

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/27/2018 3:21 PM  
BY SUSAN L. CARLSON  
CLERK

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/6/2018  
BY SUSAN L. CARLSON  
CLERK

NO. 95511-5

---

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

CATHY HARPER, et al.,

Respondents,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Petitioner.

---

**BRIEF OF AMICUS CURIAE  
WASHINGTON CITIES INSURANCE AUTHORITY AND  
WASHINGTON COUNTIES RISK POOL**

---

MICHAEL E. TARDIF, WSBA NO. 5833  
Freimund Jackson & Tardif, PLLC  
711 Capitol Way South, Suite 602  
Olympia, WA 98501  
(360) 534-9960  
Attorney for Amici Washington Cities  
Insurance Authority and Washington  
Counties Risk Pool

**TABLE OF CONTENTS**

I. INTRODUCTION AND IDENTITY AND INTEREST OF  
AMICUS CURIAE.....1

II. STATEMENT OF THE CASE .....3

III. ISSUES.....4

IV. ARGUMENT .....5

    A. The Gross Negligence Limitation On Government  
    Liability For Released Offender Crimes Is A Special  
    Conditional Immunity To Be Applied By The Court .....5

    B. The Court Of Appeals Misinterpreted And Misapplied  
    The Liability Limitation For Released Offender  
    Oversight Programs .....12

    C. The Court of Appeals Wrongly Concluded Evidence Of  
    Slight Care Was Lacking .....15

V. CONCLUSION .....17

## Table of Authorities

### Cases

<i>Benskin v. City of Fife</i> , 2005 Wn. App. Lexis 2722.....	6, 7
<i>Glass v. Stahl Specialty Co.</i> , 97 Wn.2d 880, 652 P.2d 948 (1982).....	14
<i>Harper v. Dep't of Corrections</i> , 2 Wn. App 2d. 80, 408 P.3d 735 (2017).....	16
<i>Hertog v. City of Seattle</i> , 138 Wn.2d 265, 979 P.2d 400 (1999).....	passim
<i>Kelley v. State</i> , 104 Wn. App. 328, 17 P.3d 1189 (2000).....	11, 14, 17
<i>Nist v. Tudor</i> , 67 Wn.2d 322, 407 P.2d 798 (1965).....	15, 16
<i>State v. McCullum</i> , 98 Wn.2d 484, 656 P.2d 1064 (1983).....	14
<i>Taggart v. State</i> 118 Wn.2d 195, 822 P.2d 243 (1992).....	5, 6, 11
<i>Whitehall v. King County</i> , 140 Wn. App. 761, 167 P.3d 1184 (2007).....	11, 17

### Statutes

RCW 4.24.760 .....	7, 13, 14
RCW 4.24.760(1).....	8
RCW 9.94A.030(5).....	3
RCW 9.94A.704.....	3
RCW 9.95.204(1).....	3

## **I. INTRODUCTION AND IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington Cities Insurance Authority and the Washington County Risk Pools (jointly the Risk Pools) are two large local government self-insurance pools. The Risk Pools jointly file this Amicus Brief because this Court's decision interpreting the special statutory immunity for State offender programs will affect the misdemeanor offender oversight programs established by local governments and their courts (municipal and district). These local programs monitor pre-trial release, probation, and post-custody condition compliance for persons accused or convicted of common harmful behaviors such as drunk driving, domestic violence, and assault. The Legislature enacted the same special statutory immunity for local offender programs that it earlier enacted for State offender programs.

If the statutory immunity is applied in the narrow manner suggested by the Court of Appeals, offender monitoring programs will not be viable for local governments and courts. Local government offender programs attempt to oversee difficult populations prone to dangerous behaviors, but these programs have limited staff and funding. Even the best offender monitoring programs have an inherently high risk of producing the catastrophic injury claims typical of litigation contending

government is liable for crime. If liability exposure is not contained as the Legislature intended, local governments' ability to provide these public services is jeopardized.

Local government offender programs are discretionary and not mandated by statute. Thus, the risk management and insurance principles underlying local government risk pools dictate that local governments forgo non-mandatory programs with extraordinarily high risks of huge claims.

State and local government liability for crime by released offenders presents a major policy conundrum. This Court and the Court of Appeals, in earlier released offender cases, urged the Legislature to resolve this conundrum. In response, the Legislature crafted a special limited immunity for released offender claims. This special statutory immunity allows claims in egregious cases of government inaction when providing offender oversight, but disallows claims if the government provided some oversight and the contention is simply that the government could have done something more or different. Unfortunately, the Court of Appeals decision in this case undoes the balance struck by the Legislature in resolving the conundrum created by government liability for released offender crimes.

## II. STATEMENT OF THE CASE

On October 15, 2012, the Washington State Department of Corrections (DOC) initiated “community custody” of Scottye Miller upon his release from confinement for 2010 and 2012 King County Superior Court misdemeanor domestic violence convictions. CP 80-82, 84-91, 93-95, 97-99. DOC oversees superior court misdemeanants unless a county agrees to perform the task. *See* RCW 9.95.204(1), *et seq.* Community custody is a post-release period during which DOC places controls on offenders’ movements and activities. RCW 9.94A.030(5). The controls are implemented through “conditions” of release imposed by the court, statute, or DOC within the discretion allowed by statute. *See* RCW 9.94A.704. In Miller’s case his community custody conditions were: (1) no use of alcohol, illegal substances, or controlled substances without prescription; (2) urine analysis or other testing to verify compliance with the first condition; (3) reporting as directed; and (4) pay court ordered legal financial obligations. CP 80-99.

Miller murdered his girlfriend, Ms. Patricelli, while DOC was monitoring his compliance with these release conditions. In the fifteen days of Miller’s community custody before the murder, the assigned Community Corrections Officer (CCO) took the following actions related to Miller’s community custody:

1) On October 16, she met Miller at her office verifying he would report weekly report, where he would reside, and file a shelter report for each night verified by the signature of another resident. She also tested him for alcohol and drug use with clean results, and directed Miller to the Department of Social & Health Services after she checked on his eligibility for benefits. CP 33, 37.

2) On October 17, she spoke to a DOC victim's liaison and verified the liaison was communicating with Ms. Patricelli, had helped her break a lease and move, had been told by Ms. Patricelli that Miller did not know her location, and was aware she could call DOC or law enforcement. On the same day, the CCO called Miller's prior King County probation officer and left a message. CP 33, 136-140.

3) On October 23, the CCO had another weekly in-person meeting with Miller at which she received verification of food stamps, a shelter report form verifying residence with his mother and verification of a scheduled October 24 psychological evaluation. She again tested him for alcohol and drug use with clean results. CP 33-34.

4) On October 29, she received a phone call from Miller's mother stating Miller could continue living with her. CP 34.

### III. ISSUES

- A. Is the Court of Appeals interpretation of the special statutory immunity for oversight of released offenders consistent with the terms of the statute and the legislative history showing the purpose of the statute?
- B. Can a question regarding the application of a special conditional immunity be deferred as a question of fact to a jury or must a court decide the application of the immunity as a legal matter?
- C. Is there evidence of at least slight care by the Community Corrections Officer in the record, thereby satisfying the

statutory condition providing immunity for the officer's oversight of the released offender?

#### IV. ARGUMENT

The Court of Appeals interpretation of the statutory immunity for offender oversight is inconsistent with the legislation behind enactment of the local government version of that immunity. Moreover, the Court's application of that statutory immunity to the facts of this case is incorrect under prior case law applying this special immunity. The Court of Appeals decision will have negative policy consequences because broad liability for the inherent risks of offender supervision will lead to the reduction or outright elimination of local government programs. This is contrary to the interests of both released offenders, who profit from the rehabilitation effort of such programs,<sup>1</sup> and the general public, which profits to the extent successful offender oversight programs reduce crime and increase public safety.

##### **A. The Gross Negligence Limitation On Government Liability For Released Offender Crimes Is A Special Conditional Immunity To Be Applied By The Court**

In *Taggart v. State* 118 Wn.2d 195, 822 P.2d 243 (1992), this Court created potential liability for the State's failure to prevent crimes by released offenders who remain under "control" of the State because their

---

<sup>1</sup> See letters from rehabilitated offenders in Senate Judiciary Committee file attached as Appendix B, pp. 16-19.

release is subject to monitoring of release conditions and possible re-incarceration. After creating this new duty, the Court immediately noted that preventing new crimes by released offenders was a task fraught with difficulty and the Legislature was the proper forum to determine if immunity would be appropriate. *Id.*, at 224. A concurring opinion (Justice Guy) also suggested the Legislature should examine immunity for this (and certain other) vital governmental functions, emphasizing that liability for governmental functions would have the negative consequence of decreasing the provision of government programs intended to increase public safety. *Id.*, at 234-237.

The issue of local government liability for crimes of released offenders first reached this Court in *Hertog v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999). The Court held that local court probation officers have the same “take charge” relationship with offenders as the CCO’s in state cases. This rendered municipalities potentially liable for crimes committed by released offenders whose compliance with conditions of release monitored by court probation officers. *Id.*

The issue of local government liability under *Taggart* again reached the appellate courts in *Benskin v. City of Fife*, 2005 Wn. App. Lexis 2722 (unpublished decision). In *Benskin*, a serial drunk driver on probation had a multiple vehicle drunk-driving crash shortly before a re-

scheduled Fife Municipal Court hearing on the report of the court's probation officer recommending probation revocation. *Id.* The Court of Appeals reversed a summary judgment dismissing the case, holding that the judge and his probation officer had no judicial or quasi-judicial immunity for their actions to oversee probationers because the Court of Appeals considered their actions "administrative" rather than "judicial." *Id.*

Following *Benskin*, the Legislature addressed the policy and immunity issues presented to local government resulting from liability for released offenders. The Legislature enacted RCW 4.24.760 (Chapter 174 § 2, Laws of 2007), which states as follows:

(1) A limited jurisdiction court that provides misdemeanor 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.

