

HOUSE BILL REPORT

EHB 2088

As Passed Legislature

Title: An act relating to extending liability protections for responders dispatched from mobile rapid response crisis teams and community-based crisis teams.

Brief Description: Extending liability protections for responders dispatched from mobile rapid response crisis teams and community-based crisis teams.

Sponsors: Representatives Orwall, Reed, Ormsby, Ramel, Macri, Cheney, Lekanoff, Riccelli, Wylie and Reeves; by request of Health Care Authority.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/23/24, 1/26/24 [DP].

Floor Activity:

Passed House: 2/8/24, 96-0.

Passed Senate: 2/27/24, 49-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Provides covered entities and personnel with immunity from civil liability for negligent acts and omissions while providing: (1) specified crisis care services under clinical supervision to persons experiencing a behavioral health crisis, if the act or omission is done or omitted in good faith within the scope of the individual's employment responsibilities; (2) transportation of patients to specified services.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Taylor, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Abbarno, Cheney, Goodman, Peterson, Thai and Walen.

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

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

Staff: John Burzynski (786-7133).

Background:

Civil Liability for Harming Another.

When one individual causes harm to another, whether inadvertently or intentionally, the victim can typically bring a civil action in court against the responsible party to recover money damages. Harmful acts or omissions that can provide a basis for a civil action can be categorized based on the culpability and mental state of the responsible party.

Negligence. Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

Gross Negligence. Gross negligence is the failure to exercise slight care. It is negligence that is substantially greater than ordinary negligence. Failure to exercise slight care does not mean the total absence of care but care substantially less than ordinary care.

Wanton Misconduct. Wanton misconduct is the intentional doing of an act which one has a duty to refrain from doing, or the intentional failure to do an act which one has a duty to do, in reckless disregard of the consequences and under such surrounding circumstances and conditions that a reasonable person would know, or should know, that such conduct would, in a high degree of probability, result in substantial harm to another.

Willful Misconduct. Willful misconduct is the intentional doing of an act which one has a duty to refrain from doing, or the intentional failure to do an act which one has the duty to do, when he or she has actual knowledge of the peril that will be created and intentionally fails to avert injury, or actually intends to cause harm.

Immunity from Civil Liability in General.

Washington provides limited immunity from civil liability to certain individuals engaged in specified activities. Generally, such immunity only extends to negligence and does not cover more culpable acts or omissions like gross negligence, or wanton or willful misconduct. For example, such limited grants of immunity exist for, among others: (1) volunteers of nonprofit or government entities acting within the scope of their responsibilities; (2) persons who, without compensation or expectation of compensation, provide emergency care or nonmedical care at the scene of an emergency; and (3) persons acting at the request of an incident command agency who, in good faith, render emergency care, assistance, or advice with respect to a hazardous materials incident.

Crisis Call Center and 988 Contact Hub Immunity.

Washington grants limited immunity to certain persons and entities in connection with crisis call centers and designated 988 contact hubs. Covered persons and entities include:

- the clinical staff of the crisis call center or designated 988 contact hub or their clinical supervisors;
- the crisis call center or designated 988 contact hub or its officers, staff, or employees;
- any member of a mobile rapid response crisis team or community-based crisis team endorsed under state law;
- the certified public safety telecommunicator and their supervisor; and
- the public safety answering point or its officers, staff, or employees.

Covered persons and entities are immune from civil liability for all negligent acts and omissions that are:

- related to the dispatching decisions of any crisis call center staff or designated 988 contact hub staff with qualifying crisis team dispatching responsibilities;
- done or omitted in good faith within the scope of the individual's employment responsibilities; and
- done in accordance with adopted and approved dispatching procedures.

Immunity to civil liability for covered persons and entities does not apply to any act or omission that constitutes gross negligence or willful or wanton misconduct.

Summary of Engrossed Bill:

The section of Washington law governing immunity for crisis call centers and designated 988 contact hubs is amended to provide immunity in additional crisis care contexts.

Covered Persons and Entities.

The following covered persons and entities are immune from liability for negligent acts and omissions when providing specified services or transportation:

- any staff of an endorsed or nonendorsed mobile rapid response crisis team or community-based crisis team, crisis stabilization unit, or a 23-hour crisis relief center, including teams and facilities operated by tribes;
- any officer of a public, private, or tribal agency, the superintendent, any professional person in charge or their professional designee, or any attending staff of any such agency; and
- any federal, tribal, state, county, city, or other local governmental unit; contracted behavioral health agency; or employees of such units or agencies.

Service Immunity.

Covered persons and entities are immune from liability for negligent acts and omissions when providing crisis stabilization services, professional on-site community-based intervention, outreach, de-escalation, stabilization, resource connection, or follow-up support; that is: (1) delivered under the clinical supervision of a mental health professional

or an approved medical program director or their delegate; (2) provided to a person who is experiencing a behavioral health crisis; and (3) done or omitted in good faith within the scope of the individual's employment responsibilities.

Transport Immunity.

Additionally, covered persons and entities are immune from liability for negligent acts and omissions when involved in the transport of patients to behavioral health services, facilities providing crisis stabilization services, or other needed crisis services.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill builds on prior work in this area related to the 988 system. Most 988 calls are resolved on the phone, but a small percentage of people need further outreach. The goal is to build a system that provides a clinical response whenever possible and build out the crisis care continuum. The goal of this bill is to enable a rapid response to behavioral health crises, provide an alternative to police, and ensure people get the services they need at the right time, in the right place, and right away. One important part of this bill is ensuring crisis responders know they can take people suffering a behavioral health crisis to a crisis relief center and provide an alternative to emergency departments and jails.

The bill is agency request legislation from the Health Care Authority and extends current liability protections provided to 988 and 911 staff to in-person crisis care providers. Immunity is needed and provided because, while crisis health responders are well trained, they are working under difficult situations. The bill provides responders with the tools and support to go into unknown and difficult situations and extends immunities that exist for emergency medical services and fire departments. This bill empowers responders to do their jobs with minimal risk. Crisis responders should be able to render assistance to a person in crisis without fear of liability when that care is given within the scope of their job and given in good faith.

This bill specifies the persons and types of conditions under which limited immunity is provided. Responders must act under the clinical supervision of a mental health professional or medical program director. The bill does not shield responders from liability for gross negligence or willful misconduct.

Behavioral health responders are first responders and should be granted the same liability protections provided to other first responders. To attract and retain a workforce to support

crisis response systems, the nature of the work must be acknowledged.

Cities that have implemented crisis response programs have seen good outcomes. Many cities are looking to expand co-responder programs, but have questions about liability this bill helps address. One of the biggest obstacles to both starting and sustaining crisis care programs is liability risk. Adequate liability protections are needed for more cities to engage in this space. Absent this bill, there is a great deal of uncertainty about what is covered and what is not covered for field responders. One program is currently asking its social workers to cover their own liability protection because it is unclear what insurance would cover.

(Opposed) None.

Persons Testifying: Representative Tina Orwall, prime sponsor; Brad Banks, Co-Responder Outreach Alliance; Lindsey Hueer, Association of Washington Cities; Penny Sweet, City of Kirkland; Brook Buettner, Regional Crisis Response Agency; Shawn O'Neill, Health Care Authority; Kimberly Hendrickson, City of Poulsbo; Michael Transue, National Alliance on Mental Illness and Connections Health Solutions; and Amy Smith, City of Seattle.

Persons Signed In To Testify But Not Testifying: None.