
HOUSE BILL 1267

State of Washington**67th Legislature****2021 Regular Session**

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, J. Johnson, Lovick, Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos, and Ormsby; by request of Office of the Governor

Read first time 01/18/21. Referred to Committee on Public Safety.

1 AN ACT Relating to investigation of potential criminal conduct
2 arising from police use of force, including custodial injuries, and
3 other officer-involved incidents; amending RCW 10.93.020, 39.26.125,
4 and 10.114.011; adding a new section to chapter 41.06 RCW; adding a
5 new chapter to Title 43 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 101.** INTENT. The legislature finds that there
8 has been an outpouring of frustration, anger, and demand for change
9 from many members of the public over the deaths of people of color
10 resulting from encounters with police. The most recent deaths in the
11 United States and within Washington are a call to lead our state to a
12 new system for investigating deaths and other serious incidents
13 involving law enforcement officers.

14 The legislature intends that the office of independent
15 investigations be created to conduct investigations of use of force
16 and other cases under its jurisdiction in a manner that is competent,
17 unbiased, and thorough. The office will be transparent and
18 accountable for their work. The office should ensure that it treats
19 all people with dignity and respect. The director and staff must be
20 qualified and trained to conduct the investigations, including

1 training to understand the impact and effect of racism in the
2 investigation and use of an antiracist lens to conduct their work.

3 It is intended that this office will assume responsibility for
4 investigations of serious use of force incidents and refer the
5 reports on the investigation to the prosecutorial entity to determine
6 if the action was justified, or if there was criminal action such
7 that criminal charges should be filed. This is the same criminal
8 investigative inquiry that is currently conducted when there is an
9 officer-involved incident. The legislature does not intend to create
10 a new type of investigation or that the office should be involved in
11 any administrative review of conduct or complaints to police agencies
12 about officer conduct related to policy or procedure. The process
13 created in this act is intended to only change who investigates the
14 incident. It does not change the nature of the investigation and only
15 involves an investigation to determine justification or whether
16 criminal charges are appropriate.

17 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this
18 section apply throughout this chapter unless the context clearly
19 requires otherwise.

20 (1) "Advisory board" means the office of independent
21 investigations advisory board.

22 (2) "Deadly force" has the meaning provided in RCW 9A.16.010.

23 (3) "Director" means the director of the office of independent
24 investigations.

25 (4) "Great bodily harm" has the meaning provided in RCW
26 9A.04.110.

27 (5) "In-custody death" means a death of an individual while under
28 physical control of a general authority Washington law enforcement
29 agency or a limited authority Washington law enforcement agency as
30 defined in RCW 10.93.020 or a city, county, or regional adult or
31 juvenile institution, correctional, jail, holding, or detention
32 facility as defined in RCW 70.48.020, 72.09.015, or 13.40.020.

33 (6) "Independent investigation team" means a team of qualified
34 and certified peace officer investigators, civilian crime scene
35 specialists, and other representatives who operate independently of
36 any involved agency to conduct investigations of police deadly force
37 incidents. An independent investigation team may be comprised of
38 multiple law enforcement agencies who jointly investigate police use

1 of force incidents in their geographical regions or may be a single
2 law enforcement agency, provided it is not the involved agency.

3 (7) "Involved agency" means a general authority Washington law
4 enforcement agency or limited authority Washington law enforcement
5 agency, as defined in RCW 10.93.020, that employs or supervises the
6 officer or officers who are an involved officer as defined in this
7 section, or an agency responsible for any facility referenced in
8 subsection (5) of this section.

9 (8) "Involved officer" means one of the following persons who is
10 involved in an incident as an actor, victim, or custodial officer in
11 which the act or omission by the individual is within the scope of
12 the jurisdiction of the office as defined in this chapter:

13 (a) A general authority Washington peace officer, specially
14 commissioned Washington peace officer, or limited authority
15 Washington peace officer, as defined in RCW 10.93.020, whether on or
16 off duty if he or she is exercising his or her authority as a peace
17 officer; or

18 (b) An individual while employed in any facility referenced in
19 subsection (5) of this section.

20 (9) "Office" means the office of independent investigations.

21 (10) "Substantial bodily harm" has the same meaning as in RCW
22 9A.04.110.

23 **Office Creation**

24 NEW SECTION. **Sec. 301.** CREATION. (1) The office of independent
25 investigations is hereby established within the office of the
26 governor for the purpose of conducting fair, thorough, transparent,
27 and competent investigations as authorized under this chapter.

