

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2922

By: Goodwin

AS INTRODUCED

An Act relating to deadly and excessive force; amending 21 O.S. 2011, Section 732, which relates to justifiable deadly force by an officer; modifying elements that justify the use of deadly force; prohibiting the use of deadly force under certain circumstances; directing peace officers to exercise use of force judiciously; requiring peace officers to evaluate circumstances and use de-escalation tactics and resources when safe and feasible; providing guidelines for peace officers when making or attempting to make an arrest; defining terms; amending 22 O.S. 2011, Section 34.1, which relates to excessive force by a peace officer; clarifying circumstances that authorize the use of excessive force; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 732, is amended to read as follows:

Section 732. A. A peace officer, ~~or~~ or correctional officer, or any person acting by his or her command in his or her aid and assistance, is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for any of the following reasons:

1 1. ~~The officer is~~ When acting in obedience to and in accordance
2 with any judgment of a competent court in executing a penalty of
3 death; ~~or~~

4 2. ~~In effecting an arrest or preventing an escape from custody~~
5 ~~following arrest and~~ When defending against an imminent threat of
6 death or serious bodily injury to the officer or to another person;
7 or

8 3. When apprehending a fleeing person for any felony that
9 threatened or resulted in death or serious bodily injury to another
10 person, if the officer reasonably believes ~~both~~ that:

- 11 a. ~~such force is necessary to prevent the arrest from~~
12 ~~being defeated by resistance or escape, and~~
- 13 b. ~~there is probable cause to believe that the person to~~
14 ~~be arrested has committed a crime involving the~~
15 ~~infliction or threatened infliction of~~ the person will
16 cause death or serious bodily harm, or the person to
17 ~~be arrested is attempting to escape by use of a deadly~~
18 ~~weapon, or otherwise indicates that he will endanger~~
19 ~~human life or inflict great bodily harm unless~~
20 ~~arrested without delay; or~~ injury to another unless
21 immediately apprehended. Where feasible, the officer
22 shall, prior to the use of physical or deadly force,
23 make reasonable efforts to identify himself or herself

1 as an officer and to warn that physical or deadly
2 force may be used.

3 3. B. 1. The officer ~~is in the performance of his legal duty~~
4 ~~or the execution of legal process and reasonably believes the use of~~
5 ~~the force is necessary to protect himself or others from the~~
6 ~~infliction of~~ shall not use deadly force against a person based on
7 the danger that person poses to himself or herself, if an
8 objectively reasonable officer would believe the person does not
9 pose an imminent threat of death or serious bodily harm; or

10 4. ~~The force is necessary to prevent an escape from a penal~~
11 ~~institution or other place of confinement used primarily for the~~
12 ~~custody of persons convicted of felonies or from custody while in~~
13 ~~transit thereto or therefrom unless the officer has reason to know:~~

14 a. ~~the person escaping is not a person who has committed~~
15 ~~a felony involving violence, and~~

16 b. ~~the person escaping is not likely to endanger human~~
17 ~~life or to inflict serious bodily harm if not~~
18 ~~apprehended~~ injury to the officer or to another
19 person.

20 2. The authority of peace officers to use physical or deadly
21 force is a serious responsibility that shall not be used recklessly
22 but shall be exercised judiciously with respect for human rights,
23 dignity and the sanctity of every human life.

1 3. Peace officers shall use deadly force only when necessary in
2 defense of human life. In determining whether deadly force is
3 necessary, an officer shall evaluate the particular circumstances of
4 each situation and use de-escalation tactics and available resources
5 when reasonably safe and feasible for an objectively reasonable
6 officer to do so.

7 C. An officer who makes or attempts to make an arrest need not
8 retreat or desist from his or her efforts due to the resistance or
9 threatened resistance of the person being arrested. An officer
10 shall not be deemed an aggressor or lose the right to self-defense
11 by the use of objectively reasonable force in compliance with
12 subsections A and B of this section to effect the arrest or to
13 prevent escape or to overcome resistance. For the purposes of this
14 subsection, "retreat" does not mean tactical repositioning or other
15 de-escalation tactics.

16 D. For purposes of this section:

17 1. "Deadly force" means any use of force that creates a
18 substantial risk of causing death or serious bodily injury
19 including, but not limited to, the discharge of a firearm;

20 2. A threat of death or serious bodily injury is "imminent"
21 when, based on the totality of the circumstances, an objectively
22 reasonable officer in the same situation would believe that a person
23 has the present ability, opportunity, and apparent intent to
24 immediately cause death or serious bodily injury to the officer or

1 to another person. An imminent threat of death or serious bodily
2 injury is not merely a fear of future injury, no matter how great
3 the fear and no matter how great the likelihood of the injury, but
4 one that, from appearances, must be instantly confronted and
5 addressed; and

6 3. "Totality of the circumstances" means all facts known to the
7 officer at the time, including the conduct of the officer and the
8 subject leading up to the use of deadly force.

9 SECTION 2. AMENDATORY 22 O.S. 2011, Section 34.1, is
10 amended to read as follows:

11 Section 34.1 A. Any peace officer, as defined in Section 648
12 of Title 21 of the Oklahoma Statutes, who has reasonable cause to
13 believe that the person subject to arrest has committed a public
14 offense may use objectively reasonable physical force to effect the
15 arrest, to prevent escape or to overcome resistance. Any peace
16 officer who uses excessive force in pursuance of such officer's law
17 enforcement duties shall be subject to the criminal laws of this
18 state to the same degree as any other citizen.

19 B. As used in this ~~act~~ section and Section 34.2 of this title,
20 "excessive force" means physical force which exceeds the degree of
21 physical force permitted by law or the policies and guidelines of
22 the law enforcement entity. The use of excessive force shall be
23 presumed when a peace officer continues to apply physical force in
24

1 excess of the force permitted by law or said policies and guidelines
2 to a person who has been rendered incapable of resisting arrest.

3 C. Each law enforcement entity which employs any peace officer
4 shall adopt policies ~~or~~ and guidelines concerning the use of force
5 by peace officers which shall be complied with by peace officers in
6 carrying out the duties of such officers within the jurisdiction of
7 the law enforcement entity.

8 SECTION 3. This act shall become effective November 1, 2021.

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