

Senate Bill 301

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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**.

Specifies circumstances under which peace officer and corrections officer may use deadly physical force.

Requires recording of grand jury proceedings under certain circumstances. Allows disclosure of record unless certain findings are made.

Requires district attorney to investigate incidents in which public safety officer's use of deadly physical force results in death or serious physical injury. Requires Attorney General to review investigation and to provide other assistance.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to use of physical force; creating new provisions; amending ORS 132.090, 132.210, 132.330,
3 161.239 and 161.245; and declaring an emergency.

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

5 **SECTION 1.** ORS 161.239 is amended to read:

6 161.239. (1) Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly
7 physical force: *[only when the peace officer reasonably believes that:]*

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

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

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

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

17 *[(e) The officer's life or personal safety is endangered in the particular circumstances involved.]*

18 **(a) When the peace officer has a reasonable basis to believe that deadly physical force is**
19 **necessary to prevent a person from inflicting death or serious physical injury on the peace**
20 **officer or another person;**

21 **(b) When the peace officer has a reasonable basis to believe that deadly physical force is**
22 **necessary to defend the peace officer or another person against the use or threatened use**
23 **of deadly physical force; or**

24 **(c) When the peace officer has probable cause to believe that a person has committed a**
25 **felony involving the infliction, threatened infliction or attempted infliction of death or seri-**
26 **ous physical injury and that deadly physical force is necessary to prevent the person's escape**
27 **or flight.**

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

4 **SECTION 2.** ORS 161.245 is amended to read:

5 161.245. *[(1) For the purposes of ORS 161.235 and 161.239, a reasonable belief that a person has*
 6 *committed an offense means a reasonable belief in facts or circumstances which if true would in law*
 7 *constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an*
 8 *erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use*
 9 *of force to make an arrest or to prevent an escape from custody.]*

10 [(2)] A peace officer who is making an arrest is justified in using the physical force prescribed
 11 in ORS 161.235 and 161.239 unless the arrest is unlawful and is known by the officer to be unlawful.

12 **SECTION 3.** Section 4 of this 2005 Act is added to and made a part of ORS 161.195 to
 13 161.275.

14 **SECTION 4.** (1) As used in this section, “Department of Corrections institution” has the
 15 meaning given that term in ORS 421.005.

16 (2) A corrections officer or other official employed by the Department of Corrections is
 17 justified in using physical force including deadly physical force when and to the extent that
 18 the officer or official reasonably believes it is necessary to:

19 (a) Prevent the escape of an inmate from a Department of Corrections institution, in-
 20 cluding the grounds of the institution, or from custody;

21 (b) Maintain or restore order and discipline in a Department of Corrections institution,
 22 or any portion of the institution, in the event of a riot, disturbance or other occurrence that
 23 threatens the safety of inmates, department employees or other persons; or

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

26 (3) Notwithstanding subsection (2)(a) of this section and ORS 161.265, a corrections offi-
 27 cer or other official employed by the department may not use deadly physical force to pre-
 28 vent the escape of an inmate from:

29 (a) A minimum security institution; or

30 (b) Custody outside an institution:

31 (A) While the inmate is assigned to an inmate work detail; or

32 (B) During transport or other supervised activity, if the inmate is classified by the de-
 33 partment as minimum custody and the inmate is not being transported or supervised with
 34 an inmate who has been classified by the department as medium custody or higher.

35 (4) Nothing in this section may be interpreted to limit the authority of a person other
 36 than a corrections officer or other official employed by the department to use physical force
 37 under ORS 161.205 (2) or 161.265.

38 **SECTION 5.** ORS 132.330 is amended to read:

39 132.330. (1) The district attorney may submit an indictment to the grand jury in any case when
 40 the district attorney has good reason to believe that a crime has been committed which is triable
 41 within the county.

42 (2) The district attorney shall present an investigation conducted under section 10 of this
 43 2005 Act to the grand jury if the use of deadly physical force resulted in the death of a per-
 44 son.

