

HB 4008-8
(LC 101)
2/9/22 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Janelle Bynum)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4008**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line
2 and insert “creating new provisions; amending ORS 131.675, 161.233, 161.242,
3 181A.708 and 181A.710; and declaring an emergency.”.

4 Delete lines 4 through 11 and insert:

5 **“SECTION 1.** ORS 181A.708 is amended to read:

6 “181A.708. (1) As used in this section:

7 “(a) ‘Chemical incapacitant’ means the following, together or separately:

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

11 “(B) Munitions and devices specifically designed to cause temporary pain,
12 temporary irritation, temporary disruption of vital processes, temporary in-
13 capacitation, temporary disability or permanent harm through the [*toxic*]
14 properties of [*toxic*] **the** chemicals that would be released [*as a result of the*
15 *employment*] **by the use** of the munitions and devices; and

16 “(C) Any equipment specifically designed for use directly in connection
17 with the [*employment*] **use** of munitions and devices as described in subpar-
18 agraph (B) of this paragraph.

19 “(b) ‘Key component of a binary or multicomponent chemical system’
20 means the precursor that plays the most important role in determining the
21 toxic properties of the final product and that reacts rapidly with other

1 chemicals in a binary or multicomponent system.

2 “(c) ‘Kinetic impact projectile’ means all nonlethal, less-lethal or semilethal
3 projectiles, including but not limited to rubber and plastic bullets,
4 **rubber ball distraction devices and other stun grenades with projectile**
5 **payloads**, beanbag rounds, sponge rounds **and all other types of baton**
6 **rounds** and pellet rounds.

7 “(d)(A) ‘Law enforcement agency’ means the Department of State Police,
8 the Department of Justice, a district attorney, a political subdivision of the
9 State of Oregon, a municipal corporation of the State of Oregon and a uni-
10 versity, that maintains a law enforcement unit as defined in ORS 181A.355
11 (12)(a)(A).

12 “(B) ‘Law enforcement agency’ includes any entity acting in concert
13 with or pursuant to a contract with law enforcement agencies de-
14 scribed in subparagraph (A) of this paragraph.

15 “(e) ‘Precursor’ means any chemical reactant that takes part at any stage
16 in the production by whatever method of a toxic chemical, including any key
17 component of a binary or multicomponent chemical system.

18 “(f) ‘Shove’ means any use of a person’s hand or hands to forcefully
19 extend the person’s hand or hands away from the person’s body to
20 move another person.

21 “(g) ‘Stun grenade’ means any nonlethal or less-lethal flash
22 grenade, flash-bang, aerial distraction device or other explosive device
23 that emits a loud noise or bright flash of light that is used to stun,
24 temporarily blind, temporarily deafen or otherwise temporarily disori-
25 ent a person.

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

30 “[2](a) *A law enforcement agency may not use a chemical incapacitant for*

1 *crowd control, except when the following requirements are satisfied:]*

2 *“(A) The circumstances constitute a riot, as described in ORS 166.015;*
3 *and]*

4 *“(B) The officer using the chemical incapacitant reasonably believes, when*
5 *and to the extent the chemical incapacitant is used, that the use of the chemical*
6 *incapacitant is necessary to terminate and prevent furtherance of the riotous*
7 *behavior.]*

8 **“(2) All physical force by a person acting on behalf of a law**
9 **enforcement agency is restricted to use of physical force as allowed**
10 **by ORS 161.233 and this section. Nothing in this section allows or**
11 **provides for the use of physical force against any persons against**
12 **whom physical force could not otherwise be lawfully used under ORS**
13 **161.233 and the United States Constitution. The number of persons**
14 **present at the time a person acting on behalf of a law enforcement**
15 **agency uses physical force does not change the standard under ORS**
16 **161.233.**

17 **“(3) An action by a person for self-defense is not provocation justi-**
18 **fying the use of force by a person acting on behalf of a law enforce-**
19 **ment agency under ORS 161.209 or 161.233.**

