



DISABILITY RIGHTS OREGON

February 10, 2014

TO: Jeff Barker, Chair
House Judiciary Committee

FR: Bob Joondeph
DRO Executive Director

RE: HB 4036

Disability Rights Oregon applauds efforts to keep our state hospital safer and more treatment-oriented, but we oppose HB 3036 because, overall, it will not accomplish that goal

If passed, it will transform the penalty for intentionally or knowingly causing physical harm to a state hospital staff member from a Class A misdemeanor to a Class C felony. It would increase the penalty to up to five years in prison as opposed to one year in county jail. The only patients that would be eligible for this enhanced penalty are those committed to OSH after being found guilty except for insanity of any crime.

The state hospital is not a prison. It is, however, highly restrictive. Patients are in the hospital to receive treatment that is designed to allow them to safely return to society. The time of a patient's release is primarily dictated by how she progresses in treatment and how she behaves. While there, most aspects of a patient's life are under the control of staff. Patients may be subject to involuntary treatment with medication and other intrusive therapies, seclusion, mechanical restraint and a variety of security and privilege restrictions.

HB 2024 focuses on a subset of patients who are in the hospital following an insanity defense. Those patients are generally sentenced to an indefinite period of time not to exceed the maximum sentence they could have received had they been convicted. Their release is highly correlated

to ongoing assessments of their dangerousness. They have very significant incentives to follow their treatment plan and hospital rules.

DRO opposes HB 4036 because:

The bill reinforces a national trend to criminalize mental illness. Far too many men and women with mental illness are in our criminal justice system.

All patients and staff should be held to the requirements of Oregon law as equal citizens. The same behavior should be penalized in the same manner for all.

Given the huge incentives for competent patients to control their behavior and the power that staff members have to physically manage them, heightened criminal penalties for prosecutable cases are unlikely to deter knowingly assaultive patients.

The 2013 legislature provided the Marion County District Attorney's office with additional resources to prosecute alleged assault by patients. This committee should consider whether this has resulted in additional prosecutions and if such prosecutions have created a greater deterrent for patients.

We believe that HB 4036 will encourage and support the view that OSH is the equivalent of a correctional institution and that the patients should be treated as inmates. If there remains a "culture" at the state hospital that holds this perspective, it is the one that state officials and the US Department of Justice have identified as needing to change. Rather than relying upon the threat of punishment to control patients, evidence-based practices of behavioral assessment, using planning and clinically-directed response by trained staff have been shown to be successful in reducing institutional violence.

Thank you for this opportunity to voice opposition to HB 4036.