

# HOUSE BILL REPORT

## HB 1764

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to liability for performing pretrial supervision activities.

**Brief Description:** Providing limited immunity for pretrial supervision.

**Sponsors:** Representatives Lantz, Carrell, O'Brien, Flannigan and Moeller.

**Brief History:**

**Committee Activity:**

Judiciary: 2/18/03, 3/3/03 [DPS].

**Brief Summary of Substitute Bill**

- Provides that a county, city, or town, and their officers, employees, and volunteers are not liable for selecting one of two or more alternative courses of action pertaining to pretrial supervision or pretrial release, even though the course of action chosen resulted in a poor outcome, if the person exercised reasonable care and skill in arriving at the judgment to follow that particular course of action.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

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

**Background:**

Pretrial release is the release of the defendant from custody pending trial. The power of the court to grant pretrial release is authorized in the constitution and governed by statute and court rules.

Generally, a defendant who has been charged with an offense must be ordered released

on the defendant's personal recognizance (promise to appear) pending trial unless the court finds that recognizance will not reasonably assure the defendant's appearance in court when required. If the court determines that the defendant's promise alone is not sufficient to assure his appearance for subsequent court proceedings, the court may impose conditions on the defendant, such as bail.

The court may deny pretrial release on personal recognizance if there is shown a likely danger that the accused will commit a violent crime, or that the accused will seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice.

A person who has been injured by another may bring a civil action to recover damages caused by the injury. The plaintiff in a case for negligence must establish four things: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was a proximate cause of the injury; and (4) the plaintiff suffered personal injury or property damage.

Generally, a person does not have a duty to protect others from the criminal acts of third persons. However, Washington courts have recognized an exception to this general rule where a special relationship exists between the person and the third party. Whether a person has a duty to protect another from the intentional acts of a third person depends upon the relationship between the parties and the extent to which the third party's conduct was foreseeable.

In a 1999 case, the state Supreme Court held that pretrial release officers who have supervisory authority over a defendant on pretrial release have a duty to protect others from reasonably foreseeable danger resulting from the dangerous propensities of the defendant. *Hertog v. City of Seattle*, 138 Wn.2d 265 (1999). It is possible, therefore, that cities and counties can be civilly liable for the acts of a person on pretrial release if the other elements of a negligence action are proven.

In medical malpractice cases, there exists what is called an "error of judgment" jury instruction. The jury instruction is favorable to defendant doctors because it emphasizes to the jury that the mere fact the patient was injured or there was a bad result does not necessarily mean there was negligence or other wrongful conduct on the doctor's part. An "error in judgment" jury instruction is appropriate when, in arriving at a judgment, the doctor exercised reasonable care and skill within the standard of care and the doctor had a choice among competing therapeutic techniques or medical diagnoses.

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

The Legislature declares that it is obligated for policy reasons and fiscal responsibility to assure that counties, cities, and towns are accountable under fair and reasonable standards of negligence.

A county, city, or town, and their officers, employees, and volunteers shall not be liable for selecting one of two or more alternative courses of action pertaining to pretrial supervision or pretrial release, even though the course of action chosen results in a poor outcome, if the person exercised reasonable care and skill in arriving at the judgment to follow the particular course of action.

**Substitute Bill Compared to Original Bill:**

The original bill granted immunity from negligence. Under the original bill, counties, cities, and towns are not liable for acts or omissions in rendering pretrial supervision or pretrial release unless the act or omission constitutes gross negligence.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** A recent court case says that cities can be liable, and the concurring opinion in that case said the outcome is unfair and amounts to strict liability for cities. Applying the standard of gross negligence has been discussed for several years with stakeholders. Pretrial release and supervision are integral parts of the justice system. Pretrial release and supervision save money and are a substitute for incarceration. Without pretrial release and supervision, the defendant would be retained in jail or released without supervision. There is a fear to require supervision because of the fear of liability. We must encourage these supervision services.

**Testimony Against:** Eliminating liability does not solve the problems facing cities and counties. There needs to be some accountability. Cities and counties must actually supervise defendants. Cities and counties should not have to resort to the standard of gross negligence. It is not good public policy to grant immunity for failure to exercise slight care.

**Testified:** (In support) Representative Lantz, prime sponsor; Sophia Byrd, Washington Association of Counties; Pam Foister, Clark County Corrections; and Dayle Crane, Kitsap County District Court Probation.

(Opposed) Suzanne Brown, Washington Coalition of Sexual Assault Programs; and Michael Temple, Washington State Trial Lawyers Association.