

# D R A F T

## SUMMARY

Regulates use of chemical incapacitants, kinetic impact projectiles and sound devices by law enforcement agencies.

Creates private cause of action for person injured by unlawful use of chemical incapacitants, kinetic impact projectiles and sound devices by law enforcement agencies.

Prohibits law enforcement agency from using proxy law enforcement agency to enact measures that court or statute has barred law enforcement agency from using. Prohibits law enforcement agency from acting in concert with another law enforcement agency to engage in misconduct barred by statute or court order.

Eliminates immunity from claims under Oregon Tort Claims Act arising out of riot, civil commotion or mob action. Revives certain claims.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the use of tools by law enforcement agencies; creating new pro-  
3 visions; amending ORS 30.265; repealing section 1, chapter 8, Oregon Laws  
4 2020 (first special session) (Enrolled House Bill 4208); and declaring an  
5 emergency.

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

7 **SECTION 1. Section 1, chapter 8, Oregon Laws 2020 (first special**  
8 **session) (Enrolled House Bill 4208), is repealed.**

9 **SECTION 2. (1) As used in this section:**

10 **(a) “Chemical incapacitant” means the following, together or sepa-**  
11 **rately:**

12 **(A) Toxic chemicals and their precursors, except where intended for**  
13 **purposes not prohibited under this section, as long as the types and**

1 quantities are consistent with such purposes;

2 (B) Munitions and devices specifically designed to cause temporary  
3 pain, temporary irritation, temporary disruption of vital processes,  
4 temporary incapacitation, temporary disability or permanent harm  
5 through the toxic properties of toxic chemicals that would be released  
6 as a result of the employment of the munitions and devices; and

7 (C) Any equipment specifically designed for use directly in con-  
8 nection with the employment of munitions and devices as described in  
9 subparagraph (B) of this paragraph.

10 (b) “Key component of a binary or multicomponent chemical sys-  
11 tem” means the precursor that plays the most important role in de-  
12 termining the toxic properties of the final product and that reacts  
13 rapidly with other chemicals in a binary or multicomponent system.

14 (c) “Kinetic impact projectile” means all nonlethal, less-lethal or  
15 semilethal projectiles, including but not limited to rubber and plastic  
16 bullets, beanbag rounds, sponge rounds and pellet rounds.

17 (d) “Law enforcement agency” means the Department of State Po-  
18 lice, the Department of Justice, a district attorney, a political subdi-  
19 vision of the State of Oregon, a municipal corporation of the State of  
20 Oregon and a university, that maintains a law enforcement unit as  
21 defined in ORS 181A.355 (12)(a)(A).

22 (e) “Precursor” means any chemical reactant that takes part at any  
23 stage in the production by whatever method of a toxic chemical, in-  
24 cluding any key component of a binary or multicomponent chemical  
25 system.

26 (f) “Riot” means an assembly of 10 or more individuals engaging in  
27 tumultuous and violent behavior that creates a substantial risk of  
28 imminent physical injury to persons or imminent destruction of prop-  
29 erty, and for which the danger presented cannot be ameliorated  
30 through usual means of contact by law enforcement.

31 (g) “Toxic chemical” means any chemical that through its chemical

1 **action on biological processes can cause death, temporary pain, tem-**  
2 **porary irritation, temporary disruption of vital processes, temporary**  
3 **incapacitation, temporary disability or permanent harm to humans or**  
4 **animals.**

5 **(2)(a)(A) A law enforcement agency or a person acting on behalf of**  
6 **a law enforcement agency may not use a chemical incapacitant.**

7 **(B) Notwithstanding subparagraph (A) of this paragraph, a law**  
8 **enforcement agency may use pepper spray for the purposes of crowd**  
9 **control if the mayor or sheriff of the governing jurisdiction declares**  
10 **the existence of a riot.**

11 **(C) Before using pepper spray under subparagraph (B) of this para-**  
12 **graph, a law enforcement agency shall, in the following order:**

13 **(i) Announce the agency's intent to use pepper spray;**

14 **(ii) Allow sufficient time for individuals to evacuate the area; and**

15 **(iii) Announce for a second time, immediately before using the**  
16 **pepper spray, the agency's intent to use pepper spray.**

