

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1267

Chapter 318, Laws of 2021

67th Legislature
2021 Regular Session

OFFICE OF INDEPENDENT INVESTIGATIONS—POLICE USE OF FORCE

EFFECTIVE DATE: July 25, 2021

Passed by the House April 14, 2021
Yeas 56 Nays 41

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 9, 2021
Yeas 27 Nays 22

DENNY HECK

President of the Senate

Approved May 18, 2021 11:41 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1267** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 18, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1267

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By House Public Safety (originally sponsored by Representatives Entenman, Hackney, Senn, Dolan, Leavitt, Berry, Fitzgibbon, Valdez, Simmons, Ramel, Ortiz-Self, Ramos, Chopp, Davis, Thai, Bergquist, Peterson, Kloba, Callan, Lekanoff, Macri, Goodman, Gregerson, J. Johnson, Lovick, Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos, and Ormsby; by request of Office of the Governor)

READ FIRST TIME 02/09/21.

1 AN ACT Relating to investigation of potential criminal conduct
2 arising from police use of force, including custodial injuries, and
3 other officer-involved incidents; amending RCW 10.93.020, 39.26.125,
4 and 10.114.011; adding a new section to chapter 41.06 RCW; adding a
5 new chapter to Title 43 RCW; creating new sections; and providing an
6 expiration date.

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

8 NEW SECTION. **Sec. 101.** INTENT. The legislature finds that there
9 has been an outpouring of frustration, anger, and demand for change
10 from many members of the public over the deaths of people of color
11 resulting from encounters with police. The most recent deaths in the
12 United States and within Washington are a call to lead our state to a
13 new system for investigating deaths and other serious incidents
14 involving law enforcement officers.

15 The legislature intends that the office of independent
16 investigations be created to conduct investigations of use of force
17 and other cases under its jurisdiction in a manner that is competent,
18 unbiased, and thorough. The office will be transparent and
19 accountable for its work. The office should ensure that it treats all
20 people with dignity and respect. The director and staff must be
21 qualified and trained to conduct the investigations, including

1 training to understand the impact and effect of racism in the
2 investigation and use of an antiracist lens to conduct their work.

3 It is intended that this office will assume responsibility for
4 investigations of serious use of force incidents and refer the
5 reports on the investigation to the prosecutorial entity to determine
6 if the action was justified, or if there was criminal action such
7 that criminal charges should be filed. This is the same criminal
8 investigative inquiry that is currently conducted when there is an
9 officer-involved incident. The legislature does not intend to create
10 a new type of investigation or that the office should be involved in
11 any administrative review of conduct or complaints to police agencies
12 about officer conduct related to policy or procedure. The process
13 created in this act is intended to change only who investigates the
14 incident. It does not change the nature of the investigation and
15 involves only an investigation to determine justification or whether
16 criminal charges are appropriate.

17 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this
18 section apply throughout this chapter unless the context clearly
19 requires otherwise.

20 (1) "Advisory board" means the office of independent
21 investigations advisory board.

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

23 (3) "Director" means the director of the office of independent
24 investigations.

25 (4) "Great bodily harm" has the meaning provided in RCW
26 9A.04.110.

27 (5) "In-custody" refers to a person who is under the physical
28 control of a general authority Washington law enforcement agency or a
29 limited authority Washington law enforcement agency as defined in RCW
30 10.93.020 or a city, county, or regional adult or juvenile
31 institution, correctional, jail, holding, or detention facility as
32 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

33 (6) "Independent investigation team" means a team of qualified
34 and certified peace officer investigators, civilian crime scene
35 specialists, and other representatives who operate independently of
36 any involved agency to conduct investigations of police deadly force
37 incidents. An independent investigation team may be comprised of
38 multiple law enforcement agencies who jointly investigate police use

1 of force incidents in their geographical regions or may be a single
2 law enforcement agency, provided it is not the involved agency.

