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## Judiciary Committee

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### ESSB 5605

**Title:** An act relating to government liability.

**Brief Description:** Limiting governmental liability for various activities.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove).

#### Brief Summary of Engrossed Substitute Bill

- Establishes a gross negligence standard of liability for governmental entities when performing duties with respect to investigating reports of child abuse or neglect and supervising offenders.
- Provides that the duty to conduct a reasonable investigation of child abuse or neglect upon a referral runs only to children who are the subject of the referral.
- Provides that the department is not liable for actions taken to comply with court orders and that child abuse caseworkers are entitled to the same witness immunity as other witnesses.

**Hearing Date:** 3/21/11

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

#### Background:

A person who causes harm to another through the person's negligence may be liable in tort to the injured party. In order for tort liability to be found, a person must owe a duty to the injured person, the person must breach that duty, and the breach must be the proximate cause of the injury. A person is negligent if he or she fails to exercise the care that a reasonably prudent person would exercise under similar circumstances.

In some circumstances, the Legislature has altered the standard of liability to provide limited immunity from civil damages unless the party engages in conduct that rises to the level of gross

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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.*

negligence. Court decisions describe gross negligence as "the failure to exercise slight care" or "negligence substantially and appreciably greater than ordinary negligence."

#### Child Abuse Investigation Liability.

Under the state's child abuse investigation statute, the Department of Social and Health Services (DSHS) is responsible for investigating and responding to allegations of child abuse or neglect. Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. The DSHS can be held liable for a negligent investigation that leads to the wrongful removal of a child from a non-abusive home, the placement of a child in an abusive home, and the failure to remove a child from an abusive home. The duty of the DSHS to conduct a reasonable investigation runs not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse.

#### Supervision Liability.

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 the 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.

The Legislature has established a gross negligence standard of care for supervision of offenders in some contexts. The Department of Corrections and its community corrections officers, and counties and their probation officers, are not liable for civil damages resulting from an act or omission in conducting superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. Similarly, a gross negligence standard of liability applies 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.

#### **Summary of Bill:**

#### Child Abuse Investigation Liability.

The purpose section of the child abuse statute is amended to state that a child's interests of basic nurture, physical and mental health, and safety should prevail over conflicting interests of a parent and that the safety of the child is the paramount concern of the DSHS when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

A new provision is added to the child abuse statute relating to a governmental entity's duty and potential liability relating to an investigation of child abuse or neglect. Governmental entities, and their officers, agents, employees, and volunteers, are not liable for performing duties with

regard to investigating allegations of child abuse or neglect if the duties were performed without gross negligence.

The duty to conduct a reasonable investigation of child abuse or neglect runs only to children who are the subject of a referral.

The department and its employees must comply with orders of the court and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, caseworkers are entitled to the same witness immunity as would be provided to any other witness.

Supervision Liability.

Governmental entities, and their officers, agents, employees, and volunteers, are not criminally or civilly liable for performing duties with regard to the supervision of offenders if the duties were performed without gross negligence. "Supervision" includes probation, parole, community custody, community placement, community supervision, and post-release supervision.

**Appropriation:** None.

**Fiscal Note:** Requested on March 18, 2011.

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