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**SUBSTITUTE SENATE BILL 5584**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Dhingra, Saldaña, Frame, Hasegawa, Nobles, Slatter, Trudeau, Valdez, and C. Wilson)

AN ACT Relating to establishing the position of independent prosecutor within the office of the governor; amending RCW 36.27.020, 43.102.050, and 10.114.011; and adding new sections to chapter 43.06 RCW.

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

NEW SECTION. **Sec.**  The position of independent prosecutor is hereby established within the office of the governor for the purpose of conducting fair, thorough, transparent, and competent reviews of use of deadly force by an involved officer cases that result in a death, making final determinations on whether criminal charges should be filed.

NEW SECTION. **Sec.**  (1) The governor shall determine the compensation and appoint a licensed attorney to serve as the independent prosecutor.

(2) The independent prosecutor must meet the following minimum criteria for appointment:

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

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

(c) Submission to a background check, including an assessment of criminal history and research of social media and affiliations to check for racial bias and conflicts of interest.

(3) The governor may remove the independent prosecutor prior to the expiration of the independent prosecutor's term of service for misconduct or the inability to perform the duties of the office.

(4) Should the independent prosecutor resign, become incapacitated, or be removed as set forth in this section, the governor shall appoint an interim independent prosecutor within 24 hours, who shall serve as the independent prosecutor until such time as the governor appoints a new independent prosecutor.

(5) The independent prosecutor shall hold the position for a term of three years and continue to hold the position until reappointed or until a successor is appointed.

NEW SECTION. **Sec.**  Upon request of the governor, the independent prosecutor shall prosecute use of deadly force by an involved officer cases that result in death. The independent prosecutor is authorized to conduct prosecutions of use deadly force cases that result in death, 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 in the name of the governor.

NEW SECTION. **Sec.**  (1) The independent prosecutor shall have concurrent authority and power with the county prosecuting attorneys to initiate and conduct prosecutions of use of deadly force by an involved officer cases that result in death including appeals and requests for postconviction relief upon the request of the governor of the state of Washington. Such request shall be communicated in writing to the independent prosecutor.

(2) In any prosecution pursuant to this chapter, the independent prosecutor may prosecute related offenses and defendants. Related offenses and defendants are those offenses and defendants that may be joined in an information as provided by law or by the criminal rules for superior courts of the state of Washington. Related offenses also include crimes arising from or discovered in the course of use of force investigations when such crimes have a relationship to the use of force investigation or prosecution.

(3) Nothing in this section affects the authority of the county prosecuting attorney to conduct prosecutions of crimes committed by an individual who is the subject of a use of force action by the involved officer.

(4) The independent prosecutor shall be responsible for expert witness fees and other associated costs of prosecution. The independent prosecutor shall not be responsible for defense costs, including defense attorneys' fees, defense expert witness fees, or any other costs related to the defense in a criminal prosecution initiated by the office. Reimbursement for costs is subject to the provisions of RCW 9A.16.046. The county in which the action is filed shall be responsible for court administration costs and public defense costs if the defendant so qualifies.

(5) If the office of the attorney general, a county prosecuting attorney, and the independent prosecutor file competing informations or indictments charging a defendant with substantially the same offense(s), the court shall, upon motion of either the attorney general, the county prosecuting attorney, or the independent prosecutor:

(a) Determine whose prosecution of the case will best promote the interests of justice, prioritize the public's interest in ensuring a fair and impartial prosecution and trial free from bias or the appearance of bias, and enter an order designating that person as the prosecuting authority in the case; and

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

NEW SECTION. **Sec.**  (1) The independent prosecutor shall conduct reviews of referred investigations related to use of deadly force cases that result in a death.

(2) Upon completing a fair, thorough, transparent, and competent review of a referred investigation, the independent prosecutor shall make a determination of whether criminal charges should be filed and shall provide such determination in writing to the attorney general and the prosecuting authority of the jurisdiction in which the incident under investigation occurred.

(3) Beginning July 31, 2026, and annually thereafter, the independent prosecutor shall provide the appropriate committees of the legislature a written report detailing the following:

(a) The number of investigations reviewed by the independent prosecutor;

(b) The number of investigations referred to the prosecuting attorney to initiate criminal prosecutions;

(c) The number of investigations in which the independent prosecutor declined to refer to the prosecuting attorney; and

(d) In circumstances where the independent prosecutor declined to file charges, the results of the investigation and an explanation of the reasons for the decision.

NEW SECTION. **Sec.**  POWERS AND DUTIES OF THE INDEPENDENT PROSECUTOR. (1) The independent prosecutor shall hire or contract with attorneys and other personnel as necessary to pursue prosecutions and comply with other duties required under this chapter.

(2) The independent prosecutor shall ensure that persons subjected to use of force by an involved officer, or their survivors, are kept apprised of the status of the review of the investigation, any charging decisions, all court hearings, and the status of any prosecution, including access to press conferences and advance notice of media releases; and ensure that all victims of charged crimes, or their surviving family members, are afforded the rights set forth in RCW 7.69.030.

(3) The independent prosecutor shall perform the duties and exercise the powers set forth in this chapter, as well as any additional duties and powers that may be prescribed.

NEW SECTION. **Sec.**  APPOINTMENT OF ASSISTANT INDEPENDENT PROSECUTORS—SPECIAL AND TEMPORARY. The independent prosecutor may appoint one or more assistant independent prosecutors and special assistant independent prosecutors who shall have the same powers as the independent prosecutor to perform investigations and prosecutions conducted by the office. Each appointment shall be in writing, signed by the independent prosecutor.

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

NEW SECTION. **Sec.**  LIABILITY. No action or other proceeding may be instituted against the independent prosecutor or the independent prosecutor's assistant independent prosecutors or contractors, or a person exercising powers or performing duties at the direction of the independent prosecutor, for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

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

The prosecuting attorney shall:

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

(2) Be legal adviser to all county and precinct officers and school directors in all matters relating to their official business, and when required draw up all instruments of an official nature for the use of said officers;

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

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

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

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

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

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

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

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

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

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

(13)(a) Within 30 days of receiving an investigation of a fatal use of deadly force by an involved officer who is employed within the boundaries of the county, determine if recusal is necessary under the ethical rules applicable to all lawyers or to preserve public confidence.

(b) If the prosecuting attorney finds recusal is necessary under (a) of this subsection, the prosecuting attorney must notify in writing the independent prosecutor established in section 1 of this act of the decision within 30 days.

(c) If the prosecuting attorney declines to file criminal charges after reviewing an investigation of a use of deadly force by an involved officer case, the prosecuting attorney must notify in writing the independent prosecutor established in section 1 of this act within 30 days of the decision.

**Sec.**  RCW 43.102.050 and 2024 c 64 s 2 are each amended to read as follows:

(1) The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Protocol and direction to the involved agency;

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

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

(viii) Protocol for finalizing the completed investigation and referral to the local entity responsible for the prosecutorial decision and to the independent prosecutor established in section 1 of this act, including communication with the family and public regarding the completion of the investigation;

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

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

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

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

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

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

(f) Prioritization of cases for investigation.

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

(4) The director, in consultation with the advisory board, shall implement a plan 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 investigate if determined appropriate based on the review. The director must prioritize the review or investigation of prior investigations based on resources and other cases under investigation with the office. Incidents occurring after the date the office begins investigating cases will receive the highest priority for investigation.

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

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

Any entity conducting such an investigation of the use of deadly force by a peace officer that results in death shall provide the completed investigation to the entity responsible for the prosecutorial decision and the independent prosecutor established in section 1 of this act.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act are each added to chapter 43.06 RCW.

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