

2SHB 1579 - S COMM AMD

By Committee on Law & Justice

NOT CONSIDERED 05/17/2023

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

3 **"Sec. 1.** RCW 43.10.230 and 1981 c 335 s 1 are each amended to
4 read as follows:

5 The purpose of RCW 43.10.232 is to grant authority to the
6 attorney general concurrent with the county prosecuting attorneys to
7 investigate and prosecute crimes, including incidents of use of
8 deadly force by an involved officer as those terms are defined in RCW
9 43.102.010. The purpose of RCW ~~((43.10.234))~~ 10.01.190 is to
10 ~~((insure))~~ ensure access by the attorney general to the procedural
11 powers of the various prosecuting attorneys in exercising criminal
12 prosecutorial authority granted in RCW 43.10.232 or otherwise granted
13 by the legislature.

14 **Sec. 2.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to
15 read as follows:

16 (1) (a) The attorney general shall have concurrent authority and
17 power with the prosecuting attorneys to investigate crimes and
18 initiate and conduct prosecutions upon the request of or with the
19 concurrence of any of the following:

20 ~~((a))~~ (i) The county prosecuting attorney of the jurisdiction
21 in which the offense has occurred;

22 ~~((b))~~ (ii) The governor of the state of Washington; or

23 ~~((c) A majority of the committee charged with the oversight of~~
24 ~~the organized crime intelligence unit))~~ (iii) As provided in
25 subsection (2) of this section.

26 ~~((2))~~ (b) Such request or concurrence shall be communicated in
27 writing to the attorney general.

28 ~~((3))~~ (c) Prior to any prosecution by the attorney general
29 under (a) of this ~~((section))~~ subsection, the attorney general and
30 the county in which the offense occurred shall reach an agreement

1 regarding the payment of all costs, including expert witness fees,
2 and defense attorneys' fees associated with any such prosecution.

3 (2) (a) The attorney general's office of independent prosecutions
4 shall have concurrent authority and power with the prosecuting
5 attorneys to review investigations and initiate and conduct
6 prosecutions of crimes involving the use of deadly force by involved
7 officers as described in chapter 43.102 RCW. "Prosecution" includes
8 appeals and requests for postconviction relief.

9 (b) In any prosecution pursuant to this subsection, the office of
10 the attorney general may prosecute related offenses and defendants.
11 Related offenses and defendants for purposes of this subsection are
12 those offenses and defendants that may be joined as provided by law
13 or by the criminal rules for the superior courts of the state of
14 Washington. Related offenses also include any criminal activity
15 related to, or discovered in the course of, the investigation of the
16 case under the jurisdiction of the incident that has a relationship
17 to the investigation.

18 (c) Nothing in this subsection affects the authority of the
19 prosecuting attorney to conduct prosecutions of crimes committed by
20 an individual who is the subject of the use of force action by the
21 involved officer.

22 (d) The authority of the office of the attorney general under
23 this subsection applies to any criminal offense involving the use of
24 deadly force by an involved officer and any other investigations
25 within the scope of the office of independent investigations.

26 (e) The attorney general's office shall be responsible for its
27 expert witness fees and other costs of prosecution associated with
28 prosecutions it undertakes pursuant to this subsection. The attorney
29 general's office shall not be responsible for defense costs,
30 including defense attorneys' fees, defense expert witness fees, or
31 any other cost related to the defense in a criminal prosecution
32 brought pursuant to this subsection. The county in which the action
33 is filed shall be responsible for court administration costs and
34 public defense costs if the defendant so qualifies.

35 (f) For the purposes of this section, "deadly force" and
36 "involved officer" have the meanings provided in RCW 43.102.010.

37 **Sec. 3.** RCW 43.10.234 and 1981 c 335 s 3 are each amended to
38 read as follows:

1 (1) If both a prosecuting attorney and the attorney general file
2 an information or indictment charging a defendant with substantially
3 the same offense(s), the court shall, upon motion of either the
4 prosecuting attorney or the attorney general:

5 ~~((1))~~ (a) Determine whose prosecution of the case will best
6 promote the interests of justice and enter an order designating that
7 person as the prosecuting authority in the case; and

8 ~~((2))~~ (b) Enter an order dismissing the information or
9 indictment filed by the person who was not designated the prosecuting
10 authority.

