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**HOUSE BILL 1202**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**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

Read first time 01/14/21. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to addressing meaningful civil remedies for  
2 persons injured as a result of police misconduct, including by  
3 allowing for an award of attorney fees in addition to damages and  
4 injunctive and declaratory relief; and adding a new chapter to Title  
5 7 RCW.

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

7 NEW SECTION. **Sec. 1.** The state of Washington and its  
8 subdivisions undertake to protect the safety of individuals and to  
9 preserve public peace by employing peace officers entrusted with the  
10 power to arrest, detain, and use force against individuals suspected  
11 of violating criminal statutes. It is the intent of the legislature  
12 to provide a meaningful legal remedy under state law for persons who  
13 are injured when a peace officer exercises these powers unlawfully.  
14 The legislature finds that the lack of such a remedy jeopardizes  
15 justice for the victims, implies impunity for the violators, and  
16 engenders a cynicism destructive of self-government. In order to  
17 foster the important public policy of accountability for unlawful  
18 policing and promote trust between communities and law enforcement,  
19 and in view of remedial deficiencies in existing federal law and  
20 Washington common law, this chapter establishes a more meaningful  
21 remedy through a civil cause of action by which victims of misconduct

1 by peace officers may obtain compensation for their injuries and an  
2 award of costs and attorney fees incurred in seeking the remedy. By  
3 enacting this chapter the legislature intends to prevent the use of  
4 the doctrine of qualified immunity as it has developed in federal  
5 litigation of 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) "Person" means a natural person and, if the natural person  
10 has died, includes the person's estate and statutory beneficiaries.

11 (2) "Peace officer" means any law enforcement personnel subject  
12 to the basic law enforcement training requirement of RCW 43.101.200  
13 and any other requirements of that section, notwithstanding any  
14 waiver or exemption granted by the criminal justice training  
15 commission, and notwithstanding the statutory exemption based on date  
16 of initial hire under RCW 43.101.200. Commissioned officers of the  
17 Washington state patrol, whether they have been or may be exempted by  
18 rule of the commission from the basic training requirement of RCW  
19 43.101.200, are included as peace officers for purposes of this  
20 chapter. Fish and wildlife officers with enforcement powers for all  
21 criminal laws under RCW 77.15.075 are peace officers for purposes of  
22 this chapter.

23 (3) "Employer" means:

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

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

30 NEW SECTION. **Sec. 3.** (1) Any person injured in person or  
31 property by a peace officer acting under color of authority has a  
32 cause of action against the peace officer, and against any other  
33 peace officer who had the power through reasonable diligence to  
34 prevent or aid in preventing the injury from occurring and failed to  
35 do so, if the peace officer:

36 (a) Engaged in conduct that under civil law constitutes an  
37 assault, battery, outrage, false imprisonment, false arrest,  
38 malicious prosecution, trespass, or conversion; or

1 (b) Executed a detention, traffic stop, search, seizure, or entry  
2 into a home that is unlawful under the state Constitution; or

3 (c) Engaged in conduct that violated the duty of reasonable care  
4 under chapter . . . , Laws of 2021 (House Bill No. . . . ); or

5 (d) Violated a provision of RCW 10.93.160.

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

11 (3) A peace officer has a defense against an action brought under  
12 subsection (1) of this section if, when the injury occurred, the  
13 officer substantially complied with a regulation, practice,  
14 procedure, or policy that was established by the employer or approved  
15 or condoned by superior officers. If the peace officer proves this  
16 defense, the employer is independently liable for the injury if the  
17 injury was proximately caused by a regulation, custom, usage,  
18 practice, procedure, or policy approved or condoned by the employer.

19 (4) The employer is also independently liable for the injury if a  
20 proximate cause of the injury was the employer's failure to use  
21 reasonable care in hiring, training, retaining, supervising, or  
22 disciplining the peace officer.

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

25 (a) The rights, privileges, or immunities sued upon were not  
26 clearly established at the time of the act, omission, or decision by  
27 the peace officer or employer; or

28 (b) At such time, that the state of the law was such that the  
29 peace officer or employer could not reasonably have been expected to  
30 know whether such act, omission, or decision was lawful.

31 NEW SECTION. **Sec. 4.** The court shall award to a prevailing  
32 plaintiff actual damages as determined by the trier of fact, and  
33 shall make an award of at least nominal damages. The court shall also  
34 award to a prevailing plaintiff costs and reasonable attorneys' fees.  
35 The court may grant declaratory and injunctive relief as it deems  
36 appropriate.

37 NEW SECTION. **Sec. 5.** The attorney general may investigate  
38 employers and peace officers engaging in a pattern or practice of

1 conduct identified in section 3 of this act and bring an action in  
2 the name of the state, or as *parens patriae* on behalf of persons  
3 residing in the state, against a peace officer or employer to  
4 restrain and prevent the peace officer or employer from engaging in  
5 any pattern or practice of conduct identified in section 3 of this  
6 act. The prevailing party may, in the discretion of the court,  
7 recover the costs of the action including reasonable attorneys' fees.

8 NEW SECTION. **Sec. 6.** (1) This chapter must be liberally  
9 construed so that its beneficial and remedial purposes may be served.

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

12 (3) The provisions of chapter 4.22 RCW do not apply to a cause of  
13 action under section 3 of this act.

14 NEW SECTION. **Sec. 7.** A cause of action under section 3 of this  
15 act must be commenced within three years after the cause of action  
16 accrues.

17 NEW SECTION. **Sec. 8.** Nothing in this chapter is intended to  
18 limit the right of a peace officer to have a legal defense provided  
19 at the expense of his or her public employer or to having any  
20 judgment under this chapter satisfied by such employer under chapter  
21 4.92 or 4.96 RCW.

22 NEW SECTION. **Sec. 9.** This act may be known and cited as the  
23 peace officer accountability act.

24 NEW SECTION. **Sec. 10.** This chapter applies only to causes of  
25 action arising on or after the effective date of this section.

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

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