

#52

3/12/68

Memorandum 68-17

Subject: Study 52 - Sovereign Immunity (Immunity From Tort Claims by Prisoners)

Attached as Exhibit I (pink) is a Note published in the January 1968 issue of the Hastings Law Journal relating to the immunity of public entities from tort liability to prisoners. The Note recommends the repeal of the general immunity section--Section 844.6-- which, subject to certain limited exceptions, makes a public entity immune from liability for an injury caused by a prisoner or for an injury to a prisoner. The Note concludes that the section represents poor public policy and is based on an erroneous assumption as to the costs of liability and the effect of such liability on prison administration.

Exhibit III (green) sets out the pertinent statutory provisions relating to police and correctional activities together with the official comments.

Although the staff believes that some revision of Section 844.6 (text set out in Exhibit III - green) might be desirable, we recommend that the section not be repealed. Further, to the extent that immunity is to be provided, we believe that it should apply in a wrongful death case based on the death of the prisoner as well as where the prisoner himself is bringing the action.

We recommend that the statutes be revised to make it clear that recovery will be permitted where an innocent person who is ill but appears to be drunk is thrown into the drunk tank and denied medical care. See Hart v. County of Orange--Exhibit II (yellow). By a

dubious interpretation of the pertinent statutory provisions, two cases have imposed liability for failure to summon medical care immediately needed by a prisoner and we recommend that this holding be codified in the statutes.

We further recommend that the limited liability imposed by Section 845.4 (text set out in Exhibit III - green) be excepted from the immunity granted by Section 844.6.

If these two exceptions were made to Section 844.6, the staff believes that the extension of immunity to cover wrongful death cases would be justified.

If it were desired to further restrict the scope of the immunity provided by Section 844.6 and related sections, the word "prisoner" might be defined to mean one who has been convicted of a crime. This would, for example, make a public entity liable where a person confined in a jail pending trial is injured as a result of the dangerous condition of the jail property. At the same time, such a revision would still permit the public entities to demur to complaints by persons convicted of crimes. "Prisoner" might also be defined to include persons who have been adjudged to be a ward of the juvenile court.

Respectfully submitted,

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Executive Secretary