

Multiple Agency Fiscal Note Summary

Bill Number: 1025 S 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	788,000	0	0	2,031,000	0	0	2,028,000
Department of Enterprise Services	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	788,000	0	0	2,031,000	0	0	2,028,000

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	2.8	59,000	59,000	847,000	6.8	78,000	78,000	2,109,000	6.8	78,000	78,000	2,106,000
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	.0	0	0	1,089,955	.0	0	0	2,179,910	.0	0	0	2,179,910
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	37,800	37,800	165,300	2.0	130,600	130,600	570,400	2.0	130,600	130,600	570,400
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	.0	0	0	0	.0	0	0	0	.0	0	0	0
University of Washington	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Washington State University	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Eastern Washington University	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Central Washington University	.0	4,500	4,500	4,500	.0	4,500	4,500	4,500	.0	4,500	4,500	4,500
The Evergreen State College	.0	25,500	25,500	25,500	.0	15,000	15,000	15,000	.0	15,000	15,000	15,000
Western Washington University	1.1	370,330	370,330	370,330	1.1	321,330	321,330	321,330	1.1	321,330	321,330	321,330
Western Washington University	In addition to the estimate above,there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
State Parks and Recreation Commission	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Fish and Wildlife	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Natural Resources	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total \$	4.4	497,130	497,130	2,502,585	9.9	549,430	549,430	5,200,140	9.9	549,430	549,430	5,197,140

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	.0	0	0	.0	0	0	.0	0	0
Washington State University	.0	0	0	.0	0	0	.0	0	0
Eastern Washington University	.0	0	0	.0	0	0	.0	0	0
Central Washington University	.0	0	0	.0	0	0	.0	0	0
The Evergreen State College	.0	0	0	.0	0	0	.0	0	0
Western Washington University	.0	0	0	.0	0	0	.0	0	0
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: Final 3/ 1/2023
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Judicial Impact Fiscal Note

Bill Number: 1025 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/21/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/21/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/21/2023

184,452.00

Request # 207-1

Part II: Narrative Explanation

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

The substitute would specify authorities which, if violated, give rise to cause of action against the violating officer and/or their employer, would limit employer defenses, and would expand grounds under which employers may be deemed liable.

The bill would add 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

184,452.00

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 S 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	545,000	788,000	2,031,000	2,028,000
Total \$	243,000	545,000	788,000	2,031,000	2,028,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.7	3.8	2.8	6.8	6.8
Account					
General Fund-State 001-1	20,000	39,000	59,000	78,000	78,000
Legal Services Revolving Account-State 405-1	243,000	545,000	788,000	2,031,000	2,028,000
Total \$	263,000	584,000	847,000	2,109,000	2,106,000

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Amy Flanigan	Phone: 509-456-3123	Date: 02/23/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/23/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/24/2023

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: Findings. 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 and condoned by a superior officer. If officer proves the compliance was with 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 (AGO). Vicarious liability for employer of the peace officer. Allows for certain defenses for employer's independent liability if the training or regulation at issue was provided by the criminal justice training commission or if the policy confirmed to published guidance drafted by the AGO.

Defenses must provide notice within 30 days to the AGO and Director of the Criminal Justice Training Commission (CJTC). AGO must provide annual reports to legislature starting December 1, 2025 regarding all defenses asserted. Employer can also be independently liable if employer failed to use reasonable care in retaining or disciplining the officer unless the action was appealed and reduced or overturned by independent arbitrator or court. 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: Chapter is liberally construed.

Sec. 6: 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: Amends RCW 4.24.420 to add reference to this act.

Sec. 10: Section 1 through 8 and 11 are new chapters in Title 7 RCW.

Sec. 11: Effective date Jan. 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), University of Washington (UW), Washington State Patrol (WSP), Eastern Washington University (EWU), Central Washington University (CWU), The Evergreen State College (TESC), Western Washington University (WWU) and Washington State University (WSU). 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 Assistant Attorney General FTE (AAG), and 0.13 Legal Assistant 3 FTE (LA).

FY 2025: \$471,000 for 1.0 AAG, 0.5 LA, 0.75 Paralegal FTE (PL), 0.25 Investigator FTE (INV), and 0.5 Legal Office Assistant FTE (LOA)

FY 2026, and in each FY thereafter: \$943,000 for 2.0 AAG, 1.0 LA, 1.5 PL, 0.5 INV, and 0.5 LOA.

UW will be billed for Seattle rates:

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

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

WSP will be billed 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.

EWU will be billed for non-Seattle rates:

FY 2024: \$10,000 for 0.04 AAG, and 0.02 LA.

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

CWU will be billed for non-Seattle rates:

FY 2024: \$10,000 for 0.04 AAG, and 0.02 LA.

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

TESC will be billed for non-Seattle rates:

FY 2024: \$7,500 for 0.03 AAG, and 0.02 LA.

FY 2025 and in each FY thereafter: \$2,500 for 0.01 AAG, and 0.01 LA.

WWU will be billed for non-Seattle rates:

FY 2024: \$7,500 for 0.03 AAG, and 0.02 LA.

