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Rep. Brent Barton
Rep. Mitch Greenlick
Rep. Wayne Krieger
Rep. Andy Olson
Rep. Bill Post
Rep. Sherrie Sprenger
Rep. Jennifer Williamson
Jeff Rhoades, Committee Counsel and Administrator

Re: HB 2936

To the Members of the House Committee on Judiciary:

The Committee should summarily reject HB 2936. Its provisions would strip private citizens of essential and fundamental individual liberties while creating a new class of unlicensed, unregulated holding facilities with no minimum standards. If enacted, this bill would permit private companies to take private citizens into custody and hold them against their will at secret locations for indefinite periods of time without review by a magistrate. This ill-conceived bill would deny public access to any information about persons taken into custody and held at such facilities. Additionally, HB 2936 would grant civil and criminal immunity to private organizations and businesses that operate this new class of private holding facility.

In Oregon, alcohol treatment is a highly regulated activity. The terms "detoxification center" and "treatment facility" already are defined by ORS 430.306. Detailed definitions and standards applicable to existing detoxification centers and treatment facilities are set forth at chapter 415, division 50 of Oregon Administrative Rules. Strict standards must be satisfied for a detoxification center or treatment facility to be approved by the Addictions and Mental Health Section of the Oregon Health Authority. As drafted, HB 2936 would result in the wholesale deletion of references to the Oregon Health Authority in ORS chapter 430.

The Legislative Assembly decided, in 1971, to end the longstanding practice of dealing with public drunkenness as a criminal offense. In so doing, the Legislature ended the practice of holding an intoxicated person in a "drunk tank." *See, State v. Okeke,* 304 Or 367, 370-71 (1987). *See, also, former* ORS 166.160, and *former* ORS 426.460. A central aim of this legislative reform was to redirect police responsibility toward taking intoxicated persons to their homes or other safe shelter rather than jailing them in a police "drunk tank." This reform mandated that when a person is incapacitated, in danger, reasonably believed to be a danger to self or others, or cannot be taken home, the person would be taken to an *appropriate* treatment facility.

Under the law, counties were permitted to contract with private nonprofit agencies to provide alcoholism treatment services. In the past, these agencies have been required to comply with minimum standards for alcohol and drug prevention and treatment programs in accordance with the rules, policies, priorities and standards of the Alcohol and Drug Policy Commission and the Oregon Health Authority. *See,* ORS 430.357. The *Okeke* court held that, in prosecuting a person who has been detained first by police officers and then held in such a facility against the person's wish, the state cannot escape constitutional requirements merely because the facility is managed by a contracting agency. If a city or county maintained a treatment facility to which police officers would deliver intoxicated persons in their custody, the application of constitutional standards could not be doubted.

HB 2936 would not only reintroduce the "drunk tank" to Oregon law, it would create a situation worse than the one that existed 35 years ago. A present-day "drunk tank" would not only not be a section of the county jail, supervised by the courts and an elected sheriff, but also would be nothing more than a holding facility with no government standards or regulations at all.

At least one "sobering facility" already is in operation in Oregon. There, persons are confined to locked cells. No one enters voluntarily. No one is free to leave. The conditions are deplorable. Persons who are brought there are confined in small, concrete cells with as many as five or six other persons. Each cell has an unenclosed toilet and no windows. Persons held in this place are given thin mats on which to sleep and may or may not be provided with a blanket. They are, however, provided with advertisements for the "treatment program" offered by the owner of the "sobering facility." Their detention is never reviewed by a magistrate or judge.

HB 2936 would allow a "sobering facility" to hold a private citizen in custody for an indefinite period of time, or "until the person regains sobriety." The bill, however, does not define "sobriety." Although it is generally recognized that the ability to drive a motor vehicle is impaired if the person's blood alcohol content is over .08 percent, by volume, our laws provide no definitions for the terms "sober" or "sobriety." Therefore, the owners and operators of "sobering" facilities would have the authority to adopt their own definitions and apply their own standards in deciding how long to hold the persons delivered to them. By one popular definition, a person can achieve a state of "sobriety" only by successfully completing the Twelve Steps of Alcoholics Anonymous and turning over his or her will and life to the care of a "higher power." For other purposes, such as deciding whether or not to release a person from jail, a person is typically considered "sober" when a breath test indicates an estimated blood alcohol content of .05 percent. This bill establishes no control over the decision to release a person from custody. The bill requires no training that would qualify a person to make a release decision. A person imprisoned at a "sobering facility" would remain in custody until someone working there decides to set them free.

HB 2936 allows owner and operator of any "sobering facility" the anonymity to hide from the press, the public and government. Information about the identities of the persons brought to any "sobering facility" following an arrest would never be disclosed. Unlike medical facilities that have an obligation to protect the confidentiality of their patients, "sobering facilities" provide no medical treatment, so federal and state confidentiality provisions do not apply to them. No city or county jail can operate outside of the public's scrutiny. Everywhere in Oregon, the names and

addresses of persons arrested for crimes and placed in a jail are fully available to the press and the public. No less should be required of any facility where a person is held after an arrest.

Under HB 2936, private business owners, employees and volunteers of a "sobering facility" would enjoy immunity that is broader and more liberal than that granted to licensed detoxification centers, treatment facilities and jails. Despite the lack of standards and supervision for persons who are not medical professionals, police or corrections officers, they would be permitted to imprison private citizens with impunity, and they would never be held accountable before a judge or a jury.

The bill's immunity provision is all the more outrageous in light of the lack of standards in the hiring, training or supervision of "sobering facility" staff and volunteers. There is no assurance that "sobering facility" workers would have any qualifications at all. As the bill is written, "sobering facility" employees and volunteers could themselves be criminals, addicts, sex offenders or mental patients. A "sobering facility" could be staffed by virtually anyone. A "sobering facility" could be unsanitary, unsafe and unhealthy. HB 2936 cedes the authority to determine these standards to a completely unregulated company, which could never be held politically responsible for its abuses or legally accountable for its acts and failures to act. Further, any person who suffered injury at this new class of holding facility would be required to show "malice" and "bad faith" in seeking a remedy against the private entity operating the holding facility. As members of this Committee undoubtedly are aware, "malice" is a legal standard that is virtually impossible to prove in any cause of action seeking to have a defendant held accountable for acts or omissions that caused damages. Persons who are injured or who suffer damages at a holding facility simply would have no remedy.

The sponsor and supporters of this bill are requesting that the Legislature declare an emergency, "for the immediate preservation of the public peace, health and safety." HB 2936 would have the opposite effect, in that it would degrade or completely jettison the provisions already in place that ensure the safe operation of existing, licensed detoxification centers and treatment facilities. I suggest that the perception of an emergency exists only in the minds of the bill's supporters in Josephine County, where voters have repeatedly opposed ballot measures to fund the operation of the local county jail. By establishing that "intoxication" justifies the creation of a new class of privately owned and privately operated jails, local police again would be able to assert the ability take private citizens to a place where they would be held in custody. Meanwhile, recent data compiled by the National Highway Traffic Safety Administration and Mothers Against Drunk Driving indicate that cases of driving under the influence of intoxicants are at a historical low. There simply is no emergency.

Respectfully submitted,

William Francis