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**SECOND SUBSTITUTE HOUSE BILL 1579**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Stonier, Bateman, Lekanoff, Reed, Pollet, and Macri)

READ FIRST TIME 02/24/23.

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; creating a new section; and providing  
7 an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

39       (d) The authority of the office of the attorney general under  
40 this subsection applies to any criminal offense involving the use of

1 deadly force by an involved officer and any other investigations  
2 within the scope of the office of independent investigations.

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

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

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

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

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

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

26 (2) For purposes of designating the prosecuting authority where  
27 information or an indictment has been filed by both the office of the  
28 attorney general pursuant to RCW 43.10.232(2) and the prosecuting  
29 attorney pursuant to RCW 36.27.020, the court shall, in accordance  
30 with section 4 of this act, prioritize the public's interest in  
31 ensuring a fair and impartial prosecution and trial that is free from  
32 bias and even the appearance of bias, prejudice, or conflict of  
33 interest. In any judicial proceeding under this subsection, in order  
34 to be designated the prosecuting authority, the county prosecuting  
35 attorney must overcome a presumption that the county prosecuting  
36 attorney has an inherent conflict of interest in any matter arising  
37 from an investigation within the scope of the office of independent  
38 investigations.

1        NEW SECTION.    **Sec. 4.**    FINDINGS. The legislature finds that the  
2 Washington state Constitution provides that the legislature shall  
3 prescribe the duties of both the attorney general and the county  
4 prosecuting attorneys. The legislature finds that the close working  
5 relationships and intertwined duties between local law enforcement  
6 and local prosecutors can give the appearance of bias in review of  
7 incidents of use of deadly force by Washington peace officers and  
8 corrections officers.

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

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

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

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

35        NEW SECTION.    **Sec. 6.**    AUTHORITY OF ATTORNEY GENERAL REGARDING  
36 OFFICE OF INDEPENDENT PROSECUTIONS. (1) The attorney general shall  
37 determine the compensation and appoint a licensed attorney as  
38 independent counsel to lead the office of independent prosecutions.

1 The independent counsel shall have final decision-making authority  
2 for:

3 (a) Hiring and terminating personnel within the office of  
4 independent prosecutions;

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

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

10 (d) All aspects of the litigation of the office of independent  
11 prosecutions.

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

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

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

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

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

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

36 (iv) One defense attorney representative;

37 (v) Two prosecuting attorney representatives; and

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

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

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

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

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

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

25 (b) No documented criminal or disciplinary history involving  
26 dishonesty, discrimination against persons of color or marginalized  
27 communities, or abuse of power; and

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

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

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

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

2        (1) The independent counsel shall:

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

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

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

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

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

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

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

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

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

37        (2) The independent counsel may employ assistant attorneys  
38 general, or appoint and contract with special assistant attorneys

1 general, to perform or review investigations and prosecute charged  
2 cases.

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

6 (a) Forensic services and crime scene investigators;

7 (b) Liaisons for community, family, and relations with tribal  
8 nations and members;

9 (c) Analysts, including analysts to conduct evaluations on use of  
10 force;

11 (d) Mental health experts;

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

13 (f) Other experts as needed; and

14 (g) All staffing and other needs for the office of independent  
15 prosecutions.

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

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

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

24 (ii) Implicit and explicit bias;

25 (iii) Intercultural competency;

26 (iv) Use of a racial equity lens in conducting the work of the  
27 office;

28 (v) Antiracism training;

29 (vi) Undoing institutional racism;

30 (vii) Criminal procedure, to include criminal discovery rules and  
31 the prosecution's obligations under CrR 4.7 and *Brady v. Maryland*,  
32 373 U.S. 83 (1963), and its progeny; and

33 (viii) Other relevant trainings as needed.

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



1 office of independent prosecutions. Each appointment shall be in  
2 writing, signed by the independent counsel.

3 NEW SECTION. **Sec. 12.** EMPLOYMENT OF LEGAL INTERNS.  
4 Notwithstanding any other provision of this chapter, nothing in this  
5 chapter shall prevent law students from working as volunteer or paid  
6 legal interns or law clerks for the office of independent  
7 prosecutions, or as otherwise authorized by statute or court rule.

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

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

14 (ii) A charged case is dismissed;

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

16 (iv) Entry of judgment and sentence following a guilty plea or  
17 verdict of guilty.

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

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

26 NEW SECTION. **Sec. 14.** LIABILITY. No action or other proceeding  
27 may be instituted against the independent counsel or the independent  
28 counsel's employees or contractors, or a person exercising powers or  
29 performing duties at the direction of the office of independent  
30 prosecutions, for any act done in good faith in the execution or  
31 intended execution of the person's duty or for any alleged neglect or  
32 default in the execution in good faith of the person's duty.

