

ESHB 1267 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/09/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 101.** INTENT. The legislature finds that
4 there has been an outpouring of frustration, anger, and demand for
5 change from many members of the public over the deaths of people of
6 color resulting from encounters with police. The most recent deaths
7 in the United States and within Washington are a call to lead our
8 state to a new system for investigating deaths and other serious
9 incidents involving law enforcement officers.

10 The legislature intends that the office of independent
11 investigations be created to conduct investigations of use of force
12 and other cases under its jurisdiction in a manner that is competent,
13 unbiased, and thorough. The office will be transparent and
14 accountable for its work. The office should ensure that it treats all
15 people with dignity and respect. The director and staff must be
16 qualified and trained to conduct the investigations, including
17 training to understand the impact and effect of racism in the
18 investigation and use of an antiracist lens to conduct their work.

19 It is intended that this office will assume responsibility for
20 investigations of serious use of force incidents and refer the
21 reports on the investigation to the prosecutorial entity to determine
22 if the action was justified, or if there was criminal action such
23 that criminal charges should be filed. This is the same criminal
24 investigative inquiry that is currently conducted when there is an
25 officer-involved incident. The legislature does not intend to create
26 a new type of investigation or that the office should be involved in
27 any administrative review of conduct or complaints to police agencies
28 about officer conduct related to policy or procedure. The process
29 created in this act is intended to change only who investigates the
30 incident. It does not change the nature of the investigation and
31 involves only an investigation to determine justification or whether
32 criminal charges are appropriate.

1 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this
2 section apply throughout this chapter unless the context clearly
3 requires otherwise.

4 (1) "Advisory board" means the office of independent
5 investigations advisory board.

6 (2) "Deadly force" has the meaning provided in RCW 9A.16.010.

7 (3) "Director" means the director of the office of independent
8 investigations.

9 (4) "Great bodily harm" has the meaning provided in RCW
10 9A.04.110.

11 (5) "In-custody" refers to a person who is under the physical
12 control of a general authority Washington law enforcement agency or a
13 limited authority Washington law enforcement agency as defined in RCW
14 10.93.020 or a city, county, or regional adult or juvenile
15 institution, correctional, jail, holding, or detention facility as
16 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

17 (6) "Independent investigation team" means a team of qualified
18 and certified peace officer investigators, civilian crime scene
19 specialists, and other representatives who operate independently of
20 any involved agency to conduct investigations of police deadly force
21 incidents. An independent investigation team may be comprised of
22 multiple law enforcement agencies who jointly investigate police use
23 of force incidents in their geographical regions or may be a single
24 law enforcement agency, provided it is not the involved agency.

25 (7) "Involved agency" means a general authority Washington law
26 enforcement agency or limited authority Washington law enforcement
27 agency, as defined in RCW 10.93.020, that employs or supervises the
28 officer or officers who are an involved officer as defined in this
29 section, or an agency responsible for a city, county, or regional
30 adult or juvenile institution, correctional, jail, holding, or
31 detention facility as defined in RCW 70.48.020, 72.09.015, or
32 13.40.020.

33 (8) "Involved officer" means one of the following persons who is
34 involved in an incident as an actor or custodial officer in which the
35 act or omission by the individual is within the scope of the
36 jurisdiction of the office as defined in this chapter:

37 (a) A general authority Washington peace officer, specially
38 commissioned Washington peace officer, or limited authority
39 Washington peace officer, as defined in RCW 10.93.020, whether on or

1 off duty if he or she is exercising his or her authority as a peace
2 officer; or

3 (b) An individual while employed in a city, county, or regional
4 adult or juvenile institution, correctional, jail, holding, or
5 detention facility as defined in RCW 70.48.020, 72.09.015, or
6 13.40.020.

7 (9) "Office" means the office of independent investigations.

8 (10) "Substantial bodily harm" has the same meaning as in RCW
9 9A.04.110.

10 **Office Creation**

11 NEW SECTION. **Sec. 301.** CREATION. (1) The office of independent
12 investigations is hereby established within the office of the
13 governor for the purpose of conducting fair, thorough, transparent,
14 and competent investigations as authorized under this chapter.

15 (2) The office of independent investigations is an investigative
16 law enforcement agency, including for the purposes of the public
17 records act, chapter 42.56 RCW.