(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.

(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.

The essence of the legislation is the first subsection which provides there is no liability for a local court's alleged inadequate oversight of released misdemeanants unless "the inadequate supervision or monitoring constitutes gross negligence." *See* RCW 4.24.760(1). The legislation was a product of Substitute House Bill 1669, heard by the House Judiciary Committee, which was passed unanimously out of committee and then passed unanimously (97-0) by the House.<sup>2</sup> The Senate Judiciary Committee heard SHB 1669, and passed the bill out with 7-1 vote. The Senate passed the bill unanimously (47-0), followed by the Governor signing the bill without any line item vetoes.

The legislative history of the bill is important because it provides insight into the problem the Legislature sought to address and how the provisions of the bill were intended to remedy that problem. The key question in this appeal is how to interpret and apply the gross negligence limitation on liability for offender oversight. The proper way to answer that question is to look at the problem considered by the Legislature and

---

<sup>2</sup> The legislative history of SHB 1669 consists of the files of the House and Senate Judiciary Committees that heard the bills, and the Governor's Office file when the enrolled bill went to the Governor for signature. This legislative history now resides at State Archives and can be accessed by contacting Washington State Archives at (360) 586-1492 or emailing [research@sos.wa.gov](mailto:research@sos.wa.gov) and requesting committee and Governor's Office files for Chapter 174, Laws of 2007, which can be sent electronically. Since these files are not published, for ease of the Court's reference in this appeal, House and Senate Judiciary Committee file documents cited in this brief are attached as Appendix A (House Legislative History) and Appendix B (Senate Legislative History).

determine how the Legislature intended the gross negligence limitation should be applied.

The testimony in support of SHB 1699 to the legislative committees came from dozens of judges, probation officers, prosecutors, law enforcement officers and local government officials asking the Legislature to grant a conditional immunity for oversight of released offenders, including probationers in local government courts. *See* Appendix A, pp. 12-15; Appendix B, pp. 3-8 (attendance sheets for hearings). There were many written submissions from local government and court officials, along with letters from successful probationers asking that the programs and staff not be reduced or eliminated due to the high liability exposure of the programs. *See e.g.* Appendix A, pp. 16-17; Appendix B, pp. 9-19 (letters from government and court officials, and rehabilitated probationers). The thrust of the argument for immunity or liability limitation was that *Hertog*, as the *Hertog* concurrence predicted, was producing expensive claims against local courts, causing elimination, reduction, or narrowing of the offender oversight programs (*see e.g.*, Appendix A, pp. 16-17; Appendix B, pp. 9-15 (letters from Misdemeanant Corrections Association, Clark County Superior Court Judge Harris, Clark County Corrections Director, Chelan County District Court Probation Director, and Supervisor of Island County Probation Services)).

The original bill had two substantive sections. Section 2 provided a special conditional immunity, limiting liability to gross negligence only, for all acts related to offender oversight. *See* Appendix A, pp. 2-3 (original HB 1669). Section 3 imposed a “clear cogent and convincing” evidentiary standard for offender supervision actions (for the cases not dismissed based on the special immunity). *Id.*, p. 3.

The attendance sheets and the House Bill Report (see Appendix A, pp. 7-15; Appendix B, pp. 3-8) indicate the only opposition to HB 1669 was from plaintiff lawyers. The Bill Report indicates their opposition was to the clear, cogent, and convincing evidence standard, and to the application of the special immunity to any acts beyond offender supervision or to situations in which the supervision program completely defaulted on its supervision duties. The Bill Report shows the Committee responded by adopting a substitute bill eliminating the evidence burden and adding definitions limiting the special immunity only to offender supervision. The Committee did not alter the special “gross negligence” immunity, because that was not necessary to satisfy the plaintiff lawyers’ concerns (*i.e.*, evidence of a complete failure to perform court ordered offender supervision duties would be gross negligence and would avoid dismissal).

The significance of this legislative history, and the legislative language in the final bill, is two-fold. One, the Legislature did what this Court suggested in *Taggart* and *Hertog* by examining the policy issues related to government liability for offender oversight and deciding where the boundary between immunity and liability should be. Two, the Legislature chose a standard that could be applied by a trial court to eliminate on motion claims where an offender program performed some supervisory actions, but a claimant asserts the court or probation officers should have done something more or different. Under the gross negligence liability standard, any showing that the oversight program acted to implement supervision of an offender according to its procedures would be evidence of at least “slight care” sufficient to defeat a “gross” negligence claim. *See Kelley v. State*, 104 Wn. App. 328, 17 P.3d 1189 (2000); *Whitehall v. King County*, 140 Wn. App. 761, 167 P.3d 1184 (2007). Courts can and should decide this liability issue on motion, alleviating most of the liability and program elimination concerns for local government and courts, while preserving potential liability for egregious cases where oversight programs completely fail to engage in supervisory or monitoring functions.

The Court of Appeals did not examine the legislative history of the gross negligence liability limitations the Legislature enacted for offender

oversight programs. These limitations provide a special conditional immunity to protect offender oversight programs from overbroad liability interfering with the socially useful functions of those programs. The Court of Appeals decision under review is a misapplication of the Legislature's intended special immunity for such programs.

Although the legislative history discussed in this Amicus Brief is focused on the local government liability limitation, which was enacted after the limitation adopted for the State program in this case, it is the same liability limitation as the State limitation at issue. This Court's interpretation of the State liability limitation will inevitably be applied to the same local government liability limitation. Thus, this Court should be aware that an adoption of the Court of Appeals decision in this case would be contrary to the legislative intent of the same statutory liability protection given to local government offender programs, and would have a severe negative effect on the ability of local courts and governments to continue those programs.

**B. The Court Of Appeals Misinterpreted And Misapplied The Liability Limitation For Released Offender Oversight Programs**

The Court of Appeals failure to examine the purpose and legislative history of the liability limitation for offender release programs led the court to an improper conclusion about whether the limitation must

be applied by the trial court or the jury. Further, the Court of Appeals did not follow established law for determining how the gross negligence limitation should apply to the offender supervision performed in this case.

The legislative history indicates the purpose of the gross negligence limitation was to have the courts perform a “gate keeper” function to prevent offender program from liability threatening the viability of beneficial programs. The concurring opinion in *Hertog* described the problem with broad liability as follows:

These tragic cases result in what may well approximate strict liability for cities, counties, and the State. Even if every prescribed supervisory step is followed, if a released person harms someone there may always be a claim for ineffective supervision. Such claims will rarely be susceptible to summary judgment because of the fact-intensive inquiry the claims requires.

*Hertog*, 138 Wn.2d at 293. The *Hertog* concurrence’s description of the almost strict liability that results from allowing jurors to decide all supervised offender cases suggests that any solution short of absolute immunity, would need to be a conditional immunity or similar defense that would be decided by the court on motion.

When interpreting the conditional immunity for local governments in RCW 4.24.760, this Court should presume the Legislature was aware of the case law relevant to the provisions in the new statute. The interpretation given to the statute should take into account the existing law

which informed the adoption of the new statute. *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982).

At the time the Legislature considered HB and SHB 1669 and enacted the conditional immunity status for local offender programs, the law governing the application of the gross negligence defense was *Kelley v. State*, 104 Wn. App. 328, 17 P.3d 1189 (2000), which interpreted an earlier statute providing the same conditional immunity to State released offender programs. *Kelley* approved of the trial court deciding on summary judgment that evidence of at least “slight care” defeats a claim of gross negligence. *Kelley*, 104 Wn. App. At 333-38. When the Legislature enacted RCW 4.24.760, it must be assumed, consistent with *Kelley*, the Legislature intended to have trial judges apply the gross negligence standard on motion.

Based on the testimony at the legislative hearings and the *Hertog* concurrence’s description of local governments’ problem with liability in released offender cases, legislation which placed resolution of the gross negligence issue with the jury, rather than the court, would be an ineffective solution to the problem. Legislation must be construed to effect a remedy to the problem the Legislature is addressing. *State v. McCullum*, 98 Wn.2d 484, 492-93, 656 P.2d 1064 (1983). The only way to make RCW 4.24.760 and similar state offender program statutes

effective is to interpret them as providing a conditional immunity defense to be decided by the court to avoid the strict liability concern recognized in the *Hertog* concurrence. If the issue of gross negligence still goes to the jury in most cases, the problem of excessive defense and liability costs will continue to bedevil programs that have a high inherent risk of government liability for offenders' crimes. The special immunity statutes accomplish nothing if interpreted as the Court of Appeals did here.

