

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 40

By: Bergstrom, David and
Brecheen of the Senate

3
4 and

Cleveland, Calvey and Coody
5 of the House

6
7
8 [firearms - felony pointing firearms - physical or
9 deadly force against an intruder - effective date]

10
11 AUTHORS: Add the following House Coauthors: Gann and Roberts (Sean)

12 AUTHOR: Add the following Senate Coauthor: Dahm

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14 AMENDMENT NO. 1. Replace the stricken title, enacting clause and
15 entire bill and insert

16 "An Act relating to firearms; amending 21 O.S. 2011,
17 Section 1289.16, as amended by Section 20, Chapter
18 259, O.S.L. 2012 (21 O.S. Supp. 2016, Section
19 1289.16), which relates to felony pointing firearms;
20 providing an exception; modifying inclusions;
21 amending 21 O.S. 2011, Section 1289.25, which
22 relates to physical or deadly force against an
23 intruder; making certain preclusions; providing
24 definition; 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 1289.16, as
2 amended by Section 20, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,
3 Section 1289.16), is amended to read as follows:

4 Section 1289.16

5 FELONY POINTING FIREARMS

6 ~~It~~ Except for an act of self-defense, it shall be unlawful for
7 any person to willfully or without lawful cause point a shotgun,
8 rifle or pistol, or any deadly weapon, whether loaded or not, at any
9 person or persons for the purpose of threatening or with the
10 intention of discharging the firearm or with any malice or for any
11 purpose of injuring, either through physical injury or mental or
12 emotional intimidation or for purposes of whimsy, humor or prank, or
13 in anger or otherwise, but not to include the pointing of shotguns,
14 rifles or pistols by law enforcement authorities in the performance
15 of their duties, armed security guards licensed by the Council on
16 Law Enforcement Education and Training pursuant to the Oklahoma
17 Security Guard and Private Investigator Act in the performance of
18 their duties, members of the state military forces in the
19 performance of their duties, members of the federal military reserve
20 and active military components in the performance of their duties,
21 or any federal government law enforcement officer in the performance
22 of any duty, or in the performance of a play on stage, rodeo,
23 television or on film, or in defense of any person, one's home or
24 property. Any person convicted of a violation of the provisions of

1 this section shall be punished as provided in Section 1289.17 of
2 this title.

3 Any person convicted of a violation of the provisions of this
4 section after having been issued a handgun license pursuant to the
5 Oklahoma Self-Defense Act shall have the license revoked and shall
6 be subject to an administrative fine of One Thousand Dollars
7 (\$1,000.00), upon a hearing and determination by the Oklahoma State
8 Bureau of Investigation that the person is in violation of the
9 provisions of this section.

10 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1289.25, is
11 amended to read as follows:

12 Section 1289.25

13 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

14 A. The Legislature hereby recognizes that the citizens of the
15 State of Oklahoma have a right to expect absolute safety within
16 their own homes or places of business.

17 B. A person or an owner, manager or employee of a business is
18 presumed to have held a reasonable fear of imminent peril of death
19 or great bodily harm to himself or herself or another when using
20 defensive force that is intended or likely to cause death or great
21 bodily harm to another if:

22 1. The person against whom the defensive force was used was in
23 the process of unlawfully and forcefully entering, or had unlawfully
24 and forcibly entered, a dwelling, residence, occupied vehicle, or a

1 place of business, or if that person had removed or was attempting
2 to remove another against the will of that person from the dwelling,
3 residence, occupied vehicle, or place of business; and

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.

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

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

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

18 3. The person who uses defensive force is engaged in an
19 unlawful activity or is using the dwelling, residence, occupied
20 vehicle, or place of business to further an 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 or a place of business is presumed to be doing so with the intent to
7 commit an unlawful act involving force or violence.

8 F. A person who uses defensive force, as permitted pursuant to
9 the provisions of subsections B and D of this section, is justified
10 in using such defensive force and is immune from criminal
11 prosecution and civil action for the use of such defensive force.
12 As used in this subsection, the term "criminal prosecution" includes
13 charging or prosecuting the defendant.

14 G. A law enforcement agency may use standard procedures for
15 investigating the use of defensive force, but the law enforcement
16 agency may not arrest the person for using defensive force unless it
17 determines that there is probable cause that the defensive force
18 that was used was unlawful.

19 H. The court shall award reasonable attorney fees, court costs,
20 compensation for loss of income, and all expenses incurred by the
21 defendant in defense of any civil action brought by a plaintiff if
22 the court finds that the defendant is immune from prosecution as
23 provided in subsection F of this section.

