

Requested by SENATE COMMITTEE ON RULES

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 4008**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert
2 “181A.708, 181A.710 and”.

3 On page 3, after line 36, insert:

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

5 “181A.708. (1) As used in this section:

6 **“(a) ‘Crowd management’ means a public security practice in which**
7 **crowds are managed to prevent the outbreak of crowd crushes, affrays,**
8 **fight or riots, or in which an assembly, protest or demonstration is**
9 **dispersed.**

10 “[*(a)*] **(b)(A) ‘Handheld chemical incapacitant’** means the following, to-
11 gether or separately:

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

15 “[*(B)*] **(i) Handheld** munitions and devices specifically designed to cause
16 temporary pain, temporary irritation, temporary disruption of vital processes,
17 temporary incapacitation, temporary disability or permanent harm through
18 the toxic properties of toxic chemicals, **or their precursors**, that would be
19 released as a result of the employment of the **handheld** munitions and de-
20 vices; and

21 “[*(C)*] **(ii)** Any equipment specifically designed for use directly in con-

1 nection with the employment of **handheld** munitions and devices as de-
2 scribed in [*subparagraph (B) of this paragraph*] **sub-subparagraph (i) of**
3 **this subparagraph.**

4 “**(B) ‘Handheld chemical incapacitant’ does not include tear gas.**

5 “[*(b)*] **(c)** ‘Key component of a binary or multicomponent chemical
6 system’ means the precursor that plays the most important role in deter-
7 mining the toxic properties of the final product and that reacts rapidly with
8 other chemicals in a binary or multicomponent system.

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

12 “[*(d)*] **(e)** ‘Law enforcement agency’ means the Department of State Police,
13 the Department of Justice, a district attorney, a political subdivision of the
14 State of Oregon, a municipal corporation of the State of Oregon and a uni-
15 versity, that maintains a law enforcement unit as defined in ORS 181A.355
16 (12)(a)(A).

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

20 “**(g) ‘Tear gas’ means oleoresin capsicum or orthochloro-**
21 **benzalmalononitrile, or other similar chemicals meant to accomplish**
22 **the same effect, administered by any shell, cartridge or bomb capable**
23 **of being discharged or exploded, when the discharge or explosion will**
24 **cause or permit the release or emission of the chemicals.**

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

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

1 “[A] *The circumstances constitute a riot, as described in ORS 166.015;*
2 *and]*

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

7 “[b] *A law enforcement agency may not use a kinetic impact projectile for*
8 *crowd control or discharge a kinetic impact projectile in a manner that inten-*
9 *tionally targets the head of a person, except against an individual engaged in*
10 *conduct otherwise justifying the use of deadly physical force by a peace*
11 *officer.]*

12 **“(2) A law enforcement agency may not use a handheld chemical**
13 **incapacitant for crowd management.**

14 **“(3) A law enforcement agency may not use tear gas for crowd**
15 **management except when:**

16 **“(a) The use is objectively reasonable by law enforcement to:**

17 **“(A) Defend against a threat to life or serious bodily injury to any**
18 **individual, including any peace officer; or**

19 **“(B) Bring an objectively dangerous and unlawful situation safely**
20 **and effectively under control;**

21 **“(b) A commanding officer authorizes the use of tear gas;**

22 **“(c) De-escalation techniques or other alternatives to force have**
23 **been attempted, when reasonable, and failed; and**

24 **“(d) The law enforcement agency has done the following, in the**
25 **following order:**

26 **“(A) Announced the agency’s intent to use tear gas;**

27 **“(B) Allowed sufficient time for individuals to evacuate the area;**
28 **and**

29 **“(C) Announced a second time, immediately before using the tear**
30 **gas, the agency’s intent to use tear gas.**

1 **“(4)(a) A law enforcement agency may not use a kinetic impact**
2 **projectile for crowd management.**

3 **“(b) A law enforcement agency may not discharge a kinetic impact**
4 **projectile in a manner that intentionally targets the head of a person,**
5 **except against an individual engaged in conduct otherwise justifying**
6 **the use of deadly physical force by a peace officer under ORS 161.242.**

7 **“(5) This section does not prohibit a law enforcement agency or a**
8 **peace officer from using a handheld chemical incapacitant or kinetic**
9 **impact projectile against an individual engaged in conduct otherwise**
10 **justifying the use of physical force under ORS 161.195 to 161.275.**

11 **“(6) A law enforcement agency, when it is safe and possible to do**
12 **so, shall minimize the incidental impact of the agency’s use of**
13 **handheld chemical incapacitants, tear gas and kinetic impact**
14 **projectiles on bystanders, medical personnel, journalists and other**
15 **unintended targets.**

16 **“(7) When handheld chemical incapacitants, tear gas or kinetic**
17 **impact projectiles are used in a crowd by a law enforcement agency,**
18 **the agency shall make efforts to notify emergency rooms in the vi-**
19 **city of the type of handheld chemical incapacitants, tear gas or**
20 **kinetic impact projectiles used.**

21 **“(8) A law enforcement agency shall adopt policies requiring the**
22 **cleanup of visible debris caused by the use of tear gas and kinetic**
23 **impact projectiles within a reasonable time of the use of tear gas and**
24 **kinetic impact projectiles.**

25 **“[(c)] (9) A law enforcement agency may not use [*a sound device for crowd***
26 ***control for any purpose other than announcements*] electronically amplified**
27 **noise-producing equipment for crowd management except for an-**
28 **nouncements or to facilitate movement of an emergency vehicle as**
29 **allowed or required by ORS 820.300 or any other provision of law.**
30 **Whenever possible, a law enforcement agency shall provide announcements**

1 for purposes of crowd [*control*] **management** both audibly and visually.

2 “[3] (10) When using **handheld** chemical incapacitants, **tear gas**,
3 kinetic impact projectiles or [*sound devices*] **electronically amplified**
4 **noise-producing equipment** in compliance with this section, and when it
5 is possible to do so safely, a law enforcement agency:

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

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

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

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

16 “[4] (12) A law enforcement agency shall inform federal law enforcement
17 agencies of the requirements of this section.

18 “**SECTION 4.** ORS 181A.710 is amended to read:

19 “181A.710. (1) As used in this section, ‘law enforcement agency’ means the
20 Department of State Police, the Department of Justice, a district attorney,
21 a political subdivision of the State of Oregon, a municipal corporation of the
22 State of Oregon and a university, that maintains a law enforcement unit as
23 defined in ORS 181A.355 (12)(a)(A).

24 “(2) 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*] **use crowd manage-**
27 **ment** measures that a court or statute has barred the law enforcement
28 agency from using.

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

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

3 In line 37, delete “3” and insert “5”.

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