FY 2025 and in each FY thereafter: \$2,500 for 0.01 AAG, and 0.01 LA.

WSU will be billed for non-Seattle rates:

FY 2025 and in each FY thereafter: \$3,000 for 0.01 AAG, and 0.01 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. The Management Analyst 5 (MA), is used as a representative classification. An example ratio is 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 an MA.

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 certain 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 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." Courts may award attorney's fees and costs associated with causes of action under this chapter to prevailing plaintiffs. The presence of fee-shifting associated with a new cause of action 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 with the changes proposed in this bill as noted above.

TOR assumes that with this bill there will be at least half as many new cases (17) alleging some violation of the applicable state laws 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.

Based on the increases assumed above, as well as AAG caseloads for these kind of cases, the AGO anticipates 2.0 additional AAGs. Professional staff modeling to support 2 AAGs is 1.0 LA, 1.5 Paralegal 2 FTE (PL), 0.5 Investigator FTE (INV), and 0.5 Legal Office Assistant 3 FTE (LOA).

TOR assumes \$102,000 per FY in direct litigation costs, with no costs for the initial year, and half costs in FY 2025 because

the bill's effective date of January 1, 2025:

- 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 0.25 AAG beginning in FY 2024. The bill takes effect midway through FY 2025 and so half of all total FTE costs are projected for that year with full FTE costs required by FY 2026 and beyond.

TOR total FTE workload impact for Seattle rates:

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

FY 2025: \$471,000 for 1.0 AAG, 0.50 LA, 0.75 PL, 0.25 INV, and 0.5 LOA, this includes direct litigation costs of \$51,000
FY 2026, and in each FY thereafter: \$943,000 for 2.0 AAG, 1.0 LA, 1.5 FTE PL, 0.5 INV, and 0.5 LOA, this includes direct litigation costs of \$102,000.

2. Assumptions for the AGO University of Washington Division's (UOW) Legal Services for the University of Washington (UW):

The AGO will bill UW for legal services based on the enactment of this bill.

The UOW DIV will bill approximately 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, and in each FY thereafter: \$53,000 for 0.2 AAG, and 0.1 LA.

3. Assumptions for the AGO Criminal Justice Division's (CRJ) Legal Services for the Washington State Patrol (WSP):

The AGO will bill WSP for legal services based on the enactment of this bill.

Section 3 of this bill may cause increased requests for client advice from 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.

4. Assumptions for the AGO Education Division's (EDU) Legal Services for the Eastern Washington University (EWU), Central Washington University (CWU), The Evergreen State College (TESC), and Western Washington University (WWU):

The AGO will bill EWU, CWU, TESC and WWU for legal services based on 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 un-tempered 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). While revisions to Section 3 help temper potential liability, and result in AGO drafting model policies, much of the advice needs are still anticipated to remain.

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

5. Assumptions for the AGO Administrative Division (ADM):

ADM assumes enactment of this bill will require 0.25 Policy Analyst FTE (PA) for report drafting, compilation of records, and communications with peace officer employers.

ADM total FTE workload impact for Seattle rates:

FY 2024: \$20,000 for 0.13 PA.

FY 2025 and in each FY thereafter: \$39,000 for 0.25 PA.

6. Assumptions for the AGO Washington State University Division’s (AGO-WSU) Legal Services for the Washington State University (WSU):

The AGO will bill WSU for legal services based on the enactment of this bill.

The enactment of this bill will marginally impact the provision of legal services to WSU by the AGO-WSU Division. In making this determination AGO-WSU assumes that WSU Police Department’s low rate of complaints regarding injury will continue and that and additional resources from AGO-WSU 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 and in each FY thereafter: \$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.

9. The AGO Public Lands and Conservation (PLC) Division has reviewed this bill and determined 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 (WDFW) and Department of Natural Resources (DNR), and a need for some refresher trainings but hours would be 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
001-1	General Fund	State	20,000	39,000	59,000	78,000	78,000
405-1	Legal Services Revolving Account	State	243,000	545,000	788,000	2,031,000	2,028,000
Total \$			263,000	584,000	847,000	2,109,000	2,106,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.7	3.8	2.8	6.8	6.8
A-Salaries and Wages	176,000	350,000	526,000	1,246,000	1,244,000
B-Employee Benefits	57,000	116,000	173,000	415,000	414,000
C-Professional Service Contracts		31,000	31,000	124,000	124,000
E-Goods and Other Services	29,000	81,000	110,000	302,000	302,000
G-Travel	1,000	6,000	7,000	22,000	22,000
Total \$	263,000	584,000	847,000	2,109,000	2,106,000

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	1.2	1.0	2.2	2.2
Legal Assistant 3	55,872	0.1	0.0	0.1	0.0	0.0
Legal Assistant 3-Seattle	67,044	0.4	0.6	0.5	1.1	1.1
Management Analyst 5	91,524	0.2	0.3	0.3	0.6	0.6
Office Assistant 3-Seattle	45,996		0.3	0.1	0.5	0.5
Paralegal 2-Seattle	75,096		0.8	0.4	1.5	1.5
Policy Analyst (Exempt)	95,000	0.1	0.3	0.2	0.3	0.3
Senior Investigator-Seattle	98,532		0.3	0.1	0.5	0.5
Total FTEs		1.7	3.8	2.8	6.8	6.8

