

1 **SENATE FLOOR VERSION**

2 April 6, 2021

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 1662

By: West (Kevin), Roberts
(Sean), McDugle, Steagall
and Bashore of the House

6 and

7 Dahm and Bullard of the
8 Senate

9
10 An Act relating to firearms; amending 21 O.S. 2011,
11 Section 1289.25, as last amended by Section 1,
12 Chapter 218, O.S.L. 2018 (21 O.S. Supp. 2020, Section
13 1289.25), which relates to the Oklahoma Firearms Act
14 of 1971; updating statutory reference; clarifying
15 immunity provision for persons asserting claims of
16 self-defense; authorizing defendants to file motions
17 to dismiss charges under certain circumstances;
18 granting defendants the right to file interlocutory
19 appeals after adverse rulings made by the court;
20 providing parameters for appeal hearings; directing
21 judges to enter certain order at conclusion of appeal
22 hearings; providing burden-of-proof standard when
23 evidence of self-defense is provided in criminal
24 prosecutions; amending 22 O.S. 2011, Sections 1053
and 1089.1, which relate to appeals taken by the
state or municipality; authorizing appeals by the
state or municipalities under certain circumstances;
granting the state the right to appeal adverse
rulings or orders; and providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.25, as
2 last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.
3 2020, Section 1289.25), is amended to read as follows:

4 Section 1289.25.

5 PHYSICAL OR DEADLY FORCE ~~AGAINST INTRUDER~~

6 A. The Legislature hereby recognizes that the citizens of the
7 State of Oklahoma have a right to expect absolute safety within
8 their own homes, places of business or places of worship and have
9 the right to establish policies regarding the possession of weapons
10 on property pursuant to the provisions of Section 1290.22 of this
11 title.

12 B. A person, regardless of official capacity or lack of
13 official capacity, within a place of worship or a person, an owner,
14 manager or employee of a business is presumed to have held a
15 reasonable fear of imminent peril of death or great bodily harm to
16 himself or herself or another when using defensive force that is
17 intended or likely to cause death or great bodily harm to another
18 if:

19 1. ~~a.~~ The person against whom the defensive force was used was
20 in the process of unlawfully and forcefully entering, or had
21 unlawfully and forcibly entered, a dwelling, residence, occupied
22 vehicle, place of business or place of worship, or if that person
23 had removed or was attempting to remove another against the will of
24

1 that person from the dwelling, residence, occupied vehicle, place of
2 business or place of worship;

3 ~~b.~~

4 2. The person who uses defensive force knew or had reason to
5 believe that an unlawful and forcible entry or unlawful and forcible
6 act was occurring or had occurred; or

7 ~~2.~~ 3. The person who uses defensive force knew or had a
8 reasonable belief that the person against whom the defensive force
9 was used entered or was attempting to enter into a dwelling,
10 residence, occupied vehicle, place of business or place of worship
11 for the purpose of committing a forcible felony, as defined in
12 Section 733 of this title, and that the defensive force was
13 necessary to prevent the commission of the forcible felony.

14 C. The presumption set forth in subsection B of this section
15 does not apply if:

16 1. The person against whom the defensive force is used has the
17 right to be in or is a lawful resident of the dwelling, residence,
18 or vehicle, such as an owner, lessee, or titleholder, and there is
19 not a protective order from domestic violence in effect or a written
20 pretrial supervision order of no contact against that person;

21 2. The person or persons sought to be removed are children or
22 grandchildren, or are otherwise in the lawful custody or under the
23 lawful guardianship, of, the person against whom the defensive force
24 is used; or

1 3. The person who uses defensive force is engaged in an
2 unlawful activity or is using the dwelling, residence, occupied
3 vehicle, place of business or place of worship to further an
4 unlawful activity.

5 D. A person who is not engaged in an unlawful activity and who
6 is attacked in any other place where he or she has a right to be has
7 no duty to retreat and has the right to stand his or her ground and
8 meet force with force, including deadly force, if he or she
9 reasonably believes it is necessary to do so to prevent death or
10 great bodily harm to himself or herself or another or to prevent the
11 commission of a forcible felony.

12 E. A person who unlawfully and by force enters or attempts to
13 enter the dwelling, residence, occupied vehicle of another person,
14 place of business or place of worship is presumed to be doing so
15 with the intent to commit an unlawful act involving force or
16 violence.

17 F. 1. A person who uses defensive force, as permitted pursuant
18 to the provisions of ~~subsections A, B, D and E~~ of this section, ~~is~~
19 ~~justified in using such defensive force and is immune from~~ shall not
20 be subject to criminal prosecution and civil action for the use of
21 such defensive force, unless the force is determined to be unlawful.

22 2. At least ten (10) days prior to the preliminary hearing in a
23 case where a defendant has been charged and is subject to criminal
24 prosecution for the unlawful use of defensive force, the defendant

1 may file a motion to dismiss the charges based on a claim that under
2 the provisions of this section, the defendant is not subject to
3 criminal prosecution. If the court denies the motion to dismiss,
4 the defendant shall have the right to file an interlocutory appeal
5 on the ruling made by the court to the district court judge or
6 associate district court judge having jurisdiction over the case.

7 3. The appeal hearing before the district court judge or
8 associate district court judge shall address whether the defensive
9 force used by the defendant was unlawful or justified and permitted
10 pursuant to the provisions of this section.

