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## Judiciary Committee

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### HB 1679

**Title:** An act relating to government liability for supervision of offenders.

**Brief Description:** Limiting government liability for supervision of offenders.

**Sponsors:** Representatives Eddy, Carlyle, Kagi and Takko.

Brief Summary of Bill
<ul style="list-style-type: none"><li>Provides that state and local governments are not liable for injuries caused by an offender under supervision if the offender's actions that caused the injuries do not have a substantial connection with the criminal act for which the offender is being supervised.</li></ul>



**Hearing Date:** 2/9/11

**Staff:** Edie Adams (786-7180).

**Background:**

Washington waived its sovereign immunity in 1961, providing that the state is liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. A similar waiver of immunity for local governments was enacted in 1967.

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 can 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In the case *Joyce v. DOC*, the Washington Supreme Court (Court) rejected an argument that the state's duty to supervise an offender is limited by the underlying offense since its authority to supervise is limited by the judgment and sentence and the conditions of release relating to the offense. The Court reasoned that once the state has taken charge of an offender, it is that relationship, and not the conditions of the release, that impose the duty to properly supervise the offender.

### Criminal Laws and Sentencing.

The state's criminal laws are contained in a number of chapters of the Revised Code of Washington (RCW), primarily located in Titles 9 and 9A RCW. Title 9A is the Washington Criminal Code, and it defines a variety of criminal offenses categorized in chapters according to the type of offense. Examples of chapter categories include: homicide; assault; kidnapping, unlawful imprisonment, and custodial interference; criminal mistreatment; sex offenses; harassment; arson, reckless burning, and malicious mischief; burglary and trespass; and theft and robbery. "Serious violent offense" is defined by the criminal code to include: murder in the first or second degree, homicide by abuse, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, rape in the first degree, and assault of a child in the first degree.

The Sentencing Reform Act provides a complex framework for the sentencing of offenders who are convicted of felony offenses, and the subsequent supervision of these offenders and some non-felony offenders once they are released from confinement. Generally, the Department of Corrections (DOC) is required to supervise all offenders sentenced to community custody who are classified as a high risk to reoffend and certain other categories of offenders regardless of risk assessment. These other categories of offenders include: felony sex offenders, dangerous mentally ill offenders, and offenders sentenced to special sentencing alternatives. In addition, the DOC is required to supervise certain misdemeanor offenders.

### **Summary of Bill:**

The state, local governments, and their agencies, officers, and employees, are not liable for injuries caused by an offender under supervision if the offender's act that causes the injuries does not have a substantial connection with the criminal act for which the offender is being supervised. A substantial connection exists only if: the act causing the injury would be prosecutable under the same chapter of the RCW as the crime for which the offender is being supervised; or both the act causing the injury and the crime for which the offender is being supervised constitute serious violent offenses.

"Supervision" includes probation, parole, community custody, community placement, community supervision, and postrelease supervision.

**Appropriation:** None.

**Fiscal Note:** Available.

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