

7. **Establish a monitoring and review mechanism to ensure existing requirements for independent investigations regarding the use of deadly force are followed. Additionally, explore models for creating a completely independent statewide deadly force investigative team governed by a board that includes community members.**

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PART I FINDINGS AND INTENT

NEW SECTION Sec 1. (1) The Legislature finds that independent investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm are a necessary component to repairing and building public trust in the public service of law enforcement.

(2) The Legislature further finds that the current practice for independent investigations enables the perception that such investigations are not fully independent and objective.

(3) The Legislature further finds that it is necessary to establish a new state law enforcement agency with the sole purpose of conducting independent investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011.

(4) The Legislature recognizes that it is necessary to make incremental improvements to the existing system of independent investigations while a new state law enforcement agency is formed and becomes operational.

PART II CREATING A COMPLETELY INDEPENDENT DEADLY FORCE INVESTIGATIONS AGENCY

NEW SECTION Sec. 201. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

(1) There is hereby created a department of state government known as the Washington deadly force investigations agency.

(2) The sole purpose of the agency is to conduct completely independent investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011 and in compliance with rules adopted by the criminal justice training commission pursuant to RCW 10.114.011.

(3) The agency shall be a limited law enforcement agency as defined in RCW 10.93.020, for the sole purpose of, and authority to, conduct completely independent criminal investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011.

NEW SECTION Sec. 202. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

The agency shall be governed by a board, which shall consist of the following:

- (1) Two sheriffs appointed by the Governor;
- (2) Two police chiefs appointed by the Governor;
- (3) The Chief of the Washington State Patrol;
- (4) One Prosecuting Attorney appointed by the Governor;
- (5) One person employed in a city law enforcement agency with experience conducting homicide investigations appointed by the Governor;
- (6) One person employed in a county law enforcement agency with experience conducting homicide investigations appointed by the Governor;
- (7) The Executive Director of the Commission on African American Affairs;
- (8) The Executive Director of the Commission on Asian Pacific American Affairs;
- (9) The Executive Director of the Commission on Hispanic Affairs;
- (10) The Executive Director of the Governor's Office of Indian Affairs;
- (11) One person representing families of individuals against whom a Washington peace officer used deadly force appointed by the Governor;
- (12) Two members of the general public appointed by the Governor; and
- (13) The Executive Director of the Criminal Justice Training Commission, who shall be an ex officio nonvoting member.

NEW SECTION Sec. 204. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

- (1) All members appointed to the board by the governor shall be appointed for terms of six years, such terms to commence on July first, and expire on June thirtieth: PROVIDED, That of the members first appointed three shall be appointed for two year terms, three shall be appointed for four year terms, and three shall be appointed for six year terms: PROVIDED, FURTHER, That the terms of the two members appointed as police chiefs shall not expire in the same year nor shall the terms of the two members appointed as sheriffs expire in the same year. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he or she is to succeed. Any member may be reappointed for additional terms.
- (2) Any member of the board appointed pursuant to Section 202 of this act by virtue of their elected or appointed position shall immediately upon the termination of his or her holding of said office or employment, cease to be a member of the board.

NEW SECTION Sec. 205. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

(1) The board shall elect a chair and a vice chair from among its members. Eight members of the board shall constitute a quorum. The Governor shall summon the board to its first meeting. Meetings may be called by the chair and shall be called by him or her upon the written request of four members.

(2) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060. Attendance at meetings of the commission shall be deemed performance by a member of the duties of his or her employment.

NEW SECTION Sec. 206. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

The board:

(1) must select and employ an executive director to oversee the implementation of the purpose of the agency;

(2) must establish policies as it deems necessary pursuant to the purpose of the agency;

(3) must designate specific personnel positions as limited authority Washington peace officers for the sole purpose of conducting completely independent investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011;

(4) must adopt policies and procedures to ensure that actions of the board and board members are isolated from bias and political influence;

(5) must adopt policies and procedures to ensure that it can properly oversee the activities of the agency and the executive director without involving itself or any board member in any investigation conducted by the agency pursuant to its purpose;

(6) must adopt policies and procedures to ensure the complete independence of the agency and all agency employees in the execution of their assigned duties, including, but not limited to, prohibiting the provision of mutual aid or mutual law enforcement assistance pursuant to RCW 10.93;

(7) must ensure that employees of the agency are sufficiently trained and properly equipped to carry out their assigned duties; and

(8) must ensure that the agency is capable of dispatching an independent investigative team to any scene anywhere in the state, 24 hours a day, 365 days a year whenever a Washington peace officer is alleged to have used deadly force that results in death, substantial bodily harm, or great bodily harm to assume control of the scene and conduct the independent investigation as required by RCW 10.114.011.

