

# SENATE BILL REPORT

## SB 5355

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As Reported By Senate Committee On:  
Human Services & Corrections, February 22, 2001

**Title:** An act relating to limitations in tort liability for errors in judgment by state employees.

**Brief Description:** Limiting liability for specified state workers for errors of judgment.

**Sponsors:** Senator Hargrove.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/7/01, 2/22/01 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5355 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Hewitt, Kastama, Kohl-Welles, Long and Stevens.

**Staff:** Joan K. Mell (786-7447)

**Background:** Sovereign immunity was abolished by statute in 1895, meaning a person could sue the state in a civil liability case. In negligence cases, certain legal principles remain that shield the state from liability. These principles include discretionary immunity, qualified immunity, and the public duty doctrine. The law also recognizes certain exceptions to these legal principles, which have been the legal basis for several jury verdicts and settlements against the state. Current law permits a negligence claim against the state when a person other than the state commits a criminal act harming another. The theory is based upon the state's special duty to control the criminal conduct. This special duty may exist by statute or common law.

The Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) operate programs, pursuant to statute, which require employees choose a course of action under conditions where the outcome from either decision could be fatal or devastating. These agencies operate supervision programs for criminal offenders released from incarceration or detention; DSHS investigates child and adult cases of abuse and neglect. Agency employees must rely upon their training, education and experience to make discretionary decisions often based upon circumstantial evidence. Sometimes the decision he or she makes results in a bad outcome, despite the employee exercising reasonable care in making the decision.

The law in this state recognizes this professional judgment dilemma in a common law doctrine expressed in the Washington Pattern Jury Instructions as an "error in judgment." The pattern instruction permits a physician to instruct a jury that he or she is not liable for an error in

judgment. The common law history relative to this doctrine is lengthy, and provides perimeters for the appropriate application of this doctrine in tort liability cases.

In the past year, the state has been found liable or has agreed to settle several cases related to programs at DOC and DSHS. The verdicts and settlements in these cases far exceed \$30 million.

**Summary of Substitute Bill:** The state Department of Social and Health Services and the Department of Corrections through its employees and agents are not liable when the state worker or agent exercises reasonable care and selects one of two or more alternative courses of action, even though the course of action chosen results in a poor outcome.

Intent sections are codified that clarify the Legislature does not intend to immunize the state against negligence.

Other statutes governing state liability are to be harmonized with the provisions in this legislation.

**Substitute Bill Compared to Original Bill:** The title is amended. Reference to the term error in judgment– is eliminated, as are provisions referencing policies and procedures. Language changes are made to clarify intent.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The Department of Social and Health Services supports the legislation. The legislation recognizes the exercise of professional judgment. Error in judgment is a legal principle, which has been in existence for many years. The application to caseworkers and others is appropriate particularly given the difficult choices confronting these professionals in the work the state is asked to perform. The Department of Corrections believes the bill helps the state and is necessary. Offenders are a population with a high likelihood of reoffending, and the state is in a difficult position when arguments in civil liability cases focus in hindsight on what the state knew or should have known. Local county corrections personnel acting as agents of the state should be provided the same protections as the state employees. The bill is needed, and addresses the concerns of these professionals that despite all of their good work, they are liable no matter what decision they make. The bill reinforces the need to make well reasoned decisions.

**Testimony Against:** Concerns are expressed that language in the bill confuses current high verdict tort liability cases with a concept of error in judgment, which is not an appropriate standard when the state or its agents are acting negligently. Recent high verdicts were sending a message to the state to improve its supervision of offenders, rather than provide the state protections from tort liability. References to policies and procedures encourages the state agencies to lower standards.

**Testified:** Helen Bradley, Yakima County Aging & Long Term (pro w/concerns); Joe Lehman, DOC (pro); Bernie Friedman, DSHS (pro); Pete Peterson, Clallam County Juvenile (pro); Gail Hiestand, Kitsap County Aging (pro); Larry Shannon, Jack Connelly, Darrel Cochcrane, WSTLA (concerns); Michael Shaw, Pierce Co. (pro).