11 (2) For purposes of designating the prosecuting authority where
12 information or an indictment has been filed by both the office of the
13 attorney general pursuant to RCW 43.10.232(2) and the prosecuting
14 attorney pursuant to RCW 36.27.020, the court shall, in accordance
15 with section 4 of this act, prioritize the public's interest in
16 ensuring a fair and impartial prosecution and trial that is free from
17 bias and even the appearance of bias, prejudice, or conflict of
18 interest. In any judicial proceeding under this subsection, in order
19 to be designated the prosecuting authority, the county prosecuting
20 attorney must overcome a presumption that the county prosecuting
21 attorney has an inherent conflict of interest in any matter arising
22 from an investigation within the scope of the office of independent
23 investigations. Similarly, in any judicial proceeding under this
24 subsection, the attorney general must overcome a presumption that the
25 attorney general has an inherent conflict of interest in any matter
26 in which an investigation of the use of deadly force involved any
27 general authority peace officer at a state agency, an employee of the
28 department of corrections, an employee of a limited authority law
29 enforcement agency, or an employee of a police department at a public
30 institution of higher education.

31 NEW SECTION. Sec. 4. FINDINGS. The legislature finds that the
32 Washington state Constitution provides that the legislature shall
33 prescribe the duties of both the attorney general and the county
34 prosecuting attorneys. The legislature finds that the close working
35 relationships and intertwined duties between local law enforcement
36 and local prosecutors can give the appearance of bias in review of
37 incidents of use of deadly force by Washington peace officers and
38 corrections officers.

1 In order to increase public confidence in the fairness of review
2 of investigations of incidents of use of deadly force by Washington
3 peace officers and corrections officers, and to ensure independence
4 and transparency in such reviews, the legislature finds it necessary
5 to create an office of independent prosecutions within the attorney
6 general's office. The legislature further finds that prosecutions by
7 the independent prosecutor will best promote the interests of
8 justice.

9 NEW SECTION. **Sec. 5.** CREATION. (1) Subject to the availability
10 of amounts appropriated for this specific purpose, the office of
11 independent prosecutions is hereby established within the office of
12 the attorney general for the purpose of reviewing investigations of
13 use of deadly force by involved officers conducted pursuant to
14 chapter 43.102 RCW. The office is hereby authorized to review such
15 investigations, decline criminal charges when appropriate, file
16 criminal charges when appropriate, and prosecute such cases to the
17 conclusion of the case, including appeals and collateral attacks.

18 (2) The office shall be a separate division within the attorney
19 general's office. The office shall maintain policies and procedures
20 to ensure that personnel outside the office of independent
21 prosecutions with an actual and perceived conflict, including other
22 employees and divisions of the attorney general's office, shall be
23 screened from the investigation and prosecution of any case.

24 (3) The office shall have authority to adopt rules for the
25 maintaining of independent decision making and review of
26 investigations of use of deadly force by involved officers.

27 NEW SECTION. **Sec. 6.** AUTHORITY OF ATTORNEY GENERAL REGARDING
28 OFFICE OF INDEPENDENT PROSECUTIONS. (1) The attorney general shall
29 determine the compensation and appoint a licensed attorney as
30 independent counsel to lead the office of independent prosecutions.
31 The independent counsel shall have final decision-making authority
32 for:

33 (a) Hiring and terminating personnel within the office of
34 independent prosecutions;

35 (b) Declining the filing of criminal charges after thorough
36 review of an investigation of use of deadly force by an involved
37 officer as described in RCW 43.102.010;

1 (c) Filing criminal charges after thorough review of an
2 investigation of use of deadly force by an involved officer; and

3 (d) All aspects of the litigation of the office of independent
4 prosecutions.

5 (2) The attorney general may remove the independent counsel prior
6 to the expiration of the independent counsel's term for misconduct or
7 inability to perform duties. The attorney general shall otherwise be
8 screened from the work of the office of independent prosecutions. The
9 attorney general shall provide no input and have no decision-making
10 authority over whether criminal charges are filed after review of an
11 investigation of use of deadly force by an involved officer.

