

# D R A F T

## SUMMARY

Requires counties to establish policy for law enforcement response to incident involving active shooter. Requires submission of plan to Attorney General for approval.

Authorizes Attorney General to conduct all investigations related to force used during incident involving active shooter. Requires Attorney General to issue report declaring police officer's actions as being consistent or inconsistent with established policy.

Removes certain legal protections for police officers not acting consistently with established policy.

## A BILL FOR AN ACT

1  
2 Relating to emergency responses; creating new provisions; and amending  
3 ORS 30.285 and 30.287.

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

5 **SECTION 1. As used in sections 1 to 4 of this 2013 Act:**

6 **(1) "Active shooter" means a person who is discharging a firearm**  
7 **or has recently discharged a firearm and is threatening human life.**

8 **(2) "Law enforcement agency" means the Department of State Po-**  
9 **lice, the Department of Justice, a district attorney or a political sub-**  
10 **division of this state, or a municipal corporation of this state, that**  
11 **maintains a law enforcement unit as defined in ORS 181.610.**

12 **(3) "Police officer" means a person who is a police officer or a re-**  
13 **serve officer as defined in ORS 181.610 and employed by a law**  
14 **enforcement agency to enforce the criminal laws of this state.**

15 **SECTION 2. (1) There is created in each county an active shooter**  
16 **planning authority consisting of the following members:**

1 (a) The district attorney and sheriff of the county.

2 (b) Two nonmanagement police officers selected by the district at-  
3 torney and sheriff. If there are unions representing police officers  
4 within the county, the district attorney and sheriff shall select the  
5 police officers from among candidates nominated by any union repre-  
6 senting police officers within the county.

7 (c) If at least one city within the county employs a police chief, a  
8 police chief selected by the police chiefs within the county.

9 (d) A representative of the public who is not employed by a law  
10 enforcement agency selected by the district attorney and sheriff.

11 (e) A representative of the Oregon State Police selected by the Su-  
12 perintendent of State Police.

13 (2) The district attorney and sheriff are cochairs of the planning  
14 authority.

15 (3) The law enforcement agency that employs a police officer se-  
16 lected under subsection (1)(b) of this section shall release the officer  
17 from other duties for at least 16 hours per year to enable the officer  
18 to serve on the active shooter planning authority. The law enforce-  
19 ment agency shall compensate the officer at the officer's regular  
20 hourly wage while the officer is engaged in planning authority activ-  
21 ities.

22 (4) The active shooter planning authority shall develop a plan con-  
23 sisting of the following:

24 (a) An element dealing with the appropriate use of force, including  
25 deadly force, during an incident involving an active shooter;

26 (b) An element dealing with education, outreach and training re-  
27 garding incidents involving an active shooter;

28 (c) An element dealing with the immediate aftermath of an incident  
29 involving an active shooter; and

30 (d) An element dealing with the investigation of an incident in  
31 which a police officer used physical force, including deadly physical

1 force, during an incident involving an active shooter.

2 (5) The active shooter planning authority shall conduct at least one  
3 public hearing before submitting a plan, or a revision of a plan, to the  
4 governing body of each law enforcement agency within the county  
5 except for the Department of State Police and the Department of  
6 Justice.

7 (6) A governing body shall approve or disapprove the plan submitted  
8 to it under subsection (5) of this section within 60 days after receiving  
9 the plan. The governing body may not amend the plan.

10 (7) If the plan is not approved by at least two-thirds of the govern-  
11 ing bodies within the county to which the plan is submitted, the active  
12 shooter planning authority shall develop and submit a revised plan.

13 (8)(a) If the plan is approved by at least two-thirds of the governing  
14 bodies within the county to which the plan is submitted, the active  
15 shooter planning authority shall submit the approved plan to the At-  
16 torney General. No later than 30 days after receiving the plan, the  
17 Attorney General shall review the plan for compliance with the mini-  
18 mum requirements described in section 3 of this 2013 Act. If the At-  
19 torney General determines that the plan complies with the minimum  
20 requirements, the Attorney General shall approve the plan.

