

House Bill 2699

Sponsored by Representative FREDERICK (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**.

Expands definition of "involved officer" to include officer involved in incident in which use of deadly physical force caused serious physical injury. Increases number of sessions with mental health professional that law enforcement agency must pay for and requires involved officer to attend all sessions. Requires testing of involved officer for controlled substances, including anabolic steroids, immediately following incident in which use of deadly physical force caused death or serious physical injury.

Requires Department of Justice to investigate incident in which use of deadly physical force by police officer resulted in death or serious physical injury of person. Authorizes department to bring criminal prosecution for violation of law by involved officer. Requires district attorney's office in county in which incident occurred to reimburse department for costs of investigation and prosecution.

Requires Board on Public Safety Standards and Training to ensure that police officers and certified reserve officers receive periodic psychological evaluations as condition of certification. Requires Department of Public Safety Standards and Training and board to determine by rule when results of, or failure to submit to, psychological evaluation requires suspension or revocation of certification.

A BILL FOR AN ACT

1
2 Relating to police officers; creating new provisions; and amending ORS 180.120, 181.783, 181.786,
3 181.789, 181.791 and 181.793.

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

5 **SECTION 1.** ORS 181.789 is amended to read:

6 181.789. (1) As used in this section, "involved officer" means:

7 (a) A police officer whose official conduct, or official order to use deadly physical force, was a
8 cause in fact of the death **or serious physical injury** of a person. As used in this paragraph, "order
9 to use deadly physical force" means an order issued to another officer to use deadly physical force
10 in a specific incident or an order or directive establishing rules of engagement for the use of deadly
11 physical force for a specific incident.

12 (b) A police officer whose official conduct was not a cause in fact of the death **or serious**
13 **physical injury** of a person but whose official involvement in an incident in which the use of deadly
14 physical force by a police officer resulted in the death **or serious physical injury** of a person:

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

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

19 (2) A law enforcement agency shall adopt a policy dealing with the use of deadly physical force
20 by its police officers. At a minimum, the policy must include guidelines for the use of deadly physical
21 force.

22 (3)(a) For each involved officer employed by a law enforcement agency, the law enforcement
23 agency shall pay the costs of at least *[two]* **six** sessions with a mental health professional that are

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 attended by the officer. The sessions must be held within six months after the incident in which the
 2 officer was involved.

3 (b) An involved officer shall attend *[at least one]* **all** of the sessions described in paragraph (a)
 4 of this subsection.

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

8 (4) *[For at least 72 hours immediately]* Following an incident in which the use of deadly physical
 9 force by a police officer resulted in the death **or serious physical injury** of a person[.]:

10 (a) **An involved officer must be tested immediately for controlled substances, as defined**
 11 **in ORS 475.005, and for anabolic steroids, as defined in ORS 342.721.**

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

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

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

24 *[(6)(a)]* (5)(a) A law enforcement agency shall collect at least the following information relating
 25 to incidents in which a police officer's use of deadly physical force resulted in the death **or serious**
 26 **physical injury** of a person:

27 (A) The name, gender, race, ethnicity and age of the decedent **or seriously injured person**.

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

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

30 (b) [A] **The** law enforcement agency shall promptly submit the information collected under par-
 31 agraph (a) of this subsection to the Department of Justice.

32 *[(7)]* (c) The *[department]* **Department of Justice** shall compile and periodically publish infor-
 33 mation submitted under *[subsection (6) of this section]* **paragraph (b) of this subsection**. The de-
 34 partment, by rule, may specify a form to be used by law enforcement agencies in submitting
 35 information under *[subsection (6) of this section]* **paragraph (b) of this subsection**.

36 (6)(a) **The Department of Justice shall conduct an investigation into an incident in which**
 37 **a police officer's use of deadly physical force resulted in the death or serious physical injury**
 38 **of a person**.

39 (b)(A) **Persons employed by the same law enforcement unit as an involved officer may**
 40 **not participate in an investigation under this subsection other than as witnesses**.

41 (B) **Failure of the Department of Justice to comply with subparagraph (A) of this para-**
 42 **graph is not grounds for suppressing evidence obtained in the investigation**.

43 (7) **Upon conclusion of the investigation required under subsection (6) of this section, if**
 44 **the Department of Justice determines that a criminal law was violated by an involved officer,**
 45 **the department may bring a criminal prosecution against the officer for the violation**.

1 **(8) The district attorney’s office of the county in which an incident in which the use of**
 2 **deadly physical force by a police officer resulted in the death or serious physical injury of a**
 3 **person shall reimburse the Department of Justice for the costs of the investigation required**
 4 **under subsection (6) of this section and of any criminal prosecution brought under subsection**
 5 **(7) of this section.**

6 **SECTION 2.** ORS 181.783 is amended to read:

7 181.783. (1) There is created in each county a deadly physical force planning authority consist-
 8 ing of the following members:

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

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

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

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

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

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

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

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

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

27 (a) An element dealing with education, outreach and training regarding the use of deadly phys-
 28 ical force for police officers, attorneys employed by state or local government within the county and
 29 members of the community.

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

32 [(c) An element dealing with the investigation of an incident in which a police officer used deadly
 33 physical force.]

