

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.

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 physical force or deadly physical force if reasonable opportunity to do so exists.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the use of force; creating new provisions; amending ORS 133.235,
3 133.245, 161.205, 161.239, 161.245, 161.265, 161.267, 426.080, 471.775 and
4 475B.299 and section 2, chapter 3, Oregon Laws 2020 (first special session)
5 (Enrolled House Bill 4203); repealing ORS 161.235 and 161.239; and de-
6 claring an emergency.

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

PRESSURE ON THROAT OR NECK

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

13 **Sec. 2.** (1) A peace officer **or corrections officer** is not justified in any
14 circumstance in knowingly using physical force that impedes the normal
15 breathing or circulation of the blood of another person by applying pressure

1 on the throat or neck of the other person[, *unless the circumstance is one in*
2 *which the peace officer may use deadly physical force as provided in ORS*
3 *161.239*] **except in circumstances in which physical force is justified**
4 **under ORS 161.209 and 161.215.**

5 (2) It is not reasonable under any circumstance for a peace officer **or**
6 **corrections officer** to knowingly use physical force that impedes the normal
7 breathing or circulation of the blood of another person by applying pressure
8 on the throat or neck of the other person[, *unless the circumstance is one in*
9 *which the peace officer may use deadly physical force as provided in ORS*
10 *161.239*] **except in circumstances in which physical force is justified**
11 **under ORS 161.209 and 161.215.**

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

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

18 161.205. The use of physical force upon another person that would other-
19 wise constitute an offense is justifiable and not criminal under any of the
20 following circumstances:

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

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

29 (2) Subject to ORS 421.107 **and section 2, chapter 3, Oregon Laws 2020**
30 **(first special session) (Enrolled House Bill 4203)**, an authorized official
31 of a jail, prison or correctional facility may use physical force when and to

1 the extent that the official reasonably believes it necessary to maintain order
2 and discipline or as is authorized by law.

3 (3) A person responsible for the maintenance of order in a common carrier
4 of passengers, or a person acting under the direction of the person, may use
5 physical force when and to the extent that the person reasonably believes it
6 necessary to maintain order, but the person may use deadly physical force
7 only when the person reasonably believes it necessary to prevent death or
8 serious physical injury.

9 (4) A person acting under a reasonable belief that another person is about
10 to commit suicide or to inflict serious physical self-injury may use physical
11 force upon that person to the extent that the person reasonably believes it
12 necessary to thwart the result.

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

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

18 161.239. (1) Notwithstanding the provisions of ORS 161.235, **and except**
19 **as provided in section 2, chapter 3, Oregon Laws 2020 (first special**
20 **session) (Enrolled House Bill 4203)**, a peace officer may use deadly phys-
21 ical force only when the peace officer reasonably believes that:

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

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

28 (c) Regardless of the particular offense which is the subject of the arrest
29 or attempted escape, the use of deadly physical force is necessary to defend
30 the peace officer or another person from the use or threatened imminent use
31 of deadly physical force; or

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

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

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

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

11 161.265. (1) **Except as provided in section 2, chapter 3, Oregon Laws**
12 **2020 (first special session) (Enrolled House Bill 4203)**, a guard or other
13 peace officer employed in a correctional facility, as that term is defined in
14 ORS 162.135, is justified in using physical force, including deadly physical
15 force, when and to the extent that the guard or peace officer reasonably be-
16 lieves it necessary to prevent the escape of a prisoner from a correctional
17 facility.

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

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

22 161.267. (1) As used in this section:

23 (a) "Colocated minimum security facility" means a Department of Cor-
24 rections institution that has been designated by the Department of Cor-
25 rections as a minimum security facility and has been located by the
26 department on the grounds of a medium or higher security Department of
27 Corrections institution.

28 (b) "Department of Corrections institution" has the meaning given that
29 term in ORS 421.005.

30 (c) "Stand-alone minimum security facility" means a Department of Cor-
31 rections institution that has been designated by the department as a mini-

1 mum security facility and that has been located by the department separate
2 and apart from other Department of Corrections institutions.

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

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

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

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

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

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

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

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

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

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

31 (4) Nothing in this section limits the authority of a person to use physical

1 force under ORS 161.205 (2) or 161.265.

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USE OF FORCE GENERALLY

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5 **SECTION 6.** Sections 7 and 8 of this 2020 second special session Act
6 are added to and made a part of ORS 161.195 to 161.275.

7 **SECTION 7.** (1) A peace officer may use physical force upon another
8 person only when it is objectively reasonable, under the totality of
9 circumstances known to the peace officer, to believe:

10 (a) That the person poses an imminent threat of physical injury to
11 the peace officer or to a third person; or

12 (b) That the use of physical 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 crime; or

15 (B) Prevent the escape from custody of the person when the peace
16 officer has probable cause to believe the person has committed a
17 crime.

18 (2) A peace officer may use physical force upon another person
19 under this section only to the degree that the peace officer reasonably
20 believes necessary to prevent physical injury under subsection (1)(a)
21 of this section or to carry out a purpose described in subsection (1)(b)
22 of this section.

