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ENGROSSED SUBSTITUTE HOUSE BILL 1267

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State of Washington

67th Legislature

2021 Regular Session

**By** House Public Safety (originally sponsored by Representatives Entenman, Hackney, Senn, Dolan, Leavitt, Berry, Fitzgibbon, Valdez, Simmons, Ramel, Ortiz-Self, Ramos, Chopp, Davis, Thai, Bergquist, Peterson, Kloba, Callan, Lekanoff, Macri, Goodman, Gregerson, J. Johnson, Lovick, Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos, and Ormsby; by request of Office of the Governor)

READ FIRST TIME 02/09/21.

1 AN ACT Relating to investigation of potential criminal conduct  
2 arising from police use of force, including custodial injuries, and  
3 other officer-involved incidents; amending RCW 10.93.020, 39.26.125,  
4 and 10.114.011; adding a new section to chapter 41.06 RCW; adding a  
5 new chapter to Title 43 RCW; creating new sections; and providing an  
6 expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

15 The legislature intends that the office of independent  
16 investigations be created to conduct investigations of use of force  
17 and other cases under its jurisdiction in a manner that is competent,  
18 unbiased, and thorough. The office will be transparent and  
19 accountable for their work. The office should ensure that it treats  
20 all people with dignity and respect. The director and staff must be  
21 qualified and trained to conduct the investigations, including

1 training to understand the impact and effect of racism in the  
2 investigation and use of an antiracist lens to conduct their work.

3 It is intended that this office will assume responsibility for  
4 investigations of serious use of force incidents and refer the  
5 reports on the investigation to the prosecutorial entity to determine  
6 if the action was justified, or if there was criminal action such  
7 that criminal charges should be filed. This is the same criminal  
8 investigative inquiry that is currently conducted when there is an  
9 officer-involved incident. The legislature does not intend to create  
10 a new type of investigation or that the office should be involved in  
11 any administrative review of conduct or complaints to police agencies  
12 about officer conduct related to policy or procedure. The process  
13 created in this act is intended to only change who investigates the  
14 incident. It does not change the nature of the investigation and only  
15 involves an investigation to determine justification or whether  
16 criminal charges are appropriate.

17 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this  
18 section apply throughout this chapter unless the context clearly  
19 requires otherwise.

20 (1) "Advisory board" means the office of independent  
21 investigations advisory board.

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

23 (3) "Director" means the director of the office of independent  
24 investigations.

25 (4) "Great bodily harm" has the meaning provided in RCW  
26 9A.04.110.

27 (5) "In-custody" refers to a person who is under the physical  
28 control of a general authority Washington law enforcement agency or a  
29 limited authority Washington law enforcement agency as defined in RCW  
30 10.93.020 or a city, county, or regional adult or juvenile  
31 institution, correctional, jail, holding, or detention facility as  
32 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

33 (6) "Independent investigation team" means a team of qualified  
34 and certified peace officer investigators, civilian crime scene  
35 specialists, and other representatives who operate independently of  
36 any involved agency to conduct investigations of police deadly force  
37 incidents. An independent investigation team may be comprised of  
38 multiple law enforcement agencies who jointly investigate police use

1 of force incidents in their geographical regions or may be a single  
2 law enforcement agency, provided it is not the involved agency.

3 (7) "Involved agency" means a general authority Washington law  
4 enforcement agency or limited authority Washington law enforcement  
5 agency, as defined in RCW 10.93.020, that employs or supervises the  
6 officer or officers who are an involved officer as defined in this  
7 section, or an agency responsible for a city, county, or regional  
8 adult or juvenile institution, correctional, jail, holding, or  
9 detention facility as defined in RCW 70.48.020, 72.09.015, or  
10 13.40.020.

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

15 (a) A general authority Washington peace officer, specially  
16 commissioned Washington peace officer, or limited authority  
17 Washington peace officer, as defined in RCW 10.93.020, whether on or  
18 off duty if he or she is exercising his or her authority as a peace  
19 officer; or

20 (b) An individual while employed in a city, county, or regional  
21 adult or juvenile institution, correctional, jail, holding, or  
22 detention facility as defined in RCW 70.48.020, 72.09.015, or  
23 13.40.020.

