

HOUSE BILL REPORT

ESHB 2508

As Passed Legislature

Title: An act relating to clarifying the scope of authority of the office of independent investigations to align with current operations and practices and to include public disclosure requirements and protect privacy.

Brief Description: Clarifying the scope of authority of the office of independent investigations to align with current operations and practices and to include public disclosure requirements and protect privacy.

Sponsors: House Committee on Community Safety (originally sponsored by Representatives Entenman, Kloba, Mena, Stearns, Parshley, Reeves, Bergquist, Burnett, Doglio, Goodman, Ormsby, Hill, Pollet, Street and Reed; by request of Office of Independent Investigations).

Brief History:

Committee Activity:

Community Safety: 1/27/26, 2/2/26 [DPS].

Floor Activity:

Passed House: 2/16/26, 90-6.

Passed Senate: 3/4/26, 44-4.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Expands the Office of Independent Investigations' (OII's) investigatory jurisdiction to include certain incidents and prior investigations involving use of deadly force by an involved officer regardless of the date the incident occurred, or any other use of force by an involved officer that may have caused or contributed to a death.
- Requires the involved agency to immediately contact the OII about incidents involving any use of force by an involved officer if there is good reason to believe the use of force may have caused or contributed to a death.

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.

- Requires the OII to receive access to specified reports and information in the custody and control of any responding fire department or ambulance service, subject to certain exceptions.
- Modifies the scope of an independent investigation team's authority to investigate incidents at the OII's request.
- Eliminates references to specific types of peace officers and agencies from the definitions of involved officer and involved agency.
- Exempts specified records related to the OII's reviews and investigations from the Public Records Act.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett, Davis, Farivar, Fosse and Obras.

Staff: Corey Patton (786-7388).

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 investigate:

- incidents 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; and
- prior investigations involving deadly force if new evidence is brought forth that was not included in the initial investigation.

The OII's investigatory jurisdiction only applies in cases where the involved officer was:

- on duty; or
- off duty, but engaged in the investigation, pursuit, detention, or arrest of a person or otherwise exercised officer powers, or the incident involved equipment or other property issued in relation to the involved officer's duties.

"Involved officer" means any general authority, limited authority, or specially

commissioned Washington peace officer, or any employee of a city, county, or regional institution, correctional, jail, holding, or detention facility, who is involved in an incident as an actor or custodial officer.

Notification by Involved Agencies.

The involved agency must notify the OII of any incident under the OII's jurisdiction. If the incident involves use of deadly force by an involved officer resulting in death, substantial bodily harm, or great bodily harm, the involved agency must immediately contact the OII once the involved agency personnel and other first responders have rendered the scene safe and provided or facilitated lifesaving first aid to persons at the scene who have life-threatening injuries. "Involved agency" means a general authority or limited authority Washington law enforcement agency that employs or supervises the involved officer, or an agency responsible for a city, county, or regional adult or juvenile institution, correctional, jail, holding, or detention facility.

Investigations.

The involved agency must ensure that any of its officers or employees who are at the scene of an incident take all lawful measures necessary to protect, obtain, and preserve evidence relating to the incident until an OII investigator, or an independent investigation team (IIT) at the request of the OII, takes charge of the scene. If the OII requests that an IIT take control of the scene of an incident, the IIT must relinquish control of the scene and investigation at the OII's request under specified circumstances. The IIT may continue to engage in the investigation conducted at the scene if requested to do so by the lead OII investigator, the Director of the OII, or the director's designee. The IIT's involvement is limited to activities requested by the OII and must terminate following the securing of the scene and any evidence preservation or other actions as determined necessary by the OII at the scene.

When conducting an investigation, the OII must be given access to and copies of all reports and information in the custody and control of the involved agency, 911 emergency communication centers, and any law enforcement agency responding to the scene of the incident, that are necessary or related to the investigation. This includes, but is 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.

Public Records Act.

Under the Public Records Act, state and local agencies are required to make written records available to the public for inspection and copying upon request, unless an exemption applies.

