

D R A F T

SUMMARY

Provides that peace officer or corrections officer may not use force that impedes normal breathing or circulation of blood of another person by applying pressure on throat or neck except in specified circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to use of force; amending ORS 161.205, 161.239, 161.265 and 161.267
3 and section 2, chapter 3, Oregon Laws 2020 (first special session) (En-
4 rolled House Bill 4203); and declaring an emergency.

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

5
6 **SECTION 1.** Section 2, chapter 3, Oregon Laws 2020 (first special session)
7 (Enrolled House Bill 4203), is amended to read:

8 **Sec. 2.** (1) A peace officer **or corrections officer** is not justified in any
9 circumstance in knowingly using physical force that impedes the normal
10 breathing or circulation of the blood of another person by applying pressure
11 on the throat or neck of the other person[, *unless the circumstance is one in*
12 *which the peace officer may use deadly physical force as provided in ORS*
13 *161.239*] **except in circumstances in which physical force is justified**
14 **under ORS 161.209 and 161.215.**

15 (2) It is not reasonable under any circumstance for a peace officer **or**
16 **corrections officer** to knowingly use physical force that impedes the normal
17 breathing or circulation of the blood of another person by applying pressure
18 on the throat or neck of the other person[, *unless the circumstance is one in*
19 *which the peace officer may use deadly physical force as provided in ORS*
20 *161.239*] **except in circumstances in which physical force is justified**

1 **under ORS 161.209 and 161.215.**

2 **(3) As used in this section, “corrections officer” means a guard,**
3 **peace officer or other official employed in a jail, prison or correctional**
4 **facility, including a youth correction facility, who primarily performs**
5 **the duty of custody, control or supervision of individuals charged with**
6 **or convicted of a crime or otherwise confined under a court order.**

7 **SECTION 2.** ORS 161.205 is amended to read:

8 161.205. The use of physical force upon another person that would other-
9 wise constitute an offense is justifiable and not criminal under any of the
10 following circumstances:

11 (1)(a) A parent, guardian or other person entrusted with the care and
12 supervision of a minor or an incompetent person may use reasonable physical
13 force upon such minor or incompetent person when and to the extent the
14 person reasonably believes it necessary to maintain discipline or to promote
15 the welfare of the minor or incompetent person.

16 (b) Personnel of a public education program, as that term is defined in
17 ORS 339.285, may use reasonable physical force upon a student when and to
18 the extent the application of force is consistent with ORS 339.285 to 339.303.

19 (2) Subject to ORS 421.107 **and section 2, chapter 3, Oregon Laws 2020**
20 **(first special session) (Enrolled House Bill 4203)**, an authorized official
21 of a jail, prison or correctional facility may use physical force when and to
22 the extent that the official reasonably believes it necessary to maintain order
23 and discipline or as is authorized by law.

24 (3) A person responsible for the maintenance of order in a common carrier
25 of passengers, or a person acting under the direction of the person, may use
26 physical force when and to the extent that the person reasonably believes it
27 necessary to maintain order, but the person may use deadly physical force
28 only when the person reasonably believes it necessary to prevent death or
29 serious physical injury.

30 (4) A person acting under a reasonable belief that another person is about
31 to commit suicide or to inflict serious physical self-injury may use physical

1 force upon that person to the extent that the person reasonably believes it
2 necessary to thwart the result.

3 (5) A person may use physical force upon another person in self-defense
4 or in defending a third person, in defending property, in making an arrest
5 or in preventing an escape, as hereafter prescribed in chapter 743, Oregon
6 Laws 1971.

