
SUBSTITUTE HOUSE BILL 1579

State of Washington

68th Legislature

2023 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Stonier, Bateman, Lekanoff, Reed, Pollet, and Macri)

READ FIRST TIME 02/14/23.

1 AN ACT Relating to establishing a mechanism for independent
2 prosecutions within the office of the attorney general of criminal
3 conduct arising from police use of force; amending RCW 43.10.230,
4 43.10.232, 43.10.234, 36.27.020, 36.27.030, 43.102.080, 41.80.400,
5 and 10.114.011; adding a new section to chapter 36.27 RCW; adding new
6 sections to chapter 43.10 RCW; and creating a new section.

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

8 **Sec. 1.** RCW 43.10.230 and 1981 c 335 s 1 are each amended to
9 read as follows:

10 The purpose of RCW 43.10.232 is to grant authority to the
11 attorney general concurrent with the county prosecuting attorneys to
12 investigate and prosecute crimes, including incidents of use of
13 deadly force by an involved officer as those terms are defined in RCW
14 43.102.010. The purpose of RCW ((43.10.234)) 10.01.190 is to
15 ((insure)) ensure access by the attorney general to the procedural
16 powers of the various prosecuting attorneys in exercising criminal
17 prosecutorial authority granted in RCW 43.10.232 or otherwise granted
18 by the legislature.

19 **Sec. 2.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to
20 read as follows:

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

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

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

8 ~~((c) A majority of the committee charged with the oversight of
9 the organized crime intelligence unit))~~ (iii) As provided in
10 subsection (2) of this section.

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

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

18 (2) (a) The attorney general's office of independent prosecutions
19 shall have concurrent authority and power with the prosecuting
20 attorneys to review investigations and initiate and conduct
21 prosecutions of crimes involving the use of deadly force by involved
22 officers as described in chapter 43.102 RCW. "Prosecution" includes
23 appeals and requests for postconviction relief.

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

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

37 (d) The authority of the office of the attorney general under
38 this subsection applies to any criminal offense involving the use of
39 deadly force by an involved officer and any other investigations
40 within the scope of the office of independent investigations.

1 (e) The attorney general's office shall be responsible for its
2 expert witness fees and other costs of prosecution associated with
3 prosecutions it undertakes pursuant to this subsection. The attorney
4 general's office shall not be responsible for defense costs,
5 including defense attorneys' fees, defense expert witness fees, or
6 any other cost related to the defense in a criminal prosecution
7 brought pursuant to this subsection. The county in which the action
8 is filed shall be responsible for court administration costs and
9 public defense costs if the defendant so qualifies.

10 (f) For the purposes of this section, "deadly force" and
11 "involved officer" have the meanings provided in RCW 43.102.010.

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

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

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

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

24 (2) For purposes of designating the prosecuting authority where
25 information or an indictment has been filed by the office of the
26 attorney general pursuant to RCW 43.10.232(2), the court shall, in
27 accordance with section 4 of this act, prioritize the public's
28 interest in ensuring a fair and impartial prosecution and trial that
29 is free from bias and even the appearance of bias, prejudice, or
30 conflict of interest. In any judicial proceeding under this
31 subsection, in order to be designated the prosecuting authority, the
32 county prosecuting attorney must overcome a presumption that the
33 county prosecuting attorney has an inherent conflict of interest in
34 any matter arising from an investigation within the scope of the
35 office of independent investigations.

36 NEW SECTION. **Sec. 4.** FINDINGS. The legislature finds that the
37 Washington state Constitution provides that the legislature shall
38 prescribe the duties of both the attorney general and the county

1 prosecuting attorneys. The legislature finds that the close working
2 relationships and intertwined duties between local law enforcement
3 and local prosecutors can give the appearance of bias in review of
4 incidents of use of deadly force by Washington peace officers and
5 corrections officers.

6 In order to increase public confidence in the fairness of review
7 of investigations of incidents of use of deadly force by Washington
8 peace officers and corrections officers, and to ensure independence
9 and transparency in such reviews, the legislature finds it necessary
10 to create an office of independent prosecutions within the attorney
11 general's office. The legislature further finds that prosecutions by
12 the independent prosecutor will best promote the interests of
13 justice.