**C. The Court of Appeals Wrongly Concluded Evidence Of Slight Care Was Lacking**

The Court of Appeals decision also wrongly relies on *Nist v. Tudor*, 67 Wn.2d 322, 407 P.2d 798 (1965), for its conclusion the evidence in this case is sufficient to require the jury to decide whether the State was grossly negligent. In *Nist*, the former host-guest statute required an injured guest-passenger to produce evidence the host-driver was grossly negligent. The trial court granted summary judgment to the driver on the ground that evidence of her careful driving, before she made a left turn immediately in front of an oncoming truck, was evidence of at least slight care that negated gross negligence. *Id.*, at 324. The *Nist* Court reversed on the straightforward ground that the specific gross negligence alleged was the unexplained left turn immediately in front of a fully visible oncoming truck approaching on a straight road on a clear, sunny

day. *Id.*, at 331-32. There was no evidence of any care taken in the left turn itself; gross negligence could not be negated by a showing of care in prior driving unrelated to the driving in question. *Id.*

In this case, the Court of Appeals found DOC's alleged gross negligence was lack of sufficient action to determine offender compliance with a no-contact order. *Harper v. Dep't of Corrections*, 2 Wn. App 2d. 80, 92, 408 P.3d 735 (2017). The Court concluded there was a question of gross negligence for the jury because there was evidence DOC failed to do certain things to determine no-contact order compliance. *Id.*, at 93. However, the Court ignored several things DOC did to determine compliance.

The CCO called Ms. Patricelli to inquire about compliance and left a message asking for a return call. *Id.*, at 83. More important, DOC assigned a victim liaison to Ms. Patricelli who helped her break her lease and move to another location unknown to ex-boyfriend Miller. *Id.*, at 84. The CCO contacted the liaison and confirmed Ms. Patricelli had relocated to a location unknown to Miller and knew she could call DOC if she saw Miller. *Id.* Finally, the CCO met weekly with Miller and required him to supply verified information about where he resided each night. *Id.* Therefore, under undisputed facts before the Court of Appeals, there was

evidence DOC exercised at least slight care, or more, to determine compliance with the no-contact order.

The evidence of at least slight DOC care concerning the no-contact order negates any claim for gross negligence. The possibility that DOC could have done something more or different than it did, as the Court of Appeals contends, is irrelevant to the gross negligence question because the showing of at least slight care means gross negligence cannot be established. Gross negligence requires a plaintiff to prove the absence of even slight care. *Kelley*, 104 Wn. App. at 333-38; *Whitehall*, 140 Wn. App. at 767-70.

#### V. CONCLUSION

The Washington Counties Risk Pool and Washington Cities Insurance Authority respectfully ask this Court to reverse the decision of the Court of Appeals and affirm the trial court's summary judgment.

RESPECTFULLY SUBMITTED this 27th day of July, 2018.

FREIMUND JACKSON & TARDIF, PLLC



MICHAEL E. TARDIF, WSBA NO. 5838  
711 Capitol Way S, Suite 602  
Olympia, WA 98501  
(360) 534-9960  
Attorney for Amici Washington Cities Insurance  
Authority and Washington Counties Risk Pool

**CERTIFICATE OF SERVICE**

I certify that the foregoing was served by the method indicated below to the following:

Christopher Carney  
Christopher.carney@cgilaw.com

- U.S. Mail
- Facsimile
- E-Service via Washington State Appellate Court's Portal

Sean Gillespie  
Sean.gillespie@cgilaw.com

Kenan Isitt  
Kenan.isitt@cgilaw.com

Paul Triesch  
pault@atg.wa.gov

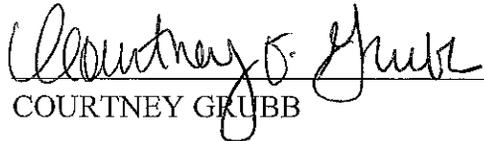
- U.S. Mail
- Facsimile
- E-Service via Washington State Appellate Court's Portal

Kaylynn What  
kaylynnw@atg.wa.gov

TorSeaEF@atg.wa.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27<sup>th</sup> day of July, 2018, at Olympia, Washington.

  
COURTNEY GRUBB

Harper, et al.,

v.

Washington State Department of Corrections

Cause No. 95511-5

# APPENDIX A

HB 1669; SHB 1669

House Legislative History

2007 Regular Session

REPORT OF STANDING COMMITTEE

HOUSE OF REPRESENTATIVES  
Olympia, Washington

February 23, 2007

(date reported out of committee)

House Bill

NO. 1669

Prime Sponsor: Representative Strow

Concerning the district and municipal court's probation and supervision services.

As reported by Committee on Judiciary (11)

- MAJORITY recommendation: Do pass.
- MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass.
- MAJORITY recommendation: Do pass as amended.
- MAJORITY recommendation on consecutively referred bill: 10

Signed by Representatives

*Travis Lantz*  
Lantz Chair

*Ron G. Goodman*  
Goodman Vice Chair

*Ray Klodner*  
Klondner Ranking Minority Member

*John E. Hansen*  
Hansen Assistant Ranking Minority Member

*Janine Williams*  
Williams

*Strow*  
Kirby

*Moeller*  
Moeller

*Jani Pedersen*  
Pedersen

*Ross*  
Ross

*Williams*  
Williams

Check here if Minority Report requested (see attached).

Attachment: Roll Call Vote

---

HOUSE BILL 1669

---

State of Washington                      60th Legislature                      2007 Regular Session  
By Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy,  
Hinkle and Lantz  
Read first time 01/24/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to district and municipal court preconviction and  
2 postconviction probation and supervision services for persons charged  
3 with or convicted of misdemeanor crimes; and adding new sections to  
4 chapter 4.24 RCW.

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

6            NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW  
7 to read as follows:

8            The legislature finds that the provision of preconviction and  
9 postconviction misdemeanor probation and supervision services, and the  
10 monitoring of persons charged with or convicted of misdemeanors to  
11 ensure their compliance with preconviction or postconviction orders of  
12 the court, are essential to improving the safety of the public in  
13 general. Furthermore, the legislature finds that decisions concerning  
14 whether criminal offenders are released into the community pretrial or  
15 postconviction, including the revocation of probation, rest with the  
16 judiciary.

17            NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW  
18 to read as follows:

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

6 (2) For the purposes of this section:

7 (a) "Limited jurisdiction court" means a district court or a  
8 municipal court, and anyone acting or operating at the direction of  
9 such court, including but not limited to its officers, employees,  
10 agents, contractors, and volunteers.

11 (b) "Misdemeanant supervision services" means preconviction or  
12 postconviction misdemeanor probation or supervision services, or the  
13 monitoring of a misdemeanor defendant's compliance with a preconviction  
14 or postconviction order of the court, including but not limited to  
15 community corrections programs, probation supervision, pretrial  
16 supervision, or pretrial release services.

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

Passed by the House March 9, 2007.

Passed by the Senate April 9, 2007.

Approved by the Governor April 21, 2007.

Filed in Office of Secretary of State April 23, 2007.

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1669

60th Legislature  
2007 Regular Session

Passed by the House March 9, 2007  
Yeas 97 Nays 0

\_\_\_\_\_  
Speaker of the House of Representatives

Passed by the Senate April 9, 2007  
Yeas 47 Nays 0

\_\_\_\_\_  
President of the Senate

Approved

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1669 as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
Chief Clerk

FILED

Secretary of State  
State of Washington

---

SUBSTITUTE HOUSE BILL 1669

---

Passed Legislature - 2007 Regular Session

State of Washington                      60th Legislature                      2007 Regular Session

By House Committee on Judiciary (originally sponsored by  
Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy,  
Hinkle and Lantz)

READ FIRST TIME 02/27/07.

1            AN ACT Relating to district and municipal court preconviction and  
2 postconviction probation and supervision services for persons charged  
3 with or convicted of misdemeanor crimes; and adding new sections to  
4 chapter 4.24 RCW.

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

6            NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW  
7 to read as follows:

8            The legislature finds that the provision of preconviction and  
9 postconviction misdemeanor probation and supervision services, and the  
10 monitoring of persons charged with or convicted of misdemeanors to  
11 ensure their compliance with preconviction or postconviction orders of  
12 the court, are essential to improving the safety of the public in  
13 general. Furthermore, the legislature finds that decisions concerning  
14 whether criminal offenders are released into the community pretrial or  
15 postconviction, including the revocation of probation, rest with the  
16 judiciary.

17            NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW  
18 to read as follows:

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

6 (2) For the purposes of this section:

7 (a) "Limited jurisdiction court" means a district court or a  
8 municipal court, and anyone acting or operating at the direction of  
9 such court, including but not limited to its officers, employees,  
10 agents, contractors, and volunteers.

11 (b) "Misdemeanant supervision services" means preconviction or  
12 postconviction misdemeanor probation or supervision services, or the  
13 monitoring of a misdemeanor defendant's compliance with a preconviction  
14 or postconviction order of the court, including but not limited to  
15 community corrections programs, probation supervision, pretrial  
16 supervision, or pretrial release services.

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

--- END ---

# HOUSE BILL REPORT

## HB 1669

As Reported by House Committee On:  
Judiciary

**Title:** An act relating to district and municipal court preconviction and postconviction probation and supervision services for persons charged with or convicted of misdemeanor crimes.

**Brief Description:** Concerning the district and municipal court's probation and supervision services.

**Sponsors:** Representatives Strow, Ericks, O'Brien, Rodne, Kirby, Haler, Eddy, Hinkle and Lantz.

**Brief History:**

**Committee Activity:**

Judiciary: 2/6/07, 2/23/07 [DPS].

**Brief Summary of Substitute Bill**

- Establishes a gross negligence standard of liability 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.

