



STATEMENT IN OPPOSITION: SB 399 **(INTERFERING WITH A PEACE OFFICER)**

To: Senate Committee On Judiciary and Ballot Measure 110 Implementation
From: Michael Selvaggio, Oregon Coalition of Police and Sheriffs
Date: March 1, 2021

Chair Bynum and Members of the Committee:

For the record, my name is Michael Selvaggio, representing the Oregon Coalition of Police and Sheriffs (ORCOPS).

Notwithstanding the intention behind SB 399, ORCOPS opposes the measure as drafted. We suggest an alternate approach to addressing ORS 162.247 that hews more closely to recent case law.

In *Oregon v. McNally* (2017), the Court found that an individual engaging in peaceful noncooperation with a lawful order of a peace officer that does not involve active conduct was in fact engaging in “passive resistance” per ORS 162.247 regardless of “protest activities” and therefore not subject to a charge of interfering with a peace officer per subsection 3 of that section. In *Oregon v. Kreis* (2019), the Court found that a “lawful order” must be supported by reasonable suspicion.

Regardless of the effect of the Court’s ruling on policy or practice of policing, ORCOPS respects the Court’s decision and does not object to making conforming changes in statute.

However, SB 399 drastically constrains the act of “Refus[ing] to obey a lawful order” from constituting a violation of ORS 162.247 (interfering with a peace officer). This goes significantly further than conforming to recent Supreme Court decisions, as the Court at no point relieved individuals of the responsibility to obey lawful orders, nor the ability of law enforcement officers to issue orders: rather, the Court more carefully defined what constitutes a “lawful order” as well as expanded the definition of “passive resistance.”

Law enforcement officers are often able to utilize ORS 162.247 to intervene in lawless situations at the point of being Violations before those situations escalate to more serious crimes.

Removing the ability of officers to lawfully order the cessation of a Violation (which, in itself, an officer is not empowered to arrest a person for) would force officers to simply bear witness to (and issue citations for) conduct until after a serious offense conferred to the officer the ability to physically restrain such conduct.

Language that would more hew to the Court's rulings as well as preserve tools that enable officers to intervene in situations prior to escalation would be as follows:

(1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670):

(a) Intentionally **or knowingly** acts in a manner that prevents, or attempts to prevent, [a] **the** peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person **or a criminal investigation**; or

(b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

(2) Interfering with a peace officer or parole and probation officer is a Class A misdemeanor.

(3) This section does not apply in situations in which the person is engaging in[:

(a) *Activity that would constitute resisting arrest under ORS 162.315; or*

(b)] passive resistance, **regardless of whether that person is engaged in protest activities.**

(4) For the purposes of this section, a "lawful order" must be an order that is predicated on an officer's reasonable suspicion that the person to whom the order was given had committed or was about to commit a crime.

(Some changes suggested to subsection 1(a) above are from HB 3164, to which ORCOPS submitted similar testimony.)