

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1055

By: Russell and Simpson of the
Senate

6 and

7 Enns of the House

8
9 COMMITTEE SUBSTITUTE

10 [firearm possession - mandatory preclusions -
11 guidelines for certain inquiries - codification -
12 effective date]

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

17 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1289.10, is
18 amended to read as follows:

19 Section 1289.10

20 FURNISHING FIREARMS TO INCOMPETENT PERSONS

21 It shall be unlawful for any person to knowingly transmit,
22 transfer, sell, lend or furnish any shotgun, rifle or pistol to any
23 person who the transferor knows or reasonably should know is ~~under~~
24 ~~an adjudication of mental incompetency, or to any person who is~~

1 ~~mentally deficient or of unsound mind~~ subject to the provisions of
2 Section 922(g)(4) of Title 18 of the United States Code, unless the
3 rights of the transferee have been restored in accordance with the
4 law of the jurisdiction where the adjudication or commitment
5 occurred by a procedure that complies with Public Law 110-180, 121
6 Stat. 2559. Any person convicted of a violation of the provisions
7 of this section shall be punished as provided in Section 1289.15 of
8 this title.

9 Any person convicted of a violation of the provisions of this
10 section after having been issued a concealed handgun license
11 pursuant to the provisions of the Oklahoma Self-Defense Act, Section
12 1290.1 et seq. of this title, shall have the license suspended for a
13 term of six (6) months and shall be subject to an administrative
14 fine of Fifty Dollars (\$50.00), upon a hearing and determination by
15 the Oklahoma State Bureau of Investigation that the person is in
16 violation of the provisions of this section.

17 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1289.12, is
18 amended to read as follows:

19 Section 1289.12

20 GIVING FIREARMS TO CONVICTED PERSONS

21 It shall be unlawful for any person within this state to
22 knowingly sell, trade, give, transmit or otherwise cause the
23 transfer of rifles, shotguns or pistols to any convicted felon or an
24 adjudicated delinquent, and it shall be unlawful for any person

1 within this state to knowingly sell, trade, give, transmit or
2 otherwise cause the transfer of any shotgun, rifle or pistol to any
3 individual who is under the influence of alcohol or drugs ~~or is~~
4 ~~mentally or emotionally unbalanced or disturbed.~~ All persons who
5 engage in selling, trading or otherwise transferring firearms will
6 display this section prominently in full view at or near the point
7 of normal firearms sale, trade or transfer. Any person convicted of
8 violating the provisions of this section shall be punished as
9 provided in Section 1289.15 of this title.

10 Any person convicted of a violation of this section after having
11 been issued a concealed handgun license pursuant to the Oklahoma
12 Self-Defense Act, ~~Sections 1 through 25 of this act,~~ shall have the
13 license suspended for six (6) months and shall be liable for an
14 administrative fine of Fifty Dollars (\$50.00), upon a hearing and
15 determination by the Oklahoma State Bureau of Investigation that the
16 person is in violation of the provisions of this section.

17 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1290.10, is
18 amended to read as follows:

19 Section 1290.10

20 MANDATORY PRECLUSIONS

21 In addition to the requirements stated in Section 1290.9 of this
22 title, the conditions stated in this section shall preclude a person
23 from eligibility for a handgun license pursuant to the provisions of
24 the Oklahoma Self-Defense Act, ~~Section 1290.1 et seq. of this title.~~

1 The occurrence of any one of the following conditions shall deny the
2 person the right to have a handgun license pursuant to the
3 provisions of the Oklahoma Self-Defense Act. Prohibited conditions
4 are:

5 1. Ineligible to possess a pistol due to any felony conviction
6 or adjudication as a delinquent as provided by Section 1283 of this
7 title, except as provided in subsection B of Section 1283 of this
8 title;

9 2. Any felony conviction pursuant to any law of another state,
10 a felony conviction pursuant to any provision of the United States
11 Code, or any conviction pursuant to the laws of any foreign country,
12 provided such foreign conviction would constitute a felony offense
13 in this state if the offense had been committed in this state,
14 except as provided in subsection B of Section 1283 of this title;

