

# House Bill 2663

Sponsored by Representative FREDERICK; Representative GELSER (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies element of plan adopted by county deadly physical force planning authority to consist of outreach and training regarding reasonable use of deadly physical force.

Modifies requirement that law enforcement agency adopt guidelines for reasonable use of deadly physical force.

## A BILL FOR AN ACT

1  
2 Relating to the use of deadly physical force; amending ORS 181.783 and 181.789.

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

4 **SECTION 1.** ORS 181.783 is amended to read:

5 181.783. (1) There is created in each county a deadly physical force planning authority consist-  
6 ing of the following members:

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

8 (b) A nonmanagement police officer selected by the district attorney and sheriff. If there are  
9 unions representing police officers within the county, the district attorney and sheriff shall select  
10 the police officer from among candidates nominated by any union representing police officers within  
11 the county.

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

14 (d) A representative of the public selected by the district attorney and sheriff. The person se-  
15 lected under this paragraph may not be employed by a law enforcement agency.

16 (e) A representative of the Oregon State Police selected by the Superintendent of State Police.

17 (f) A tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011, when requested  
18 by a tribal government.

19 (2) The district attorney and sheriff are cochairpersons of the planning authority.

20 (3) The law enforcement agency that employs the police officer selected under subsection (1)(b)  
21 of this section shall release the officer from other duties for at least 16 hours per year to enable the  
22 officer to serve on the planning authority. The agency shall compensate the officer at the officer's  
23 regular hourly wage while the officer is engaged in planning authority activities.

24 (4) The planning authority shall develop a plan consisting of the following:

25 (a) An element dealing with education, outreach and training regarding the **reasonable** use of  
26 deadly physical force for police officers, attorneys employed by state or local government within the  
27 county and members of the community.

28 (b) An element dealing with the immediate aftermath of an incident in which a police officer  
29 used deadly physical force.

30 (c) An element dealing with the investigation of an incident in which a police officer used deadly

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 physical force.

2 (d) An element dealing with the exercise of district attorney discretion to resolve issues of po-  
3 tential criminal responsibility resulting from a police officer's use of deadly physical force.

4 (e) An element dealing with collecting information regarding a police officer's use of deadly  
5 physical force, debriefing after an incident in which a police officer used deadly physical force and  
6 revising a plan developed under this subsection based on experience.

7 (f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies  
8 of each element described in paragraphs (a) to (e) of this subsection.

9 (5) The planning authority shall conduct at least one public hearing in the county before sub-  
10 mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)  
11 of this section.

12 (6) The planning authority may consult with anyone the planning authority determines may be  
13 helpful in carrying out its responsibilities.

14 (7) The planning authority shall submit the plan developed under subsection (4) of this section,  
15 and revisions of the plan, to the governing body of each law enforcement agency within the county  
16 except for the Department of State Police and the Department of Justice.

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

19 (9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan  
20 is submitted, the planning authority shall develop and submit a revised plan.

21 (10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is  
22 submitted, the planning authority shall submit the approved plan to the Attorney General. No later  
23 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance  
24 with the minimum requirements described in ORS 181.786. If the Attorney General determines that  
25 the plan complies with the minimum requirements, the Attorney General shall approve the plan.  
26 Upon approval of the plan:

27 (a) Each law enforcement agency within the county to which the plan applies is subject to the  
28 provisions of the plan; and

29 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS  
30 181.796.

31 (11) If the plan is not approved by the Attorney General, the planning authority shall develop  
32 and submit a revised plan.

33 (12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject  
34 to a provision of a plan approved under subsection (10) of this section that:

35 (a) Conflicts with a provision of a city or county charter or a general ordinance that applies to  
36 the law enforcement agency; or

37 (b) Imposes an obligation not required by ORS 181.789 if complying with the provision would  
38 require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of  
39 the people, in order to comply with the provision.

40 (13) The Attorney General shall periodically publish all approved plans.

41 (14) A law enforcement agency within a county has a duty to participate in good faith in the  
42 planning process of the planning authority for the county.

43 (15) A person bringing an action challenging the validity or enforceability of a plan approved  
44 under subsection (10) of this section shall serve the Attorney General with a copy of the complaint.  
45 If the Attorney General is not a party to the action, the Attorney General may intervene in the

1 action.

2 **SECTION 2.** ORS 181.783, as amended by section 50b, chapter 644, Oregon Laws 2011, is  
3 amended to read:

4 181.783. (1) There is created in each county a deadly physical force planning authority consist-  
5 ing of the following members:

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

7 (b) A nonmanagement police officer selected by the district attorney and sheriff. If there are  
8 unions representing police officers within the county, the district attorney and sheriff shall select  
9 the police officer from among candidates nominated by any union representing police officers within  
10 the county.

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

13 (d) A representative of the public selected by the district attorney and sheriff. The person se-  
14 lected under this paragraph may not be employed by a law enforcement agency.

15 (e) A representative of the Oregon State Police selected by the Superintendent of State Police.

16 (2) The district attorney and sheriff are cochairpersons of the planning authority.

17 (3) The law enforcement agency that employs the police officer selected under subsection (1)(b)  
18 of this section shall release the officer from other duties for at least 16 hours per year to enable the  
19 officer to serve on the planning authority. The agency shall compensate the officer at the officer's  
20 regular hourly wage while the officer is engaged in planning authority activities.

21 (4) The planning authority shall develop a plan consisting of the following:

22 (a) An element dealing with education, outreach and training regarding the **reasonable** use of  
23 deadly physical force for police officers, attorneys employed by state or local government within the  
24 county and members of the community.

