

# Summary of Statutes (from SDA Teaching Curriculum)

## I. SELF DEFENSE, USE OF FORCE, and CRIMINAL PROVISIONS

### A. Constitutional framework

1. All laws related to firearms must be understood within the limitations and rights protected by the U.S. Constitution and the Oklahoma Constitution.
2. These are the primary legal documents that define the rights of an individual and the authority of government over those rights.
3. The United States Supreme Court is the institution entrusted with the legal authority to interpret and explain constitutional provisions. These interpretations in the form of case law are the guiding rules that every Court uses to decide questions of law.

### B. The Second Amendment to the Constitution of the United States of America is the key provision directed to ownership of firearms:

1. "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed."
2. In District of Columbia v. Heller (07-290, 2008), The U.S. Supreme Court held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and that a federal law that prevents a law-abiding citizen from keeping a firearm in the home for the core purpose of self defense is unconstitutional.
3. In McDonald v. Chicago (08-1521, 2010), The U.S. Supreme Court held that, because of the 14<sup>th</sup> Amendment, the Second Amendment also applies to the States. A State law, or city ordinance, that prevents a law-abiding citizen from keeping a firearm in the home for the core purpose of self defense is unconstitutional.

### C. The Oklahoma Constitution addresses the extent of an individual's rights to bear arms and the State's regulatory power:

1. Oklahoma Constitution Article 2, Section 26:  
"The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the legislature from regulating the carrying of weapons."
2. Within the limitations established by these two critical constitutional provisions, the Oklahoma Legislature has developed a body of law to guide the actions of an individual in the use of force.

## II. Key Definitions

1. **Assault:** An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another. Words alone do not constitute an assault. Words, plus an apparent ability to commit a battery, equal assault. Oklahoma's assault law is unusual. (Title 21 O.S. § 641)
2. **Battery:** A battery is any willful and unlawful use of force or violence upon the person of another. In many States, what Oklahoma law calls a battery is called an "assault". Because of Oklahoma's definition of "assault" it is possible to have an assault, or an assault and battery. (**Title 21 O.S. § 642** and case law)
3. **Imminent danger:** Danger that is pressing, urgent, or immediate.
4. **Non Deadly Force:** Any non-consensual, offensive touching of another person with the intent to harm.
5. **Deadly Force:** Force likely or intended to cause death or serious bodily harm. Serious bodily harm is harm of a greater degree than a mere battery. **The use of a firearm is always considered an act of deadly force.**

6. **Self-Defense:** The paramount purpose of government is the protection of its citizenry from danger. The first resource for an individual who perceives him/herself to be in danger should be to contact the police. Still, State law recognizes a citizen may have to act in self-defense where a threat is imminent. The law strictly defines degrees of force.

### III. Title 21 OS § 1289.25

1. This title contains provisions commonly (if mistakenly) known as the “Make My Day” law or the “Stand Your Ground” law. This and similar laws are addressed in more detail below and allow the use of deadly force in certain circumstances.
2. By contrast, it should be noted that the only action the handgun license allows is for a person to legally carry a gun upon certain property. It does not give you any additional rights or privileges in the event of a shooting.
3. **Defense of Home, vehicle, business, Title 21 O.S. § 1289.25:** Oklahoma law recognizes a special right of an occupant of a home, dwelling, business, or occupied vehicle to self-protection or to protect other occupants from a threat of harm from an illegal entry or certain other specified threats. This special law makes no distinction between degrees of force.
  - a. “A person or an owner, manager or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:
    - i. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, occupied vehicle, or a place of business, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, or business; and
    - ii. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.”
  - b. Note that this is only a presumption. In other words, the Court will start off with the idea that the person had a reasonable fear of imminent peril of death or great bodily harm, but that presumption may be overcome by the evidence.
    - i. An example is **Bernay v. State, 989 P.2d 998 (Okla. Cr. 1999)**. The occupant said the person who was killed was making an illegal entry. Bernay said that the statute gave him an absolute right to kill the intruder. The Court of Criminal Appeals explained that this is an evidentiary presumption, and not an absolute. The Police and, ultimately, the jury, did not believe Bernay and did believe the other witnesses, so the evidentiary presumption was overcome and Mr. Bernay was convicted.
    - ii. The Oklahoma Court of Criminal Appeals defines “occupant” in this statute to mean “any person legally in the dwelling” and gives illustrative examples like a “baby sitter” or an “invited guest”. **State v. Anderson 972 P. 2d 32 (Okla. Cr. 1998)**

- c. The presumption does not apply if:
  - i. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not a protective order in effect or a written pretrial supervision order of no contact against that person;
  - ii. The person or persons sought to be removed are children or grandchildren, or are otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or
  - iii. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, occupied vehicle, or place of business to further an unlawful activity.”
    - 1. in **Dawkins v. State, 2011 Ok Cr 1**, the Oklahoma Court of Criminal Appeals addressed the question of what type of illegal activities will prevent the occupant from claiming this presumption.
- 4. Necessity: Once they have established a lawful reason, the actions of a person must still be necessary.<sup>1</sup>
- 5. Defense of Self and Another: A citizen must use only the minimum amount of force reasonably required to prevent the harm threatened. Force that is greater than necessary, or more than a reasonable person would employ, is excessive force that exceeds the authority of a citizen to self-protection.
  - a. Example: Fred is using bad language and insulting Tom, so Tom swings a garden hose attempting to strike Fred. Fred chooses to shoot Tom with a pistol. Fred could be guilty of a felony since Tom did not threaten Fred with deadly force. Fred’s use of deadly force was not necessary to avoid the threat. Fred should have used a lesser degree of force.
- 6. Defense of Another: In this instance a defender may only exercise that degree of force that the party protected is allowed to use. The defender "steps into the shoes of the party defended."
  - a. Example: Tom witnesses a cuss fight between Tom's brother John, and Fred. Tom, who sees Fred threaten John with a garden hose, shoots Fred to defend John. Tom's actions are not lawful since he could not use any greater degree of force than John, and John could not use deadly force to defend a non-deadly attack.

