

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 947

By: Ellis

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5  
6 AS INTRODUCED

7 An Act relating to deadly force; amending 21 O.S.  
8 2001, Section 1289.25, as amended by Section 2,  
9 Chapter 145, O.S.L. 2006 (21 O.S. Supp. 2008, Section  
10 1289.25), which relates to deadly force against  
11 intruder; deleting provision for stand your ground  
12 use of deadly force; conforming language; qualifying  
13 certain agency; prohibiting district attorney and  
14 certain staff from making certain determination;  
15 modifying references; declaring certain deadly force  
16 to be justified; granting immunity from prosecution  
17 and civil action for certain use of deadly force;  
18 defining term; requiring district attorney to file  
19 certain action before certain action; providing for  
20 certain jury to hear certain matters; requiring  
21 certain jury to make certain determination; stating  
22 certain burdens of proof for certain parties;  
23 declaring presumption of immunity under certain  
24 circumstance; prohibiting certain evidence be used in  
subsequent prosecution or civil action; declaring  
Legislative intent for certain conduct; making  
provision for stand your ground use of deadly force;  
requiring certain use of deadly force to be evaluated  
by police standards; stating circumstances for lawful  
use of deadly force; providing distance requirement  
and authorization for certain use of deadly force;  
providing for use of deadly force against unarmed  
persons under certain circumstance; stating lawful  
use of deadly force for unarmed aggressor; directing  
deadly force be evaluated under certain standards;  
granting certain immunity for use of deadly force  
against unarmed persons; defining terms; requiring  
certain hearing before charging person for use of  
deadly force in certain circumstances; providing  
presumption of immunity for deadly force against  
unarmed person under certain circumstance;

1 prohibiting use of certain evidence; requiring award  
2 of attorney fees, court costs and compensation for  
3 loss of income and civil expenses; providing for  
4 codification; and providing an effective date.

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

6 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1289.25, as  
7 amended by Section 2, Chapter 145, O.S.L. 2006 (21 O.S. Supp. 2008,  
8 Section 1289.25), is amended to read as follows:

9 Section 1289.25

10 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

11 A. The Legislature hereby recognizes that the citizens of the  
12 State of Oklahoma have a right to expect absolute safety within  
13 their own homes.

14 B. A person is presumed to have held a reasonable fear of  
15 imminent peril of death or great bodily harm to himself or herself  
16 or another when using defensive force that is intended or likely to  
17 cause death or great bodily harm to another if:

18 1. The person against whom the defensive force was used was in  
19 the process of unlawfully and forcefully entering, or had unlawfully  
20 and forcibly entered, a dwelling, residence, or occupied vehicle, or  
21 if that person had removed or was attempting to remove another  
22 against the will of that person from the dwelling, residence, or  
23 occupied vehicle; and

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.

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

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

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

15           3. The person who uses defensive force is engaged in an  
16 unlawful activity or is using the dwelling, residence, or occupied  
17 vehicle to further an unlawful activity.

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

1       ~~E.~~ A person who unlawfully and by force enters or attempts to  
2 enter the dwelling, residence, or occupied vehicle of another person  
3 is presumed to be doing so with the intent to commit an unlawful act  
4 involving force or violence.

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

11       ~~G.~~ F. A ~~law enforcement agency~~ police department or sheriff's  
12 office may use standard procedures for investigating the use of  
13 force, but ~~the~~ said law enforcement agency may not arrest the person  
14 for using force unless it determines that there is probable cause  
15 that the force that was used was unlawful. A district attorney and  
16 his or her staff shall not constitute a law enforcement agency in  
17 making said determination.

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

23       ~~I.~~ H. The provisions of this section and the provisions of the  
24 Oklahoma Self-Defense Act, Sections 1290.1 through 1290.26 of this

1 title, shall not be construed to require any person using a pistol  
2 pursuant to the provisions of this section to be licensed in any  
3 manner.

4 ~~J.~~ I. As used in this section:

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

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

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

14 J. A person who uses force as permitted pursuant to the  
15 provisions of this section is justified in using such force and is  
16 immune from criminal prosecution and civil action for the use of  
17 such force. As used in this subsection, "criminal prosecution"  
18 includes charging or prosecuting the defendant.

19 K. Prior to charging or prosecuting a person using a pistol,  
20 rifle, or shotgun for use of force pursuant to the provisions of  
21 subsection B of this section, the district attorney shall file an  
22 action against the said person directing him or her to appear on a  
23 day and time certain to make a determination before a jury of twelve  
24 persons as to whether or not the use of force was unlawful. The

1 burden of proof by the district attorney shall be beyond a  
2 reasonable doubt, and the burden of proof by the person using a  
3 pistol, rifle, or shotgun shall be by a reasonable doubt. If, after  
4 the investigation by a police department or sheriff's office, the  
5 investigation did not result in an arrest of the person, there shall  
6 be a presumption of immunity from being charged or prosecuted for  
7 said use of force. Provided, however, if said jury finds from the  
8 facts that said person is not eligible for immunity, said  
9 determination shall not be used as evidence in any subsequent  
10 criminal prosecution or any civil action.

11 SECTION 2. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1289.25A of Title 21, unless  
13 there is created a duplication in numbering, reads as follows:

14 USE OF DEADLY FORCE AGAINST UNARMED AGGRESSOR

15 A. The Legislature hereby recognizes that the citizens of the  
16 State of Oklahoma have an inherent right to expect absolute safety  
17 in any place where that person has a lawful right to be, and to  
18 exercise the inherent right of self protection to avoid death,  
19 threat of death, or misdemeanor threat of battery, or battery which  
20 could result in serious bodily injury. The Legislature further  
21 recognizes the citizens of Oklahoma have a right not to endure a  
22 beating from an unprovoked unarmed aggressor before using deadly  
23 force.

