

# Multiple Agency Fiscal Note Summary

|   |  |
|---|--|
| <b>Bill Number:</b> 1579 2S HB AMS LAW<br>S2569.1 | <b>Title:</b> Independent prosecutions |
|---|--|

## Estimated Cash Receipts

NONE

| Agency Name         | 2023-25          |       | 2025-27   |       | 2027-29   |       |
|---------------------|------------------|-------|-----------|-------|-----------|-------|
|                     | GF- State        | Total | GF- State | Total | GF- State | Total |
| Local Gov. Courts   | No fiscal impact |       |           |       |           |       |
| Loc School dist-SPI |                  |       |           |       |           |       |
| Local Gov. Other    |                  |       |           |       |           |       |
| Local Gov. Total    |                  |       |           |       |           |       |

## Estimated Operating Expenditures

| Agency Name                          | 2023-25     |                   |                   |                   | 2025-27     |                   |                   |                   | 2027-29     |                   |                   |                   |
|--------------------------------------|-------------|-------------------|-------------------|-------------------|-------------|-------------------|-------------------|-------------------|-------------|-------------------|-------------------|-------------------|
|                                      | FTEs        | GF-State          | NGF-Outlook       | Total             | FTEs        | GF-State          | NGF-Outlook       | Total             | FTEs        | GF-State          | NGF-Outlook       | Total             |
| Administrative Office of the Courts  | .0          | 0                 | 0                 | 0                 | .0          | 0                 | 0                 | 0                 | .0          | 0                 | 0                 | 0                 |
| Office of Attorney General           | 28.1        | 11,001,000        | 11,001,000        | 11,001,000        | 56.2        | 21,987,000        | 21,987,000        | 21,987,000        | 56.2        | 21,972,000        | 21,972,000        | 21,972,000        |
| Office of Independent Investigations | .0          | 144,000           | 144,000           | 144,000           | .0          | 288,000           | 288,000           | 288,000           | .0          | 288,000           | 288,000           | 288,000           |
| <b>Total \$</b>                      | <b>28.1</b> | <b>11,145,000</b> | <b>11,145,000</b> | <b>11,145,000</b> | <b>56.2</b> | <b>22,275,000</b> | <b>22,275,000</b> | <b>22,275,000</b> | <b>56.2</b> | <b>22,260,000</b> | <b>22,260,000</b> | <b>22,260,000</b> |

| Agency Name         | 2023-25  |          |       | 2025-27 |          |       | 2027-29 |          |       |
|---------------------|--|----------|-------|---------|----------|-------|---------|----------|-------|
|                     | FTEs   | GF-State | Total | FTEs    | GF-State | Total | FTEs    | GF-State | Total |
| Local Gov. Courts   | No fiscal impact   |          |       |         |          |       |         |          |       |
| Loc School dist-SPI |  |          |       |         |          |       |         |          |       |
| Local Gov. Other    | Non-zero but indeterminate cost and/or savings. Please see discussion. |          |       |         |          |       |         |          |       |
| Local Gov. Total    |  |          |       |         |          |       |         |          |       |

## Estimated Capital Budget Expenditures

| Agency Name                          | 2023-25    |          |          | 2025-27    |          |          | 2027-29    |          |          |
|--------------------------------------|------------|----------|----------|------------|----------|----------|------------|----------|----------|
|                                      | FTEs       | Bonds    | Total    | FTEs       | Bonds    | Total    | FTEs       | Bonds    | Total    |
| Administrative Office of the Courts  | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| Office of Attorney General           | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| Office of Independent Investigations | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| <b>Total \$</b>                      | <b>0.0</b> | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> |

| Agency Name         | 2023-25  |          |       | 2025-27 |          |       | 2027-29 |          |       |
|---------------------|--|----------|-------|---------|----------|-------|---------|----------|-------|
|                     | FTEs   | GF-State | Total | FTEs    | GF-State | Total | FTEs    | GF-State | Total |
| Local Gov. Courts   | No fiscal impact   |          |       |         |          |       |         |          |       |
| Loc School dist-SPI |  |          |       |         |          |       |         |          |       |
| Local Gov. Other    | Non-zero but indeterminate cost and/or savings. Please see discussion. |          |       |         |          |       |         |          |       |
| Local Gov. Total    |  |          |       |         |          |       |         |          |       |

## Estimated Capital Budget Breakout

|                                    |                                 |   |
|------------------------------------|---------------------------------|---|
| <b>Prepared by:</b> Val Terre, OFM | <b>Phone:</b><br>(360) 280-3973 | <b>Date Published:</b><br>Final 1/30/2024 |
|------------------------------------|---------------------------------|---|

# Judicial Impact Fiscal Note

|   |  |   |
|---|--|---|
| <b>Bill Number:</b> 1579 2S HB AMS<br>LAW S2569.1 | <b>Title:</b> Independent prosecutions | <b>Agency:</b> 055-Administrative Office of<br>the Courts |
|---|--|---|

## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

*The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

|                                |                       |                  |
|--------------------------------|-----------------------|------------------|
| Contact                        | Phone:                | Date: 01/23/2024 |
| Agency Preparation: Chris Conn | Phone: 360-704-5512   | Date: 01/29/2024 |
| Agency Approval: Chris Stanley | Phone: 360-357-2406   | Date: 01/29/2024 |
| OFM Review: Gaius Horton       | Phone: (360) 819-3112 | Date: 01/29/2024 |

192,427.00

Request # 141-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

The substitute would not make any changes affecting the fiscal impact to the Administrative Office of the Courts or the courts.

