

# SENATE BILL REPORT

## SB 5584

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As Reported by Senate Committee On:  
Law & Justice, February 6, 2025

**Title:** An act relating to expanding the office of independent investigations to include prosecutions of criminal conduct within the jurisdiction of the office of independent investigations and prosecutions.

**Brief Description:** Expanding the office of independent investigations to include prosecutions of criminal conduct. [**Revised for 1st Substitute:** Establishing the position of independent prosecutor within the office of the governor.]

**Sponsors:** Senators Dhingra, Saldaña, Frame, Hasegawa, Nobles, Slatter, Trudeau, Valdez and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 2/04/25, 2/06/25 [DPS, DNP].

### Brief Summary of First Substitute Bill

- Expands the Office of Independent Investigations to include prosecutions of cases within the jurisdiction of the Office of Independent Investigations.
- Renames the Office of Independent Investigations, the Office of Independent Investigations and Prosecutions.
- Creates the position of Independent Prosecutor within the Office of Independent Investigations and Prosecutions.
- Establishes powers and duties of the Independent Prosecutor.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5584 be substituted therefor, and the

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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.*

substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Lovick, Salomon and Valdez.

**Minority Report:** Do not pass.

Signed by Senators Holy, Ranking Member; Fortunato, Torres and Wagoner.

**Staff:** Joe McKittrick (786-7287)

**Background:** In 2021, the Office of Independent Investigations (OII) was established as a limited authority law enforcement agency within the Office of the Governor for the purpose of investigating certain incidents involving peace officers.

OII has jurisdiction to conduct investigations 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 and involved officer against or upon a person who is in custody or out of custody. OII may also investigate prior incidents, if new evidence is brought forth that was not included in the initial investigation.

If OII accepts a case, the investigation must be concluded within 120 days. If OII cannot complete the investigation within that timeframe, OII must report the reasons for the delay to the OII Advisory Board.

The OII Advisory Board consists of 11 members appointed by the Governor and representing specified interests or entities or having specified backgrounds. The Advisory Board must provide input to the Governor and OII director on certain matters, including for example, staffing, training, and procedures for engagement with individuals involved in cases.

The Governor appoints the OII director by selecting a person from a list of candidates recommended by the OII Advisory Board, or by offering an alternative candidate to be approved by the OII Advisory Board. The powers and responsibilities of the OII director include overseeing investigations and other functions of OII, implementing the requirements and protocols for investigations and regional investigation teams, hiring investigators and other necessary personnel, and ensuring proper training.

**Summary of Bill (First Substitute):** Appointment of Independent Prosecutor. The position of independent prosecutor (IP) is created within the office of the Governor. The Governor must appoint an attorney to the position of IP, and to qualify for the position, a person must meet the following criteria:

- admission to practice law in Washington;
- no documented criminal or disciplinary history involving dishonesty, discrimination against person of color or marginalized communities, or abuse of power; and
- submission to a background check, including an assessment of criminal history and

research of social media and affiliations to check for racial bias and conflicts of interest.

The term of appointment for the IP is three years, and the appointed person will continue to hold the position until reappointed or until a successor is appointed. The Governor may remove the IP prior to the end of the term of service for misconduct or the inability to preform the duties of the office.

Upon request of the Governor, the IP must prosecute fatal use of deadly force by an involved officer cases.

Powers and Duties of the Independent Prosecutor. The IP must review referred investigations, and upon completing a review must make a determination of whether criminal charges should be filed. The IP must provide such determination in writing to the attorney general and the prosecuting attorney of the jurisdiction in which the incident under investigation occurred. the IP may hire or contract with attorneys and other personnel as necessary to pursue prosecutions and to comply with the duties created under this act.

Beginning July 31, 2026, and annually thereafter, the IP must provide the appropriate committees of the Legislature a written report detailing the following:

- the number of investigations reviewed by the IP;
- the number of investigations referred to the prosecuting attorney to initiate criminal prosecutions;
- the number of investigations in which the IP declined to refer to the prosecuting attorney; and
- in circumstances where the independent prosecutor declined to file charges, the results of the investigations and an explanation of the reasons for the decision.

The IP must ensure that individuals subjected to use of force by an involved officer, or their survivors, are kept apprised of the status of the review of the investigation, any charging decisions, all court hearings, and the status of any prosecution, including access to press conferences and advance notice of media releases.

Relationship of County Prosecuting Attorneys, the Office of the Attorney General, and the Independent Prosecutor. OIIP maintains concurrent authority and power with county prosecuting attorneys to initiate and conduct prosecutions of fatal use of deadly force by an involved officer cases and other cases under the jurisdiction of OIIP, including appeals and requests for post-conviction relief. Nothing in the act affects the authority of county prosecuting attorneys to conduct prosecutions of crimes committed by an individual who is the subject of a use of force action by the involved officer.

