

## SENATE AMENDMENTS TO SENATE BILL 871

By COMMITTEE ON JUDICIARY

April 30

1 On page 1 of the printed bill, line 2, after “officers” insert “; creating new provisions; and  
2 amending ORS 132.090 and 181.789”.

3 Delete lines 4 through 27 and delete page 2 and insert:

4 “**SECTION 1.** ORS 181.789 is amended to read:

5 “181.789. (1) As used in this section, ‘involved officer’ means:

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

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

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

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

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

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

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

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

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

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

33 “(4) For at least 72 hours immediately following an incident in which the use of deadly physical  
34 force by a police officer resulted in the death of a person, a law enforcement agency may not return  
35 an involved officer to duties that might place the officer in a situation in which the officer has to

1 use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or  
2 benefits as a result of the law enforcement agency's compliance with this subsection.  
3 Notwithstanding ORS 181.796 (1), a personnel cost incurred in complying with this subsection by a  
4 law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS  
5 181.796.

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

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

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

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

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

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

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

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

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

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

30 "(2) **The presiding judge of the circuit court of the county in which the incident of deadly**  
31 **physical force occurred shall ensure that the grand jury proceeding is recorded by steno-**  
32 **graphic means. A reporter providing stenographic reporting services under this subsection**  
33 **shall be certified under ORS 8.415 to 8.455 or by a nationally recognized certification pro-**  
34 **gram.**

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

39 "(b) **Notwithstanding paragraph (a) of this subsection, a court may not release a report**  
40 **or transcript if the grand jury proceeding results in the indorsement of an indictment 'a true**  
41 **bill' or if the incident of the use of deadly physical force is the subject of an active investi-**  
42 **gation.**

43 "**SECTION 4. ORS 132.090 is amended to read:**

44 "**132.090. (1) Except as provided in subsections (2) and (3) of this section and section 3 of this**  
45 **2015 Act, no person other than the district attorney or a witness actually under examination shall**

1 be present during the sittings of the grand jury.

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

10 “(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to  
11 interpret the testimony of witnesses appearing before the grand jury. The district attorney may  
12 designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a  
13 certified interpreter is not available and that the person designated by the district attorney is a  
14 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may  
15 be present in the grand jury room and attend the sittings of the grand jury.

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

18 “(5) As used in this section, ‘intellectual disability’ has the meaning given that term in ORS  
19 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

20 “(a) Documentary evidence of intellectual functioning; or

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

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