

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2323

By: Coody, Ownbey, McDugle,
Moore and Ritze of the
House

7 and

8 Brecheen of the Senate

9
10
11
12 COMMITTEE SUBSTITUTE

13 An Act relating to crimes and punishments; amending
14 21 O.S. 2011, Section 1283, as last amended by
15 Section 1, Chapter 179, O.S.L. 2014 (21 O.S. Supp.
16 2016, Section 1283), which relates to possession of
17 firearms by convicted felons and delinquents;
18 prohibiting certain persons from possessing firearms;
19 updating definitions; amending 21 O.S. 2011, Sections
20 1289.3, 1289.7, as amended by Section 12, Chapter
21 259, O.S.L. 2012, 1289.13A, as amended by Section 19,
22 Chapter 259, O.S.L. 2012, 1289.16, as amended by
23 Section 20, Chapter 259, O.S.L. 2012 and 1289.25 (21
24 O.S. Supp. 2016, Sections 1289.7, 1289.13A and
 1289.16), which relate to the Oklahoma Firearms Act
 of 1971; updating and modifying certain definition;
 modifying manner in which firearms may be carried in
 vehicles; deleting certain definition; authorizing
 certain persons to transport firearms in vehicles;
 making certain acts unlawful; providing penalty;
 prohibiting the disarming of firearms by law
 enforcement; modifying firearms confiscation
 guidelines; clarifying and expanding scope of certain
 exemption; deeming specific act lawful under certain
 circumstances; adding definition; amending 21 O.S.

1 2011, Sections 1290.2, as last amended by Section 2,
2 Chapter 366, O.S.L. 2013 and 1290.26, as last amended
3 by Section 18, Chapter 15, O.S.L. 2013 (21 O.S. Supp.
4 2016, Sections 1290.2 and 1290.26), which relate to
5 the Oklahoma Self-Defense Act; modifying certain
6 definitions; clarifying and updating terms related to
7 reciprocal agreement authority; and providing an
8 effective date.

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

9 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1283, as
10 last amended by Section 1, Chapter 179, O.S.L. 2014 (21 O.S. Supp.
11 2016, Section 1283), is amended to read as follows:

12 Section 1283.

13 CONVICTED FELONS AND DELINQUENTS

14 A. Except as provided in subsection B of this section, it shall
15 be unlawful for any person convicted of any felony in any court of
16 this state or of another state or of the United States to have in
17 his or her possession or under his or her immediate control, or in
18 any vehicle which the person is operating, or in which the person is
19 riding as a passenger, or at the residence where the convicted
20 person resides, any pistol, imitation or homemade pistol, altered
21 air or toy pistol, machine gun, sawed-off shotgun or rifle, or any
22 other dangerous or deadly firearm.

23 B. Any person who has previously been convicted of a nonviolent
24 felony in any court of this state or of another state or of the

1 United States, and who has received a full and complete pardon from
2 the proper authority and has not been convicted of any other felony
3 offense which has not been pardoned, shall have restored the right
4 to possess any firearm or other weapon prohibited by subsection A of
5 this section, the right to apply for and carry a handgun, concealed
6 or unconcealed, pursuant to the Oklahoma Self-Defense Act and the
7 right to perform the duties of a peace officer, gunsmith, or for
8 firearms repair.

9 C. It shall be unlawful for any person serving a term of
10 probation for any felony in any court of this state or of another
11 state or of the United States or under the jurisdiction of any
12 alternative court program to have in his or her possession or under
13 his or her immediate control, or at his or her residence, or in any
14 passenger vehicle which the person is operating or is riding as a
15 passenger, any pistol, shotgun or rifle, including any imitation or
16 homemade pistol, altered air or toy pistol, shotgun or rifle, while
17 such person is subject to supervision, probation, parole or inmate
18 status.

19 D. It shall be unlawful for any person previously adjudicated
20 as a delinquent child or a youthful offender for the commission of
21 an offense, which would have constituted a felony offense if
22 committed by an adult, to have in the possession of the person or
23 under the immediate control of the person, or have in any vehicle
24 which he or she is driving or in which the person is riding as a

1 passenger, or at the residence of the person, any pistol, imitation
2 or homemade pistol, altered air or toy pistol, machine gun, sawed-
3 off shotgun or rifle, or any other dangerous or deadly firearm
4 within ten (10) years after such adjudication; provided, that
5 nothing in this subsection shall be construed to prohibit the
6 placement of the person in a home with a full-time duly appointed
7 peace officer who is certified by the Council on Law Enforcement
8 Education and Training (CLEET) pursuant to the provisions of Section
9 3311 of Title 70 of the Oklahoma Statutes.

