

Enrolled
House Bill 4008

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Janelle Bynum)

CHAPTER

AN ACT

Relating to public safety; amending ORS 181A.708, 181A.710 and 243.812 and section 10, chapter 541, Oregon Laws 2021; and declaring an emergency.

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

SECTION 1. ORS 243.812 is amended to read:

243.812. (1) The Commission on Statewide Law Enforcement Standards of Conduct and Discipline is established for the purpose of adopting rules that prescribe uniform:

- (a) Standards of conduct, including guidelines and procedures, to which law enforcement officers shall adhere; and
- (b) Disciplinary standards and procedures, including a range of disciplinary actions that may include consideration of aggravating or mitigating circumstances, by which a law enforcement agency, a civilian or community oversight board, agency or review body, and an arbitrator who serves in an arbitration proceeding described under ORS 243.706 (3) shall make determinations regarding alleged misconduct by a law enforcement officer, and shall make recommendations for and impose disciplinary action in response to such determinations.

(2) The commission consists of 15 members as follows:

- (a) The Director of the Department of Public Safety Standards and Training or a designee from the department.
- (b) The Attorney General or a designee from the Attorney General's office.
- (c) The President of the Senate shall appoint one nonvoting member, acting in an advisory capacity only, from among members of the Senate.
- (d) The Speaker of the House of Representatives shall appoint one nonvoting member, acting in an advisory capacity only, from among members of the House of Representatives.
- (e) The Director of the Department of Public Safety Standards and Training and the Attorney General shall jointly appoint 11 members of the commission consistent with the following:
 - (A) Two members who are chief law enforcement officers.
 - (B) Two members who represent labor organizations who represent law enforcement officers.
 - (C) Two members who represent historically marginalized groups or community-based organizations that represent communities impacted by policing.
 - (D) One member who represents a federally recognized Indian tribe or association of tribes within this state.
 - (E) Two members who are representatives of local government to represent the interests of cities and counties.

(F) One member who represents public defender organizations established under ORS chapter 151 or the Oregon Criminal Defense Lawyers Association.

(G) One member who represents the interests of prosecutors in this state.

(3) At a minimum, the uniform standards described under subsection (1) of this section must address standards of conduct and discipline regarding:

(a) Unjustified or excessive use of physical or deadly force;

(b) Sexual harassment;

(c) Sexual assault;

(d) Assault;

(e) Conduct that is motivated by or based on a real or perceived factor of an individual's race, ethnicity, national origin, sex, gender identity, sexual orientation, religion or homelessness;

(f) Moral character; and

(g) The use of drugs or alcohol while on duty.

(4) On or before October 1, 2022, the commission shall adopt and publish rules pursuant to ORS chapter 183 to establish the uniform standards described under subsection (1) of this section.

(5) The commission shall review the standards described under subsection (1) of this section at least once every two years.

(6) The meetings of the commission shall be open to the public in accordance with state law. Records of the commission shall be open and available to the public in accordance with state law.

(7) The commission shall establish and implement an open hearing process for public input and deliberation before the commission adopts rules that establish the standards described under subsection (1) of this section, including:

(a) Public notice;

(b) Public outreach to solicit broad public participation; and

(c) Public hearings to receive public comment.

(8) A majority of the members of the commission constitutes a quorum for the transaction of business.

(9) Official action by the commission requires the approval of a majority of the commission.

(10) The term of a member appointed under subsection (2)(e) of this section shall be two years. If there is a vacancy on the commission for any reason, the Director of the Department of Public Safety Standards and Training and the Attorney General shall appoint a person to the unexpired term.

(11) The members of the commission shall elect one person from the Department of Public Safety Standards and Training and one person from the Department of Justice from among the members of the commission to serve as cochairpersons of the commission who shall preside over meetings and execute the duties determined by the commission to be necessary.

(12) The commission may hire an executive director and support staff, and may enter into an interagency or intergovernmental agreement to have another state agency or governmental agency provide support staff.

~~[(12)]~~ **(13)** The commission may adopt rules necessary for the operation of the commission.

~~[(13)]~~ **(14)** A member of the commission who is not a member of the Legislative Assembly is entitled to compensation and expenses as provided in ORS 292.495.

