



Testimony in Support of House Bill 3164 with the -1 Amendment  
House Committee on Judiciary  
Subcommittee on Equitable Policing

Speaker of the House Tina Kotek  
February 24, 2021

Colleagues, thank you for the opportunity to provide testimony in support of House Bill 3164 with the -1 amendment. I am bringing this bill forward in collaboration with the ACLU of Oregon. This bill, while technical in nature, has a simple goal: to prevent unjustifiable arrests that disproportionately impact communities of color and people experiencing homelessness.

In August 2020, *The Oregonian* [profiled](#) the use of ORS 162.247, the statute establishing the misdemeanor offense of interfering with a peace officer (IPO), in an article titled “Hundreds of Protesters Have Been Charged with Interfering with a Peace Officer. But Should It Remain a Crime?” The article made the following points clear:

- Black and brown Oregonians have been disproportionately charged with IPO;
- Oregonians experiencing homelessness are disproportionately charged with IPO; and
- IPO charges have continued to grow, even after court rulings have made clear the limitations of that authority.

The statute is being misused, resulting in arrests for non-criminal behavior. These arrests stifle Oregonians’ first amendment rights and damage public trust in policing. This is not solely a Portland problem:

- In Corvallis in 2019, a college student was stopped by an officer for allegedly riding her bicycle outside of a designated lane. The officer threatened the student with arrest if she did not identify herself. After she legally refused, officers physically detained the student and charged her with IPO and resisting arrest. No traffic violation was issued. Here, the officer did not have the authority to order the student to show identification. The officer’s order was unlawful, and the officer did not have the authority under the IPO statute to arrest the student. Even if the officer’s order was lawful, the student’s noncompliance is not criminal behavior, both under statute and according to recent Oregon Supreme Court rulings.
- In Medford last year, a journalist for a local radio station was arrested after allegedly walking a different direction than an officer had ordered and then charged with second-degree criminal trespassing, IPO, and resisting arrest.

These are just two of the many examples where IPO is not being applied according to the legislative intent of ORS 162.247, and they certainly do not comply with Oregon Supreme Court rulings.

Oregon law specifically prohibits the charge of IPO when a person is passively resisting. This can mean, among other things, civil disobedience, failure to comply, ignoring an officer’s order, or remaining on the sidewalk when an officer tells you to leave.

In *Oregon v. McNally* (2017), the Oregon Supreme Court ruled that passive resistance includes any “noncooperation with a peace officer’s lawful order that does not involve violence or active measures, whatever the motivation for the noncooperation and regardless of whether the noncooperation takes the form of acts, techniques, or methods commonly associated with civil rights or other organized protest.” The matter before the court in *McNally* concerned an individual at a bus station who argued with a ticket agent and then refused to leave the bus station when ordered to by police.

HB 3164 with the -1 amendment seeks to make the statute explicitly clear. The -1 amendment prohibits a person from intentionally or knowingly acting in manner that prevents an officer from performing their lawful duties with regard to another person or a criminal investigation. This change removes the opportunity for confusing an officer’s authority to give an order and instead focuses on deterring behavior that actually prevents an officer from doing their job.

With the -1 amendment, “knowingly” would mean a person is acting with “an awareness” that their behavior is of the kind that would prevent an officer from performing their duties. Simply frustrating an officer by failing to adhere to or comply with their direction is not criminal behavior.

Lastly, the -1 amendment prevents charge stacking, a practice that was observed throughout last summer in Portland. This follows the logic of the existing provisions in ORS 162.247(3)(a), which prohibits the charge of IPO and resisting arrest for the same action.

Colleagues, we all know law enforcement officers have difficult jobs. It is important that they have the tools they need to enforce the law. But, misuse of IPO erodes public trust and ultimately undermines their ability to serve the public. We have an important opportunity with this bill to reaffirm the original intent of the law and, in the process, remove any doubt about how the law should be applied. It is my expectation, if passed by the legislature, that law enforcement will apply the law correctly.

I urge your adoption of the -1 amendment and passage of House Bill 3164.

Thank you for your time and consideration.