

FINAL BILL REPORT

SHB 1669

C 174 L 07

Synopsis as Enacted

Brief Description: Concerning the district and municipal court's probation and supervision services.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy, Hinkle and Lantz).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

An offender convicted of a misdemeanor or gross misdemeanor offense serves his or her confinement in a local jail and may be subject to probation with court-ordered conditions after release. Under court rules applicable to courts of limited jurisdiction, a court has the authority to establish a misdemeanant probation department, and the method of providing probation services must be established by the presiding judge of the local court to meet the needs of the court.

Generally, a person does not have a duty to protect others from the criminal acts of third persons. Washington courts have recognized an exception to this general rule where a special relationship exists between the person and the third party. Under this exception, a governmental entity may be held liable for the acts of a criminal offender it is supervising if the governmental entity fails to adequately supervise the offender and that lack of supervision results in harm to another person. Government liability in this context is based on the premise that the government has a "take-charge" relationship with the offender, and therefore must exercise reasonable care to control the known dangerous propensities of the offender.

Under the doctrine of judicial immunity, judges are provided with absolute immunity from civil liability for acts performed within their judicial capacity. Judicial immunity may also extend to governmental agencies or executive branch officials while performing judicial functions. Quasi-judicial immunity applies to persons performing functions that are so comparable to those performed by judges that they should share the judge's absolute immunity while carrying out those functions. In the offender supervision context, court decisions have held that a probation or parole officer's duties in supervising an offender and monitoring the offender's compliance with conditions of release are not entitled to quasi-judicial immunity.

In a 2005 unpublished Court of Appeals decision, the Court addressed the issue of the liability of a municipal court probation officer for the acts of an offender on probation for a DUI offense. The Court held that the relationship between the municipal court's probation department and the supervised probationer did give rise to a "take-charge" relationship, which

imposed a duty on the probation department to protect the public from foreseeable behavior associated with the conditions of probation. The Court also found that judicial and quasi-judicial immunity did not apply to the actions of the probation department, even though the judge was the head of the probation department. The Court found that a judge acting as a probation department head is acting in an administrative capacity, not a judicial capacity, and that the probation officer's monitoring of the probationer is not analogous to a judicial decision to place a defendant on probation or revoke probation.

When a superior court judge orders supervision of a misdemeanor or gross misdemeanor defendant placed on probation, responsibility for the supervision falls initially on the Department of Corrections (DOC), but a county may elect to assume responsibility for the supervision of these offenders by contract with the DOC. The DOC and any county probation department under contract with the DOC are not liable for civil damages resulting from an act or omission in conducting superior court misdemeanor probation activities unless the act or omission constitutes gross negligence.

Summary:

A limited jurisdiction court that provides misdemeanor supervision services is not liable for damages based on the inadequate supervision or monitoring of a misdemeanor defendant or probationer unless the inadequate supervision or monitoring constitutes gross negligence.

"Limited jurisdiction court" means a district court or a municipal court, and anyone acting or operating at the direction of such court, including but not limited to its officers, employees, agents, contractors, and volunteers.

"Misdemeanor supervision services" means pre-conviction or post-conviction misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with a pre-conviction or post-conviction order of the court, including but not limited to community corrections programs, probation supervision, pretrial supervision, or pretrial release services.

Votes on Final Passage:

House	97	0
Senate	47	0

Effective: July 22, 2007