



**Testimony of Becky Straus, Legislative Director  
In Opposition to HB 2204, HB 2408, and HB 2409  
House Committee on Judiciary  
March 7, 2013**

**HB 2204**

ACLU is in support of the provisions to recalibrate the weight thresholds for penalties for marijuana-related offenses to better match the federal classifications. These provisions are identical to changes proposed in HB 3195 and are being considered in the Joint Public Safety Committee along with HB 3194, which makes the same changes to the weight thresholds but preserves current law in that it does not add “plants, seeds, and starts” to penalty measurements as is proposed in HB 2204 and HB 3195.

In regard to HB 2204, the ACLU is opposed to provisions in Section 3 that create the strict liability offenses of delivery or manufacture of heroin or oxycodone and 1) the user dies as a result of the use (58-130 months) or 2) the user sustains serious physical injury as a result of the use (34-72 months). The former proposal seems to be an attempt to replicate the Len Bias law here in Oregon – the federal law that imposes a mandatory minimum sentence for death caused by delivery of certain substances.

We encourage the committee to take up these issues in the context of the larger discussion this session related to public safety reform, where all relevant factors can be studied and considered.

**HB 2408**

HB 2408 breaks out three crimes – cocaine, heroin, and methamphetamine – from those already included in the “endangering the welfare of a minor” statute and it elevates the crime in the context of these substances from a Class A misdemeanor to a Class C felony.

The ACLU is very concerned about this bill and respectfully we urge you to think comprehensively about our public safety system rather than engage in this piecemeal policymaking. When considered individually, certain crimes or substances in certain contexts may be deemed worthy of a penalty enhancement, but moving forward in this way seems inconsistent with the work and goals of the Public Safety Committee that is studying in depth our criminal justice system, its priorities, and its fiscal realities. Similar to our recommendation above, we hope you will consider this concept in the context of the larger public safety discussions.

## **HB 2409**

HB 2409 expands the “1,000 foot rule” to include preschools, so that a person charged with a qualifying offense will receive a penalty enhancement if that crime took place within 1,000 feet of a preschool. The ACLU is opposed to the use of enhancement zones for certain crimes, but we also want to point out that adding preschools to this law is especially problematic.

In general, enhancement zones cover so much ground in a community that they are very likely to achieve the deterrent effect that their enactment assumes. 1,000 feet is the length of 3 football fields. From that distance, it is very difficult for persons to have any idea that they are in an enhancement zone. Moreover, these laws disproportionately penalize persons in urban areas, who may be engaging in the criminal activity in their own home but, because of the density of these areas, are much more likely to be 1,000 feet from a school than a person engaging in the same conduct in his or her home in a rural area.

HB 2409 exacerbates these inequities not only because of the ubiquity of preschools (undefined in the bill) but also because of the high likelihood that preschools are less conspicuous than, for example, an elementary school. Often times a preschool is located within someone’s home or a community or religious building. Other times the preschool is marked only by a small sign in the window or in front.

We request that you refrain from moving this bill. Thank you for your consideration.