

Enrolled Senate Bill 111

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CHAPTER

AN ACT

Relating to use of physical force; creating new provisions; amending ORS 181.640 and 181.662; appropriating money; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 7 of this 2007 Act:

(1) "Employ," when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) "Law enforcement agency" means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon and a municipal corporation of the State of Oregon, that maintains a law enforcement unit as defined in ORS 181.610 (12)(a)(A).

(3) "Police officer" means a person who is:

(a) A police officer or reserve officer as defined in ORS 181.610; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

SECTION 2. (1) There is created in each county a deadly physical force planning authority consisting of the following members:

(a) The district attorney and sheriff of the county.

(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are unions representing police officers within the county, the district attorney and sheriff shall select the police officer from among candidates nominated by any union representing police officers within the county.

(c) If at least one city within the county employs a police chief, a police chief selected by the police chiefs within the county.

(d) A representative of the public selected by the district attorney and sheriff. The person selected under this paragraph may not be employed by a law enforcement agency.

(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

(2) The district attorney and sheriff are cochairpersons of the planning authority.

(3) The law enforcement agency that employs the police officer selected under subsection (1)(b) of this section shall release the officer from other duties for at least 16 hours per year to enable the officer to serve on the planning authority. The agency shall compensate the

officer at the officer's regular hourly wage while the officer is engaged in planning authority activities.

(4) The planning authority shall develop a plan consisting of the following:

(a) An element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

(b) An element dealing with the immediate aftermath of an incident in which a police officer used deadly physical force.

(c) An element dealing with the investigation of an incident in which a police officer used deadly physical force.

(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.

(e) An element dealing with collecting information regarding a police officer's use of deadly physical force, debriefing after an incident in which a police officer used deadly physical force and revising a plan developed under this subsection based on experience.

(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in paragraphs (a) to (e) of this subsection.

(5) The planning authority shall conduct at least one public hearing in the county before submitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7) of this section.

(6) The planning authority may consult with anyone the planning authority determines may be helpful in carrying out its responsibilities.

(7) The planning authority shall submit the plan developed under subsection (4) of this section, and revisions of the plan, to the governing body of each law enforcement agency within the county except for the Department of State Police and the Department of Justice.

(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7) of this section within 60 days after receiving the plan. The governing body may not amend the plan.

(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.

(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in section 3 of this 2007 Act. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan:

(a) Each law enforcement agency within the county to which the plan applies is subject to the provisions of the plan; and

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in section 4 of this 2007 Act.

(11) If the plan is not approved by the Attorney General, the planning authority shall develop and submit a revised plan.

(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject to a provision of a plan approved under subsection (10) of this section that:

(a) Conflicts with a provision of a city or county charter or a general ordinance that applies to the law enforcement agency; or

(b) Imposes an obligation not required by section 5 of this 2007 Act if complying with the provision would require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of the people, in order to comply with the provision.

(13) The Attorney General shall periodically publish all approved plans.

(14) A law enforcement agency within a county has a duty to participate in good faith in the planning process of the planning authority for the county.

(15) A person bringing an action challenging the validity or enforceability of a plan approved under subsection (10) of this section shall serve the Attorney General with a copy of the complaint. If the Attorney General is not a party to the action, the Attorney General may intervene in the action.

SECTION 3. In the plan required by section 2 (4) of this 2007 Act, a deadly physical force planning authority shall, at a minimum:

(1)(a) Address, under section 2 (4)(a) of this 2007 Act, the manner in which each law enforcement agency within the county will comply with section 5 (2) of this 2007 Act; and

(b) Attach a copy of each policy adopted under section 5 (2) of this 2007 Act to the plan.

(2) Address, under section 2 (4)(b) of this 2007 Act, the manner in which each law enforcement agency within the county will comply with section 5 (3)(a) and (4) of this 2007 Act.

(3) Address, under section 2 (4)(c) of this 2007 Act, the manner in which each law enforcement agency within the county will comply with section 5 (5)(a) of this 2007 Act.

