SECOND SUBSTITUTE HOUSE BILL 1202

State of Washington   **67th Legislature**   **2021 Regular Session**

By House Appropriations (originally sponsored by Representatives Thai, Davis, Bateman, Ramos, Kloba, Callan, Simmons, Berry, Santos, Ryu, Ramel, Sells, Ortiz-Self, Gregerson, Wicks, Berg, Bergquist, Dolan, Macri, Fey, Pollet, Harris-Talley, and Frame)

READ FIRST TIME 02/22/21.

 1   AN ACT Relating to addressing meaningful civil remedies for
 2 persons injured as a result of police misconduct, including by
 3 allowing for an award of attorney fees in addition to damages and
 4 injunctive and declaratory relief; adding a new chapter to Title 7
 5 RCW; and creating a new section.

 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

 7   NEW SECTION.   **Sec. 1.**   The state of Washington and its
 8 subdivisions undertake to protect the safety of individuals and to
 9 preserve public peace by employing peace officers entrusted with the
10 power to arrest, detain, and use force against individuals suspected
11 of violating criminal statutes. It is the intent of the legislature
12 to provide a meaningful legal remedy under state law for persons who
13 are injured when a peace officer exercises these powers unlawfully.
14 The legislature finds that the lack of such a remedy jeopardizes
15 justice for the victims, implies impunity for the violators, and
16 engenders a cynicism destructive of self-government. In order to
17 foster the important public policy of accountability for unlawful
18 policing and promote trust between communities and law enforcement,
19 and in view of remedial deficiencies in existing federal law and
20 Washington common law, this chapter establishes a more meaningful
21 remedy through a civil cause of action by which victims of misconduct

1   by peace officers may obtain compensation for their injuries and an
2   award of costs and attorney fees incurred in seeking the remedy. By
3   enacting this chapter the legislature intends to prevent the use of
4   the doctrine of qualified immunity as it has developed in federal
5   litigation of suits under 42 U.S.C. Sec. 1983.

6   NEW SECTION. **Sec. 2.**   The definitions in this section apply
7   throughout this chapter unless the context clearly requires
8   otherwise.
9   (1) "Person" means a natural person and, if the natural person
10 has died, includes the person's estate and statutory beneficiaries.
11   (2) "Peace officer" means any law enforcement personnel subject
12 to the basic law enforcement training requirement of RCW 43.101.200
13 and any other requirements of that section, notwithstanding any
14 waiver or exemption granted by the criminal justice training
15 commission, and notwithstanding the statutory exemption based on date
16 of initial hire under RCW 43.101.200. Commissioned officers of the
17 Washington state patrol, whether they have been or may be exempted by
18 rule of the commission from the basic training requirement of RCW
19 43.101.200, are included as peace officers for purposes of this
20 chapter. Fish and wildlife officers with enforcement powers for all
21 criminal laws under RCW 77.15.075 are peace officers for purposes of
22 this chapter.
23   (3) "Employer" means:
24   (a) The state of Washington and all political subdivisions and
25 agencies thereof that act as a peace officer's principal or
26 supervisor; and
27   (b) Any private entity that, under a contract or agreement with
28 the state or a subdivision of the state, supervises a peace officer
29 or any other person exercising the powers of a peace officer.

30   NEW SECTION. **Sec. 3.**   (1) Any person injured in person or
31 property by a peace officer acting under color of authority has a
32 cause of action against the peace officer, and against any other
33 peace officer who had the power through reasonable diligence to
34 prevent or aid in preventing the injury from occurring and failed to
35 do so, if the peace officer:
36   (a) Engaged in conduct that under common law constitutes an
37 assault, battery, intentional infliction of emotional distress, false

imprisonment, false arrest, malicious prosecution, intentional
trespass, or conversion; or

(b) Executed a detention, traffic stop, search, seizure, or entry
into a home that is unlawful under the state Constitution; or

(c) Engaged in conduct that violated the duty of reasonable care
under chapter . . ., Laws of 2021 (House Bill No. 1310); or

(d) Violated a provision of RCW 10.93.160.

(2) In an action against a peace officer under subsection (1) of
this section, the plaintiff may also name the officer's employer as a
defendant. The employer is vicariously liable if the unlawful conduct
causing the injury was within the scope of the peace officer's
employment.

(3) A peace officer has a defense against an action brought under
subsection (1) of this section if, when the injury occurred, the
officer substantially complied with a regulation, practice,
procedure, policy, or training that was established by the employer
or approved or condoned by superior officers. If the peace officer
proves this defense, the employer is independently liable for the
injury if the injury was proximately caused by a regulation,
practice, procedure, policy, or training approved or condoned by the
employer.

(4) The employer is also independently liable for the injury if a
proximate cause of the injury was the employer's failure to use
reasonable care in hiring, training, retaining, supervising, or
disciplining the peace officer.

(5) It is not an immunity or defense to an action brought under
this chapter that:

(a) The rights, privileges, or immunities sued upon were not
clearly established at the time of the act, omission, or decision by
the peace officer or employer; or

(b) At such time, that the state of the law was such that the
peace officer or employer could not reasonably have been expected to
know whether such act, omission, or decision was lawful.

NEW SECTION. **Sec. 4.**   The court shall award to a prevailing
plaintiff actual damages as determined by the trier of fact, and
shall make an award of at least nominal damages. The court shall also
award to a prevailing plaintiff costs and reasonable attorneys' fees.
The court may grant declaratory and injunctive relief as it deems
appropriate.

1   NEW SECTION. **Sec. 5.** The attorney general may investigate
2 employers and peace officers engaging in a pattern or practice of
3 conduct in violation of section 3 of this act and bring an action in
4 the name of the state, or as *parens patriae* on behalf of persons
5 residing in the state, against a peace officer or employer to
6 restrain and prevent the peace officer or employer from engaging in
7 any pattern or practice of conduct in violation of section 3 of this
8 act. The prevailing party may, in the discretion of the court,
9 recover the costs of the action including reasonable attorneys' fees.

10   NEW SECTION. **Sec. 6.** (1) This chapter must be liberally
11 construed so that its beneficial and remedial purposes may be served.
12   (2) Nothing in this chapter affects any other common law or
13 statutory right of action available to the plaintiff.

14   NEW SECTION. **Sec. 7.** A cause of action under section 3 of this
15 act must be commenced within three years after the cause of action
16 accrues.

17   NEW SECTION. **Sec. 8.** Nothing in this chapter is intended to
18 limit the right of a peace officer to have a legal defense provided
19 at the expense of his or her public employer or to having any
20 judgment under this chapter satisfied by such employer under chapter
21 4.92 or 4.96 RCW.

22   NEW SECTION. **Sec. 9.** This act may be known and cited as the
23 peace officer accountability act.

24   NEW SECTION. **Sec. 10.** This chapter applies only to causes of
25 action arising on or after the effective date of this section.

26   NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
27 constitute a new chapter in Title 7 RCW.

28   NEW SECTION. **Sec. 12.** If specific funding for the purposes of
29 this act, referencing this act by bill or chapter number, is not
30 provided by June 30, 2021, in the omnibus appropriations act, this
31 act is null and void.

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