

SENATE BILL REPORT

SB 5066

As of February 24, 2025

Title: An act relating to strengthening and clarifying the authority of the attorney general to address local law enforcement and local corrections agency misconduct through investigations and legal actions.

Brief Description: Concerning law enforcement and local corrections agency misconduct through investigations and legal actions.

Sponsors: Senators Hansen, Lovick, Wellman, Trudeau, Hasegawa, Saldaña, Frame, Nobles, Pedersen, Salomon and Valdez.

Brief History:

Committee Activity: Law & Justice: 1/30/25, 2/06/25 [DPS-WM, DNP].
Ways & Means: 2/26/25.

Brief Summary of First Substitute Bill

- Grants the attorney general authority to investigate local law enforcement and corrections agencies for violations of the Washington State Constitution and laws.
- Permits the attorney general to bring an action against a local law enforcement or corrections agency for violations of the state constitution or laws.
- Requires the attorney general to develop and publish a model policy for law enforcement agency accountability systems.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5066 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Lovick, Salomon and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Valdez.

Minority Report: Do not pass.

Signed by Senators Holy, Ranking Member; Fortunato, Torres and Wagoner.

Staff: Joe McKittrick (786-7287)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Samuel Brown (786-7470)

Background: Article III, Section 21 of the Washington State Constitution establishes the attorney general as the legal adviser of state officers and requires the attorney general “to perform such other duties as may be prescribed by law.” However, this constitutional provision is not self-executing, meaning the Legislature must pass legislation directing the work of the attorney general. When a statute ascribes rights and powers to the attorney general, those rights and powers are absolute in all cases where the statute has not specially granted that power to another.

The Legislature has prescribed the responsibilities of the attorney general to include:

- appearing and representing the state before the Supreme Court or the Court of Appeals in all cases in which the state is interested;
- instituting and prosecuting all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer;
- defending all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of Washington State or the United States;
- consulting with and advising the several prosecuting attorneys in matters relating to the duties of their office, and when the interests of the state require, attending the trial of any person accused of a crime, and assisting in the prosecution; and
- consulting with and advising the Governor, members of the Legislature, and other state officers, and when requested, giving written opinions upon all constitutional or legal questions relating to the duties of such officers.

Over the years, the Legislature has supplemented the authority of the attorney general. For instance, the Legislature granted the attorney general, with the written request of the Governor, authority to investigate violations of the criminal laws within the state, and, if the attorney general believes the criminal laws are improperly enforced, and the prosecuting attorney has failed to institute a prosecution of such violations, to initiate and prosecute those actions.

Similarly, the Legislature has granted the attorney general concurrent authority and power with county prosecuting attorneys to investigate crimes and initiate and conduct prosecutions upon the request of, or with the concurrence of:

- the county prosecuting attorney of the jurisdiction in which the offense has occurred;
- the Governor of the state of Washington; or
- a majority of the committee charged with the oversight of the organized crime intelligence unit.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Misconduct Investigations. The Attorney General's Office (AGO) is granted the authority to investigate local law enforcement agencies and, beginning July 1, 2029, local corrections agencies for violations of the Washington State Constitution or state law and to bring an action against a local law enforcement agency or corrections agency for such violations. This grant of authority includes the authority to:

- investigate violations of the constitution and state law on its own initiative or in response to investigations or reports from independent oversight bodies;
- issue written civil investigative demands for documents and oral testimony, and answers to written interrogatories; and
- institute civil actions in the courts for injunctive or declaratory relief, damages, costs, and reasonable attorneys' fees, including damages for failure to reach compliance within any specified timelines as required by the act.

The authority of the AGO under this act is not intended to hold individual officers liable for misconduct. In exercising the investigative authority granted under the act, the AGO must confer with the United States Department of Justice (DOJ) to ensure there are no conflicts with any active independent investigation by DOJ. If an investigation or action brought by the AGO pursuant to this act is subject to a DOJ investigation, the AGO may not seek any remedies that conflict with the federal action. Likewise, the AGO may not bring any civil action under this act that is concurrent to any civil actions by the DOJ.

If an investigation is initiated, the AGO must send a letter to the local law enforcement or corrections agency explaining why the office is investigating the agency, what information is being sought, and how the office intends to investigate. The AGO must also confer with the agency to clarify and remedy the alleged violations and must confer with the office of independent investigations to ensure that the investigation will not interfere with or impede an ongoing investigation by that office.