18 NEW SECTION. **Sec. 302.** OFFICE POWERS AND DUTIES. In addition to
19 other responsibilities set forth in this chapter, the office shall:

20 (1) Conduct fair, thorough, transparent, and competent
21 investigations of police use of force and other incidents involving
22 law enforcement as authorized in this chapter and shall prioritize
23 investigations conducted by the office based on resources and other
24 criteria developed in consultation with the advisory board. The
25 office shall commence investigations as follows:

26 (a) Beginning no later than July 1, 2022, the office is
27 authorized to conduct investigations of deadly force cases occurring
28 after July 1, 2022, including any incident involving use of deadly
29 force by an involved officer against or upon a person who is in-
30 custody or out-of-custody; and

31 (b) Beginning no later than July 1, 2023, the office is
32 authorized to review, and may investigate, prior investigations of
33 deadly force by an involved officer if new evidence is brought forth
34 that was not included in the initial investigation;

35 (2) Analyze data available to the office and provide reports and
36 recommendations as appropriate based on the data regarding issues,
37 trends, and other relevant areas;

1 (3) Provide reports on activities of the office as authorized
2 under this chapter; and

3 (4) Carry out such other responsibilities as may be consistent
4 with this chapter.

5 NEW SECTION. **Sec. 303.** DIRECTOR. (1)(a) The governor shall
6 appoint the director of the office and determine the director's
7 compensation. The governor shall select the director from a list of
8 three candidates recommended by the advisory board unless the
9 governor declines to select any of the candidates provided. If the
10 governor declines to select a candidate proposed by the advisory
11 board, the governor may request the advisory board to provide
12 additional qualified nominees for consideration or may offer an
13 alternative candidate who may be appointed following approval by a
14 majority of the advisory board.

15 (b) Prior to selecting the director, the governor shall consider
16 the results of a background check, including an assessment of
17 criminal history, and research of social media and affiliations to
18 check for racial bias and conflicts of interest.

19 (2) The director shall hold office for a term of three years and
20 continue to hold office until reappointed or until his or her
21 successor is appointed. The governor may remove the director prior to
22 the expiration of the director's term for neglect of duty,
23 misconduct, or inability to perform duties.

24 NEW SECTION. **Sec. 304.** DUTIES OF THE DIRECTOR. (1) The director
25 shall:

26 (a) Oversee the duties and functions of the office and
27 investigations conducted by the office pursuant to this chapter;

28 (b) Hire or contract with investigators and other personnel as
29 the director considers necessary to perform investigations conducted
30 by the office, and other duties as required, under this chapter;

31 (c) Plan and provide trainings for office personnel, including
32 contracted investigators, that promote recognition of and respect
33 for, the diverse races, ethnicities, and cultures of the state;

34 (d) Plan and provide training for advisory board members
35 including training to utilize an antiracist lens in their duties as
36 advisory board members;

37 (e) Publish reports of investigations conducted under this
38 chapter;

1 (f) Enter into contracts and memoranda of understanding as
2 necessary to implement the responsibilities of the office under this
3 chapter;

4 (g) Adopt rules in accordance with chapter 34.05 RCW and perform
5 all other functions necessary and proper to carry out the purposes of
6 this chapter;

7 (h) Develop the nondisclosure agreement required in section 501
8 of this act; and

9 (i) Perform the duties and exercise the powers that are set out
10 in this chapter, as well as any additional duties and powers that may
11 be prescribed.

12 (2) No later than February 1, 2022, in consultation with the
13 advisory board, the director shall develop a plan to implement:

14 (a) Regional investigation teams and a system for promptly
15 responding to incidents of deadly force under the jurisdiction of the
16 office. The regional investigation teams should:

17 (i) Allow for prompt response to the incident requiring
18 investigation; and

19 (ii) Include positions for team members who are not required to
20 be designated as limited authority Washington peace officers;

21 (b) A system and requirements for involved agencies to notify the
22 office of any incident under the jurisdiction of the office, which
23 must include direction to agencies as to what incidents of force and
24 injuries and other circumstances must be reported to the office,
25 including the timing of such reports, provided that any incident
26 involving substantial bodily harm, great bodily harm, or death is
27 reported to the office immediately in accordance with section 402 of
28 this act;

