
Judiciary Committee

HB 1764

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 Summary of Bill

- Provides cities, towns, and counties, and their staff and volunteers, immunity for acts or omissions in rendering pretrial supervision or pretrial release unless the act or omission constitutes gross negligence.

Hearing Date: 2/18/03

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.

If the defendant violates conditions of his or her pretrial release or fails to appear in court when required, the court may issue a warrant for the defendant's arrest and impose other conditions or sanctions.

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.

Summary of Bill:

A county, city, or town providing pretrial supervision or pretrial release is not liable for civil damages resulting from any act or omission in the rendering of pretrial supervision or pretrial release unless the act or omission constitutes gross negligence. This limit on liability applies to the county's, city's, and town's staff and volunteers as well. "Gross negligence" means the failure to exercise slight care and is substantially and appreciably greater than ordinary negligence.

Appropriation: None.

Fiscal Note: Requested on February 13, 2002.

Effective Date: The bill takes effect ninety days after adjournment of session in which bill is passed.