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Headquarters Administration Division (ADM)	20,000	39,000	59,000	78,000	78,000
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
Torts Division (TOR)	67,000	471,000	538,000	1,886,000	1,886,000
University of Washington Division (UOW)	135,000	53,000	188,000	106,000	106,000
Washington State University Division (WSU)	3,000	3,000	6,000	6,000	6,000
Total \$	263,000	584,000	847,000	2,109,000	2,106,000

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: John Iyall	Phone: 360-810-2870	Date: 02/22/2023
Agency Approval: Josh Johnston	Phone: 360-810-2878	Date: 02/22/2023
OFM Review: Gwen Stamey	Phone: (360) 790-1166	Date: 02/22/2023

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.

The intent of S 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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Kriscinda Hansen	Phone: 360-486-3489	Date: 02/24/2023
Agency Approval: Kriscinda Hansen	Phone: 360-486-3489	Date: 02/24/2023
OFM Review: Gwen Stamey	Phone: (360) 790-1166	Date: 02/27/2023

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Michael Walker	Phone: 360-725-7036	Date: 02/21/2023
Agency Approval: Michael Wood	Phone: 360-725-7007	Date: 02/21/2023
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 02/23/2023

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 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 S 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:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
Account					
Liability Account-Non-Appropriated 547-6	0	1,089,955	1,089,955	2,179,910	2,179,910
Total \$	0	1,089,955	1,089,955	2,179,910	2,179,910

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Julie McVey	Phone: (360) 407-9334	Date: 02/23/2023
Agency Approval: Ashley Howard	Phone: (360) 407-8159	Date: 02/23/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/23/2023

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 amends RCW 4.24.420 and adds a new chapter to Title 7 RCW.

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

Section 3 is a new section which 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 under: The state Constitution, RCW 10.93.160 (agency restrictions on enforcement and cooperation regarding federal immigration law), RCW 10.120.020 (permissible use of force). This is similar to federal Section 1983 actions, but with limits on the qualified immunities available under the federal provision.

Section 4 is a new section which allows courts to award damages, costs and attorneys' fees to prevailing plaintiffs in such cases.

Section 9 (3) amends RCW 4.24.420 and 2021 c 325 s 1 to add that nothing in this section shall affect a right of action under the new chapter 7 that was created in section 10 of this act.

Section 10 is a new section that creates a new chapter in Title 7 RCW consisting of Section 1 though 8 and 11 of this act.

Section 11 is a new section which 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.

There are currently 35 active cases that fall under law enforcement. The Attorney General Office estimates there will be 17 new cases per year as a result of this legislation.

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.

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.

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 17 new claims 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 Police/private actions 179-Department of Enterprise Services Self-Insurance Liability Account would be \$1,089,955 beginning in January 2025

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
547-6	Liability Account	Non-Appropriated	0	1,089,955	1,089,955	2,179,910	2,179,910
Total \$			0	1,089,955	1,089,955	2,179,910	2,179,910

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts					
E-Goods and Other Services		1,089,955	1,089,955	2,179,910	2,179,910
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	0	1,089,955	1,089,955	2,179,910	2,179,910

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Colin O Neill	Phone: (360) 664-4552	Date: 02/21/2023
Agency Approval: Aaron Hanson	Phone: 360-664-1701	Date: 02/21/2023
OFM Review: Amy Hatfield	Phone: (360) 280-7584	Date: 02/21/2023

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 RCW 10.93.160 (law enforcement restrictions regarding immigration and citizenship status), or RCW 10.120.020 (law enforcement restrictions on use of force).

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

Section 3(3d): Adds a requirement for employers asserting a qualifying training or policy defense to provide notice of the defense, and all relevant claims and facts, to the Attorney General and director of the Criminal Justice Training Commission
Section 3(3e): Adds a requirement for the Attorney General to provide the chairs of the House Civil Rights and Judiciary committee and Senate Law and Justice committee with an annual report regarding the assertion of qualifying training or policy defenses by employers.

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 9: Modifies the felony bar statute by adding an exception for claims brought under the new chapter created by this act.

Section 11: This act takes effect January 1, 2025.

CHANGES MADE BY THE SUBSTITUTE:

- Section 3(1): Strikes language establishing a cause of action against peace officers for engaging in conduct unlawful under the state Constitution or state law and replaces it with language establishing a cause of action against peace officers for conduct unlawful under the state Constitution, RCW 10.93.160 (law enforcement restrictions regarding immigration and citizenship status), or RCW 10.120.020 (law enforcement restrictions on use of force).
- Section 3(3d): Adds a requirement for employers asserting a qualifying training or policy defense to provide notice of the defense, and all relevant claims and facts, to the Attorney General and director of the Criminal Justice Training Commission
- Section 3(3e): Adds a requirement for the Attorney General to provide the chairs of the House Civil Rights and Judiciary committee and Senate Law and Justice committee with an annual report regarding the assertion of qualifying training or policy defenses by employers.
- Section 4: Clarifies that regarding remedies to state it applies to actions brought under the new chapter created by this act.
- Section 9: Modifies the felony bar statute by adding an exception for claims brought under the new chapter created by this act.
- OLD Section 9 renumbered as Section 10.
- OLD Section 10 renumbered as Section 11.

