



Office of the Washington State Auditor Pat McCarthy

DEADLY FORCE INVESTIGATION AUDITS REQUIRED BY STATE LEGISLATURE

Summary

The 2021 session of the Washington State Legislature authorized the Washington State Auditor's Office (SAO) to "conduct a process compliance audit procedure and review of any deadly force investigation conducted pursuant to [RCW 10.114.011](#) and [RCW 43.102](#),"¹

The purpose of the audits is to determine whether the actions of the involved law enforcement agency, investigative body, and prosecutor's office are in compliance with the requirements of [RCW 10.114.011](#), [RCW 43.102](#), and all pursuant rules adopted relating to investigation and reporting these incidents. The investigation, not the incident, is the focus of these audits.

SAO will conduct these process compliance audits following policies and processes used to perform similar work of the Office including fraud and whistleblower investigations and accountability audits. A report will be issued at the end of the audit with the results.

Application

Based on a review of new and existing laws, Criminal Justice Training Commission (CJTC) guidance, and in consultation with the Attorney General's Office (AGO), SAO concluded this new law applies to investigations of incidents:

1. That involve "the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury" ([RCW 9A.16.010](#))
2. Occurring after January 6, 2020 - effective date of WAC [139-12-030](#), which CJTC created and adopted as criteria for an independent investigation team;
3. That have been forwarded to and reviewed by a prosecuting attorney, followed by a decision to charge or not charge the officer(s) involved; and
4. For which any associated criminal proceedings are concluded, including appeals.

¹ Engrossed Second Substitute House Bill 1089 ([E2SHB 1089](#)) was passed by the Legislature in April 2021, and signed by the Governor on May 18, effective July 25, 2021, codified as [RCW 43.101.460](#), [RCW 43.101.465](#) and [RCW 43.101.470](#).

Other Important Considerations

1. The determination of whether to conduct an audit is automatic: If there is an independent investigation, SAO is to conduct an audit. Absent an independent investigation, SAO has no authority to audit.
2. As a corollary, SAO is not charged with determining whether deadly force was used, nor the means by which such force was applied. The independent investigation makes that determination.
3. [RCW 43.101.465](#) authorizes the CJTC to request an audit of a law enforcement agency's "compliance with all laws, policies and procedures related to the training and certification" of its peace officers.
4. The criteria created by CJTC for training and certification of peace officers can be found in [RCW 43.101.095](#) and [WAC 139-06-010](#).

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