

# D R A F T

## SUMMARY

Creates crime of making an unauthorized arrest. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates civil cause of action for unauthorized arrest. Provides prevailing plaintiff with attorney fees and greater of \$10,000 or actual damages.

Limits arrests by private person or magistrate to felonies only. Requires specified investigators to have Department of Public Safety Standards and Training certification to be considered peace officers.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to law enforcement; creating new provisions; amending ORS 133.005,  
3 133.225 and 133.340; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) A person commits the crime of making an unau-**  
6 **thorized arrest if:**

7 **(a) The person arrests another person for a crime under state or**  
8 **federal law; and**

9 **(b) The arrest is not authorized by the provisions of ORS 133.220 to**  
10 **133.360.**

11 **(2) Making an unlawful arrest is a Class A misdemeanor.**

12 **(3) A plaintiff has a civil cause of action for a violation of this**  
13 **section. A prevailing plaintiff in the civil action is entitled to receive:**

14 **(a) The greater of \$10,000 or actual damages; and**

15 **(b) Reasonable attorney fees.**

16 **SECTION 2. ORS 133.225 is amended to read:**

17 **133.225. (1) A private person may arrest another person for [*any crime*] a**

1 **felony** committed in the presence of the private person if the private person  
2 has probable cause to believe the arrested person committed the [*crime*] **fel-**  
3 **ony**. A private person making such an arrest shall, without unnecessary de-  
4 lay, take the arrested person before a magistrate or deliver the arrested  
5 person to a peace officer.

6 (2) In order to make the arrest a private person may use physical force  
7 as is justifiable under ORS 161.255.

8 **SECTION 3.** ORS 133.340 is amended to read:

9 133.340. When a [*crime*] **felony** is committed in the presence of a  
10 magistrate, the magistrate may, by a verbal or written order, command any  
11 person to arrest the offender and may thereupon proceed as if the offender  
12 had been brought before the magistrate upon a warrant of arrest.

13 **SECTION 4.** ORS 133.005, as amended by section 6, chapter 54, Oregon  
14 Laws 2012, and section 3, chapter 67, Oregon Laws 2012, is amended to read:

15 133.005. As used in ORS 133.005 to 133.400 and 133.410 to 133.450, unless  
16 the context requires otherwise:

17 (1) "Arrest" means to place a person under actual or constructive re-  
18 straint or to take a person into custody for the purpose of charging that  
19 person with an offense. A "stop" as authorized under ORS 131.605 to 131.625  
20 is not an arrest.

21 (2) "Federal officer" means a special agent or law enforcement officer  
22 employed by a federal agency who is empowered to effect an arrest with or  
23 without a warrant for violations of the United States Code and who is au-  
24 thorized to carry firearms in the performance of duty.

25 (3) "Peace officer" means:

26 (a) A member of the Oregon State Police;

27 (b) A sheriff, constable, marshal, municipal police officer or reserve offi-  
28 cer or a police officer commissioned by a university under ORS 352.383;

29 (c) An investigator of a district attorney's office if the investigator is [*or*  
30 *has been certified as a peace officer in this or any other state*] **certified as a**  
31 **public safety officer under ORS 181.610 to 181.712;**

1 (d) An investigator of the Criminal Justice Division of the Department  
2 of Justice of the State of Oregon **if the investigator is certified as a public**  
3 **safety officer under ORS 181.610 to 181.712;**

4 (e) A humane special agent as defined in section 2, chapter 67, Oregon  
5 Laws 2012;

6 (f) A liquor enforcement inspector exercising authority described in ORS  
7 471.775 (2); or

8 (g) An authorized tribal police officer as defined in section 1, chapter 644,  
9 Oregon Laws 2011.

10 (4) “Reserve officer” means an officer or member of a law enforcement  
11 agency who is:

12 (a) A volunteer or employed less than full-time as a peace officer com-  
13 missioned by a city, port, school district, mass transit district, county,  
14 county service district authorized to provide law enforcement services under  
15 ORS 451.010, the Criminal Justice Division of the Department of Justice, the  
16 Oregon State Lottery Commission or the Governor or a member of the De-  
17 partment of State Police;

18 (b) Armed with a firearm; and

19 (c) Responsible for enforcing the criminal laws and traffic laws of this  
20 state or laws or ordinances relating to airport security.

21 **SECTION 5.** ORS 133.005, as amended by section 39, chapter 644, Oregon  
22 Laws 2011, section 7, chapter 54, Oregon Laws 2012, and section 4, chapter  
23 67, Oregon Laws 2012, is amended to read:

24 133.005. As used in ORS 133.005 to 133.400 and 133.410 to 133.450, unless  
25 the context requires otherwise:

26 (1) “Arrest” means to place a person under actual or constructive re-  
27 straint or to take a person into custody for the purpose of charging that  
28 person with an offense. A “stop” as authorized under ORS 131.605 to 131.625  
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6 cer or a police officer commissioned by a university under ORS 352.383;

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8 *has been certified as a peace officer in this or any other state*] **certified as a**  
9 **public safety officer under ORS 181.610 to 181.712;**

10 (d) An investigator of the Criminal Justice Division of the Department  
11 of Justice of the State of Oregon **if the investigator is certified as a public**  
12 **safety officer under ORS 181.610 to 181.712;**

13 (e) A humane special agent as defined in section 2, chapter 67, Oregon  
14 Laws 2012; or

15 (f) A liquor enforcement inspector exercising authority described in ORS  
16 471.775 (2).

17 (4) "Reserve officer" means an officer or member of a law enforcement  
18 agency who is:

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20 missioned by a city, port, school district, mass transit district, county,  
21 county service district authorized to provide law enforcement services under  
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24 partment of State Police;

25 (b) Armed with a firearm; and

26 (c) Responsible for enforcing the criminal laws and traffic laws of this  
27 state or laws or ordinances relating to airport security.

28 **SECTION 6. This 2013 Act being necessary for the immediate pres-**  
29 **ervation of the public peace, health and safety, an emergency is de-**  
30 **clared to exist, and this 2013 Act takes effect on its passage.**

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