
Public Safety Committee

HB 1267

Brief Description: Concerning investigation of potential criminal conduct arising from police use of force, including custodial injuries, and other officer-involved incidents.

Sponsors: Representatives Entenman, Hackney, Senn, Dolan, Leavitt, Berry, Fitzgibbon, Valdez, Simmons, Ramel, Ortiz-Self, Ramos, Chopp, Davis, Thai, Bergquist, Peterson, Kloba, Callan, Lekanoff, Macri, Goodman, Gregerson, Johnson, J., Lovick, Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos and Ormsby; by request of Office of the Governor.

Brief Summary of Bill

- Establishes the Office of Independent Investigations within the Office of the Governor for the purpose of investigating certain incidents involving peace officers, including use of deadly force, in-custody deaths, and sexual assaults.

Hearing Date: 1/26/21

Staff: Kelly Leonard (786-7147).

Background:

Criminal Liability of Peace Officers.

"Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. Whether a peace officer is criminally liable for using deadly force depends on the specific crime alleged and any applicable defense. A peace officer has the same right of self-defense as others. In addition, deadly force is justifiable when used by a peace officer in certain circumstances so long as he or

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she operated in good faith. "Good faith" is an objective standard which must consider all the facts, circumstances, and information known to the peace officer at the time to determine whether a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

The circumstances where deadly force is justifiable includes, for example, when necessarily used to: arrest a suspect who the peace officer reasonably believes has committed a felony; prevent escape or recapture an escapee from prison or jail; or suppress a riot involving a deadly weapon.

When deadly force is used to arrest a suspect who may have committed a felony, the peace officer must have probable cause to believe the suspect poses a threat of serious physical harm if not arrested. Evidence that the suspect poses such a threat could include that the suspect has threatened a peace officer with a weapon, or that there is probable cause to believe the suspect has committed a crime involving threatened or actual serious physical harm. In such cases, deadly force may also be used if necessary to prevent the suspect's escape after a warning has been issued, if possible.

Independent Investigations of Incidents Involving Use of Deadly Force by Peace Officers.

State law requires an independent investigation to be completed whenever a peace officer's use of deadly force results in death, great bodily harm, or substantial bodily harm. The investigation informs the determination of whether the use of deadly force met the objective good faith test and satisfied other applicable laws and policies. The Criminal Justice Training Commission (CJTC) adopts rules to ensure that investigations are carried out completely independent of the agency whose officer was involved in the use of deadly force.

Under the current rules adopted by the CJTC, independent investigation teams (IIT) are responsible for conducting investigations. An IIT is made up of qualified and certified peace officer investigators, civilian crime scene specialists, and at least two non-law enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents. When a qualifying incident occurs, the agency must immediately report to the IIT and preserve the scene until the IIT arrives. The agency employing the involved officer under investigation may not participate in the IIT's investigation except to: share specialized equipment when no reasonable alternative exists, the equipment is critical to the investigation, and the use is approved by the IIT commander; receive briefings given to the chief or sheriff of the involved agency about the progress of the investigation; and release body cam video or other investigation information of urgent public interest, with the agreement of the jurisdiction's prosecutor.

Definitions.

State statutes rely upon different definitions of peace officer or law enforcement agency, depending on the context. The Mutual Aid Peace Officers Power Act contains definitions for general authority, limited authority, and specially commissioned peace officers, as well as

general authority and limited authority law enforcement agencies.

"General authority peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority law enforcement agency who is commissioned to enforce the criminal laws of the state generally. "Limited authority peace officer" means any full-time, fully compensated officer of a limited authority law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. "Specially commissioned peace officer" means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify as a general authority peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by Oregon or Idaho.

"General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority law enforcement agency, and any other unit of government expressly designated by statute as a general authority law enforcement agency. Among others, the Washington State Patrol and the Department of Fish and Wildlife are general authority law enforcement agencies. "Limited authority law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the Department of Natural Resources, Department of Social and Health Services, Gambling Commission, Lottery Commission, Parks and Recreation Commission, Utilities and Transportation Commission, Liquor and Cannabis Board, Office of the Insurance Commissioner, and the Department of Corrections.

Summary of Bill:

The Office of Independent Investigations (OII) is established within the Office of the Governor for the purpose investigating certain incidents involving peace officers.

Investigations of Officer-Involved Incidents.

Jurisdiction. The OII has jurisdiction to conduct investigations of any of the following incidents:

- use of deadly force by an involved officer occurring after July 1, 2022;
- in-custody deaths involving potential criminal acts committed by an involved officer occurring after July 1, 2023;
- sexual assault by an involved officer occurring after July 1, 2023; and
- deadly force by an involved officer from prior incidents, if new evidence is brought forth that was not included in the initial investigation.