15 ~~3. Adjudication as an incompetent person pursuant to the~~
16 ~~provisions of the Oklahoma Mental Health Law, Section 1-101 et seq.~~
17 ~~of Title 43A of the Oklahoma Statutes or an adjudication of~~
18 ~~incompetency entered in another state pursuant to any provision of~~
19 ~~law of that state;~~

20 4. Any false or misleading statement on the application for a
21 handgun license as provided by paragraph 5 of Section 1290.12 of
22 this title;

23 ~~5.~~ 4. Conviction of any one of the following misdemeanor
24 offenses in this state or in any other state:

- 1 a. any assault and battery which caused serious physical
2 injury to the victim, or any second or subsequent
3 assault and battery conviction,
4 b. any aggravated assault and battery,
5 c. any stalking pursuant to Section 1173 of this title,
6 or a similar law of another state,
7 d. a violation relating to the Protection from Domestic
8 Abuse Act, ~~Section 60 et seq. of Title 22 of the~~
9 ~~Oklahoma Statutes,~~ or any violation of a victim
10 protection order of another state,
11 e. any conviction relating to illegal drug use or
12 possession; or
13 f. an act of domestic abuse as defined by Section 644 of
14 this title or an act of domestic assault and battery
15 or any comparable acts under the laws of another
16 state;

17 ~~6.~~ 5. An attempted suicide or other condition ~~relating to or~~
18 diagnosed by a licensed physician or psychologist indicating mental
19 instability or an unsound mind which that the person is a danger to
20 himself or herself or others or is incapable of managing the affairs
21 of the person if the attempt or most recent treatment for the
22 condition occurred within the preceding ten-year period from the
23 date of the application for a license to carry a concealed firearm
24 or that occurs during the period of licensure;

1 ~~7. Currently undergoing treatment for a mental illness,~~
2 ~~condition, or disorder. For purposes of this paragraph, "currently~~
3 ~~undergoing treatment for a mental illness, condition, or disorder"~~
4 ~~means the person has been diagnosed by a licensed physician as being~~
5 ~~afflicted with a substantial disorder of thought, mood, perception,~~
6 ~~psychological orientation, or memory that significantly impairs~~
7 ~~judgment, behavior, capacity to recognize reality, or ability to~~
8 ~~meet the ordinary demands of life~~ 6. The applicant is subject to
9 the provisions of Section 922(g)(4) of Title 18 of the United States
10 Code unless the rights of the person have been restored in
11 accordance with the law of the jurisdiction where the adjudication
12 or commitment occurred by a procedure that complies with Public Law
13 110-180, 121 Stat. 2559;

14 ~~8.~~ 7. Significant character defects of the applicant as
15 evidenced by a misdemeanor criminal record indicating habitual
16 criminal activity;

17 ~~9.~~ 8. Ineligible to possess a pistol due to any provision of
18 law of this state or the United States Code, except as provided in
19 subsection B of Section 1283 of this title;

20 ~~10.~~ 9. Failure to pay an assessed fine or surrender the handgun
21 license as required by a decision by the administrative hearing
22 examiner pursuant to authority of the Oklahoma Self-Defense Act;

23 ~~11.~~ 10. Being subject to an outstanding felony warrant issued
24 in this state or another state or the United States; or

1 ~~preclusive period shall be permanent as provided by Title 18 of the~~
2 ~~United States Code Section 922(g) (4);~~

3 ~~4. The person has previously undergone treatment for a mental~~
4 ~~illness, condition, or disorder which required medication or~~
5 ~~supervision as defined by paragraph 7 of Section 1290.10 of this~~
6 ~~title. The preclusive period shall be three (3) years from the last~~
7 ~~date of treatment or upon presentation of a certified statement from~~
8 ~~a licensed physician stating that the person is either no longer~~
9 ~~disabled by any mental or psychiatric illness, condition, or~~
10 ~~disorder or that the person has been stabilized on medication for~~
11 ~~ten (10) years or more;~~

