

IN THE SENATE

SENATE BILL NO. 1298

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO SELF-DEFENSE; AMENDING CHAPTER 2, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-202B, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING IMMUNITY AND REIMBURSEMENT FOR JUSTIFIABLE HOMICIDE AND DEFENSE OF SELF, OTHERS, AND CERTAIN PLACES; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Chapter 2, Title 19, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 19-202B, Idaho Code, and to read as follows:

11 19-202B. IMMUNITY AND REIMBURSEMENT FOR JUSTIFIABLE HOMICIDE AND DE-
12 FENSE OF SELF, OTHERS, AND CERTAIN PLACES. (1) As used in this section:

(a) "Criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(b) "Expunge" or "expungement" means to destroy, delete, or erase a criminal history record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

(c) "Law enforcement officer" means any court personnel, sheriff, constable, peace officer, state police officer, correctional officer, probation or parole official, prosecuting attorney, city attorney, or attorney general, or their employees or agents, or any other person charged with the duty of enforcement of the criminal, traffic, or penal laws of this state or any other law enforcement personnel or peace officer as defined in chapter 51, title 19, Idaho Code.

(d) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship, or any other business entity recognized by the state of Idaho.

(e) "Public office or agency" shall have the same meaning as the definition of "public official" in section 74-101, Idaho Code.

(f) "Use of force" includes deadly force or the attempted or threatened use of force.

33 (2) A person who uses force as justified in section 18-4009, Idaho Code,
34 or as otherwise permitted in sections 19-201 through 19-205, Idaho Code,
35 shall be immune from any criminal prosecution for the use of such force or
36 threat of force.

(3) For any use of force described in subsection (2) of this section:

(a) A law enforcement officer may exercise his constitutionally enumerated powers to facilitate an impartial investigation of the use of force incident;

(b) A law enforcement officer may not arrest the person alleged to have used or threatened to use force without first obtaining a valid warrant

1 unless exigent circumstances exist. The warrant must state that there
2 is probable cause that the force threatened or used was unlawful; and
3 (c) If an arrest and detention is made pursuant to the provisions of
4 this subsection, the arrestee may not be held for more than twenty-four
5 (24) hours without an opportunity to make bail or post bond, pursuant to
6 the Idaho bail act, chapter 29, title 19, Idaho Code.

7 (4) Upon motion to the court, a pretrial immunity hearing must be held
8 within fourteen (14) days. A single thirty (30) day continuance for good
9 cause may be granted only in a criminal proceeding and only if the defendant
10 is out on bail. The motion shall be styled as a motion for summary adjudica-
11 tion and may be made during any probable cause hearing or after a grand jury
12 indictment. Grounds for the motion shall be a justified use of force. Once
13 the moving party makes a *prima facie* showing of justifiable use of force un-
14 der Idaho law, the burden shall shift to the nonmoving party.

15 (a) In a criminal proceeding, the court shall grant the motion for im-
16 munity and dismiss the indictment or information unless the nonmoving
17 party proves beyond a reasonable doubt that there is a sufficient ev-
18 identiary dispute for the case to move forward to trial. If the court
19 denies the motion, such denial shall be inadmissible in any subsequent
20 criminal or civil trial.

21 (b) In a civil proceeding, the court shall dismiss any claim, counter-
22 claim, or defense predicated on unlawful use of force, unless the non-
23 moving party establishes by clear and convincing evidence that there is
24 a sufficient evidentiary dispute for the case to move forward. If the
25 court denies the motion, such denial shall be inadmissible to the trier
26 of fact in any subsequent trial.

27 (c) The dismissal in a criminal action shall be provisionally deemed to
28 be with prejudice unless new evidence is discovered that the prosecut-
29 ing agency did not know, or have reason to know, existed at the time of
30 the dismissal. The timeliness of the new evidence may be raised during a
31 renewed motion for immunity.

32 (d) The dismissal in a civil action shall be deemed to be with prejudice
33 and shall have the full effects of *res judicata* and *collateral estoppel*.

34 (e) The moving party in either type of action may, but need not, testify
35 at the hearing. Both the *prima facie* case and any rebuttal to the non-
36 moving party's case may be made with any admissible evidence.

37 (5) (a) When a person subject to criminal prosecution is found not
38 guilty of a crime or has had charges dismissed by reason of justified use
39 of force or threat of force pursuant to section 18-4009, Idaho Code, or
40 sections 19-201 through 19-205, Idaho Code, the county where the person
41 was arrested or was subject to criminal prosecution shall reimburse the
42 defendant for all reasonable costs, including but not limited to com-
43 pensatory damages, loss of time, legal fees, including any expungement
44 under this or any other section, and other expenses incurred during the
45 proceedings.

46 (b) Such reimbursement shall not be an independent cause of action. If
47 the trier of fact makes a determination of self-defense, the judge shall
48 determine the amount of the award.

49 (c) (i) When a person subject to criminal prosecution is found not
50 guilty of a crime or has had all charges dismissed by reason of jus-

1 tified use of force or threat of force pursuant to section 18-4009,
2 Idaho Code, or sections 19-201 through 19-205, Idaho Code, the
3 court shall order that the criminal history records taken in con-
4 nection with the criminal prosecution be expunged. The court
5 shall send notice of the order of expungement to each public office
6 or agency that the court has reason to believe may have a record
7 pertaining to the criminal prosecution that is the subject of the
8 order of expungement.

9 (ii) If the court enters an order of expungement, then the arrest
10 and all other proceedings that are the subject of the order of ex-
11 pungement shall be considered not to have occurred, and the crim-
12 inal history records taken in connection with the criminal pros-
13 ecution shall be expunged. The criminal history records that are
14 expunged shall not be used against the person granted expungement
15 for any purpose.

16 (iii) Upon the entry of an order of expungement pursuant to this
17 section, the person granted expungement shall be deemed to have
18 never been arrested, detained in custody, charged, or prosecuted
19 with respect to the matters that are the subject of the order of ex-
20 pungement, and the person granted expungement may so swear under
21 oath.

22 (iv) All records regarding a motion for expungement conducted in
23 accordance with the provisions of this section that are in the cus-
24 tody of the court shall be sealed, and all references to an ar-
25 rest or prosecution resulting in dismissal or acquittal shall be
26 removed from all indices and records available to the public. A
27 special index of the expungement proceedings and records shall be
28 kept by the court ordering the expungement but shall not be avail-
29 able to the public and shall be revealed only to the person granted
30 expungement or upon order of a court of competent jurisdiction.

31 (6) Whenever the issue of justified use of force or threat of force un-
32 der this section is decided by a judge, the judge shall consider the same
33 question as must be answered in the special verdict pursuant to subsection
34 (7) of this section.

35 (7) Whenever the issue of justified use of force or threat of force un-
36 der this section has been submitted to a jury, and the jury has found the
37 defendant not guilty, the court shall instruct the jury to return a special
38 verdict in substantially the following form: "Was the finding of not guilty
39 based upon self-defense? (answer yes or no)."

40 (8) Nothing in this section shall be construed to limit or impair any
41 defense to civil or criminal liability otherwise available.

42 (9) All judicial proceedings that are currently pending or were con-
43 cluded within the twelve (12) months preceding the effective date of this act
44 shall qualify for judicial relief pursuant to this section.

45 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
46 to be severable and if any provision of this act or the application of such
47 provision to any person or circumstance is declared invalid for any reason,
48 such declaration shall not affect the validity of the remaining portions of
49 this act.

1 SECTION 3. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.