

HOUSE BILL REPORT

SSB 5278

As Reported By House Committee On:

Law & Justice

Title: An act relating to awards to persons found not guilty by reason of self-defense.

Brief Description: Revising provisions relating to awards to persons found not guilty by reason of self defense.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wojahn, Oke, Gaspard, Winsley, Franklin, Long, Rasmussen and Wood).

Brief History:

Committee Activity:

Law & Justice: 3/31/95 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Thibaudeau and Veloria.

Staff: Bill Perry (786-7123).

Background: A statute gives any person complete immunity from liability for protecting "by any reasonable means necessary" any of the following:

- (1) herself or himself;
- (2) her or his family;
- (3) her or his real or personal property; or
- (4) another person from any "heinous crime."

Some "heinous" crimes are identified. Those crimes are assault, robbery, kidnapping, arson, burglary, rape, and murder.

Many of the provisions of the statute refer only to "self-" defense. However, the entire law appears to be intended to apply to the protection of a person's property as

well as self and to apply to family members and to other persons in certain situations as noted above.

If a criminal defendant is found not guilty based on self-defense and the self-defense is justified and sustained by a preponderance of the evidence, then the state must pay all of the defendant's expenses of defending against the criminal charge. The expenses that the state must cover include lost time from work, legal fees, and any other expense involved in the defense.

This statute has sometimes been employed successfully by defendants who were themselves engaged in criminal conduct at the time they defended themselves. In a recent case, a defendant charged with murder and assault was acquitted based on self-defense. The trial court denied the defendant's recovery of his expenses because on the day of the incident, the defendant had ingested cocaine and alcohol, armed himself with a loaded handgun, and deliberately sought out a drug transaction in a high crime area. When the deal went bad, a confrontation ensued and the defendant shot two people, wounding one and killing the other. The court of appeals reversed the trial court and awarded the expenses to the defendant.

Summary of Bill: The statute requiring the state to pay the legal expenses of a defendant found not guilty by reason of self-defense is amended.

Notwithstanding a finding of self-defense, the award may be denied if the trier of fact determines the defendant "was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant."

The undefined term "heinous crime" is replaced with the term "violent crime" as defined in the Sentencing Reform Act. Ambiguous language regarding the applicability of the self-defense award provision is replaced with the explicit statement that the provision applies "when a person is charged with a crime listed" in the act. The judge is to make the determination of the amount of an award following a finding by the trier of fact that self-defense was proved by a preponderance of the evidence. An award is to cover all reasonable costs, including loss of time, and incurred legal fees and other expenses involved in defending the prosecution.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: None.

Testimony Against: None.

Testified: None.