(4) Address, under section 2 (4)(d) of this 2007 Act, the manner in which the district attorney of the county will exercise discretion to resolve issues of potential criminal responsibility.

(5) Address, under section 2 (4)(e) of this 2007 Act, the manner in which each law enforcement agency within the county will comply with section 5 (6) of this 2007 Act.

SECTION 4. (1) As used in this section, “expenses” does not include personnel costs.

(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice shall make grants to law enforcement agencies to reimburse the law enforcement agencies for expenses incurred in implementing and revising the plans required by section 2 of this 2007 Act. A grant under this section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

(3) The department may not make a grant under this section to a law enforcement agency unless the law enforcement agency is subject to a plan that has been approved by the Attorney General under section 2 (10) of this 2007 Act.

(4) The department shall adopt rules necessary for the administration of this section.

SECTION 5. (1) As used in this section, “involved officer” means:

(a) A police officer whose official conduct, or official order to use deadly physical force, was a cause in fact of the death of a person. As used in this paragraph, “order to use deadly physical force” means an order issued to another officer to use deadly physical force in a specific incident or an order or directive establishing rules of engagement for the use of deadly physical force for a specific incident.

(b) A police officer whose official conduct was not a cause in fact of the death of a person but whose official involvement in an incident in which the use of deadly physical force by a police officer resulted in the death of a person:

(A) Began before or during the use of the deadly physical force; and

(B) Was reasonably likely to have exposed the police officer to greater stresses or trauma than other police officers experienced as a result of their involvement in the incident before or during the use of the deadly physical force.

(2) A law enforcement agency shall adopt a policy dealing with the use of deadly physical force by its police officers. At a minimum, the policy must include guidelines for the use of deadly physical force.

(3)(a) For each involved officer employed by a law enforcement agency, the law enforcement agency shall pay the costs of at least two sessions with a mental health professional that are attended by the officer. The sessions must be held within six months after the incident in which the officer was involved.

(b) An involved officer shall attend at least one of the sessions described in paragraph (a) of this subsection.

(c) Sessions with a mental health professional under this subsection may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

(4) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, a law enforcement agency may not return an involved officer to duties that might place the officer in a situation in which the officer has to use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or benefits as a result of the law enforcement agency's compliance with this subsection. Notwithstanding section 4 (1) of this 2007 Act, a personnel cost incurred in complying with this subsection by a law enforcement agency employing 40 or fewer police officers is an expense for purposes of section 4 of this 2007 Act.

(5)(a) A law enforcement agency employing an involved officer shall include at least one police officer from a different law enforcement agency in the investigation of the incident in which the involved officer was involved.

(b) The failure of a law enforcement agency to comply with paragraph (a) of this subsection is not grounds for suppressing evidence obtained in the investigation.

(6)(a) A law enforcement agency shall collect at least the following information relating to incidents in which a police officer's use of deadly physical force resulted in the death of a person:

(A) The name, gender, race, ethnicity and age of the decedent.

(B) The date, time and location of the incident.

(C) A brief description of the circumstances surrounding the incident.

(b) A law enforcement agency shall promptly submit the information collected under paragraph (a) of this subsection to the Department of Justice.

(7) The department shall compile and periodically publish information submitted under subsection (6) of this section. The department, by rule, may specify a form to be used by law enforcement agencies in submitting information under subsection (6) of this section.

SECTION 6. Conclusions and recommendations for future action made by or for a law enforcement agency that result from activities conducted pursuant to the element of a plan described in section 2 (4)(e) of this 2007 Act are not admissible as evidence in any subsequent civil action or administrative proceeding.

SECTION 7. Notwithstanding sections 2, 3 and 5 (3) and (6) of this 2007 Act, if sufficient moneys are not appropriated to the Department of Justice for purposes of making grants under section 4 of this 2007 Act, a deadly physical force planning authority created by section 2 of this 2007 Act or a law enforcement agency is not required to comply with any requirement of section 2, 3 or 5 (3) or (6) of this 2007 Act for which the law enforcement agency is entitled to reimbursement under section 4 of this 2007 Act.