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1. The Courts have stated; "All self-defense rests upon necessity, and when there is no necessity to kill it cannot be self-defense", Ging v. State, 239 P. 685 (Ok. Cr.1925). If a lesser degree of force would solve the immediate threat, a person cannot use greater force without violating the law. When a person claims that a homicide is the result of self defense, the court (jury or judge if no jury) must determine whether there was a ‘reasonable fear’ of deadly force. *The ‘defense of home’ or ‘make my day’ statute is an evidentiary presumption, so that the court ‘presumes’ that the person had a reasonable fear of deadly force. This evidentiary presumption may be overcome by the evidence.*

#### IV. SDA Use of Deadly Force Summary

1. Some actions that may be taken with firearms that are legally considered use of force, and *potentially* a crime:
  - a. Displaying or flashing a firearm with intent to harm another, or
  - b. Brandishing or threatening, or
  - c. Pointing a firearm, or
  - d. Firing or discharging a firearm, or
  - e. Committing a battery with a firearm(all of the above items need to be viewed with the understanding that a firearm should never be used as a deterrent or a motivator)
2. Legal standard for lawful use of force
  - a. All acts of force against a person must be justified under the general principle of "reasonable and necessary". Unnecessary force is not lawful. Unreasonable force may also subject the actor to criminal and/or civil liability. A basic understanding of these ideas is essential in making a lawful defensive force decision.
  - b. Reasonableness: This element of lawful use of force examines the purpose or reason for the force. Oklahoma law recognizes a few lawful reasons for a citizen to use defensive force.<sup>2</sup>
3. Non-Deadly defense of self, justifiable use:
  - a. A person is justified in using force in self-defense if they reasonably believed force was necessary to protect themselves from imminent danger of bodily harm. Self-defense is a defense, although the danger to personal security may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the person using defensive force, would reasonably have believed they were in imminent danger of bodily harm.
  - b. The amount of force used may not exceed the amount of force a reasonable person, in the circumstances and from the viewpoint of the person using force, would have used to prevent the bodily harm.<sup>3</sup>

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2. Under this section a person may only use the degree of force a reasonable person would choose under the circumstances. *A person can never use deadly force lawfully against a non-deadly threat.*

3. If a person chooses to come to the aid of another person, they "step into the shoes" of the person they defend. If the protected person is in the right, the protector may use lawful, non-deadly force. If the person protected is a trespasser or is acting unlawfully, the party attempting to protect may be guilty of a crime for using unlawful defense of another. For this reason, using force to protect another (that is, 'step into their shoes') is a risky decision on the part of the protector.

4. Deadly Force - defense of self, justifiable use<sup>4, 5, 6, 7</sup>
  - a. A person is justified in using deadly force in self-defense if that person reasonably believed that use of deadly force was necessary to protect themselves from imminent danger of death or great bodily harm. Self-defense is a defense, although the danger to life or personal security may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the person using force, would reasonably have believed that they were in imminent danger of death or great bodily harm.
  - b. The amount of force used may not exceed the amount of force a reasonable person, in the circumstances and from the viewpoint of the person using defensive force, would have used to prevent the bodily harm.
5. Deadly Force -Defense of Another:
  - a. Legal Standard, justifiable use: A person is justified in using deadly force in defense of another if that person reasonably believes that use of deadly force is necessary to protect another from imminent danger of death or great bodily harm.
  - b. Defense of Another: Usually, if a person witnesses another person in a threatening situation, the best course of action is to call the Police. In limited circumstances, however, an individual may lawfully come to the aid of another person. A critical legal difference exists between protecting someone we have a relationship with and acting on behalf of a stranger.
  - c. Defense of another is a defense, although the danger to the life or personal security of the protected party may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defended person, would reasonably have believed that the other person was in imminent danger of death or great bodily harm.
  - d. Bodily harm under this law means any touching of a person against their will with physical force, in an intentional, hostile, and aggressive manner.

4. The rules for use of force by a certified, commissioned, Peace Officer are not the same as the rules for an SDA concealed carry permit holder. The student must not confuse the role of the Peace Officer and the role of the private citizen.

5. The difference between these two sections is a matter of threat assessment - one involves a non-deadly threat and response while the latter authorizes deadly force only where a person's life is immediately threatened.

6. A citizen's use of deadly force to protect another is strictly limited under Oklahoma law.

7. The taking of a human life is, by definition, the extreme act of force. Any killing regardless of justification will be reviewed by the police, prosecutors, and, in many cases, a judge and jury. Before choosing deadly force, be prepared to defend your actions with solid justification.