28 (2) The office of independent investigations is an investigative
29 law enforcement agency, including for the purposes of the public
30 records act, chapter 42.56 RCW.

31 NEW SECTION. **Sec. 302.** OFFICE POWERS AND DUTIES. In addition to
32 other responsibilities set forth in this chapter, the office shall:

33 (1) Conduct fair, thorough, transparent, and competent
34 investigations of police use of force and other incidents involving
35 law enforcement as authorized in this chapter and shall prioritize
36 investigations conducted by the office based on resources and other
37 criteria developed in consultation with the advisory board. The
38 office shall commence investigations as follows:

1 (a) Beginning no later than July 1, 2022, the office is
2 authorized to conduct investigations of deadly force cases occurring
3 after July 1, 2022, under the jurisdiction of the office pursuant to
4 this chapter;

5 (b) Beginning July 1, 2023, the office is authorized to conduct
6 investigations of cases under the jurisdiction of the office
7 involving in-custody deaths in which potential criminal acts were
8 committed, and sexual assault committed by an involved officer; and

9 (c) Beginning no later than July 1, 2023, the office is
10 authorized to review, and may investigate, prior investigations of
11 deadly force by an involved officer if new evidence is brought forth
12 that was not included in the initial investigation;

13 (2) Analyze data available to the office and provide reports and
14 recommendations as appropriate based on the data regarding issues,
15 trends, and other relevant areas;

16 (3) Provide reports on activities of the office as authorized
17 under this chapter; and

18 (4) Carry out such other responsibilities as may be consistent
19 with this chapter.

20 NEW SECTION. **Sec. 303.** DIRECTOR. (1)(a) The governor shall
21 appoint the director of the office and determine the director's
22 compensation. The governor shall select the director from a list of
23 three candidates recommended by the advisory board unless the
24 governor declines to select any of the candidates provided. If the
25 governor declines to select a candidate proposed by the advisory
26 board, the governor may request the advisory board to provide
27 additional qualified nominees for consideration or may offer an
28 alternative candidate who may be appointed following approval by a
29 majority of the advisory board.

30 (b) Prior to selecting the director, the governor shall consider
31 the results of a background check that includes research of social
32 media and affiliations to check for racial bias and conflicts of
33 interest.

34 (2) The director shall hold office for a term of three years and
35 continue to hold office until reappointed or until his or her
36 successor is appointed. The governor may remove the director prior to
37 the expiration of the director's term only for neglect of duty,
38 misconduct, or inability to perform duties.

1 NEW SECTION. **Sec. 304.** DUTIES OF THE DIRECTOR. (1) The director

2 shall:

3 (a) Oversee the duties and functions of the office and
4 investigations conducted by the office pursuant to this chapter;

5 (b) Hire or contract with investigators and other personnel as
6 the director considers necessary to perform investigations conducted
7 by the office, and other duties as required, under this chapter;

8 (c) Plan and provide trainings for office personnel, including
9 contracted investigators, that promote recognition of and respect
10 for, the diverse races, ethnicities, and cultures of the state;

11 (d) Plan and provide training for advisory board members
12 including training to utilize an antiracist lens in their duties as
13 advisory board members;

14 (e) Publish reports of investigations conducted under this
15 chapter;

16 (f) Enter into contracts and memoranda of understanding as
17 necessary to implement the responsibilities of the office under this
18 chapter;

19 (g) Adopt rules in accordance with chapter 34.05 RCW and perform
20 all other functions necessary and proper to carry out the purposes of
21 this chapter;

22 (h) Develop the nondisclosure agreement required in section 501
23 of this act; and

24 (i) Perform the duties and exercise the powers that are set out
25 in this chapter, as well as any additional duties and powers that may
26 be prescribed.

27 (2) No later than February 1, 2022, in consultation with the
28 advisory board, the director shall develop a plan to implement:

29 (a) Regional investigation teams and a system for promptly
30 responding to incidents of deadly force under the jurisdiction of the
31 office. The regional investigation teams should:

32 (i) Allow for prompt response to the incident requiring
33 investigation; and

34 (ii) Include positions for team members who are not required to
35 be designated as limited authority Washington peace officers;

36 (b) A system and requirements for notification to the office of
37 an incident under the jurisdiction of the office by an involved
38 agency;

39 (c) The process to conduct investigations of cases under the
40 jurisdiction of the office including, but not limited to:

- 1 (i) The office intake process following notification of an
2 incident by an involved agency;
- 3 (ii) The assessment and response to the notification of the
4 incident by the office, including direction to and coordination with
5 the independent investigation team;
- 6 (iii) Determination and deployment of necessary resources for the
7 regional investigation teams to conduct the investigations;
- 8 (iv) Determination of any conflicts with office investigators or
9 others involved in the investigation to ensure no investigator has an
10 existing conflict with an assigned case;
- 11 (v) Protocol and direction to the involved agency;
- 12 (vi) Protocol and direction to the independent investigation
13 team;
- 14 (vii) Protocol and guidelines for contacts and engagement with
15 the involved agency; and
- 16 (viii) Protocol for finalizing the completed investigation and
17 referral to the entity responsible for the prosecutorial decision,
18 including communication with the family and public regarding the
19 completion of the investigation;
- 20 (d) A plan for the office's interaction, communications, and
21 responsibilities to the individual who is the subject of the action
22 by the involved officer that is the basis of the case under
23 investigation, their families, the public, and other interested
24 parties or stakeholders that considers the following:
- 25 (i) A process for consultation, notifications, and communications
26 with the person, family, or tribal representative of any person who
27 is the subject of the action by the involved officer that is the
28 basis of the case under investigation;
- 29 (ii) Translation services which may be utilized through employees
30 or contracted services;
- 31 (iii) Support to access assistance or services to the extent
32 possible; and
- 33 (iv) A process for situations in which a tribal member is
34 involved in the case that ensures consultation with the tribe, and
35 notification of the governor's office of Indian affairs within 24
36 hours in cases of deadly use of force;
- 37 (e) Training for employees and contractors of the office to begin
38 prior to July 1, 2022; and
- 39 (f) Prioritization of cases for investigation. In consultation
40 with the advisory board, the director shall develop a plan to

1 prioritize investigation of cases under the jurisdiction of the
2 office and shall give highest priority to deadly force cases under
3 the jurisdiction of the office occurring after the date the office
4 begins investigating cases.

5 (3) No later than October 1, 2022, in consultation with the
6 advisory board, the director shall develop a plan for the office to
7 conduct investigations of incidents under the jurisdiction of the
8 office other than the deadly force cases which the director planned
9 under subsection (2) of this section. Investigations of the cases
10 other than deadly force shall commence no later than July 1, 2023.

11 (4) No later than December 1, 2023, in consultation with the
12 advisory board, the director shall develop a proposal for training
13 individuals who are nonlaw enforcement officers to conduct competent,
14 thorough investigations of cases under the jurisdiction of the
15 office. The proposal should establish a training plan with an
16 objective that within five years of the date the office begins
17 investigating deadly force cases the cases will be investigated by
18 nonlaw enforcement officers. The director shall report such proposal
19 to the governor and legislature by December 1, 2023. Any proposal
20 offered by the director must ensure investigations are high quality,
21 thorough, and competent.

22 (5) The director, in consultation with the advisory board, shall
23 implement a plan to review prior investigations of deadly force by an
24 involved officer if new evidence is brought forth that was not
25 included in the initial investigation and investigate if determined
26 appropriate based on the review. The director must prioritize the
27 review or investigation of cases occurring prior to July 1, 2022,
28 based on resources and other cases under investigation with the
29 office.

30 NEW SECTION. **Sec. 305.** PERSONNEL. (1) The director may employ,
31 or enter into contracts with, personnel as he or she determines
32 necessary for the proper discharge of his or her duties. The director
33 must request input from the advisory board on the hiring process and
34 hiring goals, including diversity.

35 (2) The director may employ, or enter into contracts with,
36 investigators to conduct investigations of cases under the
37 jurisdiction of the office.

1 (a) The director shall consider the relevant experience and
2 qualifications of the candidate including the extent to which he or
3 she demonstrates experience or understanding of the following areas:

4 (i) Extensive experience with criminal investigations, including
5 homicide investigations;

6 (ii) Mental health issues;

7 (iii) Trauma-informed interviewing;

8 (iv) De-escalation techniques and utilization; and

9 (v) Knowledge of Washington practices, including laws, policies,
10 and procedures related to criminal law, criminal investigations, and
11 policing.

12 (b) The director shall consider the following prior to employing
13 an investigator:

14 (i) The investigators should not be commissioned law enforcement
15 officers employed with any law enforcement agency as a peace officer
16 at the time of application with the office.

17 (A) If the individual considered for a position as an
18 investigator was a prior law enforcement officer, the director must
19 conduct a review of prior disciplinary actions or complaints related
20 to bias.

