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**SECOND SUBSTITUTE HOUSE BILL 1202**

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**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)

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

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

NEW SECTION. **Sec.**  The state of Washington and its subdivisions undertake to protect the safety of individuals and to preserve public peace by employing peace officers entrusted with the power to arrest, detain, and use force against individuals suspected of violating criminal statutes. It is the intent of the legislature to provide a meaningful legal remedy under state law for persons who are injured when a peace officer exercises these powers unlawfully. The legislature finds that the lack of such a remedy jeopardizes justice for the victims, implies impunity for the violators, and engenders a cynicism destructive of self-government. In order to foster the important public policy of accountability for unlawful policing and promote trust between communities and law enforcement, and in view of remedial deficiencies in existing federal law and Washington common law, this chapter establishes a more meaningful remedy through a civil cause of action by which victims of misconduct by peace officers may obtain compensation for their injuries and an award of costs and attorney fees incurred in seeking the remedy. By enacting this chapter the legislature intends to prevent the use of the doctrine of qualified immunity as it has developed in federal litigation of suits under 42 U.S.C. Sec. 1983.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Peace officer" means any law enforcement personnel subject to the basic law enforcement training requirement of RCW 43.101.200 and any other requirements of that section, notwithstanding any waiver or exemption granted by the criminal justice training commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.200. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW 77.15.075 are peace officers for purposes of this chapter.

(3) "Employer" means:

(a) The state of Washington and all political subdivisions and agencies thereof that act as a peace officer's principal or supervisor; and

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

NEW SECTION. **Sec.**  (1) Any person injured in person or property by a peace officer acting under color of authority has a cause of action against the peace officer, and against any other peace officer who had the power through reasonable diligence to prevent or aid in preventing the injury from occurring and failed to do so, if the peace officer:

(a) Engaged in conduct that under common law constitutes an 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.**  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.

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

NEW SECTION. **Sec.**  (1) This chapter must be liberally construed so that its beneficial and remedial purposes may be served.

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

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

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

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

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

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

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

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