

## **Senate Bills 779, 780, 781, Senate Committee on Judiciary, HR 343, 8:30 AM**

Chair Prozanski, members of the Committee: I am Representative Lew Frederick, representing House District 43, North and Northeast Portland.

I come to you today about three bills regarding the use of deadly force by police officers. I'll talk first about what they have in common, and then about each one.

My community, however you might define it, has lived through a number of these incidents. Even under what might be termed the "best" of circumstances, that is, when the circumstances point to clear-cut justification, they are hard on the community. Even a hint of doubt about that justification, however, throws it into an entirely different realm, with the remnants of every past injustice revived to review the pain alongside the new incident. When questions remain at the end of whatever investigation follows, the issue can never go away. It may seem to go dormant, but it comes back the next time, or, for that matter, anytime people get together. Incidents of 30 years ago are still part of the background story for police and community relations, because the community never got a credible set of answers, or because there remained a sense that justice was not done and that, therefore, justice was not on our side. In addition, officers' reputations may be officially cleared, but remain clouded in the eyes of the community they serve. So, I want to convey to you what that means to my community, why I'm here with these bills, and what they would do for us if enacted.

But first I want to address a couple of challenges that might come up.

The first is: "You just don't know how hard the job of a police officer is." I have a pretty good idea how hard it is, and I have a lot of respect for it. I have good friends on several police forces, and I am glad they are there. They do a job that most of us neither could do nor would want to do. I also have seen enough of police work to appreciate the profoundness of the stress they experience. They see and experience things as part of their job that would haunt any of us for a long time, every time. I think appreciation for what they take on, on our behalf, is essential context for what we are proposing here and what I have proposed in other bills. We should also recognize that when the community doesn't get answers after the kind of incident we're talking about, it means the officer's reputation remains clouded, too. This isn't just about holding officers accountable if they are wrong; it is also about laying to rest doubt when they are right.

The second is: "Isn't this just a Portland thing?" Well, I don't believe it is. Portland has had more incidents in the news, but that doesn't mean it's the only place they happen, or that anyplace else is immune. And I have received calls about this issue from other parts of the state, including Umatilla, Jackson County, Redmond and other communities. But more than that, what if it were just a Portland thing? Does that mean it doesn't count? If that's the thinking, then I have to disagree. I recognize that our challenges are different from those in other parts of the State. But that doesn't mean they don't matter. Just as my rural colleagues need my open mind, and my vote, when it comes to, say, cougar or wolf control, I need representatives from other parts of the State to help support solutions where I live.

Now to the bills:

**Senate Bill 779** calls for a change in how investigations of incidents of deadly force by a police officer are initiated and led. It makes the State Attorney General the appointing authority for the lead investigator, and requires that the lead investigator be from outside the county in which the incident occurred. This is important because police officers and local district attorney's offices work together on investigations regularly. The lead investigator needs a certain detachment that is not possible when investigating someone you work with regularly and are likely to continue to work with regularly. The bill does not ask the Attorney General's office to do the investigation; it requires the Attorney General to *appoint someone from another jurisdiction* to do it.

**Senate Bill 780** makes the contents of grand jury proceedings regarding these incidents public. It specifically requires that this should be done in a way that does not reveal the identity of a grand juror, and it does not include the deliberation of the grand jury.

This is important because there is a perception that the grand jury process in cases that inflame the public is a black box, into which evidence goes, and out comes an exoneration, and the community shakes its collective head in disbelief. The community has a burning need to know that its questions have been asked and answered. When one of our own is injured or killed by an officer, I just can't overstate the collective fear that comes from a report that "no crime was committed" or "procedures were followed" without access to the steps that led to that conclusion.

A few years ago when another bill on this subject was before the Senate, the district attorneys, as an association, opposed it. Multnomah County's district attorney supported it, saying "these cases tear communities apart." And he knew, having lived through it multiple times.

**Senate Bill 781** changes the standard for use of deadly force. Currently, the standard rests on the officer's belief that such force is necessary. This belief, of course, is *neither verifiable nor refutable*; that makes it no standard at all. And current law has no provision for judging whether such fear was justified. I have heard multiple retired officers (they're the ones who will talk about it) describe how they were coached that if they used deadly force, the first thing they must say is "I feared for my life." There has to be an external standard of some kind. There has to be both a judgment of the circumstances, and a judgment of the officer's judgment. Now, these incidents are too complex and fast moving to prescribe some kind of checklist or hard criteria. There will always be a subjective quality to these judgments. This bill brings in "a reasonable person's" judgment. I can't think of another profession in which adverse incidents, potentially mistakes, aren't judged according to *some* external standard. Officers are currently held only to their *self-report* of their *perception* of the incident.

Senators, members of my community describe a sense of being under siege. These are the stories told around Thanksgiving tables. Combine this fear in the community with military-style pep talks at roll calls, combine it with a culture in which members of the public are referred to not as citizens but as "civilians," that is, outsiders, and you have a situation in which every encounter is

escalated *before* it starts. I have had a gun pulled on me during a traffic stop, and I will never know why. Those traffic stops have become somewhat less frequent as my hair has greyed, but they still happen, most recently just a few weeks ago. Ask a Black man what he thinks of when he sees blue lights in the rear view mirror and he is likely to say, “I think: ‘*Am I going to die today?*’” Every new, inadequately explained incident only confirms that fear. When one *does* die during such an encounter, the community needs answers, not just a closed book, because without answers, the community can *never* close that book.