

ESHB 1267 - S AMD TO LAW COMM AMD (S-2126.1/21) 657
By Senator Holy

OUT OF ORDER 04/09/2021

1 Beginning on page 1, after line 2, strike all material through
2 "void." on page 21, line 28 and insert the following:

3 "PART I

4 FINDINGS AND INTENT

5 NEW SECTION. **Sec. 101.** (1) The legislature finds that
6 independent investigations into the use of deadly force by a peace
7 officer that results in death, substantial bodily harm, or great
8 bodily harm are a necessary component to repairing and building
9 public trust in the public service of law enforcement.

10 (2) The legislature further finds that the current practice for
11 independent investigations enables the perception that such
12 investigations are not fully independent and objective.

13 (3) The legislature further finds that it is necessary to
14 establish a new state law enforcement agency with the sole purpose of
15 conducting independent investigations into the use of deadly force by
16 a peace officer that results in death, substantial bodily harm, or
17 great bodily harm as required by RCW 10.114.011.

18 (4) The legislature recognizes that it is necessary to make
19 incremental improvements to the existing system of independent
20 investigations while a new state law enforcement agency is formed and
21 becomes operational.

22 PART II

23 CREATING A COMPLETELY INDEPENDENT DEADLY FORCE INVESTIGATIONS AGENCY

24 NEW SECTION. **Sec. 201.** A new section is added to chapter 10.114
25 RCW to read as follows:

26 (1) There is hereby created a department of state government
27 known as the Washington deadly force investigations agency.

28 (2) The sole purpose of the agency is to conduct completely
29 independent investigations into the use of deadly force by a peace
30 officer that results in death, substantial bodily harm, or great

1 bodily harm as required by RCW 10.114.011 and in compliance with
2 rules adopted by the criminal justice training commission pursuant to
3 RCW 10.114.011.

4 (3) The agency shall be a limited authority Washington law
5 enforcement agency, as defined in RCW 10.93.020, for the sole purpose
6 of, and authority in, conducting completely independent criminal
7 investigations into the use of deadly force by a peace officer that
8 results in death, substantial bodily harm, or great bodily harm as
9 required by RCW 10.114.011.

10 NEW SECTION. **Sec. 202.** A new section is added to chapter 10.114
11 RCW to read as follows:

12 The Washington deadly force investigations agency shall be
13 governed by a board, which shall consist of the following:

- 14 (1) Two sheriffs appointed by the governor;
- 15 (2) Two police chiefs appointed by the governor;
- 16 (3) The chief of the Washington state patrol;
- 17 (4) One prosecuting attorney appointed by the governor;
- 18 (5) One person employed in a city law enforcement agency with
19 experience conducting homicide investigations appointed by the
20 governor;
- 21 (6) One person employed in a county law enforcement agency with
22 experience conducting homicide investigations appointed by the
23 governor;
- 24 (7) The executive director of the commission on African American
25 affairs;
- 26 (8) The executive director of the commission on Asian Pacific
27 American affairs;
- 28 (9) The executive director of the commission on Hispanic affairs;
- 29 (10) The executive director of the governor's office of Indian
30 affairs;
- 31 (11) One person representing families of individuals against whom
32 a Washington peace officer used deadly force, appointed by the
33 governor;
- 34 (12) Two members of the general public appointed by the governor;
35 and
- 36 (13) The executive director of the criminal justice training
37 commission, who shall be an ex officio nonvoting member.

1 NEW SECTION. **Sec. 203.** A new section is added to chapter 10.114
2 RCW to read as follows:

3 (1) All members appointed to the board described in section 202
4 of this act by the governor shall be appointed for terms of six
5 years, such terms to commence on July 1st, and expire on June 30th.
6 However, of the members first appointed, three must be appointed for
7 two-year terms, three must be appointed for four-year terms, and
8 three must be appointed for six-year terms. The terms of the two
9 members appointed as police chiefs must not expire in the same year
10 and the terms of the two members appointed as sheriffs must not
11 expire in the same year. Any member chosen to fill a vacancy created
12 other than by expiration of term must be appointed for the unexpired
13 term of the member he or she succeeds. Any member may be reappointed
14 for additional terms.

15 (2) Any member of the board appointed pursuant to section 202 of
16 this act by virtue of his or her elected or appointed position
17 immediately upon the termination of his or her holding of said office
18 or employment ceases to be a member of the board.

