

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1845

By: Treat and Johnson
(Constance) of the Senate

and

Martin (Steve) and Bennett
of the House

11 COMMITTEE SUBSTITUTE

12 An Act relating to firearms; amending 21 O.S. 2011,
13 Sections 1290.10 and 1290.11, as last amended by
14 Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp.
2013, Section 1290.11), which relate to the Oklahoma
15 Self-Defense Act; modifying exception to certain
16 mandatory preclusion; providing exception for certain
17 temporary preclusion; directing court clerks to
18 forward commitment orders to certain entities;
19 directing court clerks to provide certain notice;
20 authorizing petitions for certain relief; providing
21 hearing procedures; requiring service of petition to
22 district attorney; directing court to consider
23 certain evidence; directing court to grant relief
24 upon showing of certain standard of proof; directing
court to issue findings of fact and conclusions of
law; requiring a record of proceedings be kept and
held confidential; providing for appeals upon denial
of requested relief; deeming certain adjudication as
not having occurred when petition for relief is
granted by the court; directing court clerks to
forward order of relief to certain entities;
directing certain entities to update records;
amending 43A O.S. 2011, Section 5-415, as last
amended by Section 5, Chapter 217, O.S.L. 2013 (43A

1 O.S. Supp. 2013, Section 5-415), which relates to
2 hearings and orders for involuntary commitments;
3 providing exception to certain records requirements;
4 providing for codification; and providing an
5 effective date.

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

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

9 Section 1290.10

10 MANDATORY PRECLUSIONS

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

19 1. Ineligible to possess a pistol due to any felony conviction
20 or adjudication as a delinquent as provided by Section 1283 of this
21 title, except as provided in subsection B of Section 1283 of this
22 title;

23 2. Any felony conviction pursuant to any law of another state,
24 a felony conviction pursuant to any provision of the United States

1 Code, or any conviction pursuant to the laws of any foreign country,
2 provided such foreign conviction would constitute a felony offense
3 in this state if the offense had been committed in this state,
4 except as provided in subsection B of Section 1283 of this title;

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

11 4. Any false or misleading statement on the application for a
12 handgun license as provided by paragraph 5 of subsection A of
13 Section 1290.12 of this title;

14 5. Conviction of any one of the following misdemeanor offenses
15 in this state or in any other state:

- 16 a. any assault and battery which caused serious physical
17 injury to the victim, or any second or subsequent
18 assault and battery conviction,
- 19 b. any aggravated assault and battery,
- 20 c. any stalking pursuant to Section 1173 of this title,
21 or a similar law of another state,
- 22 d. a violation relating to the Protection from Domestic
23 Abuse Act, ~~Section 60 et seq. of Title 22 of the~~
- 24

1 ~~Oklahoma Statutes,~~ or any violation of a victim
2 protection order of another state,

3 e. any conviction relating to illegal drug use or
4 possession~~7,~~ or

5 f. an act of domestic abuse as defined by Section 644 of
6 this title or an act of domestic assault and battery
7 or any comparable acts under the laws of another
8 state;

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

14 7. Currently undergoing treatment for a mental illness,
15 condition, or disorder. For purposes of this paragraph, "currently
16 undergoing treatment for a mental illness, condition, or disorder"
17 means the person has been diagnosed by a licensed physician as being
18 afflicted with a substantial disorder of thought, mood, perception,
19 psychological orientation, or memory that significantly impairs
20 judgment, behavior, capacity to recognize reality, or ability to
21 meet the ordinary demands of life;

22 8. Significant character defects of the applicant as evidenced
23 by a misdemeanor criminal record indicating habitual criminal
24 activity;

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

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

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

9 12. Adjudication as a delinquent as provided by Section 1283 of
10 this title, except as provided in subsection B of Section 1283 of
11 this title.

12 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1290.11, as
13 last amended by Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp.
14 2013, Section 1290.11), is amended to read as follows:

15 Section 1290.11

16 OTHER PRECLUSIONS

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

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

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

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

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

23 5. Inpatient treatment for substance abuse. The preclusive
24 period shall be three (3) years from the last date of treatment or

1 upon presentation of a certified statement from a licensed physician
2 stating that the person has been free from substance use for twelve
3 (12) months or more preceding the filing of an application for a
4 handgun license;

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

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

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

22 9. An adjudicated delinquent or convicted felon residing in the
23 residence of the applicant which may be a violation of Section 1283
24 of this title. The preclusive period shall be thirty (30) days from

1 the date the person no longer resides in the same residence as the
2 applicant; or

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

7 a. any assault and battery which caused serious physical
8 injury to the victim or any second or subsequent
9 assault and battery,

10 b. any aggravated assault and battery,

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

13 d. any violation of the Protection from Domestic Abuse
14 Act or any violation of a victim protection order of
15 another state,

16 e. any violation relating to illegal drug use or
17 possession, or

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

21 The preclusive period shall be until the final determination of the
22 matter. The preclusive period for a person subject to the
23 provisions of a deferred sentence for the offenses mentioned in this
24

1 paragraph shall be three (3) years and shall begin upon the final
2 determination of the matter.

3 B. Nothing in this section shall be construed to require a full
4 investigation of the applicant by the Oklahoma State Bureau of
5 Investigation.

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

9 A. When a court adjudicates a person mentally incompetent or
10 orders the involuntary commitment of a person due to a mental
11 illness, condition or disorder under the laws of this state by which
12 a person becomes subject to the provisions of Section 922(d)(4) and
13 (g)(4) of Title 18 of the United States Code, the clerk of the court
14 shall forward a certified copy of the order or adjudication to the
15 Federal Bureau of Investigation or its successor agency for the sole
16 purpose of inclusion in the National Instant Criminal Background
17 Check System database and to the Oklahoma State Bureau of
18 Investigation. The clerk of the court shall also notify the person
19 of the prohibitions contained within the provisions of Section
20 922(d)(4) and (g)(4) of Title 18 of the United States Code,
21 paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of
22 Section 1290.11 of Title 21 of the Oklahoma Statutes.

23 B. When a court adjudicates a person mentally incompetent or
24 orders the involuntary commitment of a person due to a mental

1 illness, condition or disorder under the laws of this state by which
2 a person becomes subject to the provisions of Section 922(d)(4) and
3 (g)(4) of Title 18 of the United States Code, paragraph 3 of Section
4 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title
5 21 of the Oklahoma Statutes, or when a person is otherwise
6 disqualified from eligibility for a handgun license under paragraph
7 6 or 7 of Section 1290.10 of Title 21 of the Oklahoma Statutes or
8 paragraph 4 of subsection A of Section 1290.11 of Title 21 of the
9 Oklahoma Statutes, the person may petition the court in which the
10 adjudication or commitment proceedings occurred or the district
11 court of the county in which the person currently resides to remove
12 the disability.

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

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

20 1. Psychological or psychiatric evidence from the petitioner
21 and in support of the petition;

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

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

1 4. The petitioner's mental health records;

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

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

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

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

10 E. The court shall grant the relief requested if the petitioner
11 proves by a preponderance of the evidence that:

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

14 2. Granting the relief requested is not contrary to the public
15 interest.

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

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

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

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7 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 03/26/2014 -
8 DO PASS, As Amended and Coauthored.

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