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Amy Andrews	Phone: 360-481-1335	Date: 02/21/2023
Agency Approval: Amy Andrews	Phone: 360-481-1335	Date: 02/21/2023
OFM Review: Tiffany West	Phone: (360) 890-2653	Date: 02/21/2023

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.

UTC assumes there is no fiscal impact resulting from this legislation. The UTC 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.

Section 1 is a new section that speaks to peace officers authority. The section explains what this legislation does overall or the intent of the bill which is to provide a legal remedy under state law for people who are injured by a peace officer who violates the state constitution.

Section 2 provides definitions for the legislation.

Section 3 explains the cause of action that someone who is injured has in regard to the state constitution and statutes. It explains what defense the peace officer has. The section requires the AG office to provide a report on this matter annually to committees in the house and senate.

Section 4 speaks to damages that could be awarded to a plaintiff by the court.

Section 5 says this proposed legislation does not affect any other common laws or statutory rights of a plaintiff.

Section 6 provides a timeline for action (3 years)

Section 7 says this is not meant to limit the rights of a peace officer.

Section 8 implements an effective date.

Section 9 amends current statutes to refer to other sections in the bill.

Section 11 states the law is effective in January 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.

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 S 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	37,800	37,800	130,600	130,600
State Patrol Highway Account-State 081-1	0	127,500	127,500	439,800	439,800
Total \$	0	165,300	165,300	570,400	570,400

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Shawn Eckhart	Phone: 360-596-4083	Date: 02/27/2023
Agency Approval: Mario Buono	Phone: (360) 596-4046	Date: 02/27/2023
OFM Review: Tiffany West	Phone: (360) 890-2653	Date: 02/28/2023

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 substitute version of the bill still has an indeterminate fiscal impact to the Washington State Patrol (WSP) due to an increase in scope of liability, in fact increasing that 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 RCW 10.93.160 regarding law enforcement agency restrictions with regard to immigration and citizenship status, or RCW 10.120.020, regarding permissible uses of force. The original bill has simply stated 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 (CJTC), or a policy in question was model guidance drafted by the Washington Office of the Attorney General (AG) at the specific request of the Washington State Legislature. In either of those cases, the employing agency must notify the CJTC and the AG of this defense within 30 days, including relevant claims and facts in the underlying litigation, with this stipulation new to the substitute bill. 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 it attempted to discipline an officer, but the action was appealed by the officer and reduced or overturned by an independent arbitrator or court. That is a change from the original bill that stated the defense was that the agency could not 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. The original bill had also disallowed the use of immunities or defenses if 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, but that stipulation was removed in the substitute bill.

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 9 is new in the substitute bill. It states that nothing in RCW 4.24.420 affects a right of action in this new chapter proposed for RCW. This current law otherwise provides for a defense of action against causing injury or death to someone as a proximate cause of that someone commissioning a felony.

Section 11 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, in addition to increased recruitment/compensation costs.

Following are impacts from the substitute version of the bill. Subsection 3(1) changes the liability from when the officer acts against "state law" in general, to specifically against RCWs 10.93.160 and 10.120.020. These are the most likely state laws that would have been cited under the original bill. Removing language in section 5 removes some liability, but preserving the remainder of section 5 retains the bulk of the liability from that section. The greatest impact is from changes in subsection 3(3)(d) and the inclusion of Section 9. In 3(3)(d), the 30-day turnaround to notify is an exceptionally tight turnaround to determine whether those two instances (CJTC training and/or AG policies) will be cited as a defense, including relevant claims and facts in the underlying litigation. If the deadline is missed, there could be the argument that the defense no longer exists. It will also likely increase the need for the WSP to defend itself against the CJTC and the AG testifying against the defense regarding their training and/or policies. With regard to section 9, under current law the felony bar statute recognizes a legal defense, however section 9 disallows that legal defense for causes of actions brought under this act and opens a door for a plaintiff to sue for damages incurred while committing a felony.

We continue to 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 \$36,400 in indirect costs in the fiscal year 2025, and then \$214,100 in direct costs and \$71,100 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 federal indirect cost rate of 33.41 percent approved by the U.S. Department of Transportation on February 14, 2023. This rate is effective July 1, 2023, and is used on all estimates completed after the approval date. 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 decision by arbitrators and the courts. 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	37,800	37,800	130,600	130,600
081-1	State Patrol Highway Account	State	0	127,500	127,500	439,800	439,800
Total \$			0	165,300	165,300	570,400	570,400

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		36,400	36,400	142,200	142,200
Total \$	0	165,300	165,300	570,400	570,400

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Bill Jordan	Phone: 360-902-8183	Date: 02/20/2023
Agency Approval: Dan Winkley	Phone: 360-902-8236	Date: 02/20/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/21/2023

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 S 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:

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Stephanie Marty	Phone: (360) 725-8428	Date: 02/22/2023
Agency Approval: Ronell Witt	Phone: (360) 725-8428	Date: 02/22/2023
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/22/2023

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.

