

**REVENUE: No revenue impact**

**FISCAL: No fiscal impact**

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<b>Action:</b>	Do Pass the A-Engrossed Measure
<b>Vote:</b>	4 - 0 - 1
<b>Yeas:</b>	Beyer, Kruse, Prozanski, Burdick
<b>Nays:</b>	0
<b>Exc.:</b>	Walker
<b>Prepared By:</b>	Bill Taylor, Counsel
<b>Meeting Dates:</b>	5/8

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**WHAT THE MEASURE DOES:** Extends the time period from 15 days to 20 days that a sheriff has to sell property pursuant to garnishment. Authorizes a sheriff to serve a facsimile copy of an eviction summons and complaint. Authorizes a sheriff to use reasonable force to remove individuals subject to the judgment when enforcing a judgment of restitution. Authorizes law enforcement agencies to forcibly enter specified premises to enforce an order of assistance pertaining to custody, or to enforce a Family Abuse Prevention Act (FAPA) custody provision. Authorizes a sheriff to serve and enter into the Law Enforcement Data System a facsimile copy of a FAPA restraining order, an Elderly Persons and Persons with Disabilities Prevention Act restraining order, or a child abuse restraining order. Declares an emergency, effective upon passage.

**ISSUES DISCUSSED:**

- Ability to fax a document from the courthouse to a deputy sheriff located at the other end of the county

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Currently, sheriffs must serve court-certified true copies of eviction summons and complaints, and restraining orders. Sheriffs receive these documents from the trial court administrators after they have been issued by a court. In eviction summons and complaints, the sheriff has only until the end of the next business day to serve. It is difficult for sheriffs to meet this timeline, particularly if the courthouse is distant from the sheriff's office if the documents are sent by mail. This bill would offer the sheriff more time to serve these documents. Since restraining orders are personal safety matters, the sheriffs would like to be able to serve more quickly after they are entered by the trial court. Using a facsimile copy would again eliminate the drive to the court or the wait for the mail.

Sheriffs are authorized to use "reasonable force" to enforce custody orders. HB 2869 A further clarifies with the language "forcible entry" and "specified premises" to further clarify sheriff duties. The "specified premises" language is to avoid running afoul of any Fourth Amendment search and seizure issues. In order to conform to the Fourth Amendment, search warrants are required to be specific regarding the premises to be searched. HB 2869 A creates a similar standard for enforcement of custody orders.

Where HB 2869 A authorizes use of reasonable force to remove persons from property subject to a restitution judgment, it deletes older language. The previous provision references a four-day waiting period for the defendant to move out. This waiting period still exists in ORS 405.151; it has merely been removed from the model form that is in the bill. Including information about the four-day waiting period has been confusing for some defendants who think that they still have four days from the time the sheriff arrives, when the four-day period has already elapsed.

5/9/2007 10:17:00 AM

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