



ODAA Legal Brief:

Oregon Law Regarding Officer Use of Serious & Deadly Physical Force

Current Applicable Criminal Law

Purposeful, unjustified killing or injuring of another human being is criminal behavior:

- Murder defined: Intentionally causing the death of another human being (without justification). ORS 163.005, 163.115
- Manslaughter defined: Recklessly (“aware of and consciously disregarding a substantial risk”) causing the death of another human being (without justification). ORS 163.118
- Assault defined: Intentionally, Knowingly, Recklessly, or with criminal negligence (“failure to be aware of a substantial and unjustifiable risk constituting a gross deviation of care”) causing physical injury or serious physical injury (without justification). ORS 163.160-185.

Defenses to Criminal Behavior:

- General Justification(s) For Any Person: Use of deadly physical force is only allowed when ‘the person reasonably believes that the other person is (1) committing or attempting to commit a felony involving imminent use of physical force; (2) attempting to commit a burglary in a dwelling; or, (3) using or about to use unlawful deadly physical force. . .’ ORS 161.219
- Use of reasonable non-deadly physical force is justified, among other circumstances, for reasonable self-defense, to defend a third person or to reasonably defend property. ORS 161.209, 161.229.

Additional provisions for Law Enforcement: ORS 161.239:

- A [police] officer may use deadly physical force in making an arrest or preventing escape only when the officer reasonably believes:
 - (a) crime committed was a felony and used or threatened use of imminent use of physical force against a person; -OR-
 - (b) crime was kidnapping I, arson I, or escape I, burglary I or attempt; -OR-
 - (c) the use of deadly physical force is necessary to defend the officer or another person from threatened use of imminent deadly physical force; -OR-
 - (d) Attempt to commit a felony and under the totality of the circumstances existing at the time such force was necessary; -OR-
 - (e) the officer’s life or personal safety is endangered in the particular circumstance.
- A [police] officer may use physical force upon another person to the extent the officer reasonably believes it necessary to make an arrest, use self-defense or defend a third person. ORS 161.235



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Current Oregon Law: Review of Deadly Physical Force Situations

Passed in 2007, SB 111 required local plans regarding investigations of the use of deadly force by police officers. SB 111 is unique to Oregon and differentiates Oregon from other states and national standards. These plans are developed at the local County level and requires approval by the local governing body and the Attorney General. SB 111 does not require a review of serious use of physical force or address it in the SB 111 protocols, however, some do address the use regardless of the outcome. SB 111 also requires law enforcement agencies to publish incidents where a police officer's use of deadly physical force resulted in the death of a person.¹

About SB 111 (ORS 181A.780):

ORS 181A.780 requires local planning authorities within each county. Currently, each Oregon County must adopt a plan to address:

1. Education, outreach and training regarding the use of deadly physical force for LE, relevant attorneys and members of public;
2. Plan to address immediate aftermath of an incident, including mandatory leave and mental health session to determine fitness for duty;
3. Plan to address investigation of an incident in which officer used deadly physical force, including data collection;
4. Plan for district attorney discretion to resolve potential criminal issues;
5. Plan for collecting information, office debrief, and plan revision;
6. Estimate of fiscal impact on law enforcement agencies.

SB 111 also requires:

- At least one investigator from an outside agency on an incident's investigatory team ORS 181A.790(5)(a)
- Public hearing prior to submitting the plan ORS 181A.780(5)
- Department of Justice approval of each plan ORS 181A.780(10)

¹ <https://justice.oregon.gov/deathincident/home/search>



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Next Steps – Proposed Legislative Concept

As Legislators consider a legislative concept that would authorize and require the Attorney General to investigate and prosecute, if the evidence dictates, any death or serious physical injury resulting from the use of force by a law enforcement office² the following issues need to be considered:

- Independent Review
 - Current Assessment of DA Review
 - Opportunity and challenges with continued DA Review or AG Review
- Establishing Standard for “deadly physical force”
 - Result driven? (Officer uses a Tazer and the individual dies of a heart attack) or
 - Intent driven? (Officer purposefully shoots at an individual but misses)
- Establishing standard for “Serious use of Force” (currently undefined.)
 - Investigatory conflicts between criminal law, agency policy, and bargaining agreements.
- Scope of “Involved” Officer(s)
 - Current law includes death cause-in-fact officer AND officers reasonably likely to have exposed officer to greater stressors. ORS 181A.790(1). Where does this second group stop?
- Transparency
 - Initial/During/After an Incident. Information release is currently restricted by Oregon Bar Press Guidelines vs. Prosecutorial Bar Rules of Professional Conduct vs. Defendant’s right to fair trial vs. public’s right to know.
- Resolving Criminal Liability
 - District Attorney/Attorney General unilaterally? or utilizing grand jury? New oversight committee?
- Constitutional Rights of Criminal Defendants as applied to Officers
 - Constitutional/Statutory/Employment rights.
- Oversight
 - Balancing true objectiveness vs. perception of objectiveness vs. experience required for competent and thorough murder investigations
- Cost and Resource Allocation
 - Resources required for competent and thorough death investigations
- Accountability
 - Local? State? Public’s ability to hold local LE and prosecutors accountable
 - Termination barriers from bargaining agreements and arbitration decisions
- Best Practice Conversation
 - Last Statewide Conversation 2005 (resulting in SB 111) - was a three-year process.

² [https://www.oregonlegislature.gov/housedemocrats/Documents/PRESS RELEASE Oregon Legislative POC Caucus Calls for Action This Year on Police Accountability.pdf](https://www.oregonlegislature.gov/housedemocrats/Documents/PRESS_RELEASE_Oregon_Legislative_POC_Caucus_Calls_for_Action_This_Year_on_Police_Accountability.pdf)