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

25 (10) "Substantial bodily harm" has the same meaning as in RCW  
26 9A.04.110.

### 27 **Office Creation**

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

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

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

37 (1) Conduct fair, thorough, transparent, and competent  
38 investigations of police use of force and other incidents involving

1 law enforcement as authorized in this chapter and shall prioritize  
2 investigations conducted by the office based on resources and other  
3 criteria developed in consultation with the advisory board. The  
4 office shall commence investigations as follows:

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

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

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

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

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

21 NEW SECTION. **Sec. 303.** DIRECTOR. (1)(a) The governor shall  
22 appoint the director of the office and determine the director's  
23 compensation. The governor shall select the director from a list of  
24 three candidates recommended by the advisory board unless the  
25 governor declines to select any of the candidates provided. If the  
26 governor declines to select a candidate proposed by the advisory  
27 board, the governor may request the advisory board to provide  
28 additional qualified nominees for consideration or may offer an  
29 alternative candidate who may be appointed following approval by a  
30 majority of the advisory board.

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

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

1        NEW SECTION.    **Sec. 304.**    DUTIES OF THE DIRECTOR. (1) The director

2 shall:

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

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

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

11       (d)    Plan and provide training for advisory board members  
12 including training to utilize an antiracist lens in their duties as  
13 advisory board members;

14       (e)    Publish reports of investigations conducted under this  
15 chapter;

16       (f)    Enter into contracts and memoranda of understanding as  
17 necessary to implement the responsibilities of the office under this  
18 chapter;

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

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

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

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

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

32       (i)    Allow for prompt response to the incident requiring  
33 investigation; and

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

36       (b)    A system and requirements for involved agencies to notify the  
37 office of any incident under the jurisdiction of the office, which  
38 must include direction to agencies as to what incidents of force and  
39 injuries and other circumstances must be reported to the office,  
40 including the timing of such reports, provided that any incident

1 involving substantial bodily harm, great bodily harm, or death is  
2 reported to the office immediately in accordance with section 402 of  
3 this act;

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

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

8 (ii) The assessment and response to the notification of the  
9 incident by the office, including direction to and coordination with  
10 the independent investigation team;

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

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

16 (v) Protocol and direction to the involved agency;

17 (vi) Protocol and direction to the independent investigation  
18 team;

19 (vii) Protocol and guidelines for contacts and engagement with  
20 the involved agency; and

21 (viii) Protocol for finalizing the completed investigation and  
22 referral to the entity responsible for the prosecutorial decision,  
23 including communication with the family and public regarding the  
24 completion of the investigation;

25 (d) A plan for the office's interaction, communications, and  
26 responsibilities to: The involved officer; the individual who is the  
27 subject of the action by the involved officer that is the basis of  
28 the case under investigation, and their families; the public; and  
29 other interested parties or stakeholders. The plan must consider the  
30 following:

31 (i) A process for consultation, notifications, and communications  
32 with the person, family, or tribal representative of any person who  
33 is the subject of the action by the involved officer that is the  
34 basis of the case under investigation;

35 (ii) Translation services which may be utilized through employees  
36 or contracted services;

37 (iii) Support to access assistance or services to the extent  
38 possible; and

39 (iv) A process for situations in which a tribal member is  
40 involved in the case that ensures consultation with the tribe, and

1 notification of the governor's office of Indian affairs within 24  
2 hours in cases of deadly use of force;

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

5 (f) Prioritization of cases for investigation.

6 (3) No later than December 1, 2023, in consultation with the  
7 advisory board, the director shall develop a proposal for training  
8 individuals who are nonlaw enforcement officers to conduct competent,  
9 thorough investigations of cases under the jurisdiction of the  
10 office. The proposal must establish a training plan with an objective  
11 that within five years of the date the office begins investigating  
12 deadly force cases the cases will be investigated by nonlaw  
13 enforcement officers. The director shall report such proposal to the  
14 governor and legislature by December 1, 2023. Any proposal offered by  
15 the director must ensure investigations are high quality, thorough,  
16 and competent.

17 (4) The director, in consultation with the advisory board, shall  
18 implement a plan to review prior investigations of deadly force by an  
19 involved officer if new evidence is brought forth that was not  
20 included in the initial investigation and investigate if determined  
21 appropriate based on the review. The director must prioritize the  
22 review or investigation of cases occurring prior to July 1, 2022,  
23 based on resources and other cases under investigation with the  
24 office.

