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**SUBSTITUTE HOUSE BILL 1025**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Thai, Reed, Berry, Ryu, Simmons, Bateman, Fitzgibbon, Farivar, Peterson, Alvarado, Pollet, Street, Cortes, Doglio, Macri, Gregerson, Stonier, Kloba, and Santos)

READ FIRST TIME 02/14/23.

1 AN ACT Relating to creating a private right of action for harm  
2 from violations of the state Constitution or state law by peace  
3 officers; amending RCW 4.24.420; adding a new chapter to Title 7 RCW;  
4 and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The state of Washington and its  
7 subdivisions undertake to protect the safety of individuals and to  
8 preserve public peace by employing peace officers entrusted with the  
9 power to arrest, detain, and use force against individuals suspected  
10 of violating the law. It is the intent of the legislature to provide  
11 a meaningful legal remedy under state law for persons who are injured  
12 when a peace officer or the officer's employer violates the state  
13 Constitution or certain state laws.

14 (2) The legislature finds that the lack of such a remedy  
15 jeopardizes justice for the victims and implies impunity for the  
16 violators. In order to foster the important public policy of  
17 accountability for unlawful policing and promote trust between  
18 communities and law enforcement, and in recognition of remedial  
19 deficiencies in existing federal law and Washington common law, this  
20 chapter establishes a more meaningful remedy through a civil cause of  
21 action by which victims of such misconduct by peace officers or their

1 employers may obtain compensation for their injuries and an award of  
2 costs and attorney fees incurred in seeking the remedy. By enacting  
3 this chapter, the legislature intends to preclude the creation of the  
4 doctrine of qualified immunity as it has developed in litigation of  
5 suits under 42 U.S.C. Sec. 1983.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires  
8 otherwise.

9 (1) "Employer" means:

10 (a) The state of Washington and all political subdivisions and  
11 agencies thereof that act as a peace officer's employing agency or  
12 entity; and

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

16 (2) "Peace officer" has the meaning defined in RCW 43.101.010.

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

19 NEW SECTION. **Sec. 3.** (1) Any person injured in person or  
20 property by a peace officer acting under color of authority has a  
21 cause of action against the peace officer, and against any other  
22 peace officer who had the power through reasonable diligence to  
23 prevent or aid in preventing the injury from occurring and failed to  
24 do so, if the peace officer engaged in conduct that is unlawful  
25 under:

26 (a) The state Constitution;

27 (b) RCW 10.93.160; or

28 (c) RCW 10.120.020.

29 (2) In an action against a peace officer under subsection (1) of  
30 this section, the plaintiff may also name the officer's employer as a  
31 defendant. The employer is vicariously liable if the unlawful conduct  
32 causing the injury was within the scope of the peace officer's  
33 employment.

34 (3) (a) A peace officer has a defense against an action brought  
35 under subsection (1) of this section if, when the injury occurred,  
36 the officer substantially complied with a regulation, practice,  
37 procedure, policy, or training that was established by the peace  
38 officer's employer or approved or condoned by superior officers.

1 (b) If a peace officer proves a defense under (a) of this  
2 subsection, the peace officer's employer is independently liable for  
3 the injury if the injury was proximately caused by a regulation,  
4 practice, procedure, policy, or training that was established by the  
5 employer or approved or condoned by superior officers.

6 (c) A peace officer's employer has a defense against independent  
7 liability arising under (b) of this subsection if the training at  
8 issue was provided by the criminal justice training commission, or if  
9 the policy at issue conformed to published model guidance drafted by  
10 the Washington office of the attorney general at the specific request  
11 of the Washington state legislature.

12 (d) If a peace officer's employer asserts a defense under (c) of  
13 this subsection, it must within 30 days provide notice of this  
14 defense, and all relevant claims and facts in the underlying  
15 litigation, to the attorney general and director of the criminal  
16 justice training commission.

17 (e) Beginning December 1, 2025, and annually thereafter, the  
18 attorney general's office must provide a report to the chairs of the  
19 house civil rights and judiciary committee and senate law and justice  
20 committee, or the chairs of any successor committees, regarding all  
21 employer defenses asserted under (c) of this subsection that were  
22 reported to the attorney general in the preceding 12 months.

23 (4) (a) The employer is also independently liable for the injury  
24 if a proximate cause of the injury was the employer's failure to use  
25 reasonable care in hiring, training, or supervising the peace  
26 officer.

27 (b) The employer is also independently liable for the injury if a  
28 proximate cause of the injury was the employer's failure to use  
29 reasonable care in retaining or disciplining the peace officer unless  
30 the employer proves that it took disciplinary action against the  
31 peace officer and that action was appealed by the officer and reduced  
32 or overturned by an independent arbitrator or court.

33 (5) It is not an immunity or defense to an action brought under  
34 this chapter that the rights, privileges, or immunities sued upon  
35 were not clearly established at the time of the act, omission, or  
36 decision by the peace officer or employer.

37 NEW SECTION. **Sec. 4.** In an action brought under this chapter,  
38 the court shall award to a prevailing plaintiff actual damages as  
39 determined by the trier of fact, and shall make an award of at least

1 nominal damages. The court may also award to a prevailing plaintiff  
2 costs and reasonable attorneys' fees. The court may grant declaratory  
3 and injunctive relief as it deems appropriate.

4 NEW SECTION. **Sec. 5.** (1) This chapter must be liberally  
5 construed to effect its beneficial and remedial purposes.

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

8 NEW SECTION. **Sec. 6.** A cause of action under section 3 of this  
9 act must be commenced within three years after the cause of action  
10 accrues.

11 NEW SECTION. **Sec. 7.** Nothing in this chapter is intended to  
12 limit the right of a peace officer to have a legal defense provided  
13 at the expense of his or her public employer or to having any  
14 judgment under this chapter satisfied by such employer under chapter  
15 4.92 or 4.96 RCW.

16 NEW SECTION. **Sec. 8.** This chapter applies only to causes of  
17 action arising on or after the effective date of this section.

18 **Sec. 9.** RCW 4.24.420 and 2021 c 325 s 1 are each amended to read  
19 as follows:

20 (1) Except in an action arising out of law enforcement activities  
21 resulting in personal injury or death, it is a complete defense to  
22 any action for damages for personal injury or wrongful death that the  
23 person injured or killed was engaged in the commission of a felony at  
24 the time of the occurrence causing the injury or death and the felony  
25 was a proximate cause of the injury or death.

26 (2) In an action arising out of law enforcement activities  
27 resulting in personal injury or death, it is a complete defense to  
28 the action that the finder of fact has determined beyond a reasonable  
29 doubt that the person injured or killed was engaged in the commission  
30 of a felony at the time of the occurrence causing the injury or  
31 death, the commission of which was a proximate cause of the injury or  
32 death.

33 (3) Nothing in this section shall affect a right of action under  
34 42 U.S.C. Sec. 1983 or chapter 7.--- RCW (the new chapter created in  
35 section 10 of this act).

1        NEW SECTION.    **Sec. 10.**    Sections 1 through 8 and 11 of this act  
2    constitute a new chapter in Title 7 RCW.

3        NEW SECTION.    **Sec. 11.**    This act takes effect January 1, 2025.

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