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

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

**Background:**

---

*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.*

An offender convicted of a misdemeanor or gross misdemeanor offense serves his or her confinement in a local jail and may be subject to probation with court-ordered conditions after release. Under court rules applicable to courts of limited jurisdiction, a court has the authority to establish a misdemeanor probation department, and the method of providing probation services must be established by the presiding judge of the local court to meet the needs of the court.

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 that 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.

Under the doctrine of judicial immunity, judges are provided with absolute immunity from civil liability for acts performed within their judicial capacity. Judicial immunity may also extend to governmental agencies or executive branch officials while performing judicial functions. Quasi-judicial immunity applies to persons performing functions that are so comparable to those performed by judges that they should share the judge's absolute immunity while carrying out those functions. In the offender supervision context, court decisions have held that a probation or parole officer's duties in supervising an offender and monitoring the offender's compliance with conditions of release are not entitled to quasi-judicial immunity.

In a 2005 unpublished Court of Appeals decision, *Benskin v. Fife*, the Court addressed the issue of the liability of a city probation officer for the acts of an offender on probation for a DUI offense. The Court held that the relationship between the municipal court's probation department and the supervised probationer did give rise to a "take-charge" relationship, which imposes a duty on the probation department to protect the public from foreseeable behavior associated with the conditions of probation. The Court also found that judicial immunity, or quasi-judicial immunity, did not apply to the actions of the probation department, even though the judge was the head of the probation department. The Court found that a judge acting as a probation department head is acting in an administrative capacity, not a judicial capacity, and that the probation officer's monitoring of the probationer is not analogous to a judicial decision to place a defendant on probation or revoke probation.

When a superior court judge orders supervision of a misdemeanor or gross misdemeanor defendant placed on probation, responsibility for the supervision falls initially on the Department of Corrections (DOC), but a county may elect to assume responsibility for the supervision of these offenders by contract with the DOC. The DOC and any county

probation department under contract with the DOC 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.

---

#### Summary of Substitute Bill:

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

"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.

"Misdemeanor supervision services" means pre-conviction or post-conviction misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with a pre-conviction or post-conviction order of the court, including but not limited to community corrections programs, probation supervision, pretrial supervision, or pretrial release services.

The act shall not be construed to create a duty or affect judicial immunity.

#### Substitute Bill Compared to Original Bill:

The original bill provided limited immunity for damages arising from "any act or omission in the provision of probation, supervision, or monitoring services," whereas the substitute bill applies to damages arising from "inadequate supervision or monitoring." The original bill provided a clear, cogent, and convincing evidence standard of proof in actions alleging liability based on misdemeanor probation or supervision services. In addition, the original bill did not include the statement that the act does not affect judicial immunity.

---

Appropriation: None.

Fiscal Note: Not requested.

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

#### Staff Summary of Public Testimony:

(In support) This bill only applies to misdemeanor supervision and it provides district and

municipal court probation departments with the same gross negligence standard that currently applies to the Department of Corrections when they supervise misdemeanants.

Accountability is the cornerstone of the criminal justice system. Having a probation department is one of the best ways to obtain that accountability and protection for our citizens. Under our current system, the more people we put on supervision, the greater our liability. We are always subject to the charge that we could do more, but it is not possible to get 100 percent compliance from this population of offenders. When an offender on supervision re-offends, we bear an unfair burden of liability. Cities are drastically changing how they deal with probation as a result of this liability exposure. They are doing less supervision, not more, which may actually increase the risk to public safety.

Probation officers are limited in their authority. They do not have arrest authority. They are limited to reporting violations to the court and gathering information to help the judge make a decision in the case. The primary supervision caseload for cities and counties are DUI offenders and domestic violence offenders. A majority of probationers are chemically dependent and many of them are repeatedly in and out of jail. There is a great benefit to society when we are able to succeed with an offender. However, because of the nature of the people that we work with, we can't always be successful.

(Opposed) We support the goals of effective supervision. However, there are important issues relating to how we get there and how we hold people responsible for providing effective supervision. We appreciate the willingness to remove the clear, cogent, and convincing evidence standard from the bill. There are two main concerns remaining. First, the bill extends the immunity to anything done by anybody involved in the supervision. This is too broad and could include the driving of a car to a meeting. The second concern is with the gross negligence standard. We shouldn't be immunizing situations where supervision is not taking place, as in the *Benskin* case where nothing was done for seven months for a repeat DUI offender.

Persons Testifying: (In support) Karen Lewis, Island County District Court Probation; James Docter, Bremerton Municipal Courts; and Tammy Fellin, Association of Washington Cities.

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.

Persons Signed In To Testify But Not Testifying: None.



7

# TESTIMONY/ATTENDANCE ROSTER

Committee: Judiciary

Bill No.: HB 11669

Date/Time: 2-10-07 10am

Short Title: Concerning the district & municipal court's probation & supervision

Name	Wish to Testify? (Yes/No)	If so, Indicate Pro/Con	Organization	Mailing Address (fill out completely) Do Not Say "On File"	Telephone
Please Print Janene Johnstone (Schellhase)	NO	Pro	Kent Municipal Probation Dept.	Street 400 W. Howe, #110 City, Zip Kent WA 98032 e-mail: jjohnstone@ci.kent.wa.wa	253-886-5951
Please Print <del>MARIE</del>				Street City, Zip e-mail	
Please Print Susan FRASER	No	Pro	Belleme Probation	Street PO Box 98012 City, Zip Belleme WA 98009-9012 e-mail	425-452-7190
Please Print Gloria Dard	no	Pro	Island County District Court	Street City, Zip e-mail	
Please Print Pamela Clark	No	Pro	Clark County Correc	Street 707 W 13th St City, Zip VAN WA 98600 e-mail	360-247-2484
Please Print Karen Lewis Headout	yes	Pro	Is. Int. Dist. of Prob	Street 800 SE 2th Ave City, Zip OH WA e-mail klawrence@co.island.wa.us	360-675-0777
Please Print Julie Mitchell	NO	Pro	Lakeside Victim Recovery WA st association of out -dist providers	Street 10422 NE 31th City, Zip Kirkland WA 98033 e-mail	(206) 441-0890
Please Print Melanie Stewart	No	Pro	Dist & Municipal Judges 15th	Street City, Zip e-mail 605 98501	360 8280

Appendix A, Page 12

## TESTIMONY/ATTENDANCE ROSTER

Committee: Judiciary

Bill No.: HB 11609

Date/Time: 2-16-07 10 AM

Short Title: \_\_\_\_\_

Name	Wish to Testify? (Yes/No)	Issue Indicate Pro/Con	Organization	Mailing Address (Fill out completely) Do Not Say "On File"	Telephone
Please Print MARK BROWN	No	Pro	Cities of Vancouver Lacey Community Battleground & Ridgelyield	Street City, Zip e-mail 4627 Proct Wick LW SE Oly, WA	360 790 4427
Please Print IANDRA Schwamberg	No	Pro	Belleuve Prolo MCA (City of Bellevue)	Street City, Zip e-mail 475-110 7th Ave SE Bellevue, WA 98004 tschwamberg@bellevue.wa.gov	425-452-7181
Please Print TIM PODHORA	No	PRO	CLARK COUNTY CORRECTIONS & MCA	Street City, Zip e-mail PO B 5000 VANCOUVER, WA 98666	360.397.6119 X1829
Please Print JUDGE JAMES DOOTER	YES	Pro	BREMERTON MULL? BOON/DMLA	Street City, Zip e-mail 900 Pacific Bremerton, WA 98337 JDOOTER@ci.bremerton.wa.us	(360) 475 5215
Please Print Dick Little	No	Pro	City of Bellingham	Street City Zip 210 Lottia St. Bellingham	360-461-2443
Please Print Roger Tedder	No	Pro	City of Bellevue	Street City, Zip e-mail PO Box 90012 Bellevue WA rtedder@ci.bellevue.wa.us	425-452-6956
Please Print Terri Cooper	No	Pro	Chevey Proob.	Street City, Zip e-mail 611 2nd St. Chevey, WA + Cooper, Terri at Chevey, WA	509-498-9280
Please Print Michael Temple Larry Stamm	Yes	con	Wa. State D Lawyer Assoc	Street City, Zip e-mail 1511 1st St NW Olympic WA 98504	

②

3

# TESTIMONY/ATTENDANCE ROSTER

Committee: Judiciary  
Date/Time: 2-6 @ 10AM

Bill No.: HB 1669  
Short Title: \_\_\_\_\_

Name	Wish to Testify? (Yes/No)	If so, Indicate Pro/Con	Organization	Mailing Address (Fill out completely) Do Not Say "On File"	Telephone
Please Print ROSE FELICIANO	NO	PRO	CITY OF SEATTLE	Street: 10000 99th Ave City, Zip: SEATTLE, WA 98124-4246 e-mail: r.feliciano@seattle.gov	206-736-9921
Please Print CAREY MORRIS	NO	PRO	Snohomish County	Street: 1527 Columbia St City, Zip: Everett, WA 98201 e-mail:	360-961-7125
Please Print MARCIA FROMHOLD	No	PRO	CIWA (small cities), WRCIP (rural counties) ins. pools	Street: City, Zip: e-mail:	(360) 600-8306
Please Print Sharon Wylie	NO	PRO	Kitsap County Clark County	Street: 2000 Kauffman Ave City, Zip: Van, WA 98660 e-mail:	(360) 921-5716
Please Print Susanne White	No	PRO	Municipal and City of Seattle	Street: Seattle WA City: Zip:	206-684-7824
Please Print Janet Doe	No	PRO	Belleme Protection	Street: 475 112th Ave SE City, Zip: Belleme WA 98009 e-mail: 98012	425-452-6954
Please Print Tammy Felin <small>Handout</small>	Yes	PRO	Assn. of WA	Street: City, Zip: e-mail:	
Please Print Doug Levy	No	PRO	City of Everett, King, Federal Way, Renton, Puyallup	Street: Levy4@msn.com City, Zip: e-mail:	425 922 3999

