

Multiple Agency Fiscal Note Summary

Bill Number: 1025 HB	Title: Police/private actions
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of Attorney General	0	0	1,619,000	0	0	5,345,000	0	0	5,342,000
Department of Enterprise Services	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	1,619,000	0	0	5,345,000	0	0	5,342,000

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of Attorney General	5.4	0	0	1,619,000	18.0	0	0	5,345,000	18.0	0	0	5,342,000
State Lottery	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Gambling Commission	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Insurance Commissioner	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Enterprise Services	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Liquor and Cannabis Board	.0	0	0	0	.0	0	0	0	.0	0	0	0
Utilities and Transportation Commission	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Patrol	.5	37,400	37,400	163,600	2.0	129,200	129,200	564,000	2.0	129,200	129,200	564,000
Washington State Patrol	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Department of Social and Health Services	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Corrections	Non-zero but indeterminate cost and/or savings. Please see discussion.											
University of Washington	Fiscal note not available											
Washington State University	Fiscal note not available											
Eastern Washington University	Fiscal note not available											
Central Washington University	Fiscal note not available											
The Evergreen State College	Fiscal note not available											
Western Washington University	Fiscal note not available											
State Parks and Recreation Commission	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Fish and Wildlife	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Natural Resources	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total \$	5.9	37,400	37,400	1,782,600	20.0	129,200	129,200	5,909,000	20.0	129,200	129,200	5,906,000

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
State Lottery	.0	0	0	.0	0	0	.0	0	0
Washington State Gambling Commission	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
Department of Enterprise Services	.0	0	0	.0	0	0	.0	0	0
Liquor and Cannabis Board	.0	0	0	.0	0	0	.0	0	0
Utilities and Transportation Commission	.0	0	0	.0	0	0	.0	0	0
Washington State Patrol	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
University of Washington	Fiscal note not available								
Washington State University	Fiscal note not available								
Eastern Washington University	Fiscal note not available								
Central Washington University	Fiscal note not available								
The Evergreen State College	Fiscal note not available								
Western Washington University	Fiscal note not available								
State Parks and Recreation Commission	.0	0	0	.0	0	0	.0	0	0
Department of Fish and Wildlife	.0	0	0	.0	0	0	.0	0	0
Department of Natural Resources	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Gaius Horton, OFM	Phone: (360) 819-3112	Date Published: Preliminary
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Judicial Impact Fiscal Note

Revised

Bill Number: 1025 HB	Title: Police/private actions	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Jackie Bailey-Johnson	Phone: 360-704-5545	Date: 01/25/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/25/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/25/2023

180,123.00

Form FN (Rev 1/00)

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Request # 046-2

Bill # 1025 HB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

INDETERMINATE FOR COURTS

The bill adds a new chapter to Title 7 RCW that would allow cause of action against peace officers.

II. B - Cash Receipts Impact

II. C - Expenditures

No fiscal impact is expected to the Administrative Office of the Courts.

The bill would allow for individuals who are injured by peace officers to have legal remedy.

Impact on the courts due to increased filings is indeterminate. We do not have data about the increased caseload.

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditure By Object or Purpose (County)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Expenditure By Object or Purpose (City)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

180,123.00

Form FN (Rev 1/00)

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 100-Office of Attorney General
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Revolving Account-State 405-1	243,000	1,376,000	1,619,000	5,345,000	5,342,000
Total \$	243,000	1,376,000	1,619,000	5,345,000	5,342,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.6	9.3	5.4	18.0	18.0
Account					
Legal Services Revolving Account-State 405-1	243,000	1,376,000	1,619,000	5,345,000	5,342,000
Total \$	243,000	1,376,000	1,619,000	5,345,000	5,342,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Allyson Bazan	Phone: 360-586-3589	Date: 01/23/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 01/23/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/24/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Sec. 1: Legislature intends to preclude the creation of the doctrine of qualified immunity as it has developed in litigation under 42 USC 1983.

Sec. 2: Definitions.

Sec. 3: Private right of action for injured persons when a peace officer engaged in conduct that is unlawful. Defenses for officers based on substantial compliance with law, policy, guidance, procedure, or training established by the agency or approved/condoned by a superior officer. If officer proves the compliance was within an agency policy, guidance, or procedure, the employer is independently liable for harm unless the agency was following training by the criminal justice training center or was a model guidance drafted by the Attorney General's Office. Vicarious liability for employer of the peace officer. No immunity or defense for rights privileges or immunities that were not clearly established or because that the state of the law was unknown at the time of the action.

Sec. 4: Actual damages and costs and fees to prevailing plaintiff.

Sec. 5: Statute of limitations of three years after the cause of action accrues.

Sec. 7: Preserves the right of a peace officer to have defense provided by their employer and having judgement satisfied by the employer in RCW 4.92 or 4.96.

Sec. 8: Not retroactive for actions prior to effective date.

Sec. 9: Effective date January 1, 2025.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These will be billed through the revolving account to the client agency.

The client agencies are the Department of Enterprise Services (DES), Washington State University (WSU), Washington Department of Fish and Wildlife (WDFW), Department of Natural Resources (DNR), Eastern Washington University (EWU), Central Washington University (CWU), The Evergreen State College (TESC), Western Washington University (WWU) and Washington State Patrol (WSP). The Attorney General's Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agencies' fiscal note. Appropriation authority is necessary in the AGO budget.

Tort defense costs are billed through the LSRA to the DES Risk Management Division through an Interagency Agreement (IAA). The Torts client agency is assumed to be DES. These costs are over and above the current 2021-23 IAA amount.

AGO AGENCY ASSUMPTIONS:

DES will be billed for Seattle rates:

FY 2024: \$67,000 for 0.25 FTE Assistant Attorney General (AAG), and 0.13 FTE Legal Assistant (LA).
FY 2025: \$1,299,000 for 3.00 FTE AAG, 1.50 FTE LA, 2.00 FTE Paralegal (PL), 1.00 FTE Investigator (INV), and 0.50 FTE Legal Office Assistant (LOA)
FY 2026: \$2,597,000 for 6.00 FTE AAG, 3.00 FTE LA, 4.00 FTE PL, 2.00 FTE INV, and 1.00 FTE LOA, and in each FY thereafter.

