

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2328

By: McDugle and West (Josh)

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 34.1, which relates to excessive use of force by peace officers; establishing standards and guidelines for the use of physical and deadly force; modifying definition; clarifying guidelines for establishing certain policies; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 34.1, is amended to read as follows:

Section 34.1 A. ~~Any~~ Except as provided in subsection B of this section, a peace officer, as defined in Section 648 of Title 21 of the Oklahoma Statutes, who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen is justified in using reasonable and appropriate physical force upon another person when and to the extent that he or she reasonably believes it necessary:

1       1. To effect an arrest or to prevent the escape from custody of  
2 an arrested person unless the peace officer knows that the arrest is  
3 unauthorized; or

4       2. To defend himself, herself or a third person from what the  
5 peace officer reasonably believes to be the use or imminent use of  
6 physical force while effecting or attempting to effect such an  
7 arrest or while preventing or attempting to prevent such an escape.

8       B. As used in this act, "excessive force" means physical force  
9 which exceeds the degree of physical force permitted by law ~~or the~~  
10 ~~policies and guidelines of the law enforcement entity.~~ The use of  
11 excessive force shall be presumed when a peace officer continues to  
12 apply physical force ~~in excess of the force permitted by law or said~~  
13 ~~policies and guidelines~~ to a person who has been rendered incapable  
14 of resisting arrest. A peace officer is justified in using physical  
15 force upon another person for a purpose specified in subsection A of  
16 this section only when the peace officer reasonably believes that it  
17 is necessary:

18       1. To defend himself, herself or a third person from what the  
19 peace officer reasonably believes to be the use or imminent use of  
20 deadly physical force; or

21       2. To effect an arrest, or to prevent the escape from custody,  
22 of a person whom the peace officer reasonably believes:  
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- 1        a. has committed or attempted to commit an offense  
2        involving the use or threatened use of a deadly or  
3        dangerous weapon,  
4        b. is attempting to escape by the use of a deadly or  
5        dangerous weapon, or  
6        c. is likely to endanger human life or inflict serious  
7        bodily injury to another unless apprehended without  
8        delay.

9        C. For purposes of this section, a reasonable belief that a  
10       person has committed an offense means a reasonable belief in facts  
11       or circumstances that if true would in law constitute an offense.  
12       If the peace officer believed facts or circumstances constitute an  
13       offense, an erroneous, though not unreasonable belief, does not  
14       render the use of force unjustified. A peace officer who is  
15       effecting an arrest pursuant to a warrant is justified in using the  
16       physical force described in subsections A and B of this section  
17       unless the warrant is invalid and is known by the officer to be  
18       invalid.

19       ~~C. D.~~ Each law enforcement entity which employs any peace  
20       officer shall adopt policies or guidelines concerning the use of  
21       force by peace officers ~~which shall be complied with by peace~~  
22       ~~officers in carrying out the duties of such officers within the~~  
23       ~~jurisdiction of the law enforcement entity.~~ The violation of such  
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1 agency policy or guidelines by a peace officer does not in of itself  
2 constitute unreasonable force.

3 SECTION 2. This act shall become effective November 1, 2019.

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