

House Bill 3053

Sponsored by 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 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 emergency.

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

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

5 133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has
6 probable cause to believe that the person has committed a misdemeanor or has committed any felony
7 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy
8 of the criminal citation to the person. The criminal citation shall require the person to appear at
9 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the
10 person were arrested for the offense.

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

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

18 **(B) The peace officer has reason to believe that the alleged abuser suffers from**
19 **Alzheimer's disease, dementia as defined in ORS 127.505 or other brain disease or defect that**
20 **impairs the person's mental capacity;**

21 **(C) The alleged victim asks the peace officer not to arrest the alleged abuser and verifies**
22 **the request in writing; and**

23 **(D) The peace officer reasonably believes the alleged victim will not be subjected to fur-**
24 **ther assault or threat of imminent serious physical injury if the alleged abuser is not ar-**
25 **rested.**

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

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

31 **(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear**

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 of physical injury;

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

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

4 (D) The potential for future assaults.

5 (d) As used in this subsection, "assault" includes conduct constituting strangulation under ORS
6 163.187.

7 (3) Whenever any peace officer has reason to believe that a family or household member, as
8 defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a
9 person with a disability has been abused as defined in ORS 124.005, that officer shall use all rea-
10 sonable means to prevent further abuse, including advising each person of the availability of a
11 shelter or other services in the community and giving each person immediate notice of the legal
12 rights and remedies available. The notice shall consist of handing each person a copy of the fol-
13 lowing statement:

14 _____
15
16 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district
17 attorney to file a criminal complaint. You also have the right to go to the circuit court and file a
18 petition requesting any of the following orders for relief: (a) An order restraining your attacker from
19 abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing
20 your attacker from entering your residence, school, business or place of employment; (d) an order
21 awarding you or the other parent custody of or parenting time with a minor child or children; (e)
22 an order restraining your attacker from molesting or interfering with minor children in your cus-
23 tody; (f) an order awarding you other relief the court considers necessary to provide for your or
24 your children's safety, including emergency monetary assistance. Such orders are enforceable in
25 every state.

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

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

32 Similar relief may also be available in tribal courts.

33 For further information you may contact: _____
34 _____

35
36 **SECTION 2.** ORS 133.315 is amended to read:

37 133.315. (1) [No] A peace officer [shall] **may not** be held criminally or civilly liable for making
38 an arrest pursuant to ORS 133.055 (2) or 133.310 (3) or (5), **or exercising discretion to not make**
39 **an arrest pursuant to ORS 133.055 (2)**, provided the peace officer acts in good faith and without
40 malice.

41 (2) [No] A peace officer [shall] **may not** be criminally or civilly liable for any arrest made under
42 ORS 133.310 (4) if the officer reasonably believes that:

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

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

3 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
5 **on its passage.**

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