

HOUSE BILL ANALYSIS

HB 2715

Brief Description: Limiting liability of counties and cities providing preconviction and postconviction probation or supervision services for person charged with or convicted of misdemeanors and developing standards for supervision.

Sponsors: Representatives O'Brien and Ballasiotes.

Hearing: February 2, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

BACKGROUND:

Whenever a person is convicted of a crime (with some exceptions), the superior court may, at the time of imposing sentence upon the person, direct that the sentence be suspended until otherwise ordered by the court. During that time of suspension, misdemeanant probationers are often placed under the responsibility of a probation officer employed or contracted by a county. As a condition of the suspended sentence, the court may order the probationer to report to a probation officer on a regular basis and follow certain probation conditions.

Liability for Misdemeanant Probationers. In a 1999 court case of *John Hertog v. City of Seattle & King County*, Hertog (the guardian of the victim) claimed that county probation officers have the duty to protect others from reasonably foreseeable danger resulting from the dangerous propensities of probationers. It was during that time that an offender (Barry Lee Krantz) had raped Sarah Hertog, a six year old victim in her home. At the time, Krantz was on Seattle Municipal Court probation for a 1989 lewd conduct conviction. He was also on pretrial release while awaiting King County charges on a 1990 sexually motivated burglary charge.

Mr. Hertog, the victim's guardian, contends that the city probation counselor and the county pretrial release counselor negligently supervised Krantz, and as a result this lead

to the rape. Both the city and the county, not the employees, were sued.

The city and county maintained that it had no duty to control Krantz as to protect others from his unforeseen dangerous acts. Unlike situations which concern postconviction felony parole releases, its alleged liability concerns a defendant who was on pretrial release and who was supposed to be presumed innocent of the charges against him. In addition, misdemeanor on probation cannot be said to pose the same risk of harm to the public as felons on parole.

The court, however, held that one who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm. In this particular case, although the individual officer who performed his statutory duties to the best of his ability may have qualified personal immunity, it does not resolve the question of duty on the part of the employing governmental agency. The court stated that the Legislature could limit or eliminate the duty of liability by passing legislation granting immunity on behalf of counties, cities or other local government entities who have the responsibility for supervising misdemeanor probations. However, to date, the Legislature has not enacted such legislation.

Washington State Law & Justice Advisory Council. The State Law and Justice Committee is an advisory committee of local and state government officials that recommend policies and procedures relating to the state and local correctional systems and assists the Department of Corrections in providing technical assistance to local government. The secretary of the Department of Corrections appoints the members to the council which include representatives of the county sheriffs, the police chiefs, the county prosecuting attorneys, the county and city legislative authorities, and the jail administrators.

SUMMARY OF BILL:

Liability for Misdemeanant Probationers. A county, city, or other local government entity and their staff may not be held liable for civil damages resulting from any act or omission in providing preconviction or postconviction or supervision services to a person charged with or convicted of a misdemeanor unless the act or omission is the direct result of an employee negligently misusing his or her authority.

Washington State Law & Justice Advisory Council. The Washington State Law and Justice Advisory Council must, by October 1, 2000, develop standards for preconviction and postconviction probation and supervision services by counties, cities, and other local

government entities of persons charged with or convicted of misdemeanors.

FISCAL NOTE: Requested on February 1, 2000.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.