11 4. If, after the appeal hearing, the district court judge or
12 associate district court judge concludes that the defensive force
13 used was justified and permitted under the provisions of this
14 section, the judge shall enter a written order containing findings
15 of fact and conclusions of law that the defendant is not subject to
16 criminal prosecution and that criminal charges and proceedings shall
17 be dismissed and shall not be filed unless newly discovered evidence
18 or evidence not known to the prosecution at the time is found or
19 discovered.

20 5. If, after the appeal hearing, the district court judge or
21 associate district court judge concludes that the defensive force
22 used was not justified and was thereby unlawful, the judge shall
23 enter an order binding the defendant over for trial.

1 6. Once prima facie evidence of justified self-defense has been
2 raised by the defendant, the State of Oklahoma shall be required to
3 prove by clear and convincing evidence that the defensive force used
4 was not justified and was thereby unlawful.

5 7. As used in this subsection, the term "criminal prosecution"
6 includes charging or prosecuting the defendant.

7 G. A law enforcement agency may use standard procedures for
8 investigating the use of defensive force, but the law enforcement
9 agency may not arrest the person for using defensive force unless it
10 determines that there is probable cause that the defensive force
11 that was used was unlawful.

12 H. The court shall award reasonable attorney fees, court costs,
13 compensation for loss of income, and all expenses incurred by the
14 defendant in defense of any civil action brought by a plaintiff if
15 the court finds that the defendant is ~~immune from~~ not subject to
16 prosecution as provided in subsection F of this section.

17 I. The provisions of this section and the provisions of the
18 Oklahoma Self-Defense Act shall not be construed to require any
19 person using a weapon pursuant to the provisions of this section to
20 be licensed in any manner.

21 J. A person pointing a weapon at a perpetrator in self-defense
22 or in order to thwart, stop or deter a forcible felony or attempted
23 forcible felony shall not be deemed guilty of committing a criminal
24 act.

1 K. As used in this section:

2 1. "Defensive force" includes, but shall not be limited to,
3 pointing a weapon at a perpetrator in self-defense or in order to
4 thwart, stop or deter a forcible felony or attempted forcible
5 felony;

6 2. "Dwelling" means a building or conveyance of any kind,
7 including any attached porch, whether the building or conveyance is
8 temporary or permanent, mobile or immobile, which has a roof over
9 it, including a tent, and is designed to be occupied by people;

10 3. "Place of worship" means:

11 a. any permanent building, structure, facility or office
12 space owned, leased, rented or borrowed, on a full-
13 time basis, when used for worship services, activities
14 and business of the congregation, which may include,
15 but is not ~~be~~ limited to, churches, temples,
16 synagogues and mosques, and

17 b. any permanent building, structure, facility or office
18 space owned, leased, rented or borrowed for use on a
19 temporary basis, when used for worship services,
20 activities and business of the congregation ~~including,~~
21 which may include, but is not limited to, churches,
22 temples, synagogues and mosques;

1 4. "Residence" means a dwelling in which a person resides
2 either temporarily or permanently or is visiting as an invited
3 guest; and

4 5. "Vehicle" means a conveyance of any kind, whether or not
5 motorized, which is designed to transport people or property.

6 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1053, is
7 amended to read as follows:

8 Section 1053. Appeals to the Court of Criminal Appeals may be
9 taken by the state or a municipality in the following cases and no
10 other:

11 1. Upon judgment for the defendant on quashing or setting aside
12 an indictment or information;

13 2. Upon an order of the court arresting the judgment;

14 3. Upon a question reserved by the state or a municipality;

15 4. Upon judgment for the defendant on a motion to quash for
16 insufficient evidence in a felony matter;

17 5. Upon a pretrial order, decision, or judgment suppressing or
18 excluding evidence where appellate review of the issue would be in
19 the best interests of justice; ~~and~~

20 6. Upon a pretrial order, decision or judgment suppressing or
21 excluding evidence in cases alleging violation of any provisions of
22 Section 13.1 of Title 21 of the Oklahoma Statutes; and

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1 7. Upon a pretrial order, decision or judgment finding that a
2 defendant is not subject to criminal prosecution under the
3 provisions of Section 1289.25 of Title 21 of the Oklahoma Statutes.

4 Priority shall be given to appeals taken pursuant to paragraph 5
5 or 6 of this section, and an order staying proceedings shall be
6 entered pending the outcome of the appeal.

7 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1089.1, is
8 amended to read as follows:

9 Section 1089.1. The State of Oklahoma, by and through the
10 district attorney or Attorney General, shall have the right to
11 appeal an adverse ruling or order of a magistrate ~~sustaining;~~

12 1. Sustaining a motion to suppress evidence, ~~quashing;~~

13 2. Quashing an information, ~~sustaining;~~

14 3. Sustaining a plea to the jurisdiction of the court, ~~failing;~~

15 4. Failing to find prosecutive merit in a hearing pursuant to
16 Section 2-2-403 of Title 10A of the Oklahoma Statutes, ~~sustaining;~~

17 5. Sustaining a demurrer to the information, ~~binding;~~

18 6. Binding the defendant over for trial on a charge other than
19 the charge for the original offense, ~~or discharging;~~

20 7. Discharging a defendant at the preliminary examination
21 because of insufficiency of the evidence to establish either that a
22 crime has been committed or that there is probable cause to believe
23 that the accused has committed a felony; or

1 8. Discharging a defendant on a finding that the defendant is
2 not subject to criminal prosecution under the provisions of Section
3 1289.25 of Title 21 of the Oklahoma Statutes.

4 Such an appeal shall be taken in accordance with the procedures
5 provided in this act.

6 SECTION 4. This act shall become effective November 1, 2021.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 April 6, 2021 - DO PASS AS AMENDED
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