

SENATE BILL REPORT

SB 5263

As of February 2, 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: Senators Frockt, Pedersen, Das, Hasegawa, Hunt, Kuderer, Lias, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 2/02/21.

Brief Summary of Bill

- Narrows the complete defense against any personal injury or wrongful death lawsuits for damages to instances where the person injured or killed has been convicted of a class A or B felony which was a proximate cause of the injury or death.

SENATE COMMITTEE ON LAW & JUSTICE

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 Bill: It is a complete defense to any lawsuit for damages for personal injury or wrongful death that the person injured or killed was convicted of a class A or B felony, the commission of which was a proximate cause of the injury or death. However, this

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defense does not affect the right to bring a lawsuit under the federal Civil Rights Act of 1983.

This act is remedial and retroactive to all claims or causes of action prior to this law regardless of when the claim or cause arose.

Appropriation: None.

Fiscal Note: Requested on January 31, 2021.

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: 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.