## **V. OKLAHOMA SELF-DEFENSE ACT (TITLE 21 O.S. § 1290.1 *et seq.*)**

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1. The law of the State of Oklahoma recognizes the rights of individuals to defend themselves from apparent threats to the life and safety of themselves, certain others, and in legitimate defense of a vehicle, business, or dwelling from illegal entry and attack.
2. **Title 21 O.S. § 1290.3** Authorizes the Oklahoma State Bureau of Investigation to issue handgun licenses.
  - a. Only persons properly licensed may lawfully carry an authorized concealed or unconcealed handgun.
  - b. Carrying a concealed or unconcealed handgun without a proper license, carrying an unauthorized firearm, improper use of a firearm, and carrying an authorized weapon into prohibited places can result in serious criminal charges being brought against the person and possible revocation or denial of any license issued under the act.

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### 3. Title 21 O.S. § 1290.2 - Definitions

#### a. Concealed Handgun:

A “loaded or unloaded pistol, the presence of which is not openly discernible to the ordinary observation of a reasonable person.”

#### b. Unconcealed Handgun:

“A loaded or unloaded pistol carried upon the person in a belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case designed for carrying firearms that is wholly or partially visible.”

#### c. Pistol:

“Any derringer, revolver or semiautomatic firearm which:

1. Has an overall length of less than sixteen (16) inches;
2. Can discharge a projectile composed of any material that may reasonably be expected to cause lethal injury;
3. Is designed to be held and fired by the use of a single hand, and
4. uses either gunpowder, gas or any means of rocket propulsion to discharge the projectile. The definition of pistol for purposes of the Oklahoma Self-Defense Act shall not apply to homemade or imitation pistols, flare guns, underwater fishing guns or blank pistols.”

### 4. Title 21 O.S. § 1290.4 – Concealed Weapons – unlawful except where hereby Authorized.

“As provided by Section 1272 of this Title, it is unlawful for any person to carry a concealed or unconcealed handgun in this state, except as hereby authorized by the provisions of the Oklahoma Self-Defense Act, or as may otherwise be provided by law.”

### 5. Title 21 O.S. § 1272.1 – firearms in liquor establishments. <sup>8</sup>

It shall be unlawful for any person to carry or possess any weapon designated in Section 1272 in any establishment where low-point beer, or alcoholic beverages are consumed. This provision shall not apply to a peace officer, or to private investigators with a firearms authorization when acting in the scope and course of employment, and shall not apply to an owner or proprietor of the establishment having a pistol, rifle, or shotgun on the premises. A person possessing a valid handgun license may carry the concealed or unconcealed handgun into any restaurant or other establishment licensed to dispense low-point beer or alcoholic beverages where the sale of low-point beer or alcoholic beverages does not constitute the primary purpose of the business.

Nothing in this section shall be interpreted to authorize any peace officer in actual physical possession of a weapon to consume low-point beer or alcoholic beverages, except in the authorized line of duty as an undercover officer.

Nothing in this section shall be interpreted to authorize any private investigator with a firearms authorization in actual physical possession of a weapon to consume low-point beer or alcoholic beverages in any establishment where low-point beer or alcoholic beverages are consumed.

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8. “Low point beer” and “alcoholic beverages” include: 3.2 beer or stronger, wine coolers, all liquors, and any other beverages that include alcohol.

## 6. Title 21 O.S. § 1277 - Prohibited Places <sup>9</sup>

- a. The following are prohibited places:
  - i. Any structure, building, or office space which is owned or leased by a city, town, county, state or federal governmental authority for the purpose of conducting business with the public.
  - ii. Courthouse, courtroom, prison, jail, or detention facility, or any facility used to process, hold, or house arrested persons
  - iii. Any public or private elementary or secondary school. (also see § 1280.1 below)
  - iv. Any publicly owned or operated sports arena or venue during a professional sporting event, unless allowed by the event holder
  - v. Any place where gambling is authorized by law, unless allowed by the property owner.
  - vi. Any other place specifically prohibited by law.
- b. The prohibited places do not include the following:
  - i. Any property set aside for the use or parking of any vehicle, whether attended or unattended, by a city, town, county, state, or federal governmental authority.
  - ii. Any property set aside for use or parking of a vehicle, whether attended or unattended, which is open to the public or by any entity engaged in gambling authorized by law.
  - iii. Any property adjacent to a structure, building, or office space in which concealed or unconcealed weapons are prohibited.
  - iv. Any property designated by a city, town, county, or state, governmental authority as a park, recreational area, or fairgrounds: provided nothing in this subparagraph shall be construed to authorize any entry by a person in possession of a concealed or unconcealed handgun into any structure, building, or office space which is specifically prohibited by the provisions above.
  - v. Any property set aside by a public or private elementary or secondary school for use or parking of any vehicle, whether attended or unattended; provided, however, said handgun shall be stored and hidden from view in a locked motor vehicle when the motor vehicle is left unattended on school property.
  - vi. **College or university or technology center** – A handgun license holder may carry a concealed or unconcealed onto property set aside for the use or parking of any vehicle, whether attended or unattended, provided the handgun is stored and not removed from the vehicle without the prior consent of the college or university president or technology center school administrator.
  - vii. Any property authorized for possession or use of handguns by college or university or technology center policy.
  - viii. Any property authorized by the written consent of the college or university president or technology center school administrator, provided the written consent is carried with the handgun and valid concealed handgun license while on college or university or technology center property.
  - ix. Carrying and use of firearms and other weapons when used for purposes of living history reenactment.