12 (3) The office of independent prosecutions shall be subject to
13 the policies and procedures applicable to employees of the attorney
14 general's office except where those policies and procedures conflict
15 with the duties of the office of independent prosecutions.

16 NEW SECTION. **Sec. 7.** OFFICE OF INDEPENDENT PROSECUTIONS
17 ADVISORY BOARD. (1)(a) There is created the office of independent
18 prosecutions advisory board. The advisory board shall consist of the
19 following members, appointed by the attorney general:

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

23 (ii) Two members of the general public representing families
24 affected by an incident of the nature under the jurisdiction of the
25 office of independent prosecutions, who are not current or former law
26 enforcement;

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

29 (iv) One defense attorney representative;

30 (v) Two prosecuting attorney representatives; and

31 (vi) Two active or retired law enforcement personnel.

32 (b) The attorney general, when making appointments to the
33 advisory board, shall make appointments that reflect the cultural
34 diversity of the state of Washington.

35 (2) The attorney general shall select the independent counsel
36 from a list of three candidates recommended by the advisory board
37 unless the attorney general declines to select any of the candidates
38 provided. If the attorney general declines to select a candidate
39 proposed by the advisory board, the attorney general may request the

1 advisory board to provide additional qualified nominees for
2 consideration or may offer an alternative candidate who may be
3 appointed following approval by a majority of the advisory board.

4 (3) In consultation with the independent counsel, the advisory
5 board shall submit a report with related recommendations to the
6 legislature and the governor by November 1, 2026, concerning the
7 cases that have been reviewed by the independent counsel under this
8 chapter, any cases that have come before a judge under RCW 43.10.234,
9 the disposition and outcomes of such cases, and whether there are any
10 changes needed in state law to increase public confidence in the
11 handling of cases under this chapter. The advisory board must seek
12 input from the public in its preparation of this report.

13 NEW SECTION. **Sec. 8.** INDEPENDENT COUNSEL. (1) The independent
14 counsel must meet the following minimum criteria for consideration of
15 appointment by the attorney general:

16 (a) Licensure to practice law in the state of Washington;

17 (b) No documented criminal or disciplinary history involving
18 dishonesty, discrimination against persons of color or marginalized
19 communities, or abuse of power; and

20 (c) Submission to a background check, including an assessment of
21 criminal history and research of social media and affiliations to
22 check for racial bias and conflicts of interest, prior to appointment
23 by the attorney general.

24 (2) Should the independent counsel resign, become incapacitated,
25 or be removed as set forth in this chapter, the attorney general
26 shall appoint an interim independent counsel within 24 hours, which
27 person shall serve as independent counsel until such time as a new
28 independent counsel can be appointed.

29 (3) The independent counsel shall hold the office for a term of
30 three years and continue to hold office until reappointed or until
31 his or her successor is appointed.

32 NEW SECTION. **Sec. 9.** POWERS AND DUTIES OF INDEPENDENT COUNSEL.

33 (1) The independent counsel shall:

34 (a) Oversee the duties and functions of the office of independent
35 prosecutions pursuant to this chapter;

36 (b) Hire or contract with attorneys, investigators, advocates for
37 those subjected to deadly force and their surviving family members,
38 and other personnel as necessary to perform investigations and

1 prosecutions conducted by the office, and other duties as required
2 under this chapter;

3 (c) Plan and provide trainings for office personnel, including
4 hired or contracted attorneys and investigators, that promote
5 recognition of and respect for the diverse races, ethnicities, and
6 cultures of the state;

7 (d) Enter into contracts and memoranda of understanding as
8 necessary to implement the responsibilities of the office under this
9 chapter;

10 (e) Ensure that persons subjected to use of deadly force by an
11 involved officer, or their survivors, are kept apprised of the status
12 of the review of the investigation, any charging decisions, all court
13 hearings, and the status of any prosecution; and ensure that all
14 victims of charged crimes, or their surviving family members, are
15 afforded the rights set forth in RCW 7.69.030;

16 (f) Perform the duties and exercise the powers set forth in this
17 chapter, as well as any additional duties and powers that may be
18 prescribed; and

19 (g) Establish policies and procedures to ensure that personnel
20 with actual and apparent conflicts are screened from the review of
21 the investigation for criminal charges.

