

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 444

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO HOMICIDE; AMENDING SECTION 18-4009, IDAHO CODE, TO REVISE A
2 PROVISION REGARDING WHEN HOMICIDE IS JUSTIFIABLE AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING CHAPTER 40, TITLE 18, IDAHO CODE, BY THE ADDITION
4 OF A NEW SECTION 18-4009A, IDAHO CODE, TO PROVIDE FOR WHEN A PERSON IS
5 PRESUMED TO HAVE HELD A REASONABLE FEAR OF IMMINENT DANGER OF DEATH OR
6 GREAT BODILY HARM, TO PROVIDE EXCEPTIONS, TO PROVIDE THAT A PERSON WHO
7 USES DEFENSIVE FORCE DOES NOT NEED TO RETREAT IN CERTAIN INSTANCES,
8 TO PROVIDE CERTAIN PRESUMPTIONS, TO PROVIDE THAT A FINDER OF FACT MAY
9 NOT CONSIDER CERTAIN ACTIONS AND TO DEFINE TERMS; AMENDING CHAPTER 40,
10 TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-4009B, IDAHO
11 CODE, TO PROVIDE CRIMINAL IMMUNITY FOR SELF-DEFENSE IN CERTAIN IN-
12 STANCES, TO DEFINE TERMS, TO PROVIDE PROCEDURES FOR LAW ENFORCEMENT, TO
13 PROVIDE THAT A DEFENDANT SHALL BE REIMBURSED FOR CERTAIN COSTS IN CER-
14 TAIN INSTANCES AND TO PROVIDE THAT CIVIL AND CRIMINAL LIABILITY SHALL
15 NOT BE LIMITED OR IMPAIRED IN CERTAIN INSTANCES; REPEALING SECTION
16 18-4010, IDAHO CODE, RELATING TO FEAR AS NOT SUFFICIENT JUSTIFICATION;
17 AMENDING SECTION 55-403, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO
18 MAKE TECHNICAL CORRECTIONS; AND PROVIDING SEVERABILITY.
19

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

21 SECTION 1. That Section 18-4009, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 18-4009. JUSTIFIABLE HOMICIDE BY ANY PERSON. Homicide is also justi-
24 fiable when committed by any person in either of the following cases:

25 ~~(1.)~~ When resisting any attempt to murder any person, or to commit a
26 felony, or to do some great bodily injury upon any person; ~~or,~~

27 ~~(2.)~~ When committed in defense of habitation, property or person,
28 against one who manifestly intends or endeavors, by violence or surprise,
29 to commit a felony, or against one who manifestly intends and endeavors, in
30 a violent, riotous or tumultuous manner, to enter the habitation of another
31 for the purpose of offering violence to any person therein; ~~or,~~

32 ~~3.~~ When committed in the lawful defense of such person, or of a wife
33 or husband, parent, child, master, mistress or servant of such person, when
34 there is reasonable ground to apprehend a design to commit a felony or to do
35 some great bodily injury, and imminent danger of such design being accom-
36 plished; but such person, or the person in whose behalf the defense was made,
37 if he was the assailant or engaged in mortal combat, must really and in good
38 faith have endeavored to decline any further struggle before the homicide
39 was committed; ~~or,~~

40 ~~4.~~(3) When necessarily committed in attempting, by lawful ways and
41 means, to apprehend any person for any felony committed, or in lawfully sup-
42 pressing any riot, or in lawfully keeping and preserving the peace.

1 SECTION 2. That Chapter 40, Title 18, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 18-4009A, Idaho Code, and to read as follows:

4 18-4009A. HOME PROTECTION -- USE OF DEADLY FORCE -- PRESUMPTION OF
5 FEAR OF DEATH OR GREAT BODILY HARM. (1) A person is presumed to have held a
6 reasonable fear of imminent danger of death or great bodily harm to himself
7 or another when using defensive force that is intended or likely to cause
8 death or great bodily harm to another if:

9 (a) The person against whom the defensive force was used was in the
10 process of unlawfully and forcibly entering or had unlawfully and
11 forcibly entered a dwelling, residence, occupied vehicle or place of
12 business or employment, or if that person had removed or was attempting
13 to remove another person against that person's will from the dwelling,
14 residence, occupied vehicle or place of business or employment; and

15 (b) The person who uses defensive force knew or had reason to believe
16 that an unlawful and forcible entry or unlawful and forcible act was oc-
17 ccurring or had occurred.

