cases; or

(c) If the director determines that the incident is not within the office's jurisdiction to investigate, the director shall decline to investigate, and shall give notice of the fact to the involved agency.

(6) If the director determines the case is to be investigated the director will communicate the decision to investigate to the involved agency and will thereafter be the lead investigative body in the case and have priority over any other state or local agency investigating the incident or a case that is under the jurisdiction of the office. The director will implement the process developed pursuant to RCW 43.102.050 and conduct the appropriate investigation in accordance with the process.

(7) In conducting the investigation the office shall have access to reports and information necessary or related to the investigation in the custody and control of the involved agency and any law enforcement agency responding to the scene of the incident including, but not limited to, voice or video recordings, body camera recordings, and officer notes, as well as disciplinary and administrative records except those that might be statements conducted as part of an administrative investigation related to the incident.

(8) The investigation shall be concluded within 120 days of acceptance of the case for investigation. If the office is not able to complete the investigation within 120 days, the director shall report to the advisory board the reasons for the delay.

(9) Upon the completion of an investigation authorized under this chapter, the office shall send its completed investigation and referral to both the county prosecuting attorney of the jurisdiction in which the offense occurred and the independent prosecutions unit in accordance with protocols established under RCW 43.102.050(2)(c)(viii). The completed investigation and referral must include an analysis consistent with RCW 36.27.040(2) of whether recusal by the county prosecuting attorney of the jurisdiction in which the offense occurred is appropriate under the ethical rules applicable to all lawyers or to preserve public confidence.

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

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

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