22 (2) The independent counsel or the independent counsel's
23 designees within the office shall make decisions pertaining to the
24 declining or filing of criminal charges independent of the attorney
25 general.

26 NEW SECTION. **Sec. 10.** PERSONNEL. (1) The independent counsel
27 may employ, or enter into contracts with, persons or entities as they
28 determine necessary for the proper discharge of the duties prescribed
29 to the independent counsel in this chapter.

30 (2) The independent counsel may employ assistant attorneys
31 general, or appoint and contract with special assistant attorneys
32 general, to perform or review investigations and prosecute charged
33 cases.

34 (3) The independent counsel may employ or contract for other
35 necessary personnel to perform the duties prescribed in this chapter
36 to include, but not limited to:

37 (a) Forensic services and crime scene investigators;

38 (b) Liaisons for community, family, and relations with tribal
39 nations and members;

- 1 (c) Analysts, including analysts to conduct evaluations on use of
- 2 force;
- 3 (d) Mental health experts;
- 4 (e) Bilingual staff, translators, or interpreters;
- 5 (f) Other experts as needed; and
- 6 (g) All staffing and other needs for the office of independent
- 7 prosecutions.

8 (4) (a) The independent counsel shall ensure training is provided
9 to staff and that there is a regular schedule for additional training
10 during the course of employment.

11 (b) The independent counsel shall ensure that the independent
12 counsel and the independent counsel's staff, including any contracted
13 personnel, engage in trainings that include the following topics:

- 14 (i) History of racism in policing, including tribal sovereignty
- 15 and history of Native Americans within the justice system;
- 16 (ii) Implicit and explicit bias;
- 17 (iii) Intercultural competency;
- 18 (iv) Use of a racial equity lens in conducting the work of the
- 19 office;
- 20 (v) Antiracism training;
- 21 (vi) Undoing institutional racism;
- 22 (vii) Criminal procedure, to include criminal discovery rules and
- 23 the prosecution's obligations under CrR 4.7 and *Brady v. Maryland*,
- 24 373 U.S. 83 (1963), and its progeny; and
- 25 (viii) Other relevant trainings as needed.

26 NEW SECTION. **Sec. 11.** APPOINTMENT OF ASSISTANT ATTORNEYS
27 GENERAL—SPECIAL AND TEMPORARY. The independent counsel may appoint
28 one or more assistant attorneys general and special assistant
29 attorneys general who shall have the same powers as prosecuting
30 attorneys to perform investigations and prosecutions conducted by the
31 office of independent prosecutions. Each appointment shall be in
32 writing, signed by the independent counsel.

33 NEW SECTION. **Sec. 12.** EMPLOYMENT OF LEGAL INTERNS.
34 Notwithstanding any other provision of this chapter, nothing in this
35 chapter shall prevent law students from working as volunteer or paid
36 legal interns or law clerks for the office of independent
37 prosecutions, or as otherwise authorized by statute or court rule.

1 NEW SECTION. **Sec. 13.** PUBLIC RECORDS ACT. (1)(a) The case
2 records of the office of independent prosecutions, and all
3 communications pertaining to same, are confidential and exempt from
4 disclosure under chapter 42.56 RCW until such time as:

5 (i) A decision has been made to decline criminal charges in a
6 particular case;

7 (ii) A charged case is dismissed;

8 (iii) A judge or jury returns a verdict of "not guilty"; or

9 (iv) Entry of judgment and sentence following a guilty plea or
10 verdict of guilty.

11 (b) After the occurrence of any of the events in (a) of this
12 subsection, the case records and related communications of the office
13 are subject to the provisions of chapter 42.56 RCW.

14 (2) If the independent counsel determines that a criminal charge
15 is not warranted in a case, the independent counsel shall issue a
16 public report that includes the results of the investigation and an
17 explanation of the reasons for the decision, and post the report on
18 the office of independent prosecutions' website.

