

**PROPOSED AMENDMENTS TO
SENATE BILL 871**

1 On page 1 of the printed bill, line 2, after “officers” insert “; creating new
2 provisions; and 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
7 physical force, was a cause in fact of the death of a person. As used in this
8 paragraph, ‘order to use deadly physical force’ means an order issued to an-
9 other officer to use deadly physical force in a specific incident or an order
10 or directive establishing rules of engagement for the use of deadly physical
11 force for a specific incident.

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

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

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

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

1 include:

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

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

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

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

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

17 “(4) For at least 72 hours immediately following an incident in which the
18 use of deadly physical force by a police officer resulted in the death of a
19 person, a law enforcement agency may not return an involved officer to du-
20 ties that might place the officer in a situation in which the officer has to
21 use deadly physical force. A law enforcement agency may not reduce an in-
22 volved officer’s pay or benefits as a result of the law enforcement agency’s
23 compliance with this subsection. Notwithstanding ORS 181.796 (1), a per-
24 sonnel cost incurred in complying with this subsection by a law enforcement
25 agency employing 40 or fewer police officers is an expense for purposes of
26 ORS 181.796.

27 “(5)(a) A law enforcement agency employing an involved officer shall in-
28 clude at least one police officer from a different law enforcement agency in
29 the investigation of the incident in which the involved officer was involved.

30 “(b) The failure of a law enforcement agency to comply with paragraph

1 (a) of this subsection is not grounds for suppressing evidence obtained in the
2 investigation.

3 “(6)(a) A law enforcement agency shall collect at least the following in-
4 formation relating to incidents in which a police officer’s use of deadly
5 physical force resulted in the death of a person:

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

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

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

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

11 “(7) The department shall compile and periodically publish information
12 submitted under subsection (6) of this section. The department, by rule, may
13 specify a form to be used by law enforcement agencies in submitting infor-
14 mation under subsection (6) of this section.

15 **“SECTION 2. A law enforcement agency that, on the effective date**
16 **of this 2015 Act, has a policy dealing with the use of deadly physical**
17 **force by its police officers that includes a requirement that the inves-**
18 **tigation into the use of deadly physical force by one of the law**
19 **enforcement agency’s police officers must be led by a person who is**
20 **not employed by the agency, is not required to revise the policy or**
21 **adopt a new policy to comply with the amendments to ORS 181.789 by**
22 **section 1 of this 2015 Act.**

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

27 **“(2) The presiding judge of the circuit court of the county in which**
28 **the incident of deadly physical force occurred shall ensure that the**
29 **grand jury proceeding is recorded by stenographic means. A reporter**
30 **providing stenographic reporting services under this subsection shall**

1 **be certified under ORS 8.415 to 8.455 or by a nationally recognized**
2 **certification program.**

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

8 **“(b) Notwithstanding paragraph (a) of this subsection, a court may**
9 **not release a report or transcript if the grand jury proceeding results**
10 **in the indorsement of an indictment ‘a true bill’ or if the incident of**
11 **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**
15 **and section 3 of this 2015 Act, no person other than the district attorney**
16 **or a witness actually under examination shall be present during the sittings**
17 **of the grand jury.**

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

29 **“(3) The district attorney may designate an interpreter who is certified**
30 **under ORS 45.291 to interpret the testimony of witnesses appearing before**

1 the grand jury. The district attorney may designate a qualified interpreter,
2 as defined in ORS 45.288, if the circuit court determines that a certified in-
3 terpreter is not available and that the person designated by the district at-
4 torney is a qualified interpreter as defined in ORS 45.288. An interpreter
5 designated under this subsection may be present in the grand jury room and
6 attend the sittings of the grand jury.

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

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

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

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

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