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**HOUSE BILL 1891**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Representatives Graham, Chase, Walsh, and Schmidt

AN ACT Relating to the establishment of liability standards for criminal defense counsel; amending RCW 4.92.070, 4.92.075, and 4.96.041; adding a new chapter to Title 7 RCW; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) Any person injured by an individual who was previously arrested for a violent offense, and subsequently released from custody before trial for such offense as a result of the advocacy of their criminal defense counsel, has a cause of action against such criminal defense counsel if: (a) The individual caused the injury after being released from custody; and (b) the criminal defense counsel failed to adequately consider the risk of public harm that could result from the individual being released from custody.

(2) For the purposes of this section, "criminal defense counsel" means any attorney who is licensed to practice law in this state and who represents an individual who is or has been previously accused of, arrested for, charged with, or incarcerated for committing a violent offense.

(3) For the purposes of this section, "violent offense" has the same meaning as defined in RCW 9.94A.030.

(4) For the purposes of this section, adequate consideration requires:

(a) A written and published assessment that analyzes:

(i) All known evidence about the individual's alleged violent offense, criminal record, and risk of engaging in further violence;

(ii) The vulnerability of anyone the individual has previously victimized or is likely to victimize in the future; and

(iii) The adequacy of alternatives to custody for mitigating the risk the individual may cause harm to others if he or she is not held in custody; and

(b) Consideration of all relevant and reasonably available evidence, including public records, and the testimony of law enforcement officials and experts and crime victims and crime victim advocates.

(5) No form of legal immunity may be raised as an immunity or defense to any action brought under this section, including without limitation any immunity or defense premised on the argument that criminal defense counsel has absolute immunity from liability when acting within the scope of their duties in defending or advocating on behalf of the criminally accused, or that immunity is warranted or necessary to protect defense counsel's role as an advocate or the administration of justice.

(6) In an action brought under this section, 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 may also award to a prevailing plaintiff costs and reasonable attorneys' fees. The court may grant declaratory and injunctive relief as it deems appropriate.

(7)(a) Except as provided in (b) of this subsection, nothing in this section is intended to limit the right of an elected or appointed official to have a legal defense provided at the expense of the state or a political subdivision of the state, or to have any judgment under this section satisfied by the state or a political subdivision of the state under chapter 4.92 or 4.96 RCW.

(b) Whenever a claim is brought under this section, if the trier of fact finds by clear and convincing evidence that the defendant intentionally, knowingly, or recklessly disregarded the risk of public harm when the defendant advocated for their client's release from custody, then:

(i) The defendant shall be personally liable for all costs of defense and judgment;

(ii) The state and any political subdivision of the state must not pay any of the defendant's subsequent costs of defense or judgment; and

(iii) Any costs of defense the state or any political subdivision of the state has previously paid must be repaid by the defendant within one year of entry of judgment.

(8) A cause of action under this section must be commenced within three years after the cause of action accrues. For the purpose of this section, a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action.

(9) This section must be liberally construed to effect its beneficial and remedial purposes.

(10) Nothing in this section affects any other common law or statutory right of action available to a plaintiff.

(11) This section applies only to causes of action arising on or after the effective date of this section.

**Sec.**  RCW 4.92.070 and 1999 c 163 s 5 are each amended to read as follows:

((~~If~~)) Except as provided in section 1(7) of this act, if the attorney general shall find that said officer, employee, or volunteer's acts or omissions were, or were purported to be in good faith, within the scope of that person's official duties, or, in the case of a foster parent, that the occurrence arose from the good faith provision of foster care services, said request shall be granted, in which event the necessary expenses of the defense of said action or proceeding relating to a state officer, employee, or volunteer shall be paid as provided in RCW 4.92.130. In the case of a foster parent, necessary expenses of the defense shall be paid from the appropriations made for the support of the department to which such foster parent is attached. In such cases the attorney general shall appear and defend such officer, employee, volunteer, or foster parent, who shall assist and cooperate in the defense of such suit. However, the attorney general may not represent or provide private representation for a foster parent in an action or proceeding brought by the department of social and health services against that foster parent.

**Sec.**  RCW 4.92.075 and 1989 c 413 s 2 are each amended to read as follows:

((~~When~~)) Except as provided in section 1(7) of this act, when a state officer, employee, or volunteer has been represented by the attorney general pursuant to RCW 4.92.070, and the body presiding over the action or proceeding has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction only from the state, and the judgment shall not become a lien upon any property of such officer, employee, or volunteer.

**Sec.**  RCW 4.96.041 and 1993 c 449 s 4 are each amended to read as follows:

(1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.

(2) If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. ((~~If~~)) Except as provided in section 1(7) of this act, if the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. ((~~Any~~)) Except as provided in section 1(7) of this act, any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

(3) The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW ((~~29.82.023~~)) 29A.56.140 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

(4) ((~~When~~)) Except as provided in section 1(7) of this act, when an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this section and the court hearing the action has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer. The legislative authority of a local governmental entity may, pursuant to a procedure created by ordinance or resolution, agree to pay an award for punitive damages.

NEW SECTION. **Sec.**  Section 1 of this act constitutes a new chapter in Title 7 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2026.

NEW SECTION. **Sec.**  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.

**--- END ---**