19 NEW SECTION. **Sec. 14.** LIABILITY. No action or other proceeding
20 may be instituted against the independent counsel or the independent
21 counsel's employees or contractors, or a person exercising powers or
22 performing duties at the direction of the office of independent
23 prosecutions, for any act done in good faith in the execution or
24 intended execution of the person's duty or for any alleged neglect or
25 default in the execution in good faith of the person's duty.

26 NEW SECTION. **Sec. 15.** DEFINITIONS. The definitions set forth in
27 RCW 43.102.010 apply to sections 4 through 14 of this act.

28 **Sec. 16.** RCW 36.27.020 and 2016 c 173 s 7 are each amended to
29 read as follows:

30 The prosecuting attorney shall:

31 (1) Be legal adviser of the legislative authority, giving it his
32 or her written opinion when required by the legislative authority or
33 the chairperson thereof touching any subject which the legislative
34 authority may be called or required to act upon relating to the
35 management of county affairs;

36 (2) Be legal adviser to all county and precinct officers and
37 school directors in all matters relating to their official business,

1 and when required draw up all instruments of an official nature for
2 the use of said officers;

3 (3) Appear for and represent the state, county, and all school
4 districts subject to the supervisory control and direction of the
5 attorney general in all criminal and civil proceedings in which the
6 state or the county or any school district in the county may be a
7 party;

8 (4) (~~Prosecute~~) Subject to subsection (13) of this section,
9 prosecute all criminal and civil actions in which the state or the
10 county may be a party, defend all suits brought against the state or
11 the county, and prosecute actions upon forfeited recognizances and
12 bonds and actions for the recovery of debts, fines, penalties, and
13 forfeitures accruing to the state or the county;

14 (5) Attend and appear before and give advice to the grand jury
15 when cases are presented to it for consideration and draw all
16 indictments when required by the grand jury;

17 (6) Institute and prosecute proceedings before magistrates for
18 the arrest of persons charged with or reasonably suspected of
19 felonies when the prosecuting attorney has information that any such
20 offense has been committed and the prosecuting attorney shall for
21 that purpose attend when required by them if the prosecuting attorney
22 is not then in attendance upon the superior court;

23 (7) Carefully tax all cost bills in criminal cases and take care
24 that no useless witness fees are taxed as part of the costs and that
25 the officers authorized to execute process tax no other or greater
26 fees than the fees allowed by law;

27 (8) Receive all cost bills in criminal cases before district
28 judges at the trial of which the prosecuting attorney was not
29 present, before they are lodged with the legislative authority for
30 payment, whereupon the prosecuting attorney may retax the same and
31 the prosecuting attorney must do so if the legislative authority
32 deems any bill exorbitant or improperly taxed;

33 (9) Present all violations of the election laws which may come to
34 the prosecuting attorney's knowledge to the special consideration of
35 the proper jury;

36 (10) Examine once in each year the official bonds of all county
37 and precinct officers and report to the legislative authority any
38 defect in the bonds of any such officer;

1 (11) Seek to reform and improve the administration of criminal
2 justice and stimulate efforts to remedy inadequacies or injustice in
3 substantive or procedural law;

4 (12) Participate in the statewide sexual assault kit tracking
5 system established in RCW 43.43.545 for the purpose of tracking the
6 status of all sexual assault kits connected to criminal
7 investigations and prosecutions within the county. Prosecuting
8 attorneys shall begin full participation in the system according to
9 the implementation schedule established by the Washington state
10 patrol;

11 (13)(a) In any case involving potential prosecution of a crime
12 involving use of deadly force by an involved officer, the prosecuting
13 attorney shall determine if recusal is necessary under the ethical
14 rules applicable to all lawyers or to preserve public confidence. In
15 making this determination, it is improper for the prosecuting
16 attorney to make a determination as to whether criminal charges shall
17 be filed or prosecuted if any of the following exist:

18 (i) The prosecuting attorney has a relationship with the involved
19 officer or the involved officer's employing agency, either personally
20 or professionally, such that the prosecuting attorney's decision or
21 pursuit of charges may be affected;

22 (ii) The prosecuting attorney has a duty to represent the
23 involved officer's employing agency in any civil action related to or
24 arising from the incident under consideration or criminally charged
25 and the prosecuting attorney's decision or pursuit of charges arising
26 from the police officer's use of deadly force may be affected by the
27 duty to defend; or

28 (iii) There is a risk that the prosecuting attorney's ability to
29 consider, recommend, or carry out an appropriate course of action
30 will be limited as a result of the prosecuting attorney's other
31 responsibilities or interests.

