



## **Mike Schmidt, District Attorney**

**1021 SW Fourth Avenue, Room 602  
Portland, OR 97204-1912  
Phone: 503-988-3162 Fax: 503-988-3643  
[www.mcda.us](http://www.mcda.us)**

### **POLICY REGARDING PROTEST RELATED CASES**

Members of our community have taken to the streets every night since the murder of George Floyd to express their collective grief, anger, and frustration over not just that senseless act of violence, but the countless other abuses People of Color have endured in our country throughout history. The demands for change go beyond calling for an end to police violence and encompass the need for all of us to acknowledge and address centuries of racism and oppression that are manifested in mass incarceration, economic inequality, educational disadvantages, and disparities in health care that have allowed COVID-19 to ravage our communities of color.

As prosecutors, we acknowledge the depth of emotion that motivates these demonstrations and support those who are civically engaged through peaceful protesting. We recognize that we will undermine public safety, not promote it, if we leverage the force of our criminal justice system against peaceful protestors who are demanding to be heard.

The Multnomah County District Attorney's Office will always strive to advance the safety of our community and its members. We recognize the need to broaden our vision of what a safe community means and our role in promoting that vision. To advance public safety we must not only prevent crime, but must also promote economic and housing stability, educational opportunities, strong family and community relationships, and the mental and physical health of all those who live in our county.

Seen through that lens, the prosecution of cases relating solely to protest activities, most of which have a weak nexus to further criminality and which are unlikely to be deterred by prosecution, draws away from crucially needed resources. As stewards of public resources, we must devote our efforts to prosecuting crimes that allow us to protect our most vulnerable victims to have the greatest impact on promoting a safer community for everyone in Multnomah County.

For these reasons, our Office will apply the following presumptions to all referred cases arising from the current protests in our community. A prosecutor choosing to decline to prosecute a case is not condoning or endorsing the conduct that led to the arrest and/or citation. A decision to not prosecute a case is not a comment on whether or not the arrest was lawful. As with all presumptions, where an individual case presents unusual, aggravating circumstances, line prosecutors may obtain supervisor approval to proceed with the case.

August 11, 2020

## 1. **Presumption of dismissal/declination:**

We will presumptively decline to charge cases where the most serious offenses are city ordinance violations and crimes that do not involve deliberate property damage, theft, or the use or threat of force against another person. Crimes in this category include:

- Interference with a police officer, ORS 162.247
- Disorderly conduct, ORS 166.025
- Criminal trespass, ORS 164.245 and 164.255
- Escape III, ORS 162.145
- Harassment, when classified as a Class B misdemeanor, ORS 166.065
- Riot, ORS 166.015 – Unless accompanied by a charge outside of this list

## 2. **Resisting Arrest, ORS § 162.315:**

Any charge of resisting arrest that arises from protesting activity should be subjected to a high level of scrutiny by the issuing deputy. Consideration should be given to the chaos of a protesting environment, especially after tear gas or other less-lethal munitions have been deployed against protestors en masse. Issuing deputies will consider the following (non-exclusive) list of factors prior to issuing a protest related resist arrest charge:

- Did law enforcement have probable cause for the arrest for a crime beyond those listed in Sec II (1) of this policy?
- Had the defendant been recently subjected to tear gas or other less lethal force? Were they otherwise in pain, or unable to hear, breathe or see at the moment the resistance occurred?
- Was the character of the resistance unreasonably severe?
- Did the act of resistance result in injury to the officer?
- What level of force was applied by the officer, and did they make any reasonable available attempt to de-escalate before making the arrest?
- Has all available video evidence been received and reviewed?

Due to the sensitive and difficult nature of these cases, issuing deputies are encouraged to consult with their senior or chief DDA or the First Assistant as necessary prior to making a final decision to issue the case.

A DDA who wishes to issue a misdemeanor case that includes a resisting arrest or attempted assault of a public safety officer must obtain the approval of the senior deputy of either the Strategic Prosecution and Services Unit, Misdemeanor Trial Unit, or Pretrial Unit.

### **3. Assaulting a Public Safety Officer/ Attempted APSO – ORS 163.208:**

Any charge of assaulting a public safety officer, or attempting to assault a public safety officer, which arises from protesting activity should be subjected to a high level of scrutiny by the issuing deputy. Consideration should be given to the chaos of a protesting environment, especially after tear gas or other less-lethal munitions have been deployed against protestors en masse. Issuing deputies will consider the following (non-exclusive) list of factors prior to issuing a protest related charge of assaulting a public safety officer:

- Did law enforcement have probable cause for the arrest for a crime beyond those listed in Sec II (1) of this policy?
- Had the defendant been recently subjected to tear gas or other less lethal force? Were they otherwise in pain, or unable to hear, breathe or see at the moment the assaultive conduct occurred?
- If the allegation is that of a completed APSO, is there adequate documentation of the specific cause of the injury and of the severity of the injury?
- If the allegation is that of an attempted APSO, the level of scrutiny shall be even greater than that of a completed act.
- Has all available video evidence been received and reviewed?

Due to the sensitive and difficult nature of these cases, issuing deputies are encouraged to consult with their senior or chief DDA or the First Assistant as necessary prior to making a final decision to issue the case.

A DDA who wishes to issue a misdemeanor case that includes a resisting arrest or attempted assault of a public safety officer must obtain the approval of the senior deputy of either the Strategic Prosecution and Services, Misdemeanor Trial, or Pretrial Unit.

### **4. Presumption of conditional dismissal:**

Where an individual is accused of a misdemeanor or felony causing financial but not physical harm to another during a protest, there will be a presumption that the individuals will either be offered conditional dismissal after restitution is paid to the victim or other amends to the community are made, including restorative justice with the impacted victim. The District Attorney expects that, to qualify for a dismissal, the individual will complete all requirements within a three-month time span. Offenses in this category include:

- Criminal mischief, in an amount under \$1000, ORS 164.345, 164.354. A conditional dismissal may also be granted in an amount higher than \$1000 if the damage is entirely due to vandalism.
- Theft, in an amount under \$1000, ORS 164.015, 164.043, 164.045, 164.055(1)(b).
- Burglary II if combined with the above, ORS 164.215.

A person is eligible for this dismissal where the charges resulted in response to a single

criminal incident. Where immigration consequences are or may be implicated, line prosecutors will discuss resolutions with their supervisor prior to extending a conditional dismissal offer.

**5. Offenses handled in the normal course:**

All other offenses, including those that allege acts of physical violence against civilians will be handled according to our general office policies.

In all cases where charges are declined or dismissed, this office will make available information on the procedure to set aside the record of arrest, and will support these motions in every way permissible under law.