WSU will be billed for non-Seattle rates:

FY 2025: \$3,000 for 0.01 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

WDFW will be billed for non-Seattle rates:

FY 2025: \$1,500 for 0.01 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

DNR will be billed for non-Seattle rates:

FY 2025: \$1,500 for 0.01 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

UOW will be billed for Seattle rates:

FY 2024: \$135,000 for 0.50 FTE AAG, and 0.25 FTE LA.
FY 2025: \$53,000 for 0.20 FTE AAG, and 0.10 FTE LA, and in each FY thereafter.

EWU will be billed for non-Seattle rates:

FY 2024: \$10,000 for 0.04 FTE AAG, and 0.02 FTE LA.
FY 2025: \$5,000 for 0.02 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

CWU will be billed for non-Seattle rates:

FY 2024: \$10,000 for 0.04 FTE AAG, and 0.02 FTE LA.
FY 2025: \$5,000 for 0.02 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

TESC will be billed for non-Seattle rates:

FY 2024: \$7,500 for 0.03 FTE AAG, and 0.02 FTE LA.
FY 2025: \$2,500 for 0.01 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

WWU will be billed for non-Seattle rates:

FY 2024: \$7,500 for 0.03 FTE AAG, and 0.02 FTE LA.
FY 2025: \$2,500 for 0.01 FTE AAG, and 0.01 FTE LA, and in each FY thereafter.

WSP will be billed for non-Seattle rates:

FY 2024: \$3,000 for 0.01 FTE AAG, and 0.01 FTE LA.
FY 2025: \$3,000 for 0.01 FTE AAG, and 0.01 FTE LA.
FY 2026: \$3,000 for 0.01 FTE AAG, and 0.01 FTE LA.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Attorney General's Office (AGO) Agency Assumptions:

This bill is effective January 1, 2025.

Location of staffing housed is assumed to be in statewide office buildings.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables, for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 FTE for a Legal Assistant 3 (LA) and 0.25 FTE of a Management Analyst 5 (MA). The MA is used as a representative classification.

1. The AGO Torts (TOR) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

TOR is funded through an interagency agreement with the Department of Enterprise Services (DES) that draws from the self-insured liability account. TOR client is DES for purposes of this analysis. Costs identified are over the current FY amounts allocated in the IAA.

Section 3 of this bill creates a cause of action for any violation of state law or the state constitution performed by a peace officer, a bystander peace officer who fails to intervene and the peace officers' employers. Defenses are limited and it is no defense that a peace officer or the employer "could not reasonably have been expected to know" that the act/omission/decision was not lawful. As a result, there is no way to presume, as would normally be the case, that the law will be followed non-negligently. Any existing causes of action and the expected as-yet-to-be-identified causes of action will now have attorneys' fees and costs available. This can be expected to incentivize the bringing of lawsuits and lends support to assumptions below about increase in claims. Typically at least 45 percent of TOR cases are dismissed by motion. Elimination of a qualified immunity defense will reduce this number and increase defense costs and payouts.

Under existing law, over the last five years Torts has seen an increase in cases against law enforcement. For the five year period between January 2016 and January 2021, agencies with peace officers resolved a total of 16 cases. Currently there are 35 active cases. This trend is expected to grow as noted above.

TOR assumes that with this bill there will be at least half as many new cases (17) alleging some violation of state law or the state constitution as there are currently cases alleging violation of the federal constitution. This is because under the federal constitution there is not vicarious liability for an employee's civil rights violations. In contrast, the bill expressly provides for vicarious liability (e.g., liability for employer) for employee's violations of the state constitution.

TOR's experience with other areas of law where new causes of action have been recognized is illustrative as to further impact/increases in cases. In 2018, a common law cause of action was recognized against Department of Children, Youths and Families (DCYF) for harm to foster children perpetrated by foster parents. Analysis of DCYF cases pending in the few years after the decision was issued showed that 78 out of 132 active lawsuits or 59 percent were brought based on the new cause of action. In 2019, Washington's Law Against Discrimination was interpreted to recognize a public accommodation theory which resulted in 12 of 185 employment cases, or 6 percent, based on the new theory. Using these low and high end rates (6 percent and 59 percent) against the current 35 cases, coupled with the increase articulated in Assumption 5 would mean that TOR assumes a low of 20 new cases and a high of 82 new cases.

Assuming 10 cases for a line AAG and 5 cases for a managing AAG (which is TOR's current aspirational caseload goal), the AGO anticipates 6.0 AAGs. Professional staff modeling to support 6 AAGs is 3.0 LA, 4 Paralegal (PL), 2.0 Investigators (INV) and 1.0 Legal Office Assistant (LOA).

TOR assumes \$102,000 per FY in direct litigation costs, with the exception noted for the initial year:

- A. Object C: \$62,000 for expert witnesses, mediations/arbitrations and litigation consultants.
- B. Object E: \$35,000 for court reporting services, court costs, records and copying fees.
- C. Object G: \$5,000 for statewide travel for depositions, court hearings and trial attendance.

TOR risk management advice/training would be expected for all agencies employing peace officers with .25 FTE beginning in FY24. The bill takes effect midway through FY25 and so half of all FTE costs are projected for that year as well as the direct litigation costs and with full FTE and litigation costs required by FY26 and beyond.

TOR total FTE workload impact for Seattle rates:

FY 2024: \$67,000 for 0.25 AAG, and 0.13 LA.

FY 2025: \$1,299,000 for 3.0 AAG, 1.5 LA, 2.0 PL, 1.0 INV, and 0.5 LOA, this includes direct litigation costs of \$51,000.

FY 2026: \$2,597,000 for 6.0 AAG, 3.0 LA, 4.0 PL, 2.0 INV, and 1.0 LOA, this includes direct litigation costs of \$102,000, and in each FY thereafter.

2. The AGO Washington State University (WSU) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

The enactment of this bill will marginally impact the provision of legal services to Washington State University by the WSU Division. In making this determination we assume that WSU Police Department's low rate of complaints regarding injury will continue and that additional resources from our division will be in the form of additional training and legal advice regarding the bill, risk mitigation, and the definition of the term "injury." Bill Sections 2 and 3 will likely increased civil lawsuits against WSU, but we assume those lawsuits would be defended by the Torts Division.

WSU total FTE workload impact for non-Seattle rates:

FY 2025: \$3,000 for 0.01 AAG, and 0.01 LA, and in each FY thereafter.

