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SFA**BILL ANALYSIS**

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Senate Bill 718 (Substitute S-6 as passed by the Senate)
Sponsor: Senator Robert Geake
Committee: Judiciary

Date Completed: 1-20-98

RATIONALE

Apparently, there have been cases in which a person who committed a crime brought a civil suit for injury he or she received while committing the crime or fleeing from the crime scene. Someone who stole a car and wrecked it, for example, then sued the car's owner and her insurer to recover for injuries incurred during the accident. In other cases, homeowners who defended their property during a break-in have been sued by the individuals who committed the burglary. Although the defendants in these civil suits might ultimately prevail, they nevertheless must go through the process of litigation and pay for a defense. A similar situation might involve lawsuits against police officers, prosecutors, or other government employees who were performing their jobs when a criminal was injured or killed. To prevent this type of litigation, it has been suggested that courts should be required to dismiss civil actions brought by perpetrators, under certain circumstances.

CONTENT

The bill would amend the Revised Judicature Act to require a court to dismiss a civil action by a perpetrator for personal injury or death that occurred during the commission of or flight from a felony, if 1) the perpetrator were convicted of an "itemized crime"; 2) the perpetrator were convicted of a felony other than an itemized crime, and (if the injury or death resulted from physical force) the person who caused the injury or death had acted under a reasonable belief that physical force was reasonable and appropriate; or 3) the perpetrator were found by clear and convincing evidence to have committed acts that were the elements of a felony, and the physical force standard were met.

The bill would define "perpetrator" as an individual who was convicted of a felony; who was determined to be responsible for a felony under the

juvenile code; or who had committed acts that could result in a conviction for a felony. "Felony" would mean a violation of a law of this State or of the United States that was designated as a felony or that was punishable by death or imprisonment for more than one year.

"Civil action by a perpetrator" would mean a civil action for damages for a perpetrator's personal injury or death, which occurred during either the commission of or immediate flight from the felony, or during the commission of or immediate flight from the acts that could result in a conviction or determination of responsibility for a felony.

"Itemized crime" would mean any of the following: burning a dwelling house or other real property (MCL 750.72 and 750.73); assault with intent to commit murder, to do great bodily harm, to maim, or to rob while armed (MCL 750.83, 750.84, 750.86, and 750.89); attempted murder (MCL 750.91); breaking and entering or home invasion (MCL 750.110 and 750.110a); child sexually abusive activity (MCL 750.145c); first- or second-degree murder (MCL 750.316 and 750.317); kidnapping or kidnapping a child under 14 (MCL 750.349 and 750.350); mayhem (MCL 750.397); first-degree criminal sexual conduct (MCL 750.520b); armed robbery or carjacking (MCL 750.529 and 750.529a); bank robbery (MCL 750.531); or the manufacture, delivery, possession with intent to deliver, or possession of 650 or more grams of a Schedule 1 or 2 narcotic or cocaine (MCL 333.7401(2)(a)(i) and 333.7403(2)(a)(i)).

Under the bill, the court would have to dismiss with prejudice a civil action by a perpetrator, and award costs and actual attorney fees to the person against whom the action was brought, if the court determined as a matter of law that the perpetrator was convicted of or determined responsible for an itemized crime.

The court also would have to dismiss an action with prejudice and award costs and fees if the court determined as a matter of law that the perpetrator was convicted or determined responsible for a felony other than an itemized crime. If the perpetrator's injury or death resulted from physical force, the court could not dismiss an action unless it also found that the person who caused the injury or death acted in either of the following manners:

- Under a reasonable belief that physical force was reasonable and appropriate to prevent injury to himself or herself, or to others, using a degree of force that the person reasonably believed necessary for that purpose.
- Under a reasonable belief that physical force was reasonable and appropriate to prevent the commission of a felony, using a degree of force that the person reasonably believed necessary for that purpose.

If the perpetrator had not been convicted of or determined reasonable for a felony and the defendant alleged that the plaintiff was a perpetrator, the court could have to dismiss the civil action by the perpetrator and award costs and fees if, in that action, the court determined by clear and convincing evidence that the perpetrator committed acts that were the elements of a felony. If the perpetrator's injury or death resulted from physical force, the reasonable belief criteria (described above) would have to be met.

If a plaintiff in a civil action were charged with a felony or a filed petition alleged that the plaintiff was responsible for a felony and within the court's jurisdiction under the juvenile code, the court would have to stay the civil action in regard to that plaintiff until the final disposition of the felony case, including appeals, if both of the following took place:

- A defendant moved to dismiss the civil action in regard to that plaintiff as a civil action by a perpetrator.
- The court found probable cause to believe that the civil action in regard to that plaintiff was a civil action by a perpetrator.

Proposed MCL 600.2955b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A criminal should not be allowed to use the judicial

system in order to gain from his or her illegal actions. By requiring courts to dismiss civil actions brought by felons who were injured during their crime, the bill would protect individuals who already may have been victimized by the criminals. Although someone might be completely justified in injuring or even killing a perpetrator, a person who is sued still must endure the litigation and pay for a defense. Under the bill, a court would have to dismiss the action, and it could not be brought again, if the perpetrator were convicted of an itemized crime or a felony other than an itemized crime. In the event of a felony other than an itemized crime, the court also would have to find that the defendant reasonably believed that his or her force was necessary to prevent injury or the commission of a felony, and used a reasonable degree of force. Thus, a perpetrator still could sue someone whose actions were quite disproportionate to the crime. It is questionable, for example, whether someone who seriously injured a perpetrator in order to protect personal property would have grounds for dismissal.

In the event that a perpetrator had not been convicted of a felony, the court would have to dismiss a civil action if the court found by clear and convincing evidence that the perpetrator had committed acts that were the elements of a felony. This means that the case still would have to be litigated but, if the elements of a felony were proven, the case would have to be dismissed and the defendant could not be held liable for the perpetrator's injuries.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government to the extent that it could bar future actions for damages against the State and local units of government.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.