

# SENATE BILL REPORT

## SB 5584

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As of February 4, 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.

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

**Brief History:**

**Committee Activity:** Law & Justice: 2/04/25.

**Brief Summary of 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**

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

**Background:** In 2021, the Office of Independent Investigations (OII) was established as a

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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:** Office of Independent Investigations. OII is renamed the Office of Independent Investigations and Prosecutions (OIIP) and is tasked with conducting fair, thorough, transparent, and competent investigations and prosecutions of police use of force and other incidents involving law enforcement as authorized by law. OIIP is authorized to conduct prosecutions of deadly force cases, 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.

Appointment of Independent Prosecutor. The position of independent prosecutor (IP) is created within OIIP. The director of the OIIP must appoint an attorney to the position of IP within nine months of the effective date of the act, 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 director 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.

Powers and Duties of the Independent Prosecutor. The IP is vested with final decision-making authority related to:

- hiring and terminating deputy independent prosecutors and related support staff;
- filing or declining to file criminal charges—if the IP declines to file charges after reviewing an investigation of fatal use of deadly force, the IP shall issue a written report that includes the results of the investigation and an explanation of the reasons for the decisions; and
- all aspects of litigation of cases within the jurisdiction of the office.

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.

The IP may appoint assistant independent prosecutors and special assistant independent prosecutors who maintain the same powers as the IP to perform investigations and prosecutions conducted by OIIP and must establish policies and procedures to ensure that personnel with actual or apparent conflicts are screened from the review of the investigation and prosecution of criminal charges.

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 investigate crimes and initiate and conduct prosecutions of 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.

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 Advisory Board. The membership of the OII Advisory Board is expanded from 11 members to 13; one additional member of the general public representing a family impacted by an incident of the nature under the jurisdiction of OII, who is not current or former law enforcement, and one additional prosecuting attorney representative.

**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:** 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.