

House Bill 2928

Sponsored by Representative BYNUM (Presession filed.)

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**.

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 provisions; amending ORS
3 30.265; repealing section 1, chapter 8, Oregon Laws 2020 (first special session) (Enrolled House
4 Bill 4208); and declaring an emergency.

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

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7 **Bill 4208), is repealed.**

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

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

10 (A) **Toxic chemicals and their precursors, except where intended for purposes not pro-**
11 **hibited under this section, as long as the types and quantities are consistent with such pur-**
12 **poses;**

13 (B) **Munitions and devices specifically designed to cause temporary pain, temporary irri-**
14 **tation, temporary disruption of vital processes, temporary incapacitation, temporary disa-**
15 **bility or permanent harm through the toxic properties of toxic chemicals that would be**
16 **released as a result of the employment of the munitions and devices; and**

17 (C) **Any equipment specifically designed for use directly in connection with the employ-**
18 **ment of munitions and devices as described in subparagraph (B) of this paragraph.**

19 (b) **“Key component of a binary or multicomponent chemical system” means the precur-**
20 **sor that plays the most important role in determining the toxic properties of the final prod-**
21 **uct and that reacts rapidly with other chemicals in a binary or multicomponent system.**

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

25 (d) **“Law enforcement agency” means the Department of State Police, the Department**
26 **of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal**

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 corporation of the State of Oregon and a university, that maintains a law enforcement unit
2 as defined in ORS 181A.355 (12)(a)(A).

3 (e) "Precursor" means any chemical reactant that takes part at any stage in the pro-
4 duction by whatever method of a toxic chemical, including any key component of a binary
5 or multicomponent chemical system.

6 (f) "Riot" means an assembly of 10 or more individuals engaging in tumultuous and vio-
7 lent behavior that creates a substantial risk of imminent physical injury to persons or im-
8 minent destruction of property, and for which the danger presented cannot be ameliorated
9 through usual means of contact by law enforcement.

10 (g) "Toxic chemical" means any chemical that through its chemical action on biological
11 processes can cause death, temporary pain, temporary irritation, temporary disruption of
12 vital processes, temporary incapacitation, temporary disability or permanent harm to hu-
13 mans or animals.

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

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

19 (C) Before using pepper spray under subparagraph (B) of this paragraph, a law enforce-
20 ment agency shall, in the following order:

- 21 (i) Announce the agency's intent to use pepper spray;
- 22 (ii) Allow sufficient time for individuals to evacuate the area; and
- 23 (iii) Announce for a second time, immediately before using the pepper spray, the agency's
24 intent to use pepper spray.

25 (b)(A) A law enforcement agency may not use a kinetic impact projectile for purposes
26 of crowd control, except against a specific person whom a law enforcement officer has indi-
27 vidualized probable cause to believe poses a threat to another's life, poses a threat of serious
28 injury to another or has committed or is committing a crime that constitutes a felony.

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

32 (c) A law enforcement agency may not use a sound device at a sound pressure level of
33 105 decibels or greater.

34 (d)(A) A person injured by a violation of this subsection may bring a private cause of
35 action for economic and noneconomic damages against the law enforcement agency com-
36 mitting the violation.

37 (B) The court shall award reasonable attorney fees to a prevailing plaintiff under this
38 paragraph.

39 (C) An action under this paragraph must be commenced within two years after the con-
40 duct giving rise to the claim occurred.

41 (D) ORS 30.260 to 30.300 do not apply to an action under this paragraph.

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

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

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

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

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

8 **(e) May not disturb a person providing medical assistance to another person.**

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

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

11 **(4) A law enforcement agency shall inform federal law enforcement agencies of the re-**
12 **quirements of this section and attempt to enforce the requirements of this section.**

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

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

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

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

23 **(3) Violation of this section constitutes official misconduct in the first degree under ORS**
24 **162.415.**

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

26 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to civil
27 action for its torts and those of its officers, employees and agents acting within the scope of their
28 employment or duties, whether arising out of a governmental or proprietary function or while op-
29 erating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

30 (2) The sole cause of action for a tort committed by officers, employees or agents of a public
31 body acting within the scope of their employment or duties and eligible for representation and
32 indemnification under ORS 30.285 or 30.287 is an action under ORS 30.260 to 30.300. The remedy
33 provided by ORS 30.260 to 30.300 is exclusive of any other action against any such officer, employee
34 or agent of a public body whose act or omission within the scope of the officer’s, employee’s or
35 agent’s employment or duties gives rise to the action. No other form of civil action is permitted.

36 (3) If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less than
37 the damages allowed under ORS 30.271, 30.272 or 30.273, the sole cause of action for a tort com-
38 mitted by officers, employees or agents of a public body acting within the scope of their employment
39 or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action
40 against the public body. If an action is filed against an officer, employee or agent of a public body,
41 and the plaintiff alleges damages in an amount equal to or less than the damages allowed under ORS
42 30.271, 30.272 or 30.273, the court upon motion shall substitute the public body as the defendant.
43 Substitution of the public body as the defendant does not exempt the public body from making any
44 report required under ORS 742.400.

45 (4) If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than the

1 damages allowed under ORS 30.271, 30.272 or 30.273, the action may be brought and maintained
 2 against an officer, employee or agent of a public body, whether or not the public body is also named
 3 as a defendant. An action brought under this subsection is subject to the limitations on damages
 4 imposed under ORS 30.271, 30.272 or 30.273, and the total combined amount recovered in the action
 5 may not exceed those limitations for a single accident or occurrence without regard to the number
 6 or types of defendants named in the action.

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

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

- 13 (a) Any claim for injury to or death of any person covered by any workers' compensation law.
- 14 (b) Any claim in connection with the assessment and collection of taxes.
- 15 (c) Any claim based upon the performance of or the failure to exercise or perform a discretion-
 16 ary function or duty, whether or not the discretion is abused.
- 17 (d) Any claim that is limited or barred by the provisions of any other statute, including but not
 18 limited to any statute of ultimate repose.

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

21 *[(f)]* (e) Any claim arising out of an act done or omitted under apparent authority of a law, re-
 22 solution, rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that
 23 they would have been liable had the law, resolution, rule or regulation been constitutional, valid and
 24 applicable, unless such act was done or omitted in bad faith or with malice.

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

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

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

34 **(2) Notwithstanding ORS 30.275 (2), a person whose claim arose on or after July 1, 2016,
 35 and before the effective date of this 2021 Act, and whose claim would have been barred by
 36 ORS 30.265 before the effective date of this 2021 Act, may give notice of claim under ORS
 37 30.275 no later than 180 days after the effective date of this 2021 Act.**

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

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

44 **SECTION 6. This 2021 Act being necessary for the immediate preservation of the public
 45 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**

1 **on its passage.**

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