3 (7) "Involved agency" means a general authority Washington law
4 enforcement agency or limited authority Washington law enforcement
5 agency, as defined in RCW 10.93.020, that employs or supervises the
6 officer or officers who are an involved officer as defined in this
7 section, or an agency responsible for a city, county, or regional
8 adult or juvenile institution, correctional, jail, holding, or
9 detention facility as defined in RCW 70.48.020, 72.09.015, or
10 13.40.020.

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

15 (a) A general authority Washington peace officer, specially
16 commissioned Washington peace officer, or limited authority
17 Washington peace officer, as defined in RCW 10.93.020, whether on or
18 off duty if he or she is exercising his or her authority as a peace
19 officer; or

20 (b) An individual while employed in a city, county, or regional
21 adult or juvenile institution, correctional, jail, holding, or
22 detention facility as defined in RCW 70.48.020, 72.09.015, or
23 13.40.020.

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

25 (10) "Substantial bodily harm" has the same meaning as in RCW
26 9A.04.110.

27 Office Creation

28 NEW SECTION. **Sec. 301.** CREATION. (1) The office of independent
29 investigations is hereby established within the office of the
30 governor for the purpose of conducting fair, thorough, transparent,
31 and competent investigations as authorized under this chapter.

32 (2) The office of independent investigations is an investigative
33 law enforcement agency, including for the purposes of the public
34 records act, chapter 42.56 RCW.

35 NEW SECTION. **Sec. 302.** OFFICE POWERS AND DUTIES. In addition to
36 other responsibilities set forth in this chapter, the office shall:

(1) Conduct fair, thorough, transparent, and competent investigations of police use of force and other incidents involving law enforcement as authorized in this chapter and shall prioritize investigations conducted by the office based on resources and other criteria developed in consultation with the advisory board. The office shall commence investigations as follows:

(a) Beginning no later than July 1, 2022, the office is authorized to conduct investigations of deadly force cases 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; and

(b) Beginning no later than July 1, 2023, the office is authorized to review, and may investigate, prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation;

(2) Analyze data available to the office and provide reports and recommendations as appropriate based on the data regarding issues, trends, and other relevant areas;

(3) Provide reports on activities of the office as authorized under this chapter; and

(4) Carry out such other responsibilities as may be consistent with this chapter.

NEW SECTION. **Sec. 303.** DIRECTOR. (1)(a) The governor shall appoint the director of the office and determine the director's compensation. The governor shall select the director from a list of three candidates recommended by the advisory board unless the governor declines to select any of the candidates provided. If the governor declines to select a candidate proposed by the advisory board, the governor may request the advisory board to provide additional qualified nominees for consideration or may offer an alternative candidate who may be appointed following approval by a majority of the advisory board.

(b) Prior to selecting the director, the governor shall consider the results of 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.

(2) The director shall hold office for a term of three years and continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the director prior to

1 the expiration of the director's term for neglect of duty,
2 misconduct, or inability to perform duties.

3 NEW SECTION. **Sec. 304.** DUTIES OF THE DIRECTOR. (1) The director
4 shall:

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

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

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

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

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

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

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

24 (h) Develop the nondisclosure agreement required in section 501
25 of this act; and

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

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

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

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

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

38 (b) A system and requirements for involved agencies to notify the
39 office of any incident under the jurisdiction of the office, which

1 must include direction to agencies as to what incidents of force and
2 injuries and other circumstances must be reported to the office,
3 including the timing of such reports, provided that any incident
4 involving substantial bodily harm, great bodily harm, or death is
5 reported to the office immediately in accordance with section 402 of
6 this act;

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

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

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

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

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

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

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

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

24 (viii) Protocol for finalizing the completed investigation and
25 referral to the entity responsible for the prosecutorial decision,
26 including communication with the family and public regarding the
27 completion of the investigation;

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

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

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

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

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

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

9 (f) Prioritization of cases for investigation.

