SUMMARY

Requires law enforcement agency to notify Attorney General when police officer uses physical force resulting in death or qualifying physical injury. Requires Attorney General to appoint special investigator to lead investigation upon receipt of notification. Directs Attorney General to prosecute violations of law related to use of physical force. Directs Attorney General to release reports from investigation if criminal proceedings are not initiated.

 Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the use of force by police officers; creating new provisions; amending ORS 181A.410, 181A.780, 181A.785, 181A.790 and 181A.800; and declaring an emergency.

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

SECTION 1. (1) A law enforcement agency shall immediately notify the Attorney General when a police officer employed by the agency, while performing official duties, uses physical force that causes the death of another person or that results in a qualifying physical injury to another person.

(2)(a) Upon receiving the notification described in subsection (1) of this section, the Attorney General shall appoint a special investigator to lead the investigation into the use of physical force. Upon the appointment and notwithstanding ORS 146.095, the investigation into the use of physical force shall proceed under the direction of the special investigator and the Attorney General.

(b) A special investigator appointed under this subsection may be
employed by the Department of Justice, but may not be employed by
the law enforcement agency employing the officer, the office of the
district attorney in the county in which the incident of the use of
physical force occurred or by any other office in the county in which
the incident occurred.

(3) The Attorney General shall ensure that the investigation de-
dscribed in subsection (2) of this section is completed as soon as rea-
sonably possible and not later than six months from the date on which
the use of physical force occurred.

(4) At the conclusion of the investigation described in subsection
(2) of this section, the Attorney General shall:

(a) Prosecute any violation of law related to the use of physical
force, in which the circuit court has jurisdiction; and

(b) Have all the powers of a district attorney when acting under this
subsection.

(5) If, after completion of the investigation described in subsection
(2) of this section, the Attorney General determines that there is no
basis to initiate criminal proceedings based on the use of physical
force, the Attorney General shall make the reports from the investi-
gation available to the public after redacting from the reports infor-
mation exempted from disclosure under ORS 192.345 and 192.355.

(6) As used in this section:

(a) “Law enforcement agency” has the meaning given that term in
ORS 181A.775.

(b) “Physical force” has the meaning given that term in ORS
161.015.

(c) “Police officer” has the meaning given that term in ORS
181A.775.

(d) “Qualifying physical injury” means a physical injury that the
Attorney General has, by rule, determined to be eligible for appoint-
ment of a special investigator under this section.
(7) The Attorney General shall adopt rules to carry out the provisions of this section.

SECTION 2. ORS 181A.780 is amended to read:

181A.780. (1) There is created in each county a deadly physical force planning authority consisting of the following members:

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

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

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

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

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

(f) An authorized tribal police officer as defined in ORS 181A.680 when requested by a tribal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.
(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in ORS 181A.785. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan:

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

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS 181A.805.

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

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

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

(b) Imposes an obligation not required by ORS 181A.790 if complying with the provision would require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of the people, in order to comply with the provision.

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

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

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

SECTION 3. ORS 181A.785 is amended to read:
181A.785. In the plan required by ORS 181A.780 (4), a deadly physical force planning authority shall, at a minimum:

(1)(a) Address, under ORS 181A.780 (4)(a), the manner in which each law enforcement agency within the county will comply with ORS 181A.790 (2); and

(b) Attach a copy of each policy adopted under ORS 181A.790 (2) to the plan.

(2) Address, under ORS 181A.780 (4)(b), the manner in which each law enforcement agency within the county will comply with ORS 181A.790 (3)(a) and (4).

[(3) Address, under ORS 181A.780 (4)(c), the manner in which each law enforcement agency within the county will comply with ORS 181A.790 (5)(a).]

[(4)] (3) Address, under ORS 181A.780 (4)(d), the manner in which the district attorney of the county Attorney General will exercise discretion to resolve issues of potential criminal responsibility.

[(5)] (4) Address, under ORS 181A.780 (4)(e), the manner in which each law enforcement agency within the county will comply with ORS 181A.790 [(6)] (5).

SECTION 4. ORS 181A.790 is amended to read:

181A.790. (1) As used in this section, “involved officer” means:

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

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

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

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

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

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

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

(4) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, a law enforcement agency may not return an involved officer to duties that might place the officer in a situation in which the officer has to use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or benefits as a result of the law enforcement agency's compliance with this subsection. Notwithstanding ORS 181A.805 (1), a personnel cost incurred in complying with this subsection by a law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS 181A.805.

[(5)(a) A law enforcement agency employing an involved officer shall Include at least one police officer from a different law enforcement agency in the investigation of the incident in which the involved officer was involved.]
[(b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is not grounds for suppressing evidence obtained in the investigation.]

