

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 1105

By: Dahm

AS INTRODUCED

An Act relating to homicide; amending 21 O.S. 2021, Section 733, which relates to justifiable homicide; requiring the state to award reimbursement of certain costs and expenses for persons found not guilty of murder; authorizing denial or reduction of certain awards; permitting appeal to certain courts; allowing for award for certain sustained injury; establishing criteria for claim of malicious prosecution; providing certain criteria for establishing malice; authorizing personal liability under certain circumstances; requiring certain reporting; clarifying applicability to pending prosecutions; making language gender neutral; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2021, Section 733, is amended to read as follows:

Section 733. A. Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon ~~him~~ the person, or upon or in any dwelling house in which such person is;

1        2. When committed in the lawful defense of such person or of  
2 another, when the person using force reasonably believes such force  
3 is necessary to prevent death or great bodily harm to himself or  
4 herself or another or to terminate or prevent the commission of a  
5 forcible felony; or

6        3. When necessarily committed in attempting, by lawful ways and  
7 means, to apprehend any person for any felony committed; or in  
8 lawfully suppressing any riot; or in lawfully keeping and preserving  
9 the peace.

10        B. When a person is charged with murder but is found not guilty  
11 due to justifiable homicide, the state shall reimburse the defendant  
12 for all reasonable costs including loss of wages, court costs,  
13 attorney fees, and other expenses involved in his or her defense;  
14 provided, such reimbursement shall not be an independent cause of  
15 action. To award reasonable costs, the trier of fact shall find  
16 that the defendant's claim that the homicide was justified was  
17 sustained by a preponderance of the evidence. If the trier of fact  
18 determines that the homicide was justified, the court shall  
19 determine the amount of the award. If the trier of fact finds that  
20 the defendant did not meet his or her burden of proof by a  
21 preponderance of the evidence, the defendant may appeal the finding  
22 to the Court of Criminal Appeals.

23        C. Notwithstanding a finding that a defendant's actions were  
24 justified, if the trier of fact determines that the defendant was

1 engaged in criminal conduct substantially related to the events  
2 giving rise to the charges filed against the defendant, the court  
3 may deny or reduce the amount of the award. In determining the  
4 amount of the award, the court shall consider the seriousness of the  
5 initial criminal conduct.

6 D. When a homicide is determined to be justified and the  
7 defendant establishes that he or she has sustained injury due to  
8 malicious prosecution, then the defendant shall be awarded fair and  
9 just compensation.

10 E. In order to support a claim of malicious prosecution  
11 pursuant to this section, a claimant shall establish:

12 1. That a prosecution for homicide was commenced against the  
13 claimant;

14 2. That the prosecution was malicious;

15 3. That the prosecution was instituted or instigated by the  
16 prosecutor;

17 4. That the prosecution was without probable cause;

18 5. That the prosecution has been legally and finally terminated  
19 in favor of the claimant; and

20 6. That as a result of the criminal prosecution the claimant  
21 sustained injury.

22 F. For purposes of this section, malice may be established if  
23 the principal motive of the prosecution was other than a desire to  
24 bring an offender to justice, or that the prosecution was done with

1 ill will or hatred or willfully done in a wanton or oppressive  
2 manner, and in conscious disregard of the claimant's rights.

3 G. A prosecutor may be held personally liable to a claimant if  
4 malicious prosecution is established pursuant to this section.

5 H. When a malicious prosecution is established pursuant to this  
6 section, any court that presided over any stage of the prosecution  
7 shall immediately report the finding to the Oklahoma Bar Association  
8 for a disciplinary investigation of both the prosecutor and the  
9 elected district attorney who employs the prosecutor.

10 I. The provisions of this section shall extend to pending  
11 prosecutions prior to the effective date of this act.

12 J. As used in this section, "forcible felony" means any felony  
13 which involves the use or threat of physical force or violence  
14 against any person.

15 SECTION 2. This act shall become effective November 1, 2023.

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