21 (B) The individual should not have been a commissioned law
22 enforcement officer within 24 months of the date of the application
23 for service as an investigator; and

24 (ii) The results of a background check that includes research of
25 social media and affiliations to check for racial bias and conflicts
26 of interest.

27 (c) Investigators employed or contracted with the office are
28 prohibited from being simultaneously employed, commissioned, or have
29 any business relationship, other than through the work of the office,
30 with a general authority or limited authority Washington law
31 enforcement agency, or county or city corrections agency.

32 (d) The director may not employ an individual who was a
33 previously commissioned law enforcement officer who does not meet the
34 criteria of this section without the approval of a majority of the
35 advisory board.

36 (3) The director may employ or enter into contracts for services
37 to provide additional personnel as needed to conduct investigations
38 of cases under the jurisdiction of the office including, but not
39 limited to, the following:

40 (a) Forensic services and crime scene investigators;

1 (b) Liaisons for community, family, and tribal relations;

2 (c) Analysts, including analysts to conduct evaluations on use of
3 force data;

4 (d) Mental health experts;

5 (e) Bilingual staff, translators, or interpreters;

6 (f) Other experts as needed; and

7 (g) All staffing and other needs for the office.

8 (4) The director shall ensure the following training is provided
9 to staff and that there is a regular schedule for additional
10 trainings during the course of employment:

11 (a) The director shall ensure that the director and staff
12 involved in investigations, including any contracted investigators,
13 engage in trainings that include the following areas. A training may
14 include more than one of the following areas per training. A separate
15 training course is not required for each topic.

16 (i) History of racism in policing, including tribal sovereignty
17 and history of Native Americans within the justice system;

18 (ii) Implicit and explicit bias training;

19 (iii) Intercultural competency;

20 (iv) The use of a racial equity lens in conducting the work of
21 the office;

22 (v) Antiracism training; and

23 (vi) Undoing institutional racism.

24 (b) The director shall ensure that investigators engage in the
25 following training. A training may include more than one of the
26 following areas per training. A separate training course is not
27 required for each topic.

28 (i) Criminal investigations, including homicide investigations as
29 appropriate for the assigned positions;

30 (ii) Washington practices, including Washington laws and
31 policies, as well as relevant policing practices as appropriate;

32 (iii) Interviewing techniques; and

33 (iv) Other relevant trainings as needed.

34 NEW SECTION. **Sec. 306.** INVESTIGATORS. (1) The director shall
35 designate investigator positions that are limited authority
36 Washington peace officers as defined in RCW 10.93.020. The
37 investigators designated as limited authority Washington peace
38 officers have the authority to investigate any case within the
39 jurisdiction of the office and any criminal activity related to, or

1 discovered in the course of, the investigation of the case under the
2 jurisdiction of the incident that has a relationship to the
3 investigation.

4 (2) Any investigator employed or contracted with the office for
5 the purpose of conducting investigations may participate in the
6 investigations of a case under the jurisdiction of the office. Only
7 investigators who are limited authority Washington peace officers may
8 be designated a lead investigator on any criminal investigation
9 conducted by the office pursuant to this chapter.

10 **Sec. 307.** RCW 10.93.020 and 2006 c 284 s 16 are each amended to
11 read as follows:

12 As used in this chapter, the following terms have the meanings
13 indicated unless the context clearly requires otherwise.

14 (1) "General authority Washington law enforcement agency" means
15 any agency, department, or division of a municipal corporation,
16 political subdivision, or other unit of local government of this
17 state, and any agency, department, or division of state government,
18 having as its primary function the detection and apprehension of
19 persons committing infractions or violating the traffic or criminal
20 laws in general, as distinguished from a limited authority Washington
21 law enforcement agency, and any other unit of government expressly
22 designated by statute as a general authority Washington law
23 enforcement agency. The Washington state patrol and the department of
24 fish and wildlife are general authority Washington law enforcement
25 agencies.

26 (2) "Limited authority Washington law enforcement agency" means
27 any agency, political subdivision, or unit of local government of
28 this state, and any agency, department, or division of state
29 government, having as one of its functions the apprehension or
30 detection of persons committing infractions or violating the traffic
31 or criminal laws relating to limited subject areas, including but not
32 limited to, the state departments of natural resources and social and
33 health services, the state gambling commission, the state lottery
34 commission, the state parks and recreation commission, the state
35 utilities and transportation commission, the state liquor (~~control~~)
36 and cannabis board, the office of the insurance commissioner, (~~and~~)
37 the state department of corrections, and the office of independent
38 investigations.