19 NEW SECTION. **Sec. 204.** A new section is added to chapter 10.114
20 RCW to read as follows:

21 (1) The board described in section 202 of this act shall elect a
22 chair and a vice chair from among its members. Eight members of the
23 board shall constitute a quorum. The governor shall summon the board
24 to its first meeting. Meetings may be called by the chair and shall
25 be called by him or her upon the written request of four members.

26 (2) Members of the board shall be compensated in accordance with
27 RCW 43.03.240, and shall be reimbursed for their travel expenses
28 incurred in the performance of their duties in accordance with RCW
29 43.03.050 and 43.03.060. Attendance at meetings of the Washington
30 deadly force investigations agency is performance by a member of the
31 duties of his or her employment.

32 NEW SECTION. **Sec. 205.** A new section is added to chapter 10.114
33 RCW to read as follows:

34 The board described in section 202 of this act must:

35 (1) Select and employ an executive director to oversee the
36 implementation of the purpose of the Washington deadly force
37 investigations agency;

1 (2) Establish policies as it deems necessary pursuant to the
2 purpose of the agency;

3 (3) Designate specific personnel positions as limited authority
4 Washington peace officers for the sole purpose of conducting
5 completely independent investigations into the use of deadly force by
6 a peace officer that results in death, substantial bodily harm, or
7 great bodily harm as required by RCW 10.114.011;

8 (4) Adopt policies and procedures to ensure that actions of the
9 board and board members are isolated from bias and political
10 influence;

11 (5) Adopt policies and procedures to ensure that it can properly
12 oversee the activities of the agency and the executive director
13 without involving itself or any board member in any investigation
14 conducted by the agency pursuant to its purpose;

15 (6) Adopt policies and procedures to ensure the complete
16 independence of the agency and all agency employees in the execution
17 of their assigned duties including, but not limited to, prohibiting
18 the provision of mutual aid or mutual law enforcement assistance
19 pursuant to chapter 10.93 RCW;

20 (7) Ensure that employees of the agency are sufficiently trained
21 and properly equipped to carry out their assigned duties; and

22 (8) Ensure that the agency is capable of dispatching an
23 independent investigative team to any scene anywhere in the state 24
24 hours a day, 365 days a year whenever a Washington peace officer is
25 alleged to have used deadly force that results in death, substantial
26 bodily harm, or great bodily harm to conduct the independent
27 investigation as required by RCW 10.114.011.

28 NEW SECTION. **Sec. 206.** A new section is added to chapter 10.114
29 RCW to read as follows:

30 Employees of the Washington deadly force investigations agency
31 assigned by the executive director to positions designated by the
32 board described in section 202 of this act as limited authority
33 Washington peace officers:

34 (1) Must be certified Washington peace officers in good standing;

35 (2) Are explicitly prohibited from taking any law enforcement
36 action other than conducting completely independent investigations
37 into the use of deadly force by a peace officer that results in
38 death, substantial bodily harm, or great bodily harm as required by
39 RCW 10.114.011; and

1 (3) Are explicitly prohibited from simultaneously being employed
2 by, being commissioned by, having any business relationship with, or
3 occupying any position or role in, any other law enforcement or
4 corrections agency.

5 **PART III**

6 **INCREMENTAL IMPROVEMENTS**

7 NEW SECTION. **Sec. 301.** A new section is added to chapter 10.114
8 RCW to read as follows:

9 (1) A law enforcement agency conducting an independent
10 investigation into the use of deadly force by a peace officer that
11 results in death, substantial bodily harm, or great bodily harm as
12 required by RCW 10.114.011 must, at the conclusion of the
13 investigation, submit to the prosecuting attorney its certification,
14 signed under penalty of perjury by all members of the independent
15 investigations team, that the investigation was:

16 (a) Completely independent of the agency whose peace officer was
17 involved in the use of deadly force; and

18 (b) In compliance with the rules adopted by the criminal justice
19 training commission pursuant to RCW 10.114.011 by listing each
20 substantive provision of the applicable rules adopted by the
21 commission and indicating whether the independent investigation
22 complied with the provision or did not comply with the provision, or
23 that the provision was not applicable.

