

# Senate Bill 361

Sponsored by Senator FREDERICK (Pre-session filed.)

## 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 in some circumstances for use of deadly physical force to belief by reasonable person in officer's or person's circumstances that other person is undertaking particular conduct.

Modifies element of plan adopted by county deadly physical force planning authority to consist of outreach and training regarding reasonable use of deadly physical force.

Modifies requirement that law enforcement agency adopt guidelines for reasonable use of deadly physical force.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to use of deadly force; creating new provisions; amending ORS 133.605, 161.219, 161.225,  
3 161.239, 161.245, 181A.780 and 181A.790; 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 justifica-  
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

**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 force upon another person when and to the extent that the person reasonably believes it necessary  
 2 to prevent or terminate what the person reasonably believes to be the commission or attempted  
 3 commission of a criminal trespass by the other person in or upon the premises.

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

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

7 (b) When [*the person reasonably believes it necessary to prevent*] **a reasonable person in the**  
 8 **person's circumstances would believe that preventing** the commission of arson or a felony by  
 9 force and violence by the trespasser **would require the deadly physical force.**

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

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

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

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

19 (b) The crime committed by the person was kidnapping, arson, escape in the first degree,  
 20 burglary in the first degree or any attempt to commit such a crime; [*or*]

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

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

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

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

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

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

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

41 **SECTION 6.** ORS 181A.780 is amended to read:

42 181A.780. (1) There is created in each county a deadly physical force planning authority con-  
 43 sisting of the following members:

44 (a) The district attorney and sheriff of the county.

45 (b) A nonmanagement police officer selected by the district attorney and sheriff. If there are

1 unions representing police officers within the county, the district attorney and sheriff shall select  
2 the police officer from among candidates nominated by any union representing police officers within  
3 the county.

4 (c) If at least one city within the county employs a police chief, a police chief selected by the  
5 police chiefs within the county.

6 (d) A representative of the public selected by the district attorney and sheriff. The person se-  
7 lected under this paragraph may not be employed by a law enforcement agency.

8 (e) A representative of the Oregon State Police selected by the Superintendent of State Police.

9 (f) An authorized tribal police officer as defined in ORS 181A.680 when requested by a tribal  
10 government.

11 (2) The district attorney and sheriff are cochairpersons of the planning authority.

12 (3) The law enforcement agency that employs the police officer selected under subsection (1)(b)  
13 of this section shall release the officer from other duties for at least 16 hours per year to enable the  
14 officer to serve on the planning authority. The agency shall compensate the officer at the officer's  
15 regular hourly wage while the officer is engaged in planning authority activities.

16 (4) The planning authority shall develop a plan consisting of the following:

17 (a) An element dealing with education, outreach and training regarding the **reasonable** use of  
18 deadly physical force for police officers, attorneys employed by state or local government within the  
19 county and members of the community.

20 (b) An element dealing with the immediate aftermath of an incident in which a police officer  
21 used deadly physical force.

22 (c) An element dealing with the investigation of an incident in which a police officer used deadly  
23 physical force.

24 (d) An element dealing with the exercise of district attorney discretion to resolve issues of po-  
25 tential criminal responsibility resulting from a police officer's use of deadly physical force.

26 (e) An element dealing with collecting information regarding a police officer's use of deadly  
27 physical force, debriefing after an incident in which a police officer used deadly physical force and  
28 revising a plan developed under this subsection based on experience.

29 (f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies  
30 of each element described in paragraphs (a) to (e) of this subsection.

31 (5) The planning authority shall conduct at least one public hearing in the county before sub-  
32 mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)  
33 of this section.

34 (6) The planning authority may consult with anyone the planning authority determines may be  
35 helpful in carrying out its responsibilities.

36 (7) The planning authority shall submit the plan developed under subsection (4) of this section,  
37 and revisions of the plan, to the governing body of each law enforcement agency within the county  
38 except for the Department of State Police and the Department of Justice.

39 (8) A governing body shall approve or disapprove the plan submitted to it under subsection (7)  
40 of this section within 60 days after receiving the plan. The governing body may not amend the plan.

41 (9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan  
42 is submitted, the planning authority shall develop and submit a revised plan.

43 (10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is  
44 submitted, the planning authority shall submit the approved plan to the Attorney General. No later  
45 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance

1 with the minimum requirements described in ORS 181A.785. If the Attorney General determines that  
 2 the plan complies with the minimum requirements, the Attorney General shall approve the plan.