14 NEW SECTION. **Sec. 5.** CREATION. (1) Subject to the availability
15 of amounts appropriated for this specific purpose, the office of
16 independent prosecutions is hereby established within the office of
17 the attorney general for the purpose of reviewing investigations of
18 use of deadly force by involved officers conducted pursuant to
19 chapter 43.102 RCW. The office is hereby authorized to review such
20 investigations, decline criminal charges when appropriate, file
21 criminal charges when appropriate, and prosecute such cases to the
22 conclusion of the case, including appeals and collateral attacks.

23 (2) The office shall be a separate division within the attorney
24 general's office. The office shall maintain policies and procedures
25 to ensure that personnel outside the office of independent
26 prosecutions with an actual and perceived conflict, including other
27 employees and divisions of the attorney general's office, shall be
28 screened from the investigation and prosecution of any case.

29 (3) The office shall have authority to adopt rules for the
30 maintaining of independent decision making and review of
31 investigations of use of deadly force by involved officers.

32 NEW SECTION. **Sec. 6.** AUTHORITY OF ATTORNEY GENERAL REGARDING
33 OFFICE OF INDEPENDENT PROSECUTIONS. (1) The attorney general shall
34 determine the compensation and appoint a licensed attorney as
35 independent counsel to lead the office of independent prosecutions.
36 The independent counsel shall have final decision-making authority
37 for:

1 (a) Hiring and terminating personnel within the office of
2 independent prosecutions;

3 (b) Declining the filing of criminal charges after thorough
4 review of an investigation of use of deadly force by an involved
5 officer as described in RCW 43.102.010;

6 (c) Filing criminal charges after thorough review of an
7 investigation of use of deadly force by an involved officer; and

8 (d) All aspects of the litigation of the office of independent
9 prosecutions.

10 (2) The attorney general may remove the independent counsel prior
11 to the expiration of the independent counsel's term for misconduct or
12 inability to perform duties. The attorney general shall otherwise be
13 screened from the work of the office of independent prosecutions. The
14 attorney general shall provide no input and have no decision-making
15 authority over whether criminal charges are filed after review of an
16 investigation of use of deadly force by an involved officer.

17 (3) The office of independent prosecutions shall be subject to
18 the policies and procedures applicable to employees of the attorney
19 general's office except where those policies and procedures conflict
20 with the duties of the office of independent prosecutions.

21 NEW SECTION. **Sec. 7.** OFFICE OF INDEPENDENT PROSECUTIONS
22 ADVISORY BOARD. (1)(a) There is created the office of independent
23 prosecutions advisory board. The advisory board shall consist of the
24 following members, appointed by the attorney general:

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

28 (ii) Two members of the general public representing families
29 affected by an incident of the nature under the jurisdiction of the
30 office of independent prosecutions, who are not current or former law
31 enforcement;

32 (iii) One member representing a federally recognized tribe in
33 Washington, who is not current or former law enforcement;

34 (iv) One defense attorney representative;

35 (v) Two prosecuting attorney representatives; and

36 (vi) Two active or retired law enforcement personnel.

37 (b) The attorney general, when making appointments to the
38 advisory board, shall make appointments that reflect the cultural
39 diversity of the state of Washington.

1 (2) The attorney general shall select the independent counsel
2 from a list of three candidates recommended by the advisory board
3 unless the attorney general declines to select any of the candidates
4 provided. If the attorney general declines to select a candidate
5 proposed by the advisory board, the attorney general may request the
6 advisory board to provide additional qualified nominees for
7 consideration or may offer an alternative candidate who may be
8 appointed following approval by a majority of the advisory board.

9 (3) In consultation with the independent counsel, the advisory
10 board shall submit a report with related recommendations to the
11 legislature and the governor by November 1, 2026, concerning the
12 cases that have been reviewed by the independent counsel under this
13 chapter, any cases that have come before a judge under RCW 43.10.234,
14 the disposition and outcomes of such cases, and whether there are any
15 changes needed in state law to increase public confidence in the
16 handling of cases under this chapter. The advisory board must seek
17 input from the public in its preparation of this report.

