

1 ENGROSSED SENATE
2 BILL NO. 1845

By: Treat of the Senate

3 and

4 Martin (Steve) and Bennett
5 of the House

6 [firearm disabilities - exception to preclusions -
7 providing certain exception - codification -
8 effective date]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1290.10, is
12 amended to read as follows:

13 Section 1290.10.

14 MANDATORY PRECLUSIONS

15 In addition to the requirements stated in Section 1290.9 of this
16 title, the conditions stated in this section shall preclude a person
17 from eligibility for a handgun license pursuant to the provisions of
18 the Oklahoma Self-Defense Act, ~~Section 1290.1 et seq. of this title.~~
19 The occurrence of any one of the following conditions shall deny the
20 person the right to have a handgun license pursuant to the
21 provisions of the Oklahoma Self-Defense Act. Prohibited conditions
22 are:

23 1. Ineligible to possess a pistol due to any felony conviction
24 or adjudication as a delinquent as provided by Section 1283 of this

1 title, except as provided in subsection B of Section 1283 of this
2 title;

3 2. Any felony conviction pursuant to any law of another state,
4 a felony conviction pursuant to any provision of the United States
5 Code, or any conviction pursuant to the laws of any foreign country,
6 provided such foreign conviction would constitute a felony offense
7 in this state if the offense had been committed in this state,
8 except as provided in subsection B of Section 1283 of this title;

9 3. Adjudication as ~~an~~ a mentally incompetent person pursuant to
10 the provisions of the Oklahoma Mental Health Law, ~~Section 1-101 et~~
11 ~~seq. of Title 43A of the Oklahoma Statutes~~ or an adjudication of
12 incompetency entered in another state pursuant to any provision of
13 law of that state, unless the person has been granted relief from
14 the disqualifying disability pursuant to Section 3 of this act;

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

18 5. Conviction of any one of the following misdemeanor offenses
19 in this state or in any other 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 conviction,
- 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. a violation relating to the Protection from Domestic
4 Abuse Act, ~~Section 60 et seq. of Title 22 of the~~
5 ~~Oklahoma Statutes,~~ or any violation of a victim
6 protection order of another state,

7 e. any conviction 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 laws of another
12 state;

13 6. An attempted suicide or other condition relating to or
14 indicating mental instability or an unsound mind which occurred
15 within the preceding ten-year period from the date of the
16 application for a license to carry a concealed firearm or that
17 occurs during the period of licensure;

18 7. Currently undergoing treatment for a mental illness,
19 condition, or disorder. For purposes of this paragraph, "currently
20 undergoing treatment for a mental illness, condition, or disorder"
21 means the person has been diagnosed by a licensed physician as being
22 afflicted with a substantial disorder of thought, mood, perception,
23 psychological orientation, or memory that significantly impairs

1 judgment, behavior, capacity to recognize reality, or ability to
2 meet the ordinary demands of life;

3 8. Significant character defects of the applicant as evidenced
4 by a misdemeanor criminal record indicating habitual criminal
5 activity;

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

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

12 11. Being subject to an outstanding felony warrant issued in
13 this state or another state or the United States; or

14 12. Adjudication as a delinquent as provided by Section 1283 of
15 this title, except as provided in subsection B of Section 1283 of
16 this title.

17 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1290.11, as
18 last amended by Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp.
19 2013, Section 1290.11), is amended to read as follows:

20 Section 1290.11. OTHER PRECLUSIONS

21 A. The following conditions shall preclude a person from being
22 eligible for a handgun license pursuant to the provisions of the
23 Oklahoma Self-Defense Act for a period of time as prescribed in each
24 of the following paragraphs:

1 1. An arrest for an alleged commission of a felony offense or a
2 felony charge pending in this state, another state or pursuant to
3 the United States Code. The preclusive period shall be until the
4 final determination of the matter;

5 2. The person is subject to the provisions of a deferred
6 sentence or deferred prosecution in this state or another state or
7 pursuant to federal authority for the commission of a felony
8 offense. The preclusive period shall be three (3) years and shall
9 begin upon the final determination of the matter;