45 **SECTION 6.** ORS 132.090 is amended to read:

1 132.090. (1) Except as provided in subsections (2) and (3) of this section **and section 9 of this**
2 **2005 Act**, no person other than the district attorney or a witness actually under examination shall
3 be present during the sittings of the grand jury.

4 (2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-
5 point a reporter who shall attend the sittings of the grand jury to take and report the testimony in
6 any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate
7 person 18 years of age or older to accompany any child 12 years of age or younger, or any person
8 with mental retardation, during an appearance before the grand jury. The circuit judge, upon the
9 district attorney's showing to the court that it is necessary for the proper examination of a witness
10 appearing before the grand jury, may appoint a guard, medical or other special attendant or nurse,
11 who shall be present in the grand jury room and shall attend such sittings.

12 (3) The district attorney may designate an interpreter who is certified under ORS 45.291 to in-
13 terpret the testimony of witnesses appearing before the grand jury. The district attorney may des-
14 ignate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a
15 certified interpreter is not available and that the person designated by the district attorney is a
16 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may
17 be present in the grand jury room and attend the sittings of the grand jury.

18 (4) No person other than members of the grand jury shall be present when the grand jury is
19 deliberating or voting upon a matter before it.

20 (5) As used in this section, "mental retardation" has the meaning given that term in ORS
21 427.005. Mental retardation may be shown by attaching to the motion of the district attorney:

22 (a) Documentary evidence of intellectual functioning; or

23 (b) The affidavit of a qualified person familiar with the person with mental retardation. "Quali-
24 fied person" includes, but is not limited to, a teacher, therapist or physician.

25 **SECTION 7. The Legislative Assembly finds that:**

26 (1) **Grand juries originally were created and have existed for centuries as a check against**
27 **potential abuse of the government's power to charge individuals with crimes.**

28 (2) **Grand jury proceedings are kept secret to help protect witnesses, victims of crime**
29 **and grand jurors against retaliation and innocent persons against wrongful accusations of**
30 **crime.**

31 (3) **As authorized by law and as guided by employers' policies, public safety officers may**
32 **cause the death of a person by the use of deadly physical force.**

33 (4) **The use of deadly physical force by a public safety officer that results in the death**
34 **of a person requires a level of public scrutiny that uniquely justifies limited intrusions into**
35 **the secrecy historically accorded grand jury proceedings.**

36 **SECTION 8. Section 9 of this 2005 Act is added to and made a part of ORS 132.310 to**
37 **132.390.**

38 **SECTION 9. (1) As used in this section:**

39 (a) **"Certified shorthand reporter" has the meaning given that term in ORS 8.415.**

40 (b) **"Public safety officer" has the meaning given that term in section 10 of this 2005 Act.**

41 (2) **A proceeding before a grand jury must be on the record and recorded by a certified**
42 **shorthand reporter as provided in this subsection if the proceeding relates to the use of**
43 **deadly physical force by a public safety officer that resulted in the death of another person.**
44 **When a proceeding is required to be on the record under this subsection, the district attor-**
45 **ney shall ensure that a certified shorthand reporter attends the sittings of the grand jury**

1 to take and report all of the comments, statements or communications by the district at-
2 torney or any other person to the grand jury and the questioning and testimony of all wit-
3 nesses. The certified shorthand reporter may not record any information that reveals the
4 identity of a grand juror.

5 (3) Unless the certified shorthand reporter can show good cause why the time should be
6 extended, no later than 10 days after a grand jury in a proceeding required to be on the re-
7 cord under subsection (2) of this section determines that no criminal charges should be re-
8 turned or returns an indictment indorsed "not a true bill," the certified shorthand reporter
9 shall provide the circuit court of the county in which the death occurred with a certified
10 transcript of the report. The court shall provide a copy of the transcript to the district at-
11 torney, to the public safety officer whose use of deadly physical force is the subject of the
12 proceeding and to the public safety agency that employs or utilizes the public safety officer.
13 When the district attorney receives a copy of the transcript, the district attorney shall
14 promptly notify all persons who appeared before the grand jury as witnesses of their right
15 to file a motion under subsection (5) of this section and of the time period in which to file
16 the motion.

