
HOUSE BILL 1579

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68th Legislature

2023 Regular Session

By Representatives Stonier, Bateman, Lekanoff, Reed, Pollet, and Macri

Read first time 01/25/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to establishing a mechanism for independent
2 prosecutions within the office of the attorney general of criminal
3 conduct arising from police use of force; amending RCW 43.10.232,
4 43.10.234, 36.27.030, 36.27.040, and 43.102.080; adding a new section
5 to chapter 43.10 RCW; adding a new section to chapter 36.27 RCW; and
6 creating a new section.

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

8 **Sec. 1.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to
9 read as follows:

10 (1) (a) The attorney general shall have concurrent authority and
11 power with the prosecuting attorneys to investigate crimes and
12 initiate and conduct prosecutions upon the request of or with the
13 concurrence of any of the following:

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

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

17 ~~((e))~~ (iii) A majority of the committee charged with the
18 oversight of the organized crime intelligence unit.

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

1 ~~((3))~~ (c) Prior to any prosecution by the attorney general
2 under this section, the attorney general and the county in which the
3 offense occurred shall reach an agreement regarding the payment of
4 all costs, including expert witness fees, and defense attorneys' fees
5 associated with any such prosecution.

6 (2) (a) The office of the attorney general shall have concurrent
7 authority and power with the prosecuting attorneys to investigate,
8 initiate, and conduct prosecutions of crimes involving police use of
9 deadly force in the state of Washington.

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

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

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

28 (e) For the purposes of this section, "deadly force" has the
29 meaning provided in RCW 9A.16.010.

30 **Sec. 2.** RCW 43.10.234 and 1981 c 335 s 3 are each amended to
31 read as follows:

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

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

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

4 (2) For purposes of designating the prosecuting authority where
5 information or an indictment has been filed by the office of the
6 attorney general pursuant to RCW 43.10.232(2), the court shall
7 prioritize the public's interest in ensuring a fair and impartial
8 prosecution and trial that is free from even the appearance of bias,
9 prejudice, or conflict of interest. In any judicial proceeding under
10 this subsection, in order to be designated the prosecuting authority,
11 the county prosecuting attorney must overcome a presumption that the
12 county prosecuting attorney has an inherent conflict of interest in
13 any matter arising from an investigation within the scope of the
14 office of independent investigations.

15 NEW SECTION. Sec. 3. A new section is added to chapter 43.10
16 RCW to read as follows:

17 (1) There is established within the office of the attorney
18 general an independent prosecutions unit which shall be headed by the
19 independent prosecutor appointed by the attorney general.

20 (2) The independent prosecutions unit has the authority and
21 jurisdiction as provided under RCW 43.10.232 to investigate and
22 prosecute any alleged criminal offense committed by a police officer
23 involving the use of deadly force, as defined in RCW 9A.16.010.

24 (3) The independent prosecutor may employ and train personnel to
25 achieve the purposes of this section, including attorneys,
26 investigators, support personnel, and other personnel as the
27 independent prosecutor determines necessary.

28 (4) If the independent prosecutor determines that a criminal
29 charge is not warranted in a case, the independent prosecutor shall
30 issue a public report, and post the report on its website, that
31 includes the results of the investigation and an explanation of the
32 reasons for the decision.

33 (5) The jurisdiction of the independent prosecutions unit applies
34 to any criminal offense involving the use of deadly force by a police
35 officer and any other investigations within the scope of the office
36 of independent investigations.

37 (6) Where the alleged criminal offense has been committed by an
38 officer of an agency whom the attorney general provides legal advice
39 and representation, the attorney general must take appropriate steps

1 to assign counsel, staff, and supervision to eliminate any appearance
2 of or actual conflicts of interest.

3 **Sec. 4.** RCW 36.27.030 and 2009 c 549 s 4046 are each amended to
4 read as follows:

5 (1) When from illness or other cause the prosecuting attorney is
6 temporarily unable to perform his or her duties, the court or judge
7 may appoint some qualified person to discharge the duties of such
8 officer in court until the disability is removed.

9 (2) 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 a police officer, where the
28 prosecuting attorney has a conflict of interest and has not either
29 transferred the case to a conflict-free special deputy prosecuting
30 attorney or to the independent prosecutions unit of the office of the
31 attorney general, the court shall order the independent prosecutions
32 unit of the office of the attorney general to discharge the
33 responsibilities of the prosecuting attorney. For the purposes of
34 this subsection, "deadly force" has the meaning provided in RCW
35 9A.16.010.

36 **Sec. 5.** RCW 36.27.040 and 2009 c 549 s 4047 are each amended to
37 read as follows:

1 (1)(a) The prosecuting attorney may appoint one or more deputies
2 who shall have the same power in all respects as their principal.
3 Each appointment shall be in writing, signed by the prosecuting
4 attorney, and filed in the county auditor's office. Each deputy thus
5 appointed shall have the same qualifications required of the
6 prosecuting attorney, except that such deputy need not be a resident
7 of the county in which he or she serves.

8 (b) The prosecuting attorney may appoint one or more special
9 deputy prosecuting attorneys upon a contract or fee basis whose
10 authority shall be limited to the purposes stated in the writing
11 signed by the prosecuting attorney and filed in the county auditor's
12 office. Such special deputy prosecuting attorney shall be admitted to
13 practice as an attorney before the courts of this state but need not
14 be a resident of the county in which he or she serves and shall not
15 be under the legal disabilities attendant upon prosecuting attorneys
16 or their deputies except to avoid any conflict of interest with the
17 purpose for which he or she has been engaged by the prosecuting
18 attorney.

19 (c) The prosecuting attorney shall be responsible for the acts of
20 his or her deputies and may revoke appointments at will.

