

HB 2928 -3 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Gillian Fischer, Counsel

Meeting Dates: 2/3, 2/8, 2/24, 3/15, 3/17, 4/6

WHAT THE MEASURE DOES:

Regulates use of chemical incapacitants, kinetic impact projectiles and sound devices by law enforcement. Defines riot for purposes of this section. Prohibits the use of pepper spray unless a riot declaration has been made by a mayor or their designee, or, in jurisdictions not governed by a mayor, by the sheriff. Requires certain accommodations and instructions to be made by law enforcement for certain individuals when deploying specified devices.

Creates a private cause of action for persons injured by the use of chemical incapacitants, kinetic impact projectiles, and sound devices, by law enforcement, in violation of this act. Declares that a violation of this act constitutes the crimes of official misconduct in the first degree. Prohibits law enforcement from acting in concert with another agency or proxy law enforcement to engage in conduct barred by statute or court order.

Eliminates immunity from claims under the Oregon Tort Claims Act arising out of riot, civil commotion or mob action and revives certain claims through retroactive application. Declares an emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Replaces measure. Regulates use of chemical incapacitants, kinetic impact projectiles and sound devices by law enforcement. Prohibits the use of chemical incapacitants and kinetic impact projectiles for purposes of crowd control unless use of force is otherwise authorized by statute. Requires certain accommodations and instructions to be made by law enforcement for certain individuals when deploying specified devices unless said requirements cannot be done safely.

Prohibits the use of strobe lights for crowd control.

Declares that an intentional violation of section 3 of the act constitutes the crime of official misconduct in the second degree. Prohibits law enforcement from acting in concert with another agency or proxy law enforcement to engage in conduct barred by statute or court order. Declares an emergency, effective on passage.

BACKGROUND:

Tear gas, long range acoustic devices, and sound cannons are devices used by various law enforcement agencies for several purposes, including to control riots and disburse crowds. There is no Oregon statute that prohibits or limits the use of these devices by law enforcement.

During the 2020 first special session House Bill 4208 A was enacted which prohibits use of tear gas by a law enforcement agency for crowd control except during riots. It further required any agency using tear gas during riot to first announce intent to use tear gas, give individuals sufficient time to evacuate area, and to then again announce intent to use tear gas immediately before use.

HB 2928 would further regulate the use of certain devices and create a private right of action against law enforcement agencies for injuries resulting from devices used in violation of the provisions.