12 ~~5. Inpatient treatment for substance abuse. The preclusive~~
13 ~~period shall be three (3) years from the last date of treatment or~~
14 ~~upon presentation of a certified statement from a licensed physician~~
15 ~~stating that the person has been free from substance use for twelve~~
16 ~~(12) months or more preceding the filing of an application for a~~
17 ~~handgun license;~~

18 ~~6. 4. Two or more convictions of public intoxication pursuant~~
19 ~~to Section 8 of Title 37 of the Oklahoma Statutes, or a similar law~~
20 ~~of another state. The preclusive period shall be three (3) years~~
21 ~~from the date of the completion of the last sentence;~~

22 ~~7. 5. Two or more misdemeanor convictions relating to~~
23 ~~intoxication or driving under the influence of an intoxicating~~
24 ~~substance or alcohol. The preclusive period shall be three (3)~~

1 years from the date of the completion of the last sentence or shall
2 require a certified statement from a licensed physician stating that
3 the person is not in need of substance abuse treatment;

4 ~~9.~~ 6. A court order for a final Victim Protection Order against
5 the applicant, as authorized by Section 60 et seq. of Title 22 of
6 the Oklahoma Statutes, or any court order granting a final victim
7 protection order against the applicant from another state. The
8 preclusive period shall be three (3) years from the date of the
9 entry of the final court order, or sixty (60) days from the date an
10 order was vacated, cancelled or withdrawn;

11 ~~9.~~ 7. An adjudicated delinquent or convicted felon residing in
12 the residence of the applicant which may be a violation of Section
13 1283 of this title. The preclusive period shall be thirty (30) days
14 from the date the person no longer resides in the same residence as
15 the applicant; or

16 ~~10.~~ 8. An arrest for an alleged commission of, a charge pending
17 for, or the person is subject to the provisions of a deferred
18 sentence or a deferred prosecution for any one or more of the
19 following misdemeanor offenses in this state or another state:

- 20 a. any assault and battery which caused serious physical
21 injury to the victim or any second or subsequent
22 assault and battery,
- 23 b. any aggravated assault and battery,

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1 c. any stalking pursuant to Section 1173 of this title,
2 or a similar law of another state,

3 d. any violation of the Protection from Domestic Abuse
4 Act, Section 60 et seq. of Title 22 of the Oklahoma
5 Statutes, or any violation of a victim protection
6 order of another state,

7 e. any violation relating to illegal drug use or
8 possession, or

9 f. an act of domestic abuse as defined by Section 644 of
10 this title or an act of domestic assault and battery
11 or any comparable acts under the law of another state.

12 The preclusive period for this paragraph shall be three (3) years
13 and shall begin upon the final determination of the matter.

14 B. Nothing in this section shall be construed to require a full
15 investigation of the applicant by the Oklahoma State Bureau of
16 Investigation.

17 SECTION 5. AMENDATORY 22 O.S. 2011, Section 1321, is
18 amended to read as follows:

19 Section 1321. A. It is the intent of the Legislature that any
20 stolen or embezzled money or other property held in custody of a
21 municipality, county or the state in any criminal investigation,
22 action or proceeding be returned to the proper person or its lawful
23 owner without unnecessary delay.

1 B. If the property coming into the custody of a municipal,
2 county or state peace officer is not alleged to have been stolen or
3 embezzled, the peace officer may return the property to the owner
4 upon satisfactory proof of ownership. The notice and hearing
5 provisions of this section shall not be required for return of the
6 property specified in this section if there is no dispute concerning
7 the ownership of the property. Within fifteen (15) days of the time
8 the owner of the property is known, the peace officer shall notify
9 the owner of the property that the property is in the custody of the
10 peace officer. The property shall be returned to the owner upon
11 request.