NEW SECTION Sec. 207. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

Employees of the agency assigned by the Executive Director to positions designated by the board as limited authority Washington peace officers:

- (1) must be certified Washington peace officers in good standing ;
- (2) are explicitly prohibited from taking any law enforcement action other than conducting completely independent investigations into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011; and
- (3) are explicitly prohibited from being simultaneously employed by, commissioned by, have any business relationship with, or occupy any position or role in, any other law enforcement or corrections agency.

PART III INCREMENTAL IMPROVEMENTS

NEW SECTION Sec. 301. A NEW SECTION is added to chapter 10.114 RCW to read as follows:

(1) A law enforcement agency conducting an independent investigation into the use of deadly force by a peace officer that results in death, substantial bodily harm, or great bodily harm as required by RCW 10.114.011 must, at the conclusion of the investigation, submit to the prosecuting attorney its certification, signed under penalty of perjury by all members of the independent investigations team, that the investigation was:

(a) completely independent of the agency whose officer was involved in the use of deadly force; and

(b) in compliance with the rules adopted by the criminal justice training commission pursuant to RCW 10.114.011 by listing each of substantive provision of the applicable rules adopted by the commission and indicating whether the independent investigation complied with the provision, did not comply with the provision, or the provision was not applicable.

(2) Any peace officer who knowingly falsifies or provides misleading information on a certification required by this section, or knowingly signs a certification required by this section that contains false or misleading information is deemed to have violated their duty to be truthful and honest in the conduct of their official business pursuant to RCW 43.101.021, and is deemed to have committed disqualifying misconduct for the purposes of revocation of peace officer certification pursuant to RCW 43.101.105.

(3) The requirements of this section are intended solely for the guidance of prosecutors in the state of Washington and are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

NEW SECTION Sec. 302. A NEW SECTION is added to chapter 36.27 RCW to read as follows:

A prosecuting attorney receiving the investigative report pursuant to an independent investigation as required by RCW 10.114.011 without a certification as required by this section, with a certification that indicates the investigation was not completely independent of the agency whose officer was involved in the use of deadly force, with a certification that indicates that the investigation was not in full compliance with all applicable provisions of the rules adopted by the criminal justice training

commission pursuant to RCW 10.114.011, or without the signature of all members of the independent investigations team must:

(a) prepare and publish a public document examining any failures or weaknesses identified by the prosecuting attorney regarding the independent investigation; and

(b) if the prosecuting attorney considers the independent investigation invalid, inadmissible, or otherwise irreparable, consider all available options to secure a new independent investigation.

PART IV MISCELLANEOUS PROVISIONS

NEW SECTION Sec. 401. A NEW SECTION is added to chapter 10.114 RCW to read as follows: The Legislature hereby declares that, except as required by federal consent decree, federal settlement agreement, or federal court order, any provision of any local regulation, ordinance, collective bargaining agreement, memorandum of understanding, policy, or practice that hinders or prevents a completely independent investigation as required by RCW 10.114.011 is hereby null and void.

NEW SECTION Sec. 402. A NEW SECTION is added to chapter 41.56 RCW to read as follows: Notwithstanding any provisions of this chapter, the provisions of this act and the implementation thereof do not constitute personnel matters, working conditions, or any other change that require collective bargaining.

NEW SECTION Sec. 403. To the extent that the any provision of this act conflicts with any local regulation, ordinance, collective bargaining agreement, memorandum of understanding, policy, or practice, the provisions of this act shall prevail and the conflicting provision shall be null and void.

NEW SECTION Sec. 404. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Sec. 405. RCW 10.93.020 is amended to read as follows:

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

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and

apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor ~~control~~ and cannabis board, the office of the insurance commissioner, the deadly force investigations agency created in section 201 of this act, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

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

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

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

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

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

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

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

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