17 **(b)(A) A law enforcement agency may not use a kinetic impact**  
18 **projectile for purposes of crowd control, except against a specific per-**  
19 **son whom a law enforcement officer has individualized probable cause**  
20 **to believe poses a threat to another's life, poses a threat of serious**  
21 **injury to another or has committed or is committing a crime that**  
22 **constitutes a felony.**

23 **(B) Notwithstanding subparagraph (A) of this paragraph, a law**  
24 **enforcement agency may not discharge a kinetic impact projectile in**  
25 **a manner that targets the head, pelvis or back of a person.**

26 **(c) A law enforcement agency may not use a sound device at a**  
27 **sound pressure level of 105 decibels or greater.**

28 **(d)(A) A person injured by a violation of this subsection may bring**  
29 **a private cause of action for economic and noneconomic damages**  
30 **against the law enforcement agency committing the violation.**

31 **(B) The court shall award reasonable attorney fees to a prevailing**

1 **plaintiff under this paragraph.**

2 **(C) An action under this paragraph must be commenced within two**  
3 **years after the conduct giving rise to the claim occurred.**

4 **(D) ORS 30.260 to 30.300 do not apply to an action under this para-**  
5 **graph.**

6 **(3) When using pepper spray, kinetic impact projectiles or sound**  
7 **devices in compliance with this section, a law enforcement agency:**

8 **(a) Shall first notify local fire and emergency services and ensure**  
9 **that medical resources are available to any person in the area.**

10 **(b) May not use pepper spray, kinetic impact projectiles or sound**  
11 **devices against medical personnel, journalists, legal observers, persons**  
12 **providing humanitarian assistance or houseless persons.**

13 **(c) Shall give instructions to medical personnel, journalists, legal**  
14 **observers and persons providing humanitarian assistance about where**  
15 **to stand to observe or to obtain assistance for injured persons.**

16 **(d) Shall take injured persons to safety or allow injured persons to**  
17 **seek medical help.**

18 **(e) May not disturb a person providing medical assistance to an-**  
19 **other person.**

20 **(f) Shall ensure that emergency medical services can reach injured**  
21 **persons.**

22 **(g) Shall accommodate disabilities.**

23 **(4) A law enforcement agency shall inform federal law enforcement**  
24 **agencies of the requirements of this section and attempt to enforce the**  
25 **requirements of this section.**

26 **SECTION 3. (1) As used in this section, “law enforcement agency”**  
27 **means the Department of State Police, the Department of Justice, a**  
28 **district attorney, a political subdivision of the State of Oregon, a mu-**  
29 **nicipal corporation of the State of Oregon and a university, that**  
30 **maintains a law enforcement unit as defined in ORS 181A.355**  
31 **(12)(a)(A).**

1       **(2) A law enforcement agency or a person acting on behalf of a law**  
2 **enforcement agency may not:**

3       **(a) Use a proxy law enforcement agency to enact measures that a**  
4 **court or statute has barred the law enforcement agency from using.**

5       **(b) Act in concert with another law enforcement agency to engage**  
6 **in misconduct barred by statute or court order.**

7       **(3) Violation of this section constitutes official misconduct in the**  
8 **first degree under ORS 162.415.**

9       **SECTION 4.** ORS 30.265 is amended to read:

10       30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public  
11 body is subject to civil action for its torts and those of its officers, employees  
12 and agents acting within the scope of their employment or duties, whether  
13 arising out of a governmental or proprietary function or while operating a  
14 motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

15       (2) The sole cause of action for a tort committed by officers, employees  
16 or agents of a public body acting within the scope of their employment or  
17 duties and eligible for representation and indemnification under ORS 30.285  
18 or 30.287 is an action under ORS 30.260 to 30.300. The remedy provided by  
19 ORS 30.260 to 30.300 is exclusive of any other action against any such officer,  
20 employee or agent of a public body whose act or omission within the scope  
21 of the officer's, employee's or agent's employment or duties gives rise to the  
22 action. No other form of civil action is permitted.