12 C. Except as otherwise provided for property that is pawned,
13 when money or property alleged to have been stolen or embezzled,
14 comes into the custody of a peace officer, the peace officer shall
15 hold it subject to the order of the magistrate authorized by Section
16 1322 of this title to direct the disposal thereof. Within fifteen
17 (15) days of the time the owner of the property is known, the peace
18 officer shall notify the owner of the property that the property is
19 in the custody of the peace officer. The peace officer shall make a
20 good faith effort to locate and notify the owner of the property.
21 If the peace officer has made a good faith effort to locate and
22 notify the owner of the property and has been unable to locate or
23 notify the owner, the peace officer shall release the property to
24 the last person in possession of the property within fifteen (15)

1 days after the peace officer determines that an owner cannot be
2 located or notified, provided that the person who last had
3 possession of the property shows proof that the person is a lawful
4 possessor of the property. Such officer may provide a copy of a
5 nonownership affidavit to the defendant to sign if the defendant is
6 not claiming ownership of the money or property taken from the
7 defendant and if the defendant has relinquished the right to remain
8 silent. The affidavit is not admissible in any proceeding to
9 ascertain the guilt or innocence of the defendant. A copy of this
10 affidavit shall be provided to the defendant, and a copy shall be
11 filed by the peace officer with the court clerk. Upon request, a
12 copy of this affidavit shall be provided to any person claiming
13 ownership of such money or property. The owner of the property or
14 designated representative of the owner may make application to the
15 magistrate for the return of the property. The application shall be
16 on a form provided by the Administrative Director of the Courts and
17 made available through the court clerk or the victim-witness
18 coordinator. The court may charge the applicant a reasonable fee to
19 defray the cost of filing and docketing the application. Once an
20 application has been made and notice provided, the magistrate shall
21 docket the application for a hearing as provided in this section.
22 Where notice by publication is appropriate, the publication notice
23 form shall be provided free of charge to the applicant by the
24 Administrative Director of the Courts through the court clerk or the

1 victim-witness coordinator with instructions on how to obtain
2 effective publication notice. The applicant shall notify the last
3 person in possession of the property prior to the property being
4 seized by the state of the hearing by mailing a copy of the notice
5 by certified mail return receipt requested at the last-known address
6 of the person, unless the person has signed a nonownership affidavit
7 pursuant to this section disclaiming any ownership rights to the
8 property. If the last person in possession of the property is
9 unable to be served notice by certified mail, notice shall be
10 provided by one publication in a newspaper of general circulation in
11 the county where the property is held in custody. The applicant
12 shall notify the district attorney and the court when notice has
13 been served to the last person in possession of the property or
14 published pursuant to this section. The hearing shall be held not
15 less than ten (10) days or more than twenty (20) days after the
16 court has been notified that the notice has been served or
17 published. For the sole purpose of conducting a due process hearing
18 to establish ownership of the property, "magistrate" as used in this
19 section shall mean a judge of the district court, associate district
20 judge, special judge or the judge of a municipal criminal court of
21 record when established pursuant to Section 28-101 et seq. of Title
22 11 of the Oklahoma Statutes.

23 D. If the magistrate determines that the property is needed as
24 evidence, the magistrate shall determine ownership and determine the

1 procedure and time frame for future release. The magistrate may
2 order the release of property needed as evidence pursuant to Section
3 1327 of this title, provided however, the order may require the
4 owner to present the property at trial. The property shall be made
5 available to the owner within ten (10) days of the court order for
6 release. The magistrate may authorize ten (10) days additional time
7 for the return of the exhibit if the district attorney shows cause
8 that additional time is needed to photograph or mark the exhibit.

