

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass
Vote: 4 - 0 - 1
Yeas: Beyer, Kruse, Prozanski, Burdick
Nays: 0
Exc.: Walker
Prepared By: Darian Stanford, Counsel
Meeting Dates: 5/9

WHAT THE MEASURE DOES: Gives district attorneys authority to investigate certain physical injuries caused by dangerous or deadly weapons. Expands scope of injuries that may be investigated from only those involving “deadly weapons” to those involving “dangerous or deadly weapons.”

ISSUES DISCUSSED:

- Nature of investigations

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 146.090 to 146.125 gives district attorneys and medical examiners joint responsibility to conduct human death investigations. Within this investigative authority is, in part, the power to control a crime scene (ORS 146.103), to enter and secure certain premises (ORS 146.107), and to take temporary possession of certain evidence/personal property (146.125). A primary concern is the preservation of any potentially relevant evidence in the event that the death (only certain types of deaths require investigations-ORS 146.090) resulted from a crime.

In cases where there is a physical injury (but no death), a different statutory section (ORS 146.710 to 146.780) controls the investigations. ORS 146.730 gives only the medical examiner (not the district attorney) the authority to investigate if the injury occurred under "suspicious or unknown circumstances" and involved a physical injury caused by a "knife, gun, pistol or other deadly weapon." The term “deadly weapon” is defined at ORS 161.015(2) as “any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.” The scope of this investigative authority is the same as for death investigations.

HB 2741 addresses two concerns with present law. The first concern is that only the medical examiner, and not the district attorney, presently has the authority to conduct injury investigations. HB 2741 allows the district attorney (or the medical examiner) to conduct injury investigations. The concern is that, if a crime occurred, there is likely evidence that should be preserved (just as in cases that result in death). The medical examiner's concern in injury cases is to save the victim, not to preserve evidence.

The second concern is that existing law is not broad enough to cover all suspicious injuries. Many crimes or assaults happen through the use of items that are not "deadly weapons" (e.g., hands, rocks, pipes, screwdrivers, etc). HB 2741 broadens the scope of ORS 146.710 to include such circumstances. Specifically, it adds the phrase “dangerous or” deadly weapon to existing law. The term “dangerous weapon” is broader than “deadly weapon” and includes “any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable or causing death or serious physical injury.” ORS 161.015(1). It also expands investigative authority to include any “serious physical injury,” which is defined at ORS 161.015(8) as “physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

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This summary has not been adopted or officially endorsed by action of the committee.