Appendix A, Page 14

# TESTIMONY/ATTENDANCE ROSTER

④

Committee: \_\_\_\_\_

Bill No.: HB 1669

Date/Time: \_\_\_\_\_

Short Title: \_\_\_\_\_

Name	Wish to Testify? (Yes/No)	If so, Indicate Pro/Con	Organization	Mailing Address (Fill out completely) Do Not Say "On File"	Telephone
Please Print Gordon McConnell	No	Pro	Belleuve Protection	Street 475 112 <sup>th</sup> Ave SE City, Zip Bellevue WA 98074 e-mail GMcConnell@ci.Belleuve.wa.us	425-452-7190
Please Print Mina Cogswell	No	Pro	MEA Chair	Street 901 Tacoma Ave SE City, Zip Tacoma, WA 98402-0101 e-mail	252-298-7595
Please Print Adell Whistler	No	Pro	Belleuve Pro	Street 475 112 <sup>th</sup> Ave. SE City, Zip Bellevue, WA 98004 e-mail mwhistler@belleuve.wa.gov	425-452-6956
Please Print Monica Alonso	No	Pro	Belleuve Pro	Street 475 112 <sup>th</sup> Ave SE City, Zip Bellevue, WA 98004 e-mail molonson@belleuve.wa.gov	425-452-6956
Please Print RASHI GUPTA	No	PRO	Pierce County	Street City Zip	360-259-9992
Please Print Ian Morrison	No	Pro	City of Lakewood	Street City, Zip e-mail	253-380-6781
Please Print				Street City, Zip e-mail	
Please Print				Street City, Zip e-mail	

*Amended*

Tammy Felty  
①



**BOARD OF DIRECTORS**

**PRESIDENT**

*Nina Cogswell*  
Pierce County  
District Court Probation  
(253) 798-7596

**VICE PRESIDENT**

*Larry Barker*  
Klickitat County Probation  
(509) 773-3776

**SECRETARY**

*Tim Podhora*  
Clark County Corrections  
(360) 397-8119

**TREASURER**

*Linda Elford*  
Skagit County  
District Court Probation  
(360) 338-9372

**PAST PRESIDENT**

*Regina Mack*  
Lynnwood  
Municipal Court Probation  
(425) 670-8870

**MEMBERSHIP**

*Jenny Hill/Tracy Hoctor*  
Klickitat County Probation  
(509) 773-3776

**LEGISLATIVE**

*Tandra Schwemberg*  
Bellevue  
Municipal Probation  
(425) 452-6956

**EDUCATION/TRAINING**

*Deena Kaellin*  
Puyallup  
Municipal Court Probation  
(253) 770-3347

**Ed Trade**

Snohomish County  
District Court Probation  
(425) 774-6816

**NOMINATIONS**

*Rick Bomar*  
Grant County  
District Court Probation  
(509) 754-2011

Since 1992, the state Supreme Court has decided a series of cases holding state and local governments liable to victims of new crimes committed by offenders on probation or parole. The Misdemeanant Corrections' Association (MCA) and others have tried unsuccessfully to pass legislation that protects Misdemeanant Probation and our cities and counties from these lawsuits. We have requested the Legislature impose a "gross negligence" standard for probation officers at the misdemeanor level. Probation Departments and Courts around the state have grave concerns about potential liability and the continued life of Misdemeanant Probation.

Misdemeanant Probation plays a critically important role in our criminal justice system. "Supervision and monitoring by a probation officer is probably the best way for a court of limited jurisdiction to ensure that a defendant is complying with its orders and conditions. But Courts are foregoing probation services in order to reduce liability risk for cities and counties -- even though foregoing probation services might in fact, increase actual risk of new crimes."<sup>1</sup>

The Supreme Court of Washington adopted ARLJ 11 in 2001. It defines misdemeanor probation services and provides requirements and standards for two levels of service: (1) full service or core probation services and (2) clerk based monitoring.

ARLJ 11 is the culmination of two significant events: (1) an attempt to revise RCW 10.64 which authorizes the levy of fees on offenders who are provided misdemeanor probation services and (2) the Supreme Court opinion *Hertog v. City of Seattle* filed in 1999.

RCW 10.64 was originally intended to provide a partial funding mechanism for professional probation departments involving degreed probation officers. An attempt was made to revise RCW 10.64 by making language more clear in allowing the assessment of fees to only those offenders who were referred to actual probation departments with qualified staff and who provided full services to the courts. This was met with considerable opposition by cities. The legislature, in an attempt to mediate, instituted an oversight committee. The Misdemeanant Corrections' Association (MCA), judges, cities and counties, and court administrators eventually formulated a document that described the two kinds of probation services.

<sup>1</sup>WASHINGTON'S IMPAIRED DRIVING LAW: COMPLEXITIES AND CHALLENGES - Report for the Washington Traffic Safety Commission - Richard D. Van Wagenen, October 2006

Hertog v. City of Seattle significantly extended the liability of cities and counties regarding supervision of criminal defendants in a misdemeanor probation or pre-trial release program. When the legislature failed to address the issue of liability, the Supreme Court moved to adopt the previous definitions generated from the RCW 10.64 oversight committee, culminating in ARLJ11 which imposes the only statewide standards on misdemeanor probation departments.

Liability protection for misdemeanor probation currently exists in two situations only:

- a) RCW 9.95.204... "The State of Washington, the department of corrections and its employees, community corrections officers, any county under contract with the department of corrections pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence."
- b) Interstate Compact for the Supervision of Adult Offenders -- HB 1402... "The State of Washington, the department of corrections and its employees, and any city or county and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence."

The Misdemeanor Corrections' Association (MCA) represents sixty-nine (69) district and municipal probation departments throughout the state. All are under local control. The majority of departments are under the authority of judges and provide full service probation. We continue to believe that the benefits to public safety from the careful operation of these programs are of great importance to our communities. While significantly reducing the amount of local jail time, most offenders supervised in the community pay probation fees, complete court prescribed treatment and other requirements, and remain productive in their various communities.

Probation programs deserve our support. The current liability risks imposed on these programs by the State Supreme Court's decisions are unacceptable and have real impacts statewide in eroding the ability to ensure defendants are on probation. This situation is not going away, and it is not getting better. There are two proposed bills; HB 1669 which would extend to local misdemeanor probation departments a degree of liability protection -- a gross negligence standard and Senate Bill 5548 which proposes creating the probation services task force to review the need to provide statewide standards for adult and juvenile probation officers supervising adult and juvenile misdemeanants. Together these two bills could be an important effort to both ensure the continued operation of probation programs and enhance consistency in operations statewide.

The Misdemeanor Corrections' Association (MCA) strongly supports passage of HB 1669 that improves liability protection for misdemeanor probation department employees and volunteers supervising misdemeanor offenders.

Monday, February 05, 2007

Harper, et al.,

v.

Washington State Department of Corrections

Cause No. 95511-5

# APPENDIX B

HB 1669; SHB 1669

Senate Legislative History

2007 Regular Session

REPORT OF STANDING COMMITTEE

3/30/2007

Substitute House Bill

NO. 1669

Concerning the district and municipal court's probation and supervision services.

(reported by Committee on Judiciary) : (8)

Recommendation - Majority

1) Choose One:

Do pass

Do pass as amended

Without recommendation

2) Complete if the bill is to be referred to a committee other than Rules:

Refer to the committee on \_\_\_\_\_

Kline, Chair \_\_\_\_\_

Tom, Vice Chair \_\_\_\_\_

McCoslin, Ranking Minority Member \_\_\_\_\_

Carrell \_\_\_\_\_

Margrove \_\_\_\_\_

Murray \_\_\_\_\_

Roach \_\_\_\_\_

Weinstein \_\_\_\_\_

Coordinator: Tom

MINORITY REPORT OF STANDING COMMITTEE

3/30/2007

Substitute House Bill

NO. 1669

Concerning the district and municipal court's probation and supervision services.

(reported by Committee on Judiciary) : (8)

Pursuant to Senate Rule 45, to be included in a minority report recommendation, committee members must sign and check only one box following each signature.

DNP = *Do Not Pass*  
W/O Rec = *Without Recommendation*

	DNP	W/O Rec		DNP	W/O Rec
<u><i>Don Kline</i></u> Kline, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	Hargrove		
Tom, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	Murray		
McCaslin, Ranking Minority Member	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	Roach		
Carrell	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
			Weinstein		

## Senate Committee Services — Testimony/Attendance Roster

Committee: Judiciary

Bill Number: SB 1669

Date: March 30, 2007

Short Title: District & municipal courts.

