

SENATE BILL REPORT

E2SHB 1089

As Passed Senate - Amended, April 7, 2021

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: Passed House: 2/10/21, 80-18.

Committee Activity: Law & Justice: 3/04/21, 3/11/21 [DPA-WM, DNP, w/oRec].
Ways & Means: 3/23/21, 3/25/21 [DPA (LAW), DNP].

Floor Activity: Passed Senate - Amended: 4/7/21, 42-7.

Brief Summary of Amended Bill

- Authorizes the Washington State Auditor to audit any use of deadly force incident by a Washington peace officer at the conclusion of an investigation to determine whether the actions of the law enforcement agency, investigative body, and prosecutor's office complied with all laws and procedures.
- Authorizes the Criminal Justice Training Commission to request an audit of any law enforcement agency to determine whether the agency is in compliance with all laws, policies, and procedures governing the training and certification of peace officers employed by the agency.

SENATE COMMITTEE ON LAW & JUSTICE

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.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

Minority Report: Do not pass.
Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy.

Minority Report: That it be referred without recommendation.
Signed by Senator Wagoner.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Law & Justice.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.
Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

Staff: Sarian Scott (786-7729)

Background: Initiative 940 and subsequent legislation amended the circumstances for when the use of deadly force by a Washington peace officer is justified. Deadly force is the intentional application of force through the use of a firearm or other means reasonably likely to cause death or serious injury.

Generally, a peace officer may use deadly force when necessary to arrest or apprehend a person the officer believes to have committed a felony, prevent escape, or lawfully suppress a riot if the person is armed with a deadly weapon. The peace officer must have a good faith belief the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. Good faith is an objective standard, considering all the facts, circumstances, and information known to the officer at the time.

In any case where the use of deadly force results in death, substantial bodily harm, or great bodily harm to an individual, an independent investigation must be completed to determine whether the officer was acting within applicable laws and policies and whether the use of force met the good faith standard. The Criminal Justice Training Commission (CJTC) was tasked with establishing criteria to determine what qualifies as an independent investigation. The CJTC finalized those rules in December of 2019.

An independent investigation team (IIT) is required to investigate any deadly force incident by a peace officer. The IIT must be comprised of members who operate completely independently of the law enforcement agency under investigation and 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 Amended Bill: The Washington State Auditor must conduct a compliance audit at the conclusion of any deadly force investigation to determine whether the investigative process conducted by the involved law enforcement agency, investigative body, and prosecutor's office complied with the law and rules adopted by the CJTC. A deadly force investigation is concluded when the involved prosecutor's office makes a charging decision and any resulting criminal case reaches disposition. The audit must be conducted in cooperation with the CJTC.

The state auditor may not conduct deadly force compliance audits until adequately staffed with subject matter expertise regarding law enforcement and investigative audits. Until that time, the state auditor must issue a request for proposal and contract with persons with adequate subject matter expertise to conduct the audits.

Upon request of the CJTC, the state auditor is authorized to audit any law enforcement agency to ensure the agency is in compliance with all laws, policies, and procedures governing the training and certification of peace officers employed by the agency. A copy of the audit must be sent to the CJTC, law enforcement agency, city or county council, county prosecutor, and relevant committees of the Legislature.

A law enforcement agency shall not pay any costs or fees associated with the above audits.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The purpose of this bill is to check our work after every deadly force investigation. It is not intended to be a judgment or determination, but to make sure the investigation followed the process set up and evaluate whether that process is working.

The second audit authorized by this bill is to allow the CJTC to request an audit when there is a concern about a particular law enforcement agency. We believe these requests would be rare.

It is important that the costs for these audits not be passed through to the law enforcement agency. Our criminal justice system cannot operate effectively without the trust of the public. An objective independent review of use of force matters is integral to that public trust. If an audit identifies issues, corrective action should be taken. This is a missing piece and important follow up to I-940 and the requirement to conduct independent investigations.

Persons Testifying (Law & Justice): PRO: Sanjay Walvekar, Washington Association of Sheriffs and Police Chiefs; Spike Unruh, Washington State Patrol Troopers Association; Seth Dawson, Washington Association for Substance Abuse and Violence Prevention; Jeff DeVere, Washington Council of Police and Sheriffs; Michael Transue, Washington Fraternal Order of Police.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Ways & Means): PRO: Allows for a robust audit of the process. This will ensure rules are followed. We support investigative rules and procedures. A robust system of audit by SAO is more fiscally responsive.

Persons Testifying (Ways & Means): PRO: Sanjay Walvekar, Washington Association of Sheriffs and Police Chiefs; Jeff DeVere, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.