17 (4) The public safety agency that employs or utilizes the public safety officer whose use
18 of deadly physical force is the subject of the grand jury proceeding shall pay the costs of the
19 recording and the costs of the transcripts required by subsections (2) and (3) of this section.

20 (5) No later than 10 days after the district attorney receives a copy of the transcript
21 under subsection (3) of this section, the district attorney, the public safety officer, the public
22 safety agency that employs or utilizes the public safety officer or any witness who appeared
23 before the grand jury may file a motion with the court requesting that all or part of the
24 transcript be made confidential and not subject to disclosure or that disclosure of all or part
25 of the transcript be delayed. The motion must be supported by an affidavit showing why the
26 public interest in disclosure is outweighed by one of the factors listed in subsection (6)(b) of
27 this section.

28 (6) No sooner than 10 days after the district attorney receives a copy of the transcript
29 under subsection (3) of this section, the court shall make the transcript available to the
30 public upon request and payment of copying fees unless:

31 (a) A motion is filed under subsection (5) of this section; and

32 (b) The court finds that the public interest in disclosure is outweighed by:

33 (A) The impairment of the proceeding or prosecution of any criminal matter related to
34 the proceeding;

35 (B) The probable prejudice to the right of a person who appeared as a witness before the
36 grand jury or of a public safety officer to a fair trial; or

37 (C) The privacy right of a victim or witness.

38 (7) When the court determines that all or part of the transcript should not be disclosed
39 or that disclosure of all or part of the transcript should be delayed, the court shall order that
40 the motion and affidavit filed under subsection (5) of this section be sealed and not subject
41 to disclosure.

42 (8) The testimony of a public safety officer who is the subject of an investigation under
43 section 10 of this 2005 Act and who is called as a witness before a grand jury in a proceeding
44 required to be on the record under subsection (2) of this section is not admissible evidence
45 in a civil proceeding except:

1 (a) When the testimony is compelled; or

2 (b) In a civil proceeding in which the testimony before the grand jury is offered as a prior
3 inconsistent statement to impeach the witness.

4 (9) This section does not create a cause of action.

5 (10) The unintentional failure of a certified shorthand reporter to record all of the pro-
6 ceeding required to be recorded under subsection (2) of this section does not affect the va-
7 lidity of any indictment or prosecution that arises from the grand jury proceeding.

8 **SECTION 10.** (1) As used in this section:

9 (a) “Public safety agency” means an agency that employs or utilizes a public safety offi-
10 cer.

11 (b) “Public safety officer” means:

12 (A) A corrections officer, youth correction officer, parole and probation officer, police
13 officer and reserve officer, as those terms are defined in ORS 181.610; and

14 (B) A person who is employed or utilized by a jurisdiction that is located outside this
15 state, holds an office in the other jurisdiction that is the equivalent of one that is listed in
16 subparagraph (A) of this paragraph and is within this state when the use of deadly physical
17 force occurs.

18 (2)(a) If the use of deadly physical force by a public safety officer acting within the scope
19 of official duty results in the death of, or serious physical injury to, another person, the
20 district attorney of the county in which the death or injury occurred shall direct an inves-
21 tigation of the incident. The district attorney shall promptly notify the Attorney General of
22 the investigation.

23 (b) The district attorney shall designate a public safety agency to conduct the investi-
24 gation required under this section. If the public safety agency designated to conduct the
25 investigation is the public safety agency that employs or utilizes the public safety officer
26 whose use of deadly physical force is being investigated, the district attorney shall request
27 that an investigator employed by a different public safety agency participate in the investi-
28 gation.

29 (3) If requested by the district attorney of the county in which the injury or death oc-
30 curred, the Attorney General may appoint an investigator to participate in an investigation
31 under this section who is employed by a public safety agency other than the public safety
32 agency that employs or utilizes the public safety officer whose use of deadly physical force
33 is being investigated.

