

HOUSE BILL REPORT

HB 1445

As Reported by House Committee On:

Civil Rights & Judiciary
Appropriations

Title: An act relating to strengthening and clarifying the authority of the attorney general to address 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: Representatives Hansen, Simmons, Reed, Thai, Pollet and Macri.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/25/23, 2/3/23 [DPS];

Appropriations: 2/16/23, 2/22/23 [DP2S(w/o sub CRJ)].

Brief Summary of Second Substitute Bill

- Authorizes the Attorney General to investigate and bring actions against law enforcement and corrections agencies for violations of the Washington Constitution or state law.
- Requires the Attorney General to confer with the Office of Independent Investigations and United States Department of Justice.
- Requires the Attorney General to develop and publish model policies in consultation with various agencies and entities.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman,

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.

Goodman, Peterson, Thai and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Cheney and Rude.

Staff: John Burzynski (786-7133).

Background:

Federal Law Governing Investigations of Unlawful Patterns or Practices.

Federal law prohibits government authorities from engaging in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities secured or protected by the United States Constitution or federal law.

When the United States Attorney General has reasonable cause to believe a government authority has engaged in an unlawful pattern or practice, the United States Attorney General is authorized to bring a civil action to seek equitable and declaratory relief to eliminate the pattern or practice.

Washington Law Governing the Attorney General's Duties and Powers.

The Washington Attorney General (Attorney General) is required by Washington law to appear for and represent the state before the Supreme Court or the Court of Appeals in all cases in which the state is interested. The Washington Supreme Court has interpreted this statutory requirement as granting the Attorney General discretionary authority to act in any court, state or federal, trial or appellate, on a matter of public concern, provided that there is a cognizable common law or statutory cause of action.

The Criminal Justice Training Commission.

The Criminal Justice Training Commission (CJTC) is a state commission created to establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers. The CJTC is required to provide programs and training that enhance the integrity, effectiveness, and professionalism of peace officers and corrections officers while helping to ensure that law enforcement and correctional services are delivered to the people of Washington in a manner that fully complies with the Constitutions and laws of Washington and the United States.

The Office of Independent Investigations.

The Office of Independent Investigations exists within the Office of the Governor and is required to conduct fair, thorough, transparent, and competent investigations of police use of force and other incidents involving law enforcement, analyze data, and provide reports and recommendations.

Summary of Substitute Bill:

Investigations and Actions.

The Attorney General is authorized to investigate and bring an action against a law enforcement agency of any county, city, town, or political subdivision of the state, or against a local corrections agency for any county, city, or local agency, for a violation of the state Constitution or state law.

Specifically, the Attorney General may:

- investigate violations of the state Constitution and state law, on its own initiative or in response to investigations or reports from independent oversight bodies;
- issue written civil investigation demands for documents, oral testimony, and answers to written interrogatories; and
- institute civil actions in the courts for injunctive or declaratory relief, damages, costs, and reasonable attorney's fees.

Conferral Requirements.

Before beginning any formal investigative steps, the Attorney General must confer with the United States Department of Justice (DOJ) to ensure law enforcement resources are being used efficiently and that there are no conflicts with any independent investigations by the DOJ. If a local agency is subject to a DOJ investigation, the Attorney General is prohibited from seeking relief or remedies in conflict with the federal action.

If an investigation is initiated, the Attorney General must confer with the Office of Independent Investigations to ensure that any investigation under this section will not interfere with or impede an ongoing investigation being conducted by the Office of Independent Investigations.

Model Policies.

By July 1, 2024, the Attorney General must develop and publish model policies for law enforcement and local correction agency accountability systems, specifying model practices for receiving complaints of serious misconduct, conducting investigations, imposing discipline, and addressing disciplinary appeals.

When developing model policies, the Attorney General must consult with the Criminal Justice Training Commission, the Office of Independent Investigations, law enforcement and local corrections agencies, police and local corrections unions, independent oversight bodies, city attorneys and county prosecutors, people impacted by police or local corrections misconduct, experts, and police and jail accountability advocates.

Other Provisions.

The provisions of this act authorizing the Attorney General to investigate and bring actions against certain law enforcement and corrections agencies must be liberally construed.

Substitute Bill Compared to Original Bill:

The substitute bill:

- requires the Attorney General to confer with the Office of Independent Investigations when an investigation is initiated; and
- requires the Attorney General, when developing model policies, to consult with the Criminal Justice Training Commission and the Office of Independent Investigations in addition to the other entities and agencies listed in the bill.

Appropriation: None.

Fiscal Note: Requested on January 18, 2023.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will clarify the Washington Attorney General's authority to act on matters of public interest and run parallel to the federal Attorney General's authority to investigate patterns and practices that violate constitutional rights. The goal is to act upstream of wrongdoing and prevent it from happening.