29 (c) The process to conduct investigations of cases under the
30 jurisdiction of the office including, but not limited to:

31 (i) The office intake process following notification of an
32 incident by an involved agency;

33 (ii) The assessment and response to the notification of the
34 incident by the office, including direction to and coordination with
35 the independent investigation team;

36 (iii) Determination and deployment of necessary resources for the
37 regional investigation teams to conduct the investigations;

38 (iv) Determination of any conflicts with office investigators or
39 others involved in the investigation to ensure no investigator has an
40 existing conflict with an assigned case;

1 (v) Protocol and direction to the involved agency;
2 (vi) Protocol and direction to the independent investigation
3 team;
4 (vii) Protocol and guidelines for contacts and engagement with
5 the involved agency; and
6 (viii) Protocol for finalizing the completed investigation and
7 referral to the entity responsible for the prosecutorial decision,
8 including communication with the family and public regarding the
9 completion of the investigation;

10 (d) A plan for the office's interaction, communications, and
11 responsibilities to: The involved officer; the individual who is the
12 subject of the action by the involved officer that is the basis of
13 the case under investigation, and their families; the public; and
14 other interested parties or stakeholders. The plan must consider the
15 following:

16 (i) A process for consultation, notifications, and communications
17 with the person, family, or representative of any person who is the
18 subject of the action by the involved officer that is the basis of
19 the case under investigation;

20 (ii) Translation services which may be utilized through employees
21 or contracted services;

22 (iii) Support to access assistance or services to the extent
23 possible; and

24 (iv) A process for situations in which a tribal member is
25 involved in the case that ensures consultation with the federally
26 recognized tribe, and notification of the governor's office of Indian
27 affairs within 24 hours in cases of deadly use of force;

28 (e) Training for employees and contractors of the office to begin
29 prior to July 1, 2022; and

30 (f) Prioritization of cases for investigation.

31 (3) No later than December 1, 2023, in consultation with the
32 advisory board, the director shall develop a proposal for training
33 individuals who are nonlaw enforcement officers to conduct competent,
34 thorough investigations of cases under the jurisdiction of the
35 office. The proposal must establish a training plan with an objective
36 that within five years of the date the office begins investigating
37 deadly force cases the cases will be investigated by nonlaw
38 enforcement officers. The director shall report such proposal to the
39 governor and legislature by December 1, 2023. Any proposal offered by

1 the director must ensure investigations are high quality, thorough,
2 and competent.

3 (4) The director, in consultation with the advisory board, shall
4 implement a plan to review prior investigations of deadly force by an
5 involved officer if new evidence is brought forth that was not
6 included in the initial investigation and investigate if determined
7 appropriate based on the review. The director must prioritize the
8 review or investigation of cases occurring prior to July 1, 2022,
9 based on resources and other cases under investigation with the
10 office.

11 NEW SECTION. **Sec. 305.** PERSONNEL. (1) The director may employ,
12 or enter into contracts with, personnel as he or she determines
13 necessary for the proper discharge of his or her duties. The director
14 must request input from the advisory board on the hiring process and
15 hiring goals, including diversity.

16 (2) The director may employ, or enter into contracts with,
17 investigators to conduct investigations of cases under the
18 jurisdiction of the office.

19 (a) The director shall consider the relevant experience and
20 qualifications of the candidate including the extent to which he or
21 she demonstrates experience or understanding of the following areas:

22 (i) Extensive experience with criminal investigations, including
23 homicide investigations;

24 (ii) Behavioral health issues;

25 (iii) Youth cognitive development;

26 (iv) Trauma-informed interviewing;

27 (v) De-escalation techniques and utilization; and

28 (vi) Knowledge of Washington practices, including laws, policies,
29 and procedures related to criminal law, criminal investigations, and
30 policing.

31 (b) The director shall consider the following prior to employing
32 an investigator:

33 (i) The investigators should not be commissioned law enforcement
34 officers employed with any law enforcement agency as a peace officer
35 at the time of application with the office.

36 (A) If the individual considered for a position as an
37 investigator was a prior law enforcement officer, the director must
38 conduct a review of prior disciplinary actions or complaints related
39 to bias.

1 (B) The individual should not have been a commissioned law
2 enforcement officer within 24 months of the date of the application
3 for service as an investigator; and

4 (ii) The results of a background check that includes research of
5 social media and affiliations to check for racial bias and conflicts
6 of interest.

