

Portland CAO Amendments to HB2928 – 12.2.21

Relating to the use of tools by law enforcement agencies; creating new provisions; repealing section 1, chapter 8, Oregon Laws 2020 (first special session); and declaring an emergency.

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

SECTION 1. Section 1, chapter 8, Oregon Laws 2020 (first special session), is repealed.

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

(a) “Chemical incapacitant” means the following, together or separately:

(A) Toxic chemicals and their precursors[, *except where intended for purposes not prohibited under this section, as long as the types and quantities are consistent with such purposes*];

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

(C) Any equipment specifically designed for use directly in connection with the employment of munitions and devices as described in subparagraph (B) of this paragraph.

(b) **“Crowd control” means law enforcement techniques used to address civil disturbances.**

[(b)] (c) “Key component of a binary or multicomponent chemical system” means the precursor that plays the most important role in determining the toxic properties of the final product and that reacts rapidly with other chemicals in a binary or multicomponent system.

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

[(d)] (e) “Law enforcement agency” means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

[(e)] (f) “Precursor” means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

[(f)] (g) “Toxic chemical” means any chemical that through its chemical action on biological processes can cause death, temporary pain, temporary irritation, temporary disruption of vital processes, temporary incapacitation, temporary disability or permanent harm to humans or animals.

(2)(a) A law enforcement agency may not use a chemical incapacitant for crowd control, except *[when the following requirements are satisfied]*:

(A) **When** *[T]*the circumstances constitute a riot, as described in ORS 166.015*[:]* and *[(B)]* the officer using the chemical incapacitant reasonably believes, when and to the extent the chemical incapacitant is used, that the use of the chemical incapacitant is necessary to terminate *[and]* **or** prevent furtherance of the riot~~*[ous behavior.]*~~; **or**

(B) When the chemical incapacitant is used against an individual engaged in conduct otherwise justifying the use of physical force under Oregon law.

(b) A law enforcement agency may not use a kinetic impact projectile for crowd control **in a manner that is indiscriminate, and a law enforcement agency may not** *[or]* discharge a kinetic impact projectile in a manner that intentionally targets the head of a person, except against an individual engaged in conduct otherwise justifying the use of deadly physical force by a peace officer.

(c) A law enforcement agency may not use *[a sound device for crowd control for any purpose other than announcements.]* **electronically amplified noise producing equipment except for announcements or to facilitate movement of an emergency vehicle as allowed or required by Oregon Law including but not limited to ORS 820.320.** Whenever possible, a law enforcement agency shall provide announcements for purposes of crowd control both audibly and visually.

(3) When using chemical incapacitants, kinetic impact projectiles or sound devices in compliance with this section, and when it is possible to do so safely, a law enforcement agency:

(a) Shall attempt to take injured persons to safety or allow injured persons to seek *[medical]* help **from emergency medical services.**

(b) May not prevent emergency medical services from reaching injured persons.

(c) Shall take reasonable action to accommodate disabilities when issuing or enforcing orders to disperse.

(4) A law enforcement agency shall inform federal law enforcement agencies of the requirements of this section.

SECTION 3. (1) As used in this section, “law enforcement agency” means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

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

(a) Use a proxy law enforcement agency to *[enact]* **use crowd control** measures that a court or statute has barred the law enforcement agency from using.

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

(3) Intentional violation of this section constitutes official misconduct in the second degree under ORS 162.405.

SECTION 4. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of State Police by section 1 (1), chapter ____, Oregon Laws 2021 (Enrolled House Bill 5028), for the biennium beginning July 1, 2021, for patrol services, criminal investigations, gaming enforcement and the Office of the State Fire Marshal, is increased by \$605,781 to implement the provisions of this 2021 Act.

SECTION 5. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.