10 E. It shall be unlawful for any person who is not lawfully
11 present in the United States to have in the possession of the person
12 or under the immediate control of the person, or in any vehicle the
13 person is operating or in which the person is riding as a passenger,
14 or at the residence where the person resides, any pistol, imitation
15 or homemade pistol, altered air or toy pistol, machine gun, sawed-
16 off shotgun, rifle or any other dangerous or deadly firearm.

17 F. Any person having been issued a handgun license pursuant to
18 the provisions of the Oklahoma Self-Defense Act and who thereafter
19 knowingly or intentionally allows a convicted felon ~~or~~, adjudicated
20 delinquent ~~or a~~, youthful offender or person that is not lawfully
21 present in the United States, as prohibited by the provisions of
22 subsection A, C, ~~or~~ D or E of this section to possess or have
23 control of any pistol authorized by the Oklahoma Self-Defense Act
24 shall, upon conviction, be guilty of a felony punishable by a fine

1 not to exceed Five Thousand Dollars (\$5,000.00). In addition, the
2 person shall have the handgun license revoked by the Oklahoma State
3 Bureau of Investigation after a hearing and determination that the
4 person has violated the provisions of this section.

5 ~~F.~~ G. Any convicted or adjudicated person violating the
6 provisions of this section shall, upon conviction, be guilty of a
7 felony punishable as provided in Section 1284 of this title.

8 ~~G.~~ H. For purposes of this section, ~~"sawed-off shotgun or~~
9 ~~rifle"~~ shall mean:

10 1. "Sawed-off shotgun or rifle" means any shotgun or rifle
11 which has been shortened to any length.

12 ~~H.~~ For purposes of this section, ~~"altered toy pistol" shall~~
13 ~~mean;~~

14 2. "Altered toy pistol" means any toy weapon which has been
15 altered from its original manufactured state to resemble a real
16 weapon.

17 ~~I.~~ For purposes of this section, ~~"altered air pistol" shall~~
18 ~~mean;~~

19 3. "Altered air pistol" means any air pistol manufactured to
20 propel projectiles by air pressure which has been altered from its
21 original manufactured state.

22 ~~J.~~ For purposes of this section, ~~"alternative court program"~~
23 ~~shall mean; and~~

1 4. "Alternative court program" means any drug court, Anna
2 McBride or mental health court, DUI court or veterans court.

3 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1289.3, is
4 amended to read as follows:

5 Section 1289.3

6 DEFINITIONS FOR FIREARMS ACT

7 "Pistols" or "handguns" as used in the Oklahoma Firearms Act of
8 1971, ~~Sections 1289.1 through 1289.17 of this title,~~ shall mean any
9 firearm capable of discharging ~~a projectile~~ single or multiple
10 projectiles from a single round of ammunition composed of any
11 material which may reasonably be expected to be able to cause lethal
12 injury, with a barrel or barrels less than sixteen (16) inches in
13 length, and using ~~either gunpowder, gas or any means of rocket~~
14 ~~propulsion~~ a combustible propellant charge, but not to include flare
15 guns, underwater fishing guns or blank pistols.

16 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1289.7, as
17 amended by Section 12, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,
18 Section 1289.7), is amended to read as follows:

19 Section 1289.7

20 FIREARMS IN VEHICLES

21 A. Any person, except a convicted felon or person that is
22 otherwise disqualified from the possession or legal purchase of a
23 firearm under state or federal law and is not involved in a crime,
24 may transport in a motor vehicle a rifle, or shotgun ~~or pistol, open~~

1 ~~concealed or unconcealed and unloaded, at any time. For purposes of~~
2 ~~this section "open" means the firearm is transported in plain view,~~
3 ~~in a case designed for carrying firearms, which case is wholly or~~
4 ~~partially visible, in a gun rack mounted in the vehicle, in an~~
5 ~~exterior locked compartment or a trunk of a vehicle.~~

6 ~~Any person, except a convicted felon, may transport in a motor~~
7 ~~vehicle a rifle or shotgun concealed behind a seat of the vehicle or~~
8 ~~within the interior of the vehicle provided the rifle or shotgun is~~
9 ~~not clip, magazine or chamber loaded. The authority to transport a~~
10 ~~clip_ or magazine_loaded rifle or shotgun shall be pursuant to~~
11 ~~Section 1289.13 of this title.~~

12 B. Any person twenty-one (21) years of age or older, except a
13 convicted felon or person that is otherwise disqualified from the
14 possession or legal purchase of a firearm under state or federal law
15 and is not involved in a crime, may transport in a motor vehicle a
16 pistol, concealed or unconcealed, loaded or unloaded, without a
17 valid handgun license issued pursuant to the Oklahoma Self-Defense
18 Act, provided the person is not involved in a crime.