34 [(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential
 35 criminal responsibility resulting from a police officer’s use of deadly physical force.]

36 [(e)] (c) An element dealing with collecting information regarding a police officer’s use of deadly
 37 physical force, debriefing after an incident in which a police officer used deadly physical force and
 38 revising a plan developed under this subsection based on experience.

39 [(f)] (d) An estimate of the fiscal impact on the law enforcement agencies to which the plan
 40 applies of each element described in paragraphs (a) to [(e)] (c) of this subsection.

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

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

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

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

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

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

13 Upon approval of the plan:

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

16 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS
 17 181.796.

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

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

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

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

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

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

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

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

36 181.783. (1) There is created in each county a deadly physical force planning authority consist-
 37 ing of the following members:

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

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

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

45 (d) A representative of the public selected by the district attorney and sheriff. The person se-

1 lected under this paragraph may not be employed by a law enforcement agency.

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

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

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

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

9 (a) An element dealing with education, outreach and training regarding the use of deadly phys-
10 ical force for police officers, attorneys employed by state or local government within the county and
11 members of the community.

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

14 [(c) *An element dealing with the investigation of an incident in which a police officer used deadly*
15 *physical force.*]

16 [(d) *An element dealing with the exercise of district attorney discretion to resolve issues of potential*
17 *criminal responsibility resulting from a police officer's use of deadly physical force.*]

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

21 [(f)] (d) An estimate of the fiscal impact on the law enforcement agencies to which the plan
22 applies of each element described in paragraphs (a) to [(e)] (c) of this subsection.

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

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

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

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

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

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

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

43 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS
44 181.796.

45 (11) If the plan is not approved by the Attorney General, the planning authority shall develop

1 and submit a revised plan.

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

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

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

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

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

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

16 **SECTION 4.** ORS 181.786 is amended to read:

17 181.786. In the plan required by ORS 181.783 (4), a deadly physical force planning authority
18 shall, at a minimum:

19 (1)(a) Address, under ORS 181.783 (4)(a), the manner in which each law enforcement agency
20 within the county will comply with ORS 181.789 (2); and

21 (b) Attach a copy of each policy adopted under ORS 181.789 (2) to the plan.

22 (2) Address, under ORS 181.783 (4)(b), the manner in which each law enforcement agency within
23 the county will comply with ORS 181.789 (3)(a) and (4).

24 *[(3) Address, under ORS 181.783 (4)(c), the manner in which each law enforcement agency within
25 the county will comply with ORS 181.789 (5)(a).]*

26 *[(4) Address, under ORS 181.783 (4)(d), the manner in which the district attorney of the county
27 will exercise discretion to resolve issues of potential criminal responsibility.]*

28 *[(5)]* (3) Address, under ORS 181.783 *[(4)(e)]* (4)(c), the manner in which each law enforcement
29 agency within the county will comply with ORS 181.789 *[(6)]* (5).

30 **SECTION 5.** ORS 181.791 is amended to read:

31 181.791. Conclusions and recommendations for future action made by or for a law enforcement
32 agency that result from activities conducted pursuant to the element of a plan described in ORS
33 181.783 *[(4)(e)]* (4)(c) are not admissible as evidence in any subsequent civil action or administrative
34 proceeding.

35 **SECTION 6.** ORS 181.793 is amended to read:

36 181.793. Notwithstanding ORS 181.783, 181.786 and 181.789 (3) and *[(6)]* (5), if sufficient moneys
37 are not appropriated to the Department of Justice for purposes of making grants under ORS 181.796,
38 a deadly physical force planning authority created by ORS 181.783 or a law enforcement agency is
39 not required to comply with any requirement of ORS 181.783, 181.786 or 181.789 (3) or *[(6)]* (5) for
40 which the law enforcement agency is entitled to reimbursement under ORS 181.796.

41 **SECTION 7.** ORS 180.120 is amended to read:

42 180.120. (1) The Attorney General shall:

43 (a) **Except as provided in ORS 181.789**, defend all criminal actions and proceedings in which
44 the Department of State Police or any member thereof is concerned as a party, which require the
45 services of an attorney or counsel in order to protect the interests of the state and are necessary

1 for the purposes of the Department of State Police or the members thereof.

2 (b) Conduct such prosecutions as shall be directed by the Superintendent of State Police with
3 the approval of the Governor.

4 (2) The Attorney General may appoint an attorney for the purpose of such defense or prose-
5 cution and certify the expenses thereof to the Department of State Police for payment from the
6 moneys appropriated for the Department of State Police.

7 **SECTION 8. Section 9 of this 2015 Act is added to and made a part of ORS 181.610 to**
8 **181.712.**

9 **SECTION 9. (1) The Board on Public Safety Standards and Training shall ensure that all**
10 **police officers and certified reserve officers receive periodic psychological evaluations as a**
11 **condition of certification under ORS 181.640.**

12 **(2) The Department of Public Safety Standards and Training shall recommend and the**
13 **board shall establish by rule the circumstances under which the results of, or failure to**
14 **submit to, the psychological evaluation required under subsection (1) of this section requires**
15 **suspension or revocation of the certification of a police officer or certified reserve officer**
16 **under ORS 181.662.**

17 _____