



Testimony in Support of House Bill 3164A
Senate Committee on Judiciary and Ballot Measure 110 Implementation

Speaker of the House Tina Kotek
May 12, 2021

Colleagues, thank you for the opportunity to provide testimony in support of House Bill 3164A. 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.

This bill passed out of House Judiciary unanimously and comes to you with bipartisan sponsorship and a bipartisan floor vote of 48-10. I want to thank Senator Prozanski for working with me to produce this bill in its final form for your consideration today.

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. 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 nebulous nature of the statute results in misuse, producing 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 was not criminal behavior under the statute and *McNally* decision.
- In Medford last year, a journalist for a local radio station was arrested after allegedly walking in a different direction than an officer had ordered and then charged with second-degree criminal trespassing, IPO, and resisting arrest.
- In Washington County an individual was arrested for walking away from an officer who told her to “stop” after refusing to show proof of her TriMet train fare. She was incarcerated for 183 days due to an absolute failure of the system. The opinion of the Oregon Appeals Court in *State v. Bledsoe*, published on May 5th, 2021, focused heavily on deciphering the legislative intent behind ORS 162.247, affirming the need to further clarify the law.

After concurring with the majority opinion, one Justice wrote the following:

“Based on a failure to pay a train fare, and her ‘refusal to obey’ an order by calmly continuing to walk down the train platform, Ms. Bledsoe spent six months incarcerated in Oregon awaiting trial. Her experience in the criminal justice system—and specifically with the charge of IPO—is, unfortunately, not unique; it is mirrored by many persons in Oregon who live in the margins, and who find themselves caught in a revolving door of low-level petty offenses and frequent police contact [...] Whether a defendant is arrested and charged with IPO, in addition to whatever was the basis of the stop originally, largely turns on the subjective perceptions of the officer about the attitude of the defendant during the police-citizen encounter. That subjective aspect of IPO provides an open door for implicit bias [...]”.

HB 3164A seeks to make the law explicitly clear. The bill prohibits a person from intentionally and **knowingly** acting in a 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.

“Knowingly” means 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 bill prevents charge stacking while maintaining officer and prosecutorial discretion for the exact charge levied. This follows the existing logic in ORS 162.247(3)(a), which prohibits the charge of IPO and resisting arrest for the same action.

Colleagues, we all appreciate that law enforcement officers have difficult jobs. It is important that they have the tools they need to enforce the law. But the subjectivity and 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.

I urge swift passage of HB 3164A.

Thank you for your time and consideration.