

# D R A F T

## 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

1  
2 Relating to the use of force by police officers; creating new provisions;  
3 amending ORS 181A.410, 181A.780, 181A.785, 181A.790 and 181A.800; and  
4 declaring an emergency.

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

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

11 **(2)(a) Upon receiving the notification described in subsection (1) of**  
12 **this section, the Attorney General shall appoint a special investigator**  
13 **to lead the investigation into the use of physical force. Upon the ap-**  
14 **pointment and notwithstanding ORS 146.095, the investigation into the**  
15 **use of physical force shall proceed under the direction of the special**  
16 **investigator and the Attorney General.**

17 **(b) A special investigator appointed under this subsection may be**

1 employed by the Department of Justice, but may not be employed by  
2 the law enforcement agency employing the officer, the office of the  
3 district attorney in the county in which the incident of the use of  
4 physical force occurred or by any other office in the county in which  
5 the incident occurred.

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

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

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

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

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

22 (6) As used in this section:

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

25 (b) “Physical force” has the meaning given that term in ORS  
26 161.015.

27 (c) “Police officer” has the meaning given that term in ORS  
28 181A.775.

29 (d) “Qualifying physical injury” means a physical injury that the  
30 Attorney General has, by rule, determined to be eligible for appoint-  
31 ment of a special investigator under this section.

1       **(7) The Attorney General shall adopt rules to carry out the pro-**  
2 **visions of this section.**

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

4       181A.780. (1) There is created in each county a deadly physical force  
5 planning authority consisting of the following members:

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

7       (b) A nonmanagement police officer selected by the district attorney and  
8 sheriff. If there are unions representing police officers within the county, the  
9 district attorney and sheriff shall select the police officer from among can-  
10 didates nominated by any union representing police officers within the  
11 county.

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

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

17       (e) A representative of the Oregon State Police selected by the Super-  
18 intendent of State Police.

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

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

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

29       (4) The planning authority shall develop a plan consisting of the follow-  
30 ing:

31       (a) An element dealing with education, outreach and training regarding

1 the use of deadly physical force for police officers, attorneys employed by  
2 state or local government within the county and members of the community.

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

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

7 (d) An element dealing with the exercise of [*district attorney*] discretion  
8 **by the Attorney General** to resolve issues of potential criminal responsi-  
9 bility resulting from a police officer's use of deadly physical force.

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

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

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

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

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

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

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

1 (10) If the plan is approved by at least two-thirds of the governing bodies  
2 to which the plan is submitted, the planning authority shall submit the ap-  
3 proved plan to the Attorney General. No later than 30 days after receiving  
4 the plan, the Attorney General shall review the plan for compliance with the  
5 minimum requirements described in ORS 181A.785. If the Attorney General  
6 determines that the plan complies with the minimum requirements, the At-  
7 torney General shall approve the plan. Upon approval of the plan:

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

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

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

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

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

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

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

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

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

31 **SECTION 3.** ORS 181A.785 is amended to read:

1 181A.785. In the plan required by ORS 181A.780 (4), a deadly physical  
2 force planning authority shall, at a minimum:

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

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

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

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

13 *[(4)]* (3) Address, under ORS 181A.780 (4)(d), the manner in which the  
14 *[district attorney of the county]* **Attorney General** will exercise discretion to  
15 resolve issues of potential criminal responsibility.

16 *[(5)]* (4) Address, under ORS 181A.780 (4)(e), the manner in which each  
17 law enforcement agency within the county will comply with ORS 181A.790

18 *[(6)]* (5).

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

20 181A.790. (1) As used in this section, “involved officer” means:

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

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

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

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

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

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

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

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

19 (4) For at least 72 hours immediately following an incident in which the  
20 use of deadly physical force by a police officer resulted in the death of a  
21 person, a law enforcement agency may not return an involved officer to du-  
22 ties that might place the officer in a situation in which the officer has to  
23 use deadly physical force. A law enforcement agency may not reduce an in-  
24 volved officer's pay or benefits as a result of the law enforcement agency's  
25 compliance with this subsection. Notwithstanding ORS 181A.805 (1), a per-  
26 sonnel cost incurred in complying with this subsection by a law enforcement  
27 agency employing 40 or fewer police officers is an expense for purposes of  
28 ORS 181A.805.

29 *[(5)(a) A law enforcement agency employing an involved officer shall In-*  
30 *clude at least one police officer from a different law enforcement agency in the*  
31 *investigation of the incident in which the involved officer was involved.]*

1        *[(b) The failure of a law enforcement agency to comply with paragraph (a)*  
2 *of this subsection is not grounds for suppressing evidence obtained in the in-*  
3 *vestigation.]*

4        ~~[(6)(a)]~~ **(5)(a)** A law enforcement agency shall collect at least the follow-  
5 ing information relating to incidents in which a police officer's use of deadly  
6 physical force resulted in the death of a person:

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

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

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

10       (b) A law enforcement agency shall promptly submit the information col-  
11 lected under paragraph (a) of this subsection to the Department of Justice.

