

HB 4131-6
(LC 237)
2/21/22 (MNJ/ps)

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

**PROPOSED AMENDMENTS TO
HOUSE BILL 4131**

1 On page 1 of the printed bill, delete lines 5 through 31.

2 On page 2, delete lines 1 through 41 and insert:

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

4 “181A.708. (1) As used in this section:

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

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

9 “(B) Munitions and devices specifically designed to cause temporary pain,
10 temporary irritation, temporary disruption of vital processes, temporary in-
11 incapacitation, temporary disability or permanent harm through the toxic
12 properties of toxic chemicals that would be released as a result of the em-
13 ployment of the munitions and devices; and

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

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

21 “(c) ‘Kinetic impact projectile’ means all nonlethal, less-lethal or semile-

1 that projectiles, including but not limited to rubber and plastic bullets,
2 beanbag rounds, sponge rounds and pellet rounds.

3 “(d) ‘Law enforcement agency’ means the Department of State Police, the
4 Department of Justice, a district attorney, a political subdivision of the State
5 of Oregon, a municipal corporation of the State of Oregon and a university,
6 that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

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

10 “(f) ‘Tear gas’ means oleoresin capsicum or orthochloro-
11 benzalmalononitrile, or other similar chemicals meant to accomplish
12 the same effect, administered by any shell, cartridge or bomb capable
13 of being discharged or exploded, when the discharge or explosion will
14 cause or permit the release or emission of the chemicals.

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

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

21 “[A) The circumstances constitute a riot, as described in ORS 166.015;
22 and]

23 “[B) The officer using the chemical incapacitant reasonably believes, when
24 and to the extent the chemical incapacitant is used, that the use of the chemical
25 incapacitant is necessary to terminate and prevent furtherance of the riotous
26 behavior.]

27 “[b) A law enforcement agency may not use a kinetic impact projectile for
28 crowd control or discharge a kinetic impact projectile in a manner that inten-
29 tionally targets the head of a person, except against an individual engaged in
30 conduct otherwise justifying the use of deadly physical force by a peace

1 *officer.]*

2 **“(2)(a) A law enforcement agency may not use chemical**
3 **incapacitants or kinetic impact projectiles indiscriminately for crowd**
4 **control.**

5 **“(b) Except as otherwise provided in paragraph (c) of this sub-**
6 **section, chemical incapacitants and kinetic impact projectiles may not**
7 **be used by a law enforcement agency to disperse any assembly, protest**
8 **or demonstration.**

9 **“(c) Chemical incapacitants and kinetic impact projectiles may be**
10 **used only:**

11 **“(A) By a peace officer who has received training on their proper**
12 **use for crowd control by the Department of Public Safety Standards**
13 **and Training or by the law enforcement agency employing the officer;**

14 **“(B)(i) If the use is objectively reasonable to defend against a threat**
15 **to life or serious bodily injury to any individual, including any peace**
16 **officer; or**

17 **“(ii) If the use is objectively reasonable to bring an objectively**
18 **dangerous and unlawful situation safely and effectively under control;**
19 **and**

20 **“(C) In accordance with all of the following requirements:**

21 **“(i) De-escalation techniques or other alternatives to force have**
22 **been attempted, when objectively reasonable, and have failed.**

23 **“(ii) Repeated and intelligible audible and visible announcements**
24 **are made announcing the intent to use chemical incapacitants and**
25 **kinetic impact projectiles and the type to be used, when objectively**
26 **reasonable to do so. The announcements must be made from various**
27 **locations, if necessary, and delivered in multiple languages, if appro-**
28 **priate.**

29 **“(iii) Persons are given an objectively reasonable opportunity to**
30 **disperse and leave the scene.**

1 “(iv) An objectively reasonable effort has been made to identify
2 persons engaged in violent acts and those who are not, and chemical
3 incapacitants and kinetic impact projectiles are targeted toward those
4 individuals engaged in violent acts.

5 “(v) Chemical incapacitants and kinetic impact projectiles are used
6 only with the frequency and intensity, and in a manner, that is pro-
7 portional to the threat and objectively reasonable.