21 (b) Upon approval of the plan under paragraph (a) of this sub-  
22 section, each law enforcement agency within the county to which the  
23 plan applies is subject to the provisions of the plan.

24 (c) Notwithstanding paragraph (b) of this subsection, a law  
25 enforcement agency is not subject to a provision of an approved plan  
26 that conflicts with a provision of a city or county charter or a general  
27 ordinance that applies to the law enforcement agency.

28 (9) The Attorney General shall periodically publish all approved  
29 plans.

30 (10) A law enforcement agency within a county has a duty to par-  
31 ticipate in good faith in the planning process of the active shooter

1 **planning authority for the county.**

2 **SECTION 3. In the plan required by section 2 (4) of this 2013 Act,**  
3 **an active shooter planning authority shall, at a minimum:**

4 (1) **Set a protocol for what actions are permitted, required and**  
5 **prohibited for police officers responding to an incident involving an**  
6 **active shooter; and**

7 (2) **Specify in what situations a police officer responding to an in-**  
8 **cident involving an active shooter may use deadly force.**

9 **SECTION 4. (1) The Attorney General shall direct an investigation**  
10 **of the use of force during any incident involving an active shooter.**

11 (2) **The Attorney General may appoint to participate in an investi-**  
12 **gation under this section an investigator who is employed by a law**  
13 **enforcement unit other than the law enforcement unit that employs**  
14 **the police officer whose use of force is being investigated.**

15 (3) **After conducting the investigation, the Attorney General shall**  
16 **decide whether the police officer was using force consistent with and**  
17 **as authorized by the plan adopted pursuant to section 2 of this 2013**  
18 **Act by the county in which the police officer is employed. The Attor-**  
19 **ney General shall prepare a written report of the findings and decision.**

20 **SECTION 5. ORS 30.285 is amended to read:**

21 30.285. (1) **The governing body of any public body shall defend, save**  
22 **harmless and indemnify any of its officers, employees and agents, whether**  
23 **elective or appointive, against any tort claim or demand, whether groundless**  
24 **or otherwise, arising out of an alleged act or omission occurring in the per-**  
25 **formance of duty.**

26 (2) **The provisions of subsection (1) of this section do not apply:**

27 (a) **In case of malfeasance in office or willful or wanton neglect of**  
28 **duty[.]; or**

29 (b) **In cases in which the Attorney General, pursuant to an inves-**  
30 **tigation under section 4 of this 2013 Act, finds that a use of force was**  
31 **not consistent with a plan adopted pursuant to section 2 of this 2013**

1 **Act.**

2 (3) If any civil action, suit or proceeding is brought against any state  
3 officer, employee or agent which on its face falls within the provisions of  
4 subsection (1) of this section, or which the state officer, employee or agent  
5 asserts to be based in fact upon an alleged act or omission in the perform-  
6 ance of duty, the state officer, employee or agent may, after consulting with  
7 the Oregon Department of Administrative Services file a written request for  
8 counsel with the Attorney General. The Attorney General shall thereupon  
9 appear and defend the officer, employee or agent unless after investigation  
10 the Attorney General finds that the claim or demand does not arise out of  
11 an alleged act or omission occurring in the performance of duty, [*or*] that the  
12 act or omission complained of amounted to malfeasance in office or willful  
13 or wanton neglect of duty, **or that a use of force was not consistent with**  
14 **a plan adopted pursuant to section 2 of this 2013 Act**, in which case the  
15 Attorney General shall reject defense of the claim.

16 (4) Any officer, employee or agent of the state against whom a claim  
17 within the scope of this section is made shall cooperate fully with the At-  
18 torney General and the department in the defense of such claim. If the At-  
19 torney General after consulting with the department determines that such  
20 officer, employee or agent has not so cooperated or has otherwise acted to  
21 prejudice defense of the claim, the Attorney General may at any time reject  
22 the defense of the claim.

