

**FLOOR AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3165

				Of the printed Bill
Page	<u>4</u>	Section	<u>1</u>	Lines <u>9</u>
				Of the Engrossed Bill

By inserting after the letter "F." the number "1.";

Page 4 Section 1, Line 10: By striking all language beginning with the word "subsections" through the word "of";

Page 4, Section 1, Lines 10-11: By striking all language beginning with the word "is" on Line 10 through the word "from" on Line 11 and inserting in lieu thereof, the following language: "shall not be subject to";

Page 4, Section 1, Line 12: By inserting after the word "force" and before the period "." the following language: ", unless the force is determined to be unlawful";

Page 4, Section 1, Line 13: By inserting before the word "As" new paragraphs 2, 3, 4, 5 and 6 to read as follows:

"2. At the initial arraignment in a case where a defendant has been charged and is subject to criminal prosecution for the unlawful use of defensive force, the defendant may file a motion to dismiss the charges based on a claim that under the provisions of this section, the defendant is not subject to criminal prosecution. If the court denies the motion to dismiss, the defendant shall have the right to file an interlocutory appeal on the ruling made by the court to the district court judge or associate district court judge having jurisdiction over the case.

3. The appeal hearing before the district court judge or associate district court judge shall address whether the defensive force used by the defendant was unlawful or justified and permitted pursuant to the provisions of this section.

(CONTINUED BELOW)

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Kevin West

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

4. If, after the appeal hearing, the district court judge or associate district court judge concludes that the defensive force used was justified and permitted under the provisions of this section, the judge shall enter an order with findings that the defendant is not subject to criminal prosecution and that criminal charges and proceedings shall be dismissed.

5. If, after the appeal hearing, the district court judge or associate district court judge concludes that the defensive force used was not justified and was thereby unlawful, the judge shall enter an order binding the defendant over for trial.

6. Once a prima facie claim of justified self-defense has been raised by the defendant, the State of Oklahoma shall be required to prove beyond reasonable doubt that the defensive force used was not justified and was thereby unlawful.

7."

Page 4, Section 1, Lines 14-18: By removing all amendatory language beginning with the word "If" on Line 14 through the period "." on Line 18;

Page 5, Section 1, Line 4: By striking the phrase "immune from" and inserting in lieu thereof, the phrase "not subject to"; and

Page 6, Section 2, Line 18: By inserting a new "Section 2." and "Section 3." to read as follows:

(see below)

and by renumbering the subsequent section of the bill.

1 "SECTION 2. AMENDATORY 22 O.S. 2011, Section 1053, is  
2 amended to read as follows:

3 Section 1053. Appeals to the Court of Criminal Appeals may be  
4 taken by the state or a municipality in the following cases and no  
5 other:

6 1. Upon judgment for the defendant on quashing or setting aside  
7 an indictment or information;

8 2. Upon an order of the court arresting the judgment;

9 3. Upon a question reserved by the state or a municipality;

10 4. Upon judgment for the defendant on a motion to quash for  
11 insufficient evidence in a felony matter;

12 5. Upon a pretrial order, decision, or judgment suppressing or  
13 excluding evidence where appellate review of the issue would be in  
14 the best interests of justice; ~~and~~

15 6. Upon a pretrial order, decision or judgment suppressing or  
16 excluding evidence in cases alleging violation of any provisions of  
17 Section 13.1 of Title 21 of the Oklahoma Statutes; and

18 7. Upon a pretrial order, decision or judgment finding that a  
19 defendant is not subject to criminal prosecution under the  
20 provisions of Section 1289.25 of Title 21 of the Oklahoma Statutes.

21 Priority shall be given to appeals taken pursuant to paragraph 5  
22 or 6 of this section, and an order staying proceedings shall be  
23 entered pending the outcome of the appeal.

SECTION 3. AMENDATORY 22 O.S. 2011, Section 1089.1, is amended to read as follows:

Section 1089.1. The State of Oklahoma, by and through the district attorney or Attorney General, shall have the right to appeal an adverse ruling or order of a magistrate ~~sustaining~~:

1. Sustaining a motion to suppress evidence, ~~quashing~~;

2. Quashing an information, ~~sustaining~~;

3. Sustaining a plea to the jurisdiction of the court, ~~failing~~;

4. Failing to find prosecutive merit in a hearing pursuant to Section 2-2-403 of Title 10A of the Oklahoma Statutes, ~~sustaining~~;

5. Sustaining a demurrer to the information, ~~binding~~;

6. Binding the defendant over for trial on a charge other than the charge for the original offense, ~~or discharging~~;

7. Discharging a defendant at the preliminary examination because of insufficiency of the evidence to establish either that a crime has been committed or that there is probable cause to believe that the accused has committed a felony; or

8. Discharging a defendant on a finding that the defendant is not subject to criminal prosecution under the provisions of Section 1289.25 of Title 21 of the Oklahoma Statutes.

Such an appeal shall be taken in accordance with the procedures provided in this act."

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