19 C. Any person who is the operator of a vehicle or is a
20 passenger in any vehicle wherein another person who is licensed
21 pursuant to the Oklahoma Self-Defense Act to carry a handgun,
22 concealed or unconcealed, and is carrying a handgun or has the
23 handgun in such vehicle, shall not be deemed in violation of the
24

1 provisions of this section provided the licensee is in or near the
2 vehicle.

3 D. It shall be unlawful for any person to fail or refuse to
4 identify the fact that the person is in actual possession of a
5 firearm pursuant to the authority of the Oklahoma Self-Defense Act
6 or the Oklahoma Firearms Act of 1971, when the person comes into
7 contact with any law enforcement officer of this state or its
8 political subdivisions or a federal law enforcement officer during
9 the course of any arrest, detainment or routine traffic stop. Said
10 identification to the law enforcement officer shall be made at the
11 first opportunity. Any person who violates the provisions of this
12 subsection shall, upon conviction, be guilty of a misdemeanor
13 punishable by a fine not exceeding One Hundred Dollars (\$100.00).

14 E. Absent a reasonable and articulable suspicion of other
15 criminal activity, an individual possessing a concealed or
16 unconcealed weapon shall not be disarmed or physically restrained by
17 any law enforcement officer.

18 SECTION 4. AMENDATORY 21 O.S. 2011, Section 1289.13A, as
19 amended by Section 19, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,
20 Section 1289.13A), is amended to read as follows:

21 Section 1289.13A

22 IMPROPER TRANSPORTATION OF FIREARMS

23 A. Notwithstanding the provisions of Section 1272 or 1289.13 of
24 this title, any person stopped pursuant to a moving traffic

1 violation who is transporting a loaded pistol in the motor vehicle
2 without a valid handgun license authorized by the Oklahoma Self-
3 Defense Act or valid license from another state, whether the loaded
4 firearm is concealed or unconcealed in the vehicle, shall be issued
5 a traffic citation in the amount of Seventy Dollars (\$70.00), plus
6 court costs for transporting a firearm improperly. In addition to
7 the traffic citation provided in this section, the person may also
8 be arrested for any other violation of law.

9 B. When the arresting officer determines that the driver of the
10 vehicle is twenty-one (21) years of age or older or a valid handgun
11 license exists, pursuant to the Oklahoma Self-Defense Act or any
12 provision of law from another state, for any person in the stopped
13 vehicle, any firearms permitted to be carried pursuant to that
14 license shall not be confiscated, unless:

15 1. The person is arrested for violating another provision of
16 law other than a violation of subsection A of this section;
17 provided, however, if the person is never charged with an offense
18 pursuant to this paragraph or if the charges are dismissed or the
19 person is acquitted, the weapon shall be returned to the person; or

20 2. The officer has probable cause to believe the weapon is:

21 a. contraband, or

22 b. a firearm used in the commission of a crime other than
23 a violation of subsection A of this section.

1 C. ~~Nothing~~ Absent a criminal act, nothing in this section shall
2 be construed to require confiscation of any firearm.

3 SECTION 5. AMENDATORY 21 O.S. 2011, Section 1289.16, as
4 amended by Section 20, Chapter 259, O.S.L. 2012 (21 O.S. Supp. 2016,
5 Section 1289.16), is amended to read as follows:

6 Section 1289.16

7 FELONY POINTING FIREARMS

8 ~~It~~ Except for an act of self-defense, it shall be unlawful for
9 any person to willfully or without lawful cause point a shotgun,
10 rifle or pistol, or any deadly weapon, whether loaded or not, at any
11 person or persons for the purpose of threatening or with the
12 intention of discharging the firearm or with any malice or for any
13 purpose of injuring, either through physical injury or mental or
14 emotional intimidation or for purposes of whimsy, humor or prank, or
15 in anger or otherwise, but not to include the pointing of shotguns,
16 rifles or pistols by law enforcement authorities in the performance
17 of their duties, armed security guards or armed private
18 investigators licensed by the Council on Law Enforcement Education
19 and Training pursuant to the Oklahoma Security Guard and Private
20 Investigator Act in the performance of their duties, members of the
21 state military forces in the performance of their duties, members of
22 the federal military reserve and active military components in the
23 performance of their duties, or any federal government law
24 enforcement officer in the performance of any duty, or in the