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

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

3       The prosecuting attorney shall:

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

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

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

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

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

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

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

37       (8) Receive all cost bills in criminal cases before district  
38 judges at the trial of which the prosecuting attorney was not  
39 present, before they are lodged with the legislative authority for  
40 payment, whereupon the prosecuting attorney may retax the same and

1 the prosecuting attorney must do so if the legislative authority  
2 deems any bill exorbitant or improperly taxed;

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

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

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

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

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

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

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

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

1 (b) If the prosecuting attorney finds recusal is necessary under  
2 the ethics rules or to preserve public confidence, the prosecuting  
3 attorney must transfer the case to the office of independent  
4 prosecutions in the attorney general's office within 30 days of  
5 receiving the case from the office of independent investigations  
6 under chapter 43.102 RCW.

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

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

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

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

34 (3) In any case involving potential prosecution of a crime  
35 involving use of deadly force by an involved officer, where the  
36 prosecuting attorney has a conflict of interest and has not  
37 transferred the case to the office of independent prosecutions of the  
38 office of the attorney general, the court shall order the office of  
39 independent prosecutions of the office of the attorney general to

1 discharge the responsibilities of the prosecuting attorney. For the  
2 purposes of this subsection, "deadly force" and "involved officer"  
3 have the meanings provided in RCW 43.102.010.

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

6 If the prosecuting attorney makes a determination not to file  
7 criminal charges in a case involving use of deadly force by an  
8 involved officer, the prosecuting attorney must refer the case and  
9 all investigative materials concerning the case to the office of  
10 independent prosecutions in the office of the attorney general within  
11 30 days of the decision to not file criminal charges. For the  
12 purposes of this section, "deadly force" and "involved officer" have  
13 the meanings provided in RCW 43.102.010.

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

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

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

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

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

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

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

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

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

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

36 (3) The director shall determine prioritization of investigations  
37 based on resources and other criteria which may be established in  
38 consultation with the advisory board. The director shall ensure that

1 incidents occurring after the date the office begins investigating  
2 cases receive the highest priority for investigation.

3 (4) The investigation should include a review of the entire  
4 incident, including but not limited to events immediately preceding  
5 the incident that may have contributed to or influenced the outcome  
6 of the incident that are directly related to the incident under  
7 investigation.

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

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

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

15 (c) If the director determines that the incident is not within  
16 the office's jurisdiction to investigate, the director shall decline  
17 to investigate, and shall give notice of the fact to the involved  
18 agency.

19 (6) If the director determines the case is to be investigated the  
20 director will communicate the decision to investigate to the involved  
21 agency and will thereafter be the lead investigative body in the case  
22 and have priority over any other state or local agency investigating  
23 the incident or a case that is under the jurisdiction of the office.  
24 The director will implement the process developed pursuant to RCW  
25 43.102.050 and conduct the appropriate investigation in accordance  
26 with the process.

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

36 (8) The investigation shall be concluded within 120 days of  
37 acceptance of the case for investigation. If the office is not able  
38 to complete the investigation within 120 days, the director shall  
39 report to the advisory board the reasons for the delay.

1 (9) (a) Upon the completion of an investigation authorized under  
2 this chapter, the office shall send its completed investigation and  
3 referral to both the county prosecuting attorney of the jurisdiction  
4 in which the offense occurred and the office of independent  
5 prosecutions in accordance with protocols established under RCW  
6 43.102.050(2)(c)(viii), and include any information, if known,  
7 regarding the presence of a conflict of interest.

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

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

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

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

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

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

35 (b) Division chiefs, deputy attorneys general, the solicitor  
36 general, the independent counsel, assistant attorneys general in the  
37 labor and personnel division, special assistant attorneys general,  
38 confidential employees as defined in RCW 41.80.005, and any assistant  
39 or deputy attorney general who reports directly to the attorney

1 general are excluded from this section and do not have the right to  
2 collectively bargain.

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

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

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

11 Except as required by federal consent decree, federal settlement  
12 agreement, or federal court order, where the use of deadly force by a  
13 peace officer results in death, substantial bodily harm, or great  
14 bodily harm, an independent investigation must be completed to inform  
15 any determination of whether the use of deadly force met the good  
16 faith standard established in RCW 9A.16.040 and satisfied other  
17 applicable laws and policies. The investigation must be completely  
18 independent of the agency whose officer was involved in the use of  
19 deadly force and conducted in accordance with chapter 43.102 RCW. All  
20 investigatory reports must be handled in accordance with RCW  
21 43.102.080. Any rules adopted by the criminal justice training  
22 commission must be consistent with chapter 43.102 RCW.

23 NEW SECTION. **Sec. 22.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

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

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



1        NEW SECTION.    **Sec. 25.**    Sections 2, 3, 16, 17, 18, and 19 of this  
2    act take effect July 1, 2024.

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