### II. B - Cash Receipts Impact

None

### II. C - Expenditures

No or minimal fiscal impact to the Administrative Office of the Courts.

## Part III: Expenditure Detail

### III. A - Expenditure By Object or Purpose (State)

NONE

### III. B - Expenditure By Object or Purpose (County)

NONE

### III. C - Expenditure By Object or Purpose (City)

NONE

### III. D - FTE Detail

NONE

### III. E - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B1 - Expenditures by Object Or Purpose (State)

NONE

### IV. B2 - Expenditures by Object Or Purpose (County)

NONE

### IV. B3 - Expenditures by Object Or Purpose (City)

NONE

### IV. C - Capital Budget Breakout

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

None

192,427.00

Form FN (Rev 1/00)

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Request # 141-1

Bill # 1579 2S HB AMS LAW S2569.1

# Individual State Agency Fiscal Note

|   |  |  |
|---|--|--|
| <b>Bill Number:</b> 1579 2S HB AMS<br>LAW S2569.1 | <b>Title:</b> Independent prosecutions | <b>Agency:</b> 100-Office of Attorney<br>General |
|---|--|--|

## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

|                               | FY 2024 | FY 2025    | 2023-25    | 2025-27    | 2027-29    |
|-------------------------------|---------|------------|------------|------------|------------|
| FTE Staff Years               | 0.0     | 56.2       | 28.1       | 56.2       | 56.2       |
| <b>Account</b>                |         |            |            |            |            |
| General Fund-State      001-1 | 0       | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |
| <b>Total \$</b>               | 0       | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

|                                    |                       |                  |
|------------------------------------|-----------------------|------------------|
| Legislative Contact:               | Phone:                | Date: 01/23/2024 |
| Agency Preparation: Chad Standifer | Phone: 3605863650     | Date: 01/26/2024 |
| Agency Approval: Edd Giger         | Phone: 360-586-2104   | Date: 01/26/2024 |
| OFM Review: Val Terre              | Phone: (360) 280-3973 | Date: 01/29/2024 |

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

Section 1 - Amends RCW 43.10.230. Changes purpose with respect to granting concurrent authority with the Attorney General and county prosecutors to cover incidences of deadly force by officers.

Section 2 - Amends RCW 43.10.232. Allows the Attorney General's Office (AGO) concurrent authority to investigate, initiate and conduct prosecutions of crimes involving the use of deadly force by police officers. Additionally allows prosecution of related offenses and defendants. The AGO is responsible for its expert witness fees and other costs of prosecution.

Section 3 - Amends RCW 43.10.234. Considerations court makes when designating prosecuting authority where an information or indictment is filed by both the AGO and the Prosecuting Attorney. Presumption that a county Prosecuting Attorney has an inherent conflict of interest in a matter investigated by the Office of Independent Investigations (OII). Presumption that the Attorney General has an inherent conflict of interest in a matter involving a state peace officer or state employee.

Section 4 - New section. Legislative findings.

Section 5 - New section. Establishment of the Office of Independent Prosecutions (OIP) within the AGO.

Section 6 - New section. Sets out authority and role of OIP and has the Attorney General appoint an Independent Counsel to lead unit.

Section 7 - New section. Creates OIP advisory board.

Section 8 - New section. Minimum criteria for Independent Counsel and term limit.

Section 9 - New section. Sets out powers of Independent Counsel.

Section 10 - New section. Personnel who Independent Counsel can contract with or employ.

Section 11 - New section. Independent Counsel may appoint Assistant Attorneys General (AAG) or Special Assistant Attorneys General (SAAG) to carry out certain functions.

Section 12 - New section. Nothing prevents law students from working as volunteer or paid interns in OIP.

Section 13 - New Section. Applies the Public Records Act (PRA), RCW 42.56, and provides rules for disclosure of OIP records.

Section 14 - New section. Provides that no action may be instituted against independent counsel for performing duties in good faith.

Section 15 - New section. Definitions in RCW 43.102.010 apply to Sections 4 through 14 of this act.

Section 16 - Amends RCW 36.27.020. Sets out procedures for a court to transfer case to independent unit when prosecutor has conflict of interest.

Section 17 - Amends RCW 36.27.030. Standard for court to order Independent Counsel to take over prosecution.

Section 18 - New section. Adds to chapter 36.27 RCW. If prosecutor declines to file it must refer case to the OIP.

Section 19 - Amends RCW 43.102.080. Requires an OII investigation to be sent to the county prosecuting attorney with jurisdiction and the OIP.