7 (c) Investigators employed or contracted with the office are
8 prohibited from being simultaneously employed, commissioned, or have
9 any business relationship, other than through the work of the office,
10 with a general authority or limited authority Washington law
11 enforcement agency, or county or city corrections agency.

12 (d) The director may not employ an individual who was a
13 previously commissioned law enforcement officer who does not meet the
14 criteria of this section without the approval of a majority of the
15 advisory board.

16 (3) The director may employ or enter into contracts for services
17 to provide additional personnel as needed to conduct investigations
18 of cases under the jurisdiction of the office including, but not
19 limited to, the following:

20 (a) Forensic services and crime scene investigators;

21 (b) Liaisons for community, family, and relations with a
22 federally recognized tribe;

23 (c) Analysts, including analysts to conduct evaluations on use of
24 force data;

25 (d) Mental health experts;

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

27 (f) Other experts as needed; and

28 (g) All staffing and other needs for the office.

29 (4) The director shall ensure the following training is provided
30 to staff and that there is a regular schedule for additional
31 trainings during the course of employment:

32 (a) The director shall ensure that the director and staff
33 involved in investigations, including any contracted investigators,
34 engage in trainings that include the following areas. A training may
35 include more than one of the following areas per training. A separate
36 training course is not required for each topic.

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

39 (ii) Implicit and explicit bias training;

40 (iii) Intercultural competency;

1 (iv) The use of a racial equity lens in conducting the work of
2 the office;

3 (v) Antiracism training; and

4 (vi) Undoing institutional racism.

5 (b) The director shall ensure that investigators engage in the
6 following training. A training may include more than one of the
7 following areas per training. A separate training course is not
8 required for each topic.

9 (i) Criminal investigations, including homicide investigations as
10 appropriate for the assigned positions;

11 (ii) Washington practices, including Washington laws and
12 policies, as well as relevant policing practices as appropriate;

13 (iii) Interviewing techniques; and

14 (iv) Other relevant trainings as needed.

15 NEW SECTION. **Sec. 306.** INVESTIGATORS. (1) The director shall
16 designate investigator positions that are limited authority
17 Washington peace officers as defined in RCW 10.93.020. The
18 investigators designated as limited authority Washington peace
19 officers have the authority to investigate any case within the
20 jurisdiction of the office and any criminal activity related to, or
21 discovered in the course of, the investigation of the case under the
22 jurisdiction of the incident that has a relationship to the
23 investigation.

24 (2) Any investigator employed or contracted with the office for
25 the purpose of conducting investigations may participate in the
26 investigations of a case under the jurisdiction of the office. Only
27 investigators who are limited authority Washington peace officers may
28 be designated a lead investigator on any criminal investigation
29 conducted by the office pursuant to this chapter.

30 **Sec. 307.** RCW 10.93.020 and 2006 c 284 s 16 are each amended to
31 read as follows:

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

34 (1) "General authority Washington law enforcement agency" means
35 any agency, department, or division of a municipal corporation,
36 political subdivision, or other unit of local government of this
37 state, and any agency, department, or division of state government,
38 having as its primary function the detection and apprehension of

1 persons committing infractions or violating the traffic or criminal
2 laws in general, as distinguished from a limited authority Washington
3 law enforcement agency, and any other unit of government expressly
4 designated by statute as a general authority Washington law
5 enforcement agency. The Washington state patrol and the department of
6 fish and wildlife are general authority Washington law enforcement
7 agencies.

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

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

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

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

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

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

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

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

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

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

38 NEW SECTION. **Sec. 308.** INVESTIGATIONS—DUTIES AND POWERS. (1)
39 The office has jurisdiction over, and is authorized to conduct
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1 investigations of, all cases and incidents as established within this
2 section.

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

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

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

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

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

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

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

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

20 (3) The director shall determine prioritization of investigations
21 based on resources and other criteria which may be established in
22 consultation with the advisory board. The director shall ensure that
23 incidents occurring after the date the office begins investigating
24 cases receive the highest priority for investigation.

25 (4) The investigation should include a review of the entire
26 incident, including but not limited to events immediately preceding
27 the incident that may have contributed to or influenced the outcome
28 of the incident that are directly related to the incident under
29 investigation.