10 (3) No later than December 1, 2023, in consultation with the
11 advisory board, the director shall develop a proposal for training
12 individuals who are nonlaw enforcement officers to conduct competent,
13 thorough investigations of cases under the jurisdiction of the
14 office. The proposal must establish a training plan with an objective
15 that within five years of the date the office begins investigating
16 deadly force cases the cases will be investigated by nonlaw
17 enforcement officers. The director shall report such proposal to the
18 governor and legislature by December 1, 2023. Any proposal offered by
19 the director must ensure investigations are high quality, thorough,
20 and competent.

21 (4) The director, in consultation with the advisory board, shall
22 implement a plan to review 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 and investigate if determined
25 appropriate based on the review. The director must prioritize the
26 review or investigation of cases occurring prior to July 1, 2022,
27 based on resources and other cases under investigation with the
28 office.

29 NEW SECTION. **Sec. 305.** PERSONNEL. (1) The director may employ,
30 or enter into contracts with, personnel as he or she determines
31 necessary for the proper discharge of his or her duties. The director
32 must request input from the advisory board on the hiring process and
33 hiring goals, including diversity.

34 (2) The director may employ, or enter into contracts with,
35 investigators to conduct investigations of cases under the
36 jurisdiction of the office.

37 (a) The director shall consider the relevant experience and
38 qualifications of the candidate including the extent to which he or
39 she demonstrates experience or understanding of the following areas:

1 (i) Extensive experience with criminal investigations, including
2 homicide investigations;
3 (ii) Behavioral health issues;
4 (iii) Youth cognitive development;
5 (iv) Trauma-informed interviewing;
6 (v) De-escalation techniques and utilization; and
7 (vi) Knowledge of Washington practices, including laws, policies,
8 and procedures related to criminal law, criminal investigations, and
9 policing.

10 (b) The director shall consider the following prior to employing
11 an investigator:

12 (i) The investigators should not be commissioned law enforcement
13 officers employed with any law enforcement agency as a peace officer
14 at the time of application with the office.

15 (A) If the individual considered for a position as an
16 investigator was a prior law enforcement officer, the director must
17 conduct a review of prior disciplinary actions or complaints related
18 to bias.

19 (B) The individual should not have been a commissioned law
20 enforcement officer within 24 months of the date of the application
21 for service as an investigator; and

22 (ii) The results of a background check that includes research of
23 social media and affiliations to check for racial bias and conflicts
24 of interest.

25 (c) Investigators employed or contracted with the office are
26 prohibited from being simultaneously employed, commissioned, or have
27 any business relationship, other than through the work of the office,
28 with a general authority or limited authority Washington law
29 enforcement agency, or county or city corrections agency.

30 (d) The director may not employ an individual who was a
31 previously commissioned law enforcement officer who does not meet the
32 criteria of this section without the approval of a majority of the
33 advisory board.

34 (3) The director may employ or enter into contracts for services
35 to provide additional personnel as needed to conduct investigations
36 of cases under the jurisdiction of the office including, but not
37 limited to, the following:

38 (a) Forensic services and crime scene investigators;

39 (b) Liaisons for community, family, and relations with a
40 federally recognized tribe;

1 (c) Analysts, including analysts to conduct evaluations on use of
2 force data;

3 (d) Mental health experts;

4 (e) Bilingual staff, translators, or interpreters;

5 (f) Other experts as needed; and

6 (g) All staffing and other needs for the office.

7 (4) The director shall ensure the following training is provided
8 to staff and that there is a regular schedule for additional
9 trainings during the course of employment:

10 (a) The director shall ensure that the director and staff
11 involved in investigations, including any contracted investigators,
12 engage in trainings that include the following areas. A training may
13 include more than one of the following areas per training. A separate
14 training course is not required for each topic.

15 (i) History of racism in policing, including tribal sovereignty
16 and history of Native Americans within the justice system;

17 (ii) Implicit and explicit bias training;

18 (iii) Intercultural competency;

19 (iv) The use of a racial equity lens in conducting the work of
20 the office;

21 (v) Antiracism training; and

22 (vi) Undoing institutional racism.