Section 20 - Amends RCW 41.80.400. Excludes Independent Counsel from collective bargaining unit.

Section 21 - Amends RCW 10.114.011. Investigatory reports are handled in accordance with RCW 43.102.080.

Section 22 - New section. Severability clause.

Section 23 - New section. If funding is not provided by June 30, 2023, the act is void.

Section 24 - New section. Sections 4 through 15 are added to chapter 43.10 RCW.

Section 25 - New section. Section 2, 3, 16, 17, 18, and 19 are effective July 1, 2024.

## **II. B - Cash receipts Impact**

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

GF-S Account 001-1: The newly created Attorney General's Office Independent Prosecutions (OIP) activities would be funded with General Fund-State dollars. No cash receipt impact. There is no client agency to bill for legal services.

## **II. C - Expenditures**

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

Attorney General's Office (AGO) Agency Assumptions:

Legal services associated with the enactment of this bill will begin on July 1, 2024 (FY 2025)

Location of staffing is assumed to be in a non-King County office building.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables. The Management Analyst 5 FTE (MA), is used as a representative classification. An example ratio is for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 Paralegal 1 FTE (PL1) and 0.4 MA.

Agency Administrative staff included in this request:

One Information Technology (IT) Support Technician 2 for support in wiring and networking, local area network (LAN) management, and ongoing technical support.

One IT Security-Senior Specialist to conduct and maintain data security of business systems used by this office, manage ongoing IT risk assessments, and ensure compliance with applicable laws, regulations and statewide security policies related to data sharing with local law enforcement.

Three MA to support for ongoing timekeeping, payroll, budgeting and projection of expenditures, accounting transactions and report generation.

A Contracts Specialist 2 (CS2) to help draft expert witness and other litigation related contracts, interpreter and potential Special Assistant Attorneys General (SAAG) contracts. This includes but is not limited to, contract preparation assistance, review, tracking, data entry, reporting and payment review.

One Policy Analyst (PA) Administrative support to create, convene, and maintain the Office of Independent Prosecution Advisory Board (OIPAB) in the performance of the duties outline in Section 7. Provide assistance and support for regular meetings. Administrative support to author and submit to the Legislature a report on the new Office of Independent Investigations (OII) by November 1, 2026.

#### 1. Assumptions for a new AGO Office of Independent Prosecution Division (OIP):

Sections 5 and 8 of this bill would require the creation of a new division in the AGO called the OIP and headed by an “Independent Counsel” (IC) appointed by the Attorney General (AG). This note presumes the IC would be compensated at or near the compensation for a senior AAG - division chief. OIP would review cases of police use of deadly force for potential criminal charges. OIP would also handle a large volume of complex, controversial, high-profile, expensive, time-consuming cases. There is limited data available on the number of incidents per year where police use deadly force in Washington State because that is not information that is tracked or collected. It is difficult to estimate exactly how many cases would come to the AGO if this bill passed, and consequently difficult to estimate how many FTE the AGO would need to perform the work required. This fiscal note adopts the projections of the OII, which will be the primary investigating agency for these cases and estimates approximately 220 cases involving use of deadly force per year; and approximately 30 cases per year resulting in death.

Section 7 requires the formation of an advisory board that selects candidates for the IC for the AG to select from. If this bill were enacted, it would take time for this advisory board to be created, supported, and for the board to identify candidates. After the AG hires an IC, the AG by statute is essentially removed from the decision-making of the new division. Consequently, the new division cannot be formed until an IC is hired; and the new division cannot review or prosecute cases until the IC has had an opportunity to staff an entire division. This will take time and should be considered when determining when to fund this division and when to make it active. The board must also research the history of the candidates, including criminal history, disciplinary history, social media, etc. The Administrative Division (ADM) Policy Unit would be tasked with creating, maintaining, and supporting the advisory board, and providing a required report to the legislature in 2026.

Sections 1, 2 and 3 give the OIP authority or jurisdiction over officer use of deadly force cases. The fiscal note assumes that over time almost all, if not all, such cases will be reviewed by the AGO despite the concurrent jurisdiction of the county prosecutors. This presumption is based upon (a) the high bar set forth in the bill for county prosecutors to overcome a presumption of conflict, and (b) the perceived likelihood that understaffed prosecutors’ offices with high caseloads will want the AGO to handle these expensive and difficult cases at no cost to the county prosecutor, similar to what happened when the Legislature passed the Community Protection Act of 1990 and gave concurrent authority to the AGO and counties for expensive, time-consuming sexually violent predator (SVP) cases. The AGO now handles all SVP cases in 38 of the 39 counties at the request of the county prosecutors. 2SHB 1579 allows the county prosecutor to review use of deadly force cases if the prosecutor has no conflict of interest. Those cases where the county prosecutor recognizes a conflict, or that are reviewed but not charged by the county, then come to the AGO for review. This will likely be the vast majority of cases. If the county prosecutor determines they have no conflict and charge a case, the AGO still reviews the case and the AGO can also charge the case if it believes greater charges should have been filed (unlikely but possible). In short, every single case of officer use of deadly force will be reviewed by the AGO under 2SHB 1579 regardless of what the county prosecutor does. Many cases will be voluminous and require intense and lengthy review, others less so. Some will require years of litigation, others none. The AGO would be tasked by this bill with reviewing each case for potential criminal charges; and filing and litigating those cases that warrant criminal charges (as well as appeals and other post-conviction



litigation). The following needs are based upon best estimates considering all of these circumstances.