Summary of Engrossed Substitute Bill:

Office of Independent Investigations.

Jurisdiction.

The Office of Independent Investigations' (OII's) investigatory jurisdiction is expanded to include:

- any incident or prior investigation involving use of deadly force by an involved officer, regardless of when the incident occurred;
- any incident involving any death that occurs during or after any other use of force by an involved officer that may have caused or contributed, directly or indirectly, to the death; and
- prior investigations involving any death that occurred during or after any other use of force by an involved officer that may have caused or contributed, directly or indirectly, to the death, if new evidence is brought forth that was not included in the initial investigation.

Specific references to general authority, limited authority, and specially commissioned Washington peace officers are removed from the definition of "involved officer" and replaced with a general reference to peace officers who are involved in an incident within the OII's investigatory jurisdiction.

Notification by Involved Agencies.

The statutory provision requiring the involved agency to immediately contact the OII about any incident involving use of deadly force by an involved officer is expanded to require immediate contact for any incident involving any other use of force by an involved officer where there is good reason to believe the use of force may have caused or contributed, directly or indirectly, to a death. Immediate notification is not required after securing the scene of an incident where death does not occur during or shortly after a use of force other than deadly force. Specific references to general authority and limited authority Washington law enforcement agencies are removed from the definition of "involved agency" and replaced with a general reference to agencies that employ or supervise an involved officer.

Investigations.

The scope of an independent investigation team's (IIT's) authority to investigate incidents at the OII's request is modified. The IIT may engage in an investigation if requested to do so by the lead OII investigator, the Director of the OII, or the director's designee. The IIT's involvement is limited to activities requested by the OII and must terminate following the securing of the scene and any evidence preservation or other actions as determined necessary by the OII.

The information that the OII must be given access to and copies of when conducting an investigation is expanded to include all reports and information in the custody and control of any responding fire department or ambulance service that are necessary or related to the investigation, except that certain health care information may only be provided with the consent of the patient or the patient's next of kin, or pursuant to a court order.

Public Records Act.

The following information is made exempt from public inspection and copying under the Public Records Act:

- all investigative records compiled or prepared by the OII in connection with a review or investigation of any incident involving use of deadly force by an involved officer, or any other use of force by an involved officer that may have caused or contributed to a death, until the matter has been referred to the prosecutor for a filing decision; and
- all noninvestigative records related to a review or investigation by the OII to the extent they contain information that implicates an individual's personal privacy, including information concerning support services.

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) This bill better aligns state law with an honest interpretation of what the Legislature intended the Office of Independent Investigations (OII) to do when it was initially established, including by making several changes to the OII's operations, clarifying the authority of independent investigation teams to render limited assistance at the OII's request, and facilitating the OII's ability to collect data while protecting confidential information. Collectively, these changes are designed to resolve inconsistencies between the OII's jurisdiction and the jurisdiction of similar independent entities, thereby advancing the goal of having truly independent investigations that are fair, open, and transparent whenever an officer uses deadly force or any other force that results in a suspect's death.

It is not always clear when a death is attributable to an officer's use of force, such as when a death occurs sometime after the use of a restraint technique. Work is still being done to craft language related to notification requirements for delayed deaths where a person passes away days, weeks, or years after a use of force.

(Opposed) None.

(Other) It used to be the case that sheriffs and police chiefs would review their own agencies' incidents, which would rarely result in any findings of misconduct. However, even with the transition to more impartial investigations, a question remains about who should guard the guardians. Ultimately, the answer is the public and people who have access to investigation files and records. There is some concern that this bill appears to

provide a blanket exemption from the Public Records Act for the OII's records. These matters are of the utmost importance for the public interest.

Persons Testifying: (In support) Representative Debra Entenman, prime sponsor; Annette Taylor, Office of Independent Investigations; Jessica Berliner, Office of Independent Investigations; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

(Other) Rowland Thompson, Allied Daily Newspapers and WSABroadcasters; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.