30 (5) Upon receiving notification required in section 402 of this
31 act of an incident under the jurisdiction of the office, the
32 director:

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

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

38 (c) If the director determines that the incident is not within
39 the office's jurisdiction to investigate, the director shall decline

1 to investigate, and shall give notice of the fact to the involved
2 agency.

3 (6) If the director determines the case is to be investigated the
4 director will communicate the decision to investigate to the involved
5 agency and will thereafter be the lead investigative body in the case
6 and have priority over any other state or local agency investigating
7 the incident or a case that is under the jurisdiction of the office.
8 The director will implement the process developed pursuant to section
9 304 of this act and conduct the appropriate investigation in
10 accordance with the process.

11 (7) In conducting the investigation the office shall have access
12 to reports and information necessary or related to the investigation
13 in the custody and control of the involved agency and any law
14 enforcement agency responding to the scene of the incident including,
15 but not limited to, voice or video recordings, body camera
16 recordings, and officer notes, as well as disciplinary and
17 administrative records except those that might be statements
18 conducted as part of an administrative investigation related to the
19 incident.

20 (8) The investigation shall be concluded within 120 days of
21 acceptance of the case for investigation. If the office is not able
22 to complete the investigation within 120 days, the director shall
23 report to the advisory board the reasons for the delay.

24 NEW SECTION. **Sec. 309.** CRIMINAL JUSTICE TRAINING COMMISSION.

25 (1) The criminal justice training commission shall collaborate with
26 the office to ensure office investigators receive sufficient training
27 to attain the necessary requirements to conduct investigations under
28 the jurisdiction of the office.

29 (2) The investigators of the office shall receive priority
30 registration to criminal justice training commission trainings
31 necessary to conduct investigations as required by this chapter.

32 NEW SECTION. **Sec. 310.** DATA AND RESEARCH. The office will
33 conduct analysis of use of force and other data to the extent such
34 data is available to the office. The director is authorized to enter
35 into contracts or memoranda of understanding to access data as
36 needed. If data is available, the office should, at a minimum,
37 analyze and report annually: Analysis and research regarding any
38 identified trends, patterns, or other situations identified by the

1 data; and recommendations for improvements. After July 1, 2024, the
2 office should also annually report recommendations, if any, for
3 expanding the scope of investigations or jurisdiction of the office
4 based on trends, data, or reports received by the agency.

5 NEW SECTION. **Sec. 311.** LIABILITY. No action or other proceeding
6 may be instituted against the director, an investigator, or an
7 employee or contractor in the office or a person exercising powers or
8 performing duties at the direction of the director for any act done
9 in good faith in the execution or intended execution of the person's
10 duty or for any alleged neglect or default in the execution in good
11 faith of the person's duty.

12 NEW SECTION. **Sec. 312.** A new section is added to chapter 41.06
13 RCW to read as follows:

14 In addition to the exemptions set forth in RCW 41.06.070, the
15 provisions of this chapter do not apply in the office of independent
16 investigations to the director, to one confidential secretary, and to
17 any deputy or regional directors, if any.

18 **Sec. 313.** RCW 39.26.125 and 2012 c 224 s 14 are each amended to
19 read as follows:

20 All contracts must be entered into pursuant to competitive
21 solicitation, except for:

- 22 (1) Emergency contracts;
- 23 (2) Sole source contracts that comply with the provisions of RCW
24 39.26.140;
- 25 (3) Direct buy purchases, as designated by the director. The
26 director shall establish policies to define criteria for direct buy
27 purchases. These criteria may be adjusted to accommodate special
28 market conditions and to promote market diversity for the benefit of
29 the citizens of the state of Washington;
- 30 (4) Purchases involving special facilities, services, or market
31 conditions, in which instances of direct negotiation is in the best
32 interest of the state;
- 33 (5) Purchases from master contracts established by the department
34 or an agency authorized by the department;
- 35 (6) Client services contracts;
- 36 (7) Other specific contracts or classes or groups of contracts
37 exempted from the competitive solicitation process when the director

1 determines that a competitive solicitation process is not appropriate
2 or cost-effective;

