ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: August 10th, 2020

TO: Senator James Manning – Co-Chair

Representative Janelle Bynum – Co-Chair

FROM: Aaron Knott, Legislative Director

SUBJECT: Testimony in support of HB 4301 – Use of Force reform

The Attorney General supports the entirety of HB 4301, but this testimony will focus on the provisions relating to "Use of Force Generally" (Sec 7-8). The statutes which govern the circumstances under which deadly force can be used by law enforcement are tremendously important – they outlines the standard under which an officer's conduct may be found to be criminal, significantly influences the instructions given to the jury, and signals directly the standards our law enforcement is meant to consider before using a degree of force with the potential to take the life of another person. These statutes have not been significantly updated in over 40 years.

This is of particular importance because of several decisions made by the United States Supreme Court in those intervening years, including the 1985 landmark decision of *Tennessee v. Garner*,[1] which forbade the practice of shooting a suspected fleeing felon in the back without any requirement that the person be believed dangerous, and 1989's *Graham v. Connor*,[2] which established the current standard by which the reasonableness of an officer's use of force is to be judged. In the years following these decisions, many states passed legislation to bring their statutory language into conformity. To date, Oregon has not done so.

HB 4301 eliminates this badly obsolete language from our statutes, but takes several additional important steps.

First, it introduces for the first time in Oregon's statutes language which would require law enforcement to de-escalate away from the use of force whenever reasonably possible and consider alternatives to deploying force whenever those alternatives are safe, feasible and available. This standard is mindful of the fact that decisions about the deployment of force must on occasion be made very quickly and without the opportunity for prolonged consideration. But it also establishes that the application of any form of force, either deadly or falling under the range of "non-deadly" force alternatives such as tasers, batons, control holds

---

[1] *Tennesee v. Garner*, 471 US 1 (1985).
[2] *Graham v. Connor,* 490 US 386 (1989).

or a wide range of other forceful compliance tactics, should never be a measure of first resort and should be deployed only when no alternative reasonably exists.

Secondly, it requires that law enforcement give a verbal warning prior to deploying any level of force against a person whenever reasonably possible, and to give the person an opportunity to comply.

Many Oregon law enforcement agencies have long since taken steps to codify in their own use of force policies much of what is contemplated by HB 4301. That said, the language of the statute itself is crucially important, not just as the articulation of what constitutes modern policing but because it serves as the legal and practical benchmark and minimum standard for what Oregon considers acceptable under the law.

HB 4301 represents a tremendous step in codifying responsible policing methodologies that establish that the use of force is and should always be a measure of last resort. We urge the passage of this bill.

Contact: Aaron Knott – Legislative Director (aaron.d.knott@doj.state.or.us)