12       ~~[(7)]~~ **(6)** The department shall compile and periodically publish informa-  
13 tion submitted under subsection ~~[(6)]~~ **(5)** of this section. The department, by  
14 rule, may specify a form to be used by law enforcement agencies in submit-  
15 ting information under subsection ~~[(6)]~~ **(5)** of this section.

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

17       181A.800. Notwithstanding ORS 181A.780, 181A.785 and 181A.790 (3) and  
18 ~~[(6)]~~ **(5)**, if sufficient moneys are not appropriated to the Department of  
19 Justice for purposes of making grants under ORS 181A.805, a deadly physical  
20 force planning authority created by ORS 181A.780 or a law enforcement  
21 agency is not required to comply with any requirement of ORS 181A.780,  
22 181A.785 or 181A.790 (3) or ~~[(6)]~~ **(5)** for which the law enforcement agency  
23 is entitled to reimbursement under ORS 181A.805.

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

25       181A.410. (1) In accordance with any applicable provision of ORS chapter  
26 183, to promote enforcement of law and fire services by improving the com-  
27 petence of public safety personnel and their support staffs, and in consulta-  
28 tion with the agencies for which the Board on Public Safety Standards and  
29 Training and Department of Public Safety Standards and Training provide  
30 standards, certification, accreditation and training:

31       (a) The department shall recommend, and the board shall establish by

1 rule, reasonable minimum standards of physical, emotional, intellectual and  
2 moral fitness for public safety personnel and instructors.

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

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

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

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

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

23 (g) The department may recommend, and the board may establish by rule,  
24 accreditation standards, levels and categories for mandated and nonmandated  
25 public safety personnel training or educational programs. The department  
26 and board, in consultation, may establish to what extent training or educa-  
27 tional programs provided by an accredited university, college, community  
28 college or public safety agency may serve as equivalent to mandated training  
29 or as a prerequisite to mandated training. Programs offered by accredited  
30 universities, colleges or community colleges may be considered equivalent to  
31 mandated training only in academic areas.

1 (h) The department shall recommend, and the board shall establish by  
2 rule, an educational program that the board determines will be most effective  
3 in reducing profiling, as defined in ORS 131.915, by police officers and re-  
4 serve officers. The program must be required at all levels of training, in-  
5 cluding basic training and advanced, leadership and continuing training.

6 (2) The department may:

7 (a) Contract or otherwise cooperate with any person or agency of gov-  
8 ernment for the procurement of services or property;

9 (b) Accept gifts or grants of services or property;

10 (c) Establish fees for determining whether a training or educational pro-  
11 gram meets the accreditation standards established under subsection (1)(g)  
12 of this section;

13 (d) Maintain and furnish to law enforcement units and public and private  
14 safety agencies information on applicants for appointment as instructors or  
15 public safety personnel, except youth correction officers, in any part of the  
16 state; and

17 (e) Establish fees to allow recovery of the full costs incurred in providing  
18 services to private entities or in providing services as experts or expert  
19 witnesses.

20 (3) The department, in consultation with the board, may:

21 (a) Upon the request of a law enforcement unit or public safety agency,  
22 conduct surveys or aid cities and counties to conduct surveys through qual-  
23 ified public or private agencies and assist in the implementation of any rec-  
24 ommendations resulting from such surveys.

25 (b) Upon the request of law enforcement units or public safety agencies,  
26 conduct studies and make recommendations concerning means by which re-  
27 questing units can coordinate or combine their resources.

28 (c) Conduct and stimulate research to improve the police, fire service,  
29 corrections, adult parole and probation, emergency medical dispatch and  
30 telecommunicator professions.

31 (d) Provide grants from funds appropriated or available therefor, to law

1 enforcement units, public safety agencies, special districts, cities, counties  
2 and private entities to carry out the provisions of this subsection.

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

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

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

10 (h) Upon the request of a law enforcement unit or public safety agency  
11 employing public safety personnel, except youth correction officers, grant an  
12 officer, fire service professional, telecommunicator or emergency medical  
13 dispatcher a multidiscipline certification consistent with the minimum re-  
14 quirements adopted or approved by the board. Multidiscipline certification  
15 authorizes an officer, fire service professional, telecommunicator or emer-  
16 gency medical dispatcher to work in any of the disciplines for which the of-  
17 ficer, fire service professional, telecommunicator or emergency medical  
18 dispatcher is certified. The provisions of ORS 181A.500, 181A.520 and  
19 181A.530 relating to lapse of certification do not apply to an officer or fire  
20 service professional certified under this paragraph as long as the officer or  
21 fire service professional maintains full-time employment in one of the certi-  
22 fied disciplines and meets the training standards established by the board.

23 (i) Establish fees and guidelines for the use of the facilities of the train-  
24 ing academy operated by the department and for nonmandated training pro-  
25 vided to federal, state or other governmental agencies, private entities or  
26 individuals.

27 (4) Pursuant to ORS chapter 183, the board, in consultation with the de-  
28 partment, shall adopt rules necessary to carry out the board’s duties and  
29 powers.

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

1 powers.

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

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

8 (8) The Department of Public Safety Standards and Training shall develop  
9 a training program for conducting investigations [*required under ORS*  
10 *181A.790*] **into the use of deadly physical force by police officers.**

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

15

---