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

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

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

36 (i) Extensive experience with criminal investigations, including  
37 homicide investigations;

38 (ii) Behavioral health issues;

39 (iii) Youth cognitive development;

1 (iv) Trauma-informed interviewing;  
2 (v) De-escalation techniques and utilization; and  
3 (vi) Knowledge of Washington practices, including laws, policies,  
4 and procedures related to criminal law, criminal investigations, and  
5 policing.

6 (b) The director shall consider the following prior to employing  
7 an investigator:

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

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

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

18 (ii) The results of a background check that includes research of  
19 social media and affiliations to check for racial bias and conflicts  
20 of interest.

21 (c) Investigators employed or contracted with the office are  
22 prohibited from being simultaneously employed, commissioned, or have  
23 any business relationship, other than through the work of the office,  
24 with a general authority or limited authority Washington law  
25 enforcement agency, or county or city corrections agency.

26 (d) The director may not employ an individual who was a  
27 previously commissioned law enforcement officer who does not meet the  
28 criteria of this section without the approval of a majority of the  
29 advisory board.

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

34 (a) Forensic services and crime scene investigators;

35 (b) Liaisons for community, family, and tribal relations;

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

38 (d) Mental health experts;

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

40 (f) Other experts as needed; and



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

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

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

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

12 (ii) Implicit and explicit bias training;

13 (iii) Intercultural competency;

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

16 (v) Antiracism training; and

17 (vi) Undoing institutional racism.

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

22 (i) Criminal investigations, including homicide investigations as  
23 appropriate for the assigned positions;

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

26 (iii) Interviewing techniques; and

27 (iv) Other relevant trainings as needed.

28 NEW SECTION. **Sec. 306.** INVESTIGATORS. (1) The director shall  
29 designate investigator positions that are limited authority  
30 Washington peace officers as defined in RCW 10.93.020. The  
31 investigators designated as limited authority Washington peace  
32 officers have the authority to investigate any case within the  
33 jurisdiction of the office and any criminal activity related to, or  
34 discovered in the course of, the investigation of the case under the  
35 jurisdiction of the incident that has a relationship to the  
36 investigation.

37 (2) Any investigator employed or contracted with the office for  
38 the purpose of conducting investigations may participate in the  
39 investigations of a case under the jurisdiction of the office. Only

1 investigators who are limited authority Washington peace officers may  
2 be designated a lead investigator on any criminal investigation  
3 conducted by the office pursuant to this chapter.

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

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

8 (1) "General authority Washington law enforcement agency" means  
9 any agency, department, or division of a municipal corporation,  
10 political subdivision, or other unit of local government of this  
11 state, and any agency, department, or division of state government,  
12 having as its primary function the detection and apprehension of  
13 persons committing infractions or violating the traffic or criminal  
14 laws in general, as distinguished from a limited authority Washington  
15 law enforcement agency, and any other unit of government expressly  
16 designated by statute as a general authority Washington law  
17 enforcement agency. The Washington state patrol and the department of  
18 fish and wildlife are general authority Washington law enforcement  
19 agencies.

20 (2) "Limited authority Washington law enforcement agency" means  
21 any agency, political subdivision, or unit of local government of  
22 this state, and any agency, department, or division of state  
23 government, having as one of its functions the apprehension or  
24 detection of persons committing infractions or violating the traffic  
25 or criminal laws relating to limited subject areas, including but not  
26 limited to, the state departments of natural resources and social and  
27 health services, the state gambling commission, the state lottery  
28 commission, the state parks and recreation commission, the state  
29 utilities and transportation commission, the state liquor (~~control~~)  
30 and cannabis board, the office of the insurance commissioner, (~~and~~)  
31 the state department of corrections, and the office of independent  
32 investigations.

33 (3) "General authority Washington peace officer" means any full-  
34 time, fully compensated and elected, appointed, or employed officer  
35 of a general authority Washington law enforcement agency who is  
36 commissioned to enforce the criminal laws of the state of Washington  
37 generally.

