

House Bill 2602

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to law enforcement; creating new provisions; amending ORS 133.005, 133.225, 133.245 and
2 133.340; and declaring an emergency.

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

4 **SECTION 1. (1) A person commits the crime of making an unauthorized arrest if:**

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

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

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

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

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

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

12 **SECTION 2.** ORS 133.245 is amended to read:

13 133.245. (1) A federal officer may arrest a person:

14 (a) For any crime committed in the federal officer's presence if the federal officer has probable
15 cause to believe the person committed the crime.

16 (b) For any felony or Class A misdemeanor if the federal officer has probable cause to believe
17 the person committed the crime.

18 (c) When rendering assistance to or at the request of a law enforcement officer, as defined in
19 ORS 414.805.

20 (d) When the federal officer has received positive information in writing or by telephone, tele-
21 graph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a
22 warrant for the person's arrest.

23 (2) The federal officer shall inform the person to be arrested of the federal officer's authority
24 and reason for the arrest.

25 (3) In order to make an arrest, a federal officer may use physical force as is justifiable and au-
26 thorized of a peace officer under ORS 161.235, 161.239 and 161.245.

27 (4)(a) A federal officer making an arrest under this section without unnecessary delay shall take
28 the arrested person before a magistrate or deliver the arrested person to a peace officer.
29

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) The federal officer retains authority over the arrested person only until the person appears
 2 before a magistrate or until the law enforcement agency having general jurisdiction over the area
 3 in which the arrest took place assumes responsibility for the person.

4 (5) A federal officer when making an arrest for a nonfederal offense under the circumstances
 5 provided in this section shall have the same immunity from suit as a state or local law enforcement
 6 officer.

7 (6) **Except as otherwise provided in ORS 133.225**, a federal officer [*is authorized to make ar-*
 8 *rests under*] **may not make an arrest in this state for a violation of federal or state law** [*this*
 9 *section upon certification by*] **unless** the Department of Public Safety Standards and Training **certi-**
 10 **fies** that the federal officer has received proper training to enable that officer to make arrests under
 11 this section.

12 **SECTION 3.** ORS 133.225 is amended to read:

13 133.225. (1) A private person may arrest another person for [*any crime*] **a felony** committed in
 14 the presence of the private person if the private person has probable cause to believe the arrested
 15 person committed the [*crime*] **felony**. A private person making such an arrest shall, without unnec-
 16 essary delay, take the arrested person before a magistrate or deliver the arrested person to a peace
 17 officer.

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

20 **SECTION 4.** ORS 133.340 is amended to read:

21 133.340. When a [*crime*] **felony** is committed in the presence of a magistrate, the magistrate may,
 22 by a verbal or written order, command any person to arrest the offender and may thereupon proceed
 23 as if the offender had been brought before the magistrate upon a warrant of arrest.

24 **SECTION 5.** ORS 133.005, as amended by section 6, chapter 54, Oregon Laws 2012, and section
 25 3, chapter 67, Oregon Laws 2012, is amended to read:

26 133.005. As used in ORS 133.005 to 133.400 and 133.410 to 133.450, unless the context requires
 27 otherwise:

28 (1) “Arrest” means to place a person under actual or constructive restraint or to take a person
 29 into custody for the purpose of charging that person with an offense. A “stop” as authorized under
 30 ORS 131.605 to 131.625 is not an arrest.

31 (2) “Federal officer” means a special agent or law enforcement officer employed by a federal
 32 agency who is empowered to effect an arrest with or without a warrant for violations of the United
 33 States Code and who is authorized to carry firearms in the performance of duty.

34 (3) “Peace officer” means:

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

36 (b) A sheriff, constable, marshal, municipal police officer or reserve officer or a police officer
 37 commissioned by a university under ORS 352.383;

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

41 (d) An investigator of the Criminal Justice Division of the Department of Justice of the State
 42 of Oregon **if the investigator is certified as a public safety officer under ORS 181.610 to**
 43 **181.712;**

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

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

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

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

3 (a) A volunteer or employed less than full-time as a peace officer commissioned by a city, port,
4 school district, mass transit district, county, county service district authorized to provide law
5 enforcement services under ORS 451.010, the Criminal Justice Division of the Department of Justice,
6 the Oregon State Lottery Commission or the Governor or a member of the Department of State
7 Police;

8 (b) Armed with a firearm; and

9 (c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordi-
10 nances relating to airport security.

11 **SECTION 6.** ORS 133.005, as amended by section 39, chapter 644, Oregon Laws 2011, section
12 7, chapter 54, Oregon Laws 2012, and section 4, chapter 67, Oregon Laws 2012, is amended to read:

13 133.005. As used in ORS 133.005 to 133.400 and 133.410 to 133.450, unless the context requires
14 otherwise:

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

18 (2) "Federal officer" means a special agent or law enforcement officer employed by a federal
19 agency who is empowered to effect an arrest with or without a warrant for violations of the United
20 States Code and who is authorized to carry firearms in the performance of duty.

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24 commissioned by a university under ORS 352.383;

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

28 (d) An investigator of the Criminal Justice Division of the Department of Justice of the State
29 of Oregon **if the investigator is certified as a public safety officer under ORS 181.610 to**
30 **181.712;**

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

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

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35 school district, mass transit district, county, county service district authorized to provide law
36 enforcement services under ORS 451.010, the Criminal Justice Division of the Department of Justice,
37 the Oregon State Lottery Commission or the Governor or a member of the Department of State
38 Police;

39 (b) Armed with a firearm; and

40 (c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordi-
41 nances relating to airport security.

42 **SECTION 7. This 2013 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
44 **on its passage.**