

SENATE BILL REPORT

SB 5542

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 18, 2003

Title: An act relating to the exercise of reasonable care by state employees and its agents at the department of social and health services and the department of corrections.

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

Sponsors: Senators Hargrove, Brandland, Schmidt and Winsley.

Brief History:

Committee Activity: Children & Family Services & Corrections: 2/12/03, 2/18/03 [DP].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Edith Rice (786-7444)

Background: Under RCW 4.92.090, the state of Washington is liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. The state acts through its officers, elected officials, employees and volunteers. In state 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 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 Department of Corrections (DOC) and the Department of Social and Health Services (DSHS) operate programs which require employees to choose a course of action under conditions where the outcome from either choice 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 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.

In the past several years, the state has been found liable or has agreed to settle cases related to programs at DOC and DSHS. The verdicts and settlements in these cases range in the millions of dollars.

Summary of Bill: The state Department of Social and Health Services and the Department of Corrections through their 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: State employees often have to make decisions regarding difficult individuals over whom they have no control. As long as they exercise reasonable care in doing so, the taxpayers should not be liable for a bad outcome. State employees are still expected to act without negligence.

Testimony Against: State employees will now have an additional excuse for not following instructions.

Testified: Michael Shaw, Assn. of Counties (pro); Dennis Eagle, Washington Federation of State Employees, (pro); Michael Temple, Washington State Trial Lawyers Association (con); Jack Connolly, Washington State Trial Lawyers Association (con); Bernie Friedman, Department of Social and Health Services (pro); Kathey Gastreich, Department of Corrections (pro); Gary Andrews, Department of Corrections (pro); Sophia Byrd, Association of Counties (pro).