32 (b) If the prosecuting attorney finds recusal is necessary under
33 the ethics rules or to preserve public confidence, the prosecuting
34 attorney must transfer the case to the office of independent
35 prosecutions in the attorney general's office within 30 days of
36 receiving the case from the office of independent investigations
37 under chapter 43.102 RCW.

38 (c) For the purposes of this subsection, "deadly force" and
39 "involved officer" have the meanings provided in RCW 43.102.010.

1 **Sec. 17.** RCW 36.27.030 and 2009 c 549 s 4046 are each amended to
2 read as follows:

3 ~~((When))~~ (1) Except as provided in subsection (3) of this
4 section, when from illness or other cause the prosecuting attorney is
5 temporarily unable to perform his or her duties, the court or judge
6 may appoint some qualified person to discharge the duties of such
7 officer in court until the disability is removed.

8 ~~((When))~~ (2) Except as provided in subsection (3) of this
9 section, when any prosecuting attorney fails, from sickness or other
10 cause, to attend a session of the superior court of his or her
11 county, or is unable to perform his or her duties at such session,
12 the court or judge may appoint some qualified person to discharge the
13 duties of such session, and the appointee shall receive a
14 compensation to be fixed by the court, to be deducted from the stated
15 salary of the prosecuting attorney, not exceeding, however, one-
16 fourth of the quarterly salary of the prosecuting attorney: PROVIDED,
17 That in counties wherein there is no person qualified for the
18 position of prosecuting attorney, or wherein no qualified person will
19 consent to perform the duties of that office, the judge of the
20 superior court shall appoint some suitable person, a duly admitted
21 and practicing attorney-at-law and resident of the state to perform
22 the duties of prosecuting attorney for such county, and he or she
23 shall receive such reasonable compensation for his or her services as
24 shall be fixed and ordered by the court, to be paid by the county for
25 which the services are performed.

26 (3) In any case involving potential prosecution of a crime
27 involving use of deadly force by an involved officer, where the
28 prosecuting attorney has a conflict of interest and has not
29 transferred the case to the office of independent prosecutions of the
30 office of the attorney general, the court shall order the office of
31 independent prosecutions of the office of the attorney general to
32 discharge the responsibilities of the prosecuting attorney. For the
33 purposes of this subsection, "deadly force" and "involved officer"
34 have the meanings provided in RCW 43.102.010.

35 NEW SECTION. **Sec. 18.** A new section is added to chapter 36.27
36 RCW to read as follows:

37 If the prosecuting attorney makes a determination not to file
38 criminal charges in a case involving use of deadly force by an
39 involved officer, the prosecuting attorney must refer the case and

1 all investigative materials concerning the case to the office of
2 independent prosecutions in the office of the attorney general within
3 30 days of the decision to not file criminal charges. For the
4 purposes of this section, "deadly force" and "involved officer" have
5 the meanings provided in RCW 43.102.010.

6 **Sec. 19.** RCW 43.102.080 and 2021 c 318 s 308 are each amended to
7 read as follows:

8 (1) The office has jurisdiction over, and is authorized to
9 conduct investigations of, all cases and incidents as established
10 within this section.

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

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

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

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

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

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

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

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

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

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

38 (5) Upon receiving notification required in RCW 43.102.120 of an
39 incident under the jurisdiction of the office, the director:

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

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

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

10 (6) If the director determines the case is to be investigated the
11 director will communicate the decision to investigate to the involved
12 agency and will thereafter be the lead investigative body in the case
13 and have priority over any other state or local agency investigating
14 the incident or a case that is under the jurisdiction of the office.
15 The director will implement the process developed pursuant to RCW
16 43.102.050 and conduct the appropriate investigation in accordance
17 with the process.

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

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

31 (9) (a) Upon the completion of an investigation authorized under
32 this chapter, the office shall send its completed investigation and
33 referral to both the county prosecuting attorney of the jurisdiction
34 in which the offense occurred and the office of independent
35 prosecutions in accordance with protocols established under RCW
36 43.102.050(2)(c)(viii), and include any information, if known,
37 regarding the presence of a conflict of interest.

