

# D R A F T

## SUMMARY

Modifies justification defenses available to peace officer who uses physical force or deadly physical force upon another person. Requires peace officer to give verbal warning, and reasonable opportunity to comply, before using physical force or deadly physical force if reasonable opportunity to do so exists. Requires peace officer to consider alternatives to deadly physical force if reasonable opportunity to do so exists.

### A BILL FOR AN ACT

Relating to the use of force by peace officers; creating new provisions; amending ORS 133.235, 133.245, 161.245, 161.265, 426.080, 471.775 and 475B.299 and section 2, chapter 3, Oregon Laws 2020 (first special session) (Enrolled House Bill 4203); and repealing ORS 161.235 and 161.239.

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

**SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS 161.195 to 161.275.**

**SECTION 2. (1) A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of physical injury to the peace officer or to a third person and the use of physical force is necessary to:**

**(a) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime;**

**(b) Defend the peace officer or a third person from the imminent threat of physical injury; or**

**(c) Prevent the escape from custody of the person when the peace**

1 officer has probable cause to believe the person has committed a  
2 crime.

3 (2) Prior to using physical force upon another person, if the peace  
4 officer has a reasonable opportunity to do so, the peace officer shall  
5 give a verbal warning to the person that physical force may be used  
6 and provide the person with a reasonable opportunity to comply.

7 SECTION 3. (1) A peace officer may use deadly physical force upon  
8 another person only when it is objectively reasonable, under the to-  
9 tality of circumstances known to the peace officer, to believe that the  
10 person poses an imminent threat of death or serious physical injury  
11 to the peace officer or to a third person and the use of deadly physical  
12 force is necessary to:

13 (a) Make a lawful arrest when the peace officer has probable cause  
14 to believe the person has committed a violent felony;

15 (b) Defend the peace officer or a third person from the imminent  
16 threat of death or serious physical injury; or

17 (c) Prevent the escape from custody of the person when the peace  
18 officer has probable cause to believe the person has committed a vio-  
19 lent felony.

20 (2) Prior to using deadly physical force upon another person, if the  
21 peace officer has a reasonable opportunity to do so, the peace officer  
22 shall:

23 (a) Consider alternatives such as verbal de-escalation, waiting, us-  
24 ing other available resources and techniques if reasonable, safe and  
25 feasible, or using a lesser degree of force; and

26 (b) Give a verbal warning to the person that deadly physical force  
27 may be used and provide the person with a reasonable opportunity to  
28 comply.

29 (3) Nothing in subsection (1) of this section constitutes justification  
30 for reckless or criminally negligent conduct by a peace officer consti-  
31 tuting an offense against or with respect to innocent persons whom

1 **the peace officer is not seeking to arrest or retain in custody.**

2 **(4) As used in this section, “violent felony” has the meaning given**  
3 **that term in ORS 419A.004.**

4 **SECTION 4.** ORS 161.245 is amended to read:

5 161.245. (1) For the purposes of [ORS 161.235 and 161.239] **sections 2 and**  
6 **3 of this 2021 Act**, a reasonable belief that a person has committed an of-  
7 fense means a reasonable belief in facts or circumstances which, if true,  
8 would [*in law*] constitute an offense. [*If the believed facts or circumstances*  
9 *would not in law constitute an offense, an erroneous though not unreasonable*  
10 *belief that the law is otherwise does not render justifiable the use of force to*  
11 *make an arrest or to prevent an escape from custody.*]

12 (2) A peace officer who is making an arrest is justified in using the  
13 physical force prescribed in [ORS 161.235 and 161.239] **sections 2 and 3 of**  
14 **this 2021 Act** unless the arrest is unlawful and is known by the officer to  
15 be unlawful.