1 (3) "General authority Washington peace officer" means any full-
2 time, fully compensated and elected, appointed, or employed officer
3 of a general authority Washington law enforcement agency who is
4 commissioned to enforce the criminal laws of the state of Washington
5 generally.

6 (4) "Limited authority Washington peace officer" means any full-
7 time, fully compensated officer of a limited authority Washington law
8 enforcement agency empowered by that agency to detect or apprehend
9 violators of the laws in some or all of the limited subject areas for
10 which that agency is responsible. A limited authority Washington
11 peace officer may be a specially commissioned Washington peace
12 officer if otherwise qualified for such status under this chapter.

13 (5) "Specially commissioned Washington peace officer", for the
14 purposes of this chapter, means any officer, whether part-time or
15 full-time, compensated or not, commissioned by a general authority
16 Washington law enforcement agency to enforce some or all of the
17 criminal laws of the state of Washington, who does not qualify under
18 this chapter as a general authority Washington peace officer for that
19 commissioning agency, specifically including reserve peace officers,
20 and specially commissioned full-time, fully compensated peace
21 officers duly commissioned by the states of Oregon or Idaho or any
22 such peace officer commissioned by a unit of local government of
23 Oregon or Idaho. A reserve peace officer is an individual who is an
24 officer of a Washington law enforcement agency who does not serve
25 such agency on a full-time basis but who, when called by the agency
26 into active service, is fully commissioned on the same basis as full-
27 time peace officers to enforce the criminal laws of the state.

28 (6) "Federal peace officer" means any employee or agent of the
29 United States government who has the authority to carry firearms and
30 make warrantless arrests and whose duties involve the enforcement of
31 criminal laws of the United States.

32 (7) "Agency with primary territorial jurisdiction" means a city
33 or town police agency which has responsibility for police activity
34 within its boundaries; or a county police or sheriff's department
35 which has responsibility with regard to police activity in the
36 unincorporated areas within the county boundaries; or a statutorily
37 authorized port district police agency or four-year state college or
38 university police agency which has responsibility for police activity
39 within the statutorily authorized enforcement boundaries of the port
40 district, state college, or university.

1 (8) "Primary commissioning agency" means (a) the employing agency
2 in the case of a general authority Washington peace officer, a
3 limited authority Washington peace officer, an Indian tribal peace
4 officer, or a federal peace officer, and (b) the commissioning agency
5 in the case of a specially commissioned Washington peace officer (i)
6 who is performing functions within the course and scope of the
7 special commission and (ii) who is not also a general authority
8 Washington peace officer, a limited authority Washington peace
9 officer, an Indian tribal peace officer, or a federal peace officer.

10 (9) "Primary function of an agency" means that function to which
11 greater than fifty percent of the agency's resources are allocated.

12 (10) "Mutual law enforcement assistance" includes, but is not
13 limited to, one or more law enforcement agencies aiding or assisting
14 one or more other such agencies through loans or exchanges of
15 personnel or of material resources, for law enforcement purposes.

16 NEW SECTION. **Sec. 308.** INVESTIGATIONS—DUTIES AND POWERS. (1)
17 The office has jurisdiction over, and is authorized to conduct
18 investigations of, all cases and incidents as established within this
19 section.

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

22 (i) Of a use of deadly force by an involved officer occurring
23 after July 1, 2022;

24 (ii) In addition to any case of use of deadly force by an
25 involved officer any incident by an involved officer that includes
26 the following that occurs after July 1, 2023:

27 (A) In-custody deaths involving potential criminal acts committed
28 by an involved officer; or

29 (B) Sexual assault by an involved officer; and

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

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

34 (i) The involved officer was on duty; or

35 (ii) The involved officer was off duty but:

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

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

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

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

14 (5) Upon receiving notification required in section 402 of this
15 act of an incident under the jurisdiction of the office, the
16 director:

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

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

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

26 (6) If the director determines the case is to be investigated the
27 director will communicate the decision to investigate to the involved
28 agency and will thereafter be the lead investigative body in the case
29 and have priority over any other state or local agency investigating
30 the incident or a case that is under the jurisdiction of the office.
31 The director will implement the process developed pursuant to section
32 304 of this act and conduct the appropriate investigation in
33 accordance with the process.

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

1 conducted as part of an administrative investigation related to the
2 incident.