9 E. If the property is not needed as evidence, it may be
10 released by the magistrate to the owner or designated representative
11 of the owner upon satisfactory proof of ownership. The owner of the
12 property or designated representative of the owner may make
13 application to the magistrate for the return of the property. The
14 applicant shall notify the last person in possession of the property
15 prior to such property being seized by the state of the hearing by
16 mailing a copy of the notice by certified mail return receipt
17 requested at the last-known address of the person, unless the person
18 has signed a nonownership affidavit pursuant to this section
19 disclaiming any ownership rights to the property. If the last
20 person in possession of the property is unable to be served notice
21 by certified mail, notice shall be provided by one publication in a
22 newspaper of general circulation in the county where the property is
23 held in custody. The applicant shall notify the district attorney
24 and the court when notice has been served to the last person in

1 possession of the property or published pursuant to this section.
2 The hearing shall be held not less than ten (10) days or more than
3 twenty (20) days after the court has been notified that the notice
4 has been served or published.

5 F. The notice and hearing provisions of subsections C and E of
6 this section shall not be required for return of the property
7 specified in said subsections if:

8 1. There is no dispute concerning the ownership of the
9 property;

10 2. The property is readily identifiable by the owner; and

11 3. The defendant has entered a plea of guilty or nolo
12 contendere to the criminal charge, has executed a nonownership
13 affidavit as provided by subsection C of this section or has been
14 personally notified that the property will be returned to the owner
15 and has failed to file an objection to such return within ten (10)
16 days of being notified. The owner shall provide satisfactory proof
17 of title to the property or sign an affidavit of ownership to be
18 provided by the peace officer. The affidavit is not admissible in
19 any proceeding to ascertain the guilt or innocence of the defendant.
20 A copy of this affidavit shall be filed by the officer with the
21 court clerk. The property shall then be returned to the owner.

22 G. When property alleged to have been stolen comes into the
23 custody of a peace officer and the property is deemed to be
24 perishable, the peace officer shall take such action as appropriate

1 to temporarily preserve the property. However, within seventy-two
2 (72) hours of the time the property was recovered, the receiving
3 agency shall make application for a disposition hearing before a
4 magistrate, and the receiving agency shall notify all persons known
5 to have an interest in the property of the date, time and place of
6 the hearing.

7 H. In any case, the magistrate may, for good cause shown, order
8 any evidence or exhibit to be retained pending the outcome of any
9 appeal.

10 I. Any time property comes into the custody of a municipality,
11 a county, or this state as a result of any contact with any peace
12 officer, criminal investigation or other situation where the return
13 of the property is prohibited by any municipal, state or federal law
14 or when the property has disputed ownership or multiple claimants,
15 the municipality, county or state shall advise the claimant to file
16 an application with the appropriate district court. Upon filing an
17 application for a hearing, the claimant shall provide notice to all
18 interested persons. At the hearing the court shall make a judicial
19 determination as to the proper and lawful release of the property.

20 J. The application, notice and hearing provisions of subsection
21 I of this section shall include, but are not limited to, all
22 situations where the peace officer has reason to believe:

23 1. One of the persons asserting a right to the return of any
24 firearm or other weapon is or was ~~mentally or emotionally unstable~~

1 ~~or disturbed~~ subject to the provisions of Section 922(g)(4) of Title
2 18 of the United States Code at the time the weapon was placed in
3 custody or at the time of the request for the return of the weapon,
4 unless the rights of the person have or had been restored in
5 accordance with the law of the jurisdiction where the adjudication
6 or commitment occurred by a procedure that complies with Public Law
7 110-180, 121 Stat. 2559;

8 2. One of the persons asserting a right to the return of a
9 firearm or other weapon is subject to a victim protection order that
10 would preclude the return of any weapon as a matter of law;

11 3. One of the persons asserting a right to the return of any
12 firearm or other weapon is under indictment or has been convicted of
13 a felony;

14 4. One of the persons asserting a right to the return of any
15 firearm or other weapon has a misdemeanor conviction for domestic
16 abuse as defined by law;

17 5. The ownership of the property is unclear due to multiple
18 claimants or disputes among heirs or next of kin for the property of
19 the deceased; or

20 6. The return of the property could subject the municipality,
21 the county, or this state to potential liability for its return.

22 SECTION 6. This act shall become effective November 1, 2012.

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24 53-2-10312 GRS 04/10/12

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