

HOUSE BILL REPORT

ESSB 5263

As Passed House:

April 8, 2021

Title: An act relating to defenses in personal injury and wrongful death actions where the person injured or killed was committing a felony.

Brief Description: Concerning defenses in personal injury and wrongful death actions where the person injured or killed was committing a felony.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Pedersen, Das, Hasegawa, Hunt, Kuderer, Lias, Saldaña, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/23/21, 3/26/21 [DP].

Floor Activity:

Passed House: 4/8/21, 56-42.

Brief Summary of Engrossed Substitute Bill

- Limits the felony bar affirmative defense in civil actions arising out of law enforcement activities resulting in personal injury or death, such that the defendant must prove each element of the defense beyond a reasonable doubt.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Ranking Minority Member; Abbarno, Klippert and Ybarra.

Staff: John Burzynski (786-7133).

Background:

Washington's felony bar rule provides it is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony at the time of the occurrence causing the injury or death and the felony was a proximate cause of the injury or death. This defense is subject to an exception for claims filed pursuant to 42 U.S.C. Sec. 1983. The defense does not require the plaintiff be convicted of a felony or admit to felonious conduct before there is a complete defense to the civil action.

The party raising the felony bar affirmative defense bears the burden of proof and must prove each element of the alleged felony, and that the felony was a proximate cause of the injury or death at issue. Proximate cause consists of two elements: cause in fact and legal causation. Cause in fact concerns the "but for" consequences of an act: those events that the act produced in a direct, unbroken sequence, and that would not have resulted had the act not occurred. Legal causation rests on considerations of logic, common sense, policy, justice, and precedent as to how far the actor's responsibility for the consequences of their actions should extend.

Generally, in civil litigation, the party with the burden of proof must prove each proposition by a "preponderance of the evidence." When a proposition must be proven by a preponderance of the evidence, it means the finder of fact must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true. Alternatively, the law may require a proposition be proven beyond a reasonable doubt, a higher standard of proof. A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

Summary of Bill:

Engrossed Substitute Senate Bill 5263 would modify the felony bar rule. For all cases except actions arising out of law enforcement activities resulting in personal injury or death, the current felony bar rule would remain in place. For actions arising out of law enforcement activities resulting in personal injury or death, a complete defense would only be available if the finder of fact determines beyond reasonable doubt that the person injured or killed was engaged in the commission of a felony at the time of the occurrence causing the injury or death, the commission of which was a proximate cause of the injury or death.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill supports due process for the victim and the police. The current system is biased, creates division in our communities, and is not conducive to justice. The felony bar defense is an excuse to not have a discussion, not have a thorough investigation, and to fail to address bias. Reforming the felony bar defense will help communities move forward and analyze the motives and practices of police enforcement.

The felony bar defense is being applied by some trial courts in police shootings, preventing the families of the deceased from obtaining legal relief. The bar doesn't allow the court to consider whether law enforcement's use of force was unreasonable. This bill is important to helping victim's families heal.

The felony bar defense is being used to conceal the truth rather than expose it. Investigations after police shootings are inadequate. The current system is destroying trust and harming underserved communities. This bill will help restore public trust.

The felony bar defense is unjust because it allows a civil court to convict a victim of a felony without due process of law.

This bill is necessary to clarify to the judiciary that some cases where this defense is invoked are not the kinds of cases that should be decided on summary judgment by a judge, but need to be decided by a finder of fact, primarily the jury. The plaintiff will still need to show unreasonable force was used. There is no need for a felony bar defense. The bill will help deter violence. Law enforcement will no longer be able to provoke a deadly encounter and then have a case against them dismissed under the felony bar rule.

(Opposed) Law enforcement wants everyone to go home safely. This bill will create unequal protection for law enforcement officers and singles out one class of public servants. A defendant raising the defense must prove each element of the defense, both the felony and proximate cause. The bill will require a criminal trial inside of a civil trial. The purpose of the felony bar defense is not to convict the plaintiff of a crime, but to prevent a person who commits a crime from profiting from the crime in a civil action.

Persons Testifying: (In support) Leonard Forsman, The Suquamish Tribe; Rose Davis; Dani Bargala Sanchez; Katrina Johnson; and Ryan Dreveskracht, Galanda Broadman, PLLC.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.