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

7 NEW SECTION. **Sec. 309.** CRIMINAL JUSTICE TRAINING COMMISSION.

8 (1) The criminal justice training commission shall collaborate with
9 the office to ensure office investigators receive sufficient training
10 to attain the necessary requirements to conduct investigations under
11 the jurisdiction of the office.

12 (2) The investigators of the office shall receive priority
13 registration to criminal justice training commission trainings
14 necessary to conduct investigations as required by this chapter.

15 NEW SECTION. **Sec. 310.** DATA AND RESEARCH. The office will
16 conduct analysis of use of force and other data to the extent such
17 data is available to the office. The director is authorized to enter
18 into contracts or memoranda of understanding to access data as
19 needed. If data is available, the office should, at a minimum,
20 analyze and report annually:

21 (1) Analysis and research regarding any identified trends,
22 patterns, or other situations identified by the data;

23 (2) Recommendations for improvements; and

24 (3) Recommendations, if any, for expanding the scope of
25 investigations or jurisdiction of the office based on trends, data,
26 or reports received by the agency.

27 NEW SECTION. **Sec. 311.** LIABILITY. No action or other proceeding
28 may be instituted against the director, an investigator, or an
29 employee or contractor in the office or a person exercising powers or
30 performing duties at the direction of the director for any act done
31 in good faith in the execution or intended execution of the person's
32 duty or for any alleged neglect or default in the execution in good
33 faith of the person's duty.

34 NEW SECTION. **Sec. 312.** A new section is added to chapter 41.06
35 RCW to read as follows:

1 In addition to the exemptions set forth in RCW 41.06.070, the
2 provisions of this chapter do not apply in the office of independent
3 investigations to the director, to one confidential secretary, and to
4 any deputy or regional directors, if any.

5 **Sec. 313.** RCW 39.26.125 and 2012 c 224 s 14 are each amended to
6 read as follows:

7 All contracts must be entered into pursuant to competitive
8 solicitation, except for:

9 (1) Emergency contracts;

10 (2) Sole source contracts that comply with the provisions of RCW
11 39.26.140;

12 (3) Direct buy purchases, as designated by the director. The
13 director shall establish policies to define criteria for direct buy
14 purchases. These criteria may be adjusted to accommodate special
15 market conditions and to promote market diversity for the benefit of
16 the citizens of the state of Washington;

17 (4) Purchases involving special facilities, services, or market
18 conditions, in which instances of direct negotiation is in the best
19 interest of the state;

20 (5) Purchases from master contracts established by the department
21 or an agency authorized by the department;

22 (6) Client services contracts;

23 (7) Other specific contracts or classes or groups of contracts
24 exempted from the competitive solicitation process when the director
25 determines that a competitive solicitation process is not appropriate
26 or cost-effective;

27 (8) Off-contract purchases of Washington grown food when such
28 food is not available from Washington sources through an existing
29 contract. However, Washington grown food purchased under this
30 subsection must be of an equivalent or better quality than similar
31 food available through the contract and must be able to be paid from
32 the agency's existing budget. This requirement also applies to
33 purchases and contracts for purchases executed by state agencies,
34 including institutions of higher education as defined in RCW
35 28B.10.016, under delegated authority granted in accordance with this
36 chapter or under RCW 28B.10.029;

37 (9) Contracts awarded to companies that furnish a service where
38 the tariff is established by the utilities and transportation
39 commission or other public entity;

1 (10) Intergovernmental agreements awarded to any governmental
2 entity, whether federal, state, or local and any department,
3 division, or subdivision thereof;

4 (11) Contracts for services that are necessary to the conduct of
5 collaborative research if the use of a specific contractor is
6 mandated by the funding source as a condition of granting funds;

7 (12) Contracts for architectural and engineering services as
8 defined in RCW 39.80.020, which shall be entered into under chapter
9 39.80 RCW;

10 (13) Contracts for the employment of expert witnesses for the
11 purposes of litigation; (~~and~~)

12 (14) Contracts for bank supervision authorized under RCW
13 (~~30.38.040~~) 30A.38.040; and

14 (15) Contracts for investigators awarded by the office of
15 independent investigations as authorized under section 304 of this
16 act.

