

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 897

By: Dahm

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Self-Defense Act;
8 amending 21 O.S. 2011, Section 1289.25, as last
9 amended by Section 1, Chapter 218, O.S.L. 2018 (21
10 O.S. Supp. 2018, Section 1289.25), which relates to
11 physical or deadly force used upon an intruder;
12 providing for immunity from certain prosecution;
13 requiring court to have pretrial hearing to determine
14 unlawful use of force; allowing certain interlocutory
15 appeal; providing definition; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.25, as
19 last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.
20 2018, Section 1289.25), is 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
25 their own homes, places of business or places of worship and have
26 the right to establish policies regarding the possession of weapons

1 on property pursuant to the provisions of Section 1290.22 of this
2 title.

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

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

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

23 2. The person who uses defensive force knew or had a reasonable
24 belief that the person against whom the defensive force was used

1 entered or was attempting to enter into a dwelling, residence,
2 occupied vehicle, place of business or place of worship for the
3 purpose of committing a forcible felony, as defined in Section 733
4 of this title, and that the defensive force was necessary to prevent
5 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. A person who uses defensive force, as permitted pursuant to
10 the provisions of subsections A, B, D and E of this section, is
11 justified in using such defensive force and is immune from criminal
12 prosecution and civil action for the use of such defensive force.
13 As used in this subsection, the term "criminal prosecution" includes
14 charging or prosecuting the defendant.

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

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

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 weapon pursuant to the provisions of this section to
4 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. 1. A person who uses defensive force, including deadly
10 physical force, as justified and permitted pursuant to this section
11 shall be immune from criminal prosecution and civil action for the
12 use of such force, unless the force was determined to be unlawful.

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

23 3. If, after a pretrial hearing, as provided in paragraph 2 of
24 this subsection, the court concludes that the prosecutor has not

1 proven beyond a reasonable doubt that the force used, including
2 deadly force, was unjustified, the court shall enter an order
3 finding the defendant immune from criminal prosecution and
4 dismissing the criminal charge.

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

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

19 L. 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 not be limited to, churches, temples, synagogues
11 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 but not limited to, churches, temples, synagogues and
17 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; and
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6. "Immune" or "Immunity" shall mean that the defendant is
statutorily exempt from further action and shall not be arrested,
charged or prosecuted.

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

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