

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1662

By: West (Kevin)

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5  
6 AS INTRODUCED

7  
8 An Act relating to firearms; amending 21 O.S. 2011,  
9 Section 1289.25, as last amended by Section 1,  
10 Chapter 218, O.S.L. 2018 (21 O.S. Supp. 2020, Section  
11 1289.25), which relates to the Oklahoma Firearms Act  
12 of 1971; updating statutory reference; clarifying  
13 immunity provision for persons asserting claims of  
14 self-defense; authorizing defendants to file motions  
15 to dismiss charges under certain circumstances;  
16 granting defendants the right to file interlocutory  
17 appeals after adverse rulings made by the court;  
18 providing parameters for appeal hearings; directing  
19 judges to enter certain order at conclusion of appeal  
20 hearings; providing burden-of-proof standard when  
21 claim of self-defense is raised in criminal  
22 prosecutions; amending 22 O.S. 2011, Sections 1053  
23 and 1089.1, which relate to appeals taken by the  
24 state or municipality; authorizing appeals by the  
state or municipalities under certain circumstances;  
granting the state the right to appeal adverse  
rulings or orders; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.25, as  
last amended by Section 1, Chapter 218, O.S.L. 2018 (21 O.S. Supp.  
2020, Section 1289.25), is amended to read as follows:

Section 1289.25



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

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

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

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

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

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

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

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

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

21 2. At the initial arraignment in a case where a defendant has  
22 been charged and is subject to criminal prosecution for the unlawful  
23 use of defensive force, the defendant may file a motion to dismiss  
24 the charges based on a claim that under the provisions of this

1 section, the defendant is not subject to criminal prosecution. If  
2 the court denies the motion to dismiss, the defendant shall have the  
3 right to file an interlocutory appeal on the ruling made by the  
4 court to the district court judge or associate district court judge  
5 having jurisdiction over the case.

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

10 4. If, after the appeal hearing, the district court judge or  
11 associate district court judge concludes that the defensive force  
12 used was justified and permitted under the provisions of this  
13 section, the judge shall enter an order with findings that the  
14 defendant is not subject to criminal prosecution and that criminal  
15 charges and proceedings shall be dismissed.

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

20 6. Once a prima facie claim of justified self-defense has been  
21 raised by the defendant, the State of Oklahoma shall be required to  
22 prove beyond reasonable doubt that the defensive force used was not  
23 justified and was thereby unlawful.

1        7. As used in this subsection, the term "criminal prosecution"  
2 includes charging or prosecuting the defendant.

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

8        H. The court shall award reasonable attorney fees, court costs,  
9 compensation for loss of income, and all expenses incurred by the  
10 defendant in defense of any civil action brought by a plaintiff if  
11 the court finds that the defendant is ~~immune from~~ not subject to  
12 prosecution as provided in subsection F of this section.

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

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

21        K. As used in this section:

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

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

7 3. "Place of worship" means:

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

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

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

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

1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1053, is  
2 amended to read as follows:

3 Section 1053. Appeals to the Court of Criminal Appeals may be  
4 taken by the state or a municipality in the following cases and no  
5 other:

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; ~~and~~

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 a pretrial order, decision or judgment finding that a  
19 defendant is not subject to criminal prosecution under the  
20 provisions of Section 1289.25 of Title 21 of the Oklahoma Statutes.

21 Priority shall be given to appeals taken pursuant to paragraph 5  
22 or 6 of this section, and an order staying proceedings shall be  
23 entered pending the outcome of the appeal.

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1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1089.1, is  
2 amended to read as follows:

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

6 1. Sustaining a motion to suppress evidence, ~~quashing~~;

7 2. Quashing an information, ~~sustaining~~;

8 3. Sustaining a plea to the jurisdiction of the court, ~~failing~~;

9 4. Failing to find prosecutive merit in a hearing pursuant to  
10 Section 2-2-403 of Title 10A of the Oklahoma Statutes, ~~sustaining~~;

11 5. Sustaining a demurrer to the information, ~~binding~~;

12 6. Binding the defendant over for trial on a charge other than  
13 the charge for the original offense, ~~or discharging~~;

14 7. Discharging a defendant at the preliminary examination  
15 because of insufficiency of the evidence to establish either that a  
16 crime has been committed or that there is probable cause to believe  
17 that the accused has committed a felony; or

18 8. Discharging a defendant on a finding that the defendant is  
19 not subject to criminal prosecution under the provisions of Section  
20 1289.25 of Title 21 of the Oklahoma Statutes.

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

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SECTION 4. This act shall become effective November 1, 2021.

58-1-6154            GRS            12/29/20