Rule of Construction. The definitions and provisions of the AGO's investigative and enforcement authority must be liberally construed to serve the act's remedial purposes. The provisions of this act control in any case of conflict with another statute ordinance, rule, or regulation.

Model Policy. By September 1, 2026, the AGO must develop and publish a model policy for law enforcement agency accountability systems. The model policy must be consistent with the standards adopted in other AGO published model policies at the specific request of

the Legislature addressing policing practices and reporting practices and must specify model practices for:

- receiving complaints of serious misconduct;
- conducting investigations of serious misconduct;
- imposing discipline for serious misconduct;
- addressing disciplinary appeals; and
- use of force data collection.

The model policy should promote transparent and effective accountability systems that metes out fair, impartial, and swift discipline commensurate to wrongdoing, reduce officer misconduct, reduce barriers to accountability, and uphold the civil and constitutional rights of members of the public.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes the requirement that the Washington Association of Sheriffs and Police Chiefs establish a program to provide technical assistance to local law enforcement and corrections agencies.
- Requires the attorney general model policy be consistent with other attorney general published model policies addressing use of force data collection.
- Makes technical corrections.
- Provides an emergency clause.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: This bill clarifies the attorney general's existing authority to investigate and file structural lawsuits. The Legislature has done great work in police accountability in the past including accrediting law enforcement agencies through the criminal justice training commission, and this bill will help ensure best practices in law enforcement. This helps fill gaps in representation where private law firms do not practice, and civil legal aid foundations do not have enough capacity. This bill provides the attorney general the tools needed to ensure law enforcement agencies abide by the law and the state constitution. This will increase trust between law enforcement and communities.

Many other states have provided their attorneys general with this authority, and it has

ensured the citizens of those states equity in policing. The prelitigation tools provided in this bill will help ensure fair and efficient resolutions to claimed violations of the law while avoiding the costs of a court case. This bill provides the attorney general the tools needed to follow up on allegations of violations of the law by law enforcement. Prelawsuit investigations will help avoid the costs of litigation, reach agreed resolutions, and close matters when no enforcement is necessary.

The communities served by law enforcement deserve more accountability from those agencies. Many of the root causes of inappropriate behaviors of officers in the field can be traced to the agencies culture, hiring practices, and training. This is good governance. Washingtonians deserve to know that those they entrust to enforce the law are also held accountable to the law. This bill builds trust and accountability in law enforcement. This is a long time coming. Law enforcement needs to return to its mandate of serving the community. This will help change the culture of policing and turn the wheel of justice in the right direction. This is healthy for communities who struggle with a lack of trust in law enforcement. This is necessary to secure agency-wide changes that individual cases cannot address.

CON: This is an unnecessary expansion of the authority of the attorney general. This gives the attorney general prelitigation subpoena power and will create confusion in local governments. The collective bargaining provisions of this bill could put cities in the disparate position of needing to comply with the binding decision of an arbiter and needing to comply with the bill. The bill only allows for the attorney general to seek attorneys' fees but does not allow agencies subject to the action to likewise seek attorneys' fees. This will undermine efforts the legislature has made towards recruitment and retention of officers. The state should be helping law enforcement agencies not suing them. The bill does not require a pattern nor a practice for the attorney general to initiate an investigation. This creates ambiguous authority for the attorney general to roam the cities of Washington and sue these jurisdictions over any single perceived violation. The bill does not require proof of systemic violations, no burden of proof, nor any timeline for the attorney general to complete an investigation. This is broad authority to intrude into local matters.

Persons Testifying (Law & Justice): PRO: Senator Drew Hansen, Prime Sponsor; Juan Peralez, Unidos of Snohomish County; Robin Emmans, Washington Association of Criminal Defense Lawyers/ Washington Defender Association; Shelly Washington, Washington Coalition for Police Accountability; Antonio Ginatta, Columbia Legal Services; Kelly McConney Moore, NYU Policing Project; Eliana Machefsky, National Police Accountability Project; Chalia Stallings-Ala'ilima, Attorney General's Office; Heather Kelly, League of Women Voters; Michael Transue, Washington Fraternal Order of Police.

CON: Candice Bock, Association of Washington Cities; Ryan Lufkin, Washington Council of Police & Sheriffs (WACOPS); James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.