23 (b) The director shall ensure that investigators engage in the
24 following training. A training may include more than one of the
25 following areas per training. A separate training course is not
26 required for each topic.

27 (i) Criminal investigations, including homicide investigations as
28 appropriate for the assigned positions;

29 (ii) Washington practices, including Washington laws and
30 policies, as well as relevant policing practices as appropriate;

31 (iii) Interviewing techniques; and

32 (iv) Other relevant trainings as needed.

33 NEW SECTION. **Sec. 306.** INVESTIGATORS. (1) The director shall
34 designate investigator positions that are limited authority
35 Washington peace officers as defined in RCW 10.93.020. The
36 investigators designated as limited authority Washington peace
37 officers have the authority to investigate any case within the
38 jurisdiction of the office and any criminal activity related to, or
39 discovered in the course of, the investigation of the case under the

1 jurisdiction of the incident that has a relationship to the
2 investigation.

3 (2) Any investigator employed or contracted with the office for
4 the purpose of conducting investigations may participate in the
5 investigations of a case under the jurisdiction of the office. Only
6 investigators who are limited authority Washington peace officers may
7 be designated a lead investigator on any criminal investigation
8 conducted by the office pursuant to this chapter.

9 **Sec. 307.** RCW 10.93.020 and 2006 c 284 s 16 are each amended to
10 read as follows:

11 As used in this chapter, the following terms have the meanings
12 indicated unless the context clearly requires otherwise.

13 (1) "General authority Washington law enforcement agency" means
14 any agency, department, or division of a municipal corporation,
15 political subdivision, or other unit of local government of this
16 state, and any agency, department, or division of state government,
17 having as its primary function the detection and apprehension of
18 persons committing infractions or violating the traffic or criminal
19 laws in general, as distinguished from a limited authority Washington
20 law enforcement agency, and any other unit of government expressly
21 designated by statute as a general authority Washington law
22 enforcement agency. The Washington state patrol and the department of
23 fish and wildlife are general authority Washington law enforcement
24 agencies.

25 (2) "Limited authority Washington law enforcement agency" means
26 any agency, political subdivision, or unit of local government of
27 this state, and any agency, department, or division of state
28 government, having as one of its functions the apprehension or
29 detection of persons committing infractions or violating the traffic
30 or criminal laws relating to limited subject areas, including but not
31 limited to, the state departments of natural resources and social and
32 health services, the state gambling commission, the state lottery
33 commission, the state parks and recreation commission, the state
34 utilities and transportation commission, the state liquor ~~((control))~~
35 and cannabis board, the office of the insurance commissioner, ~~((and))~~
36 the state department of corrections, and the office of independent
37 investigations.

38 (3) "General authority Washington peace officer" means any full-
39 time, fully compensated and elected, appointed, or employed officer

1 of a general authority Washington law enforcement agency who is
2 commissioned to enforce the criminal laws of the state of Washington
3 generally.

4 (4) "Limited authority Washington peace officer" means any full-
5 time, fully compensated officer of a limited authority Washington law
6 enforcement agency empowered by that agency to detect or apprehend
7 violators of the laws in some or all of the limited subject areas for
8 which that agency is responsible. A limited authority Washington
9 peace officer may be a specially commissioned Washington peace
10 officer if otherwise qualified for such status under this chapter.

11 (5) "Specially commissioned Washington peace officer", for the
12 purposes of this chapter, means any officer, whether part-time or
13 full-time, compensated or not, commissioned by a general authority
14 Washington law enforcement agency to enforce some or all of the
15 criminal laws of the state of Washington, who does not qualify under
16 this chapter as a general authority Washington peace officer for that
17 commissioning agency, specifically including reserve peace officers,
18 and specially commissioned full-time, fully compensated peace
19 officers duly commissioned by the states of Oregon or Idaho or any
20 such peace officer commissioned by a unit of local government of
21 Oregon or Idaho. A reserve peace officer is an individual who is an
22 officer of a Washington law enforcement agency who does not serve
23 such agency on a full-time basis but who, when called by the agency
24 into active service, is fully commissioned on the same basis as full-
25 time peace officers to enforce the criminal laws of the state.

