

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 127

By: Bergstrom

4
5 AS INTRODUCED

6 An Act relating to firearms; amending 21 O.S. 2021,
7 Section 1289.25, which relates to the Oklahoma
8 Firearms Act of 1971; updating statutory reference;
9 clarifying immunity provision for persons asserting
10 claims of self-defense; authorizing defendant to file
11 motion to dismiss charges under certain
12 circumstances; granting defendant the right to file
13 interlocutory appeal after adverse ruling made by the
14 court; providing parameters for appeal hearing;
15 directing judges to enter certain order at conclusion
16 of appeal hearing; stating burden of proof for
17 evidence of self-defense in criminal prosecution;
18 amending 22 O.S. 2021, Sections 1053, as amended by
19 Section 2, Chapter 209, O.S.L. 2022, and 1089.1 (22
20 O.S. Supp. 2022, Section 1053), which relate to
21 appeals taken by the state or municipality;
22 authorizing appeals by the state or municipalities
23 under certain circumstances; granting the state the
24 right to appeal certain adverse rulings or orders;
and providing an effective date.

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

19 SECTION 1. AMENDATORY 21 O.S. 2021, Section 1289.25, is
20 amended to read as follows:

21 Section 1289.25.

22 PHYSICAL OR DEADLY FORCE ~~AGAINST INTRUDER~~

23 A. The Legislature hereby recognizes that the citizens of the
24 State of Oklahoma have a right to expect absolute safety within

1 their own homes, places of business or places of worship and have
2 the right to establish policies regarding the possession of weapons
3 on property pursuant to the provisions of Section 1290.22 of this
4 title.

5 B. A person, regardless of official capacity or lack of
6 official capacity, within a place of worship or a person, an owner,
7 manager or employee of a business is presumed to have held a
8 reasonable fear of imminent peril of death or great bodily harm to
9 himself or herself or another when using defensive force that is
10 intended or likely to cause death or great bodily harm to another
11 if:

12 1. ~~a.~~ The person against whom the defensive force was used was
13 in the process of unlawfully and forcefully entering, or had
14 unlawfully and forcibly entered, a dwelling, residence, occupied
15 vehicle, place of business or place of worship, or if that person
16 had removed or was attempting to remove another against the will of
17 that person from the dwelling, residence, occupied vehicle, place of
18 business or place of worship~~;~~;

19 ~~b.~~

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

23 ~~2.~~ 3. The person who uses defensive force knew or had a
24 reasonable belief that the person against whom the defensive force
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1 was used entered or was attempting to enter into a dwelling,
2 residence, occupied vehicle, place of business or place of worship
3 for the purpose of committing a forcible felony, as defined in
4 Section 733 of this title, and that the defensive force was
5 necessary to prevent the commission of the forcible felony.

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

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

13 2. The person or persons sought to be removed are children or
14 grandchildren, or are otherwise in the lawful custody or under the
15 lawful guardianship, of the person against whom the defensive force
16 is used; or

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

21 D. A person who is not engaged in an unlawful activity and who
22 is attacked in any other place where he or she has a right to be has
23 no duty to retreat and has the right to stand his or her ground and
24 meet force with force, including deadly force, if he or she

1 reasonably believes it is necessary to do so to prevent death or
2 great bodily harm to himself or herself or another or to prevent the
3 commission of a forcible felony.

4 E. A person who unlawfully and by force enters or attempts to
5 enter the dwelling, residence, occupied vehicle of another person,
6 place of business or place of worship is presumed to be doing so
7 with the intent to commit an unlawful act involving force or
8 violence.

9 F. 1. A person who uses defensive force, as permitted pursuant
10 to the provisions of ~~subsections A, B, D and E~~ of this section, ~~is~~
11 ~~justified in using such defensive force and is immune from~~ shall not
12 be subject to criminal prosecution and or civil action for the use
13 of such defensive force, unless the force is determined to be
14 unlawful.

15 2. At least ten (10) days prior to the preliminary hearing in a
16 case where a defendant has been charged and is subject to criminal
17 prosecution for the unlawful use of defensive force, the defendant
18 may file a motion to dismiss the charges based on a claim that under
19 the provisions of this section, the defendant is not subject to
20 criminal prosecution. If the court denies the motion to dismiss,
21 the defendant shall have the right to file an interlocutory appeal
22 on the ruling made by the court to the district or associate
23 district court judge having jurisdiction over the case.