18 NEW SECTION. **Sec. 8.** INDEPENDENT COUNSEL. (1) The independent
19 counsel must meet the following minimum criteria for consideration of
20 appointment by the attorney general:

21 (a) Licensure to practice law in the state of Washington;

22 (b) No documented criminal or disciplinary history involving
23 dishonesty, discrimination against persons of color or marginalized
24 communities, or abuse of power; and

25 (c) Submission to a background check, including an assessment of
26 criminal history and research of social media and affiliations to
27 check for racial bias and conflicts of interest, prior to appointment
28 by the attorney general.

29 (2) Should the independent counsel resign, become incapacitated,
30 or be removed as set forth in this chapter, the attorney general
31 shall appoint an interim independent counsel within 24 hours, which
32 person shall serve as independent counsel until such time as a new
33 independent counsel can be appointed.

34 (3) The independent counsel shall hold the office for a term of
35 three years and continue to hold office until reappointed or until
36 his or her successor is appointed.

37 NEW SECTION. **Sec. 9.** POWERS AND DUTIES OF INDEPENDENT COUNSEL.

38 (1) The independent counsel shall:

1 (a) Oversee the duties and functions of the office of independent
2 prosecutions pursuant to this chapter;

3 (b) Hire or contract with attorneys, investigators, advocates for
4 those subjected to deadly force and their surviving family members,
5 and other personnel as necessary to perform investigations and
6 prosecutions conducted by the office, and other duties as required
7 under this chapter;

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

12 (d) Enter into contracts and memoranda of understanding as
13 necessary to implement the responsibilities of the office under this
14 chapter;

15 (e) Ensure that persons subjected to use of deadly force by an
16 involved officer, or their survivors, are kept apprised of the status
17 of the review of the investigation, any charging decisions, all court
18 hearings, and the status of any prosecution; and ensure that all
19 victims of charged crimes, or their surviving family members, are
20 afforded the rights set forth in RCW 7.69.030;

21 (f) Perform the duties and exercise the powers set forth in this
22 chapter, as well as any additional duties and powers that may be
23 prescribed; and

24 (g) Establish policies and procedures to ensure that personnel
25 with actual and apparent conflicts are screened from the review of
26 the investigation for criminal charges.

27 (2) The independent counsel or the independent counsel's
28 designees within the office shall make decisions pertaining to the
29 declining or filing of criminal charges independent of the attorney
30 general.

31 NEW SECTION. **Sec. 10.** PERSONNEL. (1) The independent counsel
32 may employ, or enter into contracts with, persons or entities as they
33 determine necessary for the proper discharge of the duties prescribed
34 to the independent counsel in this chapter.

35 (2) The independent counsel may employ assistant attorneys
36 general, or appoint and contract with special assistant attorneys
37 general, to perform or review investigations and prosecute charged
38 cases.

1 (3) The independent counsel may employ or contract for other
2 necessary personnel to perform the duties prescribed in this chapter
3 to include, but not limited to:

4 (a) Forensic services and crime scene investigators;

5 (b) Liaisons for community, family, and relations with tribal
6 nations and members;

7 (c) Analysts, including analysts to conduct evaluations on use of
8 force;

9 (d) Mental health experts;

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

11 (f) Other experts as needed; and

12 (g) All staffing and other needs for the office of independent
13 prosecutions.

14 (4) (a) The independent counsel shall ensure training is provided
15 to staff and that there is a regular schedule for additional training
16 during the course of employment.

17 (b) The independent counsel shall ensure that the independent
18 counsel and the independent counsel's staff, including any contracted
19 personnel, engage in trainings that include the following topics:

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

22 (ii) Implicit and explicit bias;

23 (iii) Intercultural competency;

24 (iv) Use of a racial equity lens in conducting the work of the
25 office;

26 (v) Antiracism training;

27 (vi) Undoing institutional racism;

28 (vii) Criminal procedure, to include criminal discovery rules and
29 the prosecution's obligations under CrR 4.7 and *Brady v. Maryland*,
30 373 U.S. 83 (1963), and its progeny; and

31 (viii) Other relevant trainings as needed.

