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## Judiciary Committee

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### HB 2683

**Title:** An act relating to contracting for medical care services under chapter 71.09 RCW.

**Brief Description:** Authorizing contracts for provision of basic medical care to sexually violent predators.

**Sponsors:** Representatives O'Brien, Cody and Chase; by request of Department of Social and Health Services.

#### Brief Summary of Bill

- Authorizes the Department of Social and Health Services (DSHS) to contract with health care practitioners and health care facilities to provide basic medical care to the sexually violent predators in the DSHS's care.
- Authorizes the DSHS to indemnify practitioners under contract who cannot obtain professional liability insurance through reasonable efforts.

**Hearing Date:** 2/7/02

**Staff:** Trudes Hutcheson (786-7384).

#### Background:

##### Sexually Violent Predators

Under the Community Protection Act of 1990, a sexually violent predator may be civilly committed upon the expiration of his or her criminal sentence. A sexually violent predator is a person who has been convicted of, charged with and found not guilty by reason of insanity of, or found to be incompetent to stand trial for, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined to a secure facility. Because sexually violent predators are civilly committed after they finish serving their sentence, they are under the custody of the Department of Social and Health Services (DSHS), not the Department of Corrections (DOC), and must be housed separately from inmates. Currently, sexually violent predators are confined at the Special Commitment Center (SCC) on McNeil Island.

Last session, the legislature passed a bill that, among other things, authorized DSHS to:

- establish a secure community transition facility (SCTF) on McNeil Island for sexually violent predators conditionally released to a less restrictive alternative than total confinement; and
- determine if additional SCTFs are needed, and if so, set out a process for the equitable distribution of these facilities among counties.

#### Actions against state employees

One of the attorney general's (AG) duties is to represent the state in civil actions. Whenever an action for damages is brought against a state employee, the employee may request the attorney general to authorize the defense of the action at the expense of the state. If the AG finds that the employee's acts or omissions were in good faith and within the scope of that person's official duties, the AG must grant the request for defense. When a state employee has been represented by the AG and a judgment is entered against the employee, the judgment creditor must seek satisfaction only from the state.

State agencies sometimes contract with providers for services. For example, the DOC contracts with health care practitioners and facilities to provide basic medical care to its inmates. The DOC is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort. Practitioners under the DOC contracts are considered "state employees" for the purposes of requesting the AG to provide any defense and indemnification.

#### **Summary of Bill:**

The DSHS is authorized to contract with health care practitioners, health care facilities, and other entities or agents to provide basic medical care to residents of DSHS's facilities for sexually violent predators. The contracts shall not cause the termination of classified employees of the DSHS rendering the services at the time the contract is executed.

For health care practitioners who cannot obtain professional liability insurance through reasonable effort, the DSHS is authorized to provide indemnification from liability for any action, claim, or proceeding instituted against the practitioner arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may also provide that the practitioners are state employees only for the purposes of requesting the attorney general to provide the defense of an action and indemnification.

**Appropriation:** None.

**Fiscal Note:** Available.

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