

## LC 027 STAFF MEASURE SUMMARY

### Joint Committee on Policies for the 2nd Special Session

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#### WHAT THE MEASURE DOES:

Prohibits the use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of that other person. Extends prohibition to circumstances in which a peace officer may otherwise use deadly physical force as provided in ORS 161.239. Provides that prohibition does not apply in circumstances when physical force is justified under ORS 161.209. Declares emergency, effective on passage.

Modifies circumstances under which a peace officer is justified in using physical force or deadly physical force against 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 any form of 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:

Prior to the 2020 first special session, when attempting to restrain or arrest a person, police were permitted to use a choke hold or other restraint to the head, neck, or back, that interfered with that person's blood flow or ability to breathe. During the 2020 first special session, House Bill 4203 was enacted, which limited officer's authority to use such restraints to circumstances in which the peace officer may use deadly physical force as provided in ORS 161.239.

ORS 161.235 and ORS 161.239 govern when a peace officer is justified in using 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 for 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 is "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 027 completely prohibits use of physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of that other person. It further modifies Oregon's 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.