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9. It is unlawful for a person with or without a license to carry a concealed or unconcealed handgun into places where such action is prohibited. The SDA handgun license holder is expected to know the law.

- x. When in possession of any commissioned peace officer or other person authorized by law to possess a weapon in the performance of their duties and responsibilities.

**7. Title 21 O.S. § 1280.1 – ‘Possession of firearm on school property’**

- A. It is unlawful for any person to have any firearm on public or private school property or in a vehicle used by the school for transportation, except as provided in this statute or otherwise authorized by law.
- B. Firearms may be allowed in these schools as follows:
  - 1. a gun (or knife) designed for hunting or fishing kept in a private vehicle and properly displayed or stored, provided the vehicle is on school property only to transport a student and the vehicle does not remain unattended.
  - 2. a gun (or knife) used to participate in a certified education course, or recognized firearms sports event, or competition, or living history reenactment, if approved by the school administrator
  - 3. a concealed or unconcealed weapon on private school property by a person with a handgun license, if authorized by private school policy.
  - 4. in the possession of a veterans group, the national guard, active military, or ROTC to participate in a ceremony or educational program.
  - 5. carried by a handgun license holder in a vehicle in a parking lot, if the weapon is stored and hidden from view in a locked vehicle if unattended.
  - 6. carried by school personnel designated by the board of education. The school personnel must be a certified reserve officer or a licensed armed security guard

**8. Title 21 O.S. § 1290.5 - Term of license and renewal (‘license renewal’)**

- a. The license shall be valid in this state for five (5) or ten (10) years, unless subsequently surrendered, suspended or revoked as provided by law. No authority exists for a person to continue to carry a concealed or unconcealed handgun in this state pursuant to the Oklahoma Self Defense Act if the license is expired, or has been voluntarily surrendered, or suspended or revoked for any reason.
- b. A license may be renewed any time within 90 days prior to the date of expiration. There is a 90 day grace period for renewals.
- c. Licensee must obtain a renewal form from the Oklahoma State Bureau of Investigation before the license has expired.
- d. The applicant must
  - i. Complete the renewal form;
  - ii. Attach two (2) current passport size photographs of applicant;
  - iii. Submit renewal fee, in the amount set by the statute, to the Bureau;
  - iv. Pay renewal fee by nationally recognized credit card, cashier’s check, or money order, made payable to the Oklahoma State Bureau of Investigation. Payment may also be made by electronic funds transfer.
  - v. The Bureau will conduct a criminal history records name search and a search of other records deemed by the Bureau to be relevant to the renewal application.

**9. Title 21 O.S. § 1290.6 – prohibited ammunition**

Any concealed or unconcealed handgun when carried in a manner authorized by the provisions of the Oklahoma Self-Defense Act, and when loaded with any ammunition which is either a restricted bullet as defined by Section 1289.19 of this Title or is larger than .45 caliber or is otherwise prohibited by law shall be deemed a prohibited weapon for purposes of the Oklahoma Self-Defense Act. Any person violating the provisions of this section shall be punished for a criminal offense as provided by Section 1272 of this Title or any other applicable provision of law. In addition to any criminal prosecution for a violation of the provisions of this section, the licensee shall be subject to an administrative fine of Five Hundred Dollars (\$500.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

**10. Title 21 O.S. § 1290.7 – A handgun license does not authorize a person to:**

- a. Carry or possess any weapon other than an authorized pistol as defined by the Oklahoma Self-Defense Act.
- b. Carry or possess any pistol in any manner or in any place otherwise prohibited by law.
- c. Carry or possess any prohibited ammunition or any illegal, imitation, or home-made pistol
- d. Carry or possess any pistol when the person is prohibited by state or federal law from carrying or possessing any firearm, or
- e. Point, discharge, intentionally display the pistol, or use the pistol in any manner not otherwise authorized by law.

**11. Title 21 O.S. § 1290.9 - Eligibility**

- a. Eligible persons must
  - i. be a United States citizen
  - ii. Establish a residency in the State of Oklahoma. For purposes of the Oklahoma Self-Defense Act, the term "residency" shall apply to any person who either possesses a valid Oklahoma driver license or state photo identification card, and physically maintains a residence in this state or has permanent military orders within this state (or the spouse of that person) and possesses a valid driver license from another state where such person claims residency
  - iii. Be at least twenty-one (21) years of age.
  - iv. Complete a firearms safety and training course and demonstrate competence and qualifications with the type of pistol to be carried by the person as provided in Section 1290.14 of this title, and submit proof of training and qualification or an exemption for training and qualification as authorized by Section 1290.14. The certification of completion of the class is valid for up to 3 years, per Title 21 O.S. § 1290.14(E)
  - v. Submit the required fee and complete the application process.
  - vi. Comply in good faith with the Oklahoma Self-Defense Act.