3. The AGO Public Lands and Conservation (PLC) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

PLC assumes that new lawsuits occasioned by the new cause of action created by this bill will be defended by the Torts division. In terms of legal services provided by PLC, we assume that there will be a temporary uptick in client advice requests from Washington Department of Fish and Wildlife and Department of Natural Resources in FY 2024 (estimated at 10 hours per agency), and a need for some refresher trainings for WDFW and DNR officers in the fiscal years following FY 2024 (estimated at 5 hours per year per agency).

PLC total FTE workload impact for non-Seattle rates:

FY 2024: \$3,000 for 0.50 FTE AAG, and 0.25 FTE LA, and in each FY thereafter.

4. The AGO University of Washington (UOW) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

The UOW DIV will bill ~900 hours for legal services based on the enactment of this bill. This bill will require bargaining with police officer unions and increased training. In FY 2024, 0.5 AAG will be required to provide legal advice and

guidance on policing practice, interpretation, managing risk, and bargaining issues. In FY 2025 and subsequent years, 0.2 AAG will be required to provide ongoing legal advice and guidance related to policing practice, bargaining issues around updating policies or union bargaining proposals that seek to protect or indemnify their members, as well as individual employee discipline matters.

UOW total FTE workload impact for Seattle rates:

FY 2024: \$135,000 for 0.5 AAG, and 0.25 LA.

FY 2025: \$53,000 for 0.2 AAG, and 0.1 LA, and in each FY thereafter.

5. The AGO Education (EDU) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

EDU assumes no direct litigation costs, as it is assumed that Torts will handle any litigation.

Section 3 of this bill creates a cause of action against peace officers and creates an untempered standard of vicarious liability on the part of the employer. Clients will likely seek advice about the implications and how to safeguard against liability. Injury is not defined, so the contours and scope of that term will require advice that will need to be revisited given that it will likely evolve through litigation.

EDU assumes that there will be an increase in requests for client advice, need for bargaining with police unions, need for advice around hiring, training, supervision, and discipline, need for additional clarity about the meaning of the term “injury,” etc. (See provisions of Section 3).

EDU assumes that ongoing legal advice and guidance related to policing practice, bargaining issues around updating policies or union bargaining proposals that seek to protect or indemnify their members, as well as individual employee discipline matters will be necessary moving forward.

EDU total FTE workload impact for non-Seattle rates:

FY 2024: \$35,000 for 0.14 AAG, and 0.07 LA.

FY 2025: \$15,000 for 0.06 AAG, and 0.03 LA, and in each FY thereafter.

6. The AGO Criminal Justice (CRJ) Division has reviewed this bill and determined the following impact related to the enactment of this bill:

Section 3 of this bill may cause increased requests for client advice from Washington State Patrol (WSP) on how to train WSP’s officers on new use of force laws. Sections 2 and 3 subject WSP and its commissioned employees to likely increased civil lawsuits for use of force incidents, but those lawsuits would be defended by the Torts Division.

CRJ total FTE workload impact for non-Seattle rates:

FY 2024: \$3,000 for 0.01 AAG, and 0.01 LA.

FY 2025: \$3,000 for 0.01 AAG, and 0.01 LA.

FY 2026: \$3,000 for 0.01 AAG, and 0.01 LA.

7. The AGO Government Compliance and Enforcement (GCE) Division has reviewed this bill and determined it will not significantly increase or decrease the division’s workload in representing the Washington State Gambling Commission (GMB) and the Office of the Insurance Commissioner (OIC). This bill would create a state law remedy for persons injured by peace officers, with the term “peace officer” defined to mean a general authority law enforcement officer. The enactment of this bill would not impact GCE’s provision of legal services to these GMB or OIC because both agencies are

currently limited authority law enforcement agencies and employ only limited authority peace officers. New legal services are nominal and costs are not included in this request.

8. The AGO Corrections (COR) Division has reviewed this bill and determined it will not significantly increase or decrease the division’s workload in representing the Department of Corrections (DOC). The enactment of this bill will not impact the provision of legal services to the DOC because DOC is a limited authority law enforcement agency and employs only limited authority peace officers. The bill creates a state law remedy for persons injured by peace officers, with the term “peace officer” defined to mean a general authority law enforcement officer. DOC does not employ general authority officers. New legal services are nominal and costs are not included in this request.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
405-1	Legal Services	State	243,000	1,376,000	1,619,000	5,345,000	5,342,000
	Revolving Account						
Total \$			243,000	1,376,000	1,619,000	5,345,000	5,342,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.6	9.3	5.4	18.0	18.0
A-Salaries and Wages	162,000	867,000	1,029,000	3,362,000	3,360,000
B-Employee Benefits	53,000	288,000	341,000	1,117,000	1,116,000
C-Professional Service Contracts		31,000	31,000	124,000	124,000
E-Goods and Other Services	27,000	178,000	205,000	694,000	694,000
G-Travel	1,000	12,000	13,000	48,000	48,000
Total \$	243,000	1,376,000	1,619,000	5,345,000	5,342,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Assistant Attorney General	118,700	0.2	0.1	0.1	0.1	0.1
Assistant Attorney General-Seattle	124,635	0.8	3.2	2.0	6.2	6.2
Legal Assistant 3	55,872	0.1	0.1	0.1	0.1	0.1
Legal Assistant 3-Seattle	67,044	0.4	1.6	1.0	3.1	3.1
Management Analyst 5	91,524	0.2	0.8	0.5	1.6	1.6
Office Assistant 3-Seattle	45,996		0.5	0.3	1.0	1.0
Paralegal 2-Seattle	75,096		2.0	1.0	4.0	4.0
Senior Investigator-Seattle	98,532		1.0	0.5	2.0	2.0
Total FTEs		1.6	9.3	5.4	18.0	18.0

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Criminal Justice Division (CRJ)	3,000	3,000	6,000	3,000	
Education Division (EDU)	35,000	15,000	50,000	30,000	30,000
Public Lands & Commissions (PLC)	3,000	3,000	6,000	6,000	6,000
Torts Division (TOR)	67,000	1,299,000	1,366,000	5,194,000	5,194,000
University of Washington Division (UOW)	135,000	53,000	188,000	106,000	106,000
Washing State University Division (WSU)		3,000	3,000	6,000	6,000
Total \$	243,000	1,376,000	1,619,000	5,345,000	5,342,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 116-State Lottery
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: John Iyall	Phone: 360-810-2870	Date: 01/19/2023
Agency Approval: Josh Johnston	Phone: 360-810-2878	Date: 01/19/2023
OFM Review: Gwen Stamey	Phone: (360) 790-1166	Date: 01/20/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

The intent of HB 1025 is to establish “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.” Section 3 declares that it applies to “peace officers” as defined in RCW 43.101.010. That definition states, ““Peace officer” has the same meaning as a general authority Washington peace officer as defined in RCW 10.93.020.” Washington’s Lottery is a limited authority Washington law enforcement agency as defined in RCW 10.93.020. Therefore, the definition of peace officer does not apply to Lottery staff.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 117-Washington State Gambling Commission
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Kriscinda Hansen	Phone: 360-486-3489	Date: 01/23/2023
Agency Approval: Kriscinda Hansen	Phone: 360-486-3489	Date: 01/23/2023
OFM Review: Gwen Stamey	Phone: (360) 790-1166	Date: 01/24/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

No fiscal impact.

