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SENATE BILL 6401

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State of Washington

60th Legislature

2008 Regular Session

By Senator Carrell

Read first time 01/16/08. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to civil liability in community supervision  
2 settings; adding new sections to chapter 4.24 RCW; and creating a new  
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature has enacted various laws  
6 which require state and local government to supervise criminal  
7 offenders and other persons in the community after their release from  
8 correctional or treatment facilities. One purpose of these laws is to  
9 provide oversight of problem behavior through intermittent contact with  
10 the hope that the oversight will help reduce the problem behavior.  
11 Another purpose of these laws is to reduce populations in public  
12 institutions in order to save public funds and use those funds for more  
13 important programs.

14 (2) Community supervision of offenders and others carries a high  
15 inherent risk that those persons might reoffend or engage in behaviors  
16 which harm others while under supervision. This risk cannot be  
17 eliminated or easily mitigated because community supervision is  
18 noncustodial and involves only intermittent contact with the persons  
19 under supervision and because human behavior is difficult to predict.

1 (3) The legislature finds that broad liability for injuries caused  
2 by offenders, and others who are being supervised in the community, is  
3 not in the public interest. This liability causes expensive claim and  
4 legal costs and creates false expectations among members of the public  
5 concerning the reasons for community supervision programs and what  
6 those programs can be realistically expected to achieve. Moreover,  
7 broad liability for community supervision programs strongly discourages  
8 programs which the legislature views as desirable to promote overall  
9 public welfare and reduce the cost of confinement in correctional and  
10 treatment facilities.

11 (4) Therefore, the legislature finds that it is in the public  
12 interest to limit the liability of state and local government for  
13 injuries caused by released offenders and other persons who are being  
14 supervised in the community or who are on a community-based treatment  
15 monitoring program. The legislature intends to limit both the class of  
16 supervised persons for whom state and local government can be held  
17 liable and the circumstances under which liability can be imposed.  
18 This act shall be liberally construed to accomplish the purposes of  
19 this section.

20 NEW SECTION. **Sec. 2.** For purposes of sections 3 through 7 of this  
21 act, "offender" or "offender being supervised in the community"  
22 includes anyone on community supervision, community placement,  
23 community custody, postrelease supervision, parole, probation, pretrial  
24 supervision, posttrial supervision pending the outcome of an appeal of  
25 a conviction, work release, or furlough.

26 NEW SECTION. **Sec. 3.** The state, local governments, and their  
27 agencies, officers, and employees, shall not be held liable for  
28 injuries to persons or property caused by any juvenile under the  
29 jurisdiction of the department of social and health services pursuant  
30 to Title 13 RCW or anyone subject to a commitment order under chapter  
31 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW, and conditionally released  
32 or on a less restrictive alternative.

33 NEW SECTION. **Sec. 4.** The state, local governments, and their  
34 agencies, officers, and employees, shall not be held liable for damages  
35 or injuries to persons or property caused by offenders who are being

1 supervised in the community due to a misdemeanor or gross misdemeanor  
2 conviction, or due to a charge or conviction of a nonviolent offense or  
3 any charge or conviction for a property crime or crime of dishonesty.

4 NEW SECTION. **Sec. 5.** The state, its agencies, officers, and  
5 employees, shall be liable under the provisions of section 6 of this  
6 act only for damages and injuries to persons caused by offenders under  
7 the department of corrections' jurisdiction who are classified in the  
8 two highest risk categories identified through the risk assessment done  
9 by the department of corrections pursuant to RCW 9.94A.500 and  
10 9.94A.501.

11 NEW SECTION. **Sec. 6.** (1) Liability for injuries or deaths caused  
12 by offenders on supervision in the community may be imposed on the  
13 state, local governments, their agencies, officers, or employees only  
14 pursuant to the provisions of this section and subject to the  
15 limitations of sections 4 and 5 of this act. The state, local  
16 governments, and/or their agencies, officers, or employees may be found  
17 liable for personal injuries or deaths caused by offenders other than  
18 those identified in section 4 or 5 of this act only if the supervising  
19 officer failed to exercise reasonable care in supervising the offender  
20 and each of the following elements is present:

- 21 (a) The injury-causing conduct of the offender is criminal;
- 22 (b) The criminal act resulting in the injury or death is  
23 substantially identical to the criminal conduct resulting in the  
24 conviction for which the offender is being supervised;
- 25 (c) The offender has violated a crime-related prohibition of  
26 supervision;
- 27 (d) The supervising agency or employee knew of the violation of the  
28 crime-related prohibition; and
- 29 (e) The offender would have been incarcerated on the date of the  
30 conduct resulting in personal injury or death if the violation of the  
31 crime-related prohibition had been reported to a judicial or  
32 quasi-judicial entity with the authority to incarcerate the offender.

33 (2) For purposes of this section, crime-related prohibitions shall  
34 not include reporting requirements, employment or educational  
35 requirements, requirements to pay legal financial obligations,  
36 residency requirements, geographical restrictions on travel, a

1 condition to obey all laws, curfews, or any standard conditions  
2 applicable to all offenders or a class of offenders under the  
3 jurisdiction of the supervising agency. Evidence of the violation of  
4 any of the aforementioned conditions, or sanctions that may be imposed  
5 as the result of such violations, shall not be admissible in any civil  
6 trial seeking to impose liability on a governmental agency or employee  
7 as the result of a personal injury or death caused by an offender being  
8 supervised in the community. Any immunity applicable to a past or  
9 present officer or employee shall be applicable to the employing  
10 governmental agency.

11 NEW SECTION. **Sec. 7.** Nothing in this section shall be construed  
12 to diminish any immunity or defense that may otherwise be applicable to  
13 the governmental entity and/or its past or present employees  
14 supervising authority.

15 NEW SECTION. **Sec. 8.** Sections 2 through 7 of this act are each  
16 added to chapter 4.24 RCW.

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