

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 897

5 By: Newhouse

6 **[Oklahoma Self-Defense Act - physical or deadly**
7 **force used upon an intruder - immunity - pretrial**
8 **hearing - interlocutory appeal - effective date]**

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

10 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.25, as
11 last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.
12 2018, Section 1289.25), is amended to read as follows:

13 Section 1289.25.

14 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

15 A. The Legislature hereby recognizes that the citizens of the
16 State of Oklahoma have a right to expect absolute safety within
17 their own homes, places of business or places of worship and have
18 the right to establish policies regarding the possession of weapons
19 on property pursuant to the provisions of Section 1290.22 of this
20 title.

21 B. A person, regardless of official capacity or lack of
22 official capacity, within a place of worship or a person, an owner,
23 manager or employee of a business is presumed to have held a
24 reasonable fear of imminent peril of death or great bodily harm to

1 himself or herself or another when using defensive force that is
2 intended or likely to cause death or great bodily harm to another
3 if:

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

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

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

24

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

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

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

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

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

23 E. A person who unlawfully and by force enters or attempts to
24 enter the dwelling, residence, occupied vehicle of another person,

1 place of business or place of worship is presumed to be doing so
2 with the intent to commit an unlawful act involving force or
3 violence.

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

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

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

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

24

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

5 K. 1. A person who uses defensive force, including deadly
6 physical force, as justified and permitted pursuant to this section
7 shall be immune from criminal prosecution and civil action for the
8 use of such force, unless the force was determined to be unlawful.

9 2. Prior to commencement of a trial in a case in which a
10 defense is claimed under this section, the court having jurisdiction
11 over the case, upon motion of the defendant, shall conduct a
12 pretrial hearing to determine whether the defensive force, including
13 deadly force, used by the defendant was justified or whether it was
14 unlawful under this section. During any pretrial hearing to
15 determine immunity, the prosecuting attorney must prove beyond a
16 reasonable doubt that the defendant's claim of immunity is
17 unfounded. The defendant's appearance at the pretrial hearing shall
18 not constitute a waiver of immunity or any other right or defense.

19 3. If, after a pretrial hearing, as provided in paragraph 2 of
20 this subsection, the court concludes that the prosecutor has not
21 proven beyond a reasonable doubt that the force used, including
22 deadly force, was unjustified, the court shall enter an order
23 finding the defendant immune from criminal prosecution and
24 dismissing the criminal charge.

1 4. If, after a pretrial hearing, as provided in paragraph 2 of
2 this subsection, the court concludes that the prosecutor has proven
3 beyond a reasonable doubt that the force used, including deadly
4 force, was unjustified, the court shall enter an order binding the
5 defendant over for trial. The order shall be considered a final
6 appealable order and the defendant shall have the right to an
7 interlocutory appeal on the issue of statutory immunity before the
8 trial proceeds.

9 5. In the event that statutory immunity under this section does
10 not apply, the defendant may continue to pursue the defense of self-
11 defense or defense of another person at trial. Once the issue of
12 self-defense or defense of another person has been raised by the
13 defendant, the state continues to bear the burden of proving beyond
14 a reasonable doubt all of the elements of the charged conduct.

15 L. As used in this section:

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

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

24 3. "Place of worship" means:

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

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

13 4. "Residence" means a dwelling in which a person resides
14 either temporarily or permanently or is visiting as an invited
15 guest; ~~and~~

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

18 6. "Immune" or "Immunity" shall mean that the defendant is
19 statutorily exempt from further action and shall not be arrested,
20 charged or prosecuted.

21 SECTION 2. This act shall become effective November 1, 2019.

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
23 February 26, 2019 - DO PASS AS AMENDED
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