

SENATE BILL REPORT

SHB 2086

As Passed Senate, February 27, 2024

Title: An act relating to updating processes of the office of independent investigations by changing authority to obtain and share investigative information and aligning with current operations and practices.

Brief Description: Updating processes of the office of independent investigations by changing authority to obtain and share investigative information and aligning with current operations and practices.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Entenman, Goodman, Fitzgibbon, Berry, Reed, Ormsby, Street, Doglio, Farivar and Kloba; by request of Office of Independent Investigations).

Brief History: Passed House: 2/7/24, 66-30.

Committee Activity: Law & Justice: 2/16/24, 2/20/24 [DPA, DNP, w/oRec].

Floor Activity: Passed Senate: 2/27/24, 29-20.

Brief Summary of Bill

- Modifies the Office of Independent Investigations' authority to obtain and share specified information.
- Adjusts certain reporting dates and deadlines.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Torres, Wagoner and Wilson, L..

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senator McCune.

Staff: William Bridges (786-7312)

Background: Office of Independent Investigations. The Office of Independent Investigations (OII) is established within the Office of the Governor and is led by a director appointed by the Governor. The OII is authorized to conduct investigations into any incident:

- of a use of deadly force by an involved officer occurring after July 1, 2022, including any incident involving use of deadly force by an involved officer against or upon a person who is in-custody or out-of-custody; or
- involving prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation.

Among the duties of the OII Director, is a requirement to review prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation, and the OII Director must prioritize the review or investigation of cases occurring prior to July 1, 2022, based on resources and other cases the OII is investigating. In addition, by December 1, 2023, the OII Director must develop a proposal for training nonlaw enforcement officers to conduct OII investigations.

OII Investigation Process. The OII is the lead investigative body for any incidents within its jurisdiction that it selects for investigation. The OII must have access to all reports and information necessary or related to any investigation in the custody and control of the involved agency and any law enforcement agency responding to the scene of an incident, including, but not limited to, voice or video recordings, body camera recordings, and officer notes, as well as disciplinary and administrative records except those that might be statements conducted as part of an administrative investigation related to the incident.

No information about an ongoing independent investigation under the jurisdiction of the OII may be shared with any member of an involved agency, except for limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation.

Advisory Board of the Office of Independent Investigations. In addition to the appointment of the OII Director, the Governor also appoints an OII Advisory Board (Advisory Board) of 11 members representing specified interests or entities or having specified background. The Advisory Board is authorized to assess whether the OII's jurisdiction should be expanded. The authorization expires on July 1, 2024.

Summary of Bill: Modifying When the Office of Independent Investigations May Share Information With an Involved Agency. The manners in which the OII may share information about an ongoing independent investigation under its jurisdiction with a member of an involved agency is modified to include when:

- the information is essential to protect the safety of a community or the integrity of an ongoing, urgent criminal investigation; and
- sharing the information will not impede an ongoing independent investigation conducted by the OII.

No information about an ongoing investigation under the OII's jurisdiction shared with an involved agency may be divulged to any involved or witness officers.

If the OII shares information with an involved agency because the information is deemed essential to protect the safety of a community or the integrity of an ongoing, urgent criminal investigation, the OII must:

- document the exact information provided, to whom, and why;
- obtain agreement from the involved agency in writing that no involved officer or witness will have access to the information other than what is released to the general public; and
- notify the person, family, or representative of the person impacted by the involved officer's conduct under investigation that information was provided to the involved agency, including:
 1. the exact information provided, to whom, and why; and
 2. that the involved agency must agree in writing that no involved officer or witness will have access to that information.

Any press release containing information provided by the OII must be preapproved by the OII.

Modifying Deadlines. Various reporting dates and deadlines are modified:

- by December 1, 2025, the OII must develop a proposal for training nonlaw enforcement officers to conduct OII investigations, including an objective for OII investigations to be conducted by nonlaw enforcement officers within five years;
- after July 1, 2025, the OII must begin annually reporting on its recommendations, if any, for expanding the scope or jurisdiction of the OII based on trends, data, or reports; and
- the Advisory Board's statutory authorization to assess whether the OII's jurisdiction should be expanded will expire on July 1, 2025.

Prioritizing Investigations. The OII Director must prioritize the review or investigation of prior investigations based on resources and other cases under investigation by the OII. Incidents occurring after the date the OII begins investigating cases will receive the highest priority for investigation.

Authorizing the OII Access 911 Communications Information. A definition for 911 communications center is established. The OII must have access to all reports and information necessary or related to any investigation in the custody and control of 911 communications centers. The OII must also have copies of such reports and information

from 911 emergency communications systems, involved agencies, and any law enforcement agency responding to the scene of an incident, which must be provided to the OII as soon as possible.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The OII is the first in the nation and some minor improvements have been identified. The sharing of information under the conditions specified in the bill may prevent crimes while maintaining OII's investigative mission. This is well-worked public safety bill.

Persons Testifying: PRO: Representative Debra Entenman, Prime Sponsor; Roger Rogoff, Office of Independent Investigations; James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.