32 NEW SECTION. **Sec. 11.** APPOINTMENT OF ASSISTANT ATTORNEYS
33 GENERAL—SPECIAL AND TEMPORARY. The independent counsel may appoint
34 one or more assistant attorneys general and special assistant
35 attorneys general who shall have the same powers as prosecuting
36 attorneys to perform investigations and prosecutions conducted by the
37 office of independent prosecutions. Each appointment shall be in
38 writing, signed by the independent counsel.

1 NEW SECTION. **Sec. 12.** EMPLOYMENT OF LEGAL INTERNS.

2 Notwithstanding any other provision of this chapter, nothing in this
3 chapter shall prevent law students from working as volunteer or paid
4 legal interns or law clerks for the office of independent
5 prosecutions, or as otherwise authorized by statute or court rule.

6 NEW SECTION. **Sec. 13.** PUBLIC RECORDS ACT. (1)(a) The case
7 records of the office of independent prosecutions, and all
8 communications pertaining to same, are confidential and exempt from
9 disclosure under chapter 42.56 RCW until such time as:

10 (i) A decision has been made to decline criminal charges in a
11 particular case;

12 (ii) A charged case is dismissed;

13 (iii) A judge or jury returns a verdict of "not guilty"; or

14 (iv) Entry of judgment and sentence following a guilty plea or
15 verdict of guilty.

16 (b) After the occurrence of any of the events in (a) of this
17 subsection, the case records and related communications of the office
18 are subject to the provisions of chapter 42.56 RCW.

19 (2) If the independent counsel determines that a criminal charge
20 is not warranted in a case, the independent counsel shall issue a
21 public report that includes the results of the investigation and an
22 explanation of the reasons for the decision, and post the report on
23 the office of independent prosecutions' website.

24 NEW SECTION. **Sec. 14.** LIABILITY. No action or other proceeding

25 may be instituted against the independent counsel or the independent
26 counsel's employees or contractors, or a person exercising powers or
27 performing duties at the direction of the office of independent
28 prosecutions, for any act done in good faith in the execution or
29 intended execution of the person's duty or for any alleged neglect or
30 default in the execution in good faith of the person's duty.

31 NEW SECTION. **Sec. 15.** DEFINITIONS. The definitions set forth in
32 RCW 43.102.010 apply to sections 4 through 14 of this act.

33 **Sec. 16.** RCW 36.27.020 and 2016 c 173 s 7 are each amended to
34 read as follows:

35 The prosecuting attorney shall:

1 (1) Be legal adviser of the legislative authority, giving it his
2 or her written opinion when required by the legislative authority or
3 the chairperson thereof touching any subject which the legislative
4 authority may be called or required to act upon relating to the
5 management of county affairs;

6 (2) Be legal adviser to all county and precinct officers and
7 school directors in all matters relating to their official business,
8 and when required draw up all instruments of an official nature for
9 the use of said officers;

10 (3) Appear for and represent the state, county, and all school
11 districts subject to the supervisory control and direction of the
12 attorney general in all criminal and civil proceedings in which the
13 state or the county or any school district in the county may be a
14 party;

15 (4) (~~Prosecute~~) Subject to subsection (13) of this section,
16 prosecute all criminal and civil actions in which the state or the
17 county may be a party, defend all suits brought against the state or
18 the county, and prosecute actions upon forfeited recognizances and
19 bonds and actions for the recovery of debts, fines, penalties, and
20 forfeitures accruing to the state or the county;

21 (5) Attend and appear before and give advice to the grand jury
22 when cases are presented to it for consideration and draw all
23 indictments when required by the grand jury;

24 (6) Institute and prosecute proceedings before magistrates for
25 the arrest of persons charged with or reasonably suspected of
26 felonies when the prosecuting attorney has information that any such
27 offense has been committed and the prosecuting attorney shall for
28 that purpose attend when required by them if the prosecuting attorney
29 is not then in attendance upon the superior court;

30 (7) Carefully tax all cost bills in criminal cases and take care
31 that no useless witness fees are taxed as part of the costs and that
32 the officers authorized to execute process tax no other or greater
33 fees than the fees allowed by law;

34 (8) Receive all cost bills in criminal cases before district
35 judges at the trial of which the prosecuting attorney was not
36 present, before they are lodged with the legislative authority for
37 payment, whereupon the prosecuting attorney may retax the same and
38 the prosecuting attorney must do so if the legislative authority
39 deems any bill exorbitant or improperly taxed;

