

1 STATE OF OKLAHOMA

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

3 SENATE BILL NO. 991

By: Newhouse

4  
5  
6 AS INTRODUCED

7 An Act relating to use of deadly force; amending 21  
8 O.S. 2011, Section 1289.25, as last amended by  
9 Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.  
10 2018, Section 1289.25), which relates to physical or  
11 deadly force against intruder; updating header;  
12 modifying definitions; providing for certain  
13 immunity; establishing procedures for certain  
14 pretrial hearing; stating burden of proof when  
15 certain immunity claims are raised in criminal  
16 prosecutions; requiring dismissal of charges under  
17 certain circumstances; and providing an effective  
18 date.

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

20 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.25, as  
21 last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.  
22 2018, Section 1289.25), is amended to read as follows:

23 Section 1289.25.

24 PHYSICAL OR DEADLY FORCE ~~AGAINST INTRUDER~~

25 A. The Legislature hereby recognizes that the citizens of the  
26 State of Oklahoma have a right to expect absolute safety within  
27 their own homes, places of business or places of worship and have  
28 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. 1. As used in this subsection:

10 a. "criminal prosecution" includes charging or  
11 prosecuting the defendant; and

12 b. "immune" or "immunity" means that the defendant is  
13 statutorily exempt from further action and shall not  
14 be arrested, charged or prosecuted thereafter.

15 2. A person who uses defensive force, as permitted pursuant to  
16 the provisions of subsections A, B, D and E of this section, is  
17 justified in using such defensive force and is immune from criminal  
18 prosecution and civil action for the use of such defensive force.

19 ~~As used in this subsection, the term "criminal prosecution" includes~~  
20 ~~charging or prosecuting the defendant~~ A person who uses force,  
21 including deadly physical force, as justified and permitted in this  
22 section is immune from criminal prosecution and civil action for the  
23 use of such force, unless the force was determined to be unlawful.

1       3. Prior to the commencement of a trial in a case in which a  
2 defense is claimed under this section, the court having jurisdiction  
3 over such case, upon motion of the defendant, shall conduct a  
4 pretrial hearing to determine whether the force, including deadly  
5 force, used by the defendant was justified or whether it was  
6 unlawful under this section. During any pretrial hearing to  
7 determine immunity, the prosecuting attorney must prove beyond a  
8 reasonable doubt that the defendant's claim of immunity is  
9 unfounded. The defendant's appearance at the pretrial hearing shall  
10 not constitute a waiver of immunity or any other rights or defenses.

11       4. After a pretrial hearing under paragraph 3 of this  
12 subsection, if the court concludes that the prosecutor has not  
13 proven beyond a reasonable doubt that the force used, including  
14 deadly force, was unjustified, the court shall enter an order  
15 finding the defendant immune from criminal prosecution and  
16 dismissing the criminal charges.

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

22       H. The court shall award reasonable attorney fees, court costs,  
23 compensation for loss of income, and all expenses incurred by the  
24 defendant in defense of any civil action brought by a plaintiff if

1 the court finds that the defendant is immune from prosecution as  
2 provided in subsection F of this section.

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

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

11 K. As used in this section:

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

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

20 3. "Place of worship" means:

21 a. any permanent building, structure, facility or office  
22 space owned, leased, rented or borrowed, on a full-  
23 time basis, when used for worship services, activities  
24 and business of the congregation, which may include,

1 but not be limited to, churches, temples, synagogues  
2 and mosques, and

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

9 4. "Residence" means a dwelling in which a person resides  
10 either temporarily or permanently or is visiting as an invited  
11 guest; and

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

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

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