

**A-Engrossed**  
**Senate Bill 871**

Ordered by the Senate April 30  
Including Senate Amendments dated April 30

Sponsored by Senator SHIELDS

**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.

*[Directs law enforcement agency to notify Attorney General when police officer's use of deadly physical force causes death of person.]*

*[Directs Attorney General to appoint special prosecutor to investigate and, if appropriate, prosecute use of deadly physical force. Requires that subsequent prosecution occur using preliminary hearing.]*

*[Directs law enforcement agency to fully cooperate with investigation. Authorizes Attorney General to prosecute obstruction of investigation or bring action for costs caused by failure to cooperate.]*

*[Provides that family of person whose death was caused by use of deadly physical force is victim for purposes of certain victims' rights.]*

**Requires deadly physical force policy of law enforcement agency to have requirement that investigation into use of deadly physical force by agency's police officers be led by person who is not employed by agency.**

**Requires incidents of use of deadly physical force that cause death of person to be presented to grand jury. Requires grand jury proceeding to be recorded by stenographic means. Allows release of stenographic report of proceedings in certain circumstances.**

**A BILL FOR AN ACT**

1  
2 Relating to use of deadly physical force by police officers; creating new provisions; and amending  
3 ORS 132.090 and 181.789.

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 of a person. As used in this paragraph, "order to use deadly physical  
9 force" means an order issued to another officer to use deadly physical force in a specific incident  
10 or an order or directive establishing rules of engagement for the use of deadly physical force for a  
11 specific incident.

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

21 (a) Guidelines for the use of deadly physical force.

**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       **(b) A requirement that an investigation into the use of deadly physical force by one of**  
2 **the law enforcement agency's police officers must be led by a person who is not employed**  
3 **by the agency.**

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

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

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

13       (4) For at least 72 hours immediately following an incident in which the use of deadly physical  
14 force by a police officer resulted in the death of a person, a law enforcement agency may not return  
15 an involved officer to duties that might place the officer in a situation in which the officer has to  
16 use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or  
17 benefits as a result of the law enforcement agency's compliance with this subsection.  
18 Notwithstanding ORS 181.796 (1), a personnel cost incurred in complying with this subsection by a  
19 law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS  
20 181.796.

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

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

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

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

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

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

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

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

36       **SECTION 2. A law enforcement agency that, on the effective date of this 2015 Act, has**  
37 **a policy dealing with the use of deadly physical force by its police officers that includes a**  
38 **requirement that the investigation into the use of deadly physical force by one of the law**  
39 **enforcement agency's police officers must be led by a person who is not employed by the**  
40 **agency, is not required to revise the policy or adopt a new policy to comply with the**  
41 **amendments to ORS 181.789 by section 1 of this 2015 Act.**

42       **SECTION 3. (1) All incidents involving the use of deadly physical force by a police officer**  
43 **that is the cause in fact of the death of a person shall be presented to the grand jury as**  
44 **provided in ORS 132.310 to 132.390.**

45       **(2) The presiding judge of the circuit court of the county in which the incident of deadly**

1 **physical force occurred shall ensure that the grand jury proceeding is recorded by steno-**  
2 **graphic means. A reporter providing stenographic reporting services under this subsection**  
3 **shall be certified under ORS 8.415 to 8.455 or by a nationally recognized certification pro-**  
4 **gram.**

5 **(3)(a) A stenographic report or transcript of a grand jury proceeding prepared under**  
6 **subsection (2) of this section may be released to the public only if the court finds that the**  
7 **public interest in releasing the report or transcript outweighs the privacy concerns of the**  
8 **persons involved in the proceeding.**

9 **(b) Notwithstanding paragraph (a) of this subsection, a court may not release a report**  
10 **or transcript if the grand jury proceeding results in the indorsement of an indictment “a true**  
11 **bill” or if the incident of the use of deadly physical force is the subject of an active investi-**  
12 **gation.**

13 **SECTION 4.** ORS 132.090 is amended to read:

14 132.090. (1) Except as provided in subsections (2) and (3) of this section **and section 3 of this**  
15 **2015 Act**, no person other than the district attorney or a witness actually under examination shall  
16 be present during the sittings of the grand jury.

17 (2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-  
18 point a reporter who shall attend the sittings of the grand jury to take and report the testimony in  
19 any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate  
20 person 18 years of age or older to accompany any child 12 years of age or younger, or any person  
21 with an intellectual disability, during an appearance before the grand jury. The circuit judge, upon  
22 the district attorney’s showing to the court that it is necessary for the proper examination of a  
23 witness appearing before the grand jury, may appoint a guard, medical or other special attendant  
24 or nurse, who shall be present in the grand jury room and shall attend such sittings.

25 (3) The district attorney may designate an interpreter who is certified under ORS 45.291 to in-  
26 terpret the testimony of witnesses appearing before the grand jury. The district attorney may des-  
27 ignate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a  
28 certified interpreter is not available and that the person designated by the district attorney is a  
29 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may  
30 be present in the grand jury room and attend the sittings of the grand jury.

31 (4) No person other than members of the grand jury shall be present when the grand jury is  
32 deliberating or voting upon a matter before it.

33 (5) As used in this section, “intellectual disability” has the meaning given that term in ORS  
34 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

35 (a) Documentary evidence of intellectual functioning; or

36 (b) The affidavit of a qualified person familiar with the person with an intellectual disability.  
37 “Qualified person” includes, but is not limited to, a teacher, therapist or physician.

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