## 12. Title 21 O.S. § 1290.10 - Mandatory preclusions

- a. Felony conviction (anywhere) or adjudication as a delinquent. (Except: **Title 21 O.S. § 1283** - Any person who has previously been convicted of a nonviolent felony and who has received a full and complete pardon from the proper authority, and has not been convicted of any other felony offense which has not been pardoned, shall have restored the right to possess any firearm and to apply for and carry a handgun, concealed or unconcealed.)
- b. Adjudication as an incompetent person (but see **§ 1290.27**, below)
- c. False or misleading statements on application
- d. Conviction of certain misdemeanor offenses:
  - i. Any assault and battery causing serious physical injury to the victim, or any second or subsequent assault and battery conviction.
  - ii. Aggravated assault and battery
    1. An assault and battery becomes aggravated when committed under any of the following circumstances:
      - a. When great bodily injury is inflicted upon the person attacked, or
      - b. When committed by a person of robust health or strength upon one who is elderly, or incapacitated (disabled by reason of mental or physical illness to such extent he or she lacks the ability to effectively protect his or her property or person).
      - c. Pursuant to **Title 21 O.S. § 650**, 'aggravated assault and battery upon law officers' includes 'the physical contact with and in an attempt to gain control of the firearm' of a peace officer
  - iii. Any stalking, or a similar law of another state
  - iv. Violation relating to the Protection from Domestic Abuse Act (Federal law also prohibits a domestic abuser, who is subject to a qualifying Order of Protection, from possessing firearms and ammunition).
  - v. Illegal drug use or possession. The preclusive period for a misdemeanor conviction for illegal drug use or possession is 10 years from the date of completion of the sentence.
  - vi. An act of domestic abuse or an act of domestic assault and battery or any comparable acts under the laws of another state
  - vii. Attempted suicide or other condition relating to or indicating mental instability or an unsound mind that occurred within the preceding (10) year period from the date of the application for a SDA license.
  - viii. Currently undergoing treatment for a mental illness, condition, or disorder. Defined as: the person has been diagnosed by a licensed physician as being afflicted with a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

- ix. Significant character defects as evidenced by a misdemeanor criminal record indicating habitual criminal activity.
- x. Conditions that would prohibit the possession of a firearm pursuant to any provision of law.
- xi. Ineligible to possess a pistol due to any provision of law of this State or the United States Code
- xii. Failure to pay an assessed fine or surrender the handgun license as required by a decision by the administrative hearing examiner pursuant to authority of the Oklahoma Self-Defense Act
- xiii. Being subject to an outstanding felony warrant.

**13. Title 21 O.S. § 1290.27 restoration of eligibility** for handgun license

A person who has been adjudicated incompetent (and thus precluded by § 1290.10) may petition a court to remove the disability. The statute sets out a detailed procedure. If the court finds that the person is not likely to be a danger the court may restore the person's eligibility for a handgun license.

**14. Title 21 O.S. § 1290.11 - Other preclusions** – apply for the specified time.

- a. An arrest for an alleged commission of a felony offense or a felony charge pending in this state, another state or pursuant to the United States Code. The preclusive period shall be until the final determination of the matter;
- b. The person is subject to the provisions of a deferred sentence or deferred prosecution for the commission of a felony offense. The preclusive period shall be 3 years and shall begin upon the final determination of the matter;
- c. Any involuntary commitment for a mental illness, condition, or disorder.
- d. The person has previously undergone treatment for a mental illness, condition, or disorder which required medication or supervision. The preclusive period shall be 3 years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person is either no longer disabled by any mental or psychiatric illness, condition, or disorder or that the person has been stabilized on medication for 10 years or more;
- e. Inpatient treatment for substance abuse. The preclusive period shall be 3 years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person has been free from substance use for 12 months or more preceding the filing of an application for a handgun license;
- f. Two or more convictions of public intoxication pursuant to Section 8 of Title 37 of the Oklahoma Statutes, or a similar law of another state. The preclusive period shall be 3 years from the date of the completion of the last sentence;

- g. Two or more misdemeanor convictions relating to intoxication or driving under the influence of an intoxicating substance or alcohol. The preclusive period shall be 3 years from the date of the completion of the last sentence or shall require a certified statement from a licensed physician stating that the person is not in need of substance abuse treatment;
- h. A court order for a final Victim Protection Order against the applicant, as authorized by the Protection from Domestic Abuse Act, or any court order granting a final victim protection order against the applicant from another state. The preclusive period shall be 3 years from the date of the entry of the final court order, or 60 days from the date an order was vacated, cancelled or withdrawn;
- i. An adjudicated delinquent or convicted felon residing in the residence of the applicant which may be a violation of Section 1283 of this title. The preclusive period shall be 30 days from the date the person no longer resides in the same residence as the applicant; or
- j. An arrest for an alleged commission of, a charge pending for, or the person is subject to the provisions of a deferred sentence or a deferred prosecution for any one or more of the following misdemeanor offenses in this state or another state (3 years beginning upon the final determination of the matter):
  - i. any assault and battery which caused serious physical injury to the victim or any second or subsequent assault and battery,
  - ii. any aggravated assault and battery,
  - iii. any stalking, or a similar law of another state, any violation of the Protection from Domestic Abuse Act, or any violation of a victim protection order of another state,
  - iv. any violation relating to illegal drug use or possession, or
  - v. an act of domestic abuse or an act of domestic assault and battery or any comparable acts under the law of another state.

