

House Bill 2648

Sponsored by Representative BARKER (at the request of Federation of Oregon Parole and Probation Officers)
(Presession 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**.

Authorizes parole and probation officers to detain and arrest persons under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 131.605, 131.625, 133.220, 133.239,
3 133.245, 161.235, 161.239 and 161.245.

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

5 **SECTION 1.** ORS 133.220 is amended to read:

6 133.220. An arrest may be effected by:

7 (1) A peace officer under a warrant;

8 (2) A peace officer without a warrant;

9 (3) A parole and probation officer under a warrant as provided in ORS 133.239;

10 (4) A parole and probation officer without a warrant for:

11 **(a) Crimes committed in the officer's presence while the officer is engaged in carrying**
12 **out the duties described in ORS 137.630; or**

13 **(b) Violations of conditions of probation, parole or post-prison supervision;**

14 (5) A private person; or

15 (6) A federal officer.

16 **SECTION 2.** ORS 133.239 is amended to read:

17 133.239. (1) As used in this section, "parole and probation officer" has the meaning given that
18 term in ORS 181.610.

19 (2) A parole and probation officer may arrest a person:

20 **(a) For a crime committed in the officer's presence if the officer is engaged in carrying**
21 **out the duties described in ORS 137.630 and has probable cause to believe the person com-**
22 **mitted the crime; or**

23 **(b) If the person is being supervised by the Department of Corrections or a county community**
24 **corrections agency.**

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

30 **(4) In order to make an arrest, a parole and probation officer may use physical force as**
31 **justifiable under ORS 161.235, 161.239 and 161.245.**

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 [(3)(a)] **(5)(a)** A parole and probation officer making an arrest under this section shall, without
 2 unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to
 3 a peace officer.

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

7 **SECTION 3.** ORS 161.235 is amended to read:

8 161.235. Except as provided in ORS 161.239, a peace officer **or a parole and probation officer**
 9 is justified in using physical force upon another person only when and to the extent that the
 10 [peace] officer reasonably believes it necessary:

11 (1) To make an arrest or to prevent the escape from custody of an arrested person unless the
 12 [peace] officer knows that the arrest is unlawful; or

13 (2) For self-defense or to defend a third person from what the [peace] officer reasonably believes
 14 to be the use or imminent use of physical force while making or attempting to make an arrest or
 15 while preventing or attempting to prevent an escape.

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

17 161.239. (1) Notwithstanding the provisions of ORS 161.235, a peace officer **or a parole and**
 18 **probation officer** may use deadly physical force only when the [peace] officer reasonably believes
 19 that:

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

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

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

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

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

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

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

35 161.245. (1) For the purposes of ORS 161.235 and 161.239, a reasonable belief that a person has
 36 committed an offense means a reasonable belief in facts or circumstances which if true would in law
 37 constitute an offense. If the believed facts or circumstances would not in law constitute an offense,
 38 an erroneous though not unreasonable belief that the law is otherwise does not render justifiable
 39 the use of force to make an arrest or to prevent an escape from custody.

40 (2) A peace officer **or a parole and probation officer** who is making an arrest is justified in
 41 using the physical force prescribed in ORS 161.235 and 161.239 unless the arrest is unlawful and is
 42 known by the officer to be unlawful.

43 **SECTION 6. Section 7 of this 2011 Act is added to and made a part of ORS 131.605 to**
 44 **131.625.**

45 **SECTION 7. (1) A parole and probation officer who is engaged in carrying out the duties**

1 described in ORS 137.630 and has reasonable suspicion to believe that a person has committed
 2 a crime in the officer's presence may stop the person for a reasonable time and, after in-
 3 forming the person that the officer is a parole and probation officer, make a reasonable in-
 4 quiry.

5 (2) The inquiry may include a request for consent to search in relation to the circum-
 6 stances specified in ORS 131.615 (3) or to search for items of evidence otherwise subject to
 7 search or seizure under ORS 133.535.

8 (3) A parole and probation officer making a stop may use the degree of force reasonably
 9 necessary to make the stop and ensure the safety of the officer, the person stopped or other
 10 persons who are present.

11 (4) Probable cause is a defense to any civil or criminal action based on a stop or inquiry
 12 brought by a person against a parole and probation officer acting under this section if the
 13 stop was for a reasonable time and the inquiry was reasonable.

14 (5) For purposes of this section, an inquiry is reasonable if it meets the circumstances
 15 specified in ORS 131.615 (3).

16 **SECTION 8.** ORS 131.625 is amended to read:

17 131.625. (1) A peace officer **or a parole and probation officer** may frisk a stopped person for
 18 dangerous or deadly weapons if the officer reasonably suspects that the person is armed and dan-
 19 gerous to the officer or other persons present.

20 (2) If, in the course of the frisk, the [peace] officer feels an object [which the peace] **that the**
 21 officer reasonably suspects is a dangerous or deadly weapon, the peace officer may take such action
 22 as is reasonably necessary to take possession of the weapon.

23 **SECTION 9.** ORS 131.605 is amended to read:

24 131.605. As used in ORS 131.605 to 131.625, unless the context requires otherwise:

25 (1) "Crime" has the meaning provided for that term in ORS 161.515.

26 (2) "Dangerous weapon," "deadly weapon" and "person" have the meaning provided for those
 27 terms in ORS 161.015.

28 (3) "Frisk" is an external patting of a person's outer clothing.

29 (4) "Is about to commit" means unusual conduct that leads a peace officer reasonably to con-
 30 clude in light of the officer's training and experience that criminal activity may be afoot.

31 **(5) "Parole and probation officer" has the meaning given that term in ORS 181.610.**

32 [(5)] **(6)** "Reasonably suspects" means that a peace officer holds a belief that is reasonable under
 33 the totality of the circumstances existing at the time and place the peace officer acts as authorized
 34 in ORS 131.605 to 131.625.

35 [(6)] **(7)** A "stop" is a temporary restraint of a person's liberty by a peace officer lawfully pres-
 36 ent in any place.

37 **SECTION 10.** ORS 133.245 is amended to read:

38 133.245. (1) A federal officer may arrest a person:

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

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

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

45 (d) When the federal officer has received positive information in writing or by telephone, tele-

1 graph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a
2 warrant for the person's arrest.

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

5 (3) In order to make an arrest, a federal officer may use physical force as is justifiable and au-
6 thorized of a peace officer **or a parole and probation officer** under ORS 161.235, 161.239 and
7 161.245.

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

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

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

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

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