23 (5) If the Attorney General rejects defense of a claim under [*subsection*  
24 (3)] **subsections (3) or (4)** of this section [*or this subsection*], no public funds  
25 shall be paid in settlement of said claim or in payment of any judgment  
26 against such officer, employee or agent. Such action by the Attorney General  
27 shall not prejudice the right of the officer, employee or agent to assert and  
28 establish an appropriate proceedings that the claim or demand in fact arose  
29 out of an alleged act or omission occurring in the performance of duty, or  
30 that the act or omission complained of did not amount to malfeasance in  
31 office or willful or wanton neglect of duty, in which case the officer, em-

1 ployee or agent shall be indemnified against liability and reasonable costs  
2 of defending the claim, cost of such indemnification to be a charge against  
3 the Insurance Fund established by ORS 278.425.

4 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to  
5 increase the limits of liability of any public officer, agent or employee under  
6 ORS 30.260 to 30.300, or obviate the necessity of compliance with ORS 30.275  
7 by any claimant, nor to affect the liability of the state itself or of any other  
8 public officer, agent or employee on any claim arising out of the same acci-  
9 dent or occurrence.

10 (7) As used in this section, "state officer, employee or agent" includes  
11 district attorneys and deputy district attorneys, special prosecutors and law  
12 clerks of the office of district attorney who act in a prosecutorial capacity,  
13 but does not include any other employee of the office of district attorney or  
14 any employee of the justice or circuit courts whose salary is paid wholly or  
15 in part by the county.

16 **SECTION 6.** ORS 30.287 is amended to read:

17 30.287. (1) If any civil action, suit or proceeding is brought against any  
18 officer, employee or agent of a local public body which on its face falls  
19 within the provisions of ORS 30.285 (1), or which the officer, employee or  
20 agent asserts to be based in fact upon an alleged act or omission in the  
21 performance of duty, the officer, employee or agent may file a written request  
22 for counsel with the governing body of the public body. The governing body  
23 shall thereupon engage counsel to appear and defend the officer, employee  
24 or agent unless after investigation it is determined that the claim or demand  
25 does not arise out of an alleged act or omission occurring in the performance  
26 of duty, or that the act or omission complained of amounted to malfeasance  
27 in office or willful or wanton neglect of duty, **or that a use of force was**  
28 **not consistent with a plan adopted pursuant to section 2 of this 2013**  
29 **Act**, in which case the governing body shall reject defense of the claim.

30 (2) Any officer, employee or agent of a local public body against whom a  
31 claim within the scope of this section is made shall cooperate fully with the

1 governing body and counsel in the defense of such claim. If the counsel de-  
2 termines and certifies to the governing body that such officer, employee or  
3 agent has not so cooperated or has otherwise acted in prejudice of the de-  
4 fense of the claim, the governing body may at any time reject the defense  
5 of the claim.

6 (3) If the governing body rejects defense of a claim under subsection (1)  
7 of this section, no public funds shall be paid in settlement of the claim or  
8 in payment of any judgment against such officer, employee or agent. Such  
9 action by the governing body shall not prejudice the right of the officer,  
10 employee or agent to assert and establish in an appropriate proceedings that  
11 the claim or demand in fact arose out of an alleged act or omission occurring  
12 in the performance of duty, or that the act or omission complained of did  
13 not amount to malfeasance in office or willful or wanton neglect of duty, in  
14 which case the officer, employee or agent shall be indemnified by the public  
15 body against liability and reasonable costs of defending the claim.

16 (4) Nothing in subsection (1), (2) or (3) of this section shall be deemed to  
17 increase the limits of liability of any public officer, agent or employee under  
18 ORS 30.260 to 30.300, or relieve any claimant of the necessity of compliance  
19 with ORS 30.275, nor to affect the liability of the local public body itself or  
20 of any other public officer, agent or employee on any claim arising out of  
21 the same accident or occurrence.

22 (5) The provisions of this section may be superseded to the extent that the  
23 claim against the public officer, employee or agent may be defended by any  
24 insurer, or may be subject under ORS 30.282 to agreement with the Oregon  
25 Department of Administrative Services, in which case the provisions of the  
26 policy of insurance or other agreement are applicable.

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