

1 **SENATE FLOOR VERSION**

2 February 20, 2014

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1845

By: Treat of the Senate

and

Martin (Steve) and Bennett  
of the House

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

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12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

16 Section 1290.10.

17 MANDATORY PRECLUSIONS

18 In addition to the requirements stated in Section 1290.9 of this  
19 title, the conditions stated in this section shall preclude a person  
20 from eligibility for a handgun license pursuant to the provisions of  
21 the Oklahoma Self-Defense Act, ~~Section 1290.1 et seq. of this title.~~  
22 The occurrence of any one of the following conditions shall deny the  
23 person the right to have a handgun license pursuant to the  
24

1 provisions of the Oklahoma Self-Defense Act. Prohibited conditions  
2 are:

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

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

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

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

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

24

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

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

7. Currently undergoing treatment for a mental illness, condition, or disorder. For purposes of this paragraph, "currently undergoing treatment for a mental illness, condition, or disorder"

1 means the person has been diagnosed by a licensed physician as being  
2 afflicted with a substantial disorder of thought, mood, perception,  
3 psychological orientation, or memory that significantly impairs  
4 judgment, behavior, capacity to recognize reality, or ability to  
5 meet the ordinary demands of life;

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

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

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

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

17 12. Adjudication as a delinquent as provided by Section 1283 of  
18 this title, except as provided in subsection B of Section 1283 of  
19 this title.

20 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1290.11, as  
21 last amended by Section 2, Chapter 171, O.S.L. 2013 (21 O.S. Supp.  
22 2013, Section 1290.11), is amended to read as follows:

23 Section 1290.11. OTHER PRECLUSIONS  
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1 A. The following conditions shall preclude a person from being  
2 eligible for a handgun license pursuant to the provisions of the  
3 Oklahoma Self-Defense Act for a period of time as prescribed in each  
4 of the following paragraphs:

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

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

14 3. Any involuntary commitment for a mental illness, condition,  
15 or disorder pursuant to the provisions of Section 5-410 of Title 43A  
16 of the Oklahoma Statutes or any involuntary commitment in another  
17 state pursuant to any provisions of law of that state. The  
18 preclusive period shall be permanent as provided by Title 18 of the  
19 United States Code Section 922(g) (4) unless the person has been  
20 granted relief from the disqualifying disability pursuant to Section  
21 3 of this act;

22 4. The person has previously undergone treatment for a mental  
23 illness, condition, or disorder which required medication or  
24 supervision as defined by paragraph 7 of Section 1290.10 of this

1 title. The preclusive period shall be three (3) years from the last  
2 date of treatment or upon presentation of a certified statement from  
3 a licensed physician stating that the person is either no longer  
4 disabled by any mental or psychiatric illness, condition, or  
5 disorder or that the person has been stabilized on medication for  
6 ten (10) years or more;

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

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

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

23 8. A court order for a final Victim Protection Order against  
24 the applicant, as authorized by the Protection from Domestic Abuse

1 Act, or any court order granting a final victim protection order  
2 against the applicant from another state. The preclusive period  
3 shall be three (3) years from the date of the entry of the final  
4 court order, or sixty (60) days from the date an order was vacated,  
5 canceled or withdrawn;

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

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

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

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- 1 e. any violation relating to illegal drug use or
- 2 possession, or
- 3 f. an act of domestic abuse as defined by Section 644 of
- 4 this title or an act of domestic assault and battery
- 5 or any comparable acts under the law of another state.

6 The preclusive period shall be until the final determination of the  
7 matter. The preclusive period for a person subject to the  
8 provisions of a deferred sentence for the offenses mentioned in this  
9 paragraph shall be three (3) years and shall begin upon the final  
10 determination of the matter.

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

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

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

1 Check system database and to the Oklahoma State Bureau of  
2 Investigation. The clerk of the court shall also notify the person  
3 of the prohibitions contained within the provisions of Section  
4 922(d) (4) and (g) (4) of Title 18 of the United States Code,  
5 paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of  
6 Section 1290.11 of Title 21 of the Oklahoma Statutes.

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

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

22 D. The court shall receive evidence on and consider the  
23 following before granting or denying the petition:  
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- 1        1. Psychological or psychiatric evidence from the petitioner
  - 2 and in support of the petition;
  - 3        2. The circumstances that resulted in the firearm disabilities;
  - 4        3. The petitioner's criminal history records provided by the
  - 5 state, if any;
  - 6        4. The petitioner's mental health records;
  - 7        5. The reputation of the petitioner based on character witness
  - 8 statements, testimony or other character evidence;
  - 9        6. Whether the petitioner is a danger to self or others;
  - 10       7. Changes in the condition or circumstances of the petitioner
  - 11 since the original adjudication of mental incompetency or
  - 12 involuntary commitment for a mental illness, condition or disorder
  - 13 relevant to the relief sought; and
  - 14       8. Any other evidence deemed admissible by the court.
- 15       E. The petitioner shall prove by clear and convincing evidence
- 16 that:
- 17       1. The petitioner is not likely to act in a manner that is
  - 18 dangerous to the public safety; and
  - 19       2. Granting the relief requested is not contrary to the public
  - 20 interest.
- 21       F. At the conclusion of the hearing, the court shall issue
- 22 findings of fact and conclusions of law. A record shall be kept of
- 23 the proceedings, but shall remain confidential and be disclosed only
- 24 to a court or the parties. No records of the proceedings pursuant

1 to this subsection shall be open to public inspection except by  
2 order of the court or to a person's attorney of record. The  
3 petitioner may appeal a denial of the requested relief, and review  
4 on appeal shall be de novo.

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

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

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1 Background Check System and notify the United States Attorney that  
2 the basis for such record being made available no longer applies.

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

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

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

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

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

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

1           1. The court shall take evidence and make findings of fact  
2 concerning the person's competency to consent to or refuse the  
3 treatment that may be ordered, including, but not limited to, the  
4 consumer's right to refuse medication.

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

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

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

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

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1           1. The court shall not order hospitalization without a thorough  
2 consideration of available treatment alternatives to hospitalization  
3 and may direct the submission of evidence as to the least  
4 restrictive treatment alternative or may order a mental health  
5 examination.

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

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

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

23           5. If the person is placed in the custody of the Department,  
24 the Department may designate two or more facilities to provide

1 treatment and if the person to be treated or a parent, spouse,  
2 guardian, brother, sister or child, who is at least eighteen (18)  
3 years of age, of the person, expresses a preference for one such  
4 facility, the Department shall attempt, if administratively  
5 possible, to comply with the preference.

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

10 F. The court shall make and keep records of all cases brought  
11 before it.

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

1 alleged person requiring treatment directly or indirectly as a  
2 person with a substance abuse disorder.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY  
9 February 20, 2014 - DO PASS AS AMENDED

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