

HB 4301 STAFF MEASURE SUMMARY

Carrier: Sen. Manning Jr

Joint Committee On Policies for the Second Special Session

Action Date: 08/10/20

Action: Do pass.

Senate Vote

Yeas: 2 - Manning Jr, Prozanski

Nays: 1 - Heard

House Vote

Yeas: 3 - Bynum, Fahey, Lewis

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Gillian Fischer, Counsel

Meeting Dates: 8/10

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:

- Definition of provocation limitation on self-defense
- Tribal sovereignty and policing
- Measure provisions

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Prior to the First Special Session of 2020, 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 First Special Session of 2020, House Bill 4203 was enacted, which limited an 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 no requirement for a peace officer to consider alternatives to deadly physical force.

HB 4301 STAFF MEASURE SUMMARY

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*.

House Bill 4301 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.