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**SUBSTITUTE HOUSE BILL 2605**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Irwin and Macri)

AN ACT Relating to misdemeanant supervision services by limited jurisdiction courts; amending RCW 4.24.760, 39.34.180, and 70.48.090; and reenacting and amending RCW 10.64.120.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 4.24.760 and 2007 c 174 s 2 are each amended to read as follows:

(1) A limited jurisdiction court that provides misdemeanant supervision services is not liable for civil damages based on the inadequate supervision or monitoring of a misdemeanor defendant or probationer unless the inadequate supervision or monitoring constitutes gross negligence.

(2) For the purposes of this section:

(a) "Limited jurisdiction court" means a district court or a municipal court, and anyone acting or operating at the direction of such court, including but not limited to its officers, employees, agents, contractors, ((~~and~~)) volunteers, and others acting pursuant to an interlocal agreement.

(b) "Misdemeanant supervision services" means preconviction or postconviction misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with a preconviction or postconviction order of the court, including but not limited to community corrections programs, probation supervision, pretrial supervision, or pretrial release services, including such services conducted pursuant to an interlocal agreement.

(3) This section does not create any duty and shall not be construed to create a duty where none exists. Nothing in this section shall be construed to affect judicial immunity.

**Sec.**  RCW 39.34.180 and 2001 c 68 s 4 are each amended to read as follows:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense. The court of any county, city, or town that wishes to offer probation supervision services may enter into interlocal agreements under subsection (6) of this section to provide those services.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator. This subsection does not apply to the extent that the interlocal agreement is for probation supervision services.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010. This subsection does not apply to the extent that the interlocal agreement is for probation supervision services.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998.

(6) Municipal courts or district courts may enter into interlocal agreements for pretrial and/or post judgment probation supervision services pursuant to ARLJ 11. Such agreements shall not affect the jurisdiction of the court that imposes probation supervision, need not require the referral of all supervised cases by a jurisdiction, and may limit the referral for probation supervision services to a single case. An agreement for probation supervision services is not valid unless approved by the presiding judge of each participating court. The interlocal agreement may not require approval of the local executive and legislative bodies unless the interlocal agreement requires the expenditure of additional funds by the jurisdiction. Judges of the jurisdiction hosting probation supervision services may only impose sanctions on cases from another participating jurisdiction if an agreement has been reached by the applicable cities or counties pursuant to RCW 70.48.090 on how jail costs and the cost of other sanctions will be shared by the host and participating jurisdictions, and only if the judgment and sentence or other order states that sanctions may be imposed by the host jurisdiction.

The administrative office of the courts, in cooperation with the district and municipal court judges association, may develop a model interlocal agreement.

**Sec.**  RCW 70.48.090 and 2007 c 13 s 1 are each amended to read as follows:

(1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) A city or county may contract for jail services with an adjacent county, or city in an adjacent county, in a neighboring state. A person convicted in the courts of this state and sentenced to a term of confinement in a city or county jail may be transported to a jail in the adjacent county to be confined until: (a) The term of confinement is completed; or (b) that person is returned to be confined in a city or county jail in this state.

(3) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the corrections standards board or office when it authorized disbursal of state funds for the remodeling or construction under RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved. This subsection shall not apply to interlocal agreements under RCW 39.34.180(6).

(4) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein.

(5) A city or county may enter into an interlocal agreement for the sharing of costs for sanctions imposed by a jurisdiction hosting probation supervision services pursuant to an interlocal agreement under RCW 39.34.180(6).

**Sec.**  RCW 10.64.120 and 2005 c 400 s 7 and 2005 c 282 s 22 are each reenacted and amended to read as follows:

(1) Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanant probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court. Such costs may only be imposed by a host jurisdiction if the defendant is being supervised pursuant to an interlocal agreement under RCW 39.34.180(6). Nothing in this subsection prevents contracting jurisdictions under RCW 39.34.180(6) from agreeing to the division of moneys received by the host jurisdiction for probation supervision services.

(2) For the purposes of this section the administrative office of the courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight committee shall include a representative from the district and municipal court judges' association, the misdemeanant corrections association, the administrative office of the courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education necessary to (a) conduct presentencing and postsentencing background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

(3) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(4) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050.

(5) Assessments and fees levied upon a probationer under this section must be suspended while the probationer is being supervised by another state under RCW 9.94A.745, the interstate compact for adult offender supervision.

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