SECTION 8. ORS 181.662 is amended to read:

181.662. (1) The Department of Public Safety Standards and Training may deny the application for training, or deny, suspend or revoke the certification, of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that:

(a) The public safety officer or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board on Public Safety Standards and Training or the department.

(b) The public safety officer or instructor has been convicted of a crime or violation in this state or any other jurisdiction.

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).

(d) The public safety officer failed to comply with section 5 (3)(b) of this 2007 Act.

(2) The department shall deny, suspend or revoke the certification of a fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the fire service professional has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in ORS 137.700.

(3) The department may deny, suspend or revoke the certification of any fire service professional after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding:

(a) That the fire service professional falsified any information submitted on the application for certification or on any documents submitted to the board or the department; or

(b) Consistent with ORS 670.280, that the fire service professional is not fit to receive or hold the certification as a result of conviction of a crime in this state, or in any other jurisdiction, other than a crime described in subsection (2) of this section.

(4) The department shall deny, suspend or revoke the certification of any public safety officer or instructor, except a youth correction officer, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been discharged for cause from employment as a public safety officer.

(5) The department, in consultation with the board, shall adopt rules specifying those crimes and violations for which a conviction requires the denial, suspension or revocation of the certification of a public safety officer or instructor.

(6) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a public safety officer or instructor, the department may:

(a) Proceed with any investigation of, or any action or disciplinary proceedings against, the public safety officer or instructor; or

(b) Revise or render void an order suspending or revoking the certification.

(7) The department shall deny, suspend or revoke the accreditation of a training or educational program or any course, subject, facility or instruction thereof if the program, course, subject, facility or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181.640 (1)(g) or 181.650 (3).

SECTION 9. (1) A deadly physical force planning authority created by section 2 of this 2007 Act shall submit the plan required by section 2 (4) of this 2007 Act to the governing bodies described in section 2 (7) of this 2007 Act no later than July 1, 2008.

(2) Notwithstanding section 2 (3) of this 2007 Act, for the period of time from the effective date of this 2007 Act to June 30, 2008, the law enforcement agency that employs the police officer selected under section 2 (1)(b) of this 2007 Act shall release the officer from other duties for at least 80 hours to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities during that period of time.

SECTION 10. A law enforcement agency shall adopt the policy required by section 5 (2) of this 2007 Act no later than July 1, 2008.

SECTION 11. (1) A law enforcement agency that participates in the development of the plan required by section 2 (4) of this 2007 Act shall keep track of the expenses it incurs by reason of its participation. For purposes of this subsection and subsection (2) of this section, "expenses" includes, but is not limited to, personnel costs.

(2) The Department of Justice shall award a law enforcement agency one credit for each dollar of expenses incurred before July 1, 2008, by reason of the law enforcement agency's participation in the development of the plan required by section 2 (4) of this 2007 Act.

(3) Notwithstanding section 4 (2) of this 2007 Act, when a law enforcement agency applies for a grant under section 4 of this 2007 Act, the department, to the extent that funds are appropriated to the department for the purpose, shall make a grant that exceeds 75 percent of the expenses incurred by the law enforcement agency if the law enforcement agency has unused credits awarded under subsection (2) of this section. When the department makes a grant that exceeds 75 percent of the expenses incurred by a law enforcement agency, the

department shall deduct the amount of the grant that exceeds 75 percent from the credits awarded the law enforcement agency under subsection (2) of this section.

(4) The department may adopt rules necessary for the administration of this section.

SECTION 12. A law enforcement agency, as defined in section 1 of this 2007 Act, may not use moneys it receives under section 4 of this 2007 Act to supplant moneys from another source that the law enforcement agency has been previously authorized to expend.

SECTION 13. There is appropriated to the Department of Justice, for the biennium beginning July 1, 2007, out of the General Fund, the amount of \$182,161 for the purpose of carrying out the provisions of section 4 of this 2007 Act.

SECTION 14. ORS 181.640 is amended to read:

181.640. (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

(b) The department shall recommend and the board shall establish by rule reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and instructors. Training requirements shall be consistent with the funding available in the department's legislatively approved budget.

