

SHB 2086 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the  
2 following:

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

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Advisory board" means the office of independent  
8 investigations advisory board.

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

10 (3) "Director" means the director of the office of independent  
11 investigations.

12 (4) "Great bodily harm" has the meaning provided in RCW  
13 9A.04.110.

14 (5) "In-custody" refers to a person who is under the physical  
15 control of a general authority Washington law enforcement agency or a  
16 limited authority Washington law enforcement agency as defined in RCW  
17 10.93.020 or a city, county, or regional adult or juvenile  
18 institution, correctional, jail, holding, or detention facility as  
19 defined in RCW 70.48.020, 72.09.015, or 13.40.020.

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

28 (7) "Involved agency" means a general authority Washington law  
29 enforcement agency or limited authority Washington law enforcement  
30 agency, as defined in RCW 10.93.020, that employs or supervises the  
31 officer or officers who are an involved officer as defined in this  
32 section, or an agency responsible for a city, county, or regional

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

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

8 (a) A general authority Washington peace officer, specially  
9 commissioned Washington peace officer, or limited authority  
10 Washington peace officer, as defined in RCW 10.93.020, whether on or  
11 off duty if he or she is exercising his or her authority as a peace  
12 officer; or

13 (b) An individual while employed in a city, county, or regional  
14 adult or juvenile institution, correctional, jail, holding, or  
15 detention facility as defined in RCW 70.48.020, 72.09.015, or  
16 13.40.020.

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

18 (10) "Substantial bodily harm" has the same meaning as in RCW  
19 9A.04.110.

20 (11) "911 communications center" for purposes of this chapter  
21 means a public safety answering point or any other entity that  
22 captures and maintains data that is utilized in a 911 emergency  
23 communications system, as defined in RCW 38.52.010.

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

26 (1) The director shall:

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

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

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

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

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

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

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

7 (h) Develop the nondisclosure agreement required in RCW  
8 43.102.130; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (viii) Protocol for finalizing the completed investigation and  
6 referral to the entity responsible for the prosecutorial decision,  
7 including communication with the family and public regarding the  
8 completion of the investigation;

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

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

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

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

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

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

29 (f) Prioritization of cases for investigation.

30 (3) No later than December 1, (~~2023~~) 2025, in consultation with  
31 the advisory board, the director shall develop a proposal for  
32 training individuals who are nonlaw enforcement officers to conduct  
33 competent, thorough investigations of cases under the jurisdiction of  
34 the office. The proposal must establish a training plan with an  
35 objective that within five years of the date the office begins  
36 investigating deadly force cases the cases will be investigated by  
37 nonlaw enforcement officers. The director shall report such proposal  
38 to the governor and legislature by December 1, (~~2023~~) 2025. Any  
39 proposal offered by the director must ensure investigations are high  
40 quality, thorough, and competent.

1 (4) The director, in consultation with the advisory board, shall  
2 implement a plan to review prior investigations of deadly force by an  
3 involved officer if new evidence is brought forth that was not  
4 included in the initial investigation and investigate if determined  
5 appropriate based on the review. The director must prioritize the  
6 review or investigation of (~~eases occurring prior to July 1, 2022,~~)  
7 prior investigations based on resources and other cases under  
8 investigation with the office. Incidents occurring after the date the  
9 office begins investigating cases will receive the highest priority  
10 for investigation.

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

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

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

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

22 (ii) Involving 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.

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

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

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

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

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

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

38 (4) The investigation should include a review of the entire  
39 incident, including but not limited to events immediately preceding

1 the incident that may have contributed to or influenced the outcome  
2 of the incident that are directly related to the incident under  
3 investigation.

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

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

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

11 (c) If the director determines that the incident is not within  
12 the office's jurisdiction to investigate, the director shall decline  
13 to investigate, and shall give notice of the fact to the involved  
14 agency.

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

23 (7) In conducting the investigation the office shall have access  
24 to, and copies of, reports and information necessary or related to  
25 the investigation in the custody and control of the involved agency,  
26 911 emergency communication centers, and any law enforcement agency  
27 responding to the scene of the incident (~~(including)~~) as soon as  
28 possible. This includes, but is not limited to, voice or video  
29 recordings, body camera recordings, and officer notes, as well as  
30 disciplinary and administrative records except those that might be  
31 statements conducted as part of an administrative investigation  
32 related to the incident.