3 (8) Off-contract purchases of Washington grown food when such
4 food is not available from Washington sources through an existing
5 contract. However, Washington grown food purchased under this
6 subsection must be of an equivalent or better quality than similar
7 food available through the contract and must be able to be paid from
8 the agency's existing budget. This requirement also applies to
9 purchases and contracts for purchases executed by state agencies,
10 including institutions of higher education as defined in RCW
11 28B.10.016, under delegated authority granted in accordance with this
12 chapter or under RCW 28B.10.029;

13 (9) Contracts awarded to companies that furnish a service where
14 the tariff is established by the utilities and transportation
15 commission or other public entity;

16 (10) Intergovernmental agreements awarded to any governmental
17 entity, whether federal, state, or local and any department,
18 division, or subdivision thereof;

19 (11) Contracts for services that are necessary to the conduct of
20 collaborative research if the use of a specific contractor is
21 mandated by the funding source as a condition of granting funds;

22 (12) Contracts for architectural and engineering services as
23 defined in RCW 39.80.020, which shall be entered into under chapter
24 39.80 RCW;

25 (13) Contracts for the employment of expert witnesses for the
26 purposes of litigation; ~~((and))~~

27 (14) Contracts for bank supervision authorized under RCW
28 ~~((30.38.040))~~ 30A.38.040; and

29 (15) Contracts for investigators awarded by the office of
30 independent investigations as authorized under section 304 of this
31 act.

32 **Duty of Involved Agency**

33 **Sec. 401.** RCW 10.114.011 and 2019 c 4 s 5 are each amended to
34 read as follows:

35 Except as required by federal consent decree, federal settlement
36 agreement, or federal court order, where the use of deadly force by a
37 peace officer results in death, substantial bodily harm, or great
38 bodily harm, an independent investigation must be completed to inform

1 any determination of whether the use of deadly force met the good
2 faith standard established in RCW 9A.16.040 and satisfied other
3 applicable laws and policies. The investigation must be completely
4 independent of the agency whose officer was involved in the use of
5 deadly force and conducted in accordance with chapter 43.--- RCW (the
6 new chapter created in section 601 of this act). ((The)) Any rules
7 adopted by the criminal justice training commission must ((adopt
8 ~~rules establishing criteria to determine what qualifies as an~~
9 ~~independent investigation pursuant to this section~~)) be consistent
10 with chapter 43.--- RCW (the new chapter created in section 601 of
11 this act).

12 NEW SECTION. Sec. 402. NOTIFICATION OF DIRECTOR AND SECURING
13 THE SCENE. (1) Following notification by the director that the office
14 will accept investigations of cases under its jurisdiction after July
15 1, 2022, an involved agency shall notify the office of any incident
16 by an involved officer in accordance with the requirements under
17 section 304 of this act and pursuant to this section.

18 (a) If the incident involves use of deadly force by an involved
19 officer that results in death, substantial bodily harm, or great
20 bodily harm the involved agency must immediately contact the office
21 pursuant to the procedure established by the director once the
22 involved agency personnel and other first responders have rendered
23 the scene safe and provided or facilitated lifesaving first aid to
24 persons at the scene who have life-threatening injuries. This
25 requirement does not affect the duty of law enforcement under RCW
26 36.28A.445.

27 (b) In all other cases, the involved agency must notify the
28 office of the incident pursuant to the procedure established by the
29 director.

30 (2)(a) In any case that requires notice to the director under
31 this section, the involved agency shall ensure that any officers or
32 employees over which the involved agency has authority who are at the
33 scene of the incident take all lawful measures necessary for the
34 purposes of protecting, obtaining, or preserving evidence relating to
35 the incident until an office investigator, or independent
36 investigation team at the request of the office, takes charge of the
37 scene.

38 (b) The primary focus of the involved agency must be the
39 protection and preservation of evidence in order to maintain the

1 integrity of the scene until the office investigator or independent
2 investigation team arrives or otherwise provides direction regarding
3 activities at the scene. The involved agency should ensure that
4 evidence, including but not limited to the following is protected and
5 preserved:

6 (i) Physical evidence that is at risk of being destroyed or
7 disappearing and cannot be easily reconstructed, including evidence
8 which may be degraded or tainted by human or environmental factors if
9 left unprotected or unpreserved;

10 (ii) Identification and contact information for witnesses to the
11 incident; and

12 (iii) Photographs and other methods of documenting the location
13 of physical evidence and location and perspective of witnesses.

