

Oregon Civil Rights Groups – HB 2928 Amendments

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

SECTION 1. Repeal necessary law(s).

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 **the** [*toxic*] chemicals that would be released [*as a result of the employment*] **by the use** of the munitions and devices; and
 - (C) Any equipment specifically designed for use directly in connection with the **use** [*employment*] of munitions and devices as described in subparagraph (B) of this paragraph.
- (b) “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) “Kinetic impact projectile” means all nonlethal, less-lethal or semi-lethal projectiles, including but not limited to rubber and plastic bullets, **rubber ball distraction devices and other stun grenades with projectile payloads**, beanbag rounds, sponge rounds, **all other types of baton rounds**, and pellet rounds.
- (d) “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). **Law enforcement agency also includes any entity acting in concert with or pursuant to a contract with the law enforcement agencies included in the preceding sentence.**
- (e) “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) “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.

(g) “Stun grenade” means any non-lethal or less-lethal flash grenade, flashbang, aerial distraction device, or other explosive device that emits a loud noise or bright flash of light that is used to stun, temporarily blind, temporarily deafen, or otherwise temporarily disorient a person.

(h) “Shove” means any use of a person’s hand or hands to forcefully extend the person’s hand or hands away from the person’s body to move another person.

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

(A) 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 prevent furtherance of the riotous behavior.]

(2) All physical force by any member of a law enforcement agency is restricted to use of physical force as contained in [ORS 161.233](#) and this [SECTION]. Nothing in this Section allows or provides for the use of physical force against any persons against whom physical force could not be lawfully used under ORS 161.233 and the federal Constitution. The number of persons present at the time an officer uses physical force does not change the standard under ORS 161.233.

(3) Members of law enforcement agencies shall not use force against persons who are lawfully defending themselves under [ORS 161.209](#) from unlawful physical force by a member of the law enforcement agency.

(4) A shove is a use of physical force. Members of law enforcement agencies may not shove another person, with or without an object in the member’s hand or hands, unless the other person is engaged in conduct otherwise justifying the lawful use of that level and amount of physical force under Oregon law and the federal Constitution.

(5) A law enforcement agency shall not use or possess stun grenades with projectile payloads, such as rubber ball distraction devices, stingers, or others.

(6) A law enforcement agency shall not use stun grenades in any way that would affect or have an impact on any person unless that individual is engaged in conduct otherwise justifying the lawful use of that level and amount of physical force under Oregon law and the federal Constitution.

(7)(a) A law enforcement agency shall not use or possess chemical incapacitants with a pyrotechnic ignition system or which deploy through the use of smoke.

(b) A law enforcement agency or a person acting on behalf of a law enforcement agency may only use a handheld chemical incapacitant solely against an individual who is engaged in conduct otherwise justifying the lawful use of that level and amount of physical force under Oregon law and the federal Constitution.

(c) A law enforcement agency shall not use or possess chemical incapacitant munitions or projectiles that may be launched or shot.

(8)(a) A law enforcement agency shall not use or possess any FN303 or any other semi-automatic or automatic kinetic impact projectile weapons.

~~f27~~ (b) A law enforcement agency may not use a kinetic impact projectile, **except:**

(A) When the kinetic impact projectile is used solely against an individual engaged in conduct otherwise justifying the lawful use of that level and amount of physical force under Oregon law and the federal Constitution, and

(B) a law enforcement agency may not *[use a kinetic impact projectile for crowd control 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 **lawful use of deadly physical force by a peace officer **under Oregon law and the federal Constitution.****

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

(9)(a) A law enforcement agency may not use *[a sound device for crowd control]* **electronically amplified noise producing equipment except for *[any purpose other than]* 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.**

(10) After using chemical incapacitants or kinetic impact projectiles *[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 **who have been taken into custody to safety *[or]* **and** allow injured persons **in custody** to seek medical help.**

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

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

(d) Shall require documentation of each use of force and make that documentation

available to the public. The force documentation required under this subsection shall be completed by the officer who used the force that is subject to the reporting requirement under this subsection, and the report and shall include the identity of the reporting officer who used the force, the type and degree of force used, the subject against whom the force was intended, and the reasons the officer had for using the force against the subject. The officer shall not be permitted to review any video or other evidence prior to completing their report.

(11) A law enforcement agency shall not acquire or use munitions that have passed the expiration date or use-by date. Any munition in the possession of a law enforcement agency that has passed the expiration date or use-by date must be destroyed.

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 shall not provide aid to or accept aid from any federal agency to respond to an assembly of 5 or more persons unless the law enforcement agency enters a publicly available written agreement with the federal agency that includes the following:

(a) Acknowledgement that the federal agency was informed about the requirements of this section [this law] and ORS 181A.250.

(b) Agreement from the federal agency that it will comply with the requirements of this section [this law] and ORS 181A.250.

(c) Requirement that all parties to the agreement will document each use of force and make that documentation available to the public as required in {this section/SECTION 2}. The force documentation required under this subsection shall be completed by the officer who used the force that is subject to the reporting requirement under {this section/SECTION TWO} and shall include the identity of the reporting officer who used the force, the type and degree of force used, the subject against whom the force was intended, and the reasons the officer had for using the force against the subject. The officer shall not be permitted to review any video or other evidence prior to completing their report.

(d) Requirement that all law enforcement agencies and individuals are clearly identifiable to the public when responding to an assembly.

(3) ~~f2f~~ 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 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 statute or court order.

(4) [3] [Intentional] **Violation** of this section constitutes official misconduct in the [second] **first** degree under ORS 162.4[0]15.

(5) A person may bring a civil suit for damages for official misconduct against a law enforcement agency if:

(a) a person subject to the control of the agency knowingly violates Section 2 or 3 of this Act; and

(b) the plaintiff is injured by the violation.

(6) A plaintiff who prevails on a claim for official misconduct may recover:

(a) Economic and noneconomic damages;

(b) Punitive damages;

(i) A court must award punitive damages if the plaintiff shows that any representative of the defendant agency knowingly made false or misleading statements about the conduct giving rise to the claim

(c) Equitable relief; and

(d) Reasonable attorney fees.

(7) There is no immunity defense available to a defendant in a claim for official misconduct.

(8) An action under this section must be commenced within two years of the conduct giving rise to the claim.

[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]4. This [2021] **2022** Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this [2021] **2022** Act takes effect on its passage.

Amendments to ORS 161.233 (use of force statute):

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

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

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

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

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

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

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

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

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

(4) A peace officer shall not use force against or disperse a person the peace officer knows or reasonably should know is a member of the media, a legal observer, or providing medical help.

(5) A person shall have a civil cause of action against a municipality for unlawful use of force when they can prove by a preponderance of the evidence that a peace officer acting with actual or apparent authority of the municipality used force against them in violation of ORS 161.233 or [NEW SECTION].

(a) the municipality is not immune from suit under any theory of qualified immunity or immunity described in ORS 30.265.

(b) a plaintiff that prevails on a claim for unlawful use of force is entitled to reasonable attorney fees.

(c) a plaintiff is entitled to punitive damages if they can show that the municipality improperly trained or failed to train officers on lawful use of force.

Amendment to ORS 161.242 (use of deadly force by peace officer):

- **Add language similar to: “Deadly force is only allowed as a last resort when there is no reasonable alternative, meaning only when necessary to prevent imminent and serious bodily injury or death.”**