

HOUSE BILL REPORT

E2SHB 1089

As Amended by the Senate

Title: An act relating to compliance audits of requirements relating to peace officers and law enforcement agencies.

Brief Description: Concerning compliance audits of requirements relating to peace officers and law enforcement agencies.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Ramos, Goodman, Leavitt, Slatter, Wylie, Bateman, Berry, Dolan, Ramel, Ortiz-Self, Senn, Peterson, Gregerson, Ryu, Valdez, Callan, Kloba, Hackney, Chopp, Duerr, Ormsby, Taylor, Bronoske, Fey, Lekanoff, Santos, Macri, Johnson, J., Frame, Orwall and Pollet).

Brief History:

Committee Activity:

Public Safety: 1/14/21, 1/19/21 [DPS];
Appropriations: 2/1/21, 2/4/21 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 2/10/21, 80-18.
Senate Amended.
Passed Senate: 4/7/21, 42-7.

Brief Summary of Engrossed Second Substitute Bill

- Authorizes the State Auditor to review a deadly force investigation to determine whether the involved actors complied with all applicable rules and procedures.
- Authorizes the State Auditor, upon the request of the Criminal Justice Training Commission, to review a law enforcement agency to ensure compliance with all applicable rules and procedures governing the training and certification of the agency's peace officers.

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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Do not pass. Signed by 4 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Griffey.

Staff: Corey Patton (786-7388).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Hoff and Schmick.

Minority Report: Without recommendation. Signed by 2 members: Representatives MacEwen, Assistant Ranking Minority Member; Harris.

Staff: Heidi Cao (786-7157).

Background:

An independent investigation team (IIT) must investigate a peace officer's use of deadly force resulting in death, substantial bodily harm, or great bodily harm to determine whether the use of deadly force was justified. An officer's use of deadly force is justified when, in good faith, the deadly force is:

- applied without malice in obedience to the judgment of a competent court;
- used to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty;
- used to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;
- used to prevent escape from a federal or state correctional facility;

- used to prevent escape from a county or city jail or holding facility if the person escaping has been arrested for, charged with, or convicted of a felony; or
- used to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

Good faith exists when, objectively considering all facts, circumstances, and information known to the officer at the time, a similarly situated, reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

An IIT investigating the use of deadly force must be comprised of members who operate completely independently of the law enforcement agency under investigation. An IIT must include:

- a peace officer certified as an IIT qualified lead investigator; and
- at least two non-law enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force.

An agency under investigation may not participate in the IIT's investigation except to:

- share specialized equipment when no reasonable alternative exists, the equipment is critical to the investigation, and the use is approved by the IIT commander;
- receive briefings given to the chief or sheriff of the involved agency about the progress of the investigation; and
- release body cam video or other investigation information of urgent public interest, with the agreement of the jurisdiction's prosecutor.

Summary of Engrossed Second Substitute Bill:

The Office of the State Auditor (SAO) is authorized, in cooperation with the Criminal Justice Training Commission (Commission), to conduct a process compliance audit of any completed deadly force investigation to determine whether the involved law enforcement agency, investigative body, and prosecutor's office acted in compliance with specific statutory and administrative rules for conducting deadly force investigations. A deadly force investigation is concluded when the prosecutor's office makes a charging decision and any resulting criminal case reaches disposition.

Upon the request of the Commission, the SAO may audit any law enforcement agency to ensure the agency is in compliance with all rules and procedures governing the training and certification of the agency's peace officers. A copy of the audit must be sent to the Commission, law enforcement agency, city or county council, county prosecutor, and relevant committees of the Legislature.

Law enforcement agencies do not pay any costs or fees for either type of audit.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

1. requires the State Auditor to conduct a process compliance audit at the conclusion of any deadly force investigation;
2. requires the State Auditor, before conducting a process compliance audit of any deadly force investigation, to issue a request for proposal and contract with persons with appropriate subject matter expertise in law enforcement and investigative audits until the State Auditor is adequately staffed with subject matter expertise; and
3. specifies that a process compliance audit of any deadly force investigation includes a determination of whether the actions of the involved law enforcement agency, investigative body, and prosecutor's office are in compliance with the statutory provisions related to the newly created Office of Independent Investigations and all rules adopted pursuant to those provisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Public Safety):

(In support) A tragedy where human life is lost should be acknowledged and taken seriously. Audits of deadly force investigations will ensure quality, objective, non-biased investigations. The purpose of auditing deadly force investigations is to review whether the relevant statutory and administrative rules are being followed. Audits will not be used to judge the decisions made at the end of investigations. Approximately 30 instances of officer use of deadly force occur in the state annually, so there will be about that many audits. There may need to be additional clarification about what constitutes the conclusion of a deadly force investigation.

The Office of the State Auditor (SAO) is committed to making a positive contribution as the lead agency for this bill. There was some discussion about whether the Office of the Attorney General (AGO) should be the lead agency instead because the SAO does not have expertise in this subject area. The AGO will have to provide some amount of legal support when the SAO inevitably faces lawsuits. Dedicated funds are necessary for this bill and efforts were made to develop a balanced estimate for the costs for this program. The law enforcement agencies under investigation will not be billed any costs for the audits.

(Opposed) None.

(Other) The intent of the bill is good, but the scope of the proposed audits should be clarified and narrowed. A deadly force investigation audit should only review whether the investigation was conducted in compliance with the relevant statutory and administrative

rules, not all rules and procedures generally. The Criminal Justice Training Commission (Commission) has existing authority and mechanisms to ensure that training and certification requirements for peace officers are met. The SAO should be prohibited from accessing or disclosing confidential information or interfering with the operations of the law enforcement agency under investigation. Law enforcement agencies should not be responsible for the costs of audits.

Although scrutiny of deadly force investigations is needed, conducting audits in cooperation and consultation with the Commission is a conflict of interest because the Commission is a participant in deadly force investigations.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is fiscally appropriate and cost-effective in setting up independent investigations to ensure that law enforcement rules are properly followed. The requirements of the bill will continue to improve law enforcement procedures and contribute positively towards fostering accountability, without incurring costs to the local law enforcement agencies.

(Opposed) None.

(Other) Specified funding is needed for this brand-new program at the State Auditor's Office.

Persons Testifying (Public Safety): (In support) Representative Bill Ramos, prime sponsor; Scott Nelson, Office of the State Auditor; Spike Unruh, Washington State Patrol Troopers Association; and Jeff DeVere, Washington Council of Police and Sheriffs.

(Other) James McMahan, Washington Association of Sheriffs & Police Chiefs; and James Schrimphser, Washington State Fraternal Order of Police.

Persons Testifying (Appropriations): (In support) James McMahan, Washington Association Sheriffs and Police Chiefs; and Teresa Taylor, Washington Council of Police and Sheriffs.

(Other) Scott Nelson, Office of the State Auditor.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.