

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass with amendments to the A-Engrossed Measure. (Printed B-Engrossed)

Vote: 4 - 1 - 0

Yeas: Beyer, Burdick, Ferrioli, Rosenbaum

Nays: Atkinson

Exc.: 0

Prepared By: Erin Seiler, Administrator

Meeting Dates: 5/26

WHAT THE MEASURE DOES: Provides authorized tribal police officers with certain powers and protections provided to Oregon law enforcement officers. Creates transitional approach to grant of state law enforcement authority to tribal police officers. Provides for specific authority first two years, limited to three situations outside Indian Country (hot pursuit, commission of crime in officer's presence, and upon request or approval of law enforcement agency with jurisdiction), and unrestricted within Indian Country. Sunsets these provisions July 1, 2013. Provides tribal officers with state law enforcement authority equivalent to other law enforcement agencies for the following six years, sunseting July 1, 2019, and reverting to existing law. Defines Indian Country. Adds further condition to receipt of authorization to enforce state law, requiring tribal governments to adopt written policies to facilitate conformity with the state's discovery obligations in criminal cases. Permits tribal government to make written request to obtain copies of neighboring sheriffs' policies, and if so, requires sheriffs to respond within 30 days. Requires tribal government to adopt policy within 90 days of passage of measure if no written request made of neighboring sheriffs. Provides exception to this requirement if no neighboring sheriff has adopted a written policy. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Proposed amendments ability to address outstanding concerns by stakeholders
- Implementation of *Kurtz* decision
- Differences in scope of authority of law enforcement
- Establishment of new relationship between tribal and government authority

EFFECT OF COMMITTEE AMENDMENT: Creates transitional approach to grant of state law enforcement authority to tribal police officers. Provides for specific authority the first two years, limited to three situations outside Indian Country (hot pursuit, commission of crime in officer's presence, and upon request or approval of law enforcement agency with jurisdiction), and unrestricted within Indian Country. Sunsets these provisions July 1, 2013. Provides tribal officers with state law enforcement authority equivalent to other law enforcement agencies for the following six years, sunseting July 1, 2019, and reverting to existing law. Defines Indian Country. Adds further condition to receipt of authorization to enforce state law, requiring tribal governments to adopt written policies to facilitate conformity with the state's discovery obligations in criminal cases. Permits tribal government to make written request to obtain copies of neighboring sheriffs' policies, and if so, requires sheriffs to respond within 30 days. Requires tribal government to adopt policy within 90 days of passage of measure if no written request made of neighboring sheriffs. Provides exception to this requirement if no neighboring sheriff has adopted a written policy.

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.

6/2/2011 8:55:00 AM

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

Senate Bill 412-B 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-B 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.