20 **“(4) A shove is a use of physical force. A person acting on behalf**
21 **of a law enforcement agency may not shove another person, with or**
22 **without an object in the person’s hand or hands, unless the other**
23 **person is engaged in conduct otherwise justifying the lawful use of**
24 **that level and amount of physical force under Oregon law and the**
25 **United States Constitution.**

26 **“(5)(a) A law enforcement agency may not use or possess stun**
27 **grenades with projectile payloads or chemical incapacitant payloads.**

28 **“(b) A law enforcement agency may not use stun grenades in any**
29 **way that would affect or have an impact on any person unless the in-**
30 **dividual is engaged in conduct otherwise justifying the lawful use of**

1 **that level and amount of physical force under Oregon law and the**
2 **United States Constitution.**

3 **“(6)(a) A law enforcement agency may not use or possess chemical**
4 **incapacitants with a pyrotechnic ignition system or that deploy**
5 **through the use of smoke.**

6 **“(b) A law enforcement agency may not use or possess chemical**
7 **incapacitant munitions or projectiles that may be launched or shot.**

8 **“(c) A law enforcement agency may use a handheld chemical**
9 **incapacitant solely against an individual who is engaged in conduct**
10 **otherwise justifying the lawful use of that level and amount of phys-**
11 **ical force under Oregon law and the United States Constitution.**

12 **“(7)(a) A law enforcement agency may not use or possess semi-**
13 **automatic or automatic kinetic impact projectile weapons.**

14 **“(b) A law enforcement agency may not use a kinetic impact projectile**
15 **[for crowd control or] except when the kinetic impact projectile is used**
16 **solely against an individual engaged in conduct otherwise justifying**
17 **the lawful use of that level and amount of physical force under Oregon**
18 **law and the United States Constitution.**

19 **“(c) A law enforcement agency may not discharge a kinetic impact**
20 **projectile in a manner that intentionally targets the head of a person, except**
21 **against an individual engaged in conduct otherwise justifying the lawful use**
22 **of deadly physical force by a peace officer under Oregon law and the**
23 **United States Constitution.**

24 **“(d) A law enforcement agency may not discharge a kinetic impact**
25 **projectile in a manner that targets the pelvis or back of a person un-**
26 **der any circumstances.**

27 **“[(c)] (8) A law enforcement agency may not use [a sound device for crowd**
28 **control for any purpose other than announcements] electronically amplified**
29 **noise producing equipment except for announcements or to facilitate**
30 **movement of an emergency vehicle as allowed or required by Oregon**

1 **law, including but not limited to ORS 820.320.** Whenever possible, a law
2 enforcement agency shall provide announcements for purposes of crowd
3 control both audibly and visually.

4 “[~~(3)~~] **(9)** [*When using chemical incapacitants, kinetic impact projectiles or*
5 *sound devices*] **After using chemical incapacitants or kinetic impact**
6 **projectiles** in compliance with this section, and when it is possible to do so
7 safely, a law enforcement agency:

8 “(a) Shall attempt to take injured persons **that have been taken into**
9 **custody** to safety [*or*] **and** allow injured persons **in custody** to seek medical
10 help.

11 “(b) May not prevent emergency medical services **or other medical help**
12 from reaching injured persons **that are not in custody.**

13 “(c) Shall take reasonable action to accommodate disabilities when issu-
14 ing or enforcing orders to disperse.

15 “(d) **Shall require documentation of each use of chemical**
16 **incapacitants or kinetic impact projectiles and make the documenta-**
17 **tion available to the public. The documentation required under this**
18 **paragraph must be completed by the officer who used the chemical**
19 **incapacitants or kinetic impact projectiles and the report must include**
20 **the identity of the reporting officer, the type of chemical incapacitants**
21 **or kinetic impact projectiles used, the subject against whom the**
22 **chemical incapacitants or kinetic impact projectiles were intended and**
23 **the reasons the officer had for using the chemical incapacitants or**
24 **kinetic impact projectiles against the subject. The officer may not be**
25 **permitted to review any video or other evidence prior to completing**
26 **the report.**

27 “(10) A law enforcement agency may not acquire or use munitions
28 that have passed the expiration date or use-by date. Any munition in
29 the possession of a law enforcement agency that has passed the expi-
30 ration date or use-by date must be destroyed.

