



**STATEMENT: HB 3164-1**  
**(INTERFERING WITH A PEACE OFFICER)**

**To:** House Subcommittee on Equitable Policing  
**From:** Michael Selvaggio, Oregon Coalition of Police and Sheriffs  
**Date:** February 24, 2021

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Chair Bynum and Members of the Committee:

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

With regard to 3164-1 amendments to HB 3164, a portion of the measure appears to bring statute into compliance with recent decisions by the Oregon Supreme Court. In *Oregon v. McNally* (2017), the Court found that an individual engaging in 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, the amendment 3164-1 strikes the act of “Refus[ing] to obey a lawful order” from constituting a violation of ORS 162.247 (interfering with a peace officer). This in fact goes significantly further than conforming to 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.”

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.**

ORCOPS has no objection to subsection 4 of the 3164-1 amendment.