38 (b) All employees of the office of independent investigations,
39 and all members of an independent investigations team who participate
40 in the investigation of a use of deadly force by an involved officer

1 as defined in RCW 43.102.010, are encouraged to cooperate fully with
2 requests for interviews or additional information from the office of
3 independent prosecutions.

4 (c) The office of independent investigations or a member of the
5 independent investigations team that investigated an incident of use
6 of deadly force that is the subject of a review for criminal charges
7 are encouraged to, at the request of the office of independent
8 prosecutions, transport evidence to and from any laboratory, medical
9 examiner's office, or expert witness as directed by the office of
10 independent prosecutions.

11 (d) The office of independent investigations or a member of the
12 independent investigations team that investigated an incident of use
13 of deadly force that is the subject of criminal trial proceedings are
14 encouraged to, at the request of the office of independent
15 prosecutions, transport evidence to court as directed by the office
16 of independent prosecutions.

17 **Sec. 20.** RCW 41.80.400 and 2019 c 145 s 2 are each amended to
18 read as follows:

19 (1) In addition to the agencies defined in RCW 41.80.005 and
20 subject to the provisions of this section, this chapter applies to
21 assistant attorneys general.

22 (2)(a) Assistant attorneys general who are not otherwise excluded
23 from bargaining under (b) of this subsection are granted the right to
24 collectively bargain.

25 (b) Division chiefs, deputy attorneys general, the solicitor
26 general, the independent counsel, assistant attorneys general in the
27 labor and personnel division, special assistant attorneys general,
28 confidential employees as defined in RCW 41.80.005, and any assistant
29 or deputy attorney general who reports directly to the attorney
30 general are excluded from this section and do not have the right to
31 collectively bargain.

32 (3) The only unit appropriate for the purpose of collective
33 bargaining under this chapter is a statewide unit of all assistant
34 attorneys general not otherwise excluded from bargaining.

35 (4) The governor or the governor's designee and an exclusive
36 bargaining representative shall negotiate one master collective
37 bargaining agreement for assistant attorneys general.

1 **Sec. 21.** RCW 10.114.011 and 2021 c 318 s 401 are each amended to
2 read as follows:

3 Except as required by federal consent decree, federal settlement
4 agreement, or federal court order, where the use of deadly force by a
5 peace officer results in death, substantial bodily harm, or great
6 bodily harm, an independent investigation must be completed to inform
7 any determination of whether the use of deadly force met the good
8 faith standard established in RCW 9A.16.040 and satisfied other
9 applicable laws and policies. The investigation must be completely
10 independent of the agency whose officer was involved in the use of
11 deadly force and conducted in accordance with chapter 43.102 RCW. All
12 investigatory reports must be handled in accordance with RCW
13 43.102.080. Any rules adopted by the criminal justice training
14 commission must be consistent with chapter 43.102 RCW.

15 NEW SECTION. **Sec. 22.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 23.** If specific funding for the purposes of
20 this act, referencing this act by bill or chapter number, is not
21 provided by June 30, 2023, in the omnibus appropriations act, this
22 act is null and void.

23 NEW SECTION. **Sec. 24.** Sections 4 through 15 of this act are
24 each added to chapter 43.10 RCW.

25 NEW SECTION. **Sec. 25.** Sections 2, 3, 16, 17, 18, and 19 of this
26 act take effect July 1, 2024."

2SHB 1579 - S COMM AMD
By Committee on Law & Justice

NOT CONSIDERED 05/17/2023

27 On page 1, line 3 of the title, after "force;" strike the
28 remainder of the title and insert "amending RCW 43.10.230, 43.10.232,
29 43.10.234, 36.27.020, 36.27.030, 43.102.080, 41.80.400, and
30 10.114.011; adding a new section to chapter 36.27 RCW; adding new

1 sections to chapter 43.10 RCW; creating a new section; and providing
2 an effective date."

EFFECT: Requires the Attorney General to overcome a presumption of an inherent conflict of interest in any investigation of employees of state agencies.

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