1 3. The appeal hearing before the district or associate district
2 court judge shall address whether the defensive force used by the
3 defendant was unlawful or justified and permitted pursuant to the
4 provisions of this section. If, after the appeal hearing, the
5 district or associate district court judge concludes that the
6 defensive force used was justified and permitted under the
7 provisions of this section, the judge shall enter a written order
8 containing findings of fact and conclusions of law that the
9 defendant is not subject to criminal prosecution and that criminal
10 charges and proceedings shall be dismissed and shall not be filed
11 unless newly discovered evidence or evidence not known to the
12 prosecution at the time is found or discovered. If, after the
13 appeal hearing, the district or associate district court judge
14 concludes that the defensive force used was not justified and
15 therefore unlawful, the judge shall enter an order binding the
16 defendant over for trial.

17 4. Once prima facie evidence of justified self-defense has been
18 raised by the defendant, the State of Oklahoma shall be required to
19 prove by clear and convincing evidence that the defensive force used
20 was not justified and therefore unlawful.

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

23 G. A law enforcement agency may use standard procedures for
24 investigating the use of defensive force, but the law enforcement

1 agency may not arrest the person for using defensive force unless it
2 determines that there is probable cause that the defensive force
3 that was used was unlawful.

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

9 I. The provisions of this section and the provisions of the
10 Oklahoma Self-Defense Act shall not be construed to require any
11 person using a weapon pursuant to the provisions of this section to
12 be licensed in any manner.

13 J. A person pointing a weapon at a perpetrator in self-defense
14 or ~~in order~~ to thwart, stop or deter a forcible felony or attempted
15 forcible felony shall not be deemed guilty of committing a criminal
16 act.

17 K. As used in this section:

18 1. "Defensive force" includes, but ~~shall~~ is not be limited to,
19 pointing a weapon at a perpetrator in self-defense or ~~in order~~ to
20 thwart, stop or deter a forcible felony or attempted forcible
21 felony;

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

3 3. "Place of worship" means:

4 a. any permanent building, structure, facility or office
5 space owned, leased, rented or borrowed, on a full-
6 time basis, when used for worship services, activities
7 and business of the congregation, which may include,
8 but is not ~~be~~ limited to, churches, temples,
9 synagogues and mosques, and

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

16 4. "Residence" means a dwelling in which a person resides
17 either temporarily or permanently or is visiting as an invited
18 guest; and

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

21 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1053, as
22 amended by Section 2, Chapter 209, O.S.L. 2022 (22 O.S. Supp. 2022,
23 Section 1053), is amended to read as follows:

1 Section 1053. Appeals to the Court of Criminal Appeals may be
2 taken by the state or a municipality in the following cases only:

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

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

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

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

9 5. Upon a pretrial order, decision, or judgment suppressing or
10 excluding evidence where appellate review of the issue would be in
11 the best interests of justice;

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

15 7. Upon ~~an~~ a pretrial order, decision or judgment finding that
16 a defendant is ~~immune from or~~ not subject to criminal prosecution
17 under the provisions of Section 1289.25 of Title 21 of the Oklahoma
18 Statutes.

19 Priority shall be given to appeals taken pursuant to paragraph
20 5, 6, or 7 of this section, and an order staying proceedings shall
21 be entered pending the outcome of the appeal.

22 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1089.1, is
23 amended to read as follows:
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1 Section 1089.1. The State of Oklahoma, by and through the
2 district attorney or Attorney General, shall have the right to
3 appeal an adverse ruling or order of a magistrate ~~sustaining~~:

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

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

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

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

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

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

12 7. Discharging a defendant at the preliminary examination
13 because of insufficiency of the evidence to establish either that a
14 crime has been committed or that there is probable cause to believe
15 that the accused has committed a felony; or

16 8. Discharging a defendant on a finding that the defendant is
17 not subject to criminal prosecution under the provisions of Section
18 1289.25 of Title 21 of the Oklahoma Statutes.

19 Such an appeal shall be taken in accordance with the procedures
20 provided in this act.

21 SECTION 4. This act shall become effective November 1, 2023.

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