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1 B. A person who is not engaged in an unlawful activity and who  
2 is attacked in any place where he or she has a right to be has no  
3 duty to retreat from an aggressor and has the right to stand his or  
4 her ground and meet force with force, including deadly force, and  
5 said use of force shall be evaluated under the same standards as if  
6 that person were a police officer in the performance of his or her  
7 duties and under the same standards utilized by police officers  
8 under the same or similar circumstances. Use of deadly force is  
9 presumed lawful and justified under any of the following  
10 circumstances:

11 1. If said person is the subject of an attack immediately  
12 following exhibition of road rage by an aggressor;

13 2. If the aggressor is armed with a firearm or imitation  
14 firearm; or

15 3. If the aggressor is displaying a deadly weapon, other than a  
16 firearm, such as a knife of any type or length, a club, stick,  
17 baton, bat, or any other weapon capable of causing death or serious  
18 bodily injury to the person;

19 C. Under the circumstances of paragraph 2 of subsection B of  
20 this section, the person attacked by an aggressor is justified in  
21 the use of deadly force at any distance rather than risk death or  
22 serious injury by gunshot.

23 D. Under the circumstances of paragraph 3 of subsection B of  
24 this section, the person attacked by an aggressor is justified in

1 the use of deadly force at a distance of not to exceed twenty-one  
2 (21) feet.

3 E. A person who, without provocation, is not engaged in an  
4 unlawful activity and who is attacked in any place where he or she  
5 has a right to be has no duty to retreat and has the right to stand  
6 his or her ground and meet force with force, including deadly force,  
7 if he or she reasonably believes it is necessary to do so to prevent  
8 death or great bodily harm to himself or herself or another or to  
9 prevent the commission of a forcible felony.

10 F. A person who is the subject of an unarmed aggressor is  
11 justified in the use of a deadly force under the following  
12 circumstances:

13 1. If the aggressor, if unarmed, by autopsy and qualitative and  
14 quantitative analysis of blood by the State Medical Examiner, is  
15 found to be legally intoxicated and/or containing any amount of  
16 mind-altering illegal drugs;

17 2. If the aggressor during the attack upon the person threatens  
18 to kill or injure the person or uses words reasonably susceptible of  
19 interpretation amounting to a threat to kill or causing bodily  
20 injury;

21 3. If the aggressor commences a misdemeanor assault or battery  
22 against the person;

23 4. If the aggressor threatens or attempts a forcible rape; or

24 5. If the aggressor threatens or attempts a kidnap.

1 G. A police department or sheriff's office may use standard  
2 procedures for investigating the use of force, but said law  
3 enforcement agency may not arrest the person for using force unless  
4 it determines that there is probable cause the force that was used  
5 was unlawful. A district attorney and his or her staff shall not  
6 constitute a law enforcement agency in making said determination. A  
7 determination that there is no probable cause to make an arrest  
8 because the force used was lawful shall provide a presumption the  
9 use of force was lawful.

10 H. A person who uses force as permitted pursuant to the  
11 provisions of this section is justified in using such force and is  
12 immune from criminal prosecution and civil action for the use of  
13 such force. As used in this subsection, the term "criminal  
14 prosecution" includes charging or prosecuting the defendant.

15 I. As used in this section:

16 1. "Road Rage" means a traffic exhibition of rage or aggression  
17 by an aggressor displaying evidence of a psychological disorder  
18 termed "intermittent explosive disorder" manifested by the  
19 following:

- 20 a. generally aggressive driving, including sudden  
21 acceleration, braking, and close tailgating, or
- 22 b. cutting others off in a lane, or deliberately  
23 preventing someone from merging, or

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- c. sounding the vehicle's horn or flashing lights  
excessively, or
- d. rude gestures, or
- e. shouting verbal abuse or threats, or
- f. intentionally causing a collision between vehicles, or
- g. exiting the vehicle to attempt to start a  
confrontation, including striking someone else's  
vehicle with an object, or
- h. threatening to use or using a firearm or other deadly  
weapon, or
- i. throwing projectiles from a moving vehicle with the  
intent of damaging other vehicles.

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

J. Prior to charging or prosecuting a person using a pistol, rifle, or shotgun for use of force pursuant to the provisions of this section, the district attorney shall file an action against the said person directing him or her to appear on a day and time certain to make a determination before a jury of twelve persons as to whether to not the use of force was unlawful. The burden of proof by the district attorney shall be beyond a reasonable doubt, and the burden of proof by the person using a pistol, rifle, or shotgun shall be by a reasonable doubt. If, after the investigation by a police department or sheriff's office, the investigation did not

1 result in an arrest of the person, there shall be a presumption of  
2 immunity from being charged or prosecuted for said use of force.  
3 Provided, however, if said jury finds from the facts that said  
4 person is not eligible for immunity, said determination shall not be  
5 used as evidence in any subsequent criminal prosecution or any civil  
6 action for the use of force.

7 K. The court shall award reasonable attorney fees, court costs,  
8 compensation for loss of income, and all expenses incurred by the  
9 defendant in defense of any civil action brought by a plaintiff if  
10 the court finds that the defendant is immune from prosecution as  
11 provided in subsection H of this section.

12 SECTION 3. This act shall become effective November 1, 2009.

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14 52-1-1085 NP 3/6/2009 7:48:37 AM

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