

HOUSE BILL ANALYSIS

HB 2777

Title: An act relating to defenses in civil actions and the lawful use of force when defending against criminal acts.

Brief Description: Clarifying the lawful use of force.

Sponsors: Representatives Carrell, Sheahan, Lambert, Chandler, Mielke, Mulliken, Boldt, Zellinsky, McMorris, Backlund, Alexander, Bush, Clements, McCune, Sherstad and Talcott.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background:

Civil Actions for Damages:

1. Negligence and Proximate Cause.

A person who has been injured by another may bring a civil action to recover monetary compensation for his or her damages caused by the injury. The plaintiff in a case for negligence must establish that the defendant owed a duty to the plaintiff, that the defendant breached that duty, that the breach was a proximate cause of the injury and damage to the plaintiff's person or property.

There are two components to determining if an act is the proximate cause of an injury. First, the trier of fact must determine if the injury would not have occurred but for the act. Second, the court must determine if the act was the legal causation—of the injury. Legal causation involves policy considerations of how far the consequences of a defendant's acts should extend.— McCoy v. American Suzuki Motor Corp., 86 Wn. App. 107, 117 (1997). Legal causation depends upon whether a defendant's conduct should warrant legal liability as a matter of social policy and common sense.— Doherty v. Municipality of Metropolitan Seattle, 83 Wn. App. 464, 469 (1996).

One way a court determines if there is legal causation is whether the injury was reasonably foreseeable. Generally, a person is not liable for unforeseeable harmful results not within the risk created by the person's acts.

2. Trespassers and Attractive Nuisance Doctrine.

Under common law, a landowner owes no duty to a trespasser, except to refrain from causing willful or wanton injury to the trespasser. The doctrine of attractive nuisance is an exception to that general rule. The landowner may be liable for physical injury caused by an artificial condition on the land to a trespassing child when the landowner fails to exercise reasonable care to eliminate the danger or otherwise to protect the child.

Generally, the attractive nuisance doctrine applies where: (a) the artificial condition on the land is attractive to young children; (b) the condition is left unguarded and exposed where it is reasonable to expect young children to be; (c) the condition is likely to cause injury; (d) the child is of the age where he or she is incapable by reason of youth to comprehend the danger; and (e) it was reasonably feasible to prevent access or otherwise make it safe. See Ochampaugh v. Seattle, 91 Wn.2d 514 (1979).

3. Defense to a Civil Action.

In any personal injury or wrongful death action, it is a complete defense that the person injured or killed was committing a felony at the time of the occurrence causing the injury or death, as long as the felony was a proximate cause of the injury or death.

Use of Force in a Criminal Context:

A person may use force on another person without criminal liability under certain limited circumstances, such as self-defense. The use, attempt, or offer to use force on another is not unlawful when the force is necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer. The use of force is not unlawful as long as the force is necessary, meaning no reasonable effective alternative existed and the force used is reasonable.

A person may not be placed in legal jeopardy of any kind for protecting, by any reasonable means necessary, him or herself, his or her family, his or her real or personal property, or coming to the aid of another who is in imminent danger of, or the victim of, a felony.

When a person is charged with a violent crime and is found not guilty by reason of self-defense, the state must reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in the defense. The defendant's award may be reduced or denied if the defendant was engaged in criminal conduct, and such conduct was related to the events requiring the defendant's use of force.

Summary of Bill: The statute governing when a defendant has a complete defense to a civil action for injury or death and the statutes governing when the use of force is lawful in the criminal context, and when reimbursement is allowed, are amended to include gross misdemeanors and misdemeanor crimes.

In any personal injury or wrongful death action, it is a complete defense that the person injured or killed was engaged in the commission of a felony, gross misdemeanor, or misdemeanor at the time of the occurrence causing the injury or death, as long as the crime was a proximate cause of the injury or death. This provision does not apply to a cause of action under the doctrine of attractive nuisance when the only offense committed is trespass.

In the criminal context, it is not unlawful for a person to use, attempt to use, or offer to use force upon another person when necessarily used by a person arresting another who has committed a felony, gross misdemeanor, or misdemeanor and delivering him or her to a public officer.

A person may not be placed in legal jeopardy of any kind for protecting, by any reasonable means necessary, him or herself, his or her family, his or her real or personal property, or coming to the aid of another who is in imminent danger of, or the victim of, a felony, gross misdemeanor, or misdemeanor. A defendant found not guilty of any felony, gross misdemeanor, or misdemeanor by reason of self-defense is entitled to reimbursement from the state for all reasonable costs involved in the defense.

Fiscal Note: Not requested.

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

Office of Program Research