One Senior AAG-Division Chief (DC) - “IC”

Organize and create the division

Interview employee candidates and make hiring decisions as required by Sections 10 and 11 of the bill

Manage and supervise the division

Manage the budget

Provide for necessary training for division employees

Acquire necessary resources for the division

Complete performance evaluations

Liaison with law enforcement, county prosecutors, others

Manage public records response processes

Manage responses to constituent inquiries

Liaison with AGO Media Relations

Supervise Managing AAGs and evaluate their performance

Create and cause training required by Section 10 of the bill

Three Managing AAGs (MAAG)

Serve as trial and review team leaders

Supervise groups of five - six employees

Performance evaluations

Handle partial caseload as described below

Supervise AAGs

Supervise Paralegal 3s

Supervise Crime Victim Advocate Supervisor

Supervise Crime Victim Advocates

Manage public records issues and responses as required by Section 13 of the bill

Manage responses to constituent inquiries

15 AAGs

Handle 12-20 use of deadly force cases at any given time. 220 cases per year divided by 18 AAGs (three MAAG and 15 AAG) averages 12 cases per attorney. However, some cases may last years, especially those that are charged and tried, and over time caseloads would be expected to build for each AAG. The MAAGs and AAGs would also have other duties in addition to their cases (public records responses and reviews, administrative and supervisory tasks, internal team meetings, responding to constituent correspondence, training, meetings with stakeholders, bill analyses, etc.)

Work with investigators on the investigation

Providing consultation

Brainstorming investigative ideas

Reviewing search warrants

Obtaining necessary court orders

Cause Garrity reviews. This is the screening the completed investigations before a prosecutor reviews the case to ensure no compelled statements from police officers—which cannot be considered—are included in the investigative files

Review the investigation for potential criminal charges as required by Section 9(2) of the bill

Review investigative reports, medical reports, witness statements, audio and video evidence

Discuss case with investigators

Consulting and hiring experts

Medical doctors, including forensic pathologists

Use of force experts

Requesting follow-up investigation by investigating agency

Staffing cases with colleagues and supervisors

Drafting memos

Meetings  
Presentations  
Preparing letters or reports explaining decisions to decline criminal charges  
Meetings with surviving person subjected to deadly force or family of deceased  
Preparing charging documents  
Prosecuting charged cases (two AAGs per case)  
Legal research  
Drafting pleadings  
Filing motions  
Responding to motions  
Court appearances and evidentiary hearings  
Meetings with law enforcement investigators  
Meeting and interviewing prosecution civilian and expert witnesses  
Interviewing defense witnesses  
Attending defense interviews of prosecution witnesses  
Meetings with victim or family of deceased  
Meetings with AGO staff (supervisors, co-counsel, paralegals, investigators)  
Trials  
Travel for court, interviews and meetings  
Appeals  
Respond to interlocutory appeals  
Defend convictions on appeal  
Respond to post-conviction motions/personal restraint petitions  
Court appearances  
Public Records (Section 13)  
Provide advice to AGO staff responding to public records requests  
Every case is likely to be the subject of a public records request  
Review and redact AGO documents (correspondence, investigative materials, etc.) as necessary in response to public records requests  
Respond to constituent correspondence and inquiries  
Supervise, assign work to legal interns as allowed by Section 12

One Administrative Operations Manager (AOM)  
Manage the day to day administrative and fiscal operations of the division

Three Paralegal (PL) 3s  
Supervise PLs and supervising legal assistant(s),  
Performance evaluations  
Manage public records intake and responses as required by Section 13  
Carry partial caseload (described below for PL2s)

Seven PL2s  
Respond to public records requests  
Review records  
Redact records  
Ensure attorneys review and redact records as necessary  
Coordinate discovery from completed investigations  
Organize investigative files received from investigating agency for review by AAGs  
Run criminal histories as needed  
Coordinate meetings and interviews of witnesses for individual cases  
Support assigned trial prosecutors for charged cases

Handle discovery  
Subpoenas for witnesses  
Subpoenas duces tecum  
Coordinate witness interviews and court appearances  
Use software for trial organization and presentation of evidence  
Create trial exhibits  
Assist at trial with courtroom technology and witness scheduling

Social Services Specialist 3 (Crime Victim Advocate (CVA)) (to ensure Section 9(1)(e))

One Victim Advocate Supervisor

Supervises four Victim Advocates

Evaluates performance

Liaison between AGO and injured person or the family of deceased

Provide comfort and support to injured persons or family of deceased

Connect injured person or family of deceased with needed resources

Counseling

Financial assistance

Legal assistance

Collect restitution information

Medical expenses

Funeral expenses

Attend meetings between AGO and injured person or family of deceased

Attend defense interviews of injured person or family members of deceased and other State's witnesses