34 (4) The Attorney General shall review the final report of each investigation conducted
35 this section. The public safety agency conducting the investigation shall provide the Attorney
36 General with a complete and accurate copy of all investigative materials no later than 30
37 days after the conclusion of the grand jury proceeding. Upon completion of the review, the
38 Attorney General shall write a report containing a determination as to whether the investi-
39 gation was sufficient. The Attorney General shall make the report available to the public
40 upon request.

41 (5) The Attorney General shall establish model protocols that may be used by a district
42 attorney directing, or a public safety agency conducting, an investigation under this section.
43 The protocols shall include, but need not be limited to, standards for determining when and
44 for what period of time to place on administrative leave a public safety officer who used
45 deadly physical force or was at the scene of the use of deadly physical force, taking into

1 consideration the psychological effect the incident had on the public safety officer. In estab-
2 lishing protocols under this section, the Attorney General shall take public testimony and
3 consider recommendations from district attorneys, public safety agencies and represen-
4 tatives of law enforcement associations.

5 (6) The Attorney General shall maintain records of deaths and injuries resulting from the
6 use of deadly physical force requiring investigation under this section.

7 (7) This section does not create a cause of action.

8 **SECTION 11.** Sections 12 and 13 of this 2005 Act are added to and made a part of ORS
9 181.610 to 181.712.

10 **SECTION 12.** (1) The Board on Public Safety Standards and Training shall develop a
11 training program for conducting investigations required under section 10 of this 2005 Act.
12 The training must meet or exceed the model protocols adopted by the Attorney General un-
13 der section 10 of this 2005 Act.

14 (2) This section does not create a cause of action.

15 **SECTION 13.** (1) The Department of Public Safety Standards and Training shall include
16 critical incident use-of-force decision-making training in the basic police course and in any
17 maintenance training requirements established by the Board on Public Safety Standards and
18 Training for police officers.

19 (2) The department may include critical incident use-of-force decision-making training in
20 the basic corrections course and basic parole and probation course and in any maintenance
21 training requirements established by the board for corrections officers or parole and pro-
22 bation officers.

23 (3) This section does not create a cause of action.

24 **SECTION 14.** The appropriate interim legislative committee of the Seventy-third Legis-
25 lative Assembly shall review the model protocols developed by the Attorney General under
26 section 10 of this 2005 Act, the training program developed by the Board on Public Safety
27 Standards and Training under section 12 of this 2005 Act and the implementation by the
28 Department of Public Safety Standards and Training of the training required by section 13
29 of this 2005 Act.

30 **SECTION 15.** The Attorney General shall establish the model protocols required by sec-
31 tion 10 of this 2005 Act no later than July 1, 2006.

32 **SECTION 16.** ORS 132.210 is amended to read:

33 132.210. (1) **Except as otherwise provided in subsection (2) of this section:**

34 (a) A grand juror [*cannot*] **may not** be questioned for anything the grand juror says or any vote
35 the grand juror gives, while acting as such, relative to any matter legally pending before the grand
36 jury[, *except for a perjury or false swearing of which the grand juror may have been guilty in giving*
37 *testimony before such jury*].

38 (b) A person may not contact or attempt to contact a grand juror about any aspect of
39 the grand juror's service in relation to an investigation presented to the grand jury under
40 ORS 132.330 (2). A person who violates this paragraph is subject to sanctions for contempt
41 as provided in ORS 33.015 to 33.155.

42 (2) Upon motion of a district attorney who has reason to believe that a grand juror who
43 testified before the grand jury may have committed perjury or false swearing, the court may
44 permit the district attorney to contact and question any member of the grand jury.

45 **SECTION 17.** Sections 7 to 9 of this 2005 Act and the amendments to ORS 132.090 by

1 section 6 of this 2005 Act become operative on July 1, 2006.

2 SECTION 18. This 2005 Act being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
4 on its passage.

5
