

Police Use of Force: Some Basics

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Topics

- Oregon definition of “physical force” and “deadly physical force”
- “Justification” (state criminal statutes) vs. “Potential Civil Rights Violation” (federal criminal AND civil statutes)
- Connection to dispatch requests, documentation, etc.

Physical Force

- **ORS 161.015 (6)**
“Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

Deadly Physical Force

- **ORS 161.015 (3)**

“Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.”

- **This definition would control in an Oregon criminal review of deadly force decision-making (eg., DA review, Grand Jury)**
- **NOTE: This definition does NOT require a person be armed to present a threat of deadly physical force. Similar definitions nationwide and in the federal circuits.**

Criminal “Justification”

- An Oregon officer’s deadly force decision-making will be analyzed under the “justification” statutes in the Oregon Criminal Code
- Significance of “conduct which would otherwise constitute an offense is justifiable and not criminal”
- “Criminal offense” requires “culpable mental state”

Oregon Criminal Code

- **ORS 161.190 – Justification as a defense**
- **ORS 161.195 – Justification defined**
- **ORS 161.235 – Use of physical force in making an arrest or preventing an escape**
- **ORS 161.239 – Use of deadly physical force in making an arrest or in preventing an escape**

ORS 161.190

- In any prosecution for an offense, (like assault, or any criminal homicide), justification, as defined in ORS 161.195, is a defense.

ORS 161.195

- Unless inconsistent with other provisions of [law]defining justifiable use of physical force, ...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.

ORS 161.235

- [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 self-defense 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.

ORS 161.239

[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

ORS 161.239 (cont'd)

(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.

Review for “Possible Civil Rights Violation”

- Title 18 U.S.C. Section 242 defines the federal crime of violating a person’s constitutional rights
- Investigated by US DOJ
- Successful prosecution by AUSA requires proof beyond a reasonable doubt of a culpable mental state, namely “willfulness,” attached to the deprivation of rights
- Relevance of prior state grand jury rejection of criminal charges requiring culpable mental state

Title 18 U.S.C. Sec. 242

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

Review for “Possible Civil Rights Violation”

- Title 42 U.S.C. Section 1983 defines the federal lawsuit remedy for violating a person’s constitutional rights
- Filed by person’s privately retained counsel
- The government is not a party
- No proof of culpable mental state required and burden of proof is preponderance of evidence
- Prior state grand jury rejection of criminal charges largely irrelevant

Title 42 U.S.C. Sec. 1983

“Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proceeding for redress.”

How Does This Relate to What I Do?

- Issues that may arise for dispatch
- Documentation/preservation issues
- Questions?

Questions?

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