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MEMORANDUM

TO: Honorable Sen. Floyd Prozanski, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony regarding SB 399 -1

DATE: 3/2/2021

SUMMARY

The Multnomah County District Attorney's Office commends Senate Bill 399 for making needed changes to the crime of Interfering with a Peace Officer. However, because we are concerned that the language in the -1 amendments has the potential to create significant interpretive difficulties, we would urge the committee to further refine this bill.

BACKGROUND

Under Oregon law, the charge of Interfering with a Peace Officer (IPO) is a Class A misdemeanor punishable by up to 364 days in jail. This charge can be proven either by demonstrating that a person intentionally acted in a manner that prevented or attempted to prevent a peace officer from performing their lawful duties with regards to another person, or by demonstrating that the person refused to obey a lawful order by the peace officer.

Oregon's criminal statutes are generally highly specific about the behavior they are meant to prevent. In this regard, the crime of Interfering with a Peace Officer is exceptionally broad. The statute does not clarify whether a refusal to obey a lawful order must involve an overt act, and treats all orders given as equal, regardless of the circumstances, the level of risk to the officer, or the severity of the person's conduct.

A 2021 study by Oregon's Criminal Justice Commission on the crime of Interfering with a Peace Officer concluded that arrests for IPO increased by 140% between 2010-2020

while convictions increased only 50% during the same time period. While part of this gap can undoubtedly be attributed to the dismissal of the charge of IPO as part of a plea bargain, it also reflects that the charge of IPO is frequently declined for prosecution by District Attorneys. Not every refusal to obey a lawful order results in an IPO, but some do. Because the statute does not require that the failure to obey the order present the risk of any harm to the officer or anyone else, the enforcement of IPO can at times appear arbitrary, and even those who believe they are complying with an order may find themselves subjected to the charge.

It must also be mentioned that the data reflects significant racial disparities in the relative rates of arrest for the crime of IPO. Per the Criminal Justice Commission, a Black person is roughly three and a half times more likely to be arrested for IPO than their overall representation in Oregon's census would suggest.

ANALYSIS

SB 399 as amended by the -1 amendments recognizes the need to reform the IPO statute to address these concerns. However, as written, the proposal inserts new terminology with the potential to create significant interpretive issues. Specifically, the amendment states that a person commits the crime of IPO if they refuse to obey a lawful order by a peace officer *that is necessary for the officer's performance of lawful duties with regard to another person or criminal investigation.* (emphasis added)

The term "necessary" has the potential to create significant ambiguity in the application of this statute. The proposal does not outline a standard under which the necessity of an order should be determined. While it is possible to imagine several legal standards which might theoretically be applied, any standard created will be new and will require extensive judicial interpretation. Insofar as SB 399 seeks to create additional clarity to law enforcement, prosecutors and the citizens of Oregon as to how this crime will be charged and prosecuted, this new language has the potential to be counterproductive.

We stand ready to work collaboratively to address these concerns.

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