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

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

1 The office will conduct analysis of use of force and other data  
2 to the extent such data is available to the office. The director is  
3 authorized to enter into contracts or memoranda of understanding to  
4 access data as needed. If data is available, the office should, at a  
5 minimum, analyze and report annually: Analysis and research regarding  
6 any identified trends, patterns, or other situations identified by  
7 the data; and recommendations for improvements. (~~After July 1, 2024,~~  
8 ~~the office should also annually report recommendations, if any, for~~  
9 ~~expanding the scope of investigations or jurisdiction of the office~~  
10 ~~based on trends, data, or reports received by the agency.~~)

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

13 (1) (~~Following notification by the director that the office will~~  
14 ~~accept investigations of cases under its jurisdiction after July 1,~~  
15 ~~2022, an~~) An involved agency shall notify the office of any incident  
16 by an involved officer in accordance with the requirements under RCW  
17 43.102.050 and pursuant to this section.

18 (a) If the incident involves use of deadly force by an involved  
19 officer that results in death, substantial bodily harm, or great  
20 bodily harm the involved agency must immediately contact the office  
21 pursuant to the procedure established by the director once the  
22 involved agency personnel and other first responders have rendered  
23 the scene safe and provided or facilitated lifesaving first aid to  
24 persons at the scene who have life-threatening injuries. This  
25 requirement does not affect the duty of law enforcement under RCW  
26 36.28A.445.

27 (b) In all other cases, the involved agency must notify the  
28 office of the incident pursuant to the procedure established by the  
29 director.

30 (2)(a) In any case that requires notice to the director under  
31 this section, the involved agency shall ensure that any officers or  
32 employees over which the involved agency has authority who are at the  
33 scene of the incident take all lawful measures necessary for the  
34 purposes of protecting, obtaining, or preserving evidence relating to  
35 the incident until an office investigator, or independent  
36 investigation team at the request of the office, takes charge of the  
37 scene.

38 (b) The primary focus of the involved agency must be the  
39 protection and preservation of evidence in order to maintain the

1 integrity of the scene until the office investigator or independent  
2 investigation team arrives or otherwise provides direction regarding  
3 activities at the scene. The involved agency should ensure that  
4 evidence, including but not limited to the following is protected and  
5 preserved:

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

10 (ii) Identification and contact information for witnesses to the  
11 incident; and

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

14 (3) (a) When the office investigator, or independent investigation  
15 team acting at the request of the office, arrives at the scene of an  
16 incident under the jurisdiction of the office, the involved agency  
17 will relinquish control of the scene to the office investigator or  
18 independent investigation team upon the request of the office  
19 investigator. The involved agency has a duty to comply with the  
20 requests of the office related to the investigation conducted  
21 pursuant to this chapter.

22 (b) Once the scene is relinquished, no member of the involved  
23 agency may participate in any way in the investigation, with the  
24 exception of the use of specialized equipment that is necessary for  
25 the investigation and where no alternative exists. If there is any  
26 equipment of the involved agency used in the investigation, steps  
27 must be taken to appropriately limit the role of any involved agency  
28 personnel in facilitating the use of that equipment or their  
29 engagement with the investigation.

30 (4) If an independent investigation team takes control of the  
31 scene at the request of the office, the independent investigation  
32 team shall relinquish control of the scene and investigation at the  
33 request of the office when the office is on the scene or otherwise  
34 provides notice that the office is taking control of the scene. The  
35 independent investigation team may continue to engage in the  
36 investigation conducted at the scene if requested to do so by the  
37 lead office investigator, director, or the director's designee. The  
38 involvement of the independent investigation team is limited to  
39 activities requested by the office and must terminate following the  
40 securing of the scene and any evidence preservation or other actions



1 as determined necessary by the office at the scene. The independent  
2 investigation team may not continue to participate in the ongoing  
3 investigation.

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

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

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

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

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

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

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

26 (iii) The person, family, or representative of any person who is  
27 the subject of the action by the involved officer that is under  
28 investigation by the office must be notified by the office that the  
29 information was provided and, as soon as possible without  
30 jeopardizing the integrity of any investigation, be provided with the  
31 information contained in (b)(i) and (ii) of this subsection.

32 (6) If the office declines to investigate a case, the authority  
33 and duty to investigate remains with the independent investigation  
34 team or local law enforcement authority with jurisdiction over the  
35 incident."

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1        On page 1, line 4 of the title, after "practices;" strike the  
2 remainder of the title and insert "and amending RCW 43.102.010,  
3 43.102.050, 43.102.080, 43.102.100, and 43.102.120."

EFFECT: Strikes requirement that the OII report annual recommendations, if any, for expanding the scope of investigations or jurisdiction of the OII. Strikes the requirement that the OII advisory board assess whether the jurisdiction of the OII should be expanded to conduct investigations of other types of incidents.

--- END ---