18 (2) The presumption set forth in subsection (1) of this section shall
19 not apply if:

20 (a) The person against whom the defensive force was used has the right
21 to be in or is a lawful resident of the dwelling, residence, occupied ve-
22 hicle or place of business or employment, including an owner, lessee or
23 titleholder, and there is not an injunction for the protection from do-
24 mestic violence or a written pretrial supervision order of no contact
25 against that person;

26 (b) The person or persons sought to be removed is a child or grandchild,
27 or is otherwise in the lawful custody or under the lawful guardianship
28 of the person against whom the defensive force was used;

29 (c) The person who used defensive force was knowingly engaged in an un-
30 lawful activity or was using the dwelling, residence, occupied vehicle
31 or place of business or employment to knowingly further an unlawful ac-
32 tivity; or

33 (d) The person against whom the defensive force was used is a law
34 enforcement officer who enters or attempts to enter a dwelling, res-
35 idence, occupied vehicle or place of business or employment in the
36 performance of his official duties and the officer identified himself
37 in accordance with any applicable law, or the person using force knew or
38 reasonably should have known that the person entering or attempting to
39 enter was a law enforcement officer.

40 (3) A person who is not knowingly engaged in an unlawful activity and
41 who is attacked in any other place where he has a right to be has no duty to
42 retreat and has the right to stand his ground and meet force with force, in-
43 cluding deadly force, if he reasonably believes it is necessary to do so to
44 prevent death or great bodily harm to himself or another, to prevent the com-
45 mission of a violent felony or when attempting to apprehend a person for any
46 felony committed, or to suppress a riot.

47 (4) A person who unlawfully and by force enters or attempts to enter a
48 person's dwelling, residence, occupied vehicle or place of business or em-

1 ployment is presumed to be doing so with the intent to commit an unlawful act
2 involving force or violence.

3 (5) If subsection (1) or (3) of this section applies, the trier of fact
4 may not consider whether the person who used defensive force had an oppor-
5 tunity to flee or retreat before he used force and the person is presumed to
6 have reasonably believed that the force was necessary.

7 (6) As used in this section:

8 (a) "Dwelling" means a building or conveyance of any kind, including
9 any attached porch, whether the building or conveyance is temporary
10 or permanent, mobile or immobile, that has a roof over it, including a
11 tent, and is designed to be occupied by people lodging therein at night.

12 (b) "Occupied vehicle" means a conveyance of any kind, whether or not
13 motorized, that is designed to transport people or property and within
14 which or on which a person is present.

15 (c) "Residence" means a dwelling in which a person resides, either tem-
16 porarily or permanently, or is visiting as an invited guest.

17 SECTION 3. That Chapter 40, Title 18, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 18-4009B, Idaho Code, and to read as follows:

20 18-4009B. CRIMINAL IMMUNITY FOR SELF-DEFENSE. (1) A person who uses
21 force as justified in section 18-4009 or 18-4009A, Idaho Code, or as other-
22 wise permitted in sections 19-201 through 19-205, Idaho Code, is immune from
23 any criminal prosecution for the use of such force except when the person
24 knew or reasonably should have known that the person against whom the force
25 was used was a law enforcement officer acting in the capacity of his official
26 duties. As used in this subsection, "criminal prosecution" includes arrest-
27 ing, detaining in custody and charging or prosecuting the defendant.

28 (2) A law enforcement agency may use standard procedures for investi-
29 gating the use of force as described in subsection (1) of this section, but
30 the agency may not arrest the person for using force unless it determines
31 that there is probable cause that the force used was unlawful.

32 (3) When a person charged with a crime is found not guilty by reason
33 of self-defense, the state of Idaho shall reimburse the defendant for all
34 reasonable costs including loss of time, legal fees incurred and other ex-
35 penses involved in his defense. This reimbursement shall not be an indepen-
36 dent cause of action. To award reasonable costs, the trier of fact must find
37 that the defendant's claim of self-defense was sustained by a preponderance
38 of the evidence. If the trier of fact makes a determination of self-defense,
39 the judge shall determine the amount of the award.

40 (4) Nothing in this section may be construed to limit or impair any de-
41 fense to civil or criminal liability otherwise available.

42 (5) As used in this section, "law enforcement officer" means any court
43 personnel, sheriff, constable, peace officer, state police officer, cor-
44 rectional officer, probation or parole official, prosecuting attorney, city
45 attorney, attorney general, or their employees or agents, or any other per-
46 son charged with the duty of enforcement of the criminal, traffic or penal
47 laws of this state or any other law enforcement personnel or peace officer as
48 defined in chapter 51, title 19, Idaho Code.