7 **SECTION 3.** ORS 161.239 is amended to read:

8 161.239. (1) Notwithstanding the provisions of ORS 161.235, **and except**
9 **as provided in section 2, chapter 3, Oregon Laws 2020 (first special**
10 **session) (Enrolled House Bill 4203)**, a peace officer may use deadly phys-
11 ical force only when the peace officer reasonably believes that:

12 (a) The crime committed by the person was a felony or an attempt to
13 commit a felony involving the use or threatened imminent use of physical
14 force against a person; or

15 (b) The crime committed by the person was kidnapping, arson, escape in
16 the first degree, burglary in the first degree or any attempt to commit such
17 a crime; or

18 (c) Regardless of the particular offense which is the subject of the arrest
19 or attempted escape, the use of deadly physical force is necessary to defend
20 the peace officer or another person from the use or threatened imminent use
21 of deadly physical force; or

22 (d) The crime committed by the person was a felony or an attempt to
23 commit a felony and under the totality of the circumstances existing at the
24 time and place, the use of such force is necessary; or

25 (e) The officer's life or personal safety is endangered in the particular
26 circumstances involved.

27 (2) Nothing in subsection (1) of this section constitutes justification for
28 reckless or criminally negligent conduct by a peace officer amounting to an
29 offense against or with respect to innocent persons whom the peace officer
30 is not seeking to arrest or retain in custody.

31 **SECTION 4.** ORS 161.265 is amended to read:

1 161.265. (1) **Except as provided in section 2, chapter 3, Oregon Laws**
2 **2020 (first special session) (Enrolled House Bill 4203)**, a guard or other
3 peace officer employed in a correctional facility, as that term is defined in
4 ORS 162.135, is justified in using physical force, including deadly physical
5 force, when and to the extent that the guard or peace officer reasonably be-
6 lieves it necessary to prevent the escape of a prisoner from a correctional
7 facility.

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

11 **SECTION 5.** ORS 161.267 is amended to read:

12 161.267. (1) As used in this section:

13 (a) “Colocated minimum security facility” means a Department of Cor-
14 rections institution that has been designated by the Department of Cor-
15 rections as a minimum security facility and has been located by the
16 department on the grounds of a medium or higher security Department of
17 Corrections institution.

18 (b) “Department of Corrections institution” has the meaning given that
19 term in ORS 421.005.

20 (c) “Stand-alone minimum security facility” means a Department of Cor-
21 rections institution that has been designated by the department as a mini-
22 mum security facility and that has been located by the department separate
23 and apart from other Department of Corrections institutions.

24 (2) Subject to ORS 421.107 **and section 2, chapter 3, Oregon Laws 2020**
25 **(first special session) (Enrolled House Bill 4203)**, a corrections officer or
26 other official employed by the Department of Corrections is justified in using
27 physical force, including deadly physical force, when and to the extent that
28 the officer or official reasonably believes it necessary to:

29 (a) Prevent the escape of an adult in custody from a Department of Cor-
30 rections institution, including the grounds of the institution, or from cus-
31 tody;

1 (b) Maintain or restore order and discipline in a Department of Cor-
2 rections institution, or any part of the institution, in the event of a riot,
3 disturbance or other occurrence that threatens the safety of adults in cus-
4 tody, department employees or other persons; or

5 (c) Prevent serious physical injury to or the death of the officer, official
6 or another person.

7 (3) Notwithstanding subsection (2)(a) of this section, a corrections officer
8 or other official employed by the department may not use deadly physical
9 force to prevent the escape of an adult in custody from:

10 (a) A stand-alone minimum security facility;

11 (b) A colocated minimum security facility, if the corrections officer or
12 other official knows that the adult in custody has been classified by the de-
13 partment as minimum custody; or

14 (c) Custody outside of a Department of Corrections institution:

15 (A) While the adult in custody is assigned to an adult in custody work
16 crew; or

17 (B) During transport or other supervised activity, if the adult in custody
18 is classified by the department as minimum custody and the adult in custody
19 is not being transported or supervised with an adult in custody who has been
20 classified by the department as medium or higher custody.

21 (4) Nothing in this section limits the authority of a person to use physical
22 force under ORS 161.205 (2) or 161.265.

23 **SECTION 6. This 2021 Act being necessary for the immediate pres-**
24 **ervation of the public peace, health and safety, an emergency is de-**
25 **clared to exist, and this 2021 Act takes effect on its passage.**

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