The purpose of this bill is 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.

SHB 1025 states the following:

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. 11. 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.

We assume this bill will have no fiscal impact to DOC.

DOC community corrections officers and correctional officers do not fall under the peace officer definition in RCW 43.101.010, which defines a peace officer as a general authority Washington peace officer as defined in RCW 10.93.020.

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 S HB	Title: Police/private actions	Agency: 360-University of Washington
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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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Charlotte Shannon	Phone: 2066858868	Date: 02/23/2023
Agency Approval: Charlotte Shannon	Phone: 2066858868	Date: 02/23/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/27/2023

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 substitute bill makes the following changes:

- modifies the intent section
- modifies the definition of "employer"
- limits liability to only arise from violations of the state Constitution and two specific statutes: RCW 10.93.160 and RCW 10.120.020
- reorganizes the liability and defenses established in sections 3(3) and (4)
- modifies employer liability on the basis of an officer's substantial compliance with a regulation, practice, procedure, policy, or training, by requiring the regulation, practice, procedure, policy, or training to have been established by the employer, or approved or condoned by superior officers
- modifies the employer defense of using a model policy drafted by the Office of the Attorney General to require the policy at issue to conform to published model guidance drafted by the Office of the Attorney General at the specific request of the Legislature
- modifies the employer's defense of inability to use reasonable care in retaining or disciplining an officer as a result of binding arbitration, replacing it with a defense based on the employer taking disciplinary action against a peace officer and the action being appealed by the officer and then reduced or overturned by an arbitrator or court;
- modifies the provision prohibiting certain immunities or defenses by: (a) striking the restriction on an immunity or defense based on the state of the law being such that a peace officer or employer could not reasonably have been expected to know whether an act, omission, or decision was lawful; and (b) retaining the restriction on an immunity or defense based on the rights, privileges, or immunities sued upon not being clearly established at the time;
- adds a requirement for employers asserting a qualifying training or policy defense to provide notice of the defense, and all relevant claims and facts, to the Attorney General and director of the Criminal Justice Training Commission;
- adds a requirement for the Attorney General to provide the chairs of the House Civil Rights and Judiciary committee and Senate Law and Justice committee with an annual report regarding the assertion of qualifying training or policy defenses by employers;
- clarifies section 4 regarding remedies to state it applies to actions brought under the new chapter created by this act; and modifies the Felony Bar statute by adding an exception for claims brought under the new chapter created by this act.

CHANGES TO FISCAL IMPACTS RESULTING FROM SUBSTITUTE BILL:

While the substitute bill makes significant changes to the underlying bill, some of which may impact the University of Washington (UW) as an employer, or the University of Washington Police Department (UWPD), we do not anticipate changes to our fiscal analysis as a result of these changes given cases are extremely rare and are unlikely to occur in a given year.

Overall SHB 1025 provides a civil cause of action for victims of police misconduct, or their employers, including compensation for their injuries and an award of costs and attorney fees incurred in seeking this remedy.

SECTION 1:

Provides an intent section, where in order to protect the safety of individuals, 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.

SECTION 2:

Provides definitions to key terms including "Employer", "Peace officer", "Person"

SECTION 3:

Provides that a 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. This section further includes that in an action against a peace officer, 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.

SECTION 4:

Provides that the court shall award to a prevailing plaintiff actual damages, and shall make an award of at least nominal damages. The court may also award costs and reasonable attorneys' fees, as well as declaratory and injunctive relief as it deems appropriate.

SECTION 6:

Provides a cause of action under section 3 of this act must be commenced within three years after the cause of action accrues.

SECTION 7:

Provides 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.

SECTION 8:

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

SECTION 11:

Provides 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.

The potential costs to the University of Washington (UW) associated with a cause of action against an individual police officer, or against the UW as an employer through the University of Washington Police Department (UWPD), are indeterminant starting in FY 25, as this new chapter goes into effect January 1, 2025. It is difficult to accurately predict the legal costs associated with any actions brought against individual officers, or the UW/UWPD. In addition, the UWPD does not have a history of litigation or judgments against its officers and therefore we believe litigation would be unlikely to occur in any given year. However, if litigation were to occur, costs would almost certainly exceed \$50,000.

In addition, there would be consultation and additional legal services that may be necessary from the UW AGO, both related to updating and revising policy and bargaining processes. Any revisions to UWPD policy would need to go through a demand to bargain process with impacted unions. It is assumed this could be absorbed into existing bargaining processes.

Given litigation under this legislation could occur, but is unlikely, we assess the fiscal impact as being indeterminate, but under \$50,000 for each fiscal year starting in FY25.

