

HOUSE BILL REPORT

HB 1541

As Reported by House Committee On:
Judiciary

Title: An act relating to defenses in civil actions.

Brief Description: Addressing defenses in civil actions.

Sponsors: Representatives Carrell, Lambert, Cairnes, Van Luven, Reardon, Santos, Veloria and Morris.

Brief History:

Committee Activity:

Judiciary: 2/15/01, 2/27/01 [DPS].

Brief Summary of Substitute Bill

- Provides a complete defense in an action for damages for personal injury or wrongful death if the person injured or killed was committing a gross misdemeanor or misdemeanor crime and certain conditions are met.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Lambert, Republican Vice Chair; Boldt, Casada, Dickerson, Esser and Lovick.

Minority Report: Do not pass. Signed by 2 members: Representatives Hurst Democratic Vice Chair; and McDermott.

Staff: Edie Adams (786-7180).

Background:

A person who has been injured by another may bring a civil action to recover damages caused by the injury. The plaintiff in a case for negligence must establish four things: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was a proximate cause of the injury; and (4) the plaintiff suffered

personal injury or property damage.

There is a complete defense against an action for personal injury or wrongful death that the person injured or killed was engaged in a felony and the felony was the proximate cause of the injury or death.

Proximate cause is a legal standard that consists of two components: cause in fact and legal causation. An act is the cause in fact of the injury if the injury would not have occurred but for the act. Legal causation involves considerations of whether a defendant's conduct should warrant legal liability as a matter of social policy and common sense. One way a court determines if there is legal causation is whether the injury was reasonably foreseeable. A person is generally not liable for unforeseeable harmful results that are not within the risk created by the person's negligent acts.

Generally, a property owner owes no duty to a trespasser, except to refrain from willful or wanton conduct. However, a property owner may owe a duty to a child trespasser under the doctrine of attractive nuisance. A landowner may be liable for injuries to a trespassing child from an item or artificial condition on the property if the following conditions are met:

- The item or condition is attractive and alluring to young children;
- The item or condition was left unguarded where young children may be expected to play;
- The item or condition is dangerous;
- The child was incapable of comprehending the danger because of his or her youth; and
- It was reasonably feasible to prevent access to the dangerous item or condition or to make it harmless without preventing its reasonable and intended use.

Summary of Substitute Bill:

A complete defense is created to an action for personal injury or wrongful death that the injured or killed person was engaged in a misdemeanor or gross misdemeanor crime under the following circumstances:

- the crime was a proximate cause of the injury or death;
- the injury or death was not caused by an act of a person claiming the defense; and
- in the case of a personal injury action, the person injured was convicted of the offense that was a proximate cause of the injury, or in the case of a wrongful death action, the court finds by clear, cogent, and convincing evidence that the person killed committed the crime that was a proximate cause of the death.

This defense does not apply to an action under the common law doctrine of attractive

nuisance when the only offense committed is trespass.

Substitute Bill Compared to Original Bill:

The original bill did not include the following two requirements for availability of the defense: the injury or death was not caused by an act of the person claiming the defense; and the person injured was convicted of the crime, or the person killed is found by the court to have committed the crime, that was a proximate cause of the injury or death.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This bill will plug a loophole in the current law. Someone who is convicted of a crime should not be able to turn around and sue for damages caused because of the commission of the crime. This bill provides simple justice for landowners or property owners. It is a good extension of the law to give owners relief from suit by criminals.

Testimony Against: This bill has two significant problems. It is a one-size-fits-all approach that may not be appropriate to all circumstances. In addition, it is not appropriate as a matter of social policy, because it will authorize the use of lethal force for very minor offenses.

Testified: (In support) Representative Carrell, prime sponsor; and Representative Lambert.

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.