1 SECTION 4. That Section [18-4010](#), Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 5. That Section 55-403, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 55-403. ABANDONED OR UNCLAIMED PROPERTY IN POSSESSION OF SHERIFF OR
6 CITY POLICE DEPARTMENT -- SALE AT PUBLIC AUCTION. (1) Except as otherwise
7 provided in subsection (4) of this section, any personal property ~~which~~ that
8 has come into the possession or custody of the sheriff of any county in this
9 state or the city police department of any city in this state by reason of
10 the same having been abandoned, impounded or otherwise left with the sher-
11 iff or city police department, or if originally taken into custody under le-
12 gal process, such property has been lawfully released or discharged from the
13 attachment or other process under which it was taken into custody and which
14 remains unclaimed or unredeemed by the owner or one entitled to possession
15 thereof for more than six (6) months from the date of such abandonment, im-
16 poundment, leaving, or release from attachment or other process under which
17 the same was originally taken into custody, as the case may be, shall be sub-
18 ject to sale by the sheriff or city police department at public auction for
19 cash on not less than five (5) or more than ten (10) days' notice except as
20 otherwise provided in subsection (2) of this section, the conduct and no-
21 tice of which sale shall be given and had in conformity with sales on execu-
22 tion; provided, however, that prior to public auction, bicycles need only be
23 unclaimed or unredeemed by the owner or one entitled to possession for more
24 than ninety (90) days and that personal property with a fair market value of
25 less than twenty-five dollars (\$25.00) need only be unclaimed or unredeemed
26 by the owner or one entitled to possession for more than thirty (30) days.

27 (2) Whenever the sheriff or city police department has knowledge of the
28 name and address of the owner or one entitled to possession of personal prop-
29 erty, a copy of such notice of sale at public auction as provided in subsec-
30 tion (1) of this section or of a bid for sale as provided in subsection (4)
31 of this section, shall be mailed to such owner or one entitled to possession,
32 with postage prepaid, at least fourteen (14) days prior to such sale.

33 (3) As many items of personal property may be noticed for sale and sold
34 at the same sale as the sheriff or city police department may deem advisable,
35 and said property may be sold singly or in lots or as a whole as the sheriff or
36 city police department may determine. The sheriff or city police department
37 shall give a bill of sale to the highest bidder upon payment of the amount bid
38 upon payment of the bid price.

39 (4) (a) Any firearm or ammunition that meets the established speci-
40 fications for official law enforcement duty use and will be used for
41 official law enforcement duty use and which has come into the posses-
42 sion or custody of the sheriff of any county in this state or the city
43 police department of any city in this state by reason of the firearm
44 or ammunition having been abandoned, impounded or otherwise acquired
45 by the sheriff or city police department, or if originally released or
46 discharged from the attachment or other process under which it was taken
47 into custody and which remains unclaimed or unredeemed by the owner
48 or person entitled to possession thereof for more than six (6) months
49 from the date of such abandonment, impoundment, leaving or release from

1 attachment or other process under which the firearm or ammunition was
2 originally taken into custody, as the case may be, may be converted by
3 the county sheriff or city police department in the county or city in
4 which it was first acquired. A serial number record shall be maintained
5 for all firearms thus converted, and such record shall include the de-
6 scription, acquisition and disposition for each firearm converted.

7 (b) Any firearm or ammunition not converted for official law enforce-
8 ment duty use as provided in subsection (4) (a) of this section, where
9 such firearm or ammunition may be lawfully possessed by a licensed
10 firearm dealer, shall be subject to sale to a licensed firearm dealer
11 by sealed or opened bids after notification as provided in subsection
12 (2) of this section. If no sale is completed for the firearm or ammu-
13 nition pursuant to this paragraph ~~(b)~~, the firearm or ammunition may
14 be converted to public agency ownership for official law enforcement
15 purposes, provided an actual or appraised value is determined for each
16 firearm or any ammunition converted. If the firearm or ammunition is
17 not converted, or if following conversion the firearm or ammunition is
18 deemed unusable or unsafe, the firearm or ammunition may be scrapped
19 by melting or other method of destruction. The public agency shall
20 maintain procedures and records as to the acquisition, serial number,
21 location, use and final disposition of the firearm.

22 (c) Notwithstanding any other provision of law, a court shall direct
23 the county sheriff or city police department to dispose of any firearm
24 that has been used in the commission of a homicide in a manner the sher-
25 iff or city police department deems appropriate, provided however, this
26 paragraph ~~(e)~~ shall not apply to a firearm confiscated or otherwise ac-
27 quired pursuant to an action under section 18-4009, 18-4009A, 18-4011
28 or 18-4012, Idaho Code.

29 (5) Any public agency that confiscates a firearm shall maintain a se-
30 rial number record, including a record of the acquisition and disposition,
31 of such firearm and shall provide the firearm to the sheriff or city police
32 department in the county or city in which the confiscation takes place. The
33 firearm shall thereafter be handled in accordance with the provisions of
34 this section.

35 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
36 to be severable and if any provision of this act or the application of such
37 provision to any person or circumstance is declared invalid for any reason,
38 such declaration shall not affect the validity of the remaining portions of
39 this act.