

I am retaining the new definition of residential burglary created by this bill, and the instructions in section 1 requiring the Sentencing Guidelines Commission to consider residential burglary as a more serious offense than burglary in the second degree. Because the provisions of the bill do not take effect until July 1990, I believe this veto allows us to more fully consider the ramifications of this sentencing change.

The long-term financial impact on the state adult and juvenile systems will mandate significant additional commitment of both capital and operating funds. I am concerned that the full financial reality of passing this bill has not settled upon the Legislature. The Legislature should also consider the consistency of punishment level in this bill related to punishment for other criminal offenses.

Particular attention must also be paid to the effect these changes have on our local jail system. We can no longer continue to ignore the overcrowding and potentially dangerous conditions facing these facilities. At the same time the Legislature was enacting a measure extending eligibility for home detention programs to burglars, it was removing over fifty percent of the eligible inmates by the definition change included in this bill. The Sentencing Guidelines Commission is the proper place to consider these system-wide impacts.

I am asking the Sentencing Guidelines Commission to take up this issue for the purpose of recommending a resolution to the 1990 Legislature. The commission will review the relative rankings of these crimes, and will explore the possibility of reordering the sentencing grid in such a way as to allow courts greater flexibility in determining appropriate sanctions. In addition, the Commission will review the potential for changing sentencing practices associated with rank changes, and the relationship of deadly weapons enhancements to these two offenses.

With the exception of section 3, Engrossed Senate Bill No. 5233 is approved.*

CHAPTER 413

[Substitute House Bill No. 1889]

STATE EMPLOYEES—STATE LIABILITY FOR JUDGMENTS FOR ACTS OR OMISSIONS WITHIN SCOPE OF EMPLOYMENT

AN ACT Relating to public employee immunity; amending RCW 4.92.070; adding a new section to chapter 4.24 RCW; adding a new section to chapter 4.92 RCW; and repealing RCW 4.92.060 and 10.01.150.

Be it enacted by the Legislature of the State of Washington:

***Sec. 1. Section 2, chapter 79, Laws of 1921 as last amended by section 6, chapter 126, Laws of 1986 and RCW 4.92.070 are each amended to read as follows:**

(1) If ~~((the attorney general shall find that said))~~ a civil action or proceeding for damages is instituted against a state officer, employee, or volunteer(~~s~~) arising ~~((acts or omissions were, or purported to be in good faith))~~ from acts or omissions in good faith and within the scope of that person's official duties, ~~((said request shall be granted, in which event))~~ or alleging a violation of 42 U.S.C. Sec. 1981 or 1983, the necessary expenses of the defense of ~~((said))~~ the civil action or proceeding shall be paid from the appropriations made for the support of the department to which such officer, employee, or volunteer is attached. In such cases the attorney general shall appear and defend such officer, employee, or volunteer, who shall assist and cooperate in the defense of such suit.

(2) If a criminal action or proceeding is instituted against a state officer, employee, or volunteer arising from acts or omissions within the scope of that person's official duties and in conformity with established agency policies, the necessary expenses of the defense of the criminal action or proceeding shall be paid from the appropriations made for the support of the department to which such officer, employee, or volunteer is attached. In such cases the attorney general shall appear and defend such officer, employee, or volunteer, who shall assist and cooperate in the defense of such action or proceeding.

*Sec. 1 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 4.92 RCW to read as follows:

When a state officer, employee, or volunteer has been represented by the attorney general pursuant to RCW 4.92.070, and the body presiding over the action or proceeding has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction only from the state, and the judgment shall not become a lien upon any property of such officer, employee, or volunteer.

NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW to read as follows:

(1) The state shall indemnify and hold harmless its employees in the amount of any judgment obtained or fine levied against an employee in any state or federal court, or in the amount of the settlement of a claim, or shall pay the judgment, fine, or settlement, if the act or omission that gave rise to the civil or criminal liability was in good faith and occurred while the employee was acting within the scope of his or her employment or duties and the employee is being represented in accordance with RCW 4.92.070.

(2) For purposes of this section "state employee" means a member of the civil service or an exempt person under chapter 41.06 RCW, or higher education personnel under chapter 28B.16 RCW.

***NEW SECTION.** Sec. 4. *The following acts or parts of acts are each repealed:*

(1) Section 1, chapter 79, Laws of 1921, section 1, chapter 40, Laws of 1975, section 1, chapter 126, Laws of 1975 1st ex. sess., section 1, chapter 217, Laws of 1985, section 5, chapter 126, Laws of 1986 and RCW 4.92-.060; and

(2) Section 1, chapter 144, Laws of 1975 1st ex. sess. and RCW 10.01-.150.

*Sec. 4 was vetoed, see message at end of chapter.

Passed the House April 17, 1989.

Passed the Senate April 7, 1989.

Approved by the Governor May 13, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1 and 4, Substitute House Bill No. 1889 entitled:

"AN ACT Relating to public employee immunity."

Under current law, state officers and employees can be defended by the Attorney General for acts or omissions performed in good faith within their official scope of duties, and the state will bear the cost of the litigation and any judgment or settlement that results. To qualify, the employing agency, after reviewing the facts and circumstances, must recommend that the state assume the responsibility for the defense. The Attorney General then either approves or declines the defense. This process of reviewing and evaluating such cases has proven to be effective. Although the state has rarely declined a defense, the right to decline has been upheld by the Supreme Court in State v. Herrmann, 89 Wn. 2d 349 (1977).

Amendments to RCW 4.92.070 in section 1 of the bill eliminate existing authority of the Attorney General to make a finding regarding whether or not the employee's acts or omissions were in good faith and within the scope of official duties. Additionally, section 1, when compared on a word-for-word basis with the existing statutes repealed by section 4, inappropriately expands and mandates the state via the Attorney General to represent state officers, employees, or volunteers charged with violation of criminal statutes. A review of several instances in which employees have requested criminal defense because they felt their actions were within the scope of their job does not support the need for expanding the present statutes.

The effect of these changes in section 1 would be to modify the law so that a defense by the state is more of an entitlement, with no administrative or executive officer being expressly empowered to determine eligibility or lack thereof. The current law has worked well. It has served the interests of both the state and its employees and has provided for the defense of employees in civil rights actions for alleged violations of 42 U.S.C. Sec. 1981 or 1983. I therefore see no valid reason to change the process.

Sections 2 and 3 of the bill represent important substantive additions to the law. They require the state to indemnify and hold harmless employees who are acting within the scope of their duties when the action that gave rise to the liability or civil or criminal lawsuit occurred. They also require judgment creditors in actions against employees to seek satisfaction of judgment only from the state.

With the exception of sections 1 and 4, Substitute House Bill No. 1889 is approved."