NOTE:

As written, this bill has no fiscal impact on state agencies that are limited authority law enforcement (Department of Natural Resources, Liquor and Cannabis Board, Office of Insurance Commissioner, Gambling Commission, State Parks and Recreation Commission) as their officers do not fall under the definition of “peace officer” as defined in this bill (the meaning defined in RCW 43.101.010).

HB 1132, a bill which is the Gambling Commission’s agency request legislation, seeks to include limited authority officers who have powers of arrest and carry a firearm as part of their normal duty in the definition of peace officer in 43.101.010. If HB 1132 passes, this bill will have fiscal impact on those five limited authority law enforcement agencies.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 160-Office of Insurance Commissioner
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Michael Walker	Phone: 360-725-7036	Date: 01/19/2023
Agency Approval: Michael Wood	Phone: 360-725-7007	Date: 01/19/2023
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 01/20/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill intends 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 state law. The Office of Insurance Commissioner (OIC) employs limited authority WA peace officers which do not meet the bill's definition of peace officer. Therefore, no fiscal impact on the OIC.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 179-Department of Enterprise Services
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Julie McVey	Phone: (360) 407-9334	Date: 01/23/2023
Agency Approval: Ashley Howard	Phone: (360) 407-8159	Date: 01/23/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/23/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill adds a new chapter to Title 7 RCW.

Section 1 describes this chapter will provide a more meaningful remedy for victims of misconducts by peace officers or their employers.

Section 3 creates a new cause of action against a peace officer acting under the "color of authority" for civil rights violations, allowing an individual to sue the peace officer and their employer for unlawful misconduct.

This is similar to federal Section 1983 actions, but with limits on the qualified immunities available under the federal provision.

Section 4 allows courts to award damages, costs and attorneys' fees to prevailing plaintiffs in such cases.

Section 10 states this does not go into effect until January 1, 2025, which will forestall increases in expenses to the self-insurance liability account for several years.

The cost of this proposed legislation is indeterminate, since this would be a new area of litigation.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

While the impact of this legislation to the Department of Enterprise Services (DES) is indeterminate, DES believes the increase in indemnity and defense costs could range between \$1.3M and \$5.3M per year.

Claims payouts and defense costs are paid from the Self Insurance Liability Account (SILA). The account is funded from premiums paid by state agencies, boards and commissions.

The account does not have capacity to absorb these new costs and premiums would need to be increased to cover them.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

The impact of this legislation to the Department of Enterprise Services (DES) is indeterminate. While the proposed legislation will increase legal defense and indemnity costs to the state, this would be a new area of actions against the state, with unclear impacts that will be sorted out over years of future litigation, therefore making costs difficult to quantify.

However, using the assumptions below, DES believes the impact could range between \$1.3M and \$5.3M per year, beginning in January of 2025.

In reviewing historic claim filings against agencies with law enforcement duties (e.g. WSP, Fish and Wildlife, Parks), and the results of similar expansions of causes of action via legislation in the past, the Attorney General's Office estimates there will be a range of 20 to 82 additional cases against state agencies per year as a result of this legislation. The average indemnity payout from similar lawsuits in the past is \$26,798 with an average legal defense cost per case of \$37,317.

Assuming the future anticipated cases would cost, on average, what past similar cases have, the total impact to the

Self-Insurance Liability Account would be a range of \$1,282,300 to \$5,257,430 per year, beginning in January 2025

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 195-Liquor and Cannabis Board
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Colin O Neill	Phone: (360) 664-4552	Date: 01/19/2023
Agency Approval: Aaron Hanson	Phone: 360-664-1701	Date: 01/19/2023
OFM Review: Amy Hatfield	Phone: (360) 280-7584	Date: 01/23/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 3: allows a person injured in person or property by a peace officer acting under color of authority has a cause of action against the 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 the state Constitution or state law.

Section 3(2): A plaintiff engaging in an action against a peace officer may name the officer's employer as a defendant.

Section 4: The court shall award to a prevailing plaintiff actual damages, and also award plaintiff costs and reasonable attorney's fees.

Section 6: A cause of action under section 3 of this act must be commenced within three years after the cause of action accrues.

Section 10: This act takes effect January 1, 2025.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

No fiscal impact to the agency. Section 7 indicates that the bill does not intend to limit the right of a peace officer to have a legal defense provided by his employer. Given that language, the agency assumes it would use the same process to consider whether a state paid defense was warranted, and anticipates that except for the most egregious circumstances, the agency would approve state defense.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 215-Utilities and Transportation Commission
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Kim Anderson	Phone: 360-664-1153	Date: 01/19/2023
Agency Approval: Kim Anderson	Phone: 360-664-1153	Date: 01/19/2023
OFM Review: Tiffany West	Phone: (360) 890-2653	Date: 01/19/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

There are no workload implications to the UTC resulting from this bill. It is a bill that allows the Attorney General to investigate policy misconduct and develop model policies for policing agencies to use. The commission is a limited law enforcement agency but does not commission employees as peace officers, nor does it enforce criminal law. UTC employees do not receive certification as criminal justice personnel.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

UTC assumes no cash receipts result from this bill.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

UTC assumes no agency expenditures resulting from this bill or to implement this legislation should it pass.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

The bill does not require UTC to adopt new administrative rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 225-Washington State Patrol
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	1.0	0.5	2.0	2.0
Account					
General Fund-State 001-1	0	37,400	37,400	129,200	129,200
State Patrol Highway Account-State 081-1	0	126,200	126,200	434,800	434,800
Total \$	0	163,600	163,600	564,000	564,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Shawn Eckhart	Phone: 360-596-4083	Date: 01/20/2023
Agency Approval: Mario Buono	Phone: (360) 596-4046	Date: 01/20/2023
OFM Review: Tiffany West	Phone: (360) 890-2653	Date: 01/24/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This legislation will have a fiscal impact to the Washington State Patrol (WSP) due to an increase in scope of liability.

