
SUBSTITUTE HOUSE BILL 2086

State of Washington

68th Legislature

2024 Regular Session

By House 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)

READ FIRST TIME 01/23/24.

1 AN ACT Relating to updating processes of the office of
2 independent investigations by changing authority to obtain and share
3 investigative information and aligning with current operations and
4 practices; amending RCW 43.102.010, 43.102.050, 43.102.080,
5 43.102.100, 43.102.120, and 43.102.800; and providing an expiration
6 date.

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

8 **Sec. 1.** RCW 43.102.010 and 2021 c 318 s 201 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

12 (1) "Advisory board" means the office of independent
13 investigations advisory board.

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

15 (3) "Director" means the director of the office of independent
16 investigations.

17 (4) "Great bodily harm" has the meaning provided in RCW
18 9A.04.110.

19 (5) "In-custody" refers to a person who is under the physical
20 control of a general authority Washington law enforcement agency or a
21 limited authority Washington law enforcement agency as defined in RCW

1 10.93.020 or a city, county, or regional adult or juvenile
2 institution, correctional, jail, holding, or detention facility as
3 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

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

12 (7) "Involved agency" means a general authority Washington law
13 enforcement agency or limited authority Washington law enforcement
14 agency, as defined in RCW 10.93.020, that employs or supervises the
15 officer or officers who are an involved officer as defined in this
16 section, or an agency responsible for a city, county, or regional
17 adult or juvenile institution, correctional, jail, holding, or
18 detention facility as defined in RCW 70.48.020, 72.09.015, or
19 13.40.020.

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

24 (a) A general authority Washington peace officer, specially
25 commissioned Washington peace officer, or limited authority
26 Washington peace officer, as defined in RCW 10.93.020, whether on or
27 off duty if he or she is exercising his or her authority as a peace
28 officer; or

29 (b) An individual while employed in a city, county, or regional
30 adult or juvenile institution, correctional, jail, holding, or
31 detention facility as defined in RCW 70.48.020, 72.09.015, or
32 13.40.020.

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

34 (10) "Substantial bodily harm" has the same meaning as in RCW
35 9A.04.110.

36 (11) "911 communications center" for purposes of this chapter
37 means a public safety answering point or any other entity that
38 captures and maintains data that is utilized in a 911 emergency
39 communications system, as defined in RCW 38.52.010.

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

3 (1) The director shall:

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

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

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

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

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

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

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

23 (h) Develop the nondisclosure agreement required in RCW
24 43.102.130; and

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

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

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

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

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

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

1 including the timing of such reports, provided that any incident
2 involving substantial bodily harm, great bodily harm, or death is
3 reported to the office immediately in accordance with RCW 43.102.120;

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 representative of any person who is the
33 subject of the action by the involved officer that is the basis of
34 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 federally

1 recognized tribe, and notification of the governor's office of Indian
2 affairs within 24 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~~) 2025, in consultation with
7 the advisory board, the director shall develop a proposal for
8 training individuals who are nonlaw enforcement officers to conduct
9 competent, thorough investigations of cases under the jurisdiction of
10 the office. The proposal must establish a training plan with an
11 objective that within five years of the date the office begins
12 investigating deadly force cases the cases will be investigated by
13 nonlaw enforcement officers. The director shall report such proposal
14 to the governor and legislature by December 1, (~~2023~~) 2025. Any
15 proposal offered by the director must ensure investigations are high
16 quality, thorough, 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 (~~eases occurring prior to July 1, 2022,~~)
23 prior investigations based on resources and other cases under
24 investigation with the office. Incidents occurring after the date the
25 office begins investigating cases will receive the highest priority
26 for investigation.

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

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

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

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

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

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

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

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

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

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

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

17 (4) The investigation should include a review of the entire
18 incident, including but not limited to events immediately preceding
19 the incident that may have contributed to or influenced the outcome
20 of the incident that are directly related to the incident under
21 investigation.

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

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

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

29 (c) If the director determines that the incident is not within
30 the office's jurisdiction to investigate, the director shall decline
31 to investigate, and shall give notice of the fact to the involved
32 agency.

33 (6) If the director determines the case is to be investigated the
34 director will communicate the decision to investigate to the involved
35 agency and will thereafter be the lead investigative body in the case
36 and have priority over any other state or local agency investigating
37 the incident or a case that is under the jurisdiction of the office.
38 The director will implement the process developed pursuant to RCW
39 43.102.050 and conduct the appropriate investigation in accordance
40 with the process.