17 **Duty of Involved Agency**

18 **Sec. 401.** RCW 10.114.011 and 2019 c 4 s 5 are each amended to
19 read as follows:

20 Except as required by federal consent decree, federal settlement
21 agreement, or federal court order, where the use of deadly force by a
22 peace officer results in death, substantial bodily harm, or great
23 bodily harm, an independent investigation must be completed to inform
24 any determination of whether the use of deadly force met the good
25 faith standard established in RCW 9A.16.040 and satisfied other
26 applicable laws and policies. The investigation must be completely
27 independent of the agency whose officer was involved in the use of
28 deadly force and conducted in accordance with chapter 43.--- RCW (the
29 new chapter created in section 601 of this act). (~~The~~) Any rules
30 adopted by the criminal justice training commission must (~~adopt~~
31 ~~rules establishing criteria to determine what qualifies as an~~
32 ~~independent investigation pursuant to this section~~) be consistent
33 with chapter 43.--- RCW (the new chapter created in section 601 of
34 this act).

35 NEW SECTION. **Sec. 402.** NOTIFICATION OF DIRECTOR AND SECURING
36 THE SCENE. (1) Following notification by the director that the office
37 will accept investigations of cases under its jurisdiction, after
38 July 1, 2022, for deadly force cases and after July 1, 2023, for all

1 other cases under the jurisdiction of the office, an involved agency
2 shall promptly notify the office of any incident under the
3 jurisdiction of the office that involves an officer within the
4 involved agency.

5 (a) If the incident involves use of deadly force by an involved
6 officer that results in death, substantial bodily harm, or great
7 bodily harm the involved agency must immediately contact the office
8 pursuant to the procedure established by the director once the
9 involved agency personnel and other first responders have rendered
10 the scene safe and provided or facilitated lifesaving first aid to
11 persons at the scene who have life-threatening injuries. This
12 requirement does not affect the duty of law enforcement under RCW
13 36.28A.445.

14 (b) In all other cases, the involved agency must notify the
15 office of the incident pursuant to the procedure established by the
16 director.

17 (2)(a) In any case that requires notice to the director under
18 this section, the involved agency shall ensure that any officers or
19 employees over which the involved agency has authority who are at the
20 scene of the incident take all lawful measures necessary for the
21 purposes of protecting, obtaining, or preserving evidence relating to
22 the incident until an office investigator, or independent
23 investigation team at the request of the office, takes charge of the
24 scene.

25 (b) The primary focus of the involved agency must be the
26 protection and preservation of evidence in order to maintain the
27 integrity of the scene until the office investigator or independent
28 investigation team arrives. The involved agency should ensure that
29 evidence, including but not limited to the following is protected and
30 preserved:

31 (i) Physical evidence that is at risk of being destroyed or
32 disappearing and cannot be easily reconstructed, including evidence
33 which may be degraded or tainted by human or environmental factors if
34 left unprotected or unpreserved;

35 (ii) Identification and contact information for witnesses to the
36 incident; and

37 (iii) Photographs and other methods of documenting the location
38 of physical evidence and location and perspective of witnesses.

39 (3)(a) When the office investigator, or independent investigation
40 team acting at the request of the office, arrives at the scene of an

1 incident under the jurisdiction of the office, the involved agency
2 will relinquish control of the scene to the office investigator or
3 independent investigation team upon the request of the office
4 investigator. The involved agency has a duty to comply with the
5 requests of the office related to the investigation conducted
6 pursuant to this chapter.

7 (b) Once the scene is relinquished, no member of the involved
8 agency may participate in any way in the investigation, with the
9 exception of the use of specialized equipment that is necessary for
10 the investigation and where no alternative exists. If there is any
11 equipment of the involved agency used in the investigation, steps
12 must be taken to appropriately limit the role of any involved agency
13 personnel in facilitating the use of that equipment or their
14 engagement with the investigation.

15 (4) If an independent investigation team takes control of the
16 scene at the request of the office, the independent investigation
17 shall relinquish control of the scene and investigation at the
18 request of the office when they are on the scene and prepared to lead
19 the investigation, but may continue to engage in the investigation if
20 requested to do so by the lead office investigator, director, or the
21 director's designee.

22 (5) No information about the ongoing independent investigation
23 under the jurisdiction of the office may be shared with any member of
24 the involved agency, except limited briefings given to the chief or
25 sheriff of the involved agency about the progress of the
26 investigation.

27 (6) If the office declines to investigate a case, the authority
28 and duty to investigate remains with the independent investigation
29 team or local law enforcement authority with jurisdiction over the
30 incident.