**15. Title 21 O.S. § 1290.12 - Procedure for application**

- a. Request a license packet from the Oklahoma State Bureau of Investigation, either in person, or by mail, or from the local Sheriff's office.
- b. Contact an approved SDA Instructor for class enrollment.
- c. Truthfully answer all questions and fulfill all requirements of the form.
- d. The application is then delivered to the Sheriff of the county where the person seeking the license resides. The completed application form is signed in person before the Sheriff. Making a false or misleading statement on the application is perjury and subject to criminal prosecution.
- e. Submit two passport size photographs.
- f. The Sheriff is to take two complete sets of fingerprints, which meet the Automated Fingerprint Identification System (AFIS) standards
- g. The Sheriff processes and sends the application to the Oklahoma State Bureau of Investigation.

- h. In addition to a national criminal history records search, the Bureau shall inquire of the Oklahoma Department of Mental Health and Substance Abuse Services to determine if the applicant has been committed to a mental institution. Applicants who are age 28 or younger will also be subject to a record check with the Office of Juvenile Affairs.
- i. Any person who has been granted a permanent<sup>10</sup> victim's protective order by the Court, as provided for in the Protection from Domestic Abuse act, may be issued a temporary handgun license for a period not to exceed 6 months.
  - complete the process to obtain, and have applied for, a handgun license
  - pass the required weapons course
  - pass the preliminary investigation by the sheriff and court clerk
  - provide the sheriff with a certified permanent victims protection order and a valid Oklahoma state photo I.D. or driver license
  - provide the sheriff with a copy of your application for a permanent handgun license and date of application

**16. Title 21 O.S. § 1290.17 - Suspension and revocation of license**

- a. The Oklahoma State Bureau of Investigation has the authority pursuant to the Self-Defense Act, and other provisions, to suspend or revoke any handgun license issued pursuant to the SDA.
- b. A licensee may voluntarily surrender a license to the Bureau at any time and such surrender shall render the license invalid.
- c. A voluntary surrender of a license is not a suspension or revocation.
- d. By surrendering the license, the licensee forfeits all fees paid to date.
- e. Any license suspended or revoked must be returned to the O.S.B.I.
- f. Failure to surrender and return the license shall, upon conviction, be a misdemeanor punishable by a fine not exceeding \$500.00, and/or imprisonment in the county jail for not more than 6 months.
- g. The licensee may also be subject to an administrative fine of \$500.00 if determined to be in violation of provisions of this subsection.
- h. Any law enforcement Officer shall confiscate the license and return it to O.S.B.I. (if no longer needed as evidence) when:
  - i. The permit holder is arrested for any felony offense
  - ii. The permit holder is arrested for any misdemeanor which would be a preclusion (see above for preclusions)
  - iii. The permit holder violated any of the provisions of the S.D.A.
  - iv. The Officer has been "called to assist or is investigating any situation which would be a preclusion" (see above for preclusions).

**17. Title 21 O.S. § 1290.22 - Business owner's rights.**

- a. *Just as you can prohibit anyone from bringing a weapon into your home, you can prohibit anyone from bringing a weapon into your place of business.*
- b. It is unlawful for a person with or without a license to carry a weapon onto property where an owner has barred weapons, with the exception of transporting and storing a firearm or ammunition in a locked vehicle on any property set aside for any vehicle.
  - i. Nothing contained in the Oklahoma Self-Defense Act, shall be construed to limit, restrict or prohibit in any manner the existing rights of any person, property owner, tenant, employer, place of worship, or business entity, or holder of an event permit to control the possession of weapons on any property owned or controlled by the person or business entity.
  - ii. If the building or property is open to the public, the property owner shall post signs on or about the property stating such prohibition.
  - iii. A property owner may not establish any policy or rule that has the effect of prohibiting any person from carrying concealed or unconcealed on property within the specific exclusion in Section 1277(B)(4) ('Any property designated by a city, town, county or state governmental authority as a park, recreational area, or fairgrounds; provided, nothing in this paragraph shall be construed to authorize any entry by a person in possession of a concealed or unconcealed handgun into any structure, building or office space which is specifically prohibited by the provisions of subsection A of this section')
  - iv. . However, a property owner may prohibit carrying a concealed or unconcealed firearm in the following places:
    1. the portion of a public property building authorized by a governmental authority owning or controlling such structure
    2. any public property sports field (and adjacent seating) where an elementary or secondary school, collegiate, or professional sporting event or an IOC event is being held
    3. the fairgrounds during the Oklahoma State Fair or the Tulsa State Fair.
    4. the portion of a public property building that is leased to a business or non- profit for offices.

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*Note: this statute is the subject of many complaint calls to CLEET. Handgun license holders are upset that they cannot carry their firearm into a certain business. The solution is simple – if you are unhappy with the policy of that business, do your business somewhere else. The business owner's rights to prohibit weapons from entering the business trumps the handgun license. Signs must be posted if the business is 'open to the public'.*

NOTE: The rights of a licensee under this act do not supersede or affect the authority of a peace officer to lawfully investigate, detain, or arrest persons suspected of involvement in crimes whether serious or minor in nature. Further, an officer has received extensive training in the handling and use of weapons and is authorized to use force, including deadly force, in certain instances to make an arrest and in defense of the officer or any other person. *Due to the risk that an officer could perceive a citizen's pointing, or reckless handling, of a weapon as a deadly force threat, extreme caution should be utilized when a person carrying a weapon is contacted by a peace officer.*

