
**Community Safety, Justice, & Reentry
Committee**

HB 1579

Brief Description: Establishing a mechanism for independent prosecutions within the office of the attorney general of criminal conduct arising from police use of force.

Sponsors: Representatives Stonier, Bateman, Lekanoff, Reed, Pollet and Macri.

Brief Summary of Bill

- Authorizes the Office of the Attorney General, with jurisdiction concurrent with prosecuting attorneys, to investigate and prosecute crimes involving police use of deadly force.
- Establishes the Independent Prosecutions Unit within the Office of the Attorney General.

Hearing Date: 1/31/23

Staff: Michelle Rusk (786-7153).

Background:

Use of Deadly Force by a Police Officer.

Deadly force means the intentional application of force using firearms or any other means reasonably likely to cause death or serious physical injury. Whether a police officer may be held criminally liable for use of deadly force depends on the specific crime alleged and any applicable defense. An officer has the same right of self-defense as other individuals. In addition, an officer's use of deadly force is justified when, in good faith, the deadly force is:

- applied without malice in obedience to the judgment of a competent court;
- used to overcome actual resistance to the execution of the legal process, mandate, or order

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- of a court or officer, or in the discharge of a legal duty;
- used to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;
- used to prevent escape from a federal or state correctional facility;
- used to prevent escape from a county or city jail or holding facility if the person escaping has been arrested for, charged with, or convicted of a felony; or
- used to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

Good faith exists when, objectively considering all facts, circumstances, and information known to the officer at the time, a similarly situated, reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

Office of Independent Investigations.

In 2021 the Legislature established the Office of Independent Investigations (OII) within the Office of the Governor and authorized the OII to conduct investigations into any incident:

- of a use of deadly force by an involved officer 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; or
- involving prior investigations of deadly force by an involved officer if new evidence is brought forth that was not included in the initial investigation.

After July 1, 2024, the OII may also report recommendations, if any, for expanding the scope of investigations or jurisdiction of the OII.

Criminal Prosecutions by the Office of the Attorney General.

The Office of the Attorney General (AGO) is authorized, with jurisdiction concurrent with county prosecuting attorneys, to investigate crimes and conduct prosecutions upon the request or with the concurrence of:

- the county prosecuting attorney;
- the Governor of Washington; or
- a majority of the committee charged with the oversight of the organized crime intelligence unit.

If both the county prosecuting attorney and the AGO file an information or indictment charging an individual with substantially the same offense, the court must determine whose prosecution of the case will best promote the interests of justice and enter an order designating the prosecuting authority in the case and dismissing the duplicative information or indictment.

Upon the written request of the Governor, the AGO must investigate violations of criminal law. If the AGO believes after the investigation that criminal laws are being improperly enforced in any county, and that the county prosecuting attorney has failed or neglected to prosecute criminal actions, the AGO must direct the county prosecuting attorney to take any remedial action the

AGO deems necessary and proper. If the county prosecuting attorney fails or neglects to comply with the AGO's directions in a reasonable timeframe, the AGO may prosecute those criminal actions in place of the county prosecuting attorney. If the AGO initiates or takes over a criminal prosecution, the county prosecuting attorney may not take any legal steps relating to the prosecution, except as authorized or directed by the AGO.

Summary of Bill:

Independent Prosecutions Unit.

The Office of the Attorney General (AGO) is authorized, with jurisdiction concurrent to prosecuting attorneys, to investigate, initiate, and conduct prosecutions of crimes involving police use of deadly force, as defined in RCW 9A.16.010, and any other investigations with the scope of the Office of Independent Investigations (OII). The Independent Prosecutions Unit (IPU), led by an independent prosecutor, is established within the AGO to investigate and prosecute these cases, and related offenses and defendants.

Independent Prosecutor.

The independent prosecutor is authorized to employ and train personnel, including attorneys, investigators, and other personnel as the independent prosecutor deems necessary. If the independent prosecutor decides criminal charges are not warranted in a case, the independent prosecutor must issue a public report that includes the results of the investigation and an explanation of the reasons for the decision, and post the report on the IPU's website. If an alleged criminal offense has been committed by an officer of an agency to whom the AGO provides legal advice and representation, the AGO must take appropriate steps to assign counsel, staff, and supervision to eliminate any appearance of or actual conflicts of interest.

Designating the Prosecuting Authority.

If both the county prosecuting attorney and the AGO file an information or indictment charging an officer with substantially the same offense related to the use of deadly force, a court must determine whose prosecution of the case will best promote the interests of justice and enter an order designating the prosecuting authority in the case and dismissing the duplicative information or indictment. In making its determination, the court must prioritize the public's interest in ensuring a fair and impartial prosecution and trial that is free from even the appearance of bias, prejudice, or conflict of interest, and the county prosecuting must overcome a presumption that they have an inherent conflict of interest in any matter arising from an investigation within the scope of the OII.

County Prosecuting Attorneys.

In any case involving an officer's use of deadly force, the county prosecuting attorney must determine whether recusal is necessary to preserve public confidence or prevent a conflict of interest. A conflict of interest exists if:

- the prosecutor has a relationship with the officer or the officer's employer such that the prosecutor's decision or pursuit of charges may be materially impacted;
- the prosecutor has a duty to represent the officer's employing agency in any civil action

arising from the same underlying incident and the prosecutor's decision might be materially impacted by the duty to defend; or

- there is a significant risk that the prosecutor's ability to consider or carry out an appropriate course of action will be materially limited due to the prosecutor's other responsibilities or interests.

If recusal is necessary, the county prosecuting attorney must either: (1) transfer the case to the IPU within 30 days of receiving the case; or (2) appoint, in writing signed by the county prosecuting attorney and filed with the county auditor, a conflict-free special deputy prosecuting attorney (special DPA) who must be the final decision maker as to prosecutorial decisions for the case. If appointed, the special DPA may only be removed from the case for cause and with approval of the court. If the county prosecuting attorney fails to transfer the case when recusal is necessary, the court must order the IPU to discharge the responsibilities of the county prosecuting attorney.

If the county prosecuting attorney or special DPA decides not to file charges in a case involving an officer's use of deadly force, the county prosecuting attorney or special DPA must refer the case and all investigative materials to the IPU within 30 days of the decision not to file charges.

The Office of Independent Investigations.

The OII is directed to send its completed investigations and referrals to both the county prosecuting attorney of the jurisdiction where the offense occurred and the IPU. The completed investigation and referral must include an analysis of whether recusal by the prosecuting attorney is appropriate under the ethical rules applicable to all lawyers, or to preserve public confidence.

Appropriation: None.

Fiscal Note: Requested on January 25, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.