10 3. Any involuntary commitment for a mental illness, condition,
11 or disorder pursuant to the provisions of Section 5-410 of Title 43A
12 of the Oklahoma Statutes or any involuntary commitment in another
13 state pursuant to any provisions of law of that state. The
14 preclusive period shall be permanent as provided by Title 18 of the
15 United States Code Section 922(g) (4) unless the person has been
16 granted relief from the disqualifying disability pursuant to Section
17 3 of this act;

18 4. The person has previously undergone treatment for a mental
19 illness, condition, or disorder which required medication or
20 supervision as defined by paragraph 7 of Section 1290.10 of this
21 title. The preclusive period shall be three (3) years from the last
22 date of treatment or upon presentation of a certified statement from
23 a licensed physician stating that the person is either no longer
24 disabled by any mental or psychiatric illness, condition, or

1 disorder or that the person has been stabilized on medication for
2 ten (10) years or more;

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

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

13 7. Two or more misdemeanor convictions relating to intoxication
14 or driving under the influence of an intoxicating substance or
15 alcohol. The preclusive period shall be three (3) years from the
16 date of the completion of the last sentence or shall require a
17 certified statement from a licensed physician stating that the
18 person is not in need of substance abuse treatment;

19 8. A court order for a final Victim Protection Order against
20 the applicant, as authorized by the Protection from Domestic Abuse
21 Act, or any court order granting a final victim protection order
22 against the applicant from another state. The preclusive period
23 shall be three (3) years from the date of the entry of the final
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1 court order, or sixty (60) days from the date an order was vacated,
2 canceled or withdrawn;

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

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

- 12 a. any assault and battery which caused serious physical
13 injury to the victim or any second or subsequent
14 assault and battery,
- 15 b. any aggravated assault and battery,
- 16 c. any stalking pursuant to Section 1173 of this title,
17 or a similar law of another state,
- 18 d. any violation of the Protection from Domestic Abuse
19 Act or any violation of a victim protection order of
20 another state,
- 21 e. any violation relating to illegal drug use or
22 possession, or

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1 f. an act of domestic abuse as defined by Section 644 of
2 this title or an act of domestic assault and battery
3 or any comparable acts under the law of another state.
4 The preclusive period shall be until the final determination of the
5 matter. The preclusive period for a person subject to the
6 provisions of a deferred sentence for the offenses mentioned in this
7 paragraph shall be three (3) years and shall begin upon the final
8 determination of the matter.

9 B. Nothing in this section shall be construed to require a full
10 investigation of the applicant by the Oklahoma State Bureau of
11 Investigation.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1290.27 of Title 21, unless
14 there is created a duplication in numbering, reads as follows:

15 A. When a court adjudicates a person mentally incompetent or
16 orders the involuntary commitment of a person due to a mental
17 illness, condition or disorder under the laws of this state by which
18 a person becomes subject to the provisions of Section 922(d)(4) and
19 (g)(4) of Title 18 of the United States Code, the clerk of the court
20 shall forward a certified copy of the order or adjudication to the
21 Federal Bureau of Investigation or its successor agency for the sole
22 purpose of inclusion in the National Instant Criminal Background
23 Check system database and to the Oklahoma State Bureau of
24 Investigation. The clerk of the court shall also notify the person

1 of the prohibitions contained within the provisions of Section
2 922(d) (4) and (g) (4) of Title 18 of the United States Code,
3 paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of
4 Section 1290.11 of Title 21 of the Oklahoma Statutes.

5 B. When a court adjudicates a person mentally incompetent or
6 orders the involuntary commitment of a person due to a mental
7 illness, condition or disorder under the laws of this state by which
8 a person becomes subject to the provisions Section 922(d) (4) and
9 (g) (4) of Title 18 of the United States Code, paragraph 3 of Section
10 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title
11 21 of the Oklahoma Statutes, the person may petition the court in
12 which the adjudication or commitment proceedings occurred or the
13 district court of the county in which the person currently resides
14 to remove the disability.

