

February 10, 2022

Representative Bynum, Chair
House Judiciary Committee
900 Court Street, NE
Salem, OR 97301

Dear Chair Bynum and Members of the Committee,

Law enforcement agencies are tasked with protecting lives, public safety, and property. To effectively serve the public, law enforcement agencies are seeking clarification related to policing crowd control events. The recommendations outlined below represent the shared concerns and collaborative efforts of law enforcement agencies across the state to clarify the intent of HB 2928 from the 2021 legislative session. We strongly urge your support for HB 4131 and the -1 amendment.

What will the amendment do?

- Define “crowd control” to provide clear guidance as to when the new law will apply.
- Create separate rules for handheld pepper spray and tear gas.
- Expressly state that all tools may not be used indiscriminately.
- Create consistency between the new law, existing Oregon law, and constitutional principles governing use of force.
- Clarify that in circumstances constituting a riot, law enforcement agencies may use chemical incapacitants to terminate or prevent furtherance of the riot.
- Tailor the definition of “sound device” so that it does not prohibit the use of police car sirens to respond to an emergency.
- Replace the term “medical help” with “emergency medical services,” which is used first in the bill and is considered a term of art, for consistency throughout the bill.

HB2928 (2021) restricts law enforcement agencies from using certain tools “for crowd control.” The bill restricts chemical incapacitants, which include tools ranging from handheld pepper spray to tear gas unless a riot exists (which requires six or more persons engaging in tumultuous and violent conduct), and the chemical incapacitant must only impact the individuals engaged in the riot. Thus, if there is a crowd and fewer than six people are engaged in conduct posing a risk of injury to others or officers, police are prohibited from using handheld pepper spray. Additionally, even if a riot occurs, police are prohibited from using chemical incapacitants if non-rioters will be impacted. This bill prohibits law enforcement from using chemical incapacitants even where lives are at risk.

The bill restricts the use of kinetic impact projectiles to those situations where deadly force is authorized. This prohibition leaves officers with tools such as batons, requiring close contact and greater potential of harm to the officer and the person subject to the force, or deadly tools like firearms if called upon to defend themselves or others from immediate threats of violence or harm.

The bill does not account for legally justified uses of force, which appears inconsistent with Oregon’s statutorily justified defenses. For example, under Oregon law, an officer may use reasonable force in self-defense or in defense of another. However, HB2928 (2021) appears to override legal justifications in crowd control situations. A violation of the bill results in potential criminal charges for Official Misconduct against an officer who reasonably exercises the right to defend themselves or who acts in defense of another.

Lastly, the bill does not define the term “for crowd control,” leaving law enforcement agencies uncertain when the additional restrictions, and potential criminal liability, may apply. Law enforcement agencies across the state share concerns as to whether traditionally non-crowd control events, sporting events, altercations at a crowded venue or bar, or a house party might fall under the undefined term crowd control leaving officers liable if they elect to use, for example, handheld pepper-spray to deter a belligerent and violent bar patron. Statewide, law enforcement would benefit from a bright and easily identifiable line establishing when HB2928 applies to policing.

We recognize and appreciate the incredible amount of work that went into drafting HB 2928 in the 2021 legislative session. With complex policy, it is not uncommon to need technical adjustments to the legislation as stakeholders work to implement new laws. We ask for your support for HB 4131 and the -1 amendment.

Sincerely,