In Section 3, a law enforcement officer is liable whenever a person or his or her property is injured by a peace officer acting under color of authority and engaged in conduct that is unlawful under the state Constitution or state law.

Any law enforcement officers who had the power through reasonable diligence to prevent, or aid in preventing, the injury and failed to do so would also be liable.

The employing agency of the subject law enforcement officer(s) may also be named as a defendant and held vicariously liable for conduct that caused injury if the officer acted within the scope of his or her employment. If an officer asserts that he or she complied with regulation, practice, procedures, policy or training of the employing agency during the conduct, liability would shift to the employing agency if the claim is proven. The employing agency can also be independently liable for failure to use reasonable care in hiring, training, retaining, supervising, or disciplining an officer. However, the employing agency is not liable if the training in question was provided by the Criminal Justice Training Center, or a policy in question was model guidance drafted by the Washington Office of the Attorney General. The employing agency is also not liable if it proves that it was not able to use reasonable care in retaining or disciplining the officer(s) as a result of binding arbitration.

Defendants may not use immunities or defenses against claims in this chapter by claiming that the rights, privileges, or immunities sued upon were not clearly established at the time of the conduct, nor that the state of the law was such that the officer or his or her employer could not reasonably have been expected to know whether the conduct was lawful.

Section 4 requires the court to make an award to a prevailing plaintiff of actual damages of at least nominal amount as determined by the trier of fact, and allows the court to award prevailing plaintiff costs, reasonable attorney's fees and declaratory and injunctive relief.

Section 5 states this bill adds to existing cause of action rights rather than replacing any.

Section 6 provides for a three-year statute of limitations while Section 8 states that the chapter only applies to causes of action arising on or after the effective date of this section.

Section 7 states that nothing in this legislation prevents a law enforcement officer from having his or her legal defense provided at the expense of his or her employing agency, or having any judgement under this chapter be satisfied by his or her employing agency.

Section 10 provides an effective date of January 1, 2025, for this act.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

There are no cash receipts to the WSP from this legislation.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

This legislation could have a significant fiscal impact to the WSP. The known costs are the additional paralegal FTEs described below, while the indeterminate costs are the potential tort liability claims and ancillary costs in excess of \$6 million annually.

We anticipate that this legislation will subject the agency to a large increase in claims and lawsuits. In calendar year 2019, we had 107 tort claims filed against us for a variety of causes with total claim costs of \$801,027.81. The volume of some categories of causes will largely be unaffected, such as damage caused by an officer who has a collision with a parked car, which is a claim that claimants are historically likely to pursue. However, this bill will likely increase the number of claims against the WSP in other areas due to removal of qualified immunities. Another factor would be liability to the agency for not using "reasonable care" in hiring, training, retaining, supervising, or disciplining an officer.

LIABILITY COST

The WSP investigates and tracks all uses of force regardless whether there is a claim or not. In calendar year 2019 we had 196 use-of-force arrests. Among those 2019 claims, 15 could be linked to claims related to use of force (excessive force, false imprisonment, pursuit). Because of changes in this legislation, the WSP's tort claims experience from 2019 could increase from 15 claims to 196 claims (increase of more than 180 claims, or by a multiple of 13). Use-of-force arrests can have multiple applications of force. Each application of force could result in liability for the WSP. In 2019, there were an average of 4.7 applications of the use of force in each use-of-force arrest, though those are often granular parts of an action, and include things like displaying a taser and applying handcuffs. In a hypothetical example, a use-of-force arrest might involve the discharge of a taser (use #1), followed by a take down and a counter-joint move (uses #2 and #3) to get a person into custody. Depending how a claimant articulates the causes of injury, this example could generate three times the tort risk. To come up with an estimate for tort payout cost, \$801,027.81 in payouts for 107 claims in 2019 (including ones in which the WSP prevailed), the average payout was \$7,486. If we have 180 additional suits and each suit averages 4.7 applications of force articulated to have caused injury, this could be about \$6,333,000 annually in liability.

In addition, use-of-force is just one subset of causes for claims. Under this bill, the WSP could also have increased claims for violations of civil rights, property damage, etc. In the end, the Department of Enterprise Services (which cover the state's lawsuit payouts) would retroactively track actual liability risk for agencies and if risk increases for an agency, they would request funding on our behalf via the central services allocation model so that we could receive the funding needed to cover the increased costs that they will bill to us. At this point, the state's tort self-insurance cost increase from this legislation would be indeterminate.

ATTORNEY GENERAL SERVICES

We would also have an increase in central services allocation expenditures to the Office of Attorney General as they increase staffing to defend us in an increased number of lawsuits. Some of the increased workload ends up being taken up via contracts with Special Assistant Attorney Generals at a significant cost paid directly by the agency. Like the liability cost above, at this point this cost would be indeterminate.

PARALEGAL SERVICES

We do anticipate needing at least two Paralegal 2 employees to cover the increased workload within the WSP. This would cost \$128,900 in direct costs and \$34,700 in indirect costs in the fiscal year 2025, and then \$214,100 in direct costs and \$67,900 in indirect costs annually thereafter. We base estimated salary expenditures on current levels for the positions requested per published salary schedules, plus any applicable incentive or assignment pay.

We compute estimated benefits expenditures based on federal or state mandated rates plus state provided amounts for health insurance and workers' compensation insurance. We assume that any increases in these rates or amounts will be covered by legislation establishing the increase. We compute estimated support expenditures such as supplies & materials, communications, computer costs (hardware and software), among others, using average costs to support agency positions. We adjust the estimated support costs to reflect the needs of individual divisions or positions within the Agency. The funding allocation for this estimate is based on the results of the Joint Legislative Audit and Review Committee cost allocation model approved by both the Transportation and the Omnibus Budget Committees in the 2022 Supplemental

Budget. The model analyzes costs and relevant activities (hours, transactions, type of enforcement, etc.) of WSP organizations funded by two or more sources to ensure a consistent and fair use of state resources. We base our estimate for agency indirect costs on the approved federal indirect cost rate of 31.88 percent. We apply this indirect cost rate percentage to all categories of expenditure with only two exceptions: capital equipment and expenditures after \$25,000 of each projected contract. Indirect costs include, but are not limited to, computer and telecommunications support, payroll processing, vendor payments, general accounting, procurement administration, inventory control, and human resource management.

