

HOUSE BILL 1769

By Griffey

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 7 and Title 39, relative to justification excluding criminal responsibility.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 2, is amended by adding the following new section:

(a) When a person is charged with a criminal homicide offense, as described in § 39-13-201, and is found not guilty due to the justification of self-defense, the state shall reimburse the defendant for all reasonable costs incurred in defense, including loss of wages, reasonable attorney's fees, and other expenses involved in the defense.

(b) In order to obtain reimbursement pursuant to subsection (a), the defendant must make a motion for reimbursement following the not guilty verdict. Upon such motion, the court shall order the trier of fact to determine whether the defendant's claim that the homicide was justified by self-defense was sustained by a preponderance of the evidence. If the trier of fact determines that the homicide was justified, the court shall determine the amount of reimbursement to award.

(c) Notwithstanding a finding that a defendant's actions were justified, if the trier of fact also determines that the defendant was engaged in criminal conduct that was substantially related to the events giving rise to the charges filed against the defendant, the court may deny reimbursement.

(d) If a homicide is determined by the trier of fact to be justified by self-defense, then the defendant may present evidence that the defendant has sustained injury due to malicious prosecution. The court shall determine whether the prosecution engaged in

malicious prosecution and, if so, order the state or prosecuting attorney, in their individual capacity, to pay the defendant fair and just compensation for any damages incurred as a result of the malicious prosecution.

(e) In order to support a claim of malicious prosecution pursuant to subsection (d), the defendant must establish that:

(1) A prosecution for homicide was commenced against the defendant;

(2) The prosecuting attorney acted with malice. As used in this section, malice may be established if the principal motive of the prosecution was other than a desire to bring an offender to justice, or that it was done with ill will or hatred, or willfully done in a wanton or oppressive manner and in conscious disregard of the defendant's rights;

(3) The prosecution was instituted or instigated by the prosecuting attorney;

(4) The prosecution was without probable cause;

(5) The prosecution has been legally and finally terminated in favor of the defendant; and

(6) As a result of the criminal prosecution, the defendant sustained injury.

(f) When a malicious prosecution is established pursuant to this section, the court making such determination must immediately report the determination to the board of professional responsibility.

SECTION 2. This act takes effect July 1, 2022, the public welfare requiring it, and applies to criminal prosecutions occurring on or after that date.