**18. Title 21 O.S. § 1290.8 - Notification to Police.** <sup>10</sup>

- a. The Oklahoma Self Defense Act specifically states that it is “unlawful for any person to fail or refuse to identify the fact that the person is in actual possession of a concealed or unconcealed handgun when the person comes into contact” with any law enforcement officer during the course of any arrest, detainment, or traffic stop. The statute requires that ‘said identification to the law enforcement officer shall be made at the first opportunity’.
  - i. Contact means:
    1. Conversation
    2. A stop of a motor vehicle, whether the citizen is driving or a passenger; OR
    3. Any arrest, for any reason.
    4. A person must possess a valid Oklahoma driver’s license or Oklahoma photo identification when in possession of a pistol.
- b. If not carrying a weapon, no notice is required
- c. If carrying a weapon
  - i. Keep hands visible.
  - ii. Tell the officer you have a weapon.
  - iii. Follow the officer’s directions specifically.
- d. If the weapon is not on your person but nearby:
  - i. Keep your hands in sight always
  - ii. Tell the officer that you have a weapon in the vehicle
  - iii. Avoid sudden movements unless permitted or instructed by the officer
  - iv. Inform the officer of the weapon’s location
  - v. Follow the directions of the officer specifically
  - vi. Do NOT remove or display the weapon unless specifically instructed by the officer.

**19. Title 21 O.S. § 1289.13A – Transferring Loaded Pistol without Handgun License –  
Penalty – Confiscation of Firearm**

- a. If a person is stopped for a moving traffic violation, and that person is transporting a loaded pistol in the motor vehicle without a valid handgun license authorized by the Oklahoma Self- Defense Act or valid license from another state (whether the loaded firearm is concealed or unconcealed in the vehicle) the Officer is to issue a traffic citation in the amount of \$70.00, plus court costs.

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*10. It is a common complaint among Peace Officers that SDA handgun license holders fail to identify themselves during traffic stops. Failing to follow this procedure strictly could result in injury or death as well as serious criminal charges and loss of license. It is difficult to understand (and to explain to a Judge) why a law-abiding SDA handgun license holder would not identify themselves to a Peace Officer.*

- i. In addition to the traffic citation provided in this section, the person may also be arrested for any other violation of law.
- ii. When the arresting officer determines that a valid handgun license exists, any firearms permitted to be carried shall not be confiscated, unless:
  1. The person is arrested for violating another provision of law, However, if the person is never charged with a crime or if the charges are dismissed or the person is acquitted, the weapon shall be returned to the person OR
  2. The officer has probable cause to believe the weapon is:
    - a. contraband, OR
    - b. a firearm used in the commission of a crime other than a violation of this section.

**20. Title 21 O.S. § 1273 - Allowing minors to possess firearms**

- a. It is a misdemeanor to sell or give to any child any of the arms or weapons designated in the Oklahoma Self Defense Act.
- b. This does not prohibit a parent (or a legal guardian, or a person acting with permission of the parent or legal guardian) from giving a child a firearm for legitimate hunting or sporting events, or training in safe use, except if the parent or guardian is aware of a substantial risk that the child will use the weapon to commit a crime or if the child has been adjudicated a delinquent, or if the child has been convicted as an adult for any criminal offense involving use or threat of use of force against a person.

**21. Title 21 O.S. § 1278 - Unlawful intent to carry**

- a. Any person who carries or wears a deadly weapon or dangerous instrument with the intent of unlawfully injuring another person shall be guilty of a felony.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license permanently revoked and be liable for an administrative fine of \$1000.00.

**22. Title 21 O.S. § 1279 - Misdemeanor pointing a firearm**

Except in self-defense, it is a misdemeanor to point a loaded or unloaded pistol or other deadly weapon at anyone.

**23. Title 21 O.S. § 1280.1 - Possession of firearm on school property <sup>11</sup>**

- a. It is a felony for any person, except a peace officer or other person authorized by the governing entity of the school to have in their possession any firearm or weapon on any public or private school property, or while on any vehicle used for transportation of students and teachers.

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11. "School Property" means any publicly or privately owned property held for "purposes of elementary, secondary, or vocational technical education", and shall not include property owned by public school districts or private educational entities where such property is leased or rented to an individual or corporation and used for purposes other than education.

- b. A handgun carried in a vehicle pursuant to a valid handgun license shall not be in violation provided such vehicle is driven onto school property only to transport a student to and from school and if the weapon is stored and hidden from view in a locked vehicle if unattended.
- c. For the purposes of participating in the Oklahoma Department of Wildlife Safety or Firearms Training courses, or other events, the principal or chief administrator of any public or private school where said course is offered may authorize firearms or other weapons to be brought onto school property and used in such training course.

**24. Title 21 O.S. § 1283 - Convicted felons and delinquents**

- a. It is unlawful for anyone previously convicted of a felony, or serving a term of probation, or under the jurisdiction of any alternative court program to have in their possession or under their immediate control, or in any vehicle which they are operating or riding, or at their residence, any pistol, machine gun, sawed-off shotgun, or rifle, or any other dangerous or deadly firearm.

Any person who has previously been convicted of a nonviolent felony and who has received a full and complete pardon from the proper authority, and has not been convicted of any other felony offense which has not been pardoned, shall have restored the right to possess any firearm and to apply for and carry a concealed handgun pursuant to the provisions of the Oklahoma Self-Defense Act.

- b. Any person having been issued a handgun license who knowingly or intentionally allows a convicted felon or adjudicated delinquent to possess or have control of any pistol, is guilty of a felony, punishable by a fine of up to \$5,000.00. In addition, the person shall have the handgun license permanently revoked.