~~[(14)(a)]~~ **(15)(a)** The commission shall prepare and submit a report in the manner provided by ORS 192.245 to the House Committee on Judiciary or an interim committee of the Legislative Assembly related to the judiciary no later than September 1, 2022, and September 1 every year thereafter.

(b) The initial report must describe the development and adoption of the uniform standards described under subsection (1) of this section, including the methodology used to apprise each law enforcement agency in this state and each civilian or community oversight board, agency or review body, of the standards. The commission shall include in reports submitted after September 1, 2022, information regarding the progress of each law enforcement agency and civilian or community

oversight board, agency or review body, towards implementing and applying the uniform standards and the commission's recommendations on updates to the standards, as are considered necessary.

[(15)] (16) As used in this section:

(a) "Assault" has the meaning given that term in ORS 163.115.

(b) "Civilian or community oversight board, agency or review body" means a board, an agency or a body:

(A) Designated by a municipality or a law enforcement agency in performing duties related to investigating allegations of officer misconduct or reviewing police policies and practices; or

(B) Created to oversee disciplinary matters concerning law enforcement officers pursuant to a city charter or ordinance for which a measure that included the question of whether to establish the board, agency or body was referred to and approved by the people of the city at an election held on or after July 1, 2020.

(c) "Law enforcement agency" and "law enforcement officer" have the meanings given those terms in ORS 131.930.

(d) "Sexual assault" has the meaning given that term in ORS 243.317.

SECTION 2. Section 10, chapter 541, Oregon Laws 2021, is amended to read:

Sec. 10. Section 3, **chapter 541, Oregon Laws 2021**, [of this 2021 Act] and the amendments to ORS 243.650 and 243.706 by sections 5 to 7, **chapter 541, Oregon Laws 2021**, [of this 2021 Act] apply to collective bargaining agreements entered into or renewed on or after the operative date specified in section 11, **chapter 541, Oregon Laws 2021** [10 of this 2021 Act].

SECTION 3. ORS 181A.708 is amended to read:

181A.708. (1) As used in this section:

(a) "**Crowd management**" means a public security practice in which crowds are managed to prevent the outbreak of crowd crushes, affrays, fights or riots, or in which an assembly, protest or demonstration is dispersed.

[(a)] (b)(A) "**Handheld chemical incapacitant**" means the following, together or separately:

[(A)] *Toxic chemicals and their precursors, except where intended for purposes not prohibited under this section, as long as the types and quantities are consistent with such purposes;*

[(B)] (i) **Handheld** munitions and devices specifically designed to cause temporary pain, temporary irritation, temporary disruption of vital processes, temporary incapacitation, temporary disability or permanent harm through the toxic properties of toxic chemicals, **or their precursors**, that would be released as a result of the employment of the **handheld** munitions and devices; and

[(C)] (ii) Any equipment specifically designed for use directly in connection with the employment of **handheld** munitions and devices as described in [subparagraph (B) of this paragraph] **sub-subparagraph (i) of this subparagraph**.

(B) "**Handheld chemical incapacitant**" does not include tear gas.

[(b)] (c) "Key component of a binary or multicomponent chemical system" means the precursor that plays the most important role in determining the toxic properties of the final product and that reacts rapidly with other chemicals in a binary or multicomponent system.

[(c)] (d) "Kinetic impact projectile" means all nonlethal, less-lethal or semilethal projectiles, including but not limited to rubber and plastic bullets, beanbag rounds, sponge rounds and pellet rounds.

[(d)] (e) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

[(e)] (f) "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

(g) "**Tear gas**" means oleoresin capsicum or orthochlorobenzalmalononitrile, or other similar chemicals meant to accomplish the same effect, administered by any shell, cartridge

or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of the chemicals.

[(f)] (h) "Toxic chemical" means any chemical that through its chemical action on biological processes can cause death, temporary pain, temporary irritation, temporary disruption of vital processes, temporary incapacitation, temporary disability or permanent harm to humans or animals.