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 S HB	Title: Police/private actions	Agency: 365-Washington State University
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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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Brittney Gamez	Phone: 509-335-5406	Date: 02/23/2023
Agency Approval: Chris Jones	Phone: 509-335-9682	Date: 02/23/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/27/2023

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.

1025 SHB provides a civil cause of action for victims of police misconduct, where the court shall award actual damages as determined by trier of fact, and award at least nominal damages, along with costs and attorney's fees.

Washington State University (WSU) could owe damages and/or attorney fees and plaintiff costs to a prevailing plaintiff. WSU does not expect a situation to occur where this would happen, but in the event litigation would be brought, it would create an impact that cannot be determined at this time. For purposes of the fiscal note, any costs are expected to be less than \$50,000 annually.

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

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 S HB	Title: Police/private actions	Agency: 370-Eastern Washington University
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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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Keith Tyler	Phone: 509 359-2480	Date: 02/24/2023
Agency Approval: Alexandra Rosebrook	Phone: (509) 359-7364	Date: 02/24/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/27/2023

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.

Proposed HB 1025 – Adds a new section to Title 7 RCW. Section 3 (1) provides a cause of action for a person injured by an officer and requires an award of damages and costs and attorney's fees to a prevailing plaintiff. (2) The plaintiff may also name the officer's employer as a defendant. (4) The employer is also independently liable for the injury if the proximate cause of the injury was the employer's failure to use reasonable care in hiring, training, retaining, supervising or disciplining the peace officer.

Section 4 discusses awarding damages

Section 5 through 9 detail other specifics.

Section 10 identifies January 1, 2025 as the date it takes effect.

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.

Overall this fiscal impact of this proposed bill is indeterminate. Eastern is unable to predict the legal costs, judgments, and settlement costs of future police officer litigation cases. Eastern does not have a history of litigations or judgments against Eastern Washington University Police Department (EWUPD) for misconduct. If a litigation did occur, the costs would likely exceed \$50,000. Eastern anticipates additional law enforcement liability insurance if this proposed bill is passed. Estimated additional coverage is \$30,000 per year.

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 S HB	Title: Police/private actions	Agency: 375-Central Washington University
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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
Account					
General Fund-State 001-1	2,250	2,250	4,500	4,500	4,500
Total \$	2,250	2,250	4,500	4,500	4,500

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Erin Sargent	Phone: 509-963-2395	Date: 02/23/2023
Agency Approval: Lisa Plesha	Phone: (509) 963-1233	Date: 02/23/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/27/2023

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 substitute bill S HB 1025 makes significant updates to section 3(3-(5) regarding liability relating to injuries suffered by person or property which resulted from a peace officer acting under the color of authority. Should CWU be found liable for damages through litigation, the payment would be made from the Self-Insured Liability Account.

Summary of previous versions:

Section 1: New Section – States the legislative intent to preclude creation of the doctrine of immunity and provide legal remedy for individuals who are injured when a peace officer or employer violates the state law or Constitution.

Section 2: New Section – Provides definitions for “Employer”, “Peace officer”, and “Person”.

Section 3: New Section – provides guidance related to cause of action as well as rights of plaintiff and defendant(s)

Section 4: New Section – Authorizes court to award prevailing plaintiff actual damages as well as fees, etc.

Effective 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.

While most costs related to implementing the proposed legislation would be allocated among existing resources, CWU anticipates this bill would require an estimated 10 hours of Attorney General consultation annually for a total cost of \$2,250 (10 Hours * 2250/hr).

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	2,250	2,250	4,500	4,500	4,500
Total \$			2,250	2,250	4,500	4,500	4,500

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	2,250	2,250	4,500	4,500	4,500
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	2,250	2,250	4,500	4,500	4,500

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

Revised

Bill Number: 1025 S HB	Title: Police/private actions	Agency: 376-The Evergreen State College
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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
Account					
General Fund-State 001-1	18,000	7,500	25,500	15,000	15,000
Total \$	18,000	7,500	25,500	15,000	15,000

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Daniel Ralph	Phone: 360-867-6500	Date: 02/21/2023
Agency Approval: Dane Apalategui	Phone: 360-867-6517	Date: 02/21/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/22/2023

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.

S HB 1025 relates to creating a private right of action for violations of the state Constitution or state law by peace officers.

Section 1 revises the language from “suspected of violating criminal statutes” to “suspected of violating the law.”

Section 3 (3) (b) is revised to “the peace officer’s employer is independently liable for the injury of the injury was proximately caused by by a regulation, practice, procedure, policy, or training that was established by the employer or approved or condoned by superior officers.

Section 3 (3) (c) state that a peace officer’s employer has a defense against independent liability if the training was provided by CJTC, or if the policy at issue conformed to model guidance published by the attorney general at the specific request of the legislature.

Section 3 (4) (b) states that the employer is also independently liable for the injury if a proximate cause was the employer’s failure to use reasonable care in retaining or disciplining the officer unless the employer proves that it took disciplinary action against the officer which was reduced or overturned on appeal.