HUMAN RESOURCES AND LABOR MANAGEMENT COSTS

There could be significant and cumulative costs associated with management of risk associated with staff. There are going to be costs in collective bargaining with applicable unions regarding how we move forward facing the challenges of the new risks from this legislation. Lowering the bar to prevail in lawsuits will encourage claims, and assigning liability to the employing agency for retaining officers who have been prevailed against adds more liability to the agency for not taking "reasonable care" in retaining the officer's employment. That means that there will be that much more weight to disciplinary actions against an employee, encouraging an employee to fight even low-level actions because of the cumulative effect that it might have on his or her employment in combination with future findings. There is also a high likelihood that arbitrators or courts would rule against termination of an employee, but in order to protect against liability risk, the agency might elect to reassign the employees to a desk job rather than to continue employment in positions with enforcement responsibilities. There are, however, very few desk jobs for commissioned officers, which could lead to retaining employees and creating roles for them that would otherwise not be positions that the agency would have chosen to create. The legislation does provide a defense to the agency that allows it to attempt to prove that it was not liable because it was not allowed to use reasonable care in retaining and disciplining officers due to binding arbitration. If employees are actually terminated, they will need to be replaced, increasing cost of recruiting and training replacements. Finally, we might find that the increased liability in the profession of law enforcement decreases the pool of applicants still interested in pursuing law enforcement as a career. This might present challenges to filling our vacancies, thereby increasing the costs to recruit applicants ranging from increased marketing costs to increased pay. All these potential costs in this area are taken to be indeterminate at this time.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	0	37,400	37,400	129,200	129,200
081-1	State Patrol Highway Account	State	0	126,200	126,200	434,800	434,800
Total \$			0	163,600	163,600	564,000	564,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		1.0	0.5	2.0	2.0
A-Salaries and Wages		71,500	71,500	286,000	286,000
B-Employee Benefits		27,000	27,000	108,000	108,000
C-Professional Service Contracts					
E-Goods and Other Services		8,000	8,000	22,000	22,000
G-Travel		1,200	1,200	4,800	4,800
J-Capital Outlays		21,200	21,200	7,400	7,400
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-Indirect Costs		34,700	34,700	135,800	135,800
Total \$	0	163,600	163,600	564,000	564,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Paralegal 2	71,520		1.0	0.5	2.0	2.0
Total FTEs			1.0	0.5	2.0	2.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

There is no impact to the WSP's capital budget from this legislation.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 300-Department of Social and Health Services
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Bill Jordan	Phone: 360-902-8183	Date: 01/19/2023
Agency Approval: Dan Winkley	Phone: 360-902-8236	Date: 01/19/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 01/23/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

There is no fiscal impact to the Department of Social and Health Services (DSHS). This bill creates a private right of action for harm from violations of the state Constitution or state law by peace officers. DSHS does not have peace officers.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 310-Department of Corrections
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Stephanie Marty	Phone: (360) 725-8428	Date: 01/23/2023
Agency Approval: Ronell Witt	Phone: (360) 725-8428	Date: 01/23/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 01/24/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

HB 1025 adds a new chapter to Title 7 RCW relating to creating a private right of action for harm from violations of the state Constitution or state law by peace officers. The Department of Corrections (DOC) community corrections officers are defined as Peace officers in RCW 43.101.010. This bill intends to provide legal recourse when a person is injured by a peace officer and intends to hold employers of peace officers liable if caused by a regulation, practice, procedure, policy, or training approved or condoned by the employer.

NEW SECTION. Sec. 1. (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 criminal statutes. 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 state law. (1) (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. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. (1) (a) "Employer" means: The state of Washington and all political subdivisions and agencies thereof that act as a peace officer's principal or supervisor; and (1) (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) (2) "Peace officer" has the meaning defined in RCW 43.101.010.

NEW SECTION. Sec. 3. (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 the state Constitution or state law. (3) (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) (3) 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 employer or approved or condoned by superior officers. If the peace officer proves this defense, the employer is independently liable for the injury if the injury was proximately caused by a regulation, practice, procedure, policy, or training approved or condoned by the employer, unless the training was provided by the criminal justice training center, or the policy was model guidance drafted by the Washington office of the attorney general. (3) (4) 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, retaining, supervising, or disciplining the peace officer, unless the department proves that it was not able to use reasonable care in retaining or disciplining the officer as a result of binding arbitration. (3) (5) It is not an immunity or defense to an action brought under this chapter that (a) 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; or (b) At such time, the state of the law was such that the peace officer or employer could not reasonably have been expected to know whether such act, omission, or decision was lawful.

NEW SECTION. Sec. 6. 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. 7. 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. 8. This chapter applies only to causes of action arising on or after the effective date of this section.

NEW SECTION. Sec. 10. This act takes effect January 1, 2025.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

The fiscal impact of this bill is indeterminate, assumed to be more than \$50,000 per Fiscal Year (FY).

This bill expands the liabilities of the DOC community correction officers relating to creating a private right of action for harm from violations of the state Constitution or state law by peace officers.

Due to the complexity of this bill, DOC will experience additional costs related to this bill however those costs are indeterminate or have not been identified in preliminary analysis and will “true up” our fiscal impact in subsequent budget submittals should this legislation be enacted into session law.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 465-State Parks and Recreation Commission
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Robert Ingram	Phone: (360) 902-8615	Date: 01/20/2023
Agency Approval: Van Church	Phone: (360) 902-8542	Date: 01/20/2023
OFM Review: Matthew Hunter	Phone: (360) 529-7078	Date: 01/22/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill creates a private right of action against peace officers and/or their employers for harm resulting from violations of the State law or constitution by an officer.

Section 1 provides legal remedies under state law for persons who are injured when a peace officer or the officer's employer violates the state Constitution or state law.

Section 3 creates cause of action for any person injured in person or property by a peace officer acting under color of authority.

Section 4 awards damages to prevailing plaintiffs.

