



February 5, 2019

HOUSE BILL No. 1284

DIGEST OF HB 1284 (Updated February 4, 2019 11:40 am - DI 123)

Citations Affected: IC 34-30; IC 35-41.

Synopsis: Self-defense and the defense of others. Provides immunity for a justified use of force in certain instances. Requires a trial court to conduct a pretrial hearing concerning the application of the immunity when the defendant raises the justified use of force immunity as a defense. Requires a claimant or plaintiff to prove, by clear and convincing evidence, that a claim or action is not prohibited by the justified use of force immunity. Requires a court to dismiss a prohibited claim or action. Requires a court to award, in certain instances, reasonable attorney's fees and costs to a defendant when the justified use of force immunity is successfully raised. Makes conforming amendments.

Effective: July 1, 2019.

Lucas, Stutzman, Smaltz, Goodin

January 10, 2019, read first time and referred to Committee on Judiciary.
February 4, 2019, amended, reported — Do Pass.

HB 1284—LS 7157/DI 123



February 5, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1284

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]:

4 **Chapter 31. Immunity for Justified Use of Force**

5 **Sec. 1. (a) As used in this section, "forcible felony" means:**

- 6 (1) any offense described under IC 35-31.5-2-138;
7 (2) residential entry (as defined under IC 35-43-2-1.5); or
8 (3) burglary (as defined under IC 35-43-2-1).

9 (b) The justified use of force described under IC 35-41-3-2
10 provides a complete immunity against any claim or action initiated
11 by a person:

- 12 (1) who alleges to have been injured or damaged by any such
13 use of force; and
14 (2) whose conduct justified the use of force.

15 (c) In no case shall any use of force justified under IC 35-41-3-2
16 give rise to any claim or action for damages or compensation
17 against a person, employer, or estate of a person using such force

HB 1284—LS 7157/DI 123



1 by or on behalf of any person who:

2 (1) was attempting to commit or committing a forcible felony
3 at the time such force was used; or

4 (2) was attempting to cause or causing unlawful serious bodily
5 injury to any other person at the time such force was used.

6 This prohibition shall apply to any claim or action brought by the
7 estate, personal representative, spouse, or family member of a
8 person described in subdivision (1) or (2).

9 (d) If a defendant files a motion under Trial Rule 56 of the
10 Indiana Rules of Trial Procedure and supports that motion with
11 admissible evidence that establishes a prima facie basis for the
12 application of the immunity described in subsection (b) or (c), the
13 burden shall shift to the plaintiff to oppose the motion with
14 admissible evidence directly contradicting the application of the
15 immunity in order to establish a genuine issue of material fact for
16 trial.

17 (e) In a civil case in which an immunity defense under
18 subsection (b) or (c) is raised, the fact that a defendant was not
19 prosecuted for a crime related to the defendant's use of force shall
20 create a rebuttable presumption that the defendant's use of force
21 was justified under IC 35-41-3-2 and the jury shall be instructed on
22 this presumption if the case proceeds to trial. In a summary
23 judgment proceeding described in subsection (d), the fact that a
24 defendant was not prosecuted for a crime related to the
25 defendant's use of force shall also create a prima facie basis for the
26 application of the immunity described in subsection (b) or (c).

27 (f) In any action commenced after June 30, 2019, in which the
28 defense described in subsection (c) is raised by a defendant, at the
29 conclusion of the action the court shall award to the defendant or
30 defendants, as applicable, any reasonable attorney's fees and costs
31 incurred in defending the action if a defendant successfully moves
32 for summary judgment on the basis of the defense set forth in
33 subsection (c) or the trier of fact determines that the action was
34 prohibited by subsection (c).