16 **SECTION 5.** ORS 161.265 is amended to read:

17 161.265. (1) A guard or other peace officer employed in a correctional fa-  
18 cility, as that term is defined in ORS 162.135, is justified in using physical  
19 force, including deadly physical force, **upon another person** [*when and to*  
20 *the extent that*] **if the person poses an imminent threat of physical in-**  
21 **jury to the guard or peace officer or to a third person and** the guard  
22 or peace officer reasonably believes it necessary to prevent the escape of a  
23 prisoner from a correctional facility.

24 (2) Notwithstanding subsection (1) of this section, a guard or other peace  
25 officer employed by the Department of Corrections may not use deadly  
26 physical force in the circumstances described in ORS 161.267 (3).

27 **SECTION 6.** ORS 133.235 is amended to read:

28 133.235. (1) A peace officer may arrest a person for a crime at any hour  
29 of any day or night.

30 (2) A peace officer may arrest a person for a crime, pursuant to ORS  
31 133.310 (1), whether or not such crime was committed within the geograph-

1 ical area of such peace officer's employment, and the peace officer may make  
2 such arrest within the state, regardless of the situs of the offense.

3 (3) The officer shall inform the person to be arrested of the officer's au-  
4 thority and reason for the arrest, and, if the arrest is under a warrant, shall  
5 show the warrant, unless the officer encounters physical resistance, flight  
6 or other factors rendering this procedure impracticable, in which case the  
7 arresting officer shall inform the arrested person and show the warrant, if  
8 any, as soon as practicable.

9 (4) In order to make an arrest, a peace officer may use physical force as  
10 justifiable under ORS [161.235, 161.239 and] 161.245 **and sections 2 and 3**  
11 **of this 2021 Act.**

12 (5) In order to make an arrest, a peace officer may enter premises in  
13 which the officer has probable cause to believe the person to be arrested to  
14 be present.

15 (6) If after giving notice of the officer's identity, authority and purpose,  
16 the officer is not admitted, the officer may enter the premises, and by a  
17 breaking, if necessary.

18 (7) A person may not be arrested for a violation except to the extent  
19 provided by ORS 153.039 and 810.410.

20 **SECTION 7.** ORS 133.245 is amended to read:

21 133.245. (1) A federal officer may arrest a person:

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

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

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

28 (d) When the federal officer has received positive information in writing  
29 or by telephone, telegraph, teletype, radio, facsimile machine or other au-  
30 thoritative source that a peace officer holds a warrant for the person's ar-  
31 rest.

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

3 (3) In order to make an arrest, a federal officer may use physical force  
4 as is justifiable and authorized of a peace officer under ORS [*161.235, 161.239*  
5 *and*] 161.245 **and sections 2 and 3 of this 2021 Act.**

6 (4)(a) A federal officer making an arrest under this section without un-  
7 necessary delay shall take the arrested person before a magistrate or deliver  
8 the arrested person to a peace officer.

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

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

16 (6) A federal officer is authorized to make arrests under this section upon  
17 certification by the Department of Public Safety Standards and Training that  
18 the federal officer has received proper training to enable that officer to make  
19 arrests under this section.

20 **SECTION 8.** ORS 426.080 is amended to read:

21 426.080. The person serving a warrant of detention or the citation pro-  
22 vided for by ORS 426.090 shall, immediately after service thereof, make a  
23 return upon the original warrant or citation showing the time, place and  
24 manner of such service and file it with the clerk of the court. In executing  
25 the warrant of detention or citation, the person has all the powers provided  
26 by ORS 133.235 and [*161.235 to*] 161.245 **and sections 2 and 3 of this 2021**  
27 **Act** and may require the assistance of any peace officer or other person.

28 **SECTION 9.** ORS 471.775 is amended to read:

29 471.775. (1) The provisions of ORS 183.440 shall apply to subpoenas issued  
30 by each member of the Oregon Liquor Control Commission or any of its au-  
31 thorized agents.