Testify?	Out of Town	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Phone/E-mail
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Suzanne White	City of Seattle Municipal Court Probation	Street: 500 6th Ave City: Seattle WA Zip:	Phone: 206-684-7824 E-mail: Suzanne.White@seattle.gov
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Thomas A. <del>Case</del> Case	Seattle City Attorney (CAWA)	Street: 600 4th Ave 98101 City: Zip: Seattle WA 98101	Phone: 206-684-8288 E-mail: Thomas.Case@seattle.wa.gov
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print TAMI Roadhouse	Pierce County Probation	Street: 901 Tacoma Ave S Suite 100 City: Tacoma WA Zip: 98402	Phone: 253-787-7545 E-mail: -
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Bruce Van Gucht	Whatcom County Dist Ct. Prob	Street: 311 Grand Ave, Ste 401 City: Bellingham WA 98227 Zip:	Phone: 360-675-6710 E-mail: bvanclub@co.whatcom.wa.us
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Mina Cogswell	Pierce County Probation	Street: 901 Tacoma Ave S City: Tacoma WA Zip: 98402	Phone: 253-787-7545 E-mail:
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Michael Shaw	Pierce County	Street: 206 10th Ave City: Zip: Olympia	Phone: E-mail:
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Jim Potts	14 Rural Coactive	Street: 206 10th Ave SE City: Zip: Olympia	Phone: 609-981-9257 E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Dave Pruett	Clark County Corrections	Street: PO Box 5000 City: Vancouver, WA Zip: 98665	Phone: (360)397-6119x4143 E-mail: Dave.Pruett@clark.wa.gov
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Glen Olson	Clark County Budget Director	Street: PO Box 5000 City: Vancouver, WA Zip: 98665	Phone: E-mail:
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Linda Shaw	Clark County Corrections	Street: PO Box 5000 City: Vancouver, WA Zip: 98665-5000	Phone: (360)397-6119x4143 E-mail: Linda.Shaw@clark.wa.gov

Appendix B, Page 8

**Senate Committee Services — Testimony/Attendance Roster**

Committee: sd

Bill Number: #1669

Date: 3/30/07

Short Title: municipal courts

Testify?	Out of Town	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Phone/E-mail
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Pam Clark</u>	<u>Clark County Corrections</u>	Street: <u>707 W 134th St</u> City: <u>Van, WA 98660</u> Zip:	Phone: <u>360-397-2084</u> E-mail: <u>pam.clark@clack.wa.gov</u>
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Arthur Curtis</u>	<u>Prosecuting Attorney Clark County</u>	Street: <u>707 W 134th St</u> City: <u>Van, WA 98660</u> Zip:	Phone: <u>360-397-2484</u> E-mail: <u>art.curtis@clack.wa.gov</u>
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Bonita Brumbaugh</u>	<u>Clark County Corrections</u>	Street: <u>909 W 134th St</u> City: <u>Vancouver, WA</u> Zip: <u>WA 98660</u>	Phone: <u>360 397-1119 Ext 451</u> E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Sheriff Gary Lucas</u>	<u>Clark County Sheriff</u>	Street: <u>909 W 134th St</u> City: <u>Vancouver, WA</u> Zip: <u>98660</u>	Phone: E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Judge Harris</u>	<u>Clark County Superior Court</u>	Street: <u>P.O. Box 5000</u> City: <u>Vancouver, WA</u> Zip: <u>98660-5000</u>	Phone: E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>TIM PADHORA</u>	<u>CLARK COUNTY CORRECTIONS</u>	Street: City: <u>SAME AS ABOVE</u> Zip:	Phone: <u>360.397.6449 x18</u> E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>MICHAEL PIPER</u>	<u>CLARK COUNTY DEPT. OF CORR. SERVICES</u>	Street: City: <u>u u u u</u> Zip:	Phone: <u>360.397.2300</u> E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>Judge VonSchamber</u>	<u>V.L. Schamber</u>	Street: City: <u>u u u</u> Zip:	Phone: <u>360-397-2454</u> E-mail:
Y (N)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>SOPHIA BYRD MESHENY</u>	<u>Wash. State Association of Counties</u>	Street: <u>206 10th SE</u> City: Zip: <u>Olympia 98501</u>	Phone: <u>360-397-2454</u> E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>LARRY D. BARKER</u>	<u>Klickitat County</u>	Street: <u>214 W Main</u> City: <u>Goldendale</u> Zip: <u>98620</u>	Phone: <u>509-773-8716</u> E-mail: <u>LarryB@clack.wa.gov</u>

(N)

(X)

DOUG LOUY

CITY OF EVANH (CANT) 1001 1st W. V. RANTON, PUGGETT

425-927-3999 10.0120@m.c.n.m

Senate Committee Services — Testimony/Attendance Roster

③

Committee: Jud

Bill Number: HB 669

Date: 3/30/07

Short Title: District & municipal courts

Testify?	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Out of Town	Phone/E-mail
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Karen Lewis	Island County Dist Court	Street: 800 SE 8th Ave City: Oak Harbor WA 98277 Zip: 98277	<input checked="" type="checkbox"/>	Phone: 360-675-0777 E-mail: Karen.L@Co.Island.WA.US
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Blenda Ward	Same as above	Street: City: Zip: Same as above	<input checked="" type="checkbox"/>	Phone: Same E-mail: Blenda.W@Co.Island.WA.US
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Margaret Turner	Same as above	Street: City: Zip: Same as above	<input checked="" type="checkbox"/>	Phone: E-mail: Margaret.T@Co.Island.WA.US
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Antonia Mitchell	Same as above	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: Antonia.M@Co.Island.WA.US
<input checked="" type="checkbox"/> N	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Please Print Michael Temple	Wa. State Trial Judges Assoc	Street: 1511 State Ave NE City: Olympia 98506 Zip: 98506	<input type="checkbox"/>	Phone: E-mail:
<input checked="" type="checkbox"/> N	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Melanie Stewart	Dist & Municipal Court Judges Assoc.	Street: 2035 Tupper City: Olympia Zip: WA 98501	<input type="checkbox"/>	Phone: E-mail:
<input checked="" type="checkbox"/> N	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Judge Brett Buckley	" "	Street: City: Zip: Olympia	<input type="checkbox"/>	Phone: E-mail:
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Ian Morrison	City of Lakewood	Street: City Hall City: Lakewood, WA 98499 Zip:	<input type="checkbox"/>	Phone: E-mail: 253-580-6781
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Janene Schellhase Johnstone	City of Kent Probation	Street: 400 W. Gore #10 City: Kent WA 98032 Zip:	<input type="checkbox"/>	Phone: 253-856-5957 E-mail: Johnstone@ci.kent.wa.us
<input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Margaret Burcham	" "	Street: City: Zip: "	<input type="checkbox"/>	Phone: 253-856-5957 E-mail: mburcham@ci.kent.wa.us

Bill reports list the names of those who testify. If you sign up to testify, are not called, and submit written testimony within 24 hours, your name will be included in the bill report.

## Senate Committee Services — Testimony/Attendance Roster

(4)

Committee: JUD

Bill Number: 1669

Date: 3/30/2007

Short Title: District & Municipal Courts

Testify?	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Out of Town	Phone/E-mail
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>RASHI GUPTA</b>	Pierce County	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: rgupta@co.pierce.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Maith Peterson</b>	City of Kent Probation	Street: 460 W. GARR #10 City: KENT WA 98032 Zip:	<input type="checkbox"/>	Phone: 253-856-5955 E-mail: kmpeterson@ci.kent.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Teresa Swarz Cronin</b>	"	Street: City: 4 Zip:	<input type="checkbox"/>	Phone: 253-856-5950 E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Judge Glen Phillips</b>	City of Kent Municipal Court	Street: 1220 S. Central City: KENT WA 98032 Zip:	<input type="checkbox"/>	Phone: 253-856-5730 E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Judge Robert McSevency</b>	"	Street: City: 4 Zip:	<input type="checkbox"/>	Phone: 253-856-5730 E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Mindy Breiner</b>	City of Tukwila Probation	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: mbreiner@ci.tukwila.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Melanie Schwanke</b>	City of Renton Probation	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: mschwanke@ci.renton.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Sarah Derrick</b>		Street: 9125 3rd Ave SE City: Everett WA Zip: 98208	<input type="checkbox"/>	Phone: 425-348-4269 E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>Job Long</b>		Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <b>SUSAN FRASER</b>	City of Bellevue	Street: 4504 204th Ave NE City: Sammamish WA Zip: 98074	<input type="checkbox"/>	Phone: 425-868-1783 E-mail:

Bill reports list the names of those who testify. If you sign up to testify, are not called, and submit written testimony within 24 hours, your name will be included in the bill report.