21 (2)(a) In any case involving potential prosecution of a crime
22 involving use of deadly force by a police officer, the prosecuting
23 attorney shall determine if recusal is necessary under the ethical
24 rules applicable to all lawyers or to preserve public confidence. In
25 making this determination, it is improper for the prosecuting
26 attorney to make a determination as to whether criminal charges shall
27 be filed or prosecuted if any of the following exist:

28 (i) The prosecuting attorney has a relationship with the police
29 officer or the police officer's employing agency, either personally
30 or professionally, such that the prosecuting attorney's decision or
31 pursuit of charges may be materially impacted;

32 (ii) The prosecuting attorney has a duty to represent the police
33 officer's employing agency in any civil action related to or arising
34 from the incident under consideration or criminally charged and the
35 prosecuting attorney's decision or pursuit of charges arising from
36 the police officer's use of deadly force may be materially impacted
37 by the duty to defend; or

38 (iii) There is a significant risk that the prosecuting attorney's
39 ability to consider, recommend, or carry out an appropriate course of

1 action will be materially limited as a result of the prosecuting
2 attorney's other responsibilities or interests.

3 (b) If the prosecuting attorney finds recusal is necessary under
4 the ethics rules or to preserve public confidence, the prosecuting
5 attorney must either transfer the case to the independent
6 prosecutions unit of the office of the attorney general within 30
7 days of receiving the case from the office of independent
8 investigations under chapter 43.102 RCW or other investigating agency
9 or appoint a conflict-free special deputy prosecuting attorney.

10 (i) The appointment of a conflict-free special deputy prosecuting
11 attorney must be in writing signed by the prosecuting attorney and
12 must be filed in the county auditor's office. The appointment is
13 limited to the purposes stated in the writing.

14 (ii) A conflict-free special deputy prosecuting attorney must be
15 the final decision maker as to any matter identified in the
16 appointment.

17 (iii) A conflict-free special deputy prosecuting attorney may
18 only be removed for cause and with the approval of the superior
19 court.

20 (iv) A conflict-free special deputy prosecuting attorney must be
21 admitted to practice as an attorney before the courts of this state
22 but need not be a resident of the county in which he or she serves
23 and is not under the legal disabilities attendant upon prosecuting
24 attorneys or their deputies except to avoid any conflict of interest
25 with the purpose for which he or she has been engaged by the
26 prosecuting attorney.

27 (c) For the purposes of this subsection, "deadly force" has the
28 meaning provided in RCW 9A.16.010.

29 (3) Two or more prosecuting attorneys may agree that one or more
30 deputies for any one of them may serve temporarily as deputy for any
31 other of them on terms respecting compensation which are acceptable
32 to said prosecuting attorneys. Any such deputy thus serving shall
33 have the same power in all respects as if he or she were serving
34 permanently. The provisions of chapter 39.34 RCW shall not apply to
35 such agreements.

36 (4) The provisions of RCW 41.56.030(~~((+2))~~) (12) shall not be
37 interpreted to permit a prosecuting attorney to alter the at-will
38 relationship established between the prosecuting attorney and his or
39 her appointed deputies by this section for a period of time exceeding
40 his or her term of office. Neither shall the provisions of RCW

1 41.56.030(~~(+2)~~) (12) require a prosecuting attorney to alter the at-
2 will relationship established by this section.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.27
4 RCW to read as follows:

5 If the prosecuting attorney or conflict-free special deputy
6 prosecuting attorney appointed pursuant to RCW 36.27.040 makes a
7 determination not to file criminal charges in the case, the
8 prosecuting attorney or conflict-free special deputy prosecuting
9 attorney must refer the case and all investigative materials
10 concerning the case to the independent prosecutions unit of the
11 office of the attorney general within 30 days of the decision to not
12 file criminal charges. For the purposes of this section, "deadly
13 force" has the meaning provided in RCW 9A.16.010.

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

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

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

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

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

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

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

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

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

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

36 (3) The director shall determine prioritization of investigations
37 based on resources and other criteria which may be established in
38 consultation with the advisory board. The director shall ensure that

1 incidents occurring after the date the office begins investigating
2 cases receive the highest priority for investigation.

3 (4) The investigation should include a review of the entire
4 incident, including but not limited to events immediately preceding
5 the incident that may have contributed to or influenced the outcome
6 of the incident that are directly related to the incident under
7 investigation.

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

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

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

15 (c) If the director determines that the incident is not within
16 the office's jurisdiction to investigate, the director shall decline
17 to investigate, and shall give notice of the fact to the involved
18 agency.

19 (6) If the director determines the case is to be investigated the
20 director will communicate the decision to investigate to the involved
21 agency and will thereafter be the lead investigative body in the case
22 and have priority over any other state or local agency investigating
23 the incident or a case that is under the jurisdiction of the office.
24 The director will implement the process developed pursuant to RCW
25 43.102.050 and conduct the appropriate investigation in accordance
26 with the process.

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

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

1 (9) Upon the completion of an investigation authorized under this
2 chapter, the office shall send its completed investigation and
3 referral to both the county prosecuting attorney of the jurisdiction
4 in which the offense occurred and the independent prosecutions unit
5 in accordance with protocols established under RCW
6 43.102.050(2)(c)(viii). The completed investigation and referral must
7 include an analysis consistent with RCW 36.27.040(2) of whether
8 recusal by the county prosecuting attorney of the jurisdiction in
9 which the offense occurred is appropriate under the ethical rules
10 applicable to all lawyers or to preserve public confidence.

11 NEW SECTION. Sec. 8. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. Sec. 9. If specific funding for the purposes of
16 this act, referencing this act by bill or chapter number, is not
17 provided by June 30, 2023, in the omnibus appropriations act, this
18 act is null and void.

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