31 **Office of Independent Investigations Advisory Board**

32 NEW SECTION. **Sec. 501.** MEMBERSHIP AND DUTIES. (1)(a) There is
33 created the office of independent investigations advisory board. The
34 advisory board shall consist of the following 11 members, appointed
35 by the governor, one of whom the governor shall designate as chair:

36 (i) Three members of the general public representing the
37 community who are not current or former law enforcement, with
38 preference given to individuals representing diverse communities;

1 (ii) One member of the general public representing a family
2 impacted by an incident of the nature under the jurisdiction of the
3 office, who is not current or former law enforcement;

4 (iii) One Washington tribal member representative, who is not
5 current or former law enforcement;

6 (iv) One defense attorney representative;

7 (v) One prosecuting attorney representative;

8 (vi) One representative of a police officer labor association
9 with experience in homicide investigations;

10 (vii) One sheriff or police chief who is also a member of an
11 independent investigation team;

12 (viii) One credentialed mental health expert who is not current
13 or former law enforcement; and

14 (ix) One member of the criminal justice training commission.

15 (b) The members of the advisory board appointed by the governor
16 shall be appointed for terms of three years and until their
17 successors are appointed and confirmed. The governor shall stagger
18 the initial appointment terms of the advisory board members with the
19 terms of five members being for two years from the date of
20 appointment and six members being for three years from the date of
21 appointment. The governor shall designate the appointees who will
22 serve the two-year and three-year terms. The members of the advisory
23 board serve without compensation, but must be reimbursed for travel
24 expenses as provided in RCW 43.03.050 and 43.03.060.

25 (c) The governor, when making appointments to the advisory board,
26 shall make appointments that reflect the cultural diversity of the
27 state of Washington.

28 (2) The purpose of the advisory board is to provide input to the
29 office and shall:

30 (a) Provide input to the governor on the selection of the
31 director, including providing candidates for consideration for
32 appointment for the position of director. If the governor requests
33 additional candidates for consideration, the advisory board shall
34 provide additional candidates to the governor. If the governor
35 provides an alternative candidate, the advisory board must consider
36 the candidate provided by the governor and vote on the approval or
37 rejection of the candidate.

38 (i) The advisory board shall recommend candidates to the governor
39 who they find are individuals with sound judgment, independence,

1 objectivity, and integrity who will be viewed as a trustworthy
2 director.

3 (ii) The director must have experience either in conducting
4 criminal investigations or prosecutions. The advisory board shall
5 consider the relevant experience and qualifications of the candidate
6 including the extent to which they demonstrate experience or
7 demonstrated understanding of the following areas:

8 (A) Criminal investigations;

9 (B) Organizational leadership;

10 (C) Mental health issues;

11 (D) Trauma-informed interviewing;

12 (E) Community leadership;

13 (F) Legal experience or background;

14 (G) Antioppression and antiracist analysis and addressing
15 systemic inequities; and

16 (H) Working with Black, Indigenous, and communities of color;

17 (b) Provide input to the director on the plans required to be
18 developed for the office including the regional investigation teams;
19 staffing; training for personnel; procedures for engagement with
20 individuals involved in any case under the jurisdiction of the
21 office, as well as families and the community; recommendations to the
22 legislature; and other input as requested by the governor or
23 director;

24 (c) Participate in interviews as requested by the governor or
25 director; and

26 (d) Receive briefings or reports from the director relating to
27 data, trends, and other relevant issues, as well as cases under
28 investigation to the extent permitted by law.

29 (3) Advisory board members have a duty to maintain the
30 confidentiality of the information they receive during the course of
31 their work on the advisory board. Each advisory board member shall
32 agree in writing to not disclose any information they receive or
33 otherwise access related to an investigation, including information
34 about individuals involved in the investigation as involved officers,
35 individuals who are the subject of police action, witnesses, and
36 investigators.

37 (4) Advisory board members must complete training to utilize an
38 antiracist lens in their duties as advisory board members.

39 (5) The office shall provide administrative and clerical
40 assistance to the advisory board.

1 **Miscellaneous Provisions**

2 NEW SECTION. **Sec. 601.** CODIFICATION. Sections 201 through 306,
3 308 through 311, 402, and 501 of this act constitute a new chapter in
4 Title 43 RCW.

5 NEW SECTION. **Sec. 602.** SEVERABILITY. If any provision of this
6 act or its application to any person or circumstance is held invalid,
7 the remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 603.** SUBJECT TO APPROPRIATION. If specific
10 funding for the purposes of this act, referencing this act by bill or
11 chapter number, is not provided by June 30, 2021, in the omnibus
12 appropriations act, this act is null and void.

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