24

1 I. The provisions of this section and the provisions of the
2 Oklahoma Self-Defense Act shall not be construed to require any
3 person using a ~~pistol~~ weapon pursuant to the provisions of this
4 section to be licensed in any manner.

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

9 K. As used in this section:

10 1. "Defensive force" includes, but shall not be limited to,
11 pointing a weapon at a perpetrator in self-defense or in order to
12 thwart, stop or deter a forcible felony or attempted forcible
13 felony;

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

18 ~~2.~~ 3. "Residence" means a dwelling in which a person resides
19 either temporarily or permanently or is visiting as an invited
20 guest; and

21 ~~3.~~ 4. "Vehicle" means a conveyance of any kind, whether or not
22 motorized, which is designed to transport people or property.

23 SECTION 3. This act shall become effective November 1, 2017."
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2 BILL NO. 40

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8 [firearms - felony pointing firearms - physical or
9 deadly force against an intruder - effective date]
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 4. AMENDATORY 21 O.S. 2011, Section 1289.16, as
13 amended by Section 20, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,
14 Section 1289.16), is amended to read as follows:

15 Section 1289.16.

16 FELONY POINTING FIREARMS

17 ~~It~~ Except for an act of self-defense, it shall be unlawful for
18 any person to willfully or without lawful cause point a shotgun,
19 rifle or pistol, or any deadly weapon, whether loaded or not, at any
20 person or persons for the purpose of threatening or with the
21 intention of discharging the firearm or with any malice or for any
22 purpose of injuring, either through physical injury or mental or
23 emotional intimidation or for purposes of whimsy, humor or prank, or
24 in anger or otherwise, but not to include the pointing of shotguns,

1 rifles or pistols by law enforcement authorities in the performance
2 of their duties, armed security guards or armed private
3 investigators licensed by the Council on Law Enforcement Education
4 and Training pursuant to the Oklahoma Security Guard and Private
5 Investigator Act in the performance of their duties, members of the
6 state military forces in the performance of their duties, members of
7 the federal military reserve and active military components in the
8 performance of their duties, or any federal government law
9 enforcement officer in the performance of any duty, or in the
10 performance of a play on stage, rodeo, television or on film, or in
11 defense of any person, one's home or property. Any person convicted
12 of a violation of the provisions of this section shall be punished
13 as provided in Section 1289.17 of this title.

14 Any person convicted of a violation of the provisions of this
15 section after having been issued a handgun license pursuant to the
16 Oklahoma Self-Defense Act shall have the license revoked and shall
17 be subject to an administrative fine of One Thousand Dollars
18 (\$1,000.00), upon a hearing and determination by the Oklahoma State
19 Bureau of Investigation that the person is in violation of the
20 provisions of this section.

21 SECTION 5. AMENDATORY 21 O.S. 2011, Section 1289.25, is
22 amended to read as follows:

23 Section 1289.25.

24 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

1 A. The Legislature hereby recognizes that the citizens of the
2 State of Oklahoma have a right to expect absolute safety within
3 their own homes or places of business.

4 B. A person or an owner, manager or employee of a business is
5 presumed to have held a reasonable fear of imminent peril of death
6 or great bodily harm to himself or herself or another when using
7 defensive force that is intended or likely to cause death or great
8 bodily harm to another if:

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

15 2. The person who uses defensive force knew or had reason to
16 believe that an unlawful and forcible entry or unlawful and forcible
17 act was occurring or had occurred.

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

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

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

5 3. The person who uses defensive force is engaged in an
6 unlawful activity or is using the dwelling, residence, occupied
7 vehicle, or place of business to further an unlawful activity.

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

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

19 F. A person who uses defensive force, as permitted pursuant to
20 the provisions of subsections B and D of this section, is justified
21 in using such defensive force and is immune from criminal
22 prosecution and civil action for the use of such defensive force.
23 As used in this subsection, the term "criminal prosecution" includes
24 charging or prosecuting the defendant.

1 G. A law enforcement agency may use standard procedures for
2 investigating the use of defensive force, but the law enforcement
3 agency may not arrest the person for using defensive force unless it
4 determines that there is probable cause that the defensive force
5 that was used was unlawful.

6 H. The court shall award reasonable attorney fees, court costs,
7 compensation for loss of income, and all expenses incurred by the
8 defendant in defense of any civil action brought by a plaintiff if
9 the court finds that the defendant is immune from prosecution as
10 provided in subsection F of this section.

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