38 (4) "Limited authority Washington peace officer" means any full-  
39 time, fully compensated officer of a limited authority Washington law

1 enforcement agency empowered by that agency to detect or apprehend  
2 violators of the laws in some or all of the limited subject areas for  
3 which that agency is responsible. A limited authority Washington  
4 peace officer may be a specially commissioned Washington peace  
5 officer if otherwise qualified for such status under this chapter.

6 (5) "Specially commissioned Washington peace officer", for the  
7 purposes of this chapter, means any officer, whether part-time or  
8 full-time, compensated or not, commissioned by a general authority  
9 Washington law enforcement agency to enforce some or all of the  
10 criminal laws of the state of Washington, who does not qualify under  
11 this chapter as a general authority Washington peace officer for that  
12 commissioning agency, specifically including reserve peace officers,  
13 and specially commissioned full-time, fully compensated peace  
14 officers duly commissioned by the states of Oregon or Idaho or any  
15 such peace officer commissioned by a unit of local government of  
16 Oregon or Idaho. A reserve peace officer is an individual who is an  
17 officer of a Washington law enforcement agency who does not serve  
18 such agency on a full-time basis but who, when called by the agency  
19 into active service, is fully commissioned on the same basis as full-  
20 time peace officers to enforce the criminal laws of the state.

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

25 (7) "Agency with primary territorial jurisdiction" means a city  
26 or town police agency which has responsibility for police activity  
27 within its boundaries; or a county police or sheriff's department  
28 which has responsibility with regard to police activity in the  
29 unincorporated areas within the county boundaries; or a statutorily  
30 authorized port district police agency or four-year state college or  
31 university police agency which has responsibility for police activity  
32 within the statutorily authorized enforcement boundaries of the port  
33 district, state college, or university.

34 (8) "Primary commissioning agency" means (a) the employing agency  
35 in the case of a general authority Washington peace officer, a  
36 limited authority Washington peace officer, an Indian tribal peace  
37 officer, or a federal peace officer, and (b) the commissioning agency  
38 in the case of a specially commissioned Washington peace officer (i)  
39 who is performing functions within the course and scope of the  
40 special commission and (ii) who is not also a general authority

1 Washington peace officer, a limited authority Washington peace  
2 officer, an Indian tribal peace officer, or a federal peace officer.

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) The investigation should include a review of the entire  
36 incident, including but not limited to events immediately preceding  
37 the incident that may have contributed to or influenced the outcome  
38 of the incident that are directly related to the incident under  
39 investigation.

1 (5) Upon receiving notification required in section 402 of this  
2 act of an incident under the jurisdiction of the office, the  
3 director:

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

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

9 (c) If the director determines that the incident is not within  
10 the office's jurisdiction to investigate, the director shall decline  
11 to investigate, and shall give notice of the fact to the involved  
12 agency.

13 (6) If the director determines the case is to be investigated the  
14 director will communicate the decision to investigate to the involved  
15 agency and will thereafter be the lead investigative body in the case  
16 and have priority over any other state or local agency investigating  
17 the incident or a case that is under the jurisdiction of the office.  
18 The director will implement the process developed pursuant to section  
19 304 of this act and conduct the appropriate investigation in  
20 accordance with the process.

21 (7) In conducting the investigation the office shall have access  
22 to reports and information necessary or related to the investigation  
23 in the custody and control of the involved agency and any law  
24 enforcement agency responding to the scene of the incident including,  
25 but not limited to, voice or video recordings, body camera  
26 recordings, and officer notes, as well as disciplinary and  
27 administrative records except those that might be statements  
28 conducted as part of an administrative investigation related to the  
29 incident.

30 (8) The investigation shall be concluded within 120 days of  
31 acceptance of the case for investigation. If the office is not able  
32 to complete the investigation within 120 days, the director shall  
33 report to the advisory board the reasons for the delay.

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

35 (1) The criminal justice training commission shall collaborate with  
36 the office to ensure office investigators receive sufficient training  
37 to attain the necessary requirements to conduct investigations under  
38 the jurisdiction of the office.