23 (3) Prior to using physical force upon another person, if the peace
24 officer has a reasonable opportunity to do so, the peace officer shall:

25 (a) Consider alternatives such as verbal de-escalation, waiting or
26 using other available resources and techniques if reasonable, safe and
27 feasible; and

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

30 **SECTION 8.** (1) A peace officer may use deadly physical force upon
31 another person only when it is objectively reasonable, under the to-

1 **tality of circumstances known to the peace officer, to believe that the**
2 **person poses an imminent threat of death or serious physical injury**
3 **to the peace officer or to a third person and the use of deadly physical**
4 **force is necessary to:**

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

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

9 **(c) Prevent the escape from custody of the person when the peace**
10 **officer has probable cause to believe the person has committed a vio-**
11 **lent felony.**

12 **(2) Prior to using deadly physical force upon another person, if the**
13 **peace officer has a reasonable opportunity to do so, the peace officer**
14 **shall:**

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

18 **(b) Give a verbal warning to the person that deadly physical force**
19 **may be used and provide the person with a reasonable opportunity to**
20 **comply.**

21 **(3) Nothing in subsection (1) of this section constitutes justification**
22 **for reckless or criminally negligent conduct by a peace officer consti-**
23 **tuting an offense against or with respect to innocent persons whom**
24 **the peace officer is not seeking to arrest or retain in custody.**

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

27 **SECTION 9. ORS 161.245 is amended to read:**

28 **161.245. (1) For the purposes of [ORS 161.235 and 161.239] sections 7 and**
29 **8 of this 2020 second special session Act, a reasonable belief that a person**
30 **has committed an offense means a reasonable belief in facts or circumstances**
31 **which, if true, would [in law] constitute an offense. [If the believed facts or**

1 *circumstances would not in law constitute an offense, an erroneous though not*
2 *unreasonable belief that the law is otherwise does not render justifiable the*
3 *use of force to make an arrest or to prevent an escape from custody.]*

4 (2) A peace officer who is making an arrest is justified in using the
5 physical force prescribed in [ORS 161.235 and 161.239] **sections 7 and 8 of**
6 **this 2020 second special session Act** unless the arrest is unlawful and is
7 known by the officer to be unlawful.

8 **SECTION 10.** Section 2, chapter 3, Oregon Laws 2020 (first special ses-
9 sion) (Enrolled House Bill 4203), as amended by section 1 of this 2020 second
10 special session Act, is amended to read:

11 **Sec. 2. (1) Notwithstanding section 7 of this 2020 second special**
12 **session Act,** a peace officer or corrections officer is not justified in any
13 circumstance in knowingly using physical force that impedes the normal
14 breathing or circulation of the blood of another person by applying pressure
15 on the throat or neck of the other person except in circumstances in which
16 physical force is justified under ORS 161.209 and 161.215.

17 (2) **Notwithstanding section 7 of this 2020 second special session Act,**
18 it is not reasonable under any circumstance for a peace officer or corrections
19 officer to knowingly use physical force that impedes the normal breathing
20 or circulation of the blood of another person by applying pressure on the
21 throat or neck of the other person except in circumstances in which physical
22 force is justified under ORS 161.209 and 161.215.

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

28 **SECTION 11.** ORS 161.265, as amended by section 4 of this 2020 second
29 special session Act, is amended to read:

30 161.265. (1) Except as provided in section 2, chapter 3, Oregon Laws 2020
31 (first special session) (Enrolled House Bill 4203), a guard or other peace of-

1 ficer employed in a correctional facility, as that term is defined in ORS
2 162.135, is justified in using physical force, including deadly physical force,
3 [*when and to the extent that*] **upon another person if the person poses an**
4 **imminent threat of physical injury to the guard or peace officer or to**
5 **a third person or** the guard or peace officer reasonably believes it necessary
6 to prevent the escape of a prisoner from a correctional facility. **The guard**
7 **or peace officer may use physical force under this subsection only to**
8 **the degree that the guard or peace officer reasonably believes neces-**
9 **sary to prevent the physical injury or escape.**

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

13 **SECTION 12.** ORS 133.235 is amended to read:

14 133.235. (1) A peace officer may arrest a person for a crime at any hour
15 of any day or night.

16 (2) A peace officer may arrest a person for a crime, pursuant to ORS
17 133.310 (1), whether or not such crime was committed within the geograph-
18 ical area of such peace officer's employment, and the peace officer may make
19 such arrest within the state, regardless of the situs of the offense.

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

26 (4) In order to make an arrest, a peace officer may use physical force as
27 justifiable under ORS [*161.235, 161.239 and*] 161.245 **and sections 7 and 8**
28 **of this 2020 second special session Act.**

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

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

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

6 **SECTION 13.** ORS 133.245 is amended to read:

7 133.245. (1) A federal officer may arrest a person:

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

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

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

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

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

20 (3) In order to make an arrest, a federal officer may use physical force
21 as is justifiable and authorized of a peace officer under ORS [*161.235, 161.239*
22 *and*] 161.245 **and sections 7 and 8 of this 2020 second special session**
23 **Act.**

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

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

31 (5) A federal officer when making an arrest for a nonfederal offense under

1 the circumstances provided in this section shall have the same immunity
2 from suit as a state or local law enforcement officer.