Senate Committee Services — Testimony/Attendance Roster

5

Committee: JUD Bill Number: 1669

Date: 3/30/2007 Short Title: \_\_\_\_\_

Testify?	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Out of Town	Phone/E-mail
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print TANDRA Schwamberg	City of Bellevue Probation	Street: 14908 MYTHOL N.E. City: Bothell Zip: 98011	<input checked="" type="checkbox"/>	Phone: 425-452-7191 E-mail: <del>tschwam@bellevue.gov</del>
<input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print GILL M. Orr - WASA10P	<del>WASH. STATE</del> Assoc. OF OUTPATIENT TX	Street: 1020 CAROLINE SE. City: PORT ANGELES, WA 98362 Zip:	<input checked="" type="checkbox"/>	Phone: (360)452-2443 E-mail: cedar.grove@jpsps.com
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Rick Boman	Grant County Probation	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: RBoman@co.grant.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Regina Mack	Lynnwood Probation	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: <del>rmack@lynwood.wa.us</del>
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Dwille Jackson	Lynnwood Probation	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Margaret Yetter	City of Kent Municipal Court	Street: 1220 S. Central City: Kent, WA 98032 Zip:	<input type="checkbox"/>	Phone: 253-856-5730 E-mail: myetter@ci.kent.wa.us
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Yvonne Pettus	District + Municipal Court Management Association	Street: 730 Tacoma Ave S City: Tacoma Zip: 98402	<input type="checkbox"/>	Phone: 253 591 2019 E-mail: yvonne.pettus@ci.tacoma.wa.us
Y N	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print		Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail:
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Tom McBride	WA ASSOC. OF PERS ASSN	Street: City: Zip: 206 10th Ave SE	<input type="checkbox"/>	Phone: E-mail: 753-2125
Y <input checked="" type="radio"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Sharon Case	City of Olympia	Street: 137 Columbia St SW City: Olympia Zip: 98501	<input type="checkbox"/>	Phone: 425-7686 E-mail: scase@comcast.net

*Bill reports list the names of those who testify. If you sign up to testify, are not called, and submit written testimony within 24 hours, your name will be included in the bill report.*

## Senate Committee Services — Testimony/Attendance Roster

(6)

Committee: JUD Bill Number: 1669

Date: 3/30/2007 Short Title: \_\_\_\_\_

Testify?	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Out of Town	Phone/E-mail
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print MIKE DOUBLEDAY	CITIZES OF BELLEVUE EDMONDS	Street: City: mikedoubleday@earthlink.net Zip:	<input type="checkbox"/>	Phone: E-mail: 206-533-6365
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Jim Smallwood	Pierce County	Street: 901 TROENKA AVE S City: TRACIA Zip: WA 98012 suite 200	<input type="checkbox"/>	Phone: 253-798-7595 E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Marilyn Dawson	Pierce County	Street: 901 TROENKA AVE S 200 City: TRACIA Zip: WA 98012 suite	<input type="checkbox"/>	Phone: 253-798-7595 E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Lisa Maze	Pierce County	Street: 901 TROENKA AVE S City: TRACIA Zip: WA 98012 suite 200	<input type="checkbox"/>	Phone: 253-798-7595 E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Jannette Merod (Matthews)	City of Lakewood Probation	Street: 4000 Main St SW City: Lakewood, WA Zip: 98499	<input type="checkbox"/>	Phone: 253-983-7140 E-mail: jmatthews@cityoflakewood.wa.us
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Thomas M Ball	Thurston County Prob	Street: 2000 Lohndge Ave City: SW by WA 98502 Zip:	<input type="checkbox"/>	Phone: Ball + Co. E-mail: thomas.wa.wr
Y (N)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print DON PIERCE	W ASSN OF Shoreline and Pike charts	Street: City: 3060 W. Vanetta Zip: Rainier	<input type="checkbox"/>	Phone: E-mail: 486-2380
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print Mike Burgess	Clark County	Street: City: 1608 Sylvester Zip: OR WA	<input type="checkbox"/>	Phone: E-mail: 360 223 3020
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print BRETT BUCKLEY	AMCJA	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail:
Y (N)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print MARCIA FROMHOLD	Schl. Dist. Risk Mgmt Coops. Small City & County Risk Mgmt Coops	Street: City: Zip:	<input type="checkbox"/>	Phone: E-mail: (360) 200-8206

Bill reports list the names of those who testify. If you sign up to testify, are not called, and submit written testimony within 24 hours, your name will be included in the bill report.

HB 1669

SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR CLARK COUNTY  
DEPARTMENT NO. 5  
PO BOX 5000  
VANCOUVER, WA 98666-5000



ROBERT L. HARRIS  
JUDGE

TELEPHONE (360) 897-2017  
FAX (360) 897-8078  
TDD (360) 897-6172

March 27, 2007

Robert L. Harris  
Presiding Judge, Superior Court  
PO Box 5000.  
Vancouver, WA 98666-5000

Senator Adam Kline  
c/o Senate Judiciary Committee  
455 J.A. Cherberg building,  
PO Box 404666  
Olympia, WA 98504-0466  
Telephone: (360) 786-7455; Fax: (360) 786-7899; E-mail: [Kline.Adam@leg.wa.gov](mailto:Kline.Adam@leg.wa.gov)

Dear Senator Kline:

I am writing to ask for your support on passage of SHB 1669.

A key part of enhancing and maintaining Clark County's quality of life depends on the pre-conviction and post-conviction probation and supervision services for persons charged with or convicted of misdemeanor crimes in our district and municipal courts. The series of recent appellate decisions which has made the business of probation and supervision a riskier proposition for courts of limited jurisdiction and local governments is of utmost concern to me. Passage of SHB 1669 will provide the much needed, overdue and reasonable relief from the extraordinary risk that is needed.

During the last several years when no legislative relief was at hand, Clark County Corrections in concert with our entire law and justice community has undertaken a series of critical reviews of our probation supervision activities with the idea of eliminating unacceptable risk. Out of that effort: Policies and procedures have been and are continuing to be improved; Additional risk insurance has been procured; The practice of field contacts was discontinued; Probation officers regularly suspend probation on every warrant ordered to end the "duty" to supervise during "absconded" status; and, A process of attaining an agency accreditation through the American Correctional Association is well underway.

All of these changes were necessary for continuing to operate a probation and supervision agency in Clark County. A probation and supervision agency's primary focus should be put to those things that the evidence says work to promote positive change in offender behavior – not the fear associated with tort liability. Passage of SHB 1669 will restore the proper balance for Clark County Corrections once again.

Thanks you for considering my views.

Sincerely,

Robert L. Harris  
Presiding Judge, Superior Court

-Tim Podhora



proud past, promising future

CLARK COUNTY  
WASHINGTON

*Tana*  
*Sent*

*to Jimmy Sullivan*

RECEIVED  
DEC - 8 2006  
BELLEVUE PROBATION

December 4, 2006

Senator Adam Kline  
PO Box 40437  
Olympia, Wa 98504-0437

Re: Liability in the supervision of misdemeanor offenders

Dear Senator Kline:

In recent years Misdemeanant Probation in Washington State has been rocked with the backlash of several cases which have established liability for local governments resulting in large financial awards for negligence in probation supervision. The Washington Supreme Court has established that probation and pretrial release officers, together with their employing agencies, have a duty to protect others from reasonably foreseeable danger resulting from the dangerous propensities of offenders under their supervision.

In Clark County we responded by forming a Task Force to consider options for reducing liability, the result of which was 7 options ranging from maintaining the status quo to the extreme of eliminating all types of probation supervision and monitoring functions. The Board of County Commissioners did not elect to take the most extreme course, which would have resulted in significant losses in community safety and offender accountability.

In order to limit our liability potential we have or are establishing the following:

- Increased insurance coverage at a high cost to the county.
- The Judiciary approved a process to suspend probation supervision and monitoring functions while an offender is in "abscond" status, the goal of which is to suspend any "special relationship" until the offender is rearrested and placed back on an active supervision.
- We are pursuing accreditation through the American Correctional Association with a goal of establishing standards in misdemeanor probation supervision and monitoring.

While we believe these are responsible steps to take, we know that without a legislative Gross Negligence standard, that the first substantial claim against Clark County could spell the most extreme option considered by our task force, the elimination of all types of probation supervision and monitoring functions.

707 W. 13th Street (main office) • P.O. Box 5000 • Vancouver, WA 98666-5000 • tel: [360] 397-2436 • fax: [360] 397-6013 • www.clark.wa.gov

Hertog v. City of Seattle significantly extended the liability of cities and counties regarding supervision of criminal defendants in a misdemeanor probation or pre-trial release program. When the legislature failed to address the issue of liability, the Supreme Court moved to adopt the previous definitions generated from the RCW 10.64 oversight committee, culminating in ARLJ11 which imposes the only statewide standards on misdemeanor probation departments.

Liability protection for misdemeanor probation currently exists in two situations only:

- a) RCW 9A.02.040... "The State of Washington, the department of corrections and its employees, community corrections officers, and any county under contract with the department of corrections pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence."
- b) Interstate Compact for the Supervision of Adult Offenders - HB 1402... "The State of Washington, the department of corrections and its employees, and any city or county and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence."

The Misdemeanor Corrections' Association (MCA) represents sixty-nine (69) district and municipal probation departments throughout the state. All are under local control. The majority of departments are under the authority of judges and provide full service probation. Although Municipal and District Court probation is not required by law, we continue to believe that the benefits to public safety from the careful operation of these programs are of great importance to our communities. While significantly reducing the amount of local jail time, most offenders supervised in the community pay probation fees, complete court prescribed treatment and other requirements, and remain productive in their various communities.

Probation programs deserve our support. The current liability risks imposed on these programs by the State Supreme Court's decisions are unacceptable and have real impacts statewide in eroding the ability to ensure defendants are on probation. This situation is not going away, and it is not getting better. There are two proposed bills; SHB 1669 which would extend to local misdemeanor probation departments a degree of liability protection and Senate Bill 5548 which proposes creating the probation services task force to review the need to provide statewide standards for adult and juvenile probation officers supervising adult and juvenile misdemeanants and. Together these two bills could be an important effort to both ensure the continued operation of probation programs and enhance consistency in operations statewide.

The Misdemeanor Corrections' Association (MCA) strongly supports passage of SHB 1669 that improves liability protection for misdemeanor probation department employees and volunteers supervising misdemeanor offenders.

We request that you consider supporting legislation that would impose a "gross negligence" standard on probation officers rather than the simple negligence that now exists.

