

**HB 3164 A STAFF MEASURE SUMMARY**

**Carrier:** Rep. Kropf

**House Committee On Judiciary**

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**Action Date:** 03/25/21

**Action:** Do pass with amendments. (Printed A-Eng.)

**Vote:** 9-0-1-0

**Yeas:** 9 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Power, Wallan, Wilde

**Exc:** 1 - Noble

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Gillian Fischer, Counsel

**Meeting Dates:** 2/24, 3/8, 3/10, 3/23, 3/25, 4/6, 4/6

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**WHAT THE MEASURE DOES:**

Modifies the behavior constituting the crime of interfering with a peace officer. Provides that a person may not be arrested for or charged with interfering with a peace officer or parole and probation officer for conduct that would constitute any other criminal offense. Declares an emergency, effective on passage.

**ISSUES DISCUSSED:**

- Law enforcement and prosecutorial charging discretion
- Intent of exempting passive resistance from criminal behavior encompassed by statute
- Impact on law enforcement ability to enforce existing laws
- Interference with First Amendment rights

**EFFECT OF AMENDMENT:**

Replaces the measure.

**BACKGROUND:**

Under current law, a person commits the crime of interfering with a peace officer if that person refuses to obey a lawful order by the peace officer or parole and probation officer, unless the person is refusing to obey as an act of passive resistance.

The term "passive resistance" is not defined in statute. In 2017, the Oregon Supreme Court decided *State v. McNally*, 361 Or. 314, (2017) and created a definition that provides a framework for courts to determine when conduct is protected as passive resistance and excluded from criminal prosecution. The definition articulated by the McNally court of the term 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."

House Bill 3164 A narrows the scope of conduct encompassed by the statute by limiting the criminality of a refusal to obey an order to circumstances when an officer is performing duties regarding another person or conducting a criminal investigation and the behavior prevents the performance of said duties. It also prohibits the arrest of a person for interfering with a peace officer for conduct that would constitute any other criminal offense.