

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 1090

By: Paxton

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5
6 AS INTRODUCED

7 An Act relating to appeal of criminal prosecutions;
8 amending 21 O.S. 2021, Section 732, which relates to
9 justifiable homicide by officer; clarifying immunity
10 provision for persons asserting certain claim;
11 authorizing defendant to file motion to dismiss
12 charges under certain circumstances; granting
13 defendant the right to file certain interlocutory
14 appeal; establishing procedures for certain appeal
15 hearing; defining term; amending 22 O.S. 2021,
16 Section 1053, as amended by Section 2, Chapter 209,
17 O.S.L. 2022 (22 O.S. Supp. 2022, Section 1053), which
18 relates to appeals taken by the state or
19 municipality; authorizing appeals by state or
20 municipalities under certain circumstances; and
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 21 O.S. 2021, Section 732, is
24 amended to read as follows:

25 Section 732. A. A peace officer, correctional officer, or any
26 person acting by his command in his aid and assistance, is justified
27 in using deadly force when:

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

3 or

4 2. In effecting an arrest or preventing an escape from custody
5 following arrest and the officer reasonably believes both that:

6 a. such force is necessary to prevent the arrest from
7 being defeated by resistance or escape, and

8 b. there is probable cause to believe that the person to
9 be arrested has committed a crime involving the
10 infliction or threatened infliction of serious bodily
11 harm, or the person to be arrested is attempting to
12 escape by use of a deadly weapon, or otherwise
13 indicates that he will endanger human life or inflict
14 great bodily harm unless arrested without delay; or

15 3. The officer is in the performance of his legal duty or the
16 execution of legal process and reasonably believes the use of the
17 force is necessary to protect himself or others from the infliction
18 of serious bodily harm; or

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

23 a. the person escaping is not a person who has committed
24 a felony involving violence, and

1 b. the person escaping is not likely to endanger human
2 life or to inflict serious bodily harm if not
3 apprehended.

4 B. 1. An officer who uses deadly force shall not be subject to
5 criminal prosecution or civil action for the use of such deadly
6 force unless the deadly force is determined to be unlawful.

7 2. At least ten (10) days prior to the preliminary hearing in a
8 case where an officer has been charged and is subject to criminal
9 prosecution for the unlawful use of deadly force, the officer may
10 file a motion to dismiss the charges based on a claim that under the
11 provisions of this section, the officer is not subject to criminal
12 prosecution. If the court denies the motion to dismiss, the officer
13 shall have the right to file an interlocutory appeal on the ruling
14 made by the court to the district or associate district court judge
15 having jurisdiction over the case.

16 3. The appeal hearing before the district or associate district
17 court judge shall address whether the deadly force used by the
18 officer was unlawful or justified and permitted pursuant to the
19 provisions of this section. If, after the appeal hearing, the
20 district or associate district court judge concludes that the deadly
21 force used was justified and permitted under the provisions of this
22 section, the judge shall enter a written order containing findings
23 of fact and conclusions of law that the officer is not subject to
24 criminal prosecution and that criminal charges and proceedings shall

1 be dismissed and shall not be filed unless newly discovered evidence
2 or evidence not known to the prosecution at the time is found or
3 discovered. If, after the appeal hearing, the district or associate
4 district court judge concludes that the deadly force used was not
5 justified and therefore unlawful, the judge shall enter an order
6 binding the officer over for trial.

7 4. As used in this subsection, the term "criminal prosecution"
8 includes charging or prosecuting the defendant.

9 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1053, as
10 amended by Section 2, Chapter 209, O.S.L. 2022 (22 O.S. Supp. 2022,
11 Section 1053), is amended to read as follows:

12 Section 1053. Appeals to the Court of Criminal Appeals may be
13 taken by the state or a municipality in the following cases only:

- 14 1. Upon judgment for the defendant on quashing or setting aside
15 an indictment or information;
- 16 2. Upon an order of the court arresting the judgment;
- 17 3. Upon a question reserved by the state or a municipality;
- 18 4. Upon judgment for the defendant on a motion to quash for
19 insufficient evidence in a felony matter;
- 20 5. Upon a pretrial order, decision, or judgment suppressing or
21 excluding evidence where appellate review of the issue would be in
22 the best interests of justice;

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

4 7. Upon a pretrial order, decision, or judgment finding that a
5 defendant is not subject to criminal prosecution under the
6 provisions of Section 732 of Title 22 of the Oklahoma Statutes; and

7 8. Upon an order, decision or judgment finding that a defendant
8 is immune from or not subject to criminal prosecution.

9 Priority shall be given to appeals taken pursuant to paragraph
10 5, 6, ~~or 7,~~ or 8 of this section, and an order staying proceedings
11 shall be entered pending the outcome of the appeal.

12 SECTION 3. This act shall become effective November 1, 2023.

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