1 (9) Present all violations of the election laws which may come to
2 the prosecuting attorney's knowledge to the special consideration of
3 the proper jury;

4 (10) Examine once in each year the official bonds of all county
5 and precinct officers and report to the legislative authority any
6 defect in the bonds of any such officer;

7 (11) Seek to reform and improve the administration of criminal
8 justice and stimulate efforts to remedy inadequacies or injustice in
9 substantive or procedural law;

10 (12) Participate in the statewide sexual assault kit tracking
11 system established in RCW 43.43.545 for the purpose of tracking the
12 status of all sexual assault kits connected to criminal
13 investigations and prosecutions within the county. Prosecuting
14 attorneys shall begin full participation in the system according to
15 the implementation schedule established by the Washington state
16 patrol;

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

24 (i) The prosecuting attorney has a relationship with the involved
25 officer or the involved officer's employing agency, either personally
26 or professionally, such that the prosecuting attorney's decision or
27 pursuit of charges may be affected;

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

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

38 (b) If the prosecuting attorney finds recusal is necessary under
39 the ethics rules or to preserve public confidence, the prosecuting
40 attorney must transfer the case to the office of independent

1 prosecutions in the attorney general's office within 30 days of
2 receiving the case from the office of independent investigations
3 under chapter 43.102 RCW.

4 (c) For the purposes of this subsection, "deadly force" and
5 "involved officer" have the meanings provided in RCW 43.102.010.

6 **Sec. 17.** RCW 36.27.030 and 2009 c 549 s 4046 are each amended to
7 read as follows:

8 ~~((When))~~ (1) Except as provided in subsection (3) of this
9 section, when from illness or other cause the prosecuting attorney is
10 temporarily unable to perform his or her duties, the court or judge
11 may appoint some qualified person to discharge the duties of such
12 officer in court until the disability is removed.

13 ~~((When))~~ (2) Except as provided in subsection (3) of this
14 section, when any prosecuting attorney fails, from sickness or other
15 cause, to attend a session of the superior court of his or her
16 county, or is unable to perform his or her duties at such session,
17 the court or judge may appoint some qualified person to discharge the
18 duties of such session, and the appointee shall receive a
19 compensation to be fixed by the court, to be deducted from the stated
20 salary of the prosecuting attorney, not exceeding, however, one-
21 fourth of the quarterly salary of the prosecuting attorney: PROVIDED,
22 That in counties wherein there is no person qualified for the
23 position of prosecuting attorney, or wherein no qualified person will
24 consent to perform the duties of that office, the judge of the
25 superior court shall appoint some suitable person, a duly admitted
26 and practicing attorney-at-law and resident of the state to perform
27 the duties of prosecuting attorney for such county, and he or she
28 shall receive such reasonable compensation for his or her services as
29 shall be fixed and ordered by the court, to be paid by the county for
30 which the services are performed.

31 (3) In any case involving potential prosecution of a crime
32 involving use of deadly force by an involved officer, where the
33 prosecuting attorney has a conflict of interest and has not
34 transferred the case to the office of independent prosecutions of the
35 office of the attorney general, the court shall order the office of
36 independent prosecutions of the office of the attorney general to
37 discharge the responsibilities of the prosecuting attorney. For the
38 purposes of this subsection, "deadly force" and "involved officer"
39 have the meanings provided in RCW 43.102.010.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 36.27
2 RCW to read as follows:

3 If the prosecuting attorney makes a determination not to file
4 criminal charges in a case involving use of deadly force by an
5 involved officer, the prosecuting attorney must refer the case and
6 all investigative materials concerning the case to the office of
7 independent prosecutions in the office of the attorney general within
8 30 days of the decision to not file criminal charges. For the
9 purposes of this section, "deadly force" and "involved officer" have
10 the meanings provided in RCW 43.102.010.

11 **Sec. 19.** RCW 43.102.080 and 2021 c 318 s 308 are each amended to
12 read as follows:

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

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

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

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

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

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

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

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

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

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

38 (4) The investigation should include a review of the entire
39 incident, including but not limited to events immediately preceding

1 the incident that may have contributed to or influenced the outcome
2 of the incident that are directly related to the incident under
3 investigation.

