

**REVENUE: No revenue impact**

**FISCAL: No fiscal impact**

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**Action:** Do Pass as Amended and Be Printed Engrossed

**Vote:** 3 - 2 - 0

**Yeas:** Bonamici, Dingfelder, Prozanski

**Nays:** Kruse, Whitsett

**Exc.:** 0

**Prepared By:** Cheyenne Ross, Counsel

**Meeting Dates:** 3/24, 4/7

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**WHAT THE MEASURE DOES:** Provides state law enforcement authority to tribal police officers who are certified by the Department of Public Safety Standards (DPSST) and whose employing tribal governments comply with certain conditions, including meeting certain insurance requirements and waiving sovereign immunity from tort liability for claims that arise from action taken under the measure via codification in tribal law. Prohibits receipt of funds by tribal governments for law enforcement activities authorized under the measure. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- *Kurtz* only about “hot pursuit” issue
- Ability to resolve issues via mutual deputizations and/or mutual aid agreements, limitations of same
- Differences in scope of law enforcement authority at all levels of government, and between public and private law enforcement
- Need to provide law enforcement officers with clearer, more uniform authority
- Comparison to other states, Arizona in particular, providing clarity/uniformity via statute
- Measure addresses most, but not 100 percent of stakeholders’ concerns
- Deep level of cultural offense at the idea of nontribal officers seeking enforcement authority on tribal lands
- Whether remaining concerns are outweighed by benefit to public and officers

**EFFECT OF COMMITTEE AMENDMENT:** Eliminates creation of unique category of certification by DPSST. Eliminates substantive compliance review by DPSST. Requires tribal governments to codify waiver of sovereign immunity in tribal code. Prohibits receipt of funds by tribal governments for law enforcement activities authorized under the measure.

**BACKGROUND:** In *State v. Kurtz*, S058346 (Or. 3-25-2011), 233 Or. App. 573 (2010), a defendant was found guilty of eluding and resisting arrest by a tribal law enforcement officer at the trial court level, but the convictions were overturned by the Oregon Court of Appeals. The Court of Appeals strictly applied both the statutory definitions of police and peace officer, which require that the officer’s employing entity be a unit of Oregon government. Tribes, of course, are separate sovereigns and not explicitly included in either definition.

Senate Bill 412 A took its cue from the Court of Appeals’ decision, to address disparities in the scope of authority and the treatment of law enforcement officers beyond the two crimes that were the subject of the *Kurtz* opinion (eluding and resisting). While the measure was pending in the Legislature, the Oregon Supreme Court reversed the Court of Appeals, to treat similarly those persons entrusted by governments to serve in the same public safety capacity, but only for purposes of the two subject crimes (court decisions are usually limited to their distinct facts and specific issues).

The Supreme Court’s decision in *Kurtz* and Senate Bill 412 A are consistent with each other, but the measure goes further than *Kurtz* to address other potential areas of litigation, the most significant being the potential for tort liability.

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