

FINAL BILL REPORT

ESHB 1267

C 318 L 21

Synopsis as Enacted

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

Sponsors: House Committee on Public Safety (originally sponsored by 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).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

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 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;

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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.

An independent investigation must 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 standard and satisfied other applicable laws and policies. The Criminal Justice Training Commission (CJTC) is tasked with adopting rules for independent investigations.

Under the rules, independent investigation teams (IITs) 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 nonlaw enforcement community representatives who operate independently when conducting investigations. 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 camera video or other investigation information of urgent public interest, with the agreement of the jurisdiction's prosecutor.

Summary:

The Office of Independent Investigations (OII) is established as a limited authority law enforcement agency within the Office of the Governor for the purpose of investigating certain incidents involving peace officers.

Investigations of Officer-Involved Incidents.

Jurisdiction. The OII has jurisdiction to conduct an investigation of any incident involving 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. The OII may also investigate 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 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 notify the OII of any incident under OII jurisdiction according to requirements established by the OII Director. 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.

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 the 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 any 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 OII investigatory process must include certain elements, including: an intake process; assessment and response to the notification of the incident; determination and deployment of necessary resources; a determination of any conflicts with OII investigators to ensure investigators do not have any conflicts with an assigned case; protocol for and direction to the involved agency; and protocol for finalizing the completed investigation and referral to the entity responsible for the prosecutorial decision. The OII must also have protocols for

interactions and communications with the involved officer, the subject of the involved officer's conduct under investigation, the subject's family, the public, and other interested parties or stakeholders.

If the OII accepts a case, the investigation must be concluded within 120 days. 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 and protocols for investigations and regional investigation teams, hiring of 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, behavioral health issues, youth cognitive development, trauma-informed interviewing, and de-escalation techniques, and knowledge of laws, policies, procedures, and practices. The OII Director may not hire an investigator who has been a commissioned law enforcement officer employed by any law enforcement agency in the previous 24 months or 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. By December 1, 2023, the OII Director must develop a plan for training nonlaw enforcement officers to conduct OII investigations, including an objective for OII investigations to be conducted by nonlaw enforcement officers within five years.

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.

Advisory Board Evaluation on Office of Independent Investigations Jurisdiction.

In consultation with the OII Director, the Advisory Board must assess whether the OII jurisdiction should be expanded to conduct investigations of other types of incidents committed by involved officers, including but not limited to other types of in-custody deaths not involving use of force but otherwise involving criminal acts committed by involved officers and sexual assaults committed by involved officers. The Advisory Board must submit a report with related recommendations to the Legislature and Governor by November 1, 2023.

Votes on Final Passage:

House	57	39	
Senate	27	22	(Senate amended)
House	56	41	(House concurred)

Effective: July 25, 20