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

(A) The name, gender, race, ethnicity and age of the decedent.
(B) The date, time and location of the incident.
(C) A brief description of the circumstances surrounding the incident.

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

[(7) (6)] The department shall compile and periodically publish information submitted under subsection [(6)] (5) of this section. The department, by rule, may specify a form to be used by law enforcement agencies in submitting information under subsection [(6)] (5) of this section.

SECTION 5. ORS 181A.800 is amended to read:

ORS 181A.800. Notwithstanding ORS 181A.780, 181A.785 and 181A.790 (3) and [(6)] (5), if sufficient moneys are not appropriated to the Department of Justice for purposes of making grants under ORS 181A.805, a deadly physical force planning authority created by ORS 181A.780 or a law enforcement agency is not required to comply with any requirement of ORS 181A.780, 181A.785 or 181A.790 (3) or [(6)] (5) for which the law enforcement agency is entitled to reimbursement under ORS 181A.805.

SECTION 6. ORS 181A.410 is amended to read:

ORS 181A.410. (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend, and the board shall establish by
rule, reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

(b) The department shall recommend, and the board shall establish by rule, reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and instructors. Training requirements shall be consistent with the funding available in the department’s legislatively approved budget.

(c) The department, in consultation with the board, shall establish by rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether public safety personnel meet minimum standards or have minimum training.

(d) Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel, except youth correction officers, as being qualified under the rules established by the board.

(e) The department shall deny applications for training and deny, suspend and revoke certification in the manner provided in ORS 181A.630, 181A.640 and 181A.650 (1).

(f) The department shall cause inspection of standards and training for instructors and public safety personnel, except youth correction officers, to be made.

(g) The department may recommend, and the board may establish by rule, accreditation standards, levels and categories for mandated and nonmandated public safety personnel training or educational programs. The department and board, in consultation, may establish to what extent training or educational programs provided by an accredited university, college, community college or public safety agency may serve as equivalent to mandated training or as a prerequisite to mandated training. Programs offered by accredited universities, colleges or community colleges may be considered equivalent to mandated training only in academic areas.
(h) The department shall recommend, and the board shall establish by rule, an educational program that the board determines will be most effective in reducing profiling, as defined in ORS 131.915, by police officers and reserve officers. The program must be required at all levels of training, including basic training and advanced, leadership and continuing training.

(2) The department may:
   (a) Contract or otherwise cooperate with any person or agency of government for the procurement of services or property;
   (b) Accept gifts or grants of services or property;
   (c) Establish fees for determining whether a training or educational program meets the accreditation standards established under subsection (1)(g) of this section;
   (d) Maintain and furnish to law enforcement units and public and private safety agencies information on applicants for appointment as instructors or public safety personnel, except youth correction officers, in any part of the state; and
   (e) Establish fees to allow recovery of the full costs incurred in providing services to private entities or in providing services as experts or expert witnesses.

(3) The department, in consultation with the board, may:
   (a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.
   (b) Upon the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.
   (c) Conduct and stimulate research to improve the police, fire service, corrections, adult parole and probation, emergency medical dispatch and telecommunicator professions.
   (d) Provide grants from funds appropriated or available therefor, to law
enforcement units, public safety agencies, special districts, cities, counties and private entities to carry out the provisions of this subsection.

(e) Provide optional training programs for persons who operate lockups. The term “lockup” has the meaning given it in ORS 169.005.

(f) Provide optional training programs for public safety personnel and their support staffs.

(g) Enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.

(h) Upon the request of a law enforcement unit or public safety agency employing public safety personnel, except youth correction officers, grant an officer, fire service professional, telecommunicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum requirements adopted or approved by the board. Multidiscipline certification authorizes an officer, fire service professional, telecommunicator or emergency medical dispatcher to work in any of the disciplines for which the officer, fire service professional, telecommunicator or emergency medical dispatcher is certified. The provisions of ORS 181A.500, 181A.520 and 181A.530 relating to lapse of certification do not apply to an officer or fire service professional certified under this paragraph as long as the officer or fire service professional maintains full-time employment in one of the certified disciplines and meets the training standards established by the board.

(i) Establish fees and guidelines for the use of the facilities of the training academy operated by the department and for nonmandated training provided to federal, state or other governmental agencies, private entities or individuals.

(4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt rules necessary to carry out the board’s duties and powers.

(5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the department's duties and
powers.

(6) For efficiency, board and department rules may be adopted jointly as a single set of combined rules with the approval of the board and the department.

(7) The department shall obtain approval of the board before submitting its legislative concepts, Emergency Board request or agency request budget to the Oregon Department of Administrative Services.

(8) The Department of Public Safety Standards and Training shall develop a training program for conducting investigations [required under ORS 181A.790] into the use of deadly physical force by police officers.

SECTION 7. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.