

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 4008

By COMMITTEE ON RULES

March 1

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

2 On page 3, after line 36, insert:

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

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

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

8 “[*(a)*] (b)(A) ‘**Handheld chemical incapacitant**’ means the following, together or separately:

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

11 “[*(B)*] (i) **Handheld** munitions and devices specifically designed to cause temporary pain, tem-
12 porary irritation, temporary disruption of vital processes, temporary incapacitation, temporary dis-
13 ability or permanent harm through the toxic properties of toxic chemicals, **or their precursors**,
14 that would be released as a result of the employment of the **handheld** munitions and devices; and

15 “[*(C)*] (ii) Any equipment specifically designed for use directly in connection with the employ-
16 ment of **handheld** munitions and devices as described in [*subparagraph (B) of this paragraph*] **sub-**
17 **subparagraph (i) of this subparagraph.**

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

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

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

25 “[*(d)*] (e) ‘Law enforcement agency’ means the Department of State Police, the Department of
26 Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation
27 of the State of Oregon and a university, that maintains a law enforcement unit as defined in ORS
28 181A.355 (12)(a)(A).

29 “[*(e)*] (f) ‘Precursor’ means any chemical reactant that takes part at any stage in the production
30 by whatever method of a toxic chemical, including any key component of a binary or multicompo-
31 nent chemical system.

32 “(g) ‘**Tear gas**’ means oleoresin capsicum or orthochlorobenzalmalononitrile, or other
33 similar chemicals meant to accomplish the same effect, administered by any shell, cartridge
34 or bomb capable of being discharged or exploded, when the discharge or explosion will cause
35 or permit the release or emission of the chemicals.

1 “[(f)] (h) ‘Toxic chemical’ means any chemical that through its chemical action on biological
2 processes can cause death, temporary pain, temporary irritation, temporary disruption of vital pro-
3 cesses, temporary incapacitation, temporary disability or permanent harm to humans or animals.

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

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

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

10 “[(b) A law enforcement agency may not use a kinetic impact projectile for crowd control or dis-
11 charge a kinetic impact projectile in a manner that intentionally targets the head of a person, except
12 against an individual engaged in conduct otherwise justifying the use of deadly physical force by a
13 peace officer.]

14 “(2) A law enforcement agency may not use a handheld chemical incapacitant for crowd
15 management.

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

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

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

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

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

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

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

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

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

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

30 “(4)(a) A law enforcement agency may not use a kinetic impact projectile for crowd
31 management.

32 “(b) A law enforcement agency may not discharge a kinetic impact projectile in a manner
33 that intentionally targets the head of a person, except against an individual engaged in con-
34 duct otherwise justifying the use of deadly physical force by a peace officer under ORS
35 161.242.

36 “(5) This section does not prohibit a law enforcement agency or a peace officer from us-
37 ing a handheld chemical incapacitant or kinetic impact projectile against an individual en-
38 gaged in conduct otherwise justifying the use of physical force under ORS 161.195 to 161.275.

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

43 “(7) When handheld chemical incapacitants, tear gas or kinetic impact projectiles are
44 used in a crowd by a law enforcement agency, the agency shall make efforts to notify
45 emergency rooms in the vicinity of the type of handheld chemical incapacitants, tear gas or

1 **kinetic impact projectiles used.**

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

5 “[*c*] **(9) A law enforcement agency may not use [a sound device for crowd control for any pur-**
6 **pose other than announcements] electronically amplified noise-producing equipment for crowd**
7 **management except for announcements or to facilitate movement of an emergency vehicle**
8 **as allowed or required by ORS 820.300 or any other provision of law.** Whenever possible, a law
9 enforcement agency shall provide announcements for purposes of crowd [*control*] **management** both
10 audibly and visually.

11 “[*3*] **(10) When using handheld chemical incapacitants, tear gas, kinetic impact projectiles or**
12 **[sound devices] electronically amplified noise-producing equipment** in compliance with this sec-
13 tion, and when it is possible to do so safely, a law enforcement agency:

14 **“(a) Shall attempt to take injured persons to safety or allow injured persons to seek medical**
15 **help.**

16 **“(b) May not prevent emergency medical services from reaching injured persons.**

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

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

22 “[*4*] **(12) A law enforcement agency shall inform federal law enforcement agencies of the re-**
23 **quirements of this section.**

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

25 **“181A.710. (1) As used in this section, ‘law enforcement agency’ means the Department of State**
26 **Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon,**
27 **a municipal corporation of the State of Oregon and a university, that maintains a law enforcement**
28 **unit as defined in ORS 181A.355 (12)(a)(A).**

29 **“(2) A law enforcement agency or a person acting on behalf of a law enforcement agency may**
30 **not:**

31 **“(a) Use a proxy law enforcement agency to [*enact*] use crowd management** measures that a
32 court or statute has barred the law enforcement agency from using.

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

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

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