

# HOUSE BILL REPORT

## SHB 2086

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### As Passed Legislature

**Title:** An act relating to updating processes of the office of independent investigations by changing authority to obtain and share investigative information and aligning with current operations and practices.

**Brief Description:** Updating processes of the office of independent investigations by changing authority to obtain and share investigative information and aligning with current operations and practices.

**Sponsors:** House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Entenman, Goodman, Fitzgibbon, Berry, Reed, Ormsby, Street, Doglio, Farivar and Kloba; by request of Office of Independent Investigations).

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/8/24, 1/18/24 [DPS].

**Floor Activity:**

Passed House: 2/7/24, 66-30.

Passed Senate: 2/27/24, 29-20.

Passed Legislature.

**Brief Summary of Substitute Bill**

- Modifies the Office of Independent Investigations' authority to obtain and share specified information.
- Adjusts certain reporting dates and deadlines.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 1 member: Representative Graham.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member.

**Staff:** Michelle Rusk (786-7153).

**Background:**

Office of Independent Investigations.

In 2021 the Office of Independent Investigations (OII) was established as an investigative law enforcement agency within the Office of the Governor for the purpose of investigating certain incidents involving peace officers.

*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 adult or juvenile institution, correctional, jail, holding, or detention facility, who is involved in an incident as an actor or custodial officer.

*Duties of Involved Agencies.*

An involved agency must notify the OII of any incident under OII jurisdiction in accordance with requirements established by the OII Director, and follow specified procedures for certain incidents. An involved agency's primary focus must be the protection and preservation of evidence in order to maintain the integrity of a scene of an incident until the OII or an independent investigation team (IIT) arrive, and must then relinquish control of the scene to the OII or an IIT upon the OII's request. "Involved agency" means any general authority or limited authority law enforcement agency or other facility that employs or supervises an involved officer.

*Investigation Process.*

The OII is the lead investigative body for any incidents within its jurisdiction that it selects for investigation. The OII must have access to all reports and information necessary or related to any investigation in the custody and control of the involved agency and any law enforcement agency responding to the scene of an 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.

No information about an ongoing independent investigation under the jurisdiction of the OII may be shared with any member of an involved agency, except for limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation.

#### Administration of the Office of Independent Investigations.

##### *Advisory Board.*

The OII Advisory Board (Advisory Board) consists of 11 members appointed by the Governor representing specified interests or entities or having specified background. The Advisory Board must provide input to the Governor and the OII Director on specified matters and have a duty of confidentiality. 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.

##### *Director.*

The Governor appoints the OII Director through a specified process. The powers and responsibilities of the OII Director include 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.

The OII Director must also implement a plan to review prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation, and the OII Director must prioritize the review or investigation of cases occurring prior to July 1, 2022, based on resources and other cases the OII is investigating.

##### *Investigators and Personnel.*

Investigators hired by the OII Director must meet specified qualifications. 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 unless otherwise approved by the Advisory Board. Office of Independent Investigations investigators may also not be simultaneously employed, commissioned, or have any business relationship with another law enforcement agency or county or city corrections agency. By December 1, 2023, the OII Director must develop a proposal 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, and provide the Governor and Legislature with a report on the proposal.

##### *Data Analysis.*

The OII must conduct analysis of use of force and other available data. After July 1, 2024, the OII must begin annually reporting recommendations, if any, for expanding the scope of

investigations or jurisdiction of the OII based on trends, data, or reports.

### **Summary of Substitute Bill:**

#### When the Office of Independent Investigations May Share Information with an Involved Agency.

The manners in which the OII may share information about an ongoing independent investigation under its jurisdiction with a member of an involved agency is modified to include when:

- the information is essential to protect the safety of a community or the integrity of an ongoing, urgent criminal investigation; and
- sharing the information will not impede an ongoing independent investigation conducted by the OII.

No information about an ongoing investigation under the OII's jurisdiction shared with an involved agency may be divulged to any involved or witness officers.

If the OII shares information with an involved agency because the information is deemed essential to protect the safety of a community or the integrity of an ongoing, urgent criminal investigation, the OII must:

- document the exact information provided, to whom, and why;
- obtain agreement from the involved agency in writing that no involved officer or witness will have access to the information other than what is released to the general public; and
- notify the person, family, or representative of the person impacted by the involved officer's conduct under investigation that information was provided to the involved agency, including: (1) the exact information provided, to whom, and why; and (2) that the involved agency must agree in writing that no involved officer or witness will have access to that information.

Any press release containing information provided by the OII must be preapproved by the OII.

#### Modified Deadlines.

Various reporting dates and deadlines are modified:

- By December 1, 2025, the OII must develop a proposal 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.
- After July 1, 2025, the OII must begin annually reporting on its recommendations, if any, for expanding the scope or jurisdiction of the OII based on trends, data, or reports.
- The OII Advisory Board's statutory authorization to assess whether the OII's jurisdiction should be expanded will expire on July 1, 2025.

### Prior Investigations Prioritization.

The OII Director must prioritize the review or investigation of prior investigations based on resources and other cases under investigation by the OII. Incidents occurring after the date the OII begins investigating cases will receive the highest priority for investigation.

### 911 Communications Centers.

A definition for "911 communications center" is established. The 911 communications centers are public safety answering points or any other entity that captures and maintains data that is utilized in a 911 emergency communications system.

The OII must have access to all reports and information necessary or related to any investigation in the custody and control of 911 communications centers. The OII must also have copies of such reports and information from 911 emergency communications systems, involved agencies, and any law enforcement agency responding to the scene of an incident, which must be provided to the OII as soon as possible.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) Starting this agency was not without difficulty, but the agency's progress is impressive and we look forward to it fulfilling its functions. The policy contains some fixes to ensure that the OII has access to all information needed to conduct a full and fair investigation, and it lays out clear guardrails so that those involved in an incident do not have information they should not have. These changes include the ability to get information from 911 call centers, which is not currently clear enough in the statute. The bill also modifies some deadlines so that the process of setting up the OII is not rushed. These changes primarily have to do with when the OII becomes operational, which is hopefully this year. Since this office is a new concept it is important that we get things right.

The proposed changes in this policy will modernize practices while prioritizing accountability. The changes are intended to help conduct unbiased, transparent investigations. The OII's job is to follow the facts wherever they lead, to conduct an investigation from the ground up, and then present the information to a prosecutor who decides what happens next. The OII will continue to have conversations with law enforcement as we encounter circumstances requiring information sharing. The key, and most important part, of any investigation is documenting what we do, and the OII wants to make sure what we do is documented, clear, and eventually public.

(Opposed) None.

(Other) There is concern with provisions regarding information sharing. These provisions allow the OII to give limited and specific briefings to the chief executive of an involved law enforcement agency. These briefings might include information necessary to protect the public, and the policy has language stating that the agency, as a condition of receiving information, has to sign in writing that the involved officer will never find out. But a single person cannot be isolated from getting information that goes out to the general public, like an Amber Alert. We do not want the OII to be criticized for even technical violations of law. We also need clarity on who needs to provide notification to a person of family about what information is shared by the OII with an involved law enforcement agency.

**Persons Testifying:** (In support) Representative Debra Entenman, prime sponsor; Roger Rogoff, Office of Independent Investigations; and Paula Sardinias, We Build Back Black Alliance.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.