The fiscal impact of this legislation is indeterminate as it is impossible to predict such settlements or award amounts.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Peace officers performing discretionary functions during the course of their duties have immunity at a federal level from civil suits unless the plaintiff shows that an officer violated clearly established statutory or constitutional rights. This qualified immunity only applies to individual peace officers, not to their employers. However, the elimination of qualified immunity at a state level will likely result in increased suits against peace officers and subsequently increased settlements or awards for damages. Likewise, civil suits against their employers will likely similarly increase in number and settlement or award amounts.

Though it is reasonably foreseeable that passage of this legislation will result in the increased potential for civil suit against WSPRC and substantial negative fiscal impact, the dollar amount is indeterminate as it is not possible to predict such settlement or award amounts.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 477-Department of Fish and Wildlife
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: David Hoeveler	Phone: 3609701638	Date: 01/23/2023
Agency Approval: David Hoeveler	Phone: 3609701638	Date: 01/23/2023
OFM Review: Matthew Hunter	Phone: (360) 529-7078	Date: 01/23/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

The fiscal impact of this proposed legislation is indeterminate. This bill increases the scope of liability to the Department. The Department could see an increase in tort cases as “injury” to persons or property is not defined in the legislation. It is impossible to predict the fiscal impact of possible settlements or award amounts, and it is unknown the level of service that could be needed from the Attorney General’s Office to represent the Department.

This bill creates a private right of action against law enforcement officers and law enforcement agencies for injuries to persons or property when an officer, acting under color of authority, engaged in conduct that is unlawful under the state Constitution or state law.

Section 1 states the intent of the legislature to change qualified immunity.

Section 2 defines “employer” and “peace officer”, WDFW and WDFW Law Enforcement officers are subject to these definitions.

Section 3 (1) states a law enforcement officer is liable whenever a person or their property is injured by a peace officer

Section 3 (2) states any law enforcement officers who had the power through reasonable diligence to prevent, or aid in preventing, the injury and failed to do so would also be liable.

Section 3 (3) The employing agency of the subject law enforcement officer(s) may also be named as a defendant and held vicariously liable for conduct that caused injury if the officer acted within the scope of his or her employment. If an officer asserts that he or she complied with regulation, practice, procedures, policy or training of the employing agency during the conduct, liability would shift to the employing agency if the claim is proven. The employing agency can also be held independently liable for failure to use reasonable care in hiring, training, retaining, supervising, or disciplining an officer. However, the employing agency is not liable if the training in question was provided by the Criminal Justice Training Center, or a policy in question was model guidance drafted by the Washington Office of the Attorney General. The employing agency is also not liable if it proves that it was not able to use reasonable care in retaining or disciplining the officer(s) because of binding arbitration.

Section 3 (3) (5) Defendants may not use immunities or defenses against claims in this chapter by claiming that the rights, privileges, or immunities sued upon were not clearly established at the time of the conduct, nor that the state of the law was such that the officer or his or her employer could not reasonably have been expected to know whether the conduct was lawful.

Section 4 requires the court to make an award to a prevailing plaintiff of actual damages of at least nominal amount as determined by the trier of fact, and allows the court to award prevailing plaintiff costs, reasonable attorney's fees and declaratory and injunctive relief.

Section 5 states this bill adds to existing cause of action rights rather than replacing any.

Section 6 provides for a three-year statute of limitations while Section 8 states that the chapter only applies to causes of action arising on or after the effective date of this section.

Section 7 states that nothing in this legislation prevents a law enforcement officer from having his or her legal defense provided at the expense of his or her employing agency or having any judgement under this chapter be satisfied by his or her employing agency.

Section 10 provides an effective date of January 1, 2025, for this act.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Peace officers performing discretionary functions during their duties have immunity at a federal level from civil suits unless the plaintiff shows that an officer violated clearly established statutory or constitutional rights. This qualified immunity only applies to individual peace officers, not to their employers. The elimination of qualified immunity at a state level may result in increased suits against peace officers and subsequently increased settlements or awards for damages.

The passage of this legislation may result in an increased potential for civil suit against WDFW officers. However, the fiscal impact of this legislation is indeterminate.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1025 HB	Title: Police/private actions	Agency: 490-Department of Natural Resources
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Preparation: Zoe Catron	Phone: 360-902-1121	Date: 01/20/2023
Agency Approval: Nicole Dixon	Phone: 360-902-1155	Date: 01/20/2023
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/22/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill places liability on individuals. Although it does include language establishing vicarious liability for the employer if the individuals unlawful conduct causing the injury was within the scope of the peace officer's employment, the agency would only be impacted should such a situation occur. No fiscal impact at this time.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 1025 HB

Title: Police/private actions

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Indeterminate costs to participate in claims against employed officers and against jurisdiction itself; indeterminate costs due to potential damages and attorneys' fees and costs awarded to a prevailing plaintiff; indeterminate higher costs for jurisdictions participating in risk pools
- Counties: Same as above
- Special Districts: Same as above
- Specific jurisdictions only:
- Variance occurs due to: Every claim and potential case will vary in costs incurred by a local government

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Increase in number of causes of action under the legislation; number of claims that will be settled or go to trial; outcome of claims; exact costs incurred for any given claim

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 01/25/2023
Leg. Committee Contact: John Burzynski	Phone: 360-786-7133	Date: 01/18/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/25/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/25/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

This legislation would add a new chapter to title 7 RCW (Special Proceedings and Actions).

Section 2 would provide definitions for person, employer and peace officer for the purposes of the new RCW chapter this bill would create.

Subsection 3 (1) would specify that any person injured in person or property by a peace officer acting under color of authority has a cause of action against said 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 the state constitution or state law.

Subsection 3 (2) would specify that in an action against a peace officer under subsection 3 (1), the plaintiff may also name the officer's employer as a defendant. Said employer is vicariously liable if the unlawful conduct causing the injury was within the scope of the peace officer's employment.

Subsection 3 (3) would specify that a peace officer has a defense against an action brought under subsection 3 (1) if, when the injury occurred, the officer substantially complied with a regulation, practice, procedure, policy, or training that was established by the employer or approved or condoned by superior officer. If the peace officer proves this defense, the employer is independently liable for the injury if the injury was proximately caused by a regulation, practice, procedure, policy, or training approved or condoned by the employer, unless the training was provided by the Criminal Justice Training Center, or the policy was model guidance drafted by the Washington State Office of the Attorney General.

Subsection 3 (4) would specify that an employer is independently liable for the injury if a proximate cause of the injury was the employer's failure to use reasonable care in hiring, training, retaining, supervising, or disciplining the police officer.

Subsection 3 (5) would specify some prohibited defenses against actions brought under the chapter created by this legislation.

