

# Deadly Force: What It Is And When It Is Permitted

Aaron Knott

Legislative Director, Oregon Department of Justice

7/10/2020

# Deadly Force Defined

- ORS 161.015 (3)“Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- Definition is designed to be inclusive and can include a range of kinds of force (ex: firearms, vehicles, boiling water, 2x4s).
- Following HB 4203 (2020), the use of chokeholds is now explicitly considered a deadly use of force.

# ORS 161.239 - Use of Deadly Physical Force

- **(1)** Notwithstanding the provisions of ORS [161.235 \(Use of physical force in making an arrest or in preventing an escape\)](#), a peace officer may use deadly physical force only when the peace officer reasonably believes that:
  - **(a)** The crime committed by the person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person; **or**
  - **(b)** The crime committed by the person was kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; **or**
  - **(c)** Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or another person from the use or threatened imminent use of deadly physical force; **or**
  - **(d)** The crime committed by the person was a felony or an attempt to commit a felony and under the totality of the circumstances existing at the time and place, the use of such force is necessary; **or**
  - **(e)** The officer's life or personal safety is endangered in the particular circumstances involved.
- **(2)** Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

# Issue #1 – Imminence of Harm

- **(a)** The crime committed by the person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person; **or**
  - *Statute only specifies that the crime have involved an imminent use of force at the time it occurred, not that the threat be imminent at the time of the deadly use of force.*
  - *But see Tennessee v. Garner, 471 U.S. 1 (1985)(Deadly force "may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.")*
- **(b)** The crime committed by the person was kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; **or**
  - *No statutory imminence requirement but see above.*
- **(c)** Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or another person from the **use or threatened imminent use** of deadly physical force; **or**
  - *Imminence required.*
- **(d)** The crime committed by the person was a felony or an attempt to commit a felony and under the **totality of the circumstances existing at the time and place**, the use of such force is necessary; **or**
  - *Imminence likely required.*
- **(e)** The officer's life or personal safety is endangered in the particular circumstances involved.
  - *Imminence likely required.*

## Issue #2 – Use of Force Continuum

- Question: Is there a provision within the Oregon Revised Statutes which requires that law enforcement apply a lesser use of force whenever reasonably available?
- Answer: No, this does not exist in Oregon law. This requirement is most typically articulated in the use of force policies of a given law enforcement agency.

- Contact: Aaron Knott, DOJ Legislative Director
  - aaron.d.knott@doj.state.or.us