26 (6) "Federal peace officer" means any employee or agent of the
27 United States government who has the authority to carry firearms and
28 make warrantless arrests and whose duties involve the enforcement of
29 criminal laws of the United States.

30 (7) "Agency with primary territorial jurisdiction" means a city
31 or town police agency which has responsibility for police activity
32 within its boundaries; or a county police or sheriff's department
33 which has responsibility with regard to police activity in the
34 unincorporated areas within the county boundaries; or a statutorily
35 authorized port district police agency or four-year state college or
36 university police agency which has responsibility for police activity
37 within the statutorily authorized enforcement boundaries of the port
38 district, state college, or university.

39 (8) "Primary commissioning agency" means (a) the employing agency
40 in the case of a general authority Washington peace officer, a

1 limited authority Washington peace officer, ((~~an Indian~~)) a tribal
2 peace officer from a federally recognized tribe, or a federal peace
3 officer, and (b) the commissioning agency in the case of a specially
4 commissioned Washington peace officer (i) who is performing functions
5 within the course and scope of the special commission and (ii) who is
6 not also a general authority Washington peace officer, a limited
7 authority Washington peace officer, ((~~an Indian~~)) a tribal peace
8 officer from a federally recognized tribe, or a federal peace
9 officer.

10 (9) "Primary function of an agency" means that function to which
11 greater than fifty percent of the agency's resources are allocated.

12 (10) "Mutual law enforcement assistance" includes, but is not
13 limited to, one or more law enforcement agencies aiding or assisting
14 one or more other such agencies through loans or exchanges of
15 personnel or of material resources, for law enforcement purposes.

16 NEW SECTION. Sec. 308. INVESTIGATIONS—DUTIES AND POWERS. (1)
17 The office has jurisdiction over, and is authorized to conduct
18 investigations of, all cases and incidents as established within this
19 section.

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

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

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

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

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

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

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

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

37 (3) The director shall determine prioritization of investigations
38 based on resources and other criteria which may be established in
39 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 section 402 of this
9 act of an incident under the jurisdiction of the office, the
10 director:

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

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

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

20 (6) If the director determines the case is to be investigated the
21 director will communicate the decision to investigate to the involved
22 agency and will thereafter be the lead investigative body in the case
23 and have priority over any other state or local agency investigating
24 the incident or a case that is under the jurisdiction of the office.
25 The director will implement the process developed pursuant to section
26 304 of this act and conduct the appropriate investigation in
27 accordance with the process.

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

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

1 NEW SECTION. **Sec. 309.** CRIMINAL JUSTICE TRAINING COMMISSION.

2 (1) The criminal justice training commission shall collaborate with
3 the office to ensure office investigators receive sufficient training
4 to attain the necessary requirements to conduct investigations under
5 the jurisdiction of the office.

6 (2) The investigators of the office shall receive priority
7 registration to criminal justice training commission trainings
8 necessary to conduct investigations as required by this chapter.

9 NEW SECTION. **Sec. 310.** DATA AND RESEARCH. The office will
10 conduct analysis of use of force and other data to the extent such
11 data is available to the office. The director is authorized to enter
12 into contracts or memoranda of understanding to access data as
13 needed. If data is available, the office should, at a minimum,
14 analyze and report annually: Analysis and research regarding any
15 identified trends, patterns, or other situations identified by the
16 data; and recommendations for improvements. After July 1, 2024, the
17 office should also annually report recommendations, if any, for
18 expanding the scope of investigations or jurisdiction of the office
19 based on trends, data, or reports received by the agency.

