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## Civil Rights & Judiciary Committee

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### ESSB 5263

**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 Summary of Engrossed Substitute Bill

- Limits the felony bar affirmative defense in civil actions arising out of law enforcement activities resulting in personal injury or death, such that the defendant must prove each element of the defense beyond a reasonable doubt.

**Hearing Date:** 3/23/21

**Staff:** John Burzynski (786-7133).

#### Background:

Washington's felony bar rule provides it is a complete defense to any action for damages for personal injury or wrongful death 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 and the felony was a proximate cause of the injury or death. This defense is subject to an exception for claims filed pursuant to 42 U.S.C. Sec. 1983. The defense does not require the plaintiff be convicted of a felony or admit to felonious conduct before there is a complete defense to the civil action.

The party raising the felony bar affirmative defense bears the burden of proof and must prove each element of the alleged felony, and that the felony was a proximate cause of the injury or death at issue. Proximate cause consists of two elements: cause in fact and legal causation.

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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.*

Cause in fact concerns the "but for" consequences of an act: those events that the act produced in a direct, unbroken sequence, and that would not have resulted had the act not occurred. Legal causation rests on considerations of logic, common sense, policy, justice, and precedent as to how far the actor's responsibility for the consequences of their actions should extend.

Generally, in civil litigation, the party with the burden of proof must prove each proposition by a "preponderance of the evidence." When a proposition must be proven by a preponderance of the evidence, it means the finder of fact must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true. Alternatively, the law may require a proposition be proven beyond a reasonable doubt, a higher standard of proof. A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

### **Summary of Engrossed Substitute Bill:**

Engrossed Substitute Senate Bill 5263 would modify the felony bar rule. For all cases except actions arising out of law enforcement activities resulting in personal injury or death, the current felony bar rule would remain in place. For actions arising out of law enforcement activities resulting in personal injury or death, a complete defense would only be available if the finder of fact determines beyond 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.