

1 STATE OF OKLAHOMA

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

3 SENATE BILL 831

By: Dahm

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6 AS INTRODUCED

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

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

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

22 Section 1289.25.

23 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, places of business or places of worship and have
4 the right to establish policies regarding the possession of weapons
5 on property pursuant to the provisions of Section 1290.22 of this
6 title.

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

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

21 ~~b.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

18 6. Once prima facie evidence of justified self-defense has been
19 raised by the defendant, the prosecution shall be required to prove
20 by clear and convincing evidence that the defensive force used was
21 not justified and was thereby unlawful.

22 7. As used in this subsection, the term "criminal prosecution"
23 includes 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~~ not subject to
10 prosecution as provided in subsection F of this section.

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

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

19 K. As used in this section:

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

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

5 3. "Place of worship" means:

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

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

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

21 5. "Vehicle" means a conveyance of any kind, whether or not
22 motorized, which is designed to transport people or property.
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1 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1053, as
2 amended by Section 2, Chapter 209, O.S.L. 2022 (22 O.S. Supp. 2022,
3 Section 1053), is amended to read as follows:

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

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

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

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

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

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

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

18 7. Upon an order, decision or judgment finding that a defendant
19 is immune from or not subject to criminal prosecution; and

20 8. Upon a pretrial order, decision, or judgment finding that a
21 defendant is not subject to criminal prosecution under the
22 provisions of Section 1289.25 of Title 21 of the Oklahoma Statutes.
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1 Priority shall be given to appeals taken pursuant to paragraph
2 5, 6, or 7 of this section, and an order staying proceedings shall
3 be entered pending the outcome of the appeal.

4 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1089.1, is
5 amended to read as follows:

6 Section 1089.1. The State of Oklahoma, by and through the
7 district attorney or Attorney General, shall have the right to
8 appeal an adverse ruling or order of a magistrate ~~sustaining~~:

- 9 1. Sustaining a motion to suppress evidence, ~~quashing~~;
- 10 2. Quashing an information, ~~sustaining~~;
- 11 3. Sustaining a plea to the jurisdiction of the court, ~~failing~~;
- 12 4. Failing to find prosecutive merit in a hearing pursuant to
13 Section 2-2-403 of Title 10A of the Oklahoma Statutes, ~~sustaining~~;
- 14 5. Sustaining a demurrer to the information, ~~binding~~;
- 15 6. Binding the defendant over for trial on a charge other than
16 the charge for the original offense, ~~or discharging~~;
- 17 7. Discharging a defendant at the preliminary examination
18 because of insufficiency of the evidence to establish either that a
19 crime has been committed or that there is probable cause to believe
20 that the accused has committed a felony; or
- 21 8. Discharging a defendant on a finding that the defendant is
22 not subject to criminal prosecution under the provisions of Section
23 1289.25 of Title 21 of the Oklahoma Statutes.

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

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

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