20 NEW SECTION. **Sec. 311.** LIABILITY. No action or other proceeding
21 may be instituted against the director, an investigator, or an
22 employee or contractor in the office or a person exercising powers or
23 performing duties at the direction of the director for any act done
24 in good faith in the execution or intended execution of the person's
25 duty or for any alleged neglect or default in the execution in good
26 faith of the person's duty.

27 NEW SECTION. **Sec. 312.** A new section is added to chapter 41.06
28 RCW to read as follows:

29 In addition to the exemptions set forth in RCW 41.06.070, the
30 provisions of this chapter do not apply in the office of independent
31 investigations to the director, to one confidential secretary, and to
32 any deputy or regional directors, if any.

33 **Sec. 313.** RCW 39.26.125 and 2012 c 224 s 14 are each amended to
34 read as follows:

35 All contracts must be entered into pursuant to competitive
36 solicitation, except for:

- 1 (1) Emergency contracts;
- 2 (2) Sole source contracts that comply with the provisions of RCW
3 39.26.140;
- 4 (3) Direct buy purchases, as designated by the director. The
5 director shall establish policies to define criteria for direct buy
6 purchases. These criteria may be adjusted to accommodate special
7 market conditions and to promote market diversity for the benefit of
8 the citizens of the state of Washington;
- 9 (4) Purchases involving special facilities, services, or market
10 conditions, in which instances of direct negotiation is in the best
11 interest of the state;
- 12 (5) Purchases from master contracts established by the department
13 or an agency authorized by the department;
- 14 (6) Client services contracts;
- 15 (7) Other specific contracts or classes or groups of contracts
16 exempted from the competitive solicitation process when the director
17 determines that a competitive solicitation process is not appropriate
18 or cost-effective;
- 19 (8) Off-contract purchases of Washington grown food when such
20 food is not available from Washington sources through an existing
21 contract. However, Washington grown food purchased under this
22 subsection must be of an equivalent or better quality than similar
23 food available through the contract and must be able to be paid from
24 the agency's existing budget. This requirement also applies to
25 purchases and contracts for purchases executed by state agencies,
26 including institutions of higher education as defined in RCW
27 28B.10.016, under delegated authority granted in accordance with this
28 chapter or under RCW 28B.10.029;
- 29 (9) Contracts awarded to companies that furnish a service where
30 the tariff is established by the utilities and transportation
31 commission or other public entity;
- 32 (10) Intergovernmental agreements awarded to any governmental
33 entity, whether federal, state, or local and any department,
34 division, or subdivision thereof;
- 35 (11) Contracts for services that are necessary to the conduct of
36 collaborative research if the use of a specific contractor is
37 mandated by the funding source as a condition of granting funds;
- 38 (12) Contracts for architectural and engineering services as
39 defined in RCW 39.80.020, which shall be entered into under chapter
40 39.80 RCW;

1 (13) Contracts for the employment of expert witnesses for the
2 purposes of litigation; ~~((and))~~

3 (14) Contracts for bank supervision authorized under RCW
4 ~~((30.38.040))~~ 30A.38.040; and

5 (15) Contracts for investigators awarded by the office of
6 independent investigations as authorized under section 304 of this
7 act.

8 **Duty of Involved Agency**

9 **Sec. 401.** RCW 10.114.011 and 2019 c 4 s 5 are each amended to
10 read as follows:

11 Except as required by federal consent decree, federal settlement
12 agreement, or federal court order, where the use of deadly force by a
13 peace officer results in death, substantial bodily harm, or great
14 bodily harm, an independent investigation must be completed to inform
15 any determination of whether the use of deadly force met the good
16 faith standard established in RCW 9A.16.040 and satisfied other
17 applicable laws and policies. The investigation must be completely
18 independent of the agency whose officer was involved in the use of
19 deadly force and conducted in accordance with chapter 43.--- RCW (the
20 new chapter created in section 601 of this act). ~~((The))~~ Any rules
21 adopted by the criminal justice training commission must ~~((adopt~~
22 ~~rules establishing criteria to determine what qualifies as an~~
23 ~~independent investigation pursuant to this section))~~ be consistent
24 with chapter 43.--- RCW (the new chapter created in section 601 of
25 this act).

