



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 4, 2014

The Honorable Jeff Barker, Chair
The Honorable Brent Barton, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: HB 4094

Dear Chair Barker, Vice-Chairs and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of HB 4094.

1. Alcohol use by persons under age 21 years is a major public health problem. The 2013 Center for Disease Control Factsheet on Underage Drinking¹ states that alcohol is the most commonly used and abused drug among youth in the United States and is responsible for more than 5,000 annual deaths among underage youth. Although youth drink less often than adults do, when they do drink, they drink more. Of the people aged 12 to 20 years who drink alcohol, more than 90% of this alcohol is consumed in the form of binge drinking. In 2010, there were approximately 189,000 emergency rooms visits by persons under age 21 for injuries and other conditions linked to alcohol.

2. Oregon is not the first state to propose a medical assistance exception, or Good Samaritan defense, to MIP law. North Dakota², Michigan³, Texas⁴, Washington⁵, and thirteen other states have similar exceptions, which provide immunity from prosecution for individuals under 21 if they contact law enforcement or emergency medical services or another or were themselves in need of medical assistance. In fact, Washington has a statute⁶ that provides immunity from prosecution of possession a controlled substance if a

¹ <http://www.cdc.gov/alcohol/fact-sheets/underage-drinking.htm> (last updated: December 26, 2013).

² *N.D. Cent. Code Ann.* § 5-01-08.

³ *Mich. Comp. Laws Ann.* § 436.1703.

⁴ *Tex. Alco. Bev. Code Ann.* § 106.05.

⁵ *Wash. Rev. Code Ann.* § 66.44.270.

⁶ *Wash. Rev. Code Ann.* § 69.50.315.

person acts in good faith and seeks medical assistance for someone experiencing a drug-related overdose. Washington's laws have created awareness among young people that they can summon assistance if their friends are in trouble, without fear of arrest or police involvement, which researchers continually identify as a significant barrier to the ideal response of calling 911.

3. By including the following language, Oregon's HB 4094 is narrowly crafted to allow prosecution for crimes and offenses other than MIP as a result of a person seeking medical assistance for alcohol poisoning:

- "Paragraph (a) of this subsection does not exclude the use of evidence obtained as a result of a person's having sought medical assistance in proceedings for crimes or offenses other than a violation of this section."⁷

In other words, law enforcement can prosecute a sexual assault as a result of evidence obtained from a person having sought medical assistance for alcohol poisoning.

Additionally, HB 4094 is narrowly crafted to require that the person seeking medical assistance for another have a "reasonabl[e] belie[f]" that the person is suffering from alcohol poisoning. Crafting the language by imposing a standard of reasonability precludes frivolous claims of immunity under this law. Furthermore, because HB 4094 requires that a person seek or obtain medical assistance, the bill precludes a situation where law enforcement respond to a party and minors at the party try to claim immunity under MIP law by alleging that they were about to seek medical assistance for an unconscious friend. This bill requires that minors seek medical assistance, as evidenced, for example, by a call to 911 or a trip to the emergency room.

4. In conclusion, alcohol poisoning is common in this age group because of binge drinking. The first priority should be to ensure that medical personnel get involved right away. This bill can save lives by increasing timely medical attention to alcohol poisoning victims because it conveys the message that preserving life outweighs an MIP charge.

Thank you for your consideration of these comments. Please do not hesitate to contact me or OCDLA's legislative lobbyist, Gail Meyer, if you have any questions.

Respectfully submitted,

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⁷ HB 4094, 2014 Legislative Session.