1 “[4] (11) A law enforcement agency shall inform federal law enforcement
2 agencies of the requirements of this section.

3 **“SECTION 2.** ORS 181A.710 is amended to read:

4 “181A.710. (1) As used in this section, ‘law enforcement agency’ means the
5 Department of State Police, the Department of Justice, a district attorney,
6 a political subdivision of the State of Oregon, a municipal corporation of the
7 State of Oregon and a university, that maintains a law enforcement unit as
8 defined in ORS 181A.355 (12)(a)(A).

9 **“(2) A law enforcement agency may not provide aid to or accept aid
10 from any federal agency to respond to an assembly of five or more
11 persons unless the law enforcement agency first enters into a publicly
12 available written agreement with the federal agency that includes the
13 following:**

14 **“(a) Acknowledgement that the federal agency is informed about
15 the requirements of this section and ORS 181A.250.**

16 **“(b) Agreement from the federal agency that the agency will comply
17 with the requirements of this section and ORS 181A.250.**

18 **“(c) A requirement that all parties to the agreement will document
19 each use of chemical incapacitants and kinetic impact projectiles and
20 make that documentation available to the public as required by ORS
21 181A.708.**

22 **“(d) A requirement that all law enforcement agencies and officers
23 are clearly identifiable to the public when responding to an assembly.**

24 “[2] (3) A law enforcement agency or a person acting on behalf of a law
25 enforcement agency may not:

26 “(a) Use a proxy law enforcement agency to enact measures that a court
27 or statute has barred the law enforcement agency from using.

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

30 “[3] (4) [Intentional] Violation of this section constitutes official mis-

1 conduct in the second degree under ORS 162.405.

2 **“(5)(a) A person may bring a civil action for official misconduct**
3 **against a law enforcement agency if:**

4 **“(A) A person subject to the control of the agency knowingly vio-**
5 **lates this section or ORS 181A.708; and**

6 **“(B) The plaintiff is injured by the violation.**

7 **“(b) A plaintiff that prevails on a claim under this subsection may**
8 **recover:**

9 **“(A) Economic and noneconomic damages;**

10 **“(B) Punitive damages;**

11 **“(C) Equitable relief; and**

12 **“(D) Reasonable attorney fees.**

13 **“(c) There is no immunity defense available to a defendant in a**
14 **claim for official misconduct.**

15 **“(d) A claim under this subsection is not subject to ORS 30.260 to**
16 **30.300.**

17 **“(e) An action under this section must be commenced within two**
18 **years of the conduct giving rise to the claim.**

19 **“SECTION 3. ORS 131.675 is amended to read:**

20 **“131.675. (1) When any five or more persons are unlawfully assembled in**
21 **any county, city, town or village, the sheriff of the county and the deputies**
22 **of the sheriff, the mayor of the city, town or village, or chief executive offi-**
23 **cer or officers thereof, may go among the persons assembled, or as near to**
24 **them as they can with safety, and command them in the name of the State**
25 **of Oregon to disperse. If, so commanded, they do not immediately disperse,**
26 **the officer may arrest them or cause them to be arrested for any unlawful**
27 **activity constituting an offense.**

28 **“(2) Notwithstanding subsection (1) of this section, a peace officer**
29 **may not command to disperse any person that the peace officer knows**
30 **or reasonably should know is a member of the media, a legal observer**

1 **or providing medical assistance to one or more other persons.**

2 **“SECTION 4.** ORS 161.233 is amended to read:

3 “161.233. (1) A peace officer may use physical force upon another person
4 only when it is objectively reasonable, under the totality of circumstances
5 known to the peace officer, to believe:

6 “(a) That the person poses an imminent threat of physical injury to the
7 peace officer or to a third person; or

8 “(b) That the use of physical force is necessary to:

9 “(A) Make a lawful arrest when the peace officer has probable cause to
10 believe the person has committed a crime; or

11 “(B) Prevent the escape from custody of the person when the peace officer
12 has probable cause to believe the person has committed a crime.