8 “(vi) Officers must minimize the possible incidental impact of their
9 use of chemical incapacitants and kinetic impact projectiles on
10 bystanders, medical personnel, journalists and other unintended tar-
11 gets.

12 “(vii) An objectively reasonable effort has been made to extract in-
13 dividuals in distress.

14 “(viii) Kinetic impact projectiles may not be aimed at the head,
15 neck or any other vital organs.

16 “(ix) Chemical incapacitants and kinetic impact projectiles may not
17 be used by a law enforcement agency solely due to any of the follow-
18 ing:

19 “(I) A violation of an imposed curfew.

20 “(II) A verbal threat.

21 “(III) Noncompliance with a law enforcement directive.

22 “(x) A law enforcement agency must clear, from all public places
23 and from any other location that the agency is authorized to access,
24 spent munitions and shrapnel resulting from the use of chemical
25 incapacitants or kinetic impact projectiles within six hours after it is
26 possible to do so safely.

27 “(xi) If the chemical incapacitant to be deployed is tear gas, only a
28 commanding officer at the scene of the assembly, protest or demon-
29 stration may authorize the use of tear gas.

30 “[(c)] (3) A law enforcement agency may not use [*a sound device for crowd*

1 *control for any purpose other than announcements]* **electronically amplified**
2 **noise-producing equipment except for announcements or to facilitate**
3 **movement of an emergency vehicle as allowed or required by ORS**
4 **820.300 or any other provision of law.** Whenever possible, a law enforce-
5 ment agency shall provide announcements for purposes of crowd control both
6 audibly and visually.

7 “[3] (4) When using chemical incapacitants, kinetic impact projectiles
8 or [*sound devices*] **electronically amplified noise-producing equipment** in
9 compliance with this section, and when it is possible to do so safely, a law
10 enforcement agency:

11 “(a) Shall attempt to take injured persons to safety or allow injured per-
12 sons to seek medical help.

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

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

17 “(d) **Shall notify emergency rooms in the vicinity of the type of**
18 **chemical incapacitants, kinetic impact projectiles or electronically**
19 **amplified noise-producing equipment used.**

20 “(5) **This section does not prohibit a law enforcement agency from**
21 **adopting more stringent policies than are required by this section for**
22 **the use of chemical incapacitants, tear gas, kinetic impact projectiles**
23 **and electronically amplified noise-producing equipment.**

24 “[4] (6) A law enforcement agency shall inform federal law enforcement
25 agencies of the requirements of this section.

26 “(7)(a) **Except as provided in paragraph (b) of this subsection, a law**
27 **enforcement agency shall, within 60 days of each incident, publish a**
28 **summary on its website of all instances in which a peace officer em-**
29 **ployed by that agency uses a chemical incapacitant or a kinetic impact**
30 **projectile for crowd control.**

1 **“(b) A law enforcement agency may extend the period set forth in**
2 **paragraph (a) of this subsection by 30 days if the agency demonstrates**
3 **just cause to do so.**

4 **“(c) For each incident reported under paragraph (a) of this sub-**
5 **section, the law enforcement agency shall limit its report to the in-**
6 **formation known to the agency at the time of the report and shall**
7 **include only the following in the report:**

8 **“(A) A description of the assembly, protest, demonstration or inci-**
9 **dent, including the approximate crowd size and the number of officers**
10 **involved.**

11 **“(B) The type of chemical incapacitant or kinetic impact projectile**
12 **used.**

13 **“(C) The number of rounds or quantity of chemical incapacitant**
14 **dispersed, as applicable.**

15 **“(D) The number of documented injuries as a result of the use of**
16 **chemical incapacitants or kinetic impact projectiles.**

17 **“(E) The justification for using the chemical incapacitants or**
18 **kinetic impact projectiles, including any de-escalation tactics or pro-**
19 **ocols and other measures that were taken at the time of the event**
20 **to de-escalate tensions and avoid the necessity of using the chemical**
21 **incapacitants or kinetic impact projectiles.**

22 **“(d) The Department of Justice shall post on its website a compiled**
23 **list linking to each law enforcement agency’s reports posted pursuant**
24 **to this subsection.”.**

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