

# SENATE BILL REPORT

## SB 5505

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As of February 7, 2017

**Title:** An act relating to school district liability for criminal acts committed by their students.

**Brief Description:** Eliminating school districts' liability for criminal misconduct of their students that occurs outside of school district custody or supervision.

**Sponsors:** Senator Zeiger.

**Brief History:**

**Committee Activity:** Law & Justice: 1/31/17.

**Brief Summary of Bill**

- Prevents a school district from being held liable for civil damages for the criminal acts of a student that occur while the student is outside the district's custody or supervision.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** At common law, governments are immune from all lawsuits. The State Constitution allows the Legislature to waive its immunity and specify by statute in what manner, and in what courts, suit may be brought against the state, its officers, and employees. Sovereign immunity was waived by Washington by statute in 1961. Under RCW 4.92.090, the state of Washington is liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

In 2016, the Washington Supreme Court found the Bethel School District could be held liable for the criminal acts of one of its students, *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422 (Wash. 2016). In the Bethel case, Nicholas Clark was an 18 year old Bethel High School student who had previously sexually assaulted a younger girl. As a result of that assault, Clark was convicted and required to register as a level one sex offender. When Clark enrolled in Bethel High School, the Pierce County sheriff notified the principal that Clark was a registered sex offender. The principal did not inform Clark's teachers, coaches, or relevant staff of Clark's status. Clark met N.L., a 14 year old junior high school girl, when they both participated on

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their school's track teams which utilized the same field for after school practice. The next day, Clark and N.L. arranged to skip track practice and go out to lunch. Clark instead drove N.L. to his home where he raped her.

The courts in Washington have generally found that school districts have a duty of reasonable care toward the students in their care to protect them from foreseeable dangers. In the Bethel case, the court found the school district has a duty to use reasonable care to protect them from foreseeable injuries whether or not the ultimate injury occurred off school property.

Juvenile sex offenders in Washington have a continued right to a public education after their conviction, and many return to public schools after periods of confinement with the Juvenile Rehabilitation Administration or at a county detention facility. Convicted juvenile sex offenders in Washington State must register with their local sheriff and must notify the sheriff before attending any public or private school in Washington. The law requires that school principals be promptly notified any time a sheriff has information that a registered sex offender intends to enroll in a public or private school. All sex offenders are assigned a risk level on their release, with Level I being the lowest likelihood to re-offend and Level III being most likely to re-offend. If a student is classified as a risk Level II or III, the principal must notify every teacher of the student and any other personnel who supervises the student. If a student is classified as a risk Level I, the principal must only notify persons who, in the judgment of the principal, should be aware of the student's record.

**Summary of Bill:** School districts are not liable for civil damages resulting from criminal acts committed by any of their students that occur outside of the district's custody or supervision. Nothing in this section alters a school district's duty to protect its students from being sexually assaulted by another student who is a registered sex offender during school or school-sponsored activities.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill corrects the decision of the Supreme court that reversed 60 years of case precedent holding that a school district is only liable for the foreseeable acts of student occurring while in its custody and supervision. It is hard to imagine how school districts can respond to this expansion of its duty with violating a student's constitutional right of privacy. This case has not yet been decided on the facts, but the mere fact that the case can go to a jury would create enormous liability. The impacts of this case go far beyond the facts of this individual case and have far reaching consequences. This bill is drafted narrowly to exempt a school district from liability for the criminal acts of a student outside its control, after school hours, and outside its supervision. The school has no control over what kids will do outside of campus. For example, consider a circumstance where a child is waiting at a bus stop before the bus gets there. Is the school liable for the acts of a student? It is unclear under this ruling where liability would stop. Some reasonable

limitation that needs to be drawn and this bill does that. Legislators should look to RCW 4.24.190 which gives parents immunity for the willful acts of their children over \$5,000.

The school insurance association serves approximately 192 school districts. Insurance is provided through two statewide insurance pools designed to keep costs down. If this expansion of liability is allowed to stand, schools will be subject to a big ticket insurance bill, if it will be able to get insurance at all. Insurance is provided based on risk that is anticipated. It is unclear how risk can be anticipated after the Bethel case. The case gives the school district nearly unlimited exposure. Passage of this bill would clearly define insurance risk.

Schools take the responsibility to guard the safety of its students very seriously. School districts are being asked to deal with more complex situations than ever before, including caring for children with emotional, behavioral and mental health issues. Approximately 20 percent of students are behaviorally disturbed. How is a school to protect against the acts of these children? The school system already goes above and beyond to protect children. It is imperative that the school not be held liable for actions of the student once they leave school premises and school control.

CON: The Supreme Court decided in this case simply that N.L. gets her day in court. The jury will still need to decide whether the rape was foreseeable. Clark had 78 different instances of school disciplinary action taken against him and 19 suspensions. He was a registered sex offender. The school did not notify persons supervising Clark so that they could take reasonable actions to protect N.L. The foreseeable act that cause injury happened on campus. Clark used a ruse to get N.L off of campus. This bill addresses luring. It would work an absurd result by not holding a district accountable if a student is lured off school premises. School district personnel should know and implement laws to ensure school safety. In this case, it failed on every level. The school did not communicate with persons who had supervision of Clark. It is the primary responsibility of schools to keep students safe. This bill would give schools free reign to ignore that obligation. This particular case went through two layers of appellate review. Both layers came out with the same decision. All the Supreme Court did was ensure that N.L. would have her day in court. Whether the act occurred on campus or off campus should not be a controlling factor. The parties still have a significant hurdle to show proximate cause.

**Persons Testifying:** PRO: Rich Moore, School Insurance Association of Washington; Monty Sabin, WA School District representative; John Bash, WA School District representative; Tom Siegel, WA School District representative; Heidi Maynard, WA State School Directors' Association; Jerry Moberg, JM & Associates; John Safari, Floyd, Pflueger & Ringer.

CON: Julie Kays, Judi Billings, Darrell Cochran, and Nathan Roberts, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** PRO: Larry Shannon, Washington State Association for Justice.