
Judiciary Committee

HB 1669

Title: An act relating to district and municipal court preconviction and postconviction probation and supervision services for persons charged with or convicted of misdemeanor crimes.

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

Sponsors: Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy, Hinkle and Lantz.

Brief Summary of Bill

- Establishes a gross negligence standard of liability for a district or municipal court's provision of misdemeanor probation or supervision services, or monitoring of a misdemeanor defendant's compliance with a court order.
- Establishes a "clear, cogent, and convincing evidence" burden of proof in any action alleging liability based on the provision of misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with court orders.

Hearing Date: 2/6/07

Staff: Edie Adams (786-7180).

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 rule 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 can be

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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 result 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, *Benskin v. Fife*, the court addressed the issue of the liability of a city 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 imposes 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 immunity or 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, not 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 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 misdemeanant probation activities unless the act or omission constitutes gross negligence.

Summary of Bill:

A district or municipal court, and its officers, employees, agents, or volunteers, are not liable for damages resulting from an act or omission in the provision of misdemeanor probation or supervision services, or monitoring of a misdemeanor defendant's compliance with court orders, unless the act or omission constitutes gross negligence.

The burden of proof in any action alleging liability based on the provision of misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with court orders is clear, cogent, and convincing evidence.

Appropriation: None.

Fiscal Note: Not requested.

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