

SENATE BILL REPORT

SB 5001

As Passed Senate, January 29, 2003

Title: An act relating to assault as a predicate for felony murder.

Brief Description: Revising the felony-murder statute.

Sponsors: Senators Zarelli, McCaslin, Kastama, T. Sheldon, Carlson, Esser and Sheahan.

Brief History:

Committee Activity: Judiciary: 1/23/03 [DP].

Passed Senate: 1/29/03, 49-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: A person is guilty of second degree felony murder when he commits or attempts to commit any felony, other than those enumerated in the first degree felony murder statute, and in the course of and in furtherance of the crime, he causes the death of a person other than an accomplice. The long-standing rule in Washington for felony murder in all instances has been that the intent to commit the felony is substituted for the premeditation of or intent to commit murder that would otherwise be necessary to establish murder.

For the past 27 years, Washington appellate courts have found assault as a predicate offense for second degree felony murder to be constitutional and appropriate. The Washington State Supreme Court recently ruled for the first time, in *State v. Andress*, Docket 71170-4 (2002), that "assault cannot serve as the predicate felony for second degree felony murder." The court found that an assault is never independent of a resulting homicide and, therefore, the "in furtherance of" language in the statute is meaningless in relation to assault, a strong indication that "the Legislature did not intend that assault should serve as a predicate felony for second degree murder." The court also found that, in some instances, using assault as a predicate offense would be unduly harsh. The court has agreed to reconsider its decision (pending).

Summary of Bill: The statute is clarified to reinforce the Legislature's original and continued intent that assault is a predicate offense for felony murder in the second degree. The Legislature urges the Supreme Court to apply this interpretation retroactively to July 1, 1976.

Appropriation: None.

Fiscal Note: Requested on January 16, 2003.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: How will victims and their families ever be able to trust the judicial system again? By changing the policy 27 years after the law took effect, the court is doing an injustice to victims and their surviving families. Any time you choose to engage in felonious behavior, you should reasonably know that victims may suffer serious injury or death. The bill clearly indicates that the original legislative intent should be applied. The Legislature's intent was clear when the statute was enacted and the court should honor that clear intent. It is not the court's role to make or amend law; that is the role of the Legislature.

Testimony Against: People should be punished for what they intend, not for unforeseen results. The purpose of the law is to proportionately punish prohibited behavior; intentional murder and felony murder should be punished differently. It is premature for the Legislature to act when the case is under reconsideration.

Testified: PRO: Dave McEchan, Whatcom County Prosecutor; Lori Boyd, Yakima County Prosecutor; Tom McBride, WAPA; Anita Scherhoff; Henny Wilborn; Bonnie Gordon; Maria Roberts-Norris; Winona Latta; Jenny Wieland, Families and Friends of Violent Crime Victims; Sharon Kirkpatrick; Joan Guenther, Washington Coalition of Crime Victim Advocates; John Sheeran, WACOPS; Bill Hanson, WACOPS; CON: Jackie McMurty, Washington Association of Criminal Defense Lawyers, Washington Defender Association; Neil Fox, Washington Association of Criminal Defense Lawyers, Washington Defender Association.