1 (7) In conducting the investigation the office shall have access
2 to, and copies of, reports and information necessary or related to
3 the investigation in the custody and control of the involved agency,
4 911 emergency communication centers, and any law enforcement agency
5 responding to the scene of the incident (~~(including)~~) as soon as
6 possible. This includes, but is not limited to, voice or video
7 recordings, body camera recordings, and officer notes, as well as
8 disciplinary and administrative records except those that might be
9 statements conducted as part of an administrative investigation
10 related to the incident.

11 (8) The investigation shall be concluded within 120 days of
12 acceptance of the case for investigation. If the office is not able
13 to complete the investigation within 120 days, the director shall
14 report to the advisory board the reasons for the delay.

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

17 The office will conduct analysis of use of force and other data
18 to the extent such data is available to the office. The director is
19 authorized to enter into contracts or memoranda of understanding to
20 access data as needed. If data is available, the office should, at a
21 minimum, analyze and report annually: Analysis and research regarding
22 any identified trends, patterns, or other situations identified by
23 the data; and recommendations for improvements. After July 1,
24 (~~(2024)~~) 2025, the office should also annually report
25 recommendations, if any, for expanding the scope of investigations or
26 jurisdiction of the office based on trends, data, or reports received
27 by the agency.

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

30 (1) (~~(Following notification by the director that the office will~~
31 ~~accept investigations of cases under its jurisdiction after July 1,~~
32 ~~2022, an~~) An involved agency shall notify the office of any incident
33 by an involved officer in accordance with the requirements under RCW
34 43.102.050 and pursuant to this section.

35 (a) If the incident involves use of deadly force by an involved
36 officer that results in death, substantial bodily harm, or great
37 bodily harm the involved agency must immediately contact the office
38 pursuant to the procedure established by the director once the

1 involved agency personnel and other first responders have rendered
2 the scene safe and provided or facilitated lifesaving first aid to
3 persons at the scene who have life-threatening injuries. This
4 requirement does not affect the duty of law enforcement under RCW
5 36.28A.445.

6 (b) In all other cases, the involved agency must notify the
7 office of the incident pursuant to the procedure established by the
8 director.

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

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

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

28 (ii) Identification and contact information for witnesses to the
29 incident; and

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

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

1 (b) Once the scene is relinquished, no member of the involved
2 agency may participate in any way in the investigation, with the
3 exception of the use of specialized equipment that is necessary for
4 the investigation and where no alternative exists. If there is any
5 equipment of the involved agency used in the investigation, steps
6 must be taken to appropriately limit the role of any involved agency
7 personnel in facilitating the use of that equipment or their
8 engagement with the investigation.

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

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

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

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

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

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

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

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

6 (iii) The person, family, or representative of any person who is
7 the subject of the action by the involved officer that is under
8 investigation by the office must be notified by the office that the
9 information was provided and, as soon as possible without
10 jeopardizing the integrity of any investigation, be provided with the
11 information contained in (b) (i) and (ii) of this subsection.

12 (6) If the office declines to investigate a case, the authority
13 and duty to investigate remains with the independent investigation
14 team or local law enforcement authority with jurisdiction over the
15 incident.

16 **Sec. 6.** RCW 43.102.800 and 2021 c 318 s 502 are each amended to
17 read as follows:

18 (1) In consultation with the director, the advisory board shall
19 assess whether the jurisdiction of the office should be expanded to
20 conduct investigations of other types of incidents committed by
21 involved officers, including but not limited to other types of in-
22 custody deaths not involving use of force but otherwise involving
23 criminal acts committed by involved officers as well as sexual
24 assaults committed by involved officers, subject to the same standard
25 under RCW 43.102.080(2)(b). The advisory board must consider
26 available data and information on other types of in custody deaths
27 not involving use of force but otherwise involving criminal acts
28 committed by involved officers as well as other types of incidents,
29 the capacity and resources of the office, and any modifications or
30 additions to procedures and processes necessary for the office to
31 conduct investigations of those incidents. The advisory board must
32 consider the recommendations and counsel of the director when
33 conducting the assessment under this section.

34 (2) At the request of the advisory board, the office shall
35 conduct analysis of available data, including identified trends and
36 patterns, and other information relevant to in-custody deaths
37 involving criminal acts committed by involved officers, sexual
38 assaults committed by involved officers, and other types of incidents
39 as requested by the advisory board.

1 (3) The advisory board shall submit a report with related
2 recommendations to the legislature and governor by November 1, 2023.
3 (4) For the purposes of this section, "in-custody death" means a
4 death of an individual while under physical control of a general
5 authority Washington law enforcement agency or a limited authority
6 Washington law enforcement agency as defined in RCW 10.93.020 or a
7 city, county, or regional adult or juvenile institution,
8 correctional, jail, holding, or detention facility as defined in RCW
9 70.48.020, 72.09.015, or 13.40.020.
10 (5) This section expires July 1, (~~2024~~) 2025.

--- END ---