

LC 761 STAFF MEASURE SUMMARY

Joint Interim Committee on Transparent Policing and Use of Force Reform Special Session of 2020

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WHAT THE MEASURE DOES:

Modifies circumstances under which a peace officer is justified in using physical force or deadly physical force upon another person. Requires peace officer to give verbal warning, and reasonable opportunity to comply, before using physical force or deadly physical force if reasonable opportunity to do so exists. Requires peace officer to consider alternatives to deadly physical force if reasonable opportunity to do so exists. Modifies circumstances under which corrections officers may use physical force or deadly physical force.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

BACKGROUND: ORS 161.235 and ORS 161.239 govern when a peace officer is justified in used physical force or deadly physical force. Generally, those statutes limit the use of force to circumstances where an officer reasonably believes the force is necessary to effectuate an arrest, prevent imminent physical injury, prevent an escape, or when the officer reasonably believes it necessary under the totality of the circumstances presented.

Currently, there is not requirement of a peace officer to consider alternatives to deadly physical force.

A 1985 U.S. Supreme Court case, *Tennessee v. Garner*, held that any deadly force used by a police officer must be limited to situations where deadly force was “necessary to prevent the escape *and* the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.” *Tennessee v. Garner*, 471 U.S. 1 (1985)

While many of the circumstances outlined in ORS 161.239 have been interpreted by individual agencies to require a threat of death or serious bodily harm, the language of the statute itself does not align with the standards articulated in *Tennessee v. Garner*.

LC 761 modifies Oregon use of force statutes to more closely align with the requirements articulated by the U.S. Supreme Court in *Tennessee v. Garner*. The measure also adds a requirement that a peace officer consider alternatives to deadly physical force if a reasonable opportunity to do so exists.