

---

HOUSE BILL 2777

---

State of Washington

55th Legislature

1998 Regular Session

By Representatives Carrell, Sheahan, Lambert, Chandler, Mielke, Mulliken, Boldt, Zellinsky, McMorris, Backlund, Alexander, Bush, Clements, McCune, Sherstad and Talcott

Read first time 01/20/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to defenses in civil actions and the lawful use of  
2 force when defending against criminal acts; and amending RCW 4.24.420,  
3 9A.16.020, and 9A.16.110.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.24.420 and 1987 c 212 s 901 are each amended to read  
6 as follows:

7 It is a complete defense to any action for damages for personal  
8 injury or wrongful death that the person injured or killed was engaged  
9 in the commission of a felony, a gross misdemeanor, or a misdemeanor at  
10 the time of the occurrence causing the injury or death and the felony,  
11 the gross misdemeanor, or the misdemeanor was a proximate cause of the  
12 injury or death. However, nothing in this section shall affect a right  
13 of action under 42 U.S.C. Sec. 1983, nor shall anything in this section  
14 affect a right of action under the common law doctrine of attractive  
15 nuisance when the only offense committed or intended to be committed is  
16 trespass.

17 **Sec. 2.** RCW 9A.16.020 and 1986 c 149 s 2 are each amended to read  
18 as follows:

1 The use, attempt, or offer to use force upon or toward the person  
2 of another is not unlawful in the following cases:

3 (1) Whenever necessarily used by a public officer in the  
4 performance of a legal duty, or a person assisting the officer and  
5 acting under the officer's direction;

6 (2) Whenever necessarily used by a person arresting one who has  
7 committed a felony, a gross misdemeanor, or a misdemeanor and  
8 delivering him or her to a public officer competent to receive him or  
9 her into custody;

10 (3) Whenever used by a party about to be injured, or by another  
11 lawfully aiding him or her, in preventing or attempting to prevent an  
12 offense against his or her person, or a malicious trespass, or other  
13 malicious interference with real or personal property lawfully in his  
14 or her possession, in case the force is not more than is necessary;

15 (4) Whenever reasonably used by a person to detain someone who  
16 enters or remains unlawfully in a building or on real property lawfully  
17 in the possession of such person, so long as such detention is  
18 reasonable in duration and manner to investigate the reason for the  
19 detained person's presence on the premises, and so long as the premises  
20 in question did not reasonably appear to be intended to be open to  
21 members of the public;

22 (5) Whenever used by a carrier of passengers or the carrier's  
23 authorized agent or servant, or other person assisting them at their  
24 request in expelling from a carriage, railway car, vessel, or other  
25 vehicle, a passenger who refuses to obey a lawful and reasonable  
26 regulation prescribed for the conduct of passengers, if such vehicle  
27 has first been stopped and the force used is not more than is necessary  
28 to expel the offender with reasonable regard to the offender's personal  
29 safety;

30 (6) Whenever used by any person to prevent a mentally ill, mentally  
31 incompetent, or mentally disabled person from committing an act  
32 dangerous to any person, or in enforcing necessary restraint for the  
33 protection or restoration to health of the person, during such period  
34 only as is necessary to obtain legal authority for the restraint or  
35 custody of the person.

36 **Sec. 3.** RCW 9A.16.110 and 1995 c 44 s 1 are each amended to read  
37 as follows:

1 (1) No person in the state shall be placed in legal jeopardy of any  
2 kind whatsoever for protecting by any reasonable means necessary,  
3 himself or herself, his or her family, or his or her real or personal  
4 property, or for coming to the aid of another who is in imminent danger  
5 of or the victim of (~~assault, robbery, kidnapping, arson, burglary,~~  
6 ~~rape, murder, or any other violent crime as defined in RCW 9.94A.030~~)  
7 a felony, a gross misdemeanor, or a misdemeanor.

8 (2) When a person charged with a crime listed in subsection (1) of  
9 this section is found not guilty by reason of self-defense, the state  
10 of Washington shall reimburse the defendant for all reasonable costs,  
11 including loss of time, legal fees incurred, and other expenses  
12 involved in his or her defense. This reimbursement is not an  
13 independent cause of action. To award these reasonable costs the trier  
14 of fact must find that the defendant's claim of self-defense was  
15 sustained by a preponderance of the evidence. If the trier of fact  
16 makes a determination of self-defense, the judge shall determine the  
17 amount of the award.

18 (3) Notwithstanding a finding that a defendant's actions were  
19 justified by self-defense, if the trier of fact also determines that  
20 the defendant was engaged in criminal conduct substantially related to  
21 the events giving rise to the charges filed against the defendant the  
22 judge may deny or reduce the amount of the award. In determining the  
23 amount of the award, the judge shall also consider the seriousness of  
24 the initial criminal conduct.

25 Nothing in this section precludes the legislature from using the  
26 sundry claims process to grant an award where none was granted under  
27 this section or to grant a higher award than one granted under this  
28 section.

29 (4) Whenever the issue of self-defense under this section is  
30 decided by a judge, the judge shall consider the same questions as must  
31 be answered in the special verdict under subsection (~~((4)-(5))~~) (5)  
32 of this section.

33 (5) Whenever the issue of self-defense under this section has been  
34 submitted to a jury, and the jury has found the defendant not guilty,  
35 the court shall instruct the jury to return a special verdict in  
36 substantially the following form:

1		answer
2		yes or no
3	1. Was the finding of not guilty based upon	
4	self-defense?	. . . . .
5	2. If your answer to question 1 is no, do not	
6	answer the remaining question.	
7	3. If your answer to question 1 is yes, was the	
8	defendant:	
9	a. Protecting himself or herself?	. . . . .
10	b. Protecting his or her family?	. . . . .
11	c. Protecting his or her property?	. . . . .
12	d. Coming to the aid of another who was in imminent	
13	danger of a ((heinous)) crime?	. . . . .
14	e. Coming to the aid of another who was the victim	
15	of a ((heinous)) crime?	. . . . .
16	f. Engaged in criminal conduct substantially	
17	related to the events giving rise to the	
18	crime with which the defendant is charged?	. . . . .

--- END ---