Assist in scheduling court appearances for injured person or family members of deceased

Attend court appearances where injured person or family of deceased will attend

OII employs victim advocates for the death cases it presently investigates who can work with the surviving family from start to finish. This fiscal note, for all use of deadly force cases including those with no death, presumes that OII cannot provide victim advocacy for all persons and families impacted by use of deadly force not resulting in death

Data Consultant (DC) 2

Create data points from the review and prosecution of these cases

Collect and organize data in a database

Reach out to local, state, and federal criminal justice partners for data and information as needed

Analyze data as needed on specific cases

Cell phone data

Timelines

Police agency organization, policies and practices

Criminal organizations

Bank records

Other

Create annual (or other) report of the division's cases and outcomes

Nine PL1s

Maintain and update case files for assigned AAGs

Draft, proofread, serve, and file legal pleadings and correspondence

Independently compose routine correspondence to courts and parties

Schedule hearings by coordinating with the court and opposing counsel

Schedule depositions by coordinating dates with parties, securing facilities, court reporters, and videographers

Utilize the case management system to track deadlines and log documents

Assist AAG and PLs in organizing and preparing trial notebooks, pleadings, and exhibits to be used at trial

Track and organize discovery materials

Arrange travel and processed travel reimbursements for AAG  
Process invoices and incoming mail

The AGO assumes the new division will be located in Thurston County and additional lease space will be necessary for staff. The AGO assumes \$550,000 per FY based on current lease contract rates in the Bristol Court Office Building.

Expert Witnesses: \$1 million per FY.

Some cases will require no paid expert consultation while other cases will require extensive use of experts (use of force experts, pathologists, medical experts, audio and video experts, etc.). The AGO may need to hire an independent attorney, or SAAG, for (a) conflict cases where a state agency client of the AGO is involved, or the AGO for whatever other reason has a conflict of interest, or (b) caseloads are more than projected or more than current staff can handle and hiring outside help becomes necessary.

Litigation Travel: \$250,000 per FY.

AAG Travel: \$220,000 per FY for potential crime scene response; attend autopsies; meetings with investigators; meetings with medical examiner and doctors; meetings with injured person or family of deceased; interviewing witnesses; attend defense interviews, court appearances, and trial.

CVA Travel: \$20,000 per FY;

PLs Travel for Trials: \$10,000 per FY.

Contract interpreter services: \$150,000 per FY (\$150 per hour x 1,000 estimated annual hours)

For witnesses, injured parties, or family of deceased where English is not their first language.

Data storage costs: \$250,000 per FY

For anticipated large volumes of video evidence (police body-worn camera video, police dash camera video, cell phone video, doorbell video, store security camera video).

Video Files (720p HD at 30 frames per sec) and 3.5 gigabyte (GB) per hour.

10 Videos per Case at 35 GB per case.

50 Cases per FY = 1,750 GB per FY.

Everlaw Cost (2023 estimated rate) totals \$9,960 per fiscal month.

\$119,520 annual cost is rounded up to \$120,000 per FY.

File retention from the previous FY is required as well as new electronic files for the current FY.

Statutorily required regular training (Section 10): \$50,000 per FY

AGO support for Advisory Board (Section 7): \$14,500 per FY for fiscal years 2025-2026.

OIP: Total non-King County workload impact:

FY 2025 and FY 2026: \$11,001,000 for 1.0 DC, 3.0 MAAG, 15.0 AAG, 1.0 AOM, 3.0 PL3, 7.0 PL2, 9.0 PL1, 1.0 CVA Supervisor, 4.0 CVA, 1.0 DC2, 7.7 MA, 1.0 IT Support Tech 2, 1.0 IT Security Senior Specialist, 1.0 PA and 0.5 CS2, this includes litigation costs of \$2,564,500

FY 2027 and in each FY thereafter: \$10,986,000 for 1.0 DC, 3.0 MAAG, 15.0 AAG, 1.0 AOM, 3.0 PL3, 7.0 PL2, 9.0 PL1, 1.0 CVA Supervisor, 4.0 CVA, 1.0 DC2, 7.7 MA, 1.0 IT Support Tech 2, 1.0 IT Security Senior Specialist, 1.0 PA and 0.5 CS2, this includes litigation costs of \$2,550,000

2. The AGO Government Compliance & Enforcement Division (GCE) has reviewed this bill and determined it will not increase or decrease the division's workload in representing the OII. This bill would establish within the AGO OIP, and would give the AGO concurrent authority with prosecuting attorneys to investigate and prosecute crimes involving the use of deadly force by police officers and any other investigations within the scope of the OII. Upon the completion of an investigation, OII would be required to send the completed investigation and referral to both the county prosecutor and OIP.

Therefore, no costs are included in this request.