15 C. On filing of the petition, the court shall set a hearing.
16 Not less than thirty (30) days prior to a hearing on the matter, a
17 copy of the petition for relief shall be served upon the district
18 attorney for that county. The court shall receive and consider
19 evidence in a closed hearing.

20 D. The court shall receive evidence on and consider the
21 following before granting or denying the petition:

22 1. Psychological or psychiatric evidence from the petitioner
23 and in support of the petition;

24 2. The circumstances that resulted in the firearm disabilities;

1 3. The petitioner's criminal history records provided by the
2 state, if any;

3 4. The petitioner's mental health records;

4 5. The reputation of the petitioner based on character witness
5 statements, testimony or other character evidence;

6 6. Whether the petitioner is a danger to self or others;

7 7. Changes in the condition or circumstances of the petitioner
8 since the original adjudication of mental incompetency or
9 involuntary commitment for a mental illness, condition or disorder
10 relevant to the relief sought; and

11 8. Any other evidence deemed admissible by the court.

12 E. The petitioner shall prove by clear and convincing evidence
13 that:

14 1. The petitioner is not likely to act in a manner that is
15 dangerous to the public safety; and

16 2. Granting the relief requested is not contrary to the public
17 interest.

18 F. At the conclusion of the hearing, the court shall issue
19 findings of fact and conclusions of law. A record shall be kept of
20 the proceedings, but shall remain confidential and be disclosed only
21 to a court or the parties. No records of the proceedings pursuant
22 to this subsection shall be open to public inspection except by
23 order of the court or to a person's attorney of record. The
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1 petitioner may appeal a denial of the requested relief, and review
2 on appeal shall be de novo.

3 G. If the court grants the petition for relief, the original
4 adjudication of mental incompetency or order of involuntary
5 commitment due to a mental illness, condition or disorder of the
6 petitioner is deemed not to have occurred for purposes of applying
7 Section 922(d)(4) and (g)(4) of Title 18 of the United States Code,
8 paragraph 3 of Section 1290.10, or paragraph 3 of subsection A of
9 Section 1290.11 of Title 21 of the Oklahoma Statutes.

10 H. The clerk of the court shall promptly forward to the Federal
11 Bureau of Investigation or its successor agency for the sole purpose
12 of inclusion in the National Instant Criminal Background Check
13 System database and the Department of Mental Health and Substance
14 Abuse Services and the Oklahoma State Bureau of Investigation, a
15 certified copy of the order granting relief under this section. The
16 Department of Mental Health and Substance Abuse Services and the
17 Oklahoma State Bureau of Investigation shall as soon thereafter as
18 is practicable, but in no case later than ten (10) business days,
19 update, correct, modify, or remove the person's record in any
20 databases that these agencies use or refer to for the purposes of
21 gun licensing, or make available to the National Instant Criminal
22 Background Check System and notify the United States Attorney that
23 the basis for such record being made available no longer applies.

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1 SECTION 4. AMENDATORY 43A O.S. 2011, Section 5-415, as
2 last amended by Section 5, Chapter 217, O.S.L. 2013 (43A O.S. Supp.
3 2013, Section 5-415), is amended to read as follows:

4 Section 5-415. A. Upon receiving a petition alleging a person
5 to be a person requiring treatment, the court shall set a day and
6 time for the hearing.

7 1. If the person alleged to be a person requiring treatment
8 does not have an attorney, the court shall immediately appoint an
9 attorney for the person.

10 2. If a copy of a mental health evaluation is not attached to
11 the petition at the time it is filed, the court shall immediately
12 order a mental health evaluation of the person as provided by
13 Section 5-414 of this title.

14 B. If the court deems it necessary, or if the person alleged to
15 be a person requiring treatment demands, the court shall schedule
16 the hearing on the petition as a jury trial to be held within one
17 hundred twenty (120) hours or five (5) days of the demand, excluding
18 weekends and holidays, or within as much additional time as is
19 requested by the attorney of such person upon good cause shown.