Respectfully,



Pamela Clark,  
Director, Clark County Corrections

Cc: Tammy Fellin, Association of Washington Cities  
Tandra Schwamberg, Misdemeanant Corrections Association

Schwamberg, Tandra

---

From: Debbie Yonaka [Debbie.Yonaka@CO.CHELAN.WA.US]  
Sent: Monday, December 11, 2006 1:17 PM  
To: Kline, Sen. Adam; lantz.patriola@leg.wa.gov  
Cc: Schwamberg, Tandra  
Subject: Probation Liability  
Attachments: ADAPTING TO LIABILITY CONCERNS AT.doc

AWC has suggested that we provide you with details of any specific changes or modifications made in sentencing or supervision as a result of recent lawsuits or the potential for liability. As stated in the attachment, our current policies can be found on the Chelan County website listed below.

Please feel free to contact me if you have additional questions. <<ADAPTING TO LIABILITY CONCERNS AT.doc>>

Deborah M. Yonaka, Director  
Chelan County District Court Probation  
415 Washington, Suite 210  
Wenatchee, WA 98801  
debbie.yonaka@co.chelan.wa.us  
[www.co.chelan.wa.us](http://www.co.chelan.wa.us)  
(509) 667-6239 FAX 667-6662

## ADAPTING TO LIABILITY CONCERNS AT CHELAN COUNTY DISTRICT COURT

Over the past several years, the probation staff and the District Court judges have met numerous times to discuss ways in which we might reduce liability as we supervise offenders in the community. These discussions have occurred due to the fears raised by recent Supreme Court decisions (most notably Hertog). Local government, while addressing concerns raised by the Washington Risk Pool, has decided maintaining probation services is in the best interests of public safety. However, we've never been sued and are making diligent efforts to make sure we never do.

As a result of the Hertog decision, and the later ARLJ 11, Chelan County District Court has established policies and procedures for operating the probation department. The following changes are reflective of the liability concerns. While I am in no way suggesting these changes are not good ones, they nonetheless have created significant work load on the part of probation officers and court staff, also involve considerably more court hearings and loss of revenue.

Transfer of Probation Supervision: Prior to Hertog, it was common practice statewide to transfer cases to other jurisdictions for courtesy supervision. For example, if a Chelan County probationer resided in Olympia, we would transfer his supervision to Olympia. Now, each department has enough liability concerns involving their own cases, let alone taking on somebody else's. Consequently, courtesy supervision no longer exists in the State of Washington for courts of limited jurisdiction.

Early Termination of Probation: By policy, the judges will grant a request for early termination from probation once all sentencing requirements are completed. Once approved, the offender is no longer supervised or monitored in the community and probation fee revenue is no longer generated.

Our current policies can be found on the Chelan County website, under District Court Probation. For any additional information, please contact the Probation Director, Deborah Yonaka.

KAREN LEWIS  
1046 SHAWN AVENUE  
OAK HARBOR WA 98277  
360-678-3296

[cohorts1@whidbev.net](mailto:cohorts1@whidbev.net)

Dear Senator Kline:

I have worked in the Island County District Court Probation office for over twenty years. I started as a part-time probation officer. I have interviewed well over three thousand defendants as part of my job. I believe that I have been an effective probation officer. I base this believe on the number of letters and thank you cards I have received over the years from people who have remained in recovery.

I am also a mother who lost her son to a DUI. He was driving. I drive by the Do not Drink and Drive sign on a daily basis. My son was drunk. There was nothing I could do to help him. My mission now is to help others who are alcoholic.

Misdemeanant probation is unique to Washington State. There is no other state that operates as this state does with regard to misdemeanor offenses. It is a program that works. Of course there are problems and risks. Problems and risks exist in every facet of life.

Supervision and monitoring of the DV and DUI cases is the best way for a court to ensure that the offender is complying with the court ordered conditions. At this time, in Washington State, there are approximately 50,000 defendants being monitored. Probation is an alternative that works.

If Probation goes away due to liability issues, actual risk of new crimes might well increase. The threat of offices closing is very real. This office is under that threat and offices in Centralia and Union Gap have closed. I am asking that you study and support House Bill 1669. It is a simple bill that would change the language and give the men and women working in this field some protection.

Respectfully,

Karen Lewis, M.S., C. C. J. S  
Supervisor  
Island County District  
Municipal Court Probation Services

3-28-07

Senator Kline -

I am writing to you in regards to supporting the probation office. <sup>(Dept)</sup> Two years ago I got arrested for a D.U.I. and was sentenced to deferred prosecution program; meaning 5 years probation, first 2 years going to outpatient treatment, AA's and 1 year with an interlock device. With the help of the system, I was able to get the right help I needed and I am happy to say I am sober today! I tried for a couple years prior to try and get sober on my own and didn't succeed. I had to hurt a bit longer.

To be given a chance to get my life back in order is the greatest gift ever. Karen Lewis, my probation officer was very supportive and as long as I abided by the law and did my "homework" in staying abstinent; I would (and do) have a fulfilling life ahead of me. I now do, I am able to live "Life on Life's terms"

I hope that everyone can be given the opportunity to have a probation office available when times are needed. As long as you are willing to devote your time to change for the good then you will succeed.

Thank-you for the judicial system to give many of us 2<sup>nd</sup> chances on life.

God Bless,  
Kathy Seltveit  
726 Soundview Ln  
Oak Harbor, WA,  
98277

March 25, 2007

Senator Adam Kline  
37th District Seattle  
223 John A. Chierberg Building  
PO Box 40437  
Olympia, WA 98504-0437

Dear Senator Kline:

I'm writing this letter in support of the Island County Probation Services located in Oak Harbor, Washington. It has been brought to my attention that consideration has been made in regards to closing these services. Fortunately, I have been associated with the Probation Services located in Oak Harbor for many years. I want you to realize that I say fortunately now; but for many years, unfortunately would have been my chosen word. Well unfortunately along with many more words that I am now too polite to mention.

Although I had previously dealt with Karen Lewis in regards to Deferred Prosecution, my most recent "close" encounter has been with Glenda Ward, Probation Officer I. Ms. Ward, and actually the whole office, has been my salvation. They have all been there for me at one time or another and listened to what I had to say or had me thrown in jail; whichever choice was appropriate at the moment.

Ms. Ward had me arrested when I arrived in court after breaking my probation. I was in complete shock and quite angry although I certainly deserved the treatment I received. While in jail, I tried to phone Ms. Ward on more than one occasion just to let her know what I was thinking, but she (or I) was lucky and her phone does not accept collect calls from Island County Jail. I was in jail for 16 days, during which time Ms. Ward was finagling methods for my placement in a treatment facility. That was a huge turning point in my life.

I completed treatment and have stayed sober for three years. Afterwards, I still had huge fines in regards to past misdeeds. I spoke to Ms. Ward quite honestly about these fines and how worried I was about paying them. Although not many people have managed to pay off their fines through community service, once again Ms. Ward gave me the benefit of the doubt. I completed 186 hours of community service with the Island County Parks Department. I was quite proud of myself and they actually offered me a job at the completion of my service.

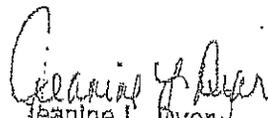
Now, I have also completed a business degree I started in 1984. While in school, I studied business law and again, the ladies in the probation office aided

me as needed in a compiling a report required for class. I received an A- in that class and many other classes since then.

Both my husband and I visit the probation office whenever we can because we know what we will find there; three probation officers who are tough as nails, but are willing to work with those that are willing to work at their lives.

I have never been as happy or self satisfied as I am today, and I can honestly say that if it had not been for Glenda Ward, Karen Lewis, and Margaret Turner, I never would have made it. I would probably be dead by now if not for the toughness and kindness that was afforded me at the worst time in my life.

Thank you for listening and I hope you'll consider wisely when you are addressing closure of the probation services in Oak Harbor. There are many more men and women like me, who were given that push, shove, and then acceptance turning our lives around.

  
Jeanine L. Dyer  
1736 Stephen Street  
Oak Harbor, WA 98277  
(360) 678-8366  
neendyer@peoplepc.com

**FREIMUND JACKSON & TARDIF P.L.L.C**

**July 27, 2018 - 3:21 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95511-5  
**Appellate Court Case Title:** Cathy Harper, et al., v. State of Washington, et al.  
**Superior Court Case Number:** 14-2-32600-9

**The following documents have been uploaded:**

- 955115\_Briefs\_20180727151755SC759836\_7042.pdf  
This File Contains:  
Briefs - Amicus Curiae  
*The Original File Name was AmicusCuriaeBriefOf\_WCIA\_WCRP.pdf*

**A copy of the uploaded files will be sent to:**

- TorSeaEF@atg.wa.gov
- christopher.carney@cgilaw.com
- courtneyg@fjtlaw.com
- kaylynnw@atg.wa.gov
- kenan.isitt@cgilaw.com
- miket@fjtlaw.com
- pault@atg.wa.gov
- sean.gillespie@cgilaw.com

**Comments:**

---

Sender Name: Courtney Grubb - Email: CourtneyG@fjtlaw.com

**Filing on Behalf of:** Michael E. Tardif - Email: miket@fjtlaw.com (Alternate Email: )

Address:

711 Capitol Way South, Suite 602

Olympia, WA, 98501

Phone: (360) 534-9960

**Note: The Filing Id is 20180727151755SC759836**