

Senate Bill 781

Sponsored by Senator DINGFELDER, Representative FREDERICK; Senator SHIELDS, Representatives GALLEGOS, GREENLICK, KENY-GUYER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes standard for use of deadly force from officer's reasonable belief that certain circumstances exist in which other person is undertaking particular conduct to belief by reasonable person in officer's circumstances that other person is undertaking particular conduct.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to standards for use of deadly force; creating new provisions; amending ORS 133.605,
3 161.219, 161.225, 161.239 and 161.245; and declaring an emergency.

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

5 **SECTION 1.** ORS 133.605 is amended to read:

6 133.605. (1) The executing officer and other officers accompanying and assisting the officer may
7 use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to
8 open containers, as is reasonably necessary for the execution of the search warrant with all prac-
9 ticable safety.

10 (2) The use of deadly physical force in [*the execution of*] **executing** a search warrant is justifi-
11 ble only:

12 (a) If [*the officer reasonably believes*] **a reasonable person in the officer's circumstances**
13 **would believe** that there is a substantial risk that things to be seized will be used to cause death
14 or serious physical injury if their seizure is delayed and that the force used creates no substantial
15 risk of injury to persons other than those obstructing the officer; or

16 (b) If [*the officer reasonably believes*] **a reasonable person in the officer's circumstances**
17 **would believe** that [*the use of*] **using** deadly physical force is necessary to defend the officer or
18 another person from the use or threatened imminent use of deadly physical force.

19 **SECTION 2.** ORS 161.219 is amended to read:

20 161.219. Notwithstanding the provisions of ORS 161.209, a person is not justified in using deadly
21 physical force upon another person unless [*the person reasonably believes*] **a reasonable person in**
22 **the person's circumstances would believe** that the other person is:

23 (1) Committing or attempting to commit a felony involving the use or threatened imminent use
24 of physical force against a person; or

25 (2) Committing or attempting to commit a burglary in a dwelling; or

26 (3) Using or about to use unlawful deadly physical force against a person.

27 **SECTION 3.** ORS 161.225 is amended to read:

28 161.225. (1) A person in lawful possession or control of premises is justified in using physical
29 force upon another person when and to the extent that the person reasonably believes it necessary
30 to prevent or terminate what the person reasonably believes to be the commission or attempted

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 commission of a criminal trespass by the other person in or upon the premises.

2 (2) A person may use deadly physical force under the circumstances set forth in subsection (1)
3 of this section only:

4 (a) In defense of a person as provided in ORS 161.219; or

5 (b) When [*the person reasonably believes it necessary to prevent*] **a reasonable person in the**
6 **person's circumstances would believe that** the commission of arson or a felony by force and vi-
7 olence by the trespasser **would require the deadly force.**

8 (3) As used in subsection (1) and subsection (2)(a) of this section, "premises" includes any
9 building as defined in ORS 164.205 and any real property. As used in subsection (2)(b) of this section,
10 "premises" includes any building.

11 **SECTION 4.** ORS 161.239 is amended to read:

12 161.239. (1) Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly
13 physical force only when [*the peace officer reasonably believes*] **a reasonable person in the peace**
14 **officer's circumstances would believe that:**

15 (a) The crime [*committed by*] the person **committed** was a felony or an attempt to commit a
16 felony involving the use or threatened imminent use of physical force against a person; or

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

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

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

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

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

29 **SECTION 5.** ORS 161.245 is amended to read:

30 161.245. (1) For the purposes of ORS 161.235 and 161.239, a reasonable **person's** belief that a
31 person has committed an offense means a reasonable **person's** belief in facts or circumstances which
32 if true would in law constitute an offense. If the [*believed*] facts or circumstances **that a reasonable**
33 **person would believe** [*would*] **do** not in law constitute an offense, an erroneous though not unrea-
34 sonable belief that the law is otherwise does not render justifiable the use of force to make an arrest
35 or to prevent an escape from custody.

36 (2) A peace officer who is making an arrest is justified in using the physical force prescribed in
37 ORS 161.235 and 161.239 unless the arrest is unlawful and [*is known by*] the officer **knows the ar-**
38 **rest is** [*to be*] unlawful.

39 **SECTION 6. The amendments to ORS 133.605, 161.219, 161.225, 161.239 and 161.245 by**
40 **sections 1 to 5 of this 2013 Act apply to conduct that occurs on or after the effective date**
41 **of this 2013 Act.**

42 **SECTION 7. This 2013 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
44 **on its passage.**