CARINI & FRANCIS

ATTORNEYS
1555 E. McAndrews Road, Suite 302
Medford, Oregon 97504
(541) 779-5000
carinifrancis@gmail.com

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Re: HB 2936, relating to the establishment of private jails endowed with civil and criminal immunity

To the House Judiciary Committee:

HB 2936 should be rejected. The bill is a "Trojan Horse." It is presented as a bill concerned with substance abuse treatment, yet, by its definitions, content and context, it eschews even the pretext or inference that treatment is at issue. Perhaps it is nothing, but if this bill had something to do with healthcare, substance abuse treatment or mental health issues would not this bill be in front of a committee that deals with those issues such as the House Committee on Health Care? Instead, the bill is brought in the Judiciary Committee. The Judiciary Committee is the appropriate committee when the issue of a bill is a "jail."

> "What is in a name? that which we call a rose
> by any other name would smell as sweet."
> William Shakespeare

This bill is about the creation of a statutory scheme that permits and encourages the creation of privately owned jail facilities which are, in effect, immune from criminal and civil responsibility through negligent and reckless operation, a totally unregulated operation whose "prisoners" are provided through state action. A tow truck operator who is called by the police to tow a vehicle is held to a higher standard of care for that protection of that vehicle than the "sobering facility" operator would have toward a human being. There can doubt about that. That is what is before you. No amount of mischaracterizing this bill by its proponents, or "re-framing" can change what this bill is, and what it does.

> "Leave no authority existing not responsible to the people."
> Thomas Jefferson

HB 2936 creates a private business that can lawfully hold citizens in a cell, against their will, for an indeterminate amount of time, whether they have committed a crime or not. Private business people would have immunity from violation of criminal law and civil wrongs. They would be free from governmental oversight. They would be free from governmental restriction. They would be free from political oversight. Their books, papers and records would be kept free from the eyes of the public or the public's representatives. And the people that they hold in captivity would lose all liberty. Captives would have no right to habeus corpus, no right to judicial review, no right to contact the outside world to inform loved ones of their circumstance. The press would have no access and the people would be uniformed. That is the unacceptable consequence of this legislation. Take the doors off the cells and allow citizens the liberty to remain or leave a sobering center, at their will, and the vast majority of the defects of this legislation will be cured.

> "Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves."
> Ronald Reagan

The supporters of HB 2936 have provided written testimony that is before this committee. What should be noted are the various notions that each has for the purpose, mechanism and consequence of this proposed legislation.

State Representatives Stark and Wilson inform us that this legislation will "provide safe and clean environments where acutely intoxicated individuals are monitored until it is determined they are no longer intoxicated and it is safe for them to leave." I ask a simple questions. With what mechanism will those goals be enforced? As the Representatives point out in their written testimony, a "sobering center" is not a detox or treatment program. As such, there would be no jurisdiction or authority for the Oregon Health Authority to regulate the "sobering center".

With the grant of immunity for civil or criminal that this legislation provides, there would be no effective oversight by the judiciary either. Because the "sobering center" is non-governmental, there would be no political oversight or responsibility. The proposed amendment to the statute which is the subject of HB 2936 fails to define "intoxication," "acute intoxication," "monitored," and "safe for them to leave." Without definitions and mechanisms for implementation and monitoring of the goals sought, we are left depending on faith and trust of these yet to be known "sobering center" operators. Faith and trust is a poor substitute for enforceable laws.

OPERA provided written testimony. They also believe that these "sobering centers" will service "individuals acutely effected by drugs or alcohol.…" They believe that "the goal of all sobering facilities is to guide those in crisis situations in a direction that will best serve them as well as the community." Yet the proposed legislation does not speak to the issue of "guiding" people into treatment. Nor does it address the situation where the person brought to the "sobering centers" is not in "crisis," is not "difficult to manage," and does not seek to be "guided" in the direction that someone else feels is beneficial for that person. One gets the impression that OPERA is unaware that many of people brought to the "sobering centers" will be there against their will and will be locked in a cell until some person with unknown qualifications will allow them to leave.

Rita Sullivan from OnTrack provided written testimony. She believes that there is a "need to provide shelter in a safe, supportive environment for persons who are, due to their level of intoxication, assessed as at risk and need a safe place to sober up available 24/7." Yet, what standard is going to be used to "assess" whether a person is at risk? Since there are no standards to guide the "assessment," it's doubtful there will be a person at the "sobering center" qualified to make such an assessment. Given the lack of standards, any such "assessment" would be arbitrary. If the "sobering center" was using an arbitrary assessment, this legislation provides no mechanism to address or curtail that abuse.