25 (b) An element dealing with the immediate aftermath of an incident in which a police officer  
26 used deadly physical force.

27 (c) An element dealing with the investigation of an incident in which a police officer used deadly  
28 physical force.

29 (d) An element dealing with the exercise of district attorney discretion to resolve issues of po-  
30 tential criminal responsibility resulting from a police officer's use of deadly physical force.

31 (e) An element dealing with collecting information regarding a police officer's use of deadly  
32 physical force, debriefing after an incident in which a police officer used deadly physical force and  
33 revising a plan developed under this subsection based on experience.

34 (f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies  
35 of each element described in paragraphs (a) to (e) of this subsection.

36 (5) The planning authority shall conduct at least one public hearing in the county before sub-  
37 mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)  
38 of this section.

39 (6) The planning authority may consult with anyone the planning authority determines may be  
40 helpful in carrying out its responsibilities.

41 (7) The planning authority shall submit the plan developed under subsection (4) of this section,  
42 and revisions of the plan, to the governing body of each law enforcement agency within the county  
43 except for the Department of State Police and the Department of Justice.

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

1 (9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan  
 2 is submitted, the planning authority shall develop and submit a revised plan.

3 (10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is  
 4 submitted, the planning authority shall submit the approved plan to the Attorney General. No later  
 5 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance  
 6 with the minimum requirements described in ORS 181.786. If the Attorney General determines that  
 7 the plan complies with the minimum requirements, the Attorney General shall approve the plan.  
 8 Upon approval of the plan:

9 (a) Each law enforcement agency within the county to which the plan applies is subject to the  
 10 provisions of the plan; and

11 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS  
 12 181.796.

13 (11) If the plan is not approved by the Attorney General, the planning authority shall develop  
 14 and submit a revised plan.

15 (12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject  
 16 to a provision of a plan approved under subsection (10) of this section that:

17 (a) Conflicts with a provision of a city or county charter or a general ordinance that applies to  
 18 the law enforcement agency; or

19 (b) Imposes an obligation not required by ORS 181.789 if complying with the provision would  
 20 require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of  
 21 the people, in order to comply with the provision.

22 (13) The Attorney General shall periodically publish all approved plans.

23 (14) A law enforcement agency within a county has a duty to participate in good faith in the  
 24 planning process of the planning authority for the county.

25 (15) A person bringing an action challenging the validity or enforceability of a plan approved  
 26 under subsection (10) of this section shall serve the Attorney General with a copy of the complaint.  
 27 If the Attorney General is not a party to the action, the Attorney General may intervene in the  
 28 action.

29 **SECTION 3.** ORS 181.789 is amended to read:

30 181.789. (1) As used in this section, “involved officer” means:

31 (a) A police officer whose official conduct, or official order to use deadly physical force, was a  
 32 cause in fact of the death of a person. As used in this paragraph, “order to use deadly physical  
 33 force” means an order issued to another officer to use deadly physical force in a specific incident  
 34 or an order or directive establishing rules of engagement for the use of deadly physical force for a  
 35 specific incident.

36 (b) A police officer whose official conduct was not a cause in fact of the death of a person but  
 37 whose official involvement in an incident in which the use of deadly physical force by a police offi-  
 38 cer resulted in the death of a person:

39 (A) Began before or during the use of the deadly physical force; and

40 (B) Was reasonably likely to have exposed the police officer to greater stresses or trauma than  
 41 other police officers experienced as a result of their involvement in the incident before or during  
 42 the use of the deadly physical force.

43 (2) A law enforcement agency shall adopt a policy dealing with the use of deadly physical force  
 44 by its police officers. At a minimum, the policy must include guidelines for the **reasonable** use of  
 45 deadly physical force.

1 (3)(a) For each involved officer employed by a law enforcement agency, the law enforcement  
2 agency shall pay the costs of at least two sessions with a mental health professional that are at-  
3 tended by the officer. The sessions must be held within six months after the incident in which the  
4 officer was involved.

5 (b) An involved officer shall attend at least one of the sessions described in paragraph (a) of this  
6 subsection.

7 (c) Sessions with a mental health professional under this subsection may not be substituted for  
8 a fitness for duty examination required or requested as a condition of employment by the law  
9 enforcement agency that employs the involved officer.

10 (4) For at least 72 hours immediately following an incident in which the use of deadly physical  
11 force by a police officer resulted in the death of a person, a law enforcement agency may not return  
12 an involved officer to duties that might place the officer in a situation in which the officer has to  
13 use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or  
14 benefits as a result of the law enforcement agency's compliance with this subsection.  
15 Notwithstanding ORS 181.796 (1), a personnel cost incurred in complying with this subsection by a  
16 law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS  
17 181.796.

18 (5)(a) A law enforcement agency employing an involved officer shall include at least one police  
19 officer from a different law enforcement agency in the investigation of the incident in which the  
20 involved officer was involved.

21 (b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is  
22 not grounds for suppressing evidence obtained in the investigation.

23 (6)(a) A law enforcement agency shall collect at least the following information relating to in-  
24 cidents in which a police officer's use of deadly physical force resulted in the death of a person:

25 (A) The name, gender, race, ethnicity and age of the decedent.

26 (B) The date, time and location of the incident.

27 (C) A brief description of the circumstances surrounding the incident.

28 (b) A law enforcement agency shall promptly submit the information collected under paragraph  
29 (a) of this subsection to the Department of Justice.

30 (7) The department shall compile and periodically publish information submitted under sub-  
31 section (6) of this section. The department, by rule, may specify a form to be used by law enforce-  
32 ment agencies in submitting information under subsection (6) of this section.

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