

Enrolled House Bill 4301

Sponsored by Representatives KOTEK, BYNUM, LAWRENCE SPENCE, Senators FREDERICK, MANNING JR; Representatives ALONSO LEON, DEXTER, HERNANDEZ, KENY-GUYER, LEWIS, NOBLE, SALINAS, SANCHEZ, WILDE, Senator GELSER (at the request of Joint Committee on the Second Special Session of 2020)

CHAPTER

AN ACT

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

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

PRESSURE ON THROAT OR NECK

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

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

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

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

SECTION 2. ORS 161.205 is amended to read:

161.205. The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

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

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

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

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

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

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

SECTION 3. ORS 161.239 is amended to read:

161.239. (1) Notwithstanding the provisions of ORS 161.235, and except as provided in section 2, chapter 3, Oregon Laws 2020 (first special session) (Enrolled House Bill 4203), 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.

SECTION 4. ORS 161.265 is amended to read:

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

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

SECTION 5. ORS 161.267 is amended to read:

161.267. (1) As used in this section:

(a) "Colocated minimum security facility" means a Department of Corrections institution that has been designated by the Department of Corrections as a minimum security facility and has been located by the department on the grounds of a medium or higher security Department of Corrections institution.

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

(c) "Stand-alone minimum security facility" means a Department of Corrections institution that has been designated by the department as a minimum security facility and that has been located by the department separate and apart from other Department of Corrections institutions.

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

(a) Prevent the escape of an adult in custody from a Department of Corrections institution, including the grounds of the institution, or from custody;

(b) Maintain or restore order and discipline in a Department of Corrections institution, or any part of the institution, in the event of a riot, disturbance or other occurrence that threatens the safety of adults in custody, department employees or other persons; or

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

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

(a) A stand-alone minimum security facility;

(b) A colocated minimum security facility, if the corrections officer or other official knows that the adult in custody has been classified by the department as minimum custody; or

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

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

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

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

USE OF FORCE GENERALLY

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

SECTION 7. (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:

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

(b) That 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; or

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

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

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

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

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

SECTION 8. (1) A peace officer may use deadly 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 death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

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

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

(c) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.

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

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

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

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

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

SECTION 9. ORS 161.245 is amended to read:

161.245. (1) For the purposes of [ORS 161.235 and 161.239] **sections 7 and 8 of this 2020 second special session Act**, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would [*in law*] constitute an offense. [*If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody.*]

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

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

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

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

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

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

161.265. (1) Except as provided in section 2, chapter 3, Oregon Laws 2020 (first special session) (Enrolled House Bill 4203), a guard or other peace officer employed in a correctional facility, as that term is defined in ORS 162.135, is justified in using physical force, including deadly physical force, *[when and to the extent that]* **upon another person if the person poses an imminent threat of physical injury to the guard or peace officer or to a third person** or the guard or peace officer reasonably believes it necessary to prevent the escape of a prisoner from a correctional facility. **The guard or peace officer may use physical force under this subsection only to the degree that the guard or peace officer reasonably believes necessary to prevent the physical injury or escape.**

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

SECTION 12. ORS 133.235 is amended to read:

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

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

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

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

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

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

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

SECTION 13. ORS 133.245 is amended to read:

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

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

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

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

(d) When the federal officer has received positive information in writing or by telephone, telegraph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a warrant for the person's arrest.

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

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

(4)(a) A federal officer making an arrest under this section without unnecessary delay shall take the arrested person before a magistrate or deliver the arrested person to a peace officer.

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

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

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

SECTION 14. ORS 426.080 is amended to read:

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

SECTION 15. ORS 471.775 is amended to read:

471.775. (1) The provisions of ORS 183.440 shall apply to subpoenas issued by each member of the Oregon Liquor Control Commission or any of its authorized agents.

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

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

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

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

(3) A regulatory specialist may not:

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

(b) Carry a firearm.

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

475B.299. (1) In addition to the duties, functions and powers described in ORS 471.775, and subject to subsection (2) of this section, a regulatory specialist, as defined in ORS 471.001, has the authority as provided in ORS 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, [161.235,] 161.245, 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655, and chapter 743, Oregon Laws 1971, **and section 7 of this 2020 second special session Act** to conduct inspections and investigations, make seizures, aid in prosecutions of and issue citations to licensees and persons who hold a certificate or permit under ORS 475B.010 to 475B.545 for violations of and offenses related to, and otherwise enforce, ORS 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655, any rule adopted under ORS 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655 and any other law of this state that charges the Oregon Liquor Control Commission with a duty, function or power related to a marijuana item, including enforcing any law or rule related to individuals who use false identification for purposes of purchasing or possessing a marijuana item or who engage in illegal activity on or near a premises.

(2) A regulatory specialist may not:

(a) Be sworn in as a federal law enforcement official and act in that capacity while performing an activity authorized by this section.

(b) Carry a firearm.

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

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

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

(2) ORS 161.239 is repealed.

MISCELLANEOUS

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

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

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

Passed by House August 10, 2020

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate August 10, 2020

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

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Bev Clarno, Secretary of State