House
Legislative
Analysis
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LIMIT CIVIL SUITS BY FELONS

House Bill 5232 (Substitute H-3)
First Analysis (2-29-00)

Sponsor: Rep. Jim Howell
Committee: Family and Civil Law

THE APPARENT PROBLEM:

Apparently, there have been cases in which a person who committed a crime brought a civil suit for an injury he or she received while committing the crime or fleeing from the crime scene. Such a case might involve 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.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to require in certain circumstances that the court dismiss a civil action for damages for personal injury or death suffered by a person in the commission of a felony or during the immediate flight from the felony or while committing or fleeing from acts that the finder of fact in the civil action finds, by clear and convincing evidence, constituted all the elements of a felony.

The term "felony" would be defined to mean a violation of a law of this state or of the United States that is designated as a felony or that is punishable by death or imprisonment for more than one year. "Commission of a felony" would mean either a conviction for a felony or an adjudication under the probate code for an offense that if committed by an adult would be a felony. The term "plaintiff" would be defined to include an individual who, or an estate that, brings an action for the bodily injury or death.

Specifically, the bill would generally require a court to dismiss a plaintiff's civil action for an individual's bodily injury or death with prejudice, where the injury or death occurred during the individual's commission or flight from the commission of a felony or the individual's acts or flight from acts that the finder of fact in the civil action finds, by clear and convincing evidence, constituted all the elements of a felony. If the action was dismissed, the court would be required to order the plaintiff to pay each defendant's costs and actual attorney fees.

If the injury or death resulted from force, a civil action against a defendant who had caused the individual's bodily injury or death would not be dismissed, unless the court found that the defendant either 1) used a degree of force that a reasonable person would believe to have been appropriate to prevent injury to himself or herself, or to others; or (2) used a degree of force that a reasonable person would have believed was necessary to prevent the commission of a felony (the bill specifies that whether the defendant may or may not have known that the plaintiff's actions or attempted actions were a felony would not bear upon the court's determination under this provision).

Where a plaintiff who was seeking damages for an injury was facing a proceeding regarding his or her commission of a felony, the court could stay the civil action until final disposition of the felony proceedings, including appeals. In order to require a court to stay a civil action under such circumstances, the defendant would have to make a motion asking the court to dismiss the case based upon the injured party's involvement in a felony and the court would have to find that there is probable cause to believe that the motion would apply to the plaintiff's case.

As long as a court proceeding, including appeals, for a criminal action or juvenile adjudication arising from same events as the civil action were pending, the statute of limitations in a civil action would be tolled.

The provisions for dismissal of civil cases would not apply to situations that would be covered under MCL 600.1902, which prohibits a defendant in a criminal

sexual conduct case from maintaining a civil action against a victim of the crime for which the defendant is charged.

The bill's provisions would only apply to those civil actions filed on or after the bill's effective date.
MCL 600.2955b

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (2-28-00)

ARGUMENTS:

For:

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 while committing a 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 would-be criminal in self-defense, if he or she is sued by the criminal or on the criminal's behalf, the person who is sued still must endure the litigation and pay for a defense. Under the bill, a person would not have to go through such litigation. The court would be required to dismiss a civil action brought by a criminal for injuries he or she suffered during his or her commission of a felony or during the immediate flight from the felony, and the action could not be brought again. Even if the person were not convicted of the felony, the case would have to be dismissed if the injury occurred while the individual was committing or fleeing from acts that the finder of fact in the civil action concluded constituted all the elements of a felony, and action could not be brought again.

However, the bill would still allow such lawsuits under limited circumstances, such as where the actions of the person who had injured or killed the perpetrator were quite disproportionate to the crime. Whether the case would be dismissed would depend upon the reasonableness of the civil defendant's behavior. It is questionable, for example, whether someone who seriously injured a perpetrator in order to protect personal property would have grounds for dismissal.

Against:

The bill is unnecessary in light of the many tort reforms adopted in recent years. There are a myriad of mechanisms that already serve to screen out those cases that should not have been brought and disincentives against bringing certain cases. For example, all cases must go through the mediation process. Further, all cases are subject to the modified comparative negligence, which allows the trier of fact to reduce the award of economic damages by the percentage of fault of the plaintiff and disallows the recovery of non-economic damages if the plaintiff's fault is more than fifty percent. Thus, it is unlikely that the situations that this bill is intended to prevent could even occur given the current status of the law.

POSITIONS:

The Michigan Coalition Against Domestic and Sexual Violence supports the bill. (2-28-00)

The Michigan Trial Lawyers Association does not support the bill. (2-24-00)

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.