1 performance of a play on stage, rodeo, television or on film, or in
2 defense of any person, one's home or property. Any person convicted
3 of a violation of the provisions of this section shall be punished
4 as provided in Section 1289.17 of this title.

5 Any person convicted of a violation of the provisions of this
6 section after having been issued a handgun license pursuant to the
7 Oklahoma Self-Defense Act shall have the license revoked and shall
8 be subject to an administrative fine of One Thousand Dollars
9 (\$1,000.00), upon a hearing and determination by the Oklahoma State
10 Bureau of Investigation that the person is in violation of the
11 provisions of this section.

12 SECTION 6. AMENDATORY 21 O.S. 2011, Section 1289.25, is
13 amended to read as follows:

14 Section 1289.25

15 PHYSICAL OR DEADLY FORCE AGAINST INTRUDER

16 A. The Legislature hereby recognizes that the citizens of the
17 State of Oklahoma have a right to expect absolute safety within
18 their own homes or places of business.

19 B. A person or an owner, manager or employee of a business is
20 presumed to have held a reasonable fear of imminent peril of death
21 or great bodily harm to himself or herself or another when using
22 defensive force that is intended or likely to cause death or great
23 bodily harm to another if:
24

1 1. The person against whom the defensive force was used was in
2 the process of unlawfully and forcefully entering, or had unlawfully
3 and forcibly entered, a dwelling, residence, occupied vehicle, or a
4 place of business, or if that person had removed or was attempting
5 to remove another against the will of that person from the dwelling,
6 residence, occupied vehicle, or place of business; and

7 2. The person who uses defensive force knew or had reason to
8 believe that an unlawful and forcible entry or unlawful and forcible
9 act was occurring or had occurred.

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

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

17 2. The person or persons sought to be removed are children or
18 grandchildren, or are otherwise in the lawful custody or under the
19 lawful guardianship of, the person against whom the defensive force
20 is used; or

21 3. The person who uses defensive force is engaged in an
22 unlawful activity or is using the dwelling, residence, occupied
23 vehicle, or place of business to further an unlawful activity.

1 D. A person who is not engaged in an unlawful activity and who
2 is attacked in any other place where he or she has a right to be has
3 no duty to retreat and has the right to stand his or her ground and
4 meet force with force, including deadly force, if he or she
5 reasonably believes it is necessary to do so to prevent death or
6 great bodily harm to himself or herself or another or to prevent the
7 commission of a forcible felony.

8 E. A person who unlawfully and by force enters or attempts to
9 enter the dwelling, residence, occupied vehicle of another person,
10 or a place of business is presumed to be doing so with the intent to
11 commit an unlawful act involving force or violence.

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

18 G. A law enforcement agency may use standard procedures for
19 investigating the use of defensive force, but the law enforcement
20 agency may not arrest the person for using defensive force unless it
21 determines that there is probable cause that the defensive force
22 that was used was unlawful.

23 H. The court shall award reasonable attorney fees, court costs,
24 compensation for loss of income, and all expenses incurred by the

1 defendant in defense of any civil action brought by a plaintiff if
2 the court finds that the defendant is immune from prosecution as
3 provided in subsection F of this section.

4 I. The provisions of this section and the provisions of the
5 Oklahoma Self-Defense Act shall not be construed to require any
6 person using a ~~pistol~~ weapon pursuant to the provisions of this
7 section to be licensed in any manner.

8 J. A person pointing a weapon at a perpetrator in self-defense
9 or in order to thwart, stop or deter a forcible felony or attempted
10 forcible felony shall not be deemed guilty of committing a criminal
11 act.