14 (3) (a) When the office investigator, or independent investigation
15 team acting at the request of the office, arrives at the scene of an
16 incident under the jurisdiction of the office, the involved agency
17 will relinquish control of the scene to the office investigator or
18 independent investigation team upon the request of the office
19 investigator. The involved agency has a duty to comply with the
20 requests of the office related to the investigation conducted
21 pursuant to this chapter.

22 (b) Once the scene is relinquished, no member of the involved
23 agency may participate in any way in the investigation, with the
24 exception of the use of specialized equipment that is necessary for
25 the investigation and where no alternative exists. If there is any
26 equipment of the involved agency used in the investigation, steps
27 must be taken to appropriately limit the role of any involved agency
28 personnel in facilitating the use of that equipment or their
29 engagement with the investigation.

30 (4) If an independent investigation team takes control of the
31 scene at the request of the office, the independent investigation
32 team shall relinquish control of the scene and investigation at the
33 request of the office when the office is on the scene or otherwise
34 provides notice that the office is taking control of the scene. The
35 independent investigation team may continue to engage in the
36 investigation conducted at the scene if requested to do so by the
37 lead office investigator, director, or the director's designee. The
38 involvement of the independent investigation team is limited to
39 activities requested by the office and must terminate following the
40 securing of the scene and any evidence preservation or other actions

1 as determined necessary by the office at the scene. The independent
2 investigation team may not continue to participate in the ongoing
3 investigation.

4 (5) No information about the ongoing independent investigation
5 under the jurisdiction of the office may be shared with any member of
6 the involved agency, except limited briefings given to the chief or
7 sheriff of the involved agency about the progress of the
8 investigation.

9 (6) If the office declines to investigate a case, the authority
10 and duty to investigate remains with the independent investigation
11 team or local law enforcement authority with jurisdiction over the
12 incident.

13 **Office of Independent Investigations Advisory Board**

14 NEW SECTION. **Sec. 501.** MEMBERSHIP AND DUTIES. (1)(a) There is
15 created the office of independent investigations advisory board. The
16 advisory board shall consist of the following 11 members, appointed
17 by the governor, one of whom the governor shall designate as chair:

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

21 (ii) One member of the general public representing a family
22 impacted by an incident of the nature under the jurisdiction of the
23 office, who is not current or former law enforcement;

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

26 (iv) One defense attorney representative;

27 (v) One prosecuting attorney representative;

28 (vi) One representative of a police officer labor association
29 with experience in homicide investigations;

30 (vii) One sheriff or police chief who is also a member of an
31 independent investigation team;

32 (viii) One credentialed mental health expert who is not current
33 or former law enforcement; and

34 (ix) One member of the criminal justice training commission.

35 (b) The members of the advisory board appointed by the governor
36 shall be appointed for terms of three years and until their
37 successors are appointed and confirmed. The governor shall stagger
38 the initial appointment terms of the advisory board members with the

1 terms of five members being for two years from the date of
2 appointment and six members being for three years from the date of
3 appointment. The governor shall designate the appointees who will
4 serve the two-year and three-year terms. The members of the advisory
5 board serve without compensation, but must be reimbursed for travel
6 expenses as provided in RCW 43.03.050 and 43.03.060.

7 (c) The governor, when making appointments to the advisory board,
8 shall make appointments that reflect the cultural diversity of the
9 state of Washington.

10 (2) The purpose of the advisory board is to provide input to the
11 office and shall:

12 (a) Provide input to the governor on the selection of the
13 director, including providing candidates for consideration for
14 appointment for the position of director. If the governor requests
15 additional candidates for consideration, the advisory board shall
16 provide additional candidates to the governor. If the governor
17 provides an alternative candidate, the advisory board must consider
18 the candidate provided by the governor and vote on the approval or
19 rejection of the candidate.

20 (i) The advisory board shall recommend candidates to the governor
21 who they find are individuals with sound judgment, independence,
22 objectivity, and integrity who will be viewed as a trustworthy
23 director.