26 NEW SECTION. **Sec. 402.** NOTIFICATION OF DIRECTOR AND SECURING
27 THE SCENE. (1) Following notification by the director that the office
28 will accept investigations of cases under its jurisdiction after July
29 1, 2022, an involved agency shall notify the office of any incident
30 by an involved officer in accordance with the requirements under
31 section 304 of this act and pursuant to this section.

32 (a) If the incident involves use of deadly force by an involved
33 officer that results in death, substantial bodily harm, or great
34 bodily harm the involved agency must immediately contact the office
35 pursuant to the procedure established by the director once the
36 involved agency personnel and other first responders have rendered
37 the scene safe and provided or facilitated lifesaving first aid to

1 persons at the scene who have life-threatening injuries. This
2 requirement does not affect the duty of law enforcement under RCW
3 36.28A.445.

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

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

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

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

26 (ii) Identification and contact information for witnesses to the
27 incident; and

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

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

38 (b) Once the scene is relinquished, no member of the involved
39 agency may participate in any way in the investigation, with the
40 exception of the use of specialized equipment that is necessary for

1 the investigation and where no alternative exists. If there is any
2 equipment of the involved agency used in the investigation, steps
3 must be taken to appropriately limit the role of any involved agency
4 personnel in facilitating the use of that equipment or their
5 engagement with the investigation.

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

20 (5) No information about the ongoing independent investigation
21 under the jurisdiction of the office may be shared with any member of
22 the involved agency, except limited briefings given to the chief or
23 sheriff of the involved agency about the progress of the
24 investigation.

25 (6) If the office declines to investigate a case, the authority
26 and duty to investigate remains with the independent investigation
27 team or local law enforcement authority with jurisdiction over the
28 incident.

29 **Office of Independent Investigations Advisory Board**

30 NEW SECTION. **Sec. 501.** MEMBERSHIP AND DUTIES. (1)(a) There is
31 created the office of independent investigations advisory board. The
32 advisory board shall consist of the following 11 members, appointed
33 by the governor, one of whom the governor shall designate as chair:

34 (i) Three members of the general public representing the
35 community who are not current or former law enforcement, with
36 preference given to individuals representing diverse communities;

1 (ii) One member of the general public representing a family
2 impacted by an incident of the nature under the jurisdiction of the
3 office, who is not current or former law enforcement;

4 (iii) One member representing a federally recognized tribe in
5 Washington, who is not current or former law enforcement;

6 (iv) One defense attorney representative;

7 (v) One prosecuting attorney representative;

8 (vi) One representative of a police officer labor association
9 with experience in homicide investigations;

10 (vii) One sheriff or police chief who is also a member of an
11 independent investigation team;

12 (viii) One credentialed mental health expert who is not current
13 or former law enforcement; and

14 (ix) One member of the criminal justice training commission.

15 (b) The members of the advisory board appointed by the governor
16 shall be appointed for terms of three years and until their
17 successors are appointed and confirmed. The governor shall stagger
18 the initial appointment terms of the advisory board members with the
19 terms of five members being for two years from the date of
20 appointment and six members being for three years from the date of
21 appointment. The governor shall designate the appointees who will
22 serve the two-year and three-year terms. The members of the advisory
23 board serve without compensation, but must be reimbursed for travel
24 expenses as provided in RCW 43.03.050 and 43.03.060.

25 (c) The governor, when making appointments to the advisory board,
26 shall make appointments that reflect the cultural diversity of the
27 state of Washington.

28 (2) The purpose of the advisory board is to provide input to the
29 office and shall:

30 (a) Provide input to the governor on the selection of the
31 director, including providing candidates for consideration for
32 appointment for the position of director. If the governor requests
33 additional candidates for consideration, the advisory board shall
34 provide additional candidates to the governor. If the governor
35 provides an alternative candidate, the advisory board must consider
36 the candidate provided by the governor and vote on the approval or
37 rejection of the candidate.