(c) The department, in consultation with the board, shall establish by rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether public safety personnel meet minimum standards or have minimum training.

(d) Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel, except youth correction officers, as being qualified under the rules established by the board.

(e) The department shall deny applications for training and deny, suspend and revoke certification in the manner provided in ORS 181.661, 181.662 and 181.664 (1).

(f) The department shall cause inspection of standards and training for instructors and public safety personnel, except youth correction officers, to be made.

(g) The department may recommend and the board may establish by rule accreditation standards, levels and categories for mandated and nonmandated public safety personnel training or educational programs. The department and board, in consultation, may establish to what extent training or educational programs provided by an accredited university, college, community college or public safety agency may serve as equivalent to mandated training or as a prerequisite to mandated training. Programs offered by accredited universities, colleges or community colleges may be considered equivalent to mandated training only in academic areas.

(2) The department may:

(a) Contract or otherwise cooperate with any person or agency of government for the procurement of services or property;

(b) Accept gifts or grants of services or property;

(c) Establish fees for determining whether a training or educational program meets the accreditation standards established under subsection (1)(g) of this section;

(d) Maintain and furnish to law enforcement units and public and private safety agencies information on applicants for appointment as instructors or public safety personnel, except youth correction officers, in any part of the state; and

(e) Establish fees to allow recovery of the full costs incurred in providing services to private entities or in providing services as experts or expert witnesses.

(3) The department, in consultation with the board, may:

(a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(b) Upon the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.

(c) Stimulate research by public and private agencies to improve police, fire service, corrections and adult parole and probation administration and law enforcement.

(d) Provide grants from funds appropriated or available therefor, to law enforcement units, public safety agencies, special districts, cities, counties and private entities to carry out the provisions of this subsection.

(e) Provide optional training programs for persons who operate lockups. The term "lockup" has the meaning given it in ORS 169.005.

(f) Provide optional training programs for public safety personnel and their support staffs.

(g) Enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.

(h) Upon the request of a law enforcement unit or public safety agency employing public safety personnel, except youth correction officers, grant an officer, fire service professional, telecommunicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum requirements adopted or approved by the board. Multidiscipline certification authorizes an officer, fire service professional, telecommunicator or emergency medical dispatcher to work in any of the disciplines for which the officer, fire service professional, telecommunicator or emergency medical dispatcher is certified. The provisions of ORS 181.652, 181.653 and 181.667 relating to lapse of certification do not apply to an officer or fire service professional certified under this paragraph as long as the officer or fire service professional maintains full-time employment in one of the certified disciplines and meets the training standards established by the board.

(i) Establish fees and guidelines for the use of the facilities of the training academy operated by the department and for nonmandated training provided to federal, state or other governmental agencies, private entities or individuals.

(4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt rules necessary to carry out the board's duties and powers.

(5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the department's duties and powers.

(6) For efficiency, board and department rules may be adopted jointly as a single set of combined rules with the approval of the board and the department.

(7) The department shall obtain approval of the board before submitting its legislative concepts, Emergency Board request or budget requests to the Oregon Department of Administrative Services.

(8) The Department of Public Safety Standards and Training shall develop a training program for conducting investigations required under section 5 of this 2007 Act.

SECTION 15. The Department of Public Safety Standards and Training shall complete development of the training program required by ORS 181.640 (8) no later than August 31, 2008. The department shall submit a report summarizing the training program to the legislative interim committees dealing with the judiciary no later than September 30, 2008.

SECTION 16. Sections 4 and 12 of this 2007 Act and the amendments to ORS 181.640 and 181.662 by sections 8 and 14 of this 2007 Act become operative on July 1, 2008.

SECTION 17. Notwithstanding the effective date of section 5 of this 2007 Act, section 5 (3) to (7) of this 2007 Act applies to incidents occurring on or after July 1, 2008.

SECTION 18. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate June 24, 2007

Repassed by Senate June 28, 2007

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Secretary of Senate

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President of Senate

Passed by House June 28, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

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Secretary of State