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

4 NEW SECTION. **Sec. 310.** DATA AND RESEARCH. The office will  
5 conduct analysis of use of force and other data to the extent such  
6 data is available to the office. The director is authorized to enter  
7 into contracts or memoranda of understanding to access data as  
8 needed. If data is available, the office should, at a minimum,  
9 analyze and report annually: Analysis and research regarding any  
10 identified trends, patterns, or other situations identified by the  
11 data; and recommendations for improvements. After July 1, 2024, the  
12 office should also annually report recommendations, if any, for  
13 expanding the scope of investigations or jurisdiction of the office  
14 based on trends, data, or reports received by the agency.

15 NEW SECTION. **Sec. 311.** LIABILITY. No action or other proceeding  
16 may be instituted against the director, an investigator, or an  
17 employee or contractor in the office or a person exercising powers or  
18 performing duties at the direction of the director for any act done  
19 in good faith in the execution or intended execution of the person's  
20 duty or for any alleged neglect or default in the execution in good  
21 faith of the person's duty.

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

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

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

30 All contracts must be entered into pursuant to competitive  
31 solicitation, except for:

32 (1) Emergency contracts;

33 (2) Sole source contracts that comply with the provisions of RCW  
34 39.26.140;

35 (3) Direct buy purchases, as designated by the director. The  
36 director shall establish policies to define criteria for direct buy

1 purchases. These criteria may be adjusted to accommodate special  
2 market conditions and to promote market diversity for the benefit of  
3 the citizens of the state of Washington;

4 (4) Purchases involving special facilities, services, or market  
5 conditions, in which instances of direct negotiation is in the best  
6 interest of the state;

7 (5) Purchases from master contracts established by the department  
8 or an agency authorized by the department;

9 (6) Client services contracts;

10 (7) Other specific contracts or classes or groups of contracts  
11 exempted from the competitive solicitation process when the director  
12 determines that a competitive solicitation process is not appropriate  
13 or cost-effective;

14 (8) Off-contract purchases of Washington grown food when such  
15 food is not available from Washington sources through an existing  
16 contract. However, Washington grown food purchased under this  
17 subsection must be of an equivalent or better quality than similar  
18 food available through the contract and must be able to be paid from  
19 the agency's existing budget. This requirement also applies to  
20 purchases and contracts for purchases executed by state agencies,  
21 including institutions of higher education as defined in RCW  
22 28B.10.016, under delegated authority granted in accordance with this  
23 chapter or under RCW 28B.10.029;

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

27 (10) Intergovernmental agreements awarded to any governmental  
28 entity, whether federal, state, or local and any department,  
29 division, or subdivision thereof;

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

33 (12) Contracts for architectural and engineering services as  
34 defined in RCW 39.80.020, which shall be entered into under chapter  
35 39.80 RCW;

36 (13) Contracts for the employment of expert witnesses for the  
37 purposes of litigation; ((and))

38 (14) Contracts for bank supervision authorized under RCW  
39 ((~~30.38.040~~)) 30A.38.040; and

1 (15) Contracts for investigators awarded by the office of  
2 independent investigations as authorized under section 304 of this  
3 act.

#### 4 **Duty of Involved Agency**

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

7 Except as required by federal consent decree, federal settlement  
8 agreement, or federal court order, where the use of deadly force by a  
9 peace officer results in death, substantial bodily harm, or great  
10 bodily harm, an independent investigation must be completed to inform  
11 any determination of whether the use of deadly force met the good  
12 faith standard established in RCW 9A.16.040 and satisfied other  
13 applicable laws and policies. The investigation must be completely  
14 independent of the agency whose officer was involved in the use of  
15 deadly force and conducted in accordance with chapter 43.--- RCW (the  
16 new chapter created in section 601 of this act). ((The)) Any rules  
17 adopted by the criminal justice training commission must ~~((adopt~~  
18 ~~rules establishing criteria to determine what qualifies as an~~  
19 ~~independent investigation pursuant to this section))~~ be consistent  
20 with chapter 43.--- RCW (the new chapter created in section 601 of  
21 this act).

22 NEW SECTION. **Sec. 402.** NOTIFICATION OF DIRECTOR AND SECURING  
23 THE SCENE. (1) Following notification by the director that the office  
24 will accept investigations of cases under its jurisdiction after July  
25 1, 2022, an involved agency shall notify the office of any incident  
26 by an involved officer in accordance with the requirements under  
27 section 304 of this act and pursuant to this section.