[(2)(a)] A law enforcement agency may not use a chemical incapacitant for crowd control, except when the following requirements are satisfied:]

[(A)] *The circumstances constitute a riot, as described in ORS 166.015; and]*

[(B)] *The officer using the chemical incapacitant reasonably believes, when and to the extent the chemical incapacitant is used, that the use of the chemical incapacitant is necessary to terminate and prevent furtherance of the riotous behavior.]*

[(b)] *A law enforcement agency may not use a kinetic impact projectile for crowd control or discharge a kinetic impact projectile in a manner that intentionally targets the head of a person, except against an individual engaged in conduct otherwise justifying the use of deadly physical force by a peace officer.]*

(2) A law enforcement agency may not use a handheld chemical incapacitant for crowd management.

(3) A law enforcement agency may not use tear gas for crowd management except when:

(a) The use is objectively reasonable by law enforcement to:

(A) Defend against a threat to life or serious bodily injury to any individual, including any peace officer; or

(B) Bring an objectively dangerous and unlawful situation safely and effectively under control;

(b) A commanding officer authorizes the use of tear gas;

(c) De-escalation techniques or other alternatives to force have been attempted, when reasonable, and failed; and

(d) The law enforcement agency has done the following, in the following order:

(A) Announced the agency's intent to use tear gas;

(B) Allowed sufficient time for individuals to evacuate the area; and

(C) Announced a second time, immediately before using the tear gas, the agency's intent to use tear gas.

(4)(a) A law enforcement agency may not use a kinetic impact projectile for crowd management.

(b) A law enforcement agency may not discharge a kinetic impact projectile in a manner that intentionally targets the head of a person, except against an individual engaged in conduct otherwise justifying the use of deadly physical force by a peace officer under ORS 161.242.

(5) This section does not prohibit a law enforcement agency or a peace officer from using a handheld chemical incapacitant or kinetic impact projectile against an individual engaged in conduct otherwise justifying the use of physical force under ORS 161.195 to 161.275.

(6) A law enforcement agency, when it is safe and possible to do so, shall minimize the incidental impact of the agency's use of handheld chemical incapacitants, tear gas and kinetic impact projectiles on bystanders, medical personnel, journalists and other unintended targets.

(7) When handheld chemical incapacitants, tear gas or kinetic impact projectiles are used in a crowd by a law enforcement agency, the agency shall make efforts to notify emergency rooms in the vicinity of the type of handheld chemical incapacitants, tear gas or kinetic impact projectiles used.

(8) A law enforcement agency shall adopt policies requiring the cleanup of visible debris caused by the use of tear gas and kinetic impact projectiles within a reasonable time of the use of tear gas and kinetic impact projectiles.

[(c)] (9) A law enforcement agency may not use [a sound device for crowd control for any purpose other than announcements] **electronically amplified noise-producing equipment for crowd management except for announcements or to facilitate movement of an emergency vehicle as allowed or required by ORS 820.300 or any other provision of law.** Whenever possible, a law enforcement agency shall provide announcements for purposes of crowd [control] **management** both audibly and visually.

[(3)] (10) When using **handheld** chemical incapacitants, **tear gas**, kinetic impact projectiles or [sound devices] **electronically amplified noise-producing equipment** in compliance with this section, and when it is possible to do so safely, a law enforcement agency:

- (a) Shall attempt to take injured persons to safety or allow injured persons to seek medical help.
- (b) May not prevent emergency medical services from reaching injured persons.
- (c) Shall take reasonable action to accommodate disabilities when issuing or enforcing orders to disperse.

(11) **This section does not prohibit a law enforcement agency from adopting more stringent policies than are required by this section for the use of chemical incapacitants, tear gas, kinetic impact projectiles and electronically amplified noise-producing equipment.**

[(4)] (12) A law enforcement agency shall inform federal law enforcement agencies of the requirements of this section.

SECTION 4. ORS 181A.710 is amended to read:

181A.710. (1) As used in this section, “law enforcement agency” means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

(2) A law enforcement agency or a person acting on behalf of a law enforcement agency may not:

- (a) Use a proxy law enforcement agency to [enact] **use crowd management** measures that a court or statute has barred the law enforcement agency from using.
- (b) Act in concert with another law enforcement agency to engage in misconduct barred by a court order or statute.
- (3) Intentional violation of this section constitutes official misconduct in the second degree under ORS 162.405.

SECTION 5. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Passed by House February 17, 2022

Repassed by House March 4, 2022

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 3, 2022

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

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Shemia Fagan, Secretary of State