

SENATE BILL REPORT

SB 6852

As Reported By Senate Committee On:
Judiciary, February 2, 2006

Title: An act relating to state and local agency tort liability for the acts of supervised persons in the community.

Brief Description: Addressing state and local agency tort liability for the acts of supervised persons in the community.

Sponsors: Senators Kline, Hargrove, Brandland and Rasmussen.

Brief History:

Committee Activity: Judiciary: 2/02/06 [DPS, w/oRec]

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6852 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Carrell, Hargrove, Rasmussen and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Johnson, Ranking Minority Member and Esser.

Staff: Lidia Mori (786-7755)

Background: Washington waived sovereign immunity in 1961. RCW 4.92.090 provides "the state of Washington...shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation." On a case-by-case basis, Washington courts have gradually been reducing immunities previously recognized by them. Liability costs, including payouts, defense, and insurance, have increased notably since the waiver took effect.

In *Couch v. the Department of Corrections*, the Washington Court of Appeals enumerated the elements of a negligence cause of action as being: duty, breach, causation, and damages. The court went on to state that the Department of Corrections cannot be liable for a community corrections officer's (CCO) failure to exercise reasonable care to control an offender on community placement or community supervision to prevent the offender from causing bodily harm to another unless the officer has "taken charge" of the offender. To determine whether a CCO has "taken charge" of an offender, the court pointed out that it must examine the nature of the relationship between the officer and the offender, including all of the various features of the relationship.

Summary of Substitute Bill: The state, local governments, and their agencies, officers, or employees may be found liable for personal injuries or deaths caused by supervised persons

only if each of the following elements is present: (1) the conduct of the supervised person that caused the injury or death is criminal, whether or not a charge has been filed; (2) the criminal act resulting in the injury or death is within the dangerous propensities of the supervised individual; (3) the supervised person violated those terms of the judgment and sentence, court orders, or conditions of supervision which are crime related prohibitions as that term is statutorily defined; (4) the supervising agency or employee knew of conduct, statements, or other behavioral manifestations of an increased likelihood on the part of the supervised person of causing the act complained of; (5) the supervised person would have been incarcerated or restrained when the injurious conduct occurred if the violation of the judgment or sentence, orders, or conditions of supervision had been reported to a judicial or quasi-judicial entity with the authority to incarcerate the supervised person, and (6) the supervising agency or its officers, employees, or agents failed to exercise reasonable care in the management of the supervised person, and that failure was the proximate cause of the death or injury.

"Supervised person" means anyone in or on community supervision, community custody, community placement, misdemeanor probation, or pretrial supervision, including juvenile offenders under the jurisdiction of the juvenile rehabilitation administration, anyone subject to a commitment order under the Washington statutes pertaining to the criminally insane, chemically dependent, mentally ill, sexually violent predators, or mental health services for minors. The term also includes anyone supervised through state services for persons with developmental disabilities and conditionally released or on a less restrictive alternative.

"Dangerous propensities" is defined as the totality of dangerous or criminal conduct about which the supervising agency, or its officers, employees, or agents knew regarding the supervised person. This includes knowledge of the supervised person's conduct that is violent or threatening criminal conduct, conduct while in custody, and conduct or statements made while on supervision.

"Proximate cause" means a cause that, in a direct sequence, unbroken by any new independent cause, produces a death or injury, and without which, the death or injury would not have happened.

The proposed substitute bill contains a title amendment such that the act relates to tort liability for local and state government employees, agents, officers and representatives involved in the delivery of social, health, correctional, or supervision services.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: None

Testimony Against: The definition of "dangerous propensities" is too broad. The bill provides no protection for local governments. Local governments supervise DUI and gross misdemeanor cases and the offenses of those offenders are always going to be within their

dangerous propensities. The concept that the supervising agency would be on notice from the behavioral manifestations of a supervised person is unworkable. The court often doesn't have the authority to order a supervised person to take medication and the CCO does not have the authority either. It's not a good idea to have a statute that actually creates liability.

Who Testified: PRO: None CON: Glen Anderson, Attorney General's Office; Mike Tardif, Attorney General's Office,