**25. Title 21 O.S. § 1287 - Use of firearm while committing a felony**

- a. It is a felony for anyone, while committing or attempting to commit a felony, to possess a pistol, shotgun, rifle or other offensive weapon, blank or imitation, whether loaded or not, capable of raising fear in the mind of one that is threatened.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license permanently revoked and be liable for an administrative fine of \$1,000.00.

**26. Title 21 O.S. § 1289.7 - Firearms in vehicles**

- a. Any person except a convicted felon, with or without a license, may transport a rifle, shotgun, or pistol, unloaded;
  - i. In plain view;
  - ii. In a weapon case (wholly or partially visible);
  - iii. In a mounted gun rack; or
  - iv. In an exterior locked compartment.

Examples of "exterior locked compartment" would include a trunk, or a locked tool box in the back of a pickup.

- v. in the interior compartment of the vehicle as long as it is not chamber loaded in the case of a rifle or shotgun if the person is in the possession of a valid handgun license according to Section 1289.13 Any person who is the operator of a vehicle, or is a passenger in any vehicle wherein another person who is licensed pursuant to the Self Defense Act to carry a handgun, concealed or unconcealed, and is carrying a handgun or has the handgun in such vehicle, shall not be deemed in violation of the provisions of this section, provided the licensee is in or near the vehicle.

**27. Title 21 O.S. § 1289.9 - Carrying Weapons Under the Influence of Alcohol**

- a. It is a misdemeanor for any person to carry or use shotguns, rifles or pistols in any circumstances while under the influence of beer, intoxicating liquors, hallucinogenic, or other drugs. The same applies to prescription drugs if the aftereffects of consumption affect mental, emotional, or physical processes to a degree resulting in abnormal behavior.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license suspended for 6 months and be liable for an administrative fine of up to \$50.00.

**28. Title 21 O.S. § 1289.10 - Furnishing firearms to incompetent persons**

- a. It is a misdemeanor for anyone knowingly to transmit, transfer, sell, lend, or furnish any shotgun, rifle or pistol to anyone adjudicated as mentally incompetent, or to anyone who is mentally deficient or of unsound mind.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license suspended for 6 months and be liable for an administrative fine of up to \$50.00.

**29. Title 21 O.S. § 1289.11 - Reckless conduct**

- a. It is a misdemeanor for anyone to engage in actions creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person, while having possession of any shotgun, rifle, or pistol.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license revoked and be liable for an administrative fine of up to \$1,000.00.

**30. Title 21 O.S. § 1289.12 - Giving firearms to convicted persons**

- a. It is a misdemeanor knowingly to sell, trade, give, or transfer a rifle, shotgun, or pistol to any convicted felon or an adjudicated delinquent. Transferring weapons to any individual who is under the influence of alcohol or drugs, or who is mentally or emotionally unbalanced or disturbed, is also unlawful.
- b. Any handgun license holder who is convicted of a violation shall have the license suspended for 6 months and be liable for an administrative fine of up to \$50.00.

**31. Title 21 O.S. § 1289.16 - Felony pointing firearms**

- a. It is a felony to willfully or without a lawful cause point a shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at anyone for the purpose of threatening, injuring, intimidation, whimsy, humor, prank, or in anger.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license revoked and be liable for an administrative fine of up to \$1000.00.

**32. Title 21 O.S. § 1364 - Discharging firearm**

- a. It is a misdemeanor to willfully or without lawful cause discharge a shotgun, rifle or pistol, air gun or other weapon, or throw any other missile in any public place, or in a place where a person is endangered, even if no injury takes place.
- b. Any person having been issued a handgun license who is convicted of a violation of this section shall have the license suspended for 6 months and be liable for an administrative fine up to \$50.00.

**33. Title 21 O.S. § 1289.17A – Felony Discharge Firearms**

- a. It shall be a felony for any person to willfully or intentionally discharge any firearm, or other deadly weapon at or into any dwelling, or into any building used for public or business purposes.
- b. Any violation of the provisions of this section is a felony punishable by imprisonment for a term of 2 years to 20 years.

### 34. Summary

- a. Never display a handgun to gain “leverage” in an argument, even if it is not loaded or you never intend to use it.
- b. The amount of force used must not be excessive under the circumstances
- c. Never use deadly force in self-defense unless you are afraid that if you do not, you will be killed or seriously injured AND THE USE OF THE GUN IS THE ONLY OPTION;
- d. Verbal threats never justify use of deadly force, and property crime alone never justifies the use of deadly force.
- e. If you think someone has a weapon and will use it unless you kill them, be sure you are right and are not overreacting to the situation.
- f. A cool head and even temper can keep handgun carriers out of trouble. Never carry a gun into a situation where you might get angry.
- g. The law permits carrying a weapon for self-defense. Possession of a SDA handgun license, or carrying a concealed or unconcealed weapon, does not make you a freelance police officer.
- h. Never carry your weapon into any place where prohibited by statute.

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The preceding outline is not a complete summary of all the statutes and court opinions on the use of deadly force and is not intended as legal advice. Every self-defense case has its own unique set of facts, and trying to predict how a particular case would be decided is unwise. It is clear, however, that the law protects people who keep their tempers under control and use deadly force only as a last resort.

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