
HOUSE BILL 1891

State of Washington

69th Legislature

2025 Regular Session

By Representatives Graham, Chase, Walsh, and Schmidt

Read first time 02/07/25. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to the establishment of liability standards for
2 criminal defense counsel; amending RCW 4.92.070, 4.92.075, and
3 4.96.041; adding a new chapter to Title 7 RCW; and providing an
4 effective date.

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

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

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

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

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

3 (a) A written and published assessment that analyzes:

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

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

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

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

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

23 (6) In an action brought under this section, the court shall
24 award to a prevailing plaintiff actual damages as determined by the
25 trier of fact, and shall make an award of at least nominal damages.
26 The court may also award to a prevailing plaintiff costs and
27 reasonable attorneys' fees. The court may grant declaratory and
28 injunctive relief as it deems appropriate.

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

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

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

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

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

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

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

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

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

20 **Sec. 2.** RCW 4.92.070 and 1999 c 163 s 5 are each amended to read
21 as follows:

22 (~~(1F)~~) Except as provided in section 1(7) of this act, if the
23 attorney general shall find that said officer, employee, or
24 volunteer's acts or omissions were, or were purported to be in good
25 faith, within the scope of that person's official duties, or, in the
26 case of a foster parent, that the occurrence arose from the good
27 faith provision of foster care services, said request shall be
28 granted, in which event the necessary expenses of the defense of said
29 action or proceeding relating to a state officer, employee, or
30 volunteer shall be paid as provided in RCW 4.92.130. In the case of a
31 foster parent, necessary expenses of the defense shall be paid from
32 the appropriations made for the support of the department to which
33 such foster parent is attached. In such cases the attorney general
34 shall appear and defend such officer, employee, volunteer, or foster
35 parent, who shall assist and cooperate in the defense of such suit.
36 However, the attorney general may not represent or provide private
37 representation for a foster parent in an action or proceeding brought
38 by the department of social and health services against that foster
39 parent.

1 **Sec. 3.** RCW 4.92.075 and 1989 c 413 s 2 are each amended to read
2 as follows:

3 (~~When~~) Except as provided in section 1(7) of this act, when a
4 state officer, employee, or volunteer has been represented by the
5 attorney general pursuant to RCW 4.92.070, and the body presiding
6 over the action or proceeding has found that the officer, employee,
7 or volunteer was acting within the scope of his or her official
8 duties, and a judgment has been entered against the officer,
9 employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec.
10 1981 et seq., thereafter the judgment creditor shall seek
11 satisfaction only from the state, and the judgment shall not become a
12 lien upon any property of such officer, employee, or volunteer.

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

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

22 (2) If the legislative authority of the local governmental
23 entity, or the local governmental entity using a procedure created by
24 ordinance or resolution, finds that the acts or omissions of the
25 officer, employee, or volunteer were, or in good faith purported to
26 be, within the scope of his or her official duties, the request shall
27 be granted. (~~If~~) Except as provided in section 1(7) of this act, if
28 the request is granted, the necessary expenses of defending the
29 action or proceeding shall be paid by the local governmental entity.

30 (~~Any~~) Except as provided in section 1(7) of this act, any monetary
31 judgment against the officer, employee, or volunteer shall be paid on
32 approval of the legislative authority of the local governmental
33 entity or by a procedure for approval created by ordinance or
34 resolution.

35 (3) The necessary expenses of defending an elective officer of
36 the local governmental entity in a judicial hearing to determine the
37 sufficiency of a recall charge as provided in RCW (~~(29.82.023)~~)
38 29A.56.140 shall be paid by the local governmental entity if the
39 officer requests such defense and approval is granted by both the

1 legislative authority of the local governmental entity and the
2 attorney representing the local governmental entity. The expenses
3 paid by the local governmental entity may include costs associated
4 with an appeal of the decision rendered by the superior court
5 concerning the sufficiency of the recall charge.

6 (4) (~~When~~) Except as provided in section 1(7) of this act, when
7 an officer, employee, or volunteer of the local governmental entity
8 has been represented at the expense of the local governmental entity
9 under subsection (1) of this section and the court hearing the action
10 has found that the officer, employee, or volunteer was acting within
11 the scope of his or her official duties, and a judgment has been
12 entered against the officer, employee, or volunteer under chapter
13 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment
14 creditor shall seek satisfaction for nonpunitive damages only from
15 the local governmental entity, and judgment for nonpunitive damages
16 shall not become a lien upon any property of such officer, employee,
17 or volunteer. The legislative authority of a local governmental
18 entity may, pursuant to a procedure created by ordinance or
19 resolution, agree to pay an award for punitive damages.

20 NEW SECTION. **Sec. 5.** Section 1 of this act constitutes a new
21 chapter in Title 7 RCW.

22 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2026.

23 NEW SECTION. **Sec. 7.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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