### Part III: Expenditure Detail

#### III. A - Operating Budget Expenditures

| Account         | Account Title | Type  | FY 2024 | FY 2025    | 2023-25    | 2025-27    | 2027-29    |
|-----------------|---------------|-------|---------|------------|------------|------------|------------|
| 001-1           | General Fund  | State | 0       | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |
| <b>Total \$</b> |               |       | 0       | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |

#### III. B - Expenditures by Object Or Purpose

|                                  | FY 2024 | FY 2025   | 2023-25    | 2025-27    | 2027-29    |            |
|----------------------------------|---------|-----------|------------|------------|------------|------------|
| FTE Staff Years                  |         | 56.2      | 28.1       | 56.2       | 56.2       |            |
| A-Salaries and Wages             |         | 5,677,000 | 5,677,000  | 11,354,000 | 11,354,000 |            |
| B-Employee Benefits              |         | 1,786,000 | 1,786,000  | 3,572,000  | 3,572,000  |            |
| C-Professional Service Contracts |         | 1,000,000 | 1,000,000  | 2,000,000  | 2,000,000  |            |
| E-Goods and Other Services       |         | 2,238,000 | 2,238,000  | 4,461,000  | 4,446,000  |            |
| G-Travel                         |         | 300,000   | 300,000    | 600,000    | 600,000    |            |
| <b>Total \$</b>                  |         | 0         | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |

#### III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

| Job Classification                             | Salary  | FY 2024 | FY 2025 | 2023-25 | 2025-27 | 2027-29 |
|--|---------|---------|---------|---------|---------|---------|
| Admin Office Manager                           | 100,000 |         | 1.0     | 0.5     | 1.0     | 1.0     |
| Assistant Attorney General                     | 129,100 |         | 15.0    | 7.5     | 15.0    | 15.0    |
| Contracts Specialist 2                         | 75,552  |         | 0.5     | 0.3     | 0.5     | 0.5     |
| Crime Victim Advocate - Supervisor             | 95,000  |         | 1.0     | 0.5     | 1.0     | 1.0     |
| Data Consultant 2                              | 78,120  |         | 1.0     | 0.5     | 1.0     | 1.0     |
| Division Chief                                 | 150,000 |         | 1.0     | 0.5     | 1.0     | 1.0     |
| IT Security - Senior/Specialist                | 120,456 |         | 1.0     | 0.5     | 1.0     | 1.0     |
| IT Support Technician 2                        | 61,056  |         | 1.0     | 0.5     | 1.0     | 1.0     |
| Management Analyst 5                           | 95,184  |         | 7.7     | 3.9     | 7.7     | 7.7     |
| Managing AAG                                   | 135,600 |         | 3.0     | 1.5     | 3.0     | 3.0     |
| Paralegal 1                                    | 72,528  |         | 9.0     | 4.5     | 9.0     | 9.0     |
| Paralegal 2                                    | 76,188  |         | 7.0     | 3.5     | 7.0     | 7.0     |
| Paralegal 3                                    | 78,900  |         | 3.0     | 1.5     | 3.0     | 3.0     |
| Policy Analyst (Exempt)                        | 95,000  |         | 1.0     | 0.5     | 1.0     | 1.0     |
| Social Services Specialist 3 (Victim Advocate) | 82,056  |         | 4.0     | 2.0     | 4.0     | 4.0     |
| <b>Total FTEs</b>                              |         |         | 56.2    | 28.1    | 56.2    | 56.2    |

#### III. D - Expenditures By Program (optional)

| Program                             | FY 2024 | FY 2025   | 2023-25    | 2025-27    | 2027-29    |            |
|-------------------------------------|---------|-----------|------------|------------|------------|------------|
| Headquarters Administration (ADM)   |         | 170,000   | 170,000    | 340,000    | 340,000    |            |
| Financial Services Division (FIS)   |         | 444,000   | 444,000    | 888,000    | 888,000    |            |
| Facilities Division (FST)           |         | 550,000   | 550,000    | 1,100,000  | 1,100,000  |            |
| Information Services Division (ISD) |         | 334,000   | 334,000    | 668,000    | 668,000    |            |
| New Division - OIP (NEW)            |         | 9,503,000 | 9,503,000  | 18,991,000 | 18,976,000 |            |
| <b>Total \$</b>                     |         |           | 11,001,000 | 11,001,000 | 21,987,000 | 21,972,000 |

### Part IV: Capital Budget Impact

#### IV. A - Capital Budget Expenditures

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# Individual State Agency Fiscal Note

|   |  |  |
|---|--|--|
| <b>Bill Number:</b> 1579 2S HB AMS<br>LAW S2569.1 | <b>Title:</b> Independent prosecutions | <b>Agency:</b> 229-Office of Independent<br>Investigations |
|---|--|--|

## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

|                               | FY 2024 | FY 2025 | 2023-25 | 2025-27 | 2027-29 |
|-------------------------------|---------|---------|---------|---------|---------|
| <b>Account</b>                |         |         |         |         |         |
| General Fund-State      001-1 | 0       | 144,000 | 144,000 | 288,000 | 288,000 |
| <b>Total \$</b>               | 0       | 144,000 | 144,000 | 288,000 | 288,000 |