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

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

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

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

15 (6) If the director determines the case is to be investigated the
16 director will communicate the decision to investigate to the involved
17 agency and will thereafter be the lead investigative body in the case
18 and have priority over any other state or local agency investigating
19 the incident or a case that is under the jurisdiction of the office.
20 The director will implement the process developed pursuant to RCW
21 43.102.050 and conduct the appropriate investigation in accordance
22 with the process.

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

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

36 (9) (a) Upon the completion of an investigation authorized under
37 this chapter, the office shall send its completed investigation and
38 referral to both the county prosecuting attorney of the jurisdiction
39 in which the offense occurred and the office of independent
40 prosecutions in accordance with protocols established under RCW

1 43.102.050(2)(c)(viii), and include any information, if known,
2 regarding the presence of a conflict of interest.

3 (b) All employees of the office of independent investigations,
4 and all members of an independent investigations team who participate
5 in the investigation of a use of deadly force by an involved officer
6 as defined in RCW 43.102.010, are encouraged to cooperate fully with
7 requests for interviews or additional information from the office of
8 independent prosecutions.

9 (c) The office of independent investigations or a member of the
10 independent investigations team that investigated an incident of use
11 of deadly force that is the subject of a review for criminal charges
12 are encouraged to, at the request of the office of independent
13 prosecutions, transport evidence to and from any laboratory, medical
14 examiner's office, or expert witness as directed by the office of
15 independent prosecutions.

16 (d) The office of independent investigations or a member of the
17 independent investigations team that investigated an incident of use
18 of deadly force that is the subject of criminal trial proceedings are
19 encouraged to, at the request of the office of independent
20 prosecutions, transport evidence to court as directed by the office
21 of independent prosecutions.

22 **Sec. 20.** RCW 41.80.400 and 2019 c 145 s 2 are each amended to
23 read as follows:

24 (1) In addition to the agencies defined in RCW 41.80.005 and
25 subject to the provisions of this section, this chapter applies to
26 assistant attorneys general.

27 (2)(a) Assistant attorneys general who are not otherwise excluded
28 from bargaining under (b) of this subsection are granted the right to
29 collectively bargain.

30 (b) Division chiefs, deputy attorneys general, the solicitor
31 general, the independent counsel, assistant attorneys general in the
32 labor and personnel division, special assistant attorneys general,
33 confidential employees as defined in RCW 41.80.005, and any assistant
34 or deputy attorney general who reports directly to the attorney
35 general are excluded from this section and do not have the right to
36 collectively bargain.

37 (3) The only unit appropriate for the purpose of collective
38 bargaining under this chapter is a statewide unit of all assistant
39 attorneys general not otherwise excluded from bargaining.

1 (4) The governor or the governor's designee and an exclusive
2 bargaining representative shall negotiate one master collective
3 bargaining agreement for assistant attorneys general.

4 **Sec. 21.** RCW 10.114.011 and 2021 c 318 s 401 are each amended to
5 read as follows:

6 Except as required by federal consent decree, federal settlement
7 agreement, or federal court order, where the use of deadly force by a
8 peace officer results in death, substantial bodily harm, or great
9 bodily harm, an independent investigation must be completed to inform
10 any determination of whether the use of deadly force met the good
11 faith standard established in RCW 9A.16.040 and satisfied other
12 applicable laws and policies. The investigation must be completely
13 independent of the agency whose officer was involved in the use of
14 deadly force and conducted in accordance with chapter 43.102 RCW. All
15 investigatory reports must be handled in accordance with RCW
16 43.102.080. Any rules adopted by the criminal justice training
17 commission must be consistent with chapter 43.102 RCW.

18 NEW SECTION. **Sec. 22.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 23.** If specific funding for the purposes of
23 this act, referencing this act by bill or chapter number, is not
24 provided by June 30, 2023, in the omnibus appropriations act, this
25 act is null and void.

26 NEW SECTION. **Sec. 24.** Sections 4 through 15 of this act are
27 each added to chapter 43.10 RCW.

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