13 “(2) A peace officer may use physical force upon another person under
14 this section only to the degree that the peace officer reasonably believes
15 necessary to prevent physical injury under subsection (1)(a) of this section
16 or to carry out a purpose described in subsection (1)(b) of this section.

17 “(3) Prior to using physical force upon another person, if the peace officer
18 has a reasonable opportunity to do so **and it is safe to do so**, the peace
19 officer shall:

20 “(a) [*Consider*] **Attempt** alternatives such as verbal de-escalation, waiting
21 or using other available resources and techniques [*if reasonable, safe and*
22 *feasible*]; and

23 “(b) Give a **clear** verbal warning, **intelligible** to the person **that is**
24 **subject to the potential use of physical force**, that physical force may be
25 used and provide the person with a reasonable opportunity to comply.

26 “(4) **Notwithstanding the provisions of this section, a peace officer**
27 **may not use physical force against a person that the peace officer**
28 **knows or reasonably should know is a member of the media, a legal**
29 **observer or providing medical assistance to one or more other persons.**

30 **“SECTION 5.** (1) A person has a cause of action against a public

1 **body as defined in ORS 174.109 for the unlawful use of physical force**
2 **if the person can prove, by a preponderance of the evidence, that a**
3 **peace officer acting with actual or apparent authority from the public**
4 **body used physical force against the person in violation of ORS 161.233,**
5 **161.242 or 181A.708.**

6 **“(2) ORS 30.260 to 30.300 do not apply to actions described in this**
7 **section.**

8 **“(3) The court shall award reasonable attorney fees to the prevail-**
9 **ing plaintiff in an action described in this section.**

10 **“(4) A plaintiff that prevails in an action described in this section**
11 **may recover punitive damages.**

12 **“SECTION 6.** ORS 161.242 is amended to read:

13 **“161.242. (1) A peace officer may use deadly physical force upon another**
14 **person only [*when it is objectively reasonable, under the totality of circum-***
15 ***stances known to the peace officer, to believe that the person poses an imminent***
16 ***threat of death or serious physical injury to the peace officer or to a third***
17 ***person and the use of deadly physical force is necessary to:]*** **as a last resort**
18 **when there is no reasonable alternative and only when necessary to**
19 **prevent imminent and serious bodily injury or death.**

20 **“[(a) *Make a lawful arrest when the peace officer has probable cause to***
21 ***believe the person has committed a violent felony;]***

22 **“[(b) *Defend the peace officer or a third person from the imminent threat***
23 ***of death or serious physical injury; or]***

24 **“[(c) *Prevent the escape from custody of the person when the peace officer***
25 ***has probable cause to believe the person has committed a violent felony.]***

26 **“(2) Prior to using deadly physical force upon another person, if the peace**
27 **officer has a reasonable opportunity to do so, the peace officer shall:**

28 **“(a) Consider alternatives such as verbal de-escalation, waiting, using**
29 **other available resources and techniques if reasonable, safe and feasible, or**
30 **using a lesser degree of force; and**

1 “(b) Give a verbal warning to the person that deadly physical force may
2 be used and provide the person with a reasonable opportunity to comply.

3 “(3) Nothing in subsection (1) of this section constitutes justification for
4 reckless or criminally negligent conduct by a peace officer constituting an
5 offense against or with respect to innocent persons whom the peace officer
6 is not seeking to arrest or retain in custody.

7 “[(4) *As used in this section, ‘violent felony’ has the meaning given that*
8 *term in ORS 419A.004.*]

9 **“SECTION 7. This 2022 Act being necessary for the immediate**
10 **preservation of the public peace, health and safety, an emergency is**
11 **declared to exist, and this 2022 Act takes effect on its passage.”.**

12