Within 30 days of receiving an investigation of a fatal use of deadly force by an involved officer case, county prosecutors must determine if recusal is necessary under the ethical rules applicable to all lawyers or to preserve public confidence. If the prosecuting attorney

finds recusal is necessary, the prosecuting attorney must notify the IP in writing within 30 days. If the prosecuting attorney declines to file criminal charges, the prosecuting attorney must notify the IP in writing within 30 days.

If the Office of the Attorney General, a county prosecuting attorney, and the IP file competing informations or indictments charging a defendant with substantially the same offense or offenses, the court must, upon a motion of the IP or county prosecuting attorney:

- determine whose prosecution of the case will best promote the interests of justice, and prioritize the public's interest in ensuring a fair and impartial prosecution and trial free from bias or the appearance of bias and enter an order designating that person as the prosecuting authority in the case; and
- enter an order dismissing the information or indictment filed by the person who was not designated the prosecuting authority.

Office of Independent Investigations. the director of the office of independent investigations, in consultation with the office of independent investigations advisory board, must develop a plan to implement protocol for finalizing completed investigations and referral to the local entity responsible for the prosecutorial decision and to the IP.

Any entity conducting an investigation of a fatal use of deadly force by a peace officer case must provide the completed investigation to the entity responsible for the prosecutorial decision and the IP.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Amends the title.
- Established the independent prosecutor as a position in the office of the Governor, rather than with the office of independent investigations.
- Requires county prosecutors to conduct a conflicts check within 30 days of receiving an investigation of a use of deadly force case that resulted in a death.

**Appropriation:** None.

**Fiscal Note:** Requested on January 31, 2025.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: It is critical to have public trust in the criminal justice system, especially when the use of deadly force by law enforcement is

involved. This bill insures transparent, independent, and accountable prosecutions when an officer's use of deadly force constitutes a crime. Due to their close working relationship, it is a disservice for local prosecutors to prosecute the police. This bill allows for a nonbiased prosecutor to oversee these cases. This will help secure accountability and procedures to ensure a truly independent prosecution of use of deadly force by an involved officer cases. It is inherent that local prosecutors have a bias toward their local law enforcement officers.

This bill will help prevent the police from policing themselves. This bill will help foster public trust across Washington. We have seen that when elected prosecutors attempt to bring charges against officers, they face serious backlash and threats of removal from office. This bill will ensure these difficult decisions are made without any concern of backlash. Survivors of unlawful use of force by police are still waiting for justice. This bill will help them receive that justice.

CON: Since 2019, the Legislature has changed almost everything about how law enforcement is deployed, and the Legislature should stand by that work. This bill is unnecessary, and its political nature will have a cooling effect on the profession of policing. This is an unconstitutional bill that undermines the fundamental nature of our criminal justice system. Local prosecutors fundamental duty is to decide whether to file criminal charges. This bill upends the foundations of our criminal justice system that has been in place since the adoption of our constitution. This creates one agency that is both the police and the prosecutor and allows a nonelected director to appoint a nonelected prosecutor.

Police should have the same rights as any other citizen. Law enforcement is a noble profession; however, the perception that law enforcement officers are not routinely held accountable for crimes is not evidence the system is broken, it is evidence that officers do not routinely violate the law. Local prosecutors have shown that when the facts support charging an officer, they do so. This is an unconstitutional delegation of authority. The constitution provides that the county prosecutor is the sole authority for criminal prosecutions. Appointing someone with the sole job of prosecuting officers will hinder recruitment efforts across the state. This takes power away from voters and gives it to an appointed prosecutor. The decision to charge officers with crimes should be made by local prosecutors.

OTHER: Housing the independent prosecutor in the Office of Independent Investigations will take resources and time away from the office's investigations and presents a conflict of interests within the office. The concurrent jurisdiction in this bill will be treated differently in different counties across the county.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Trishandra Pickup, Washington Coalition for Police Accountability; Kelly McConney Moore, NYU Policing Project; Debbie Novak, Washington Coalition for Police Accountability; Jay Hollingsworth, Task Force on Use of Force/John T Williams Org Comm; Eliana Machefsky, National Police Accountability Project; Sonia Joseph, Washington Coalition for Police

Accountability.

CON: Teresa Taylor, (WACOPS) Washington Council of Police & Sheriffs; Ryan Lufkin, (WACOPS) Washington Council of Police & Sheriffs; James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys; Anne Anderson, Washington State Narcotics Investigators Association.

OTHER: Ramona Brandes, Washington Defender Association/Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** PRO: Arthur West; Kurtis Robinson, I Did The Time/ Revive Center For Returning Citizens.

CON: TERI ROGERS KEMP, The Black Community Lobby; Pauly Giuglianotti, Partnership for a Truly Independent Prosecutor.