Section 9 states that it is a complete defense for personal injury of wrongful death if the person injured or killed was engaged in the commission of a felony at the time of the occurrence that was a proximate cause of their injury or death.

HB 1025 relates to creating a private right of action for harm from violations of the state constitution or state law by peace officers.

Section 2 defines “employer,” “peace officer,” and “person.”

Section 3 (1) states that any person injured in person or property by a peace officer has a cause of action against the police officer, and against any other police officer who had the power to prevent or aid in preventing the injury from occurring and failed to do so.

Section 3 (2) states that in an action against a police officer under subsection (1) 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.

Section 3 (3) states than a peace officer has a defense against an action brought 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.

Section 4 (4) states that the employer is also liable for the injury if the proximate cause of the injury was the employer’s failure to use reasonable care in hiring, training, 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.

Section 6 requires that a course of action under section 3 must be commenced within three years of the cause of action.

Section 7 states that nothing in the 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.

Section 10 states that this act would take effect on 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.

This bill will require the need for legal services. We estimate the number of hours needed as follows: FY24 - 60 hours, FY25 through FY29 - 25 hours each year. At the current billing rate of \$300 per hour, the cost is: FY24 - \$18,000, FY25 through FY29 - \$7,500 each year. There is potential for a very large fiscal impact depending on litigation outcomes.

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	18,000	7,500	25,500	15,000	15,000
Total \$			18,000	7,500	25,500	15,000	15,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	18,000	7,500	25,500	15,000	15,000
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	18,000	7,500	25,500	15,000	15,000

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 S HB	Title: Police/private actions	Agency: 380-Western Washington University
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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	1.1	1.1	1.1	1.1	1.1
Account					
General Fund-State 001-1	209,665	160,665	370,330	321,330	321,330
Total \$	209,665	160,665	370,330	321,330	321,330

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Gena Mikkelsen	Phone: 3606507412	Date: 02/21/2023
Agency Approval: Faye Gallant	Phone: 3606504762	Date: 02/21/2023
OFM Review: Ramona Nabors	Phone: (360) 742-8948	Date: 02/27/2023

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.

WWU is unable to determine the fiscal impact this bill could have on the department and university.

Under the existing State Self-Insurance Liability Program (SILP), in which Western participates, personal injury and property damage arising out of our police officer's negligence while acting within the scope of their employment duties and in good faith is covered under the SILP. Western's vicarious and independent liability arising from our police officer's actions is also covered under the SILP.

However, this bill will or could be creating liability other than negligence, including willful or unlawful conduct of police officers, and an employer's vicarious liability for that. Not all of this is covered under the SILP, so we will likely incur the expense of a new law enforcement liability insurance policy (premiums and deductibles) to fill gaps in coverage under the SILP.

Time and expense to terminate an implicated police officer and recruit a replacement. Depending on the "quality" of the termination, the former police officer may file a tort claim or lawsuit in response for wrongful termination.

Responding to an AGO investigation, demands for documents and testimony, and civil action will be very time-consuming for Western as an institution and its employees providing administrative support and response to the AGO's initiatives. Responding to these AGO initiatives will consume time and resources of affected employees. The estimated cost of a lawsuit would be approximately \$250,000 not including any plaintiff's award of damages. This is not reflected in this fiscal note, but the Office of the Attorney General fiscal note.

The University would not be able to purchase private insurance for its officers. However the cost for supplemental private insurance through a private carrier is approximately \$300 per year per individual for \$1 Million in coverage. Obtaining this insurance will also require additional training and training records management, based on preliminary discussions with insurers.

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.

Sec. 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.

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.

(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.

(broad liability for the university)

(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.

(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.

Section 3 (4)(a) regarding inadequate supervision could potentially cause WWU to need another supervisor, but we will not know until the law and its repercussion matures.?

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

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.

WWU would need to obtain a new insurance policy to cover the gap not covered by the existing SILP costing around \$50,000; and if there is litigation resulting in a plaintiff's verdict, the cost of litigation will be minimum of \$250,000 not inclusive of any monetary damages. The cost of litigation is included in the fiscal note with the Office of the Attorney General and not reflected in this note.

In order to obtain needed insurance, the university would need to purchase new training management software, which it currently does not have, and demonstrate proof of training on compliance with this bill. Training records would then need to be recorded and provided on demand. This would require the purchase of new training tracking software and staff time. The estimated cost of this would be approximately \$20,000 for new tracking software and an annual license (approximately \$200). In addition, the university would purchase an Early Warning System from IAPRO costing, \$30,000 for new software and an annual license of \$1,000. Assumptions on staff training time are based on total number of officers multiplied by the average hourly wage of a police officer for a full day of training on each topic and estimating 10 primary topics. Total = \$68,375 including benefits reflected in salary/benefits.

Tort claims and lawsuits are time-consuming for those employees providing support and those employees who are directly involved.? In addition to direct and indirect fiscal impacts, responding to tort claims and lawsuits consumes time and resources of affected employees.

Whether this will require additional employees, we will not know until the law and its repercussion matures.?????