28 (a) If the incident involves use of deadly force by an involved  
29 officer that results in death, substantial bodily harm, or great  
30 bodily harm the involved agency must immediately contact the office  
31 pursuant to the procedure established by the director once the  
32 involved agency personnel and other first responders have rendered  
33 the scene safe and provided or facilitated lifesaving first aid to  
34 persons at the scene who have life-threatening injuries. This  
35 requirement does not affect the duty of law enforcement under RCW  
36 36.28A.445.



1 (b) In all other cases, the involved agency must notify the  
2 office of the incident pursuant to the procedure established by the  
3 director.

4 (2)(a) In any case that requires notice to the director under  
5 this section, the involved agency shall ensure that any officers or  
6 employees over which the involved agency has authority who are at the  
7 scene of the incident take all lawful measures necessary for the  
8 purposes of protecting, obtaining, or preserving evidence relating to  
9 the incident until an office investigator, or independent  
10 investigation team at the request of the office, takes charge of the  
11 scene.

12 (b) The primary focus of the involved agency must be the  
13 protection and preservation of evidence in order to maintain the  
14 integrity of the scene until the office investigator or independent  
15 investigation team arrives or otherwise provides direction regarding  
16 activities at the scene. The involved agency should ensure that  
17 evidence, including but not limited to the following is protected and  
18 preserved:

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

23 (ii) Identification and contact information for witnesses to the  
24 incident; and

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

27 (3)(a) When the office investigator, or independent investigation  
28 team acting at the request of the office, arrives at the scene of an  
29 incident under the jurisdiction of the office, the involved agency  
30 will relinquish control of the scene to the office investigator or  
31 independent investigation team upon the request of the office  
32 investigator. The involved agency has a duty to comply with the  
33 requests of the office related to the investigation conducted  
34 pursuant to this chapter.

35 (b) Once the scene is relinquished, no member of the involved  
36 agency may participate in any way in the investigation, with the  
37 exception of the use of specialized equipment that is necessary for  
38 the investigation and where no alternative exists. If there is any  
39 equipment of the involved agency used in the investigation, steps  
40 must be taken to appropriately limit the role of any involved agency

1 personnel in facilitating the use of that equipment or their  
2 engagement with the investigation.

3 (4) If an independent investigation team takes control of the  
4 scene at the request of the office, the independent investigation  
5 team shall relinquish control of the scene and investigation at the  
6 request of the office when the office is on the scene or otherwise  
7 provides notice that the office is taking control of the scene. The  
8 independent investigation team may continue to engage in the  
9 investigation conducted at the scene if requested to do so by the  
10 lead office investigator, director, or the director's designee. The  
11 involvement of the independent investigation team is limited to  
12 activities requested by the office and must terminate following the  
13 securing of the scene and any evidence preservation or other actions  
14 as determined necessary by the office at the scene. The independent  
15 investigation team may not continue to participate in the ongoing  
16 investigation.

17 (5) No information about the ongoing independent investigation  
18 under the jurisdiction of the office may be shared with any member of  
19 the involved agency, except limited briefings given to the chief or  
20 sheriff of the involved agency about the progress of the  
21 investigation.

22 (6) If the office declines to investigate a case, the authority  
23 and duty to investigate remains with the independent investigation  
24 team or local law enforcement authority with jurisdiction over the  
25 incident.

26 **Office of Independent Investigations Advisory Board**

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

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

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

37 (iii) One Washington tribal member representative, who is not  
38 current or former law enforcement;

39 (iv) One defense attorney representative;

1 (v) One prosecuting attorney representative;

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

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

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

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

9 (b) The members of the advisory board appointed by the governor  
10 shall be appointed for terms of three years and until their  
11 successors are appointed and confirmed. The governor shall stagger  
12 the initial appointment terms of the advisory board members with the  
13 terms of five members being for two years from the date of  
14 appointment and six members being for three years from the date of  
15 appointment. The governor shall designate the appointees who will  
16 serve the two-year and three-year terms. The members of the advisory  
17 board serve without compensation, but must be reimbursed for travel  
18 expenses as provided in RCW 43.03.050 and 43.03.060.

