

HOUSE BILL REPORT

ESHB 1490

As Passed House

February 9, 1998

Title: An act relating to liability of drivers of authorized emergency vehicles.

Brief Description: Clarifying liability of drivers of authorized emergency vehicles.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Thompson, Mielke, L. Thomas, McMorris, Chandler, Sterk and Delvin).

Brief History:

Committee Activity:

Law & Justice: 3/5/97 [DPS].

Floor Activity:

Passed House: 3/18/97, 58-40;

Passed House: 2/9/98, 95-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 1 member: Representative Constantine, Assistant Ranking Minority Member.

Staff: Bill Perry (786-7123).

Background: An authorized emergency vehicle is any vehicle of a fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington State Patrol, ambulance service (public or private), or any other vehicle authorized as such in writing by the Washington State Patrol.

When responding to an emergency call, pursuing an actual or suspected violator of the law, or responding to a fire alarm, the driver of an authorized emergency vehicle is permitted to exercise privileges otherwise prohibited by motor vehicle laws. For example, the driver may park in a no-parking zone, proceed past a red light, and disregard regulations governing direction of movement. A driver may also exceed the

speed limit "so long as he does not endanger life or property. A driver may exercise these privileges only when making use of visual signals required by law.

The privileges that a driver of any authorized emergency vehicle may exercise do not relieve the driver from the duty to drive with due regard for the safety of all persons, nor do they protect the driver from the consequences of acting in reckless disregard for the safety of others.

Courts have used due regard for the safety of all persons— interchangeably with the duty of care for ordinary negligence. Ordinary negligence involves a breach of a duty of reasonable care;— that is, doing some act that a reasonably careful person would not do under the same or similar circumstances.

Reckless disregard for the safety of others is intentional conduct that breaches a duty to do or refrain from doing something, in wanton disregard of the consequences and under such circumstances that a reasonable person would know the conduct is likely to harm another person.

Gross negligence is defined as the failure to exercise slight care. Although failure to exercise slight care does not mean the total absence of care, such as with reckless disregard, it does mean care that is substantially less than reasonable— care.

Washington long ago abolished the principle of sovereign immunity, under which a city, state, or other governmental entity could not be held liable for the negligent acts of a law enforcement officer in its employ. Washington courts have carved an exception to the policy abolishing sovereign immunity. Government entities are immune from liability for acts involving basic policy discretion.— The Washington Supreme Court has ruled, however, that the decisions of law enforcement officers whether to give chase, and whether to continue the pursuit, are operational decisions and are not decisions involving basic policy discretion. Officers and their employers have been held liable for negligence in deciding to terminate a high-speed pursuit, where the suspect later caused damage to a third party.

Summary of Bill: The duty of care and liability of a drivers of authorized emergency vehicles are changed.

Two statements of limitation on the privileges of emergency vehicle drivers are eliminated. The specific limitation on exceeding the speed limit only so long as doing so "does not endanger life or property" and the general limitation on immunity from liability for "reckless disregard for the safety of others" are both eliminated. The existing privileges, however, all still remain subject to the "duty to drive with due regard for the safety of all persons."

A new grant of immunity from liability is created for law enforcement agencies and personnel. This immunity applies to a law enforcement decision not to pursue a suspect or a decision to stop a pursuit of a suspect. There is no liability for damages resulting from negligence in failing to pursue or in terminating a pursuit. Liability may attach only in cases of gross negligence.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Law enforcement officers deserve the authority to perform their duties without fear of lawsuits over ordinary negligence. Courts have held these officers liable for terminating a high-speed pursuit even when continuing the pursuit would be extremely dangerous. This bill provides the protection and guidance needed for police officers to do their jobs fearlessly.

Testimony Against: None.

Testified: Representative Thompson, prime sponsor; Gerald Ross, Snohomish County Sheriff's Office (pro); Al Gahri, Snohomish County Prosecutor's Office (pro); Marsh Pugh, Washington State Patrol (pro); and Mike Patrick, Washington State Council of Police Officers (pro).