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

7 **SECTION 14.** ORS 426.080 is amended to read:

8 426.080. The person serving a warrant of detention or the citation pro-
9 vided for by ORS 426.090 shall, immediately after service thereof, make a
10 return upon the original warrant or citation showing the time, place and
11 manner of such service and file it with the clerk of the court. In executing
12 the warrant of detention or citation, the person has all the powers provided
13 by ORS 133.235 and [*161.235 to*] 161.245 **and sections 7 and 8 of this 2020**
14 **second special session Act** and may require the assistance of any peace
15 officer or other person.

16 **SECTION 15.** ORS 471.775 is amended to read:

17 471.775. (1) The provisions of ORS 183.440 shall apply to subpoenas issued
18 by each member of the Oregon Liquor Control Commission or any of its au-
19 thorized agents.

20 (2) Subject to subsection (3) of this section, regulatory specialists have
21 authority as provided under this chapter, ORS chapter 153, ORS 133.005 to
22 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739[*161.235, 161.239*] and
23 161.245 and chapter 743, Oregon Laws 1971, **and sections 7 and 8 of this**
24 **2020 second special session Act** to conduct inspections or investigations,
25 make arrests and seizures, aid in prosecutions for offenses, issue criminal
26 citations and citations for violations and otherwise enforce this chapter, ORS
27 474.005 to 474.095 and 474.115, commission rules and any other laws of this
28 state that the commission considers related to alcoholic liquor, including but
29 not limited to:

30 (a) Laws regarding the production, processing, manufacture, importation,
31 transportation, possession, distribution, sale or consumption of alcoholic

1 beverages;

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

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

4 (3) A regulatory specialist may not:

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

7 (b) Carry a firearm.

8 **SECTION 16.** ORS 475B.299 is amended to read:

9 475B.299. (1) In addition to the duties, functions and powers described in
10 ORS 471.775, and subject to subsection (2) of this section, a regulatory spe-
11 cialist, as defined in ORS 471.001, has the authority as provided in ORS
12 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, [161.235,]
13 161.245, 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655,
14 and chapter 743, Oregon Laws 1971, **and section 7 of this 2020 second**
15 **special session Act** to conduct inspections and investigations, make sei-
16 zures, aid in prosecutions of and issue citations to licensees and persons who
17 hold a certificate or permit under ORS 475B.010 to 475B.545 for violations
18 of and offenses related to, and otherwise enforce, ORS 475B.010 to 475B.545,
19 475B.550 to 475B.590 and 475B.600 to 475B.655, any rule adopted under ORS
20 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655 and any
21 other law of this state that charges the Oregon Liquor Control Commission
22 with a duty, function or power related to a marijuana item, including en-
23 forcing any law or rule related to individuals who use false identification for
24 purposes of purchasing or possessing a marijuana item or who engage in il-
25 legal activity on or near a premises.

26 (2) A regulatory specialist may not:

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

29 (b) Carry a firearm.

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

31 (d) For purposes of ensuring compliance with ORS 475B.785 to 475B.949,

1 conduct inspections and investigations of registry identification cardholders
2 or designated primary caregivers, the residences of registry identification
3 cardholders or designated primary caregivers, or the locations where registry
4 identification cardholders or designated primary caregivers produce
5 marijuana.

6 **SECTION 17. (1) ORS 161.235, as amended by section 3, chapter 3,**
7 **Oregon Laws 2020 (first special session) (Enrolled House Bill 4203), is**
8 **repealed.**

9 **(2) ORS 161.239 is repealed.**

10

11

MISCELLANEOUS

12

13 **SECTION 18. Sections 6, 7 and 8 of this 2020 second special session**
14 **Act, the amendments to ORS 161.245, 161.265, 133.235, 133.245, 426.080,**
15 **471.775 and 475B.299 and section 2, chapter 3, Oregon Laws 2020 (first**
16 **special session) (Enrolled House Bill 4203), by sections 9 to 16 of this**
17 **2020 second special session Act and the repeal of ORS 161.235 and**
18 **161.239 by section 17 of this 2020 second special session Act become**
19 **operative on January 1, 2021.**

20 **SECTION 19. The unit captions used in this 2020 second special**
21 **session Act are provided only for the convenience of the reader and**
22 **do not become part of the statutory law of this state or express any**
23 **legislative intent in the enactment of this 2020 second special session**
24 **Act.**

25 **SECTION 20. This 2020 second special session Act being necessary**
26 **for the immediate preservation of the public peace, health and safety,**
27 **an emergency is declared to exist, and this 2020 second special session**
28 **Act takes effect on its passage.**

29
