

**Physical Force Use Citations  
from  
Oregon Revised Statutes  
1997 EDITION  
(Unfinished Work Product, Version 1.0)**

Please note that in both ORS 161.015 (4) & ORS 133.005 (3)  
“Peace officer” means ... constable... .”

These citations are as follows

**Chapter 133 General Provisions in Arrest and Related Criminal Procedures;  
Search and Seizure; Extradition;**

**“133.005**

**Definitions for ORS 131.655 and certain provisions of ORS 133.005 to 133.381 and 133.410 to 133.450. As used in ORS 131.655 and 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise**

**(1) “Arrest” means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A “stop” as authorized under ORS 131.605 to 131.625 is not an arrest. ...**

**(3) “Peace officer” means a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney’s office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.**

**“133.220 Who may make arrest.**

**An arrest may be effected by**

- (1) A peace officer under a warrant;**
- (2) A peace officer without a warrant;**
- (3) A private person; or**
- (4) A federal officer.**

**“133.225 Arrest by a private person.**

**“A private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to a peace officer. ... In order to make the arrest a private person may use physical force as is justifiable ...”**

**TITLE 16 CRIMES AND PUNISHMENTS Chapter 161. General Provisions**

**161.015 General definitions.**

**As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise...**

**(4) “Peace officer” means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney’s office and such other persons as may be designated by law. ...**

**161.025 Purposes; principles of construction.**

- (1) The general purposes of chapter 743, Oregon Laws 1971, are**
  - (a) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.**
  - (b) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.**

- (c) To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.
- (d) To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.
- (e) To differentiate on reasonable grounds between serious and minor offenses.
- (f) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
- (g) To safeguard offenders against excessive, disproportionate or arbitrary punishment.

(2) The rule that a penal statute is to be strictly construed shall not apply to chapter 743, Oregon Laws 1971, or any of its provisions. Chapter 743, Oregon Laws 1971, shall be construed according to the fair import of its terms, to promote justice and to effect the purposes stated in subsection (1) of this section.

#### JUSTIFICATION

161.190 Justification as a defense.

In any prosecution for an offense, justification, as defined in ORS 161.195 to 161.275, is a defense.

161.195 "Justification" described.

(1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties or functions.

(2) As used in subsection (1) of this section, "laws and judicial decrees" include but are not limited to

- (a) Laws defining duties and functions of public servants;
- (b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
- (c) Laws governing the execution of legal process;
- (d) Laws governing the military services and conduct of war; and
- (e) Judgments and orders of courts.

161.200 Choice of evils.

(1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when

(a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and

(b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

"161.205 Use of physical force generally.

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...

(5) A person may use physical force upon another person in selfdefense or in defending a third person, in defending property, in making an arrest or in preventing an escape, ..."

"161.209 Use of physical force in defense of a person.

... a person is justified in using physical force upon another person for selfdefense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

161.219 Limitations on use of deadly physical force in defense of a person.

Notwithstanding the provisions of ORS 161.209, a person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is:

- (1) Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or
- (2) Committing or attempting to commit a burglary in a dwelling; or
- (3) Using or about to use unlawful deadly physical force against a person.

161.225 Use of physical force in defense of premises.

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

161.229 Use of physical force in defense of property.

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that the person reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.

161.235 Use of physical force in making an arrest or in preventing an escape.

Except as provided in ORS 161.239, a peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes it necessary

- (1) To make an arrest or to prevent the escape from custody of an arrested person unless the peace officer knows that the arrest is unlawful; or
- (2) For selfdefense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

161.239 Use of deadly physical force in making an arrest or in preventing an escape.

(1) Notwithstanding the provisions of ORS 161.235, 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.

161.245 "Reasonable belief" described; status of unlawful arrest.

- (1) For the purposes of ORS 161.235 and 161.239, 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 unless the arrest is unlawful and is known by the officer to be unlawful.

161.249 Use of physical force by private person assisting an arrest.

(1) Except as provided in subsection (2) of this section, a person who has been directed by a peace officer to assist the peace officer to make an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that the person reasonably believes that force to be necessary to carry out the peace officer's direction.

(2) A person who has been directed to assist a peace officer under circumstances specified in subsection (1) of this section may use deadly physical force to make an arrest or to prevent an escape only when

(a) The person reasonably believes that force to be necessary for selfdefense or to defend a third person from what the person reasonably believes to be the use or imminent use of deadly physical force; or

(b) The person is directed or authorized by the peace officer to use deadly physical force unless the person knows that the peace officer is not authorized to use deadly physical force under the circumstances.

“161.255 Use of physical force by private person making citizen's arrest.

(1) ... a private person acting on the person's own account is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to make an arrest or to prevent the escape from custody of an arrested person whom the person has arrested under ORS 133.225.

(2) A private person acting under the circumstances prescribed in subsection (1) of this section is justified in using deadly physical force only when the person reasonably believes it necessary for selfdefense or to defend a third person from what the person reasonably believes to be the use or imminent use of deadly physical force.

ORS 161.260 Use of physical force in resisting arrest prohibited.

A person may not use physical force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.

## TITLE 16 CRIMES AND PUNISHMENTS

### CHAPTER 162 Offenses Against the State and Public Justice

162.145 Escape in the third degree.

(1) A person commits the crime of escape in the third degree if the person escapes from custody.

(2) It is a defense to a prosecution under this section that the person escaping or attempting to escape was in custody pursuant to an illegal arrest.

(3) Escape in the third degree is a Class A misdemeanor.

162.155 Escape in the second degree.

(1) A person commits the crime of escape in the second degree if

(a) The person uses or threatens to use physical force escaping from custody; or

(b) Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or

(c) The person escapes from a correctional facility; ...

(2) Escape in the second degree is a Class C felony.

**162.165 Escape in the first degree.**

- (1) A person commits the crime of escape in the first degree if
- (a) Aided by another person actually present, the person uses or threatens to use physical force in escaping from custody or a correctional facility; or
  - (b) The person uses or threatens to use a dangerous or deadly weapon escaping from custody or a correctional facility.
- (2) Escape in the first degree is a Class B felony.

**“ORS 162.315 Resisting arrest.**

- (1) A person commits the crime of resisting arrest if the person intentionally resists a person known by the person to be a peace officer in making an arrest.
- (2) "Resists," as used in this section, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer. The behavior does not have to result in actual physical injury to the arresting officer. ...
- (3) It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest, provided the peace officer was acting under color of official authority.

**162.325 Hindering prosecution.**

- (1) A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime punishable as a felony, or with the intent to assist a person who has committed a crime punishable as a felony in profiting or benefiting from the commission of the crime, the person
- (a) Harbors or conceals such person; or
  - (b) Warns such person of impending discovery or apprehension; or
  - (c) Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
  - (d) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
  - (e) Suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
  - (f) Aids such person in securing or protecting the proceeds of the crime.
- (2) Hindering prosecution is a Class C felony.

TITLE 16 CRIMES AND PUNISHMENTS  
163. Offenses Against Persons

(NoteMore to come soon)