35 SECTION 2. IC 35-41-3-2, AS AMENDED BY P.L.13-2013,
36 SECTION 139, IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) In enacting this section, the
38 general assembly finds and declares that it is the policy of this state to
39 recognize the unique character of a citizen's home and to ensure that a
40 citizen feels secure in his or her own home against unlawful intrusion
41 by another individual or a public servant. By reaffirming the long
42 standing right of a citizen to protect his or her home against unlawful



1 intrusion, however, the general assembly does not intend to diminish
 2 in any way the other robust self defense rights that citizens of this state
 3 have always enjoyed. Accordingly, the general assembly also finds and
 4 declares that it is the policy of this state that people have a right to
 5 defend themselves and third parties from physical harm and crime. The
 6 purpose of this section is to provide the citizens of this state with a
 7 lawful means of carrying out this policy. **Provisions concerning civil**
 8 **immunity for the justified use of force as defined in this section are**
 9 **codified under IC 34-30-31.**

10 (b) As used in this section, "public servant" means a person
 11 described in IC 35-31.5-2-129 or IC 35-31.5-2-185.

12 (c) A person is justified in using reasonable force against any other
 13 person to protect the person or a third person from what the person
 14 reasonably believes to be the imminent use of unlawful force.
 15 However, a person:

- 16 (1) is justified in using deadly force; and
- 17 (2) does not have a duty to retreat;

18 if the person reasonably believes that that force is necessary to prevent
 19 serious bodily injury to the person or a third person or the commission
 20 of a forcible felony. No person, **employer, or estate of a person** in this
 21 state shall be placed in legal jeopardy of any kind whatsoever for
 22 protecting the person or a third person by reasonable means necessary.

23 (d) A person:

- 24 (1) is justified in using reasonable force, including deadly force,
 25 against any other person; and
- 26 (2) does not have a duty to retreat;

27 if the person reasonably believes that the force is necessary to prevent
 28 or terminate the other person's unlawful entry of or attack on the
 29 person's dwelling, curtilage, or occupied motor vehicle.

30 (e) With respect to property other than a dwelling, curtilage, or an
 31 occupied motor vehicle, a person is justified in using reasonable force
 32 against any other person if the person reasonably believes that the force
 33 is necessary to immediately prevent or terminate the other person's
 34 trespass on or criminal interference with property lawfully in the
 35 person's possession, lawfully in possession of a member of the person's
 36 immediate family, or belonging to a person whose property the person
 37 has authority to protect. However, a person:

- 38 (1) is justified in using deadly force; and
- 39 (2) does not have a duty to retreat;

40 only if that force is justified under subsection (c).

41 (f) A person is justified in using reasonable force, including deadly
 42 force, against any other person and does not have a duty to retreat if the



1 person reasonably believes that the force is necessary to prevent or stop
 2 the other person from hijacking, attempting to hijack, or otherwise
 3 seizing or attempting to seize unlawful control of an aircraft in flight.
 4 For purposes of this subsection, an aircraft is considered to be in flight
 5 while the aircraft is:

6 (1) on the ground in Indiana:

7 (A) after the doors of the aircraft are closed for takeoff; and

8 (B) until the aircraft takes off;

9 (2) in the airspace above Indiana; or

10 (3) on the ground in Indiana:

11 (A) after the aircraft lands; and

12 (B) before the doors of the aircraft are opened after landing.

13 (g) Notwithstanding subsections (c) through (e), a person is not
 14 justified in using force if:

15 (1) the person is committing or is escaping after the commission
 16 of a crime;

17 (2) the person provokes unlawful action by another person with
 18 intent to cause bodily injury to the other person; or

19 (3) the person has entered into combat with another person or is
 20 the initial aggressor unless the person withdraws from the
 21 encounter and communicates to the other person the intent to do
 22 so and the other person nevertheless continues or threatens to
 23 continue unlawful action.

24 (h) Notwithstanding subsection (f), a person is not justified in using
 25 force if the person:

26 (1) is committing, or is escaping after the commission of, a crime;

27 (2) provokes unlawful action by another person, with intent to
 28 cause bodily injury to the other person; or

29 (3) continues to combat another person after the other person
 30 withdraws from the encounter and communicates the other
 31 person's intent to stop hijacking, attempting to hijack, or
 32 otherwise seizing or attempting to seize unlawful control of an
 33 aircraft in flight.