24 (2) Any peace officer who knowingly falsifies or provides
25 misleading information on a certification required by this section,
26 or knowingly signs a certification required by this section that
27 contains false or misleading information, has violated his or her
28 duty to be truthful and honest in the conduct of his or her official
29 business pursuant to RCW 43.101.021, and has committed disqualifying
30 misconduct for the purposes of revocation of peace officer
31 certification pursuant to RCW 43.101.105.

32 (3) The requirements of this section are intended solely for the
33 guidance of prosecutors in the state of Washington, and are not
34 intended, do not, and may not be relied upon to create a right or
35 benefit, substantive or procedural, enforceable at law by a party in
36 litigation with the state.

37 **PART IV**

MISCELLANEOUS PROVISIONS

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NEW SECTION. **Sec. 401.** A new section is added to chapter 10.114 RCW to read as follows:

The legislature hereby declares that, except as required by federal consent decree, federal settlement agreement, or federal court order, any provision of any local regulation, ordinance, collective bargaining agreement, memorandum of understanding, policy, or practice that hinders or prevents a completely independent investigation as required by RCW 10.114.011 is hereby null and void.

NEW SECTION. **Sec. 402.** A new section is added to chapter 41.56 RCW to read as follows:

Notwithstanding any provisions of this chapter, the provisions of chapter . . ., Laws of 2021 (this act) and the implementation thereof do not constitute personnel matters, working conditions, or any other change that require collective bargaining.

NEW SECTION. **Sec. 403.** To the extent that any provision of this act conflicts with any local regulation, ordinance, collective bargaining agreement, memorandum of understanding, policy, or practice, the provisions of this act shall prevail and the conflicting provision shall be null and void.

NEW SECTION. **Sec. 404.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Sec. 405. RCW 10.93.020 and 2006 c 284 s 16 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington

1 law enforcement agency, and any other unit of government expressly
2 designated by statute as a general authority Washington law
3 enforcement agency. The Washington state patrol and the department of
4 fish and wildlife are general authority Washington law enforcement
5 agencies.

6 (2) "Limited authority Washington law enforcement agency" means
7 any agency, political subdivision, or unit of local government of
8 this state, and any agency, department, or division of state
9 government, having as one of its functions the apprehension or
10 detection of persons committing infractions or violating the traffic
11 or criminal laws relating to limited subject areas, including but not
12 limited to, the state departments of natural resources and social and
13 health services, the state gambling commission, the state lottery
14 commission, the state parks and recreation commission, the state
15 utilities and transportation commission, the state liquor ~~((control))~~
16 and cannabis board, the office of the insurance commissioner, ~~((and))~~
17 the state department of corrections, and the Washington deadly force
18 investigations agency created in section 201 of this act.

19 (3) "General authority Washington peace officer" means any full-
20 time, fully compensated and elected, appointed, or employed officer
21 of a general authority Washington law enforcement agency who is
22 commissioned to enforce the criminal laws of the state of Washington
23 generally.

24 (4) "Limited authority Washington peace officer" means any full-
25 time, fully compensated officer of a limited authority Washington law
26 enforcement agency empowered by that agency to detect or apprehend
27 violators of the laws in some or all of the limited subject areas for
28 which that agency is responsible. A limited authority Washington
29 peace officer may be a specially commissioned Washington peace
30 officer if otherwise qualified for such status under this chapter.

31 (5) "Specially commissioned Washington peace officer", for the
32 purposes of this chapter, means any officer, whether part-time or
33 full-time, compensated or not, commissioned by a general authority
34 Washington law enforcement agency to enforce some or all of the
35 criminal laws of the state of Washington, who does not qualify under
36 this chapter as a general authority Washington peace officer for that
37 commissioning agency, specifically including reserve peace officers,
38 and specially commissioned full-time, fully compensated peace
39 officers duly commissioned by the states of Oregon or Idaho or any
40 such peace officer commissioned by a unit of local government of

1 Oregon or Idaho. A reserve peace officer is an individual who is an
2 officer of a Washington law enforcement agency who does not serve
3 such agency on a full-time basis but who, when called by the agency
4 into active service, is fully commissioned on the same basis as full-
5 time peace officers to enforce the criminal laws of the state.

6 (6) "Federal peace officer" means any employee or agent of the
7 United States government who has the authority to carry firearms and
8 make warrantless arrests and whose duties involve the enforcement of
9 criminal laws of the United States.

10 (7) "Agency with primary territorial jurisdiction" means a city
11 or town police agency which has responsibility for police activity
12 within its boundaries; or a county police or sheriff's department
13 which has responsibility with regard to police activity in the
14 unincorporated areas within the county boundaries; or a statutorily
15 authorized port district police agency or four-year state college or
16 university police agency which has responsibility for police activity
17 within the statutorily authorized enforcement boundaries of the port
18 district, state college, or university.

19 (8) "Primary commissioning agency" means (a) the employing agency
20 in the case of a general authority Washington peace officer, a
21 limited authority Washington peace officer, an Indian tribal peace
22 officer, or a federal peace officer, and (b) the commissioning agency
23 in the case of a specially commissioned Washington peace officer (i)
24 who is performing functions within the course and scope of the
25 special commission and (ii) who is not also a general authority
26 Washington peace officer, a limited authority Washington peace
27 officer, an Indian tribal peace officer, or a federal peace officer.

28 (9) "Primary function of an agency" means that function to which
29 greater than fifty percent of the agency's resources are allocated.

30 (10) "Mutual law enforcement assistance" includes, but is not
31 limited to, one or more law enforcement agencies aiding or assisting
32 one or more other such agencies through loans or exchanges of
33 personnel or of material resources, for law enforcement purposes.

34 NEW SECTION. **Sec. 406.** If specific funding for the purposes of
35 this act, referencing this act by bill or chapter number, is not
36 provided by June 30, 2021, in the omnibus appropriations act, this
37 act is null and void."

OUT OF ORDER 04/09/2021

1 Beginning on page 21, line 30, after "insert" strike all material
2 through "date." on page 22, line 3 and insert "amending RCW
3 10.93.020; adding new sections to chapter 10.114 RCW; adding a new
4 section to chapter 41.56 RCW; and creating new sections."

EFFECT: Strikes all provisions in the underlying bill establishing the Office of Independent Investigations and related requirements. Instead, provides the following:

(1) Establishes legislative findings.

(2) Establishes the Washington Deadly Force Investigations Agency (WDFIA) as a department of state government. Provides that the WDFIA is a limited law enforcement agency with the sole function of conducting completely independent investigations of any use of deadly force by a peace officer resulting in death, substantial bodily harm, or great bodily harm.

(3) Provides that the WDFIA is governed by a board of 15 voting members and one nonvoting member representing specified entities or interests and who are appointed by the Governor or serve in an ex officio capacity. Provides requirements and procedures for appointments, terms, vacancies, compensation, meeting operations, and election of a chair and vice chair.

(4) Assigns the board responsibilities pertaining to the appointment of an executive director, designating personnel as limited law enforcement officers, and establishing policies and procedures pertaining to specific operations, including ensuring the board is isolated from bias and political influence, overseeing the activities of the agency, ensuring the completion of investigations, prohibiting the provision of mutual aid, and ensuring proper personnel training. Requires the board to ensure that the WDFIA is capable of dispatching independent investigation teams to any scene anywhere in the state 24 hours a day, 365 days a year whenever a peace officer is alleged to have used deadly force resulting in death, substantial bodily harm, or great bodily harm.

(5) Requires any employee designated as a limited law enforcement officer by the WDFIA to be a certified peace officer in good standing. Prohibits these officers from taking any other law enforcement action other than those relating to independent investigations, and further prohibits these officers from being simultaneously employed by, commissioned by, or having a business relationship with any other law enforcement or corrections agency.

(6) Requires any law enforcement agency conducting an independent investigation into the use of deadly force by a peace officer according to current requirements to submit confirmation to the prosecuting attorney, signed by all members of the independent investigation team under penalty of perjury, certifying that the investigation was completely independent of the agency whose peace officer was involved in the use of deadly force, and in compliance with the related rules adopted by the Criminal Justice Training Commission. Provides that any peace officer who knowingly falsifies

or provides misleading information in the certification process is deemed to have violated his or her duties to be truthful and honest and to have committed disqualifying misconduct for purposes of revocation of his or her peace officer certification pursuant to current state law.

(7) Provides that local laws or collective bargaining agreements that hinder or prevent independent investigations or otherwise conflict with the striking amendment are null and void. Provides the policies in the striking amendment do not constitute personnel matters, working conditions, or any other change requiring collective bargaining. Retains the severability clause, and retains the null and void clause.

--- END ---