H-1498.1

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**SECOND SUBSTITUTE HOUSE BILL 1025**

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**State of Washington 68th Legislature 2023 Regular Session**

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

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

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

NEW SECTION. **Sec.**  (1) 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 the law. 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 or the officer's employer violates the state Constitution or certain state laws.

(2) The legislature finds that the lack of such a remedy jeopardizes justice for the victims and implies impunity for the violators. In order to foster the important public policy of accountability for unlawful policing and promote trust between communities and law enforcement, and in recognition 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 such misconduct by peace officers or their employers 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 preclude the creation of the doctrine of qualified immunity as it has developed in 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) "Employer" means:

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

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

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

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 engaged in conduct that is unlawful under:

(a) The state Constitution;

(b) RCW 10.93.160; or

(c) RCW 10.120.020.

(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) 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 peace officer's employer or approved or condoned by superior officers.

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

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

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

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

(4)(a) 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, or supervising the peace officer.

(b) 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 retaining or disciplining the peace officer unless the employer proves that it took disciplinary action against the peace officer and that action was appealed by the officer and reduced or overturned by an independent arbitrator or court.

(5) It is not an immunity or defense to an action brought under this chapter that 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.

NEW SECTION. **Sec.**  In an action brought under this chapter, 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 may 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.**  (1) This chapter must be liberally construed to effect its beneficial and remedial purposes.

(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 chapter applies only to causes of action arising on or after the effective date of this section.

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

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

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

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

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

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

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, 2023, in the omnibus appropriations act, this act is null and void.

**--- END ---**