Bob Morgan from ADAPT provided written testimony. He opines that "[t]he occurrence of individuals in the community who are overtly and publically under the influence of intoxicants represents both personal and public and even family safety issues." It should be noted that most European countries consider having a blood alcohol concentration of .05% to be "under the influence of intoxicants." By that definition a one hundred and forty pound woman would be "under the influence of intoxicants" is she drank two twelve-ounce bottles of beer. As lawyers know, there is an immense difference between a person who is deemed "under the influence" and one who is deemed "intoxicated." OLCC provides that servers cannot provide alcohol to persons who are visibly intoxicated. There is no prohibition for a licensed server to provide alcohol to persons who are "under the influence." Are we to round up everyone in a public tavern and deliver them to "sobering centers" because people in the alcohol rehabilitation industry have strong feelings that alcohol drinkers or pot smokers, per se, present personal, public and family safety issues?

Ryan Mulkins, Josephine County District Attorney presented written testimony. He points out that if a person is a danger to himself or others then that person cannot be taken by the police to "sobering centers." Instead, the law requires that they be taken to a "treatment facility". He recognizes that if the person is merely "under the influence" and the police want that person off the street then the police must take them to jail. He makes clear that it is legal to be under the influence and in the public at the same time. His concern is that Josephine County does not have jail space for people who may actually be breaking the law by committing disorderly conduct and as a result the police cannot stop that person from doing it again. He sees this proposed legislation as a means of providing non-governmental jail facilities for law enforcement.

Karla McCafferty from Options for Southern Oregon presented written testimony. She writes "[t]his proposed Center would employ specially trained staff to monitor and manage this population in a professional, ethical and safe manner." She goes on to state her belief that the "sober centers" will keep persons for "a brief period of time enabling treatment professionals to assess them and begin treatment with the goal of service engagement and recovery." ("Service engagement" is a soft way of saying being hired and paid.) However, this proposed legislation does not require "specially trained staff" to employ "professional," "ethical" and "safe" care. And there can be no treatment without being licensed as a treatment facility by OHA. In fact, this legislation eschews any such requirement. As much as we might have faith and trust in a particular individual or organization, it is a law that is being considered that will apply equally to all, even those who do not have faith and trust. And it is for that reason that responsibility and accountability is required for all operators of "sobering centers." That is one of the major flaws of this proposed legislation.

The Ausland Group provided to this committee a photo of the Moore Center in Medford, Oregon. That photo shows the proposed holding rooms. Anyone looking at that photo would recognize it as a poorly furnished jail cell.

Darin Fowler, Mayor of the City of Grants Pass, provided written testimony. He points out that "Grants Pass and Josephine County has been struggling with intoxicated and impaired persons who are unable to care for themselves, cannot get into treatment, and leave of City and County without options." He fails to recognize that "sobering centers" would not be dealing with persons who are "unable to care for themselves." The law makes clear that such individuals must be taken to a treatment facility. He states, "I feel that these people are in need of treatment and not jail space." Again, he fails to realize that a "sobering center" cannot provide "treatment" without being licensed to do so by OHA and the proponents of the legislation not want OHA regulating these facilities.

Dave Daniel, Sheriff of Josephine County provided written testimony. He laments not having money to properly staff his department or his jail. He opines, "Many of our citizens have needs we are unable to provide for and having a facility that could allow them to be sober in order to seek treatment is a win win. I cannot stress to you enough how important this is and what it would mean to our County should this get built and be able to operate in order to help our citizens." Sherriff Daniels apparently does not know that this legislation has nothing to do with treatment. And while he may have strong opinions about what is needed in his county, the people of his county have expressed, at the ballot box, an entirely different opinion. If anything is clear, the people of Josephine County have made clear that they do not want more government "help." That said, as has been pointed out in the district attorney's written testimony, other counties have sobering units up and running. They exist. This legislation is not needed for their existence. No one has answered why that cannot occur in Josephine County or why we have to make legislation that affects everyone, in every county of this state, just because of the perceived dysfunction in Josephine County by its elected officials. Lastly, if there is this groundswell of support for "sobering centers" in Josephine County, and there are treatment providers ready and eager to swing into action, and there are community leaders in support, and the jail is empty – why don't they just open a "sobering center" in the jail and have it manned by volunteers? That seems like a local solution to a perceived local