Some local police departments in Washington have a history of using excessive force against people of color. Lives are being lost over nonviolent crimes. People of color are overrepresented in the population that is being killed and having force used against them. If a department has a history of violating civil rights, someone must step in to stop the harm. This bill is focused on addressing widespread and systematic misconduct. Some police departments are failing and unwilling to course correct. Washington will join other states in providing a backstop against systemic failure. Currently, the main tool to address these problems is the United States Department of Justice, but that agency must oversee 18,000 departments across the country. Misconduct is going unchecked, which undermines confidence in the police. This bill is about good governance, and it empowers the Attorney General to investigate problems and call for change.

Accountability systems are required to create impartial and fair outcomes. There is a need for a framework to address misconduct. The Office of the Attorney General must publish model policies and consult with stakeholders.

This bill is focused on increasing accountability for departments and agency culture, not individual officers who can be held accountable under other laws. Additional stakeholders should be included like the Criminal Justice Training Commission.

(Opposed) The bill provides ambiguous authority to the Attorney General to roam cities and counties for any perceived violation of the state Constitution or state law. This bill is more about punishing local governments rather than improving them. Avenues already exist to help injured parties, and this bill is redundant while simply providing another way to sue local governments. Mediation is a better approach than litigation.

The professed intent of the bill is not to address isolated actions, but the bill grants authority to investigate a single act, and impose damages and costs. The bill does not require a pattern, practice, or systemic problem; a single incident is sufficient. This bill goes beyond federal authority to investigate patterns and practices. The Attorney General is not required to articulate any reason before launching an investigation and crippling a law enforcement agency. Selective enforcement is a concern.

Washington governments should not be suing each other; they should be helping each other. It is a mistake to make the Attorney General an adversary of law enforcement rather than an ally. If there is reason to believe a pattern or practice of violating rights exists, the state should assist in fixing the issue. Some departments have requested assistance proactively, but have not had much success. Some departments have asked for more police officers; better policies; and assistance with accreditation, training, and early intervention, but nothing fruitful has resulted yet. The bill does not require the Attorney General to assist an agency to comply before filing suit. The focus should be on helping agencies comply rather than punishing them.

This bill creates a conflict of interest and agencies will hesitate to involve the Attorney General as a result. If the Attorney General's Office is to become the watchdog for law enforcement agencies, it should be the watchdog for all agencies, not just local agencies, and the Attorney General should be divested from its law enforcement activities.

This bill creates a due process loophole by authorizing the Attorney General to seek injunctive relief.

Washington has already enacted wide ranging police reforms, including creation of the Criminal Justice Training Commission. Many of these reforms are only now coming online. This bill is going to create confusion and conflicting authorities.

Persons Testifying: (In support) Representative Drew Hansen, prime sponsor; Enoka Herat, American Civil Liberties Union of Washington; Leslie Cushman and Shelly Washington, Washington Coalition for Police Accountability; and Michael Transue, Washington Fraternal Order of Police.

(Opposed) Ryan Lufkin, Washington Council of Police and Sheriffs; James McMahan, Washington Association of Sheriffs and Police Chiefs; Candice Bock, Association of Washington Cities; and Juliana Roe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin and Steele.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

The Appropriations Committee recommended the following changes:

- delaying the date by which the Attorney General must develop model policies from July 1, 2024 to September 1, 2024;
- removing the requirement that model policies be developed for corrections agencies;
- requiring model practices for investigations and discipline to relate to serious misconduct;
- requiring model policies to be consistent with standards adopted in other published model guidance drafted by the Office of the Attorney General at the specific request of the Legislature;
- removing local corrections agencies, local corrections unions, people impacted by local corrections misconduct, and jail accountability advocates from the list of entities with which the Attorney General must consult in developing model policies; and
- adding a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill clarifies the Attorney General's (AG) existing authority and parallels the federal authority of the Department of Justice (DOJ). It is an important tool to ensure accountability and institutional change when federal DOJ authority will not meet the need. The ability to bring a case is a powerful but reasonably limited tool. These powers must be exercised within the limits of the law. Other state attorneys general have "pattern or practice" authority which has been very effective. It is important to the community to clarify this authority in Washington to address widespread problems, create accountability, reduce litigation, and improve community trust. Police departments and sheriff's offices have histories of excessive force against people of color and people with behavioral health issues, who are disproportionately killed by police. The fiscal note does not account for the costs of trauma for families and communities.

(Opposed) Cities have concerns not about the AG's ability to pursue investigations, but to balance litigation and investigations against voluntary compliance and helping cities address the concerns that the AG may find in their investigation. Voluntary compliance is more closely aligned with the DOJ's current approach. Cities would appreciate an amendment clarifying that the AG may investigate a "pattern or practice" rather than a "violation."

Washington governments should help each other, not sue each other. If there is reason to believe there is a pattern or practice of misconduct, it is better for the state to help fix that pattern or practice and prevent future misconduct rather than create punitive measures. There is no requirement in the bill for the AG to work with the agency to fix the problem. This bill should apply equally to state agencies. If the Legislature pursues this policy it should divest the AG of law enforcement programs.

Persons Testifying: (In support) Representative Drew Hansen, prime sponsor; Jonathan Smith, Washington Lawyers' Committee; and Shelly Washington, Washington Coalition for Police Accountability.

(Opposed) Candice Bock, Association of Washington Cities; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.