

Cherokee Nation Code Annotated
Title 21: Crimes and Punishments
Part VI. Crimes Against Public Peace
Chapter 53: Manufacturing, Selling and Wearing Weapons
§ 1289.25. Physical or deadly force against intruder

Cite as: 21 CNCA § 1289.25

A. The Council hereby recognizes that the citizens of the Cherokee Nation have a right to expect absolute safety within their own homes, places of business or places of worship and have the right to establish policies regarding the possession of weapons on property pursuant to Section 1289.22 of this title.

B. A person, regardless of official capacity or lack of official capacity, within a place of worship or a person, 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:

1. a. 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, place of business or place of worship, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, place of business or place of worship.

b. 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; or

2. The person who uses defensive force knew or had reasonable belief that the person against whom the defensive force was used entered or was attempting to enter a dwelling, residence, occupied vehicle, place of business or place of worship for the purpose of committing a forcible felony, as defined in Section 733 of this title, and that the defensive force was necessary to prevent the commission of the forcible felony.

C. The presumption set forth in subsection B of this section does not apply if:

1. 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 from domestic violence in effect or a written pretrial supervision order of no contact against that person;

2. 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

3. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, occupied vehicle, place of business or place of worship to further an unlawful activity.

D. A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

E. A person who unlawfully and by force enters or attempts to enter the dwelling, residence, occupied vehicle of another person, place of business or place of worship is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

F. A person who uses defensive force, as permitted pursuant to the provisions of subsections A, B, D and E of this section, is justified in using such defensive force and is immune from criminal prosecution and civil action for the use of such defensive force. As used in this subsection, the term "criminal prosecution" includes charging or prosecuting the defendant.

G. A law enforcement agency may use standard procedures for investigating the use of defensive force, but the law enforcement agency may not arrest the person for using defensive force unless it determines that there is probable cause that the defensive force that was used was unlawful.

H. The court shall award reasonable attorney fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection F of this section.

I. The provisions of this section and the provisions of the Cherokee Nation Self-Defense Act shall not be construed to require any person using a weapon pursuant to the provisions of this section to be licensed in any manner.

J. A person pointing a weapon at a perpetrator in self-defense or in order to thwart, stop or deter a forcible felony or attempted forcible felony shall not be deemed guilty of committing a criminal act.

K. As used in this section:

1. "Defensive force" includes, but shall not be limited to, pointing a weapon at a perpetrator in self-defense or in order to thwart, stop or deter a forcible felony or attempted forcible felony;
2. "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people;
3. "Place of worship" means:
 - a. any permanent building, structure, facility or office space owned, leased, rented or borrowed, on a full-time basis, when used for worship services, activities and business of the congregation, which may include, but not be limited to, churches, temples, synagogues and mosques, and
 - b. any permanent building, structure, facility or office space owned, leased, rented or borrowed for use on a temporary basis, when used for worship services, activities and business of the congregation including, but not limited to, churches, temples, synagogues and mosques;
4. "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest; and
5. "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Historical Data

LA 10-90, eff. November 13, 1990. Amended LA 28-20, eff. December 14, 2020.