12 K. As used in this section:

13 1. "Defensive force" includes, but shall not be limited to,
14 pointing a weapon at a perpetrator in self-defense or in order to
15 thwart, stop or deter a forcible felony or attempted forcible
16 felony;

17 2. "Dwelling" means a building or conveyance of any kind,
18 including any attached porch, whether the building or conveyance is
19 temporary or permanent, mobile or immobile, which has a roof over
20 it, including a tent, and is designed to be occupied by people;

21 ~~2.~~ 3. "Residence" means a dwelling in which a person resides
22 either temporarily or permanently or is visiting as an invited
23 guest; and
24

~~3.~~ 4. "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

SECTION 7. AMENDATORY 21 O.S. 2011, Section 1290.2, as last amended by Section 2, Chapter 366, O.S.L. 2013 (21 O.S. Supp. 2016, Section 1290.2), is amended to read as follows:

Section 1290.2

DEFINITIONS

A. As used in the Oklahoma Self-Defense Act:

1. "Concealed handgun" means a loaded or unloaded pistol,~~the~~
~~presence of which is~~ or handgun not openly ~~discernible~~ visible to
the ordinary observation of a reasonable person;

2. "Unconcealed handgun" or "open carry" means a loaded or unloaded pistol or handgun carried upon the person in a ~~belt holster or shoulder holster that is wholly or partially~~ where the firearm is visible, or carried upon the person ~~in~~ using a scabbard, sling or case designed for carrying firearms ~~that is wholly or partially visible;~~ and

3. "Pistol" or "handgun" means any derringer, revolver or semiautomatic firearm which:

a. ~~has an overall~~ a barrel or barrels which have an
overall length of less than sixteen (16) inches,

b. is capable of discharging ~~a projectile~~ single or
multiple projectiles from a single round of ammunition

- 1 composed of any material which may reasonably be
2 expected to be able to cause lethal injury,
- 3 c. ~~is designed to~~ can be held and fired by the use of a
4 ~~single hand~~ one or both hands, and
- 5 d. uses ~~either gunpowder, gas or any means of rocket~~
6 ~~propulsion~~ a combustible propellant charge to
7 ~~discharge~~ propel the projectile or projectiles.

8 B. The definition of pistol or handgun for purposes of the
9 Oklahoma Self-Defense Act shall not apply to ~~homemade or~~ imitation
10 pistols, flare guns, underwater fishing guns or blank pistols.

11 SECTION 8. AMENDATORY 21 O.S. 2011, Section 1290.26, as
12 last amended by Section 18, Chapter 15, O.S.L. 2013 (21 O.S. Supp.
13 2016, Section 1290.26), is amended to read as follows:

14 Section 1290.26

15 RECIPROCAL AGREEMENT AUTHORITY

16 The State of Oklahoma hereby recognizes any valid concealed or
17 unconcealed carry weapons permit or license issued by another state,
18 or if the state is a nonpermitting carry state, this state shall
19 reciprocate under the permitting law of that state.

20 ~~A.~~ 1. Any person entering this state in possession of a firearm
21 authorized for concealed or unconcealed carry upon the authority and
22 license of another state is authorized to continue to carry a
23 concealed or unconcealed firearm and license in this state; provided
24 the license from the other state remains valid. The firearm must

1 either be carried unconcealed or concealed ~~from detection and view~~,
2 and upon coming in contact with any peace officer of this state, the
3 person must disclose the fact that he or she is in possession of a
4 concealed or unconcealed firearm pursuant to a valid concealed or
5 unconcealed carry weapons permit or license issued in another state.

6 ~~B.~~ 2. Any person entering this state in possession of a firearm
7 authorized for concealed carry upon the authority of a state that is
8 a nonpermitted carry state and the person is in compliance with the
9 Oklahoma Self-Defense Act, the person is authorized to carry a
10 concealed or unconcealed firearm in this state. The firearm must be
11 carried ~~fully concealed from detection and view~~ or unconcealed, and
12 upon coming in contact with any peace officer of this state, the
13 person must disclose the fact that he or she is in possession of a
14 concealed or unconcealed firearm pursuant to the nonpermitting laws
15 of the state in which he or she is a legal resident. The person
16 shall present proper identification by a valid photo ID as proof
17 that he or she is a legal resident in such a ~~non-permitting~~
18 nonpermitting state. The Department of Public Safety shall keep a
19 current list of ~~non-permitting~~ nonpermitting states for law
20 enforcement officers to confirm that a state is nonpermitting.

21 ~~C.~~ 3. Any person who is twenty-one (21) years of age or older
22 having a valid firearm license from another state may apply for a
23 handgun license in this state immediately upon establishing a
24 residence in this state.

SECTION 9. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/16/2017 -
DO PASS, As Amended and Coauthored.