3 Upon approval of the plan:

4 (a) Each law enforcement agency within the county to which the plan applies is subject to the  
 5 provisions of the plan; and

6 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS  
 7 181A.805.

8 (11) If the plan is not approved by the Attorney General, the planning authority shall develop  
 9 and submit a revised plan.

10 (12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject  
 11 to a provision of a plan approved under subsection (10) of this section that:

12 (a) Conflicts with a provision of a city or county charter or a general ordinance that applies to  
 13 the law enforcement agency; or

14 (b) Imposes an obligation not required by ORS 181A.790 if complying with the provision would  
 15 require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of  
 16 the people, in order to comply with the provision.

17 (13) The Attorney General shall periodically publish all approved plans.

18 (14) A law enforcement agency within a county has a duty to participate in good faith in the  
 19 planning process of the planning authority for the county.

20 (15) A person bringing an action challenging the validity or enforceability of a plan approved  
 21 under subsection (10) of this section shall serve the Attorney General with a copy of the complaint.  
 22 If the Attorney General is not a party to the action, the Attorney General may intervene in the  
 23 action.

24 **SECTION 7.** ORS 181A.790 is amended to read:

25 181A.790. (1) As used in this section, “involved officer” means:

26 (a) A police officer whose official conduct, or official order to use deadly physical force, was a  
 27 cause in fact of the death of a person. As used in this paragraph, “order to use deadly physical  
 28 force” means an order issued to another officer to use deadly physical force in a specific incident  
 29 or an order or directive establishing rules of engagement for the use of deadly physical force for a  
 30 specific incident.

31 (b) A police officer whose official conduct was not a cause in fact of the death of a person but  
 32 whose official involvement in an incident in which the use of deadly physical force by a police offi-  
 33 cer resulted in the death of a person:

34 (A) Began before or during the use of the deadly physical force; and

35 (B) Was reasonably likely to have exposed the police officer to greater stresses or trauma than  
 36 other police officers experienced as a result of their involvement in the incident before or during  
 37 the use of the deadly physical force.

38 (2) A law enforcement agency shall adopt a policy dealing with the **reasonable** use of deadly  
 39 physical force by its police officers. At a minimum, the policy must include guidelines for the use  
 40 of deadly physical force.

41 (3)(a) For each involved officer employed by a law enforcement agency, the law enforcement  
 42 agency shall pay the costs of at least two sessions with a mental health professional that are at-  
 43 tended by the officer. The sessions must be held within six months after the incident in which the  
 44 officer was involved.

45 (b) An involved officer shall attend at least one of the sessions described in paragraph (a) of this

1 subsection.

2 (c) Sessions with a mental health professional under this subsection may not be substituted for  
 3 a fitness for duty examination required or requested as a condition of employment by the law  
 4 enforcement agency that employs the involved officer.

5 (4) For at least 72 hours immediately following an incident in which the use of deadly physical  
 6 force by a police officer resulted in the death of a person, a law enforcement agency may not return  
 7 an involved officer to duties that might place the officer in a situation in which the officer has to  
 8 use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or  
 9 benefits as a result of the law enforcement agency's compliance with this subsection.  
 10 Notwithstanding ORS 181A.805 (1), a personnel cost incurred in complying with this subsection by  
 11 a law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS  
 12 181A.805.

13 (5)(a) A law enforcement agency employing an involved officer shall include at least one police  
 14 officer from a different law enforcement agency in the investigation of the incident in which the  
 15 involved officer was involved.

16 (b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is  
 17 not grounds for suppressing evidence obtained in the investigation.

18 (6)(a) A law enforcement agency shall collect at least the following information relating to in-  
 19 cidents in which a police officer's use of deadly physical force resulted in the death of a person:

20 (A) The name, gender, race, ethnicity and age of the decedent.

21 (B) The date, time and location of the incident.

22 (C) A brief description of the circumstances surrounding the incident.

23 (b) A law enforcement agency shall promptly submit the information collected under paragraph  
 24 (a) of this subsection to the Department of Justice.

25 (7) The department shall compile and periodically publish information submitted under sub-  
 26 section (6) of this section. The department, by rule, may specify a form to be used by law enforce-  
 27 ment agencies in submitting information under subsection (6) of this section.

28 **SECTION 8. The amendments to ORS 133.605, 161.219, 161.225, 161.239 and 161.245 by**  
 29 **sections 1 to 5 of this 2017 Act apply to conduct that occurs on or after the effective date**  
 30 **of this 2017 Act.**

31 **SECTION 9. This 2017 Act being necessary for the immediate preservation of the public**  
 32 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
 33 **on its passage.**