23       (3) If an action under ORS 30.260 to 30.300 alleges damages in an amount  
24 equal to or less than the damages allowed under ORS 30.271, 30.272 or 30.273,  
25 the sole cause of action for a tort committed by officers, employees or agents  
26 of a public body acting within the scope of their employment or duties and  
27 eligible for representation and indemnification under ORS 30.285 or 30.287  
28 is an action against the public body. If an action is filed against an officer,  
29 employee or agent of a public body, and the plaintiff alleges damages in an  
30 amount equal to or less than the damages allowed under ORS 30.271, 30.272  
31 or 30.273, the court upon motion shall substitute the public body as the de-

1 fendant. Substitution of the public body as the defendant does not exempt the  
2 public body from making any report required under ORS 742.400.

3 (4) If an action under ORS 30.260 to 30.300 alleges damages in an amount  
4 greater than the damages allowed under ORS 30.271, 30.272 or 30.273, the  
5 action may be brought and maintained against an officer, employee or agent  
6 of a public body, whether or not the public body is also named as a defend-  
7 ant. An action brought under this subsection is subject to the limitations on  
8 damages imposed under ORS 30.271, 30.272 or 30.273, and the total combined  
9 amount recovered in the action may not exceed those limitations for a single  
10 accident or occurrence without regard to the number or types of defendants  
11 named in the action.

12 (5) Every public body is immune from liability for any claim for injury  
13 to or death of any person or injury to property resulting from an act or  
14 omission of an officer, employee or agent of a public body when such officer,  
15 employee or agent is immune from liability.

16 (6) Every public body and its officers, employees and agents acting within  
17 the scope of their employment or duties, or while operating a motor vehicle  
18 in a ridesharing arrangement authorized under ORS 276.598, are immune  
19 from liability for:

20 (a) Any claim for injury to or death of any person covered by any  
21 workers' compensation law.

22 (b) Any claim in connection with the assessment and collection of taxes.

23 (c) Any claim based upon the performance of or the failure to exercise  
24 or perform a discretionary function or duty, whether or not the discretion  
25 is abused.

26 (d) Any claim that is limited or barred by the provisions of any other  
27 statute, including but not limited to any statute of ultimate repose.

28 *[(e) Any claim arising out of riot, civil commotion or mob action or out of*  
29 *any act or omission in connection with the prevention of any of the*  
30 *foregoing.]*

31 *[(f)]* (e) Any claim arising out of an act done or omitted under apparent

1 authority of a law, resolution, rule or regulation that is unconstitutional,  
2 invalid or inapplicable except to the extent that they would have been liable  
3 had the law, resolution, rule or regulation been constitutional, valid and  
4 applicable, unless such act was done or omitted in bad faith or with malice.

5 (7) This section applies to any action of any officer, employee or agent  
6 of the state relating to a nuclear incident, whether or not the officer, em-  
7 ployee or agent is acting within the scope of employment, and provided the  
8 nuclear incident is covered by an insurance or indemnity agreement under  
9 42 U.S.C. 2210.

10 (8) Subsection (6)(c) of this section does not apply to any discretionary  
11 act that is found to be the cause or partial cause of a nuclear incident cov-  
12 ered by an insurance or indemnity agreement under the provisions of 42  
13 U.S.C. 2210, including but not limited to road design and route selection.

14 **SECTION 5. (1) The amendments to ORS 30.265 by section 4 of this**  
15 **2021 Act apply to claims that arise on or after July 1, 2016.**

16 **(2) Notwithstanding ORS 30.275 (2), a person whose claim arose on**  
17 **or after July 1, 2016, and before the effective date of this 2021 Act, and**  
18 **whose claim would have been barred by ORS 30.265 before the effective**  
19 **date of this 2021 Act, may give notice of claim under ORS 30.275 no**  
20 **later than 180 days after the effective date of this 2021 Act.**

21 **(3) Notwithstanding ORS 30.275 (9), a person whose claim arose on**  
22 **or after July 1, 2016, and before the effective date of this 2021 Act, and**  
23 **whose claim would have been barred by ORS 30.265 before the effective**  
24 **date of this 2021 Act, must commence an action for the claim within**  
25 **two years after the effective date of this 2021 Act.**

26 **(4) The amendments to ORS 30.265 by section 4 of this 2021 Act do**  
27 **not act to revive any civil action in which a judgment was entered**  
28 **before the effective date of this 2021 Act.**

29 **SECTION 6. This 2021 Act being necessary for the immediate pres-**  
30 **ervation of the public peace, health and safety, an emergency is de-**  
31 **clared to exist, and this 2021 Act takes effect on its passage.**

