

SHB 2086 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 02/27/2024

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

3 "Sec. 1. RCW 43.102.010 and 2021 c 318 s 201 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Advisory board" means the office of independent
8 investigations advisory board.

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

10 (3) "Director" means the director of the office of independent
11 investigations.

12 (4) "Great bodily harm" has the meaning provided in RCW
13 9A.04.110.

14 (5) "In-custody" refers to a person who is under the physical
15 control of a general authority Washington law enforcement agency or a
16 limited authority Washington law enforcement agency as defined in RCW
17 10.93.020 or a city, county, or regional adult or juvenile
18 institution, correctional, jail, holding, or detention facility as
19 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

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

28 (7) "Involved agency" means a general authority Washington law
29 enforcement agency or limited authority Washington law enforcement
30 agency, as defined in RCW 10.93.020, that employs or supervises the
31 officer or officers who are an involved officer as defined in this
32 section, or an agency responsible for a city, county, or regional

1 adult or juvenile institution, correctional, jail, holding, or
2 detention facility as defined in RCW 70.48.020, 72.09.015, or
3 13.40.020.

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

8 (a) A general authority Washington peace officer, specially
9 commissioned Washington peace officer, or limited authority
10 Washington peace officer, as defined in RCW 10.93.020, whether on or
11 off duty if he or she is exercising his or her authority as a peace
12 officer; or

13 (b) An individual while employed in a city, county, or regional
14 adult or juvenile institution, correctional, jail, holding, or
15 detention facility as defined in RCW 70.48.020, 72.09.015, or
16 13.40.020.

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

18 (10) "Substantial bodily harm" has the same meaning as in RCW
19 9A.04.110.

20 (11) "911 communications center" for purposes of this chapter
21 means a public safety answering point or any other entity that
22 captures and maintains data that is utilized in a 911 emergency
23 communications system, as defined in RCW 38.52.010.

24 **Sec. 2.** RCW 43.102.050 and 2021 c 318 s 304 are each amended to
25 read as follows:

26 (1) The director shall:

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

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

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

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

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

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

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

7 (h) Develop the nondisclosure agreement required in RCW
8 43.102.130; and

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

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

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

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

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

21 (b) A system and requirements for involved agencies to notify the
22 office of any incident under the jurisdiction of the office, which
23 must include direction to agencies as to what incidents of force and
24 injuries and other circumstances must be reported to the office,
25 including the timing of such reports, provided that any incident
26 involving substantial bodily harm, great bodily harm, or death is
27 reported to the office immediately in accordance with RCW 43.102.120;

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

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

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

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

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

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

1 (vi) Protocol and direction to the independent investigation
2 team;

3 (vii) Protocol and guidelines for contacts and engagement with
4 the involved agency; and

5 (viii) Protocol for finalizing the completed investigation and
6 referral to the entity responsible for the prosecutorial decision,
7 including communication with the family and public regarding the
8 completion of the investigation;

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

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

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

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

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

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

29 (f) Prioritization of cases for investigation.

30 (3) No later than December 1, (~~2023~~) 2025, in consultation with
31 the advisory board, the director shall develop a proposal for
32 training individuals who are nonlaw enforcement officers to conduct
33 competent, thorough investigations of cases under the jurisdiction of
34 the office. The proposal must establish a training plan with an
35 objective that within five years of the date the office begins
36 investigating deadly force cases the cases will be investigated by
37 nonlaw enforcement officers. The director shall report such proposal
38 to the governor and legislature by December 1, (~~2023~~) 2025. Any
39 proposal offered by the director must ensure investigations are high
40 quality, thorough, and competent.

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

11 **Sec. 3.** RCW 43.102.080 and 2021 c 318 s 308 are each amended to
12 read as follows:

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

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

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

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

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

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

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

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

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

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

38 (4) The investigation should include a review of the entire
39 incident, including but not limited to events immediately preceding

1 the incident that may have contributed to or influenced the outcome
2 of the incident that are directly related to the incident under
3 investigation.

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

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

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

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

15 (6) If the director determines the case is to be investigated the
16 director will communicate the decision to investigate to the involved
17 agency and will thereafter be the lead investigative body in the case
18 and have priority over any other state or local agency investigating
19 the incident or a case that is under the jurisdiction of the office.
20 The director will implement the process developed pursuant to RCW
21 43.102.050 and conduct the appropriate investigation in accordance
22 with the process.

23 (7) In conducting the investigation the office shall have access
24 to, and copies of, reports and information necessary or related to
25 the investigation in the custody and control of the involved agency,
26 911 emergency communication centers, and any law enforcement agency
27 responding to the scene of the incident (~~(including)~~) as soon as
28 possible. This includes, but is not limited to, voice or video
29 recordings, body camera recordings, and officer notes, as well as
30 disciplinary and administrative records except those that might be
31 statements conducted as part of an administrative investigation
32 related to the incident.

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

37 **Sec. 4.** RCW 43.102.100 and 2021 c 318 s 310 are each amended to
38 read as follows:

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

11 **Sec. 5.** RCW 43.102.120 and 2021 c 318 s 402 are each amended to
12 read as follows:

13 (1) (~~Following notification by the director that the office will~~
14 ~~accept investigations of cases under its jurisdiction after July 1,~~
15 ~~2022, an~~) An involved agency shall notify the office of any incident
16 by an involved officer in accordance with the requirements under RCW
17 43.102.050 and pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) Limited briefings given to the chief or sheriff of the
10 involved agency about the progress of the investigation; or

11 (ii) Information essential to protect the safety of the community
12 or the integrity of any ongoing, urgent criminal investigation; and

13 (iii) Sharing of the information will not impede the ongoing
14 investigation being conducted by the office.

15 (b) No information provided under (a) of this subsection may be
16 divulged to any involved officers or witness officers. If any
17 information is disclosed pursuant to (a)(ii) of this subsection, the
18 following must also occur:

19 (i) The office must document the exact information provided, to
20 whom it was provided, and the reason it was provided;

21 (ii) The involved agency must agree in writing that no involved
22 officer or witness officer will have access to the information other
23 than what is released to the general public. Any press release
24 containing information provided by the office pursuant to this
25 section must be preapproved by the office; and

26 (iii) The person, family, or representative of any person who is
27 the subject of the action by the involved officer that is under
28 investigation by the office must be notified by the office that the
29 information was provided and, as soon as possible without
30 jeopardizing the integrity of any investigation, be provided with the
31 information contained in (b)(i) and (ii) of this subsection.

32 (6) If the office declines to investigate a case, the authority
33 and duty to investigate remains with the independent investigation
34 team or local law enforcement authority with jurisdiction over the
35 incident."

SHB 2086 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 02/27/2024

1 On page 1, line 4 of the title, after "practices;" strike the
2 remainder of the title and insert "and amending RCW 43.102.010,
3 43.102.050, 43.102.080, 43.102.100, and 43.102.120."

EFFECT: Strikes requirement that the OII report annual recommendations, if any, for expanding the scope of investigations or jurisdiction of the OII. Strikes the requirement that the OII advisory board assess whether the jurisdiction of the OII should be expanded to conduct investigations of other types of incidents.

--- END ---