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## Civil Rights & Judiciary Committee

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### HB 2597

**Brief Description:** Concerning remedies for violations of federal constitutional rights occurring during immigration enforcement.

**Sponsors:** Representatives Thai, Fosse, Simmons, Parshley, Gregerson, Santos, Ramel, Stearns, Goodman, Obras, Peterson, Cortes, Doglio, Ormsby, Pollet, Scott, Ryu, Nance and Salahuddin.

#### Brief Summary of Bill

- Creates a civil claim for damages for any person who is injured during civil immigration enforcement against any government agent who violates the United States Constitution while participating in civil immigration enforcement.
- Limits immunity to the maximum extent permissible under the United States and Washington Constitutions for a claim of damages against government agents for violations of federal constitutional rights during civil immigration enforcement.

**Hearing Date:** 1/28/26

**Staff:** Matt Sterling (786-7289).

#### **Background:**

##### Civil Actions for Deprivation of Constitutional Rights.

##### *Claims Against State Agents.*

Federal law provides a civil cause of action to redress violations of federal constitutional and statutory rights caused by persons acting under color of state law that is often referred to as a section 1983 action. The legal standard depends on the legal right at issue.

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*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.*

Section 1983 actions are generally brought against the individual state officer who committed the alleged violation. The doctrine of vicarious liability of employers does not apply in section 1983 actions. An officer's employing agency may only be held liable in a section 1983 action when the injury is the result of the execution of a policy or custom adopted by the agency.

#### *Claims Against Federal Agents.*

The Federal Tort Claims Act (FTCA) generally provides the exclusive civil remedy against the United States for injury or loss resulting from the negligent or wrongful act or omission of any federal agent while acting within the scope of their office or employment. However, the FTCA does not displace or prohibit a civil action against a federal agent that is brought for a violation of the Constitution of the United States.

The United States Supreme Court held in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics* that a civil claim for damages is available in limited circumstances when federal officials commit certain constitutional violations.

#### Federal Government Immunity.

The Supremacy Clause requires that federal law prevails when it is in conflict with state law. The states are prohibited from burdening or controlling the operations of the constitutional laws enacted by the United States Congress. The doctrine of intergovernmental immunity bars state laws that attempt to regulate or discriminate against the federal government or single out federal actors for unique treatment.

#### *Supremacy Clause Immunity.*

Supremacy Clause immunity generally shields federal officials from criminal state liability if the federal official was engaged in activity that was authorized by federal law and the official's actions were "necessary and proper" in fulfilling their federal duties.

#### *Qualified Immunity.*

The doctrine of qualified immunity provides government officials performing discretionary functions with immunity from civil suits for violations of rights secured by the United States Constitution or federal law, unless the plaintiff shows that the officer violated "clearly established" rights. When determining whether a right was clearly established, courts consider whether the right at issue was sufficiently clear such that every reasonable official would have known that his or her conduct violated the right.

#### Washington Civil Actions.

Washington has not enacted a statute authorizing a cause of action for violations of state constitutional or statutory rights. Washington courts have consistently refused to recognize a private cause of action for damages for state constitutional violations absent legislative guidance.

However, a civil suit against state agents and employees can be brought under state common law

tort actions. These include actions for intentional torts, such as assault, battery, false arrest, false imprisonment, or trespass; and for unintentional torts, such as a negligence claim based on an officer's failure to use reasonable care.

#### *Qualified Immunity.*

Washington courts recognize a distinct state variant of qualified immunity in some instances. A peace officer is generally entitled to state qualified immunity from civil liability where the officer carries out a statutory duty according to procedures dictated to the officer by statute and superiors and where the officer acts reasonably. However, this state qualified immunity does not apply to claims of assault and battery arising out of the use of excessive force to effectuate an arrest.

#### Removal to Federal Court.

Federal law provides that a civil action or criminal prosecution that is commenced in a state court and that is against or directed toward the federal government or a federal agent may be removed to federal court.

### **Summary of Bill:**

#### Washington Civil Actions.

A person who is injured during civil immigration enforcement by any local, state, or United States government agent who violates the United States Constitution while participating in civil immigration enforcement may bring a civil action against the government agent in any court.

#### *Government Liability.*

A government agent found to have violated the United States Constitution while participating in civil immigration enforcement is liable to the injured person for legal relief, equitable relief, and any other appropriate relief. A prevailing plaintiff may recover compensatory and punitive damages. A court must award reasonable attorneys' fees and costs to a prevailing plaintiff. If a judgment is entered in favor of a defendant, the court may award reasonable attorneys' fees and costs to the defendant for defending any claims the court finds frivolous.

#### *Government Immunity.*

To the maximum extent permissible under the United States and Washington Constitutions, the grant of any immunity to a defendant does not apply in any action brought against a government agent who violates the United States Constitution while participating in civil immigration enforcement.

#### Statute of Limitations.

A civil action brought against a government agent who violates the United States Constitution while participating in civil immigration enforcement must be commenced within three years after the cause of action accrues.

Severability.

Severability clauses are included for any provision of the act that is held invalid or conflicts with federal requirements that are a condition to the allocation of federal funds to the state.

**Appropriation:** None.

**Fiscal Note:** Requested on January 26, 2026.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.