38 (i) The advisory board shall recommend candidates to the governor
39 who they find are individuals with sound judgment, independence,

1 objectivity, and integrity who will be viewed as a trustworthy
2 director.

3 (ii) The director must have experience either in conducting
4 criminal investigations or prosecutions. The advisory board shall
5 consider the relevant experience and qualifications of the candidate
6 including the extent to which they demonstrate experience or
7 demonstrated understanding of the following areas:

8 (A) Criminal investigations;

9 (B) Organizational leadership;

10 (C) Mental health issues;

11 (D) Trauma-informed interviewing;

12 (E) Community leadership;

13 (F) Legal experience or background;

14 (G) Antioppression and antiracist analysis and addressing
15 systemic inequities; and

16 (H) Working with Black, Indigenous, and communities of color;

17 (b) Provide input to the director on the plans required to be
18 developed for the office including the regional investigation teams;
19 staffing; training for personnel; procedures for engagement with
20 individuals involved in any case under the jurisdiction of the
21 office, as well as families and the community; recommendations to the
22 legislature; and other input as requested by the governor or
23 director;

24 (c) Participate in employment interviews as requested by the
25 governor or director; and

26 (d) Receive briefings or reports from the director relating to
27 data, trends, and other relevant issues, as well as cases under
28 investigation to the extent permitted by law.

29 (3) Advisory board members have a duty to maintain the
30 confidentiality of the information they receive during the course of
31 their work on the advisory board. Each advisory board member shall
32 agree in writing to not disclose any information they receive or
33 otherwise access related to an investigation, including information
34 about individuals involved in the investigation as involved officers,
35 individuals who are the subject of police action, witnesses, and
36 investigators.

37 (4) Advisory board members must complete training to utilize an
38 antiracist lens in their duties as advisory board members.

39 (5) The office shall provide administrative and clerical
40 assistance to the advisory board.

NEW SECTION. **Sec. 502.** REPORT. (1) In consultation with the director, the advisory board shall assess whether the jurisdiction of the office should be expanded to conduct investigations of other types of incidents committed by involved officers, including but not limited to other types of in-custody deaths not involving use of force but otherwise involving criminal acts committed by involved officers as well as sexual assaults committed by involved officers, subject to the same standard under section 308(2)(b) of this act. The advisory board must consider available data and information on other types of in custody deaths not involving use of force but otherwise involving criminal acts committed by involved officers as well as other types of incidents, the capacity and resources of the office, and any modifications or additions to procedures and processes necessary for the office to conduct investigations of those incidents. The advisory board must consider the recommendations and counsel of the director when conducting the assessment under this section.

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

(3) The advisory board shall submit a report with related recommendations to the legislature and governor by November 1, 2023.

(4) For the purposes of this section, "in-custody death" means a death of an individual while under physical control of a general authority Washington law enforcement agency or a limited authority Washington law enforcement agency as defined in RCW 10.93.020 or a city, county, or regional adult or juvenile institution, correctional, jail, holding, or detention facility as defined in RCW 70.48.020, 72.09.015, or 13.40.020.

(5) This section expires July 1, 2024.

Miscellaneous Provisions

NEW SECTION. **Sec. 601.** CODIFICATION. Sections 201 through 306, 308 through 311, 402, 501, and 502 of this act constitute a new chapter in Title 43 RCW.

1 NEW SECTION. **Sec. 602.** SEVERABILITY. If any provision of this
2 act or its application to any person or circumstance is held invalid,
3 the remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 603.** SUBJECT TO APPROPRIATION. If specific
6 funding for the purposes of this act, referencing this act by bill or
7 chapter number, is not provided by June 30, 2021, in the omnibus
8 appropriations act, this act is null and void.

Passed by the House April 14, 2021.

Passed by the Senate April 9, 2021.

Approved by the Governor May 18, 2021.

Filed in Office of Secretary of State May 18, 2021.

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