"Involved officer" means any general authority, limited authority, or specially commissioned officer, or any employee of a city, county, or regional institution, correctional, jail, holding, or detention facility, who is involved in an incident as an actor, victim, or custodial officer. The OII has jurisdiction to investigate the incident only if: (1) the involved officer was on duty; or (2) where the involved officer was off duty, he or she engaged in the investigation, pursuit, detention, or arrest of a person or otherwise exercised officer powers, or the incident involved equipment or other property issued to the officer in relation to his or her duties.

Duties of Involved Agencies. "Involved agency" means any general authority or limited authority law enforcement agency or other facility that employs or supervises an involved officer. An involved agency must promptly notify the OII of any incident under OII jurisdiction.

If the incident involves use of deadly force by an involved officer resulting in death, substantial bodily harm, or great bodily harm, the involved agency must immediately contact the OII once the involved agency personnel and other first responders have rendered the scene safe and provided or facilitated lifesaving first aid to persons at the scene who have life-threatening injuries. In all other cases, the involved agency must notify the OII pursuant to the procedures established by the OII Director.

The involved agency must ensure that any of its officers or employees who are at the scene of the incident take all lawful measures necessary to protect, obtain, and preserve evidence relating to the incident until an OII investigator, or the IIT at the request of the OII, takes charge of the scene. The primary focus of the involved agency is to protect and preserve evidence. The involved agency must relinquish control of the scene upon the arrival of the OII or IIT, after which no member of the involved agency may participate in any way in the investigation. If the OII declines to investigate a case, the authority and duty for the investigation remains with the IIT or local law enforcement authority with jurisdiction over the incident.

Investigation Process. The OII is the lead investigative body for any incidents it selects for investigation. 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.

The OII must have access to all reports and information necessary or related to the investigation, 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.

The investigation must be concluded within 120 days of acceptance of the case for investigation. If the OII is not able to complete the investigation within 120 days, the OII must report to the OII Advisory Board (Advisory Board) the reasons for the delay.

Administration of the Office of Independent Investigations.

Advisory Board. The OII Advisory Board is established and consists of 11 members appointed by the Governor and representing specified interests or entities or having specified background. The Advisory Board must provide input to the Governor and OII Director on certain matters, including for example, staffing, training, and procedures for engagement with individuals involved in cases. Advisory Board members have a duty of confidentiality and must agree in writing not to disclose certain information. Advisory Board members must complete training to utilize an antiracist lens in their duties.

Director. The Governor appoints the OII Director by selecting a person from a list of candidates recommended by the Advisory Board, or by offering an alternative candidate to be approved by the Advisory Board. Candidates must meet certain qualifications, including, for example, having sound judgment, objectivity, and integrity, and also having experiences in conducting criminal investigations or prosecutions. The powers and responsibilities of the OII Director are established, including for example, overseeing investigations and other functions of the OII, implementing the requirements for investigations and regional investigation teams, hiring investigators and other necessary personnel, and ensuring proper training.

Investigators and Personnel. Investigators hired by the OII Director must meet certain qualifications. The OII Director must consider candidates' experience or understanding of criminal investigations, mental health issues, trauma-informed interviewing, and de-escalation techniques, and knowledge of laws, policies, procedures, and practices. The OII Director may not hire an investigator who is a commissioned law enforcement officer employed by any law enforcement agency at the time of his or her application, unless otherwise approved by the Advisory Board. Further, OII investigators may not be simultaneously employed, commissioned, or have any business relationship with another law enforcement agency or county or city corrections agency. The OII investigators must receive training on criminal investigations, interviewing techniques, and state laws, policies, and practices. The CJTC must collaborate with the OII to ensure investigators receive sufficient training.

The OII Director may also hire additional personnel necessary for conducting investigations, including, for example, forensic specialists, liaisons for community family and tribal relations, data analysts, mental health experts, and interpreters.

Any personnel involved in investigations must engage in trainings on the history of racism in policing, implicit and explicit bias, intercultural competency, antiracism, undoing institutional racism, and the use of a racial equity lens in conducting the work of the OII.

Data Analysis. The OII must conduct analysis of use of force and other available data. If data is available, the OII should, at a minimum, analyze and report annually:

- analysis and research regarding any identified trends, patterns, or other situations;
- recommendations for improvements; and
- recommendations, if any, for expanding the scope of investigations or jurisdiction of the OII based on trends, data, or reports.

Appropriation: None.

Fiscal Note: Requested on January 21, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.