19 (c) The governor, when making appointments to the advisory board,  
20 shall make appointments that reflect the cultural diversity of the  
21 state of Washington.

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

24 (a) Provide input to the governor on the selection of the  
25 director, including providing candidates for consideration for  
26 appointment for the position of director. If the governor requests  
27 additional candidates for consideration, the advisory board shall  
28 provide additional candidates to the governor. If the governor  
29 provides an alternative candidate, the advisory board must consider  
30 the candidate provided by the governor and vote on the approval or  
31 rejection of the candidate.

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

36 (ii) The director must have experience either in conducting  
37 criminal investigations or prosecutions. The advisory board shall  
38 consider the relevant experience and qualifications of the candidate  
39 including the extent to which they demonstrate experience or  
40 demonstrated understanding of the following areas:

- 1 (A) Criminal investigations;
- 2 (B) Organizational leadership;
- 3 (C) Mental health issues;
- 4 (D) Trauma-informed interviewing;
- 5 (E) Community leadership;
- 6 (F) Legal experience or background;
- 7 (G) Antioppression and antiracist analysis and addressing
- 8 systemic inequities; and
- 9 (H) Working with Black, Indigenous, and communities of color;

10 (b) Provide input to the director on the plans required to be  
11 developed for the office including the regional investigation teams;  
12 staffing; training for personnel; procedures for engagement with  
13 individuals involved in any case under the jurisdiction of the  
14 office, as well as families and the community; recommendations to the  
15 legislature; and other input as requested by the governor or  
16 director;

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

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

22 (3) Advisory board members have a duty to maintain the  
23 confidentiality of the information they receive during the course of  
24 their work on the advisory board. Each advisory board member shall  
25 agree in writing to not disclose any information they receive or  
26 otherwise access related to an investigation, including information  
27 about individuals involved in the investigation as involved officers,  
28 individuals who are the subject of police action, witnesses, and  
29 investigators.

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

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

34 NEW SECTION. **Sec. 502.** REPORT. (1) In consultation with the  
35 director, the advisory board shall assess whether the jurisdiction of  
36 the office should be expanded to conduct investigations of other  
37 types of incidents committed by involved officers, including but not  
38 limited to other types of in-custody deaths not involving use of  
39 force but otherwise involving criminal acts committed by involved

1 officers as well as sexual assaults committed by involved officers,  
2 subject to the same standard under section 308(2)(b) of this act. The  
3 advisory board must consider available data and information on other  
4 types of in custody deaths not involving use of force but otherwise  
5 involving criminal acts committed by involved officers as well as  
6 other types of incidents, the capacity and resources of the office,  
7 and any modifications or additions to procedures and processes  
8 necessary for the office to conduct investigations of those  
9 incidents. The advisory board must consider the recommendations and  
10 counsel of the director when conducting the assessment under this  
11 section.

12 (2) At the request of the advisory board, the office shall  
13 conduct analysis of available data, including identified trends and  
14 patterns, and other information relevant to in-custody deaths  
15 involving criminal acts committed by involved officers, sexual  
16 assaults committed by involved officers, and other types of incidents  
17 as requested by the advisory board.

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

20 (4) For the purposes of this section, "in-custody death" means a  
21 death of an individual while under physical control of a general  
22 authority Washington law enforcement agency or a limited authority  
23 Washington law enforcement agency as defined in RCW 10.93.020 or a  
24 city, county, or regional adult or juvenile institution,  
25 correctional, jail, holding, or detention facility as defined in RCW  
26 70.48.020, 72.09.015, or 13.40.020.

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

28 **Miscellaneous Provisions**

29 NEW SECTION. **Sec. 601.** CODIFICATION. Sections 201 through 306,  
30 308 through 311, 402, 501, and 502 of this act constitute a new  
31 chapter in Title 43 RCW.

32 NEW SECTION. **Sec. 602.** SEVERABILITY. If any provision of this  
33 act or its application to any person or circumstance is held invalid,  
34 the remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

36 NEW SECTION. **Sec. 603.** SUBJECT TO APPROPRIATION. If specific  
37 funding for the purposes of this act, referencing this act by bill or

1 chapter number, is not provided by June 30, 2021, in the omnibus  
2 appropriations act, this act is null and void.

--- **END** ---