20 C. The court, at the hearing on the petition, shall determine
21 by clear and convincing evidence whether the person is a person
22 requiring treatment.

23 1. The court shall take evidence and make findings of fact
24 concerning the person's competency to consent to or refuse the

1 treatment that may be ordered, including, but not limited to, the
2 consumer's right to refuse medication.

3 2. If a jury trial is not demanded, the court may receive as
4 evidence and act upon the affidavits of the licensed mental health
5 professionals who evaluated the person and the mental health
6 evaluation.

7 3. When the hearing is conducted as a jury trial, the
8 petitioner and any witness in behalf of the petitioner shall be
9 subject to cross-examination by the attorney for the person alleged
10 to be a person requiring treatment. The person alleged to be a
11 person requiring treatment may also be called as a witness and
12 cross-examined.

13 D. After the hearing, when the court determines that the person
14 is not a person requiring treatment, the court shall dismiss the
15 petition and, if the person is being detained, order the person to
16 be discharged from detention.

17 E. After the hearing, when the court determines the person to
18 be a person requiring treatment, the court shall order the person to
19 receive the least restrictive treatment consistent with the
20 treatment needs of the person and the safety of the person and
21 others.

22 1. The court shall not order hospitalization without a thorough
23 consideration of available treatment alternatives to hospitalization
24 and may direct the submission of evidence as to the least

1 restrictive treatment alternative or may order a mental health
2 examination.

3 2. If the court finds that a program other than hospitalization
4 is appropriate to meet the treatment needs of the individual and is
5 sufficient to prevent injury to the individual or to others, the
6 court may order the individual to receive whatever treatment other
7 than hospitalization that is appropriate for a period set by the
8 court, during which time the court shall continue its jurisdiction
9 over the individual as a person requiring treatment.

10 3. If the court orders the person to be committed for
11 involuntary inpatient treatment, the court shall commit the person
12 to the custody of the Department of Mental Health and Substance
13 Abuse Services for a placement that is suitable to the person's
14 needs or to a private facility willing to accept the person for
15 treatment.

16 4. The person shall be delivered to the custody of the
17 Department of Mental Health and Substance Abuse Services for a
18 placement that is suitable to the person's needs or to a private
19 facility willing to accept the person for treatment.

20 5. If the person is placed in the custody of the Department,
21 the Department may designate two or more facilities to provide
22 treatment and if the person to be treated or a parent, spouse,
23 guardian, brother, sister or child, who is at least eighteen (18)
24 years of age, of the person, expresses a preference for one such

1 facility, the Department shall attempt, if administratively
2 possible, to comply with the preference.

3 6. The person shall be discharged from inpatient treatment at
4 such time as the person no longer requires treatment as determined
5 by the executive director of the facility or the designee of the
6 executive director, or as otherwise required by law.

7 F. The court shall make and keep records of all cases brought
8 before it.

9 1. ~~No~~ Except as provided in Section 3 of this act, no records
10 of proceedings pursuant to this section shall be open to public
11 inspection except by order of the court or to employees of the
12 Department of Mental Health and Substance Abuse Services, the
13 person's attorney of record, the person's treatment advocate as
14 defined pursuant to Section 1-109.1 of this title, if any, a person
15 having a valid power of attorney with health care decision-making
16 authority, a person having valid guardianship with health care
17 decision-making authority, a person having an advance health care
18 directive, a person having an attorney-in-fact as designated in a
19 valid mental health advance directive or persons having a legitimate
20 treatment interest, unless specifically indicated otherwise by the
21 instrument or court order. The documents shall not identify the
22 alleged person requiring treatment directly or indirectly as a
23 person with a substance abuse disorder.

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1 2. Bonded abstractors may be deemed to be persons having a
2 legitimate interest for the purpose of having access to records
3 regarding determinations of persons requiring treatment under this
4 section.

5 SECTION 5. This act shall become effective July 1, 2015.

6 Passed the Senate the 5th day of March, 2014.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2014.

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Presiding Officer of the House
of Representatives

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