Additional staff time is anticipated for workforce replacement if an officer is put on administrative leave for any period of time; recruitment and hiring of a replacement officer; and training time dedicated to police academy (720 hours) and 480

weeks of field training. It is difficult to quantify this at this time without knowing how many officers may be impacted.

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	209,665	160,665	370,330	321,330	321,330
Total \$			209,665	160,665	370,330	321,330	321,330

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	1.1	1.1	1.1	1.1	1.1
A-Salaries and Wages	84,204	84,204	168,408	168,408	168,408
B-Employee Benefits	25,261	25,261	50,522	50,522	50,522
C-Professional Service Contracts	100,200	51,200	151,400	102,400	102,400
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	209,665	160,665	370,330	321,330	321,330

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
Police Officer	91,524	0.6	0.6	0.6	0.6	0.6
Records Specialist 2	63,216	0.5	0.5	0.5	0.5	0.5
Total FTEs		1.1	1.1	1.1	1.1	1.1

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Robert Ingram	Phone: (360) 902-8615	Date: 02/21/2023
Agency Approval: Frank Gillis	Phone: (360) 902-8538	Date: 02/21/2023
OFM Review: Matthew Hunter	Phone: (360) 529-7078	Date: 02/21/2023

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 substitute 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.

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

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 S 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:

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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: David Hoeveler	Phone: (360) 970-1638	Date: 02/21/2023
Agency Approval: David Hoeveler	Phone: (360) 970-1638	Date: 02/21/2023
OFM Review: Matthew Hunter	Phone: (360) 529-7078	Date: 02/21/2023

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 changes from previous fiscal note. The changes in the proposed legislation do not change the fiscal impact.

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.

Change Catalog:

Sections 1 and 2 make minor changes to the bill language, but do not provide more details on what constitutes an “injury” in this bill.

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 S 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: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Preparation: Zoe Catron	Phone: 360-902-1121	Date: 02/22/2023
Agency Approval: Nicole Dixon	Phone: 360-902-1155	Date: 02/22/2023
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 02/22/2023

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 S 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: 02/27/2023
Leg. Committee Contact: Yvonne Walker	Phone: 360-786-7841	Date: 02/20/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/27/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/28/2023

Part IV: Analysis

A. SUMMARY OF BILL

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

CHANGES BETWEEN PREVIOUS VERSION AND CURRENT BILL VERSION:

The proposed substitute bill would make several changes compared to the original bill version.

Section 3 would narrow the circumstances under which someone injured in person or property by a peace officer has a cause of action against that officer and any other officers who had the ability to prevent or aid in preventing the injury from a situation in which the injuring officer engaged in conduct unlawful under the state constitution or state law, to a situation in which the injuring officer engaged in conduct unlawful under the state constitution, RCW 10.93.160, or RCW 10.120.020.

This section would also require that employers asserting, as a defense against independent liability in a claim stemming from the above cause of action, that the training at issue in a claim was provided by the Criminal Justice Training Commission (CJTC), or the policy at issue in a claim conformed to published model guidance drafted by the Washington Office of the Attorney General, provide notice of this defense and all relevant claims and facts to the attorney general and director of the CJTC within 30 days.

Employers would be provided an exception from independent liability in a claim where “a proximate cause of the injury was the employer's failure to use reasonable care in retaining or disciplining the peace officer” if “the employer proves that it took disciplinary action against the peace officer and that action was appealed by the officer and reduced or overturned by an independent arbitrator or court.”

Finally, section 3 would strike the subsection from the original bill that specified that the fact that at the time of an act, omission or decision by a peace officer or employer, “the state of law was such that the peace officer or employer could not have reasonably been expected to know whether such act, omission or decision was lawful” is not an immunity or defense to an action brought under the new chapter in title 7 RCW this bill would create.

The substitute bill would also amend RCW 4.24.420, specifying that nothing in that RCW section shall affect a right of action under the new chapter in title 7 RCW this bill would create.

According to the Washington Counties Risk Pool and the Washington Cities Insurance Association, the provisions of the substitute bill would not change the local government expenditure impact of the original bill.

SUMMARY OF CURRENT BILL:

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, RCW 10.93.160, or RCW 10.120.020.

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 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. It would be a defense for an employer against this independent liability that the training was provided by the CJTC, or the policy conformed to model guidance published by the Washington State Office of the Attorney General at the specific request of the Legislature.

Subsection 3 (3) would also require that employers asserting one of the above defenses provide notice of this defense and all relevant claims and facts to the attorney general and director of the CJTC within 30 days.

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 or supervising the police officer. This subsection would also specify that an "employer is also independently liable for the injury if a proximate cause of the injury was the employer's failure to use reasonable care in retaining or disciplining the peace officer unless the employer proves that it took disciplinary action against the peace officer and that action was appealed by the officer and reduced or overturned by an independent arbitrator or court."

Subsection 3 (5) would specify a prohibited defense 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 9 would amend RCW 4.24.420, specifying that nothing in that RCW section shall affect a right of action under the new chapter in title 7 RCW this bill would create.

Section 11 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