



March 2nd, 2021

Committee on Judiciary and Ballot Measure 110 Implementation
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: SB 399, Interfering with a Police Officer

Chair Prozanski, Vice Chair Thatcher and members of the committee,

My name is Andrea Valderrama, and I am here representing the American Civil Liberties Union of Oregon (ACLU of Oregon). We are a nonpartisan, nonprofit organization dedicated to the preservation and enhancement of civil liberties and civil rights, with more than 28,415 members and supporters statewide. We'd like to thank Chair Prozanski for bringing this important bill and conversation forward.

Law enforcement is using ORS 162.247 incorrectly, wielding the spectre of criminalization for those who dare disobey any command. Law enforcement do not need nor should they have such broad authority to arrest Oregonians for mere disobedience, without any required public safety nexus or necessity for a given order. It is no surprise that this tool has been used to criminalize free expression of speech, criminalize those gathered with a civic and democratic message challenging how we invest in police, criminalize First Amendment protected press reporting on police activities, or criminalize people for asserting their constitutional rights to remain silent. This tool has also been disproportionately used against Black Oregonians and houseless Oregonians¹. Officers should follow the law, and the court precedent is clear: the breadth of unnecessary authority afforded in ORS 162.247 is not lawful and restricts constitutional freedoms.

We also submitted testimony in support of HB 3164² and shared similar feedback. We appreciate the changes proposed in the -1 Amendment to SB 399³ including:

- 1. Maintaining language on passive resistance in 3 (b).** ORS 162.247 cannot be applied when someone is participating in passive resistance, and the Oregon Supreme Court, in *Oregon v. McNally*, clarified that passive resistance is a broad exception. This should be included in the bill.
- 2. Prohibiting charge stacking.** Charge stacking drives mass incarceration and racial disparities in the justice system and should be prohibited where possible.

In addition to the changes of the -1 Amendment, we believe an appropriate application of refusing to comply would also meet the definition of 1(a), so (1)(b) should be deleted.

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<https://www.oregonlive.com/crime/2020/08/hundreds-of-protesters-have-been-charged-with-interfering-wit-h-a-peace-officer-but-should-it-remain-a-crime.html>

² <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3164>

³ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/ProposedAmendment/18372>



We've heard the repeated claim that those in the streets are not engaged in speech but rather conduct that law enforcement can punish based on the logic that a wide breadth of actions constitute interfering with a peace officer for refusing to obey a lawful order. However, the breadth of these laws gives police unnecessarily wide and harmful latitude to unleash severe and life-threatening levels of force against the public. These laws also unfairly encumber people like journalists and medical graduate students with arrest and criminal records when they are engaging in press activity protected by the First Amendment or providing first aid to hurt protesters.

The ACLU of Oregon looks forward to working with this committee to refine the language of SB 399.

Thank you,

Andrea Valderrama
Policy Director
ACLU of Oregon