34 (i) A person is justified in using reasonable force against a public
 35 servant if the person reasonably believes the force is necessary to:

36 (1) protect the person or a third person from what the person
 37 reasonably believes to be the imminent use of unlawful force;

38 (2) prevent or terminate the public servant's unlawful entry of or
 39 attack on the person's dwelling, curtilage, or occupied motor
 40 vehicle; or

41 (3) prevent or terminate the public servant's unlawful trespass on
 42 or criminal interference with property lawfully in the person's



- 1 possession, lawfully in possession of a member of the person's
2 immediate family, or belonging to a person whose property the
3 person has authority to protect.
- 4 (j) Notwithstanding subsection (i), a person is not justified in using
5 force against a public servant if:
- 6 (1) the person is committing or is escaping after the commission
7 of a crime;
- 8 (2) the person provokes action by the public servant with intent to
9 cause bodily injury to the public servant;
- 10 (3) the person has entered into combat with the public servant or
11 is the initial aggressor, unless the person withdraws from the
12 encounter and communicates to the public servant the intent to do
13 so and the public servant nevertheless continues or threatens to
14 continue unlawful action; or
- 15 (4) the person reasonably believes the public servant is:
- 16 (A) acting lawfully; or
- 17 (B) engaged in the lawful execution of the public servant's
18 official duties.
- 19 (k) A person is not justified in using deadly force against a public
20 servant whom the person knows or reasonably should know is a public
21 servant unless:
- 22 (1) the person reasonably believes that the public servant is:
- 23 (A) acting unlawfully; or
- 24 (B) not engaged in the execution of the public servant's official
25 duties; and
- 26 (2) the force is reasonably necessary to prevent serious bodily
27 injury to the person or a third person.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1284, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 5 through 17, begin a new paragraph and insert:

"Sec. 1. (a) As used in this section, "forcible felony" means:

- (1) any offense described under IC 35-31.5-2-138;**
- (2) residential entry (as defined under IC 35-43-2-1.5); or**
- (3) burglary (as defined under IC 35-43-2-1).**

(b) The justified use of force described under IC 35-41-3-2 provides a complete immunity against any claim or action initiated by a person:

- (1) who alleges to have been injured or damaged by any such use of force; and**
- (2) whose conduct justified the use of force.**

(c) In no case shall any use of force justified under IC 35-41-3-2 give rise to any claim or action for damages or compensation against a person, employer, or estate of a person using such force by or on behalf of any person who:

- (1) was attempting to commit or committing a forcible felony at the time such force was used; or**
- (2) was attempting to cause or causing unlawful serious bodily injury to any other person at the time such force was used.**

This prohibition shall apply to any claim or action brought by the estate, personal representative, spouse, or family member of a person described in subdivision (1) or (2).

(d) If a defendant files a motion under Trial Rule 56 of the Indiana Rules of Trial Procedure and supports that motion with admissible evidence that establishes a prima facie basis for the application of the immunity described in subsection (b) or (c), the burden shall shift to the plaintiff to oppose the motion with admissible evidence directly contradicting the application of the immunity in order to establish a genuine issue of material fact for trial.

(e) In a civil case in which an immunity defense under subsection (b) or (c) is raised, the fact that a defendant was not prosecuted for a crime related to the defendant's use of force shall create a rebuttable presumption that the defendant's use of force was justified under IC 35-41-3-2 and the jury shall be instructed on this presumption if the case proceeds to trial. In a summary judgment proceeding described in subsection (d), the fact that a



defendant was not prosecuted for a crime related to the defendant's use of force shall also create a prima facie basis for the application of the immunity described in subsection (b) or (c).

(f) In any action commenced after June 30, 2019, in which the defense described in subsection (c) is raised by a defendant, at the conclusion of the action the court shall award to the defendant or defendants, as applicable, any reasonable attorney's fees and costs incurred in defending the action if a defendant successfully moves for summary judgment on the basis of the defense set forth in subsection (c) or the trier of fact determines that the action was prohibited by subsection (c)."

Page 2, delete lines 1 through 20.

Page 2, line 33, after "crime" delete "and" and insert ".".

Page 2, delete lines 34 through 35.

Page 2, line 36, delete "reasonable means necessary."

Page 3, line 8, reset in roman "No person in this state shall be placed in legal".

Page 3, line 8, after "person" insert ", **employer, or estate of a person**".

Page 3, reset in roman lines 9 through 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1284 as introduced.)

TORR

Committee Vote: yeas 9, nays 2.

