
SUBSTITUTE SENATE BILL 5605

State of Washington

62nd Legislature

2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to government liability; amending RCW 26.44.010 and
2 4.22.070; adding new sections to chapter 4.24 RCW; and adding a new
3 section to chapter 72.09 RCW.

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

5 **Sec. 1.** RCW 26.44.010 and 1999 c 176 s 27 are each amended to read
6 as follows:

7 The Washington state legislature finds and declares: The bond
8 between a child and his or her parent, custodian, or guardian is of
9 paramount importance, and any intervention into the life of a child is
10 also an intervention into the life of the parent, custodian, or
11 guardian; however, instances of nonaccidental injury, neglect, death,
12 sexual abuse and cruelty to children by their parents, custodians or
13 guardians have occurred, and in the instance where a child is deprived
14 of his or her right to conditions of minimal nurture, health, and
15 safety, the state is justified in emergency intervention based upon
16 verified information; and therefore the Washington state legislature
17 hereby provides for the reporting of such cases to the appropriate
18 public authorities. It is the intent of the legislature that, as a
19 result of such reports, protective services shall be made available in

1 an effort to prevent further abuses, and to safeguard the general
2 welfare of such children(~~(+—PROVIDED, That such)~~). When the child's
3 interests of basic nurture, physical and mental health, and safety
4 conflict with the parents' interests, the interests of the child should
5 prevail. When determining whether a parent and child should be
6 separated during or immediately following an investigation of alleged
7 child abuse or neglect, the safety of the child shall be the
8 department's paramount concern. Reports of child abuse and neglect
9 shall be maintained and disseminated with strictest regard for the
10 privacy of the subjects of such reports and so as to safeguard against
11 arbitrary, malicious or erroneous information or actions(~~(+—PROVIDED~~
12 ~~FURTHER, That)~~). This chapter shall not be construed to authorize
13 interference with child-raising practices, including reasonable
14 parental discipline, which are not proved to be injurious to the
15 child's health, welfare and safety.

16 NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW
17 to read as follows:

18 (1) Governmental entities, and their officers, agents, employees,
19 and volunteers, are not liable in tort to parents or legal guardians
20 accused of abuse or neglect for acts or omissions in investigating
21 reports of child abuse or neglect under chapter 26.44 RCW unless the
22 investigation was done with reckless disregard of whether there was
23 reason to believe the child was in danger of abuse or neglect.

24 (2) Except as provided in subsection (1) of this section, the duty
25 to conduct a reasonable investigation of child abuse or neglect upon a
26 referral runs only to children who are the subject of a referral under
27 chapter 26.44 RCW.

28 (3) The department and its employees shall comply with the orders
29 of the court, including shelter care and other dependency orders, and
30 are not liable for acts performed to comply with such court orders. In
31 providing reports and recommendations to the court, caseworkers are
32 entitled to the same witness immunity as would be provided to any other
33 witness.

34 NEW SECTION. Sec. 3. A new section is added to chapter 72.09 RCW
35 to read as follows:

36 The legislature has enacted laws which require the state and local

1 governments to supervise criminal offenders after their release from
2 correctional facilities. These laws have been interpreted by our
3 courts as giving rise to a duty that creates tort liability. The
4 courts have expanded this duty to create liability for offender
5 behavior that is unrelated to the criminal behavior for which the
6 offender was placed on supervision. As the duty has expanded, claims
7 for failure to supervise have increased, and these claims have become
8 unrelated or minimally connected to the offense for which the offender
9 is being supervised. The legislature intends to rebalance this
10 interplay between duty and liability by focusing the state's duty on
11 supervision of the offender for the actual criminal behavior that
12 brought the offender into the criminal justice system and for which it
13 may be properly said that the state has an identifiable duty.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.24 RCW
15 to read as follows:

16 (1) The state, local governments, and their agencies, officers, and
17 employees, are not liable for injuries caused by an offender under
18 supervision if the offender's act causing the injuries does not have a
19 substantial connection with the criminal act for which the offender is
20 being supervised. A substantial connection exists only if the act
21 resulting in the injury would constitute a criminal act prosecutable
22 under the same chapter of the Revised Code of Washington as the crime
23 for which the offender is being supervised, or if both the act
24 resulting in the injury and the crime for which the offender is being
25 supervised constitute serious violent offenses as defined by RCW
26 9.94A.030.

27 (2) For the purposes of this section, supervision includes any type
28 of community-based supervision including, but not limited to,
29 probation, parole, community custody, community placement, community
30 supervision, and postrelease supervision.

31 (3) Nothing in this section diminishes any immunity or defense that
32 may otherwise be applicable to the governmental entity or its past or
33 present employees.

34 **Sec. 5.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
35 as follows:

36 (1) In all actions involving fault of more than one entity, the

1 trier of fact shall determine the percentage of the total fault which
2 is attributable to every entity which caused the claimant's damages
3 except entities immune from liability to the claimant under Title 51
4 RCW. The sum of the percentages of the total fault attributed to at-
5 fault entities shall equal one hundred percent. The entities whose
6 fault shall be determined include the claimant or person suffering
7 personal injury or incurring property damage, defendants, third-party
8 defendants, entities ~~((released by))~~ who have entered into a release,
9 covenant not to sue, covenant not to enforce judgment, or similar
10 agreement with the claimant, entities with any other individual defense
11 against the claimant, and entities immune from liability to the
12 claimant, but shall not include those entities immune from liability to
13 the claimant under Title 51 RCW. Judgment shall be entered against
14 each defendant except those entities who have ~~((been released by))~~
15 entered into a release, covenant not to sue, covenant not to enforce
16 judgment, or similar agreement with the claimant or are immune from
17 liability to the claimant or have prevailed on any other individual
18 defense against the claimant in an amount which represents that party's
19 proportionate share of the claimant's total damages. The liability of
20 each defendant shall be several only and shall not be joint except(~~(+~~
21 ~~(a))~~) a party shall be responsible for the fault of another person
22 or for payment of the proportionate share of another party where both
23 were acting in concert or when a person was acting as an agent or
24 servant of the party.

25 ~~((b) If the trier of fact determines that the claimant or party~~
26 ~~suffering bodily injury or incurring property damages was not at fault,~~
27 ~~the defendants against whom judgment is entered shall be jointly and~~
28 ~~severally liable for the sum of their proportionate shares of the~~
29 ~~claimants [claimant's] total damages.))~~

30 (2) If a defendant is jointly and severally liable under ~~((one of))~~
31 the exception(~~(s)~~) listed in subsection(~~(s)~~) (1)~~((a) or (1)(b))~~ of
32 this section, such defendant's rights to contribution against another
33 jointly and severally liable defendant, and the effect of settlement by
34 either such defendant, shall be determined under RCW 4.22.040,
35 4.22.050, and 4.22.060.

36 (3)(a) Nothing in this section affects any cause of action relating
37 to hazardous wastes or substances or solid waste disposal sites.

1 (b) Nothing in this section shall affect a cause of action arising
2 from the tortious interference with contracts or business relations.

3 (c) Nothing in this section shall affect any cause of action
4 arising from the manufacture or marketing of a fungible product in a
5 generic form which contains no clearly identifiable shape, color, or
6 marking.

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