



In 2021, communities, cities, and police came to the table and agreed to reasonable restrictions on the use of tear gas and munition weapons against protestors, communities, and the environment. As a result, the legislature passed HB 2928.

The legislature should not change those protective restrictions now via HB 4008-A11 when there has been very limited time for intentionality and deliberation and no opportunity for community participation and feedback on this bill.

The ACLU of Oregon and the OJRC oppose HB 4008-A11.

	4008 -8	CURRENT LAW HB 2928 (2021)	4008 -A11
When is <u>TEAR GAS</u> permitted?	Almost never. Most types of tear gas are expressly banned, and indiscriminate use is prohibited.	To stop a riot.	Police want to control a “dangerous and unlawful situation” AND <ul style="list-style-type: none"> • de-escalation has failed, warning given • 2 announcements of intent to use • people given time to leave, • commanding officer authorization
When is <u>HANDHELD PEPPER SPRAY</u> permitted?	Against individuals who are engaged in conduct justifying this level of force.	To stop a riot.	It is unclear. The amendment both prohibits its use for crowd management but contemplates its use in a crowd.
When are <u>IMPACT MUNITIONS</u> permitted?	Inherently indiscriminate weapons (e.g. automatic pepper-ball guns, rubber ball grenades) are banned. Some impact munitions are permitted against an individual engaged in conduct justifying the amount of force used.	When used against an individual engaged in conduct justifying the amount of force used. Never fired at the head.	It is unclear. The amendment both prohibits its use for crowd management but contemplates its use in a crowd.
Does it restrict indiscriminate <u>FLASHBANGS AND STUN GRENADES?</u>	Yes	No	No
Does it limit unlawful <u>SHOVING?</u>	Yes	No	No

1. Police have repeatedly failed to comport with constitutional standards when given vague terms like these, including “unlawful assembly.” Additionally, this is very likely a much lower threshold than riot. It is unclear how the additional riot restriction interplays with the express permission to use tear gas to control a dangerous and unlawful situation.

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Does it protect <u>MEDICS</u> ?	Yes	Yes	Yes
Does it protect <u>JOURNALISTS AND LEGAL OBSERVERS</u> constitutional access rights?	Yes	No	No
Does it <u>EQUALLY PROTECT EVERYONE</u> from unconstitutional, indiscriminate force? (**The Fourth Amendment does not apply differently, for example, in protest crowds versus bar crowds or sporting event crowds.)	Yes	Yes, when read consistent with the Oregon DOJ's memo.	No
Does it address <u>ENVIRONMENTAL HARMS</u> ?	No	No	Requires clean up of visible debris.
Does it consider <u>DISABILITY ACCOMMODATIONS</u> ?	Minimally	Minimally	No
Does it provide for <u>TRANSPARENCY</u> for munitions at protests?	Yes	No	No
Does it ensure officers, supervisors, and local governments are held <u>ACCOUNTABLE</u> for violations of the law?	Yes, including removing the protection of qualified immunity.	Minimally	No

This comparison is based on the interpretation and opinions of the legal and policy teams at the ACLU of Oregon and the Oregon Justice Resource Center based on their review of the bill amendments.

THE BOTTOM LINE:



OPPOSE HB 4008-A11. Tear gas and munition weapons indiscriminately harm protestors, bystanders, communities, and our environment. Any changes by legislators of HB 2928 should be done with intentionality, deliberation, and community participation — and not rushed through during the 2022 legislative short session.

RELEVANT LINKS:

- [DOJ Memo](#)
- [4008 Amendment Explainer \(with citations\)](#)
- [-8 Amendment language](#)
- [-A11 Amendment language](#)