
SECOND SUBSTITUTE HOUSE BILL 1025

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Thai, Reed, Berry, Ryu, Simmons, Bateman, Fitzgibbon, Farivar, Peterson, Alvarado, Pollet, Street, Cortes, Doglio, Macri, Gregerson, Stonier, Kloba, and Santos)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to creating a private right of action for harm
2 from violations of the state Constitution or state law by peace
3 officers; amending RCW 4.24.420; adding a new chapter to Title 7 RCW;
4 creating a new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The state of Washington and its
7 subdivisions undertake to protect the safety of individuals and to
8 preserve public peace by employing peace officers entrusted with the
9 power to arrest, detain, and use force against individuals suspected
10 of violating the law. It is the intent of the legislature to provide
11 a meaningful legal remedy under state law for persons who are injured
12 when a peace officer or the officer's employer violates the state
13 Constitution or certain state laws.

14 (2) The legislature finds that the lack of such a remedy
15 jeopardizes justice for the victims and implies impunity for the
16 violators. In order to foster the important public policy of
17 accountability for unlawful policing and promote trust between
18 communities and law enforcement, and in recognition of remedial
19 deficiencies in existing federal law and Washington common law, this
20 chapter establishes a more meaningful remedy through a civil cause of
21 action by which victims of such misconduct by peace officers or their

1 employers may obtain compensation for their injuries and an award of
2 costs and attorney fees incurred in seeking the remedy. By enacting
3 this chapter, the legislature intends to preclude the creation of the
4 doctrine of qualified immunity as it has developed in litigation of
5 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) "Employer" means:

10 (a) The state of Washington and all political subdivisions and
11 agencies thereof that act as a peace officer's employing agency or
12 entity; and

13 (b) Any private entity that, under a contract or agreement with
14 the state or a subdivision of the state, supervises a peace officer
15 or any other person exercising the powers of a peace officer.

16 (2) "Peace officer" has the meaning defined in RCW 43.101.010.

17 (3) "Person" means a natural person and, if the natural person
18 has died, includes the person's estate and statutory beneficiaries.

19 NEW SECTION. **Sec. 3.** (1) Any person injured in person or
20 property by a peace officer acting under color of authority has a
21 cause of action against the peace officer, and against any other
22 peace officer who had the power through reasonable diligence to
23 prevent or aid in preventing the injury from occurring and failed to
24 do so, if the peace officer engaged in conduct that is unlawful
25 under:

26 (a) The state Constitution;

27 (b) RCW 10.93.160; or

28 (c) RCW 10.120.020.

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

34 (3) (a) A peace officer has a defense against an action brought
35 under subsection (1) of this section if, when the injury occurred,
36 the officer substantially complied with a regulation, practice,
37 procedure, policy, or training that was established by the peace
38 officer's employer or approved or condoned by superior officers.

1 (b) If a peace officer proves a defense under (a) of this
2 subsection, the peace officer's employer is independently liable for
3 the injury if the injury was proximately caused by a regulation,
4 practice, procedure, policy, or training that was established by the
5 employer or approved or condoned by superior officers.

6 (c) A peace officer's employer has a defense against independent
7 liability arising under (b) of this subsection if the training at
8 issue was provided by the criminal justice training commission, or if
9 the policy at issue conformed to published model guidance drafted by
10 the Washington office of the attorney general at the specific request
11 of the Washington state legislature.

12 (d) If a peace officer's employer asserts a defense under (c) of
13 this subsection, it must within 30 days provide notice of this
14 defense, and all relevant claims and facts in the underlying
15 litigation, to the attorney general and director of the criminal
16 justice training commission.

17 (e) Beginning December 1, 2025, and annually thereafter, the
18 attorney general's office must provide a report to the chairs of the
19 house civil rights and judiciary committee and senate law and justice
20 committee, or the chairs of any successor committees, regarding all
21 employer defenses asserted under (c) of this subsection that were
22 reported to the attorney general in the preceding 12 months.

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

27 (b) The employer is also independently liable for the injury if a
28 proximate cause of the injury was the employer's failure to use
29 reasonable care in retaining or disciplining the peace officer unless
30 the employer proves that it took disciplinary action against the
31 peace officer and that action was appealed by the officer and reduced
32 or overturned by an independent arbitrator or court.

33 (5) It is not an immunity or defense to an action brought under
34 this chapter that the rights, privileges, or immunities sued upon
35 were not clearly established at the time of the act, omission, or
36 decision by the peace officer or employer.

37 NEW SECTION. **Sec. 4.** In an action brought under this chapter,
38 the court shall award to a prevailing plaintiff actual damages as
39 determined by the trier of fact, and shall make an award of at least

1 nominal damages. The court may also award to a prevailing plaintiff
2 costs and reasonable attorneys' fees. The court may grant declaratory
3 and injunctive relief as it deems appropriate.

4 NEW SECTION. **Sec. 5.** (1) This chapter must be liberally
5 construed to effect its beneficial and remedial purposes.

6 (2) Nothing in this chapter affects any other common law or
7 statutory right of action available to the plaintiff.

8 NEW SECTION. **Sec. 6.** A cause of action under section 3 of this
9 act must be commenced within three years after the cause of action
10 accrues.

11 NEW SECTION. **Sec. 7.** Nothing in this chapter is intended to
12 limit the right of a peace officer to have a legal defense provided
13 at the expense of his or her public employer or to having any
14 judgment under this chapter satisfied by such employer under chapter
15 4.92 or 4.96 RCW.

16 NEW SECTION. **Sec. 8.** This chapter applies only to causes of
17 action arising on or after the effective date of this section.

18 **Sec. 9.** RCW 4.24.420 and 2021 c 325 s 1 are each amended to read
19 as follows:

20 (1) Except in an action arising out of law enforcement activities
21 resulting in personal injury or death, it is a complete defense to
22 any action for damages for personal injury or wrongful death that the
23 person injured or killed was engaged in the commission of a felony at
24 the time of the occurrence causing the injury or death and the felony
25 was a proximate cause of the injury or death.

26 (2) In an action arising out of law enforcement activities
27 resulting in personal injury or death, it is a complete defense to
28 the action that the finder of fact has determined beyond a reasonable
29 doubt that the person injured or killed was engaged in the commission
30 of a felony at the time of the occurrence causing the injury or
31 death, the commission of which was a proximate cause of the injury or
32 death.

33 (3) Nothing in this section shall affect a right of action under
34 42 U.S.C. Sec. 1983 or chapter 7.--- RCW (the new chapter created in
35 section 10 of this act).

1 NEW SECTION. **Sec. 10.** Sections 1 through 8 and 11 of this act
2 constitute a new chapter in Title 7 RCW.

3 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2025.

4 NEW SECTION. **Sec. 12.** If specific funding for the purposes of
5 this act, referencing this act by bill or chapter number, is not
6 provided by June 30, 2023, in the omnibus appropriations act, this
7 act is null and void.

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