

D R A F T

SUMMARY

Creates exception to arrest requirement for peace officers responding to domestic disturbance calls.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to arrests; amending ORS 133.055 and 133.315; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 133.055 is amended to read:

6 133.055. (1) A peace officer may issue a criminal citation to a person if
7 the peace officer has probable cause to believe that the person has committed
8 a misdemeanor or has committed any felony that is subject to misdemeanor
9 treatment under ORS 161.705. The peace officer shall deliver a copy of the
10 criminal citation to the person. The criminal citation shall require the per-
11 son to appear at the court of the magistrate before whom the person would
12 be taken pursuant to ORS 133.450 if the person were arrested for the offense.

13 (2)(a) Notwithstanding the provisions of subsection (1) of this section,
14 when a peace officer responds to [*an incident of*] **a call concerning a do-**
15 **mestic disturbance** and has probable cause to believe that an assault **or an**
16 **incident of abuse as defined in ORS 107.705** has occurred between family
17 or household members[,] as defined in ORS 107.705, [*or to believe that one*
18 *such person has placed the other in fear of imminent serious physical injury,*]
19 the officer shall arrest and take into custody the alleged [*assailant or po-*
20 *tential assailant.*] **abuser unless:**

1 (A) The alleged abuser is 65 years of age or older;

2 (B) The peace officer has reason to believe that the alleged abuser
3 suffers from Alzheimer's disease, dementia as defined in ORS 127.505
4 or other brain disease or defect that impairs the person's mental ca-
5 pacity;

6 (C) The alleged victim asks the peace officer not to arrest the al-
7 leged abuser and verifies the request in writing; and

8 (D) The peace officer reasonably believes the alleged victim will not
9 be subjected to further assault or threat of imminent serious physical
10 injury if the alleged abuser is not arrested.

11 (b) When the peace officer makes an arrest under paragraph (a) of this
12 subsection, the peace officer is not required to arrest both persons.

13 (c) When a peace officer makes an arrest under paragraph (a) of this
14 subsection, the peace officer shall make every effort to determine who is the
15 [*assailant or potential assailant*] **alleged abuser** by considering, among other
16 factors:

17 (A) The comparative extent of the injuries inflicted or the seriousness of
18 threats creating a fear of physical injury;

19 (B) If reasonably ascertainable, the history of domestic violence between
20 the persons involved;

21 (C) Whether any alleged crime was committed in self-defense; and

22 (D) The potential for future assaults.

23 (d) As used in this subsection, "assault" includes conduct constituting
24 strangulation under ORS 163.187.

25 (3) Whenever any peace officer has reason to believe that a family or
26 household member, as defined in ORS 107.705, has been abused as defined in
27 ORS 107.705 or that an elderly person or a person with a disability has been
28 abused as defined in ORS 124.005, that officer shall use all reasonable means
29 to prevent further abuse, including advising each person of the availability
30 of a shelter or other services in the community and giving each person im-
31 mediate notice of the legal rights and remedies available. The notice shall

1 consist of handing each person a copy of the following statement:

2 _____
3 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you
4 can ask the district attorney to file a criminal complaint. You also have the
5 right to go to the circuit court and file a petition requesting any of the fol-
6 lowing orders for relief: (a) An order restraining your attacker from abusing
7 you; (b) an order directing your attacker to leave your household; (c) an or-
8 der preventing your attacker from entering your residence, school, business
9 or place of employment; (d) an order awarding you or the other parent cus-
10 tody of or parenting time with a minor child or children; (e) an order re-
11 straining your attacker from molesting or interfering with minor children in
12 your custody; (f) an order awarding you other relief the court considers
13 necessary to provide for your or your children's safety, including emergency
14 monetary assistance. Such orders are enforceable in every state.

15 You may also request an order awarding support for minor children in
16 your care or for your support if the other party has a legal obligation to
17 support you or your children.

18 You also have the right to sue for losses suffered as a result of the abuse,
19 including medical and moving expenses, loss of earnings or support, and
20 other out-of-pocket expenses for injuries sustained and damage to your
21 property. This can be done without an attorney in the small claims depart-
22 ment of a court if the total amount claimed is under \$10,000.

23 Similar relief may also be available in tribal courts.

24 For further information you may contact: _____.

25 _____
26 **SECTION 2.** ORS 133.315 is amended to read:

27 133.315. (1) [No] A peace officer [shall] **may not** be held criminally or
28 civilly liable for making an arrest pursuant to ORS 133.055 (2) or 133.310 (3)
29 or (5), **or exercising discretion to not make an arrest pursuant to ORS**
30 **133.055 (2)**, provided the peace officer acts in good faith and without malice.

31 (2) [No] A peace officer [shall] **may not** be criminally or civilly liable for

1 any arrest made under ORS 133.310 (4) if the officer reasonably believes that:

2 (a) A document or other writing supplied to the officer under ORS 133.310
3 (4) is an accurate copy of a foreign restraining order as defined by ORS
4 24.190 and is the most recent order in effect between the parties; and

5 (b) The person restrained by the order has been personally served with a
6 copy of the order or has actual notice of the order.

7 **SECTION 3. This 2013 Act being necessary for the immediate pres-**
8 **ervation of the public peace, health and safety, an emergency is de-**
9 **clared to exist, and this 2013 Act takes effect on its passage.**

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