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

|                                 |                       |                  |
|---------------------------------|-----------------------|------------------|
| Legislative Contact:            | Phone:                | Date: 01/23/2024 |
| Agency Preparation: Kathy Cody  | Phone: (360) 480-7237 | Date: 01/26/2024 |
| Agency Approval: Jamie Langford | Phone: (360) 902-0422 | Date: 01/26/2024 |
| OFM Review: Val Terre           | Phone: (360) 280-3973 | Date: 01/29/2024 |

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

Sec. 2. Amendment to RCW 43.10.232 (Attorney General - Concurrent authority to investigate crimes and initiate and conduct prosecutions). Renumbering (1) and adding (2) as follows:

(a) The Attorney General's Office of Independent Prosecutions shall have concurrent authority and power with the prosecuting attorneys to review investigations and initiate and conduct prosecutions of crimes involving the use of deadly force by involved officers as described in chapter 43.102 RCW. "Prosecution" includes appeals and requests for postconviction relief.

(b) In any investigation or prosecution pursuant to this subsection, the Office of the Attorney General may prosecute related offenses and defendants. Related offenses and defendants for purposes of this subsection are those offenses and defendants that may be joined as provided by law or by the criminal rules for the Superior Courts of the State of Washington. Related offenses also include any criminal activity related to, or discovered during, the investigation of the case under the jurisdiction of the incident that has a relationship to the investigation.

This section could require additional resources in the Office of Independent Investigations (OII) for staff time to communicate with both the AG staff and local prosecuting authority as conflicts of interest are being determined.

Sec. 19 (9)(a) upon the completion of an investigation authorized under this chapter, the office shall send its completed investigation and referral to both the county prosecuting attorney of the jurisdiction in which the offense occurred and the office of independent prosecutions in accordance with protocols established under RCW 43.102.050(2)(c)(viii), and include any information, if known, regarding the presence of a conflict of interest.

Requires OII to make a referral to both the AG Independent Prosecution as well as the local PA and if known, includes any information regarding the presence of a conflict of interest. This section could require additional resources in the Office of Independent Investigations (OII) for staff time to communicate with both the AG staff and local prosecuting authority.

(9)(b) All employees of the Office of Independent Investigations, and all members of an independent investigations team who participate in the investigation of a use of deadly force by an involved officer as defined in RCW 43.102.010, are encouraged to cooperate fully with requests for interviews or additional information from the office of independent prosecutions.

Encourages OII to cooperate fully with requests for interviews or additional information from the office of independent prosecution. OII has written this into their operating protocols and has already determined this work is standard work for the OII and assumes no fiscal impact.

(9)(c) The Office of Independent Investigations or a member of the independent investigations team that investigated an incident of use of deadly force that is the subject of a review for criminal charges are encouraged to, at the request of the office of independent prosecutions, transport evidence to and from any laboratory, medical examiner's office, or expert witness as directed by the office of independent prosecutions.

Encourages OII to transport evidence to the Office of Independent Prosecution. OII has adopted this as standard work in its protocols and assumes no fiscal impact.

(9)(d) The Office of Independent Investigations or a member of the independent investigations team that investigated an incident of use of deadly force that is the subject of criminal trial proceedings are encouraged to, at the request of the office of independent prosecutions, transport evidence to court as directed by the office of independent prosecutions.



Encourages OII transport evidence in the event there is a criminal trial. OII has adopted this as standard work in its protocols and assumes no fiscal impact.

**II. B - Cash receipts Impact**

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

**II. C - Expenditures**

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Office of Independent Investigations (OII) assumes this amendment will increase the need for staff time to communicate with both the AG staff and local prosecuting authority. Based on an average of 27 cases of use of deadly force incidents from 2020 - 2023 (39, 13, 32, and 21 cases, respectively), OII assumes an ongoing increase for AGO costs at \$144,000 per fiscal year starting in FY 2025.

**Part III: Expenditure Detail**

**III. A - Operating Budget Expenditures**

| Account         | Account Title | Type  | FY 2024 | FY 2025 | 2023-25 | 2025-27 | 2027-29 |
|-----------------|---------------|-------|---------|---------|---------|---------|---------|
| 001-1           | General Fund  | State | 0       | 144,000 | 144,000 | 288,000 | 288,000 |
| <b>Total \$</b> |               |       | 0       | 144,000 | 144,000 | 288,000 | 288,000 |

**III. B - Expenditures by Object Or Purpose**

|                                      | FY 2024 | FY 2025 | 2023-25 | 2025-27 | 2027-29 |
|--------------------------------------|---------|---------|---------|---------|---------|
| FTE Staff Years                      |         |         |         |         |         |
| A-Salaries and Wages                 |         |         |         |         |         |
| B-Employee Benefits                  |         |         |         |         |         |
| C-Professional Service Contracts     |         |         |         |         |         |
| E-Goods and Other Services           |         | 144,000 | 144,000 | 288,000 | 288,000 |
| G-Travel                             |         |         |         |         |         |
| J-Capital Outlays                    |         |         |         |         |         |
| M-Inter Agency/Fund Transfers        |         |         |         |         |         |
| N-Grants, Benefits & Client Services |         |         |         |         |         |
| P-Debt Service                       |         |         |         |         |         |
| S-Interagency Reimbursements         |         |         |         |         |         |
| T-Intra-Agency Reimbursements        |         |         |         |         |         |
| 9-                                   |         |         |         |         |         |
| <b>Total \$</b>                      | 0       | 144,000 | 144,000 | 288,000 | 288,000 |