Section 4 would require the court to award to a prevailing plaintiff actual damages as determined by the trier of fact, and to make an award of at least nominal damages. The court may also award a prevailing plaintiff costs and reasonable attorney' fees. The court may grant declaratory and injunctive relief as it deems appropriate.

Section 6 would require that a cause of action under section 3 of this legislation be commenced within three years after the cause of action accrues.

Section 7 states that nothing in the chapter created by this legislation would be 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 RCW chapter 4.92 or 4.96.

Section 8 states that the chapter created by this legislation would apply only to causes of action arising on or after the effective date of this section.

Section 10 states that this act would take effect January 1, 2025.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

This legislation would result in an indeterminate increase in local government expenditures.

Please note, court impacts, including judicial costs, clerk costs, and court fees are described in fiscal notes prepared by the Administrative Office of the Courts. It is possible that all cost drivers are not identified in this analysis.

NUMBER OF CLAIMS FILED

Subsection 3 (1) details the potential incidents that would give individuals causes of action against police officers and/or their employing agencies. At this time, it is infeasible to estimate the total number of incidents that occur within Washington per year that would qualify as creating a cause of action for a person to pursue a claim upon.

Section 6 would set the statute of limitations for a cause of action at three years. It is not possible to reliably predict the timeline of any given claim, further complicating attempts to estimate the number of claims local governments could see annually. It is assumed the number of claims that would be pursued per year would be variable by jurisdiction and by year.

COST OF CLAIMS

Cost of claims would vary depending on whether the claim is dismissed, is settled out of court, or goes to trial. The costs of a claim that goes to trial where a judgment is entered in favor of a plaintiff would obviously be higher than a claim where a judgment is entered in favor of a defendant due to arbitration awards, and in some cases, having to pay a defendant's attorneys' fees.

Costs are lowest in the case of a claim being dismissed, as they are limited solely to a local jurisdiction's attorney or other counsel attending necessary hearings and submitting necessary documents. However, it should be noted, these costs for claims that are dismissed could still be substantial when attorney costs, staff costs, staff time, and other expended resources are taken into account. The Washington Counties Risk Pool (WCRP) indicates that it anticipates that the elimination of the qualified immunity defense in subsection 3 (5) of the proposed legislation would eliminate the opportunity for local jurisdictions to secure summary judgment dismissals, leaving claims to be resolved by either settlement or trial.

Where settlements are concerned, potential costs are indeterminate, but could be significant. Settlements may or may not be disclosed to the public, depending on their terms, and based on widely publicized examples from other jurisdictions, can range anywhere from thousands to millions of dollars. WCRP indicates that an inability to secure summary judgment dismissals could drive up settlement amounts as a means of avoiding the costs of a trial and a potential arbitration award. Furthermore, jurisdictions would incur costs for use of their attorneys or other counsel to handle proceedings and negotiations when a settlement is reached.

In cases that go to trial and are eventually ruled upon by a court, local jurisdictions could incur significant attorney and counsel costs as cases can cause dozens to hundreds of attorney and staff hours to be expended in the jurisdiction's defense. Section 4 of this legislation would require the court to award a prevailing plaintiff actual damages, and may award the plaintiff costs and reasonable attorneys' fees. As a result, local jurisdictions would have to pay for their defense, any awarded damages, and, in some cases, the attorneys' fees and costs of a prevailing plaintiff.

It should be noted across all possible resolutions to a claim under the provisions of the proposed legislation, that costs may be incurred by law enforcement agencies as well. These costs could be incurred through investigations, evidence management, and trial process participation. These costs would vary by case but would very likely be incurred for any claim as involved officers, supervisors, and other staff members may be required to participate in legal proceedings.

EXPLANATION OF COSTS

Measurement of the costs discussed above, from attorney and counsel representation for local jurisdictions, to settlement agreements, to awarding of damages and costs and attorneys' fees to a prevailing plaintiff, to law enforcement costs, is infeasible as all the above cost drivers will vary case by case. Combining this with the unknown number of claims and

potential trial cases, the cumulative costs from claims that may arise under this legislation are indeterminate.

However, to provide illustrative examples, this analysis gathered figures from the Washington Counties Risk Pool (WCRP) and Washington Cities Insurance Authority (WCIA). WCRP provides its 25 member counties programs of joint self-insurance, joint purchasing of insurance and joint contracting for or hiring of personnel to provide risk management, claims handling and administrative services. WCIA has the same general mission and counts 165 cities and municipal entities among its membership, which also includes 90 police departments. WCRP and WCIA, however, do not account for Washington's largest counties and cities and therefore the data given may not adequately cover the complete context of this legislation as it concerns the state.

Over a 10-year period, WCRP spent about \$2 million in legal costs to address 70 law enforcement related cases. Over the next 10 years, using the same numbers and based on its assumptions, it would expect to spend about \$11.5 million if this legislation were to pass. This 475% increase in costs is based on WCRP's assumption that the language of this legislation would cause most cases to no longer be dismissed via a summary judgment. Over the 10-year period referenced by WCRP the cost incurred to have a case dismissed on summary judgment was about \$18,000 while taking a case to trial cost \$225,000 on average. It is important to note that it is reasonable to assume more cases could be filed than otherwise would have been due to this legislation's language.

WCIA anticipates a significant increase in costs for settlement and defense, at least doubling its expenses. The authority emphasizes that this potential doubling of costs would be driven in part by the provisions in subsection 3 (3) of the bill that would allow officers to point to compliance with certain law enforcement agency policies as a defense against liability. Over the past 10 years, the authority has spent \$12 million defending 1600 law enforcement claims.

The Association of Washington Cities anticipates that the additional liability this bill would create for cities could cause insurance costs to rise, potentially to cost-prohibitive levels for some cities. WCIA, like all risk pools, relies on the traditional insurance market, and believes that this legislation may hasten the exit of more carriers, which would further raise insurance costs as well, potentially to an unsustainable point for its model.

In sum, exact numbers of new claims as well as costs for settlements and trials, and therefore the total additional costs to local governments this legislation could create are indeterminate, but likely significant.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The proposed legislation would have no impact on local government revenues.

SOURCES:

Association of Washington Cities
Local government fiscal note for 1202 P 3S HB H-1855.2, 2022
Washington Association of Sheriffs and Police Chiefs
Washington Cities Insurance Authority
Washington Counties Risk Pool