

House Bill 4201

Sponsored by Representative KOTEK (at the request of Joint Committee on the First Special Session of 2020)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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; amending ORS 181A.410,
3 181A.780, 181A.785, 181A.790 and 181A.800; and declaring an emergency.

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

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

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

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

18 (3) The Attorney General shall ensure that the investigation described in subsection (2)
19 of this section is completed as soon as reasonably possible and not later than six months
20 from the date on which the use of physical force occurred.

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

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

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

26 (5) If, after completion of the investigation described in subsection (2) of this section, the
27 Attorney General determines that there is no basis to initiate criminal proceedings based on
28 the use of physical force, the Attorney General shall make the reports from the investigation
29 available to the public after redacting from the reports information exempted from disclo-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **sure under ORS 192.345 and 192.355.**

2 **(6) As used in this section:**

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

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

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

6 **(d) “Qualifying physical injury” means a physical injury that the Attorney General has,**
 7 **by rule, determined to be eligible for appointment of a special investigator under this section.**

8 **(7) The Attorney General shall adopt rules to carry out the provisions of this section.**

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

10 181A.780. (1) There is created in each county a deadly physical force planning authority con-
 11 sisting of the following members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) The planning authority shall conduct at least one public hearing in the county before sub-

1 mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)
2 of this section.

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

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

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

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

12 (10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is
13 submitted, the planning authority shall submit the approved plan to the Attorney General. No later
14 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance
15 with the minimum requirements described in ORS 181A.785. If the Attorney General determines that
16 the plan complies with the minimum requirements, the Attorney General shall approve the plan.
17 Upon approval of the plan:

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

20 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS
21 181A.805.

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

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

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

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

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

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

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

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

39 181A.785. In the plan required by ORS 181A.780 (4), a deadly physical force planning authority
40 shall, at a minimum:

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

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

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

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

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

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

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

9 181A.790. (1) As used in this section, “involved officer” means:

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

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

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

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

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

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

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

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

34 (4) For at least 72 hours immediately following an incident in which the use of deadly physical
 35 force by a police officer resulted in the death of a person, a law enforcement agency may not return
 36 an involved officer to duties that might place the officer in a situation in which the officer has to
 37 use deadly physical force. A law enforcement agency may not reduce an involved officer’s pay or
 38 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
 39 a law enforcement agency employing 40 or fewer police officers is an expense for purposes of ORS
 40 181A.805.
 41

42 *[(5)(a) A law enforcement agency employing an involved officer shall Include at least one police*
 43 *officer from a different law enforcement agency in the investigation of the incident in which the involved*
 44 *officer was involved.]*

45 *[(b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is not*

1 *grounds for suppressing evidence obtained in the investigation.]*

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

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

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

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

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

9 [(7)] (6) The department shall compile and periodically publish information submitted under
10 subsection [(6)] (5) of this section. The department, by rule, may specify a form to be used by law
11 enforcement agencies in submitting information under subsection [(6)] (5) of this section.

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

13 181A.800. Notwithstanding ORS 181A.780, 181A.785 and 181A.790 (3) and [(6)] (5), if sufficient
14 moneys are not appropriated to the Department of Justice for purposes of making grants under ORS
15 181A.805, a deadly physical force planning authority created by ORS 181A.780 or a law enforcement
16 agency is not required to comply with any requirement of ORS 181A.780, 181A.785 or 181A.790 (3)
17 or [(6)] (5) for which the law enforcement agency is entitled to reimbursement under ORS 181A.805.

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

19 181A.410. (1) In accordance with any applicable provision of ORS chapter 183, to promote
20 enforcement of law and fire services by improving the competence of public safety personnel and
21 their support staffs, and in consultation with the agencies for which the Board on Public Safety
22 Standards and Training and Department of Public Safety Standards and Training provide standards,
23 certification, accreditation and training:

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

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

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

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

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

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

43 (g) The department may recommend, and the board may establish by rule, accreditation stan-
44 dards, levels and categories for mandated and nonmandated public safety personnel training or ed-
45 ucational programs. The department and board, in consultation, may establish to what extent

1 training or educational programs provided by an accredited university, college, community college
 2 or public safety agency may serve as equivalent to mandated training or as a prerequisite to man-
 3 dated training. Programs offered by accredited universities, colleges or community colleges may be
 4 considered equivalent to mandated training only in academic areas.

5 (h) The department shall recommend, and the board shall establish by rule, an educational pro-
 6 gram that the board determines will be most effective in reducing profiling, as defined in ORS
 7 131.915, by police officers and reserve officers. The program must be required at all levels of
 8 training, including basic training and advanced, leadership and continuing training.

9 (2) The department may:

10 (a) Contract or otherwise cooperate with any person or agency of government for the procure-
 11 ment of services or property;

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

13 (c) Establish fees for determining whether a training or educational program meets the accred-
 14 itation standards established under subsection (1)(g) of this section;

15 (d) Maintain and furnish to law enforcement units and public and private safety agencies infor-
 16 mation on applicants for appointment as instructors or public safety personnel, except youth cor-
 17 rection officers, in any part of the state; and

18 (e) Establish fees to allow recovery of the full costs incurred in providing services to private
 19 entities or in providing services as experts or expert 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, conduct surveys or aid
 22 cities and counties to conduct surveys through qualified public or private agencies and assist in the
 23 implementation of any recommendations resulting from such surveys.

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

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

29 (d) Provide grants from funds appropriated or available therefor, to law enforcement units,
 30 public safety agencies, special districts, cities, counties and private entities to carry out the pro-
 31 visions of this subsection.

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

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

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

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

1 disciplines and meets the training standards established by the board.

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

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

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

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

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

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

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

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