**III. C - Operating FTE Detail:** FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.

NONE

**III. D - Expenditures By Program (optional)**

NONE

**Part IV: Capital Budget Impact**

**IV. A - Capital Budget Expenditures**

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

|   |  |
|---|--|
| <b>Bill Number:</b> 1579 2S HB AMS<br>LAW S2569.1 | <b>Title:</b> Independent prosecutions |
|---|--|

## Part I: Jurisdiction

Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- Cities: Indeterminate impacts to participate on the Office of Independent Prosecutions Advisory Board
- Counties: Same as above
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

## Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Appointees to Advisory Board; number of meetings; whether travel is required

### Estimated revenue impacts to:

None

### Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

## Part III: Preparation and Approval

|                                   |                       |                  |
|-----------------------------------|-----------------------|------------------|
| Fiscal Note Analyst: Alice Zillah | Phone: 360-725-5035   | Date: 01/30/2024 |
| Leg. Committee Contact:           | Phone:                | Date: 01/23/2024 |
| Agency Approval: Allan Johnson    | Phone: 360-725-5033   | Date: 01/30/2024 |
| OFM Review: Val Terre             | Phone: (360) 280-3973 | Date: 01/30/2024 |

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

*Description of the bill with an emphasis on how it impacts local government.*

Sec. 1 amends RCW 43.10.230. The purpose of RCW 43.10.232 is to grant authority to the Attorney General's Office (AGO) concurrent with the county prosecuting attorneys to investigate and prosecute crimes, including incidents of use of deadly force by an involved officer as those terms are defined in RCW 43.102.010.

Sec. 2 amends RCW 43.10.232. The AGO's Office of Independent Prosecutions (OIP) shall have concurrent authority and power with the prosecuting attorneys to investigate, initiate, and conduct prosecutions of crimes involving police use of deadly force in the state of Washington. Nothing in this subsection affects the authority of the prosecuting attorney to conduct prosecutions of crimes committed by an individual who is the subject of the use of force action by the involved officer. The AGO shall not be responsible for defense costs, including defense attorneys' fees, defense expert witness fees, or any other cost related to the defense in a criminal prosecution brought pursuant to this subsection. The county in which the action is filed shall be responsible for court administration costs and public defense costs if the defendant so qualifies.

Sec. 3 amends RCW 43.10.234. In any judicial proceeding under this subsection, in order to be designated the prosecuting authority, the county prosecuting attorney must overcome a presumption that the county prosecuting attorney has an inherent conflict of interest in any matter arising from an investigation within the scope of the office of independent investigations. Similarly, in any judicial proceeding under this subsection, the attorney general must overcome a presumption that the attorney general has an inherent conflict of interest in any matter in which an investigation of the use of deadly force involved any general authority peace officer at a state agency, an employee of the department of corrections, an employee of a limited authority law enforcement agency, or an employee of a police department at a public institution of higher education.

Sec. 7 creates a new section. The Office of Independent Prosecutions Advisory Board is created. Its membership includes one defense attorney, two prosecuting attorney representatives, and two active or retired law enforcement personnel.

Sec. 16 amends RCW 36.27.020. In any case involving potential prosecution of a crime involving use of deadly force by an involved officer, the prosecuting attorney shall determine if recusal is necessary under the ethical rules applicable to all lawyers or to preserve public confidence.

Sec. 18 create a new section in RCW 36.27. If the prosecuting attorney makes a determination not to file criminal charges in the case, the prosecuting attorney or conflict-free special deputy prosecuting attorney must refer the case and all investigative materials concerning the case to the independent prosecutions unit of the AGO within 30 days of the decision to not file criminal charges.

### **B. SUMMARY OF EXPENDITURE IMPACTS**

*Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.*

The legislation would have indeterminate expenditure impacts for local government.

The bill creates the Office of Independent Prosecutions Advisory Board, whose members include a defense attorney, two prosecuting attorney representatives, and two active or retired law enforcement personnel. To the extent that these members are current employees of cities and counties, local governments would incur costs for their participation on the Advisory Board. Because the number of meetings, location, and other work elements for the Advisory Board have not been determined, these costs cannot be estimated.

According to the Washington Association of Prosecuting Attorneys, county prosecutors already review cases of deadly

force by law enforcement officers for potential conflicts of interest, and refer cases to other prosecutor offices as needed. As such, the requirement for the prosecuting attorney to determine if recusal is necessary in these cases would not result in any additional costs.

### **C. SUMMARY OF REVENUE IMPACTS**

*Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.*

The legislation would have no revenue impacts for local government.

#### **SOURCES:**

Washington Association of Prosecuting Attorneys