

# SENATE BILL REPORT

## ESSB 5263

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As Passed Senate, March 5, 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:** Law & Justice: 2/02/21, 2/04/21 [DPS, DNP, w/oRec].

**Floor Activity:** Passed Senate: 3/5/21, 28-20.

**Brief Summary of Engrossed First Substitute Bill**

- Narrows the complete defense against any personal injury or wrongful death lawsuits for damages arising out of law enforcement activities to instances where the finder of fact has determined beyond a reasonable doubt that the person injured or killed was engaged in the commission of a felony which was a proximate cause of the injury or death.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy.

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*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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Wagoner.

**Staff:** Tim Ford (786-7423)

**Background:** It is a complete defense to any lawsuit for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony which was a proximate cause of the injury or death. However, this defense does not affect the right to bring a lawsuit under the federal Civil Rights Act of 1983.

**Summary of Engrossed First Substitute Bill:** In actions arising out of law enforcement activities resulting in personal injury or death, it is a complete defense to the action that the finder of fact has determined beyond a 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. However, this defense does not affect the right to bring a lawsuit under the federal Civil Rights Act of 1983.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The defense has been asserted more frequently in recent years by government entities, police shootings. The civil remedy should be available, it is about a person who is injured and should have a civil claim which is one way to provide justice. Courts are summarily dismissing these cases and not allowing these cases to get to trial to determine the facts. This bill is consistent with our close states Oregon and California.

The mere accusation of a felony should not deprive someone of their right to safety and not be killed. The current law deprives the public of trust in the justice system and makes it harder to hold law enforcement accountable. Courts have noted the need for reform.

CON: Anyone can be sued by an individual who was injured during the commission of a felony. You would be liable unless the person was convicted and that does not seem fair because the standard for convicting an individual is much more difficult to prove than the standard for civil liability. Many crimes are never prosecuted leaving many people liable for their injuries sustained by their attackers. This bill allows people to profit from felonious conduct where a conviction is not obtained. Dead people can not be prosecuted so

when a person is killed in self defense the attacker's estate would be able to sue and the defense would not be available for the defender.

**Persons Testifying:** PRO: Senator David Frockt, Prime Sponsor; Katrina Johnson, Cousin of Charleena Lyles, Washington Coalition of Police Accountability; Dani Bargala Sanchez, Muckleshoot Tribe, Washington Coalition of Police Accountability; Rose Davis, Sister of Renee Davis; Leonard Forsman, Chair, Suquamish Tribe.

CON: Michael Sanders, Mix Sanders Thompson PLLC, Washington Defense Trial Lawyers; James McMahan, Washington Association of Sheriffs and Police Chiefs; Sharon Swanson, Association of Washington Cities; Jean Homan, City of Tacoma, Deputy City Attorney; Megan Coluccio, Christie Law Group; Cliff Webster, Liability Reform Coalition; Marco Montebianco, Washington State Fraternal Order of Police; Jeff DeVere, Washington Council of Police and Sheriffs.

**Persons Signed In To Testify But Not Testifying:** No one.