1 (2) Subject to subsection (3) of this section, regulatory specialists have  
2 authority as provided under this chapter, ORS chapter 153, ORS 133.005 to  
3 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739[, 161.235, 161.239] and  
4 161.245 and chapter 743, Oregon Laws 1971, **and sections 2 and 3 of this**  
5 **2021 Act** to conduct inspections or investigations, make arrests and seizures,  
6 aid in prosecutions for offenses, issue criminal citations and citations for  
7 violations and otherwise enforce this chapter, ORS 474.005 to 474.095 and  
8 474.115, commission rules and any other laws of this state that the commis-  
9 sion considers related to alcoholic liquor, including but not limited to:

10 (a) Laws regarding the production, processing, manufacture, importation,  
11 transportation, possession, distribution, sale or consumption of alcoholic  
12 beverages;

13 (b) The manufacture or use of false identification; or

14 (c) The entry of premises licensed to sell alcoholic liquor.

15 (3) A regulatory specialist may not:

16 (a) Be sworn in as a federal law enforcement official and act in that ca-  
17 pacity while performing duties under subsection (2) of this section; or

18 (b) Carry a firearm.

19 **SECTION 10.** ORS 475B.299 is amended to read:

20 475B.299. (1) In addition to the duties, functions and powers described in  
21 ORS 471.775, and subject to subsection (2) of this section, a regulatory spe-  
22 cialist, as defined in ORS 471.001, has the authority as provided in ORS  
23 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, [161.235,]  
24 161.245, 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655,  
25 and chapter 743, Oregon Laws 1971, **and section 2 of this 2021 Act** to con-  
26 duct inspections and investigations, make seizures, aid in prosecutions of and  
27 issue citations to licensees and persons who hold a certificate or permit un-  
28 der ORS 475B.010 to 475B.545 for violations of and offenses related to, and  
29 otherwise enforce, ORS 475B.010 to 475B.545, 475B.550 to 475B.590 and  
30 475B.600 to 475B.655, any rule adopted under ORS 475B.010 to 475B.545,  
31 475B.550 to 475B.590 and 475B.600 to 475B.655 and any other law of this state

1 that charges the Oregon Liquor Control Commission with a duty, function  
2 or power related to a marijuana item, including enforcing any law or rule  
3 related to individuals who use false identification for purposes of purchasing  
4 or possessing a marijuana item or who engage in illegal activity on or near  
5 a premises.

6 (2) A regulatory specialist may not:

7 (a) Be sworn in as a federal law enforcement official and act in that ca-  
8 pacity while performing an activity authorized by this section.

9 (b) Carry a firearm.

10 (c) Conduct inspections and investigations of a primary residence.

11 (d) For purposes of ensuring compliance with ORS 475B.785 to 475B.949,  
12 conduct inspections and investigations of registry identification cardholders  
13 or designated primary caregivers, the residences of registry identification  
14 cardholders or designated primary caregivers, or the locations where registry  
15 identification cardholders or designated primary caregivers produce  
16 marijuana.

17 **SECTION 11.** Section 2, chapter 3, Oregon Laws 2020 (first special ses-  
18 sion) (Enrolled House Bill 4203), is amended to read:

19 **Sec. 2. (1) Notwithstanding section 2 of this 2021 Act,** a peace officer  
20 is not justified in any circumstance in knowingly using physical force that  
21 impedes the normal breathing or circulation of the blood of another person  
22 by applying pressure on the throat or neck of the other person, unless the  
23 circumstance is one in which the peace officer may use deadly physical force  
24 as provided in [*ORS 161.239*] **section 3 of this 2021 Act.**

25 (2) **Notwithstanding section 2 of this 2021 Act,** it is not reasonable  
26 under any circumstance for a peace officer to knowingly use physical force  
27 that impedes the normal breathing or circulation of the blood of another  
28 person by applying pressure on the throat or neck of the other person, unless  
29 the circumstance is one in which the peace officer may use deadly physical  
30 force as provided in [*ORS 161.239*] **section 3 of this 2021 Act.**

31 **SECTION 12. ORS 161.235 and 161.239 are repealed.**