24 (ii) The director must have experience either in conducting
25 criminal investigations or prosecutions. The advisory board shall
26 consider the relevant experience and qualifications of the candidate
27 including the extent to which they demonstrate experience or
28 demonstrated understanding of the following areas:

29 (A) Criminal investigations;

30 (B) Organizational leadership;

31 (C) Mental health issues;

32 (D) Trauma-informed interviewing;

33 (E) Community leadership;

34 (F) Legal experience or background;

35 (G) Antioppression and antiracist analysis and addressing
36 systemic inequities; and

37 (H) Working with Black, Indigenous, and communities of color;

38 (b) Provide input to the director on the plans required to be
39 developed for the office including the regional investigation teams;
40 staffing; training for personnel; procedures for engagement with

1 individuals involved in any case under the jurisdiction of the
2 office, as well as families and the community; recommendations to the
3 legislature; and other input as requested by the governor or
4 director;

5 (c) Participate in employment interviews as requested by the
6 governor or director; and

7 (d) Receive briefings or reports from the director relating to
8 data, trends, and other relevant issues, as well as cases under
9 investigation to the extent permitted by law.

10 (3) Advisory board members have a duty to maintain the
11 confidentiality of the information they receive during the course of
12 their work on the advisory board. Each advisory board member shall
13 agree in writing to not disclose any information they receive or
14 otherwise access related to an investigation, including information
15 about individuals involved in the investigation as involved officers,
16 individuals who are the subject of police action, witnesses, and
17 investigators.

18 (4) Advisory board members must complete training to utilize an
19 antiracist lens in their duties as advisory board members.

20 (5) The office shall provide administrative and clerical
21 assistance to the advisory board.

22 NEW SECTION. **Sec. 502.** REPORT. (1) In consultation with the
23 director, the advisory board shall assess whether the jurisdiction of
24 the office should be expanded to conduct investigations of other
25 types of incidents committed by involved officers, including but not
26 limited to other types of in-custody deaths not involving use of
27 force but otherwise involving criminal acts committed by involved
28 officers as well as sexual assaults committed by involved officers,
29 subject to the same standard under section 308(2)(b) of this act. The
30 advisory board must consider available data and information on other
31 types of in custody deaths not involving use of force but otherwise
32 involving criminal acts committed by involved officers as well as
33 other types of incidents, the capacity and resources of the office,
34 and any modifications or additions to procedures and processes
35 necessary for the office to conduct investigations of those
36 incidents. The advisory board must consider the recommendations and
37 counsel of the director when conducting the assessment under this
38 section.

1 (2) At the request of the advisory board, the office shall
2 conduct analysis of available data, including identified trends and
3 patterns, and other information relevant to in-custody deaths
4 involving criminal acts committed by involved officers, sexual
5 assaults committed by involved officers, and other types of incidents
6 as requested by the advisory board.

7 (3) The advisory board shall submit a report with related
8 recommendations to the legislature and governor by November 1, 2023.

9 (4) For the purposes of this section, "in-custody death" means a
10 death of an individual while under physical control of a general
11 authority Washington law enforcement agency or a limited authority
12 Washington law enforcement agency as defined in RCW 10.93.020 or a
13 city, county, or regional adult or juvenile institution,
14 correctional, jail, holding, or detention facility as defined in RCW
15 70.48.020, 72.09.015, or 13.40.020.

16 (5) This section expires July 1, 2024.

17 **Miscellaneous Provisions**

18 NEW SECTION. **Sec. 601.** CODIFICATION. Sections 201 through 306,
19 308 through 311, 402, 501, and 502 of this act constitute a new
20 chapter in Title 43 RCW.

21 NEW SECTION. **Sec. 602.** SEVERABILITY. If any provision of this
22 act or its application to any person or circumstance is held invalid,
23 the remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 603.** SUBJECT TO APPROPRIATION. If specific
26 funding for the purposes of this act, referencing this act by bill or
27 chapter number, is not provided by June 30, 2021, in the omnibus
28 appropriations act, this act is null and void."

ESHB 1267 - S COMM AMD
By Committee on Law & Justice

ADOPTED 04/09/2021

29 On page 1, beginning on line 3, after "incidents;" strike the
30 remainder of the title and insert "amending RCW 10.93.020, 39.26.125,

1 and 10.114.011; adding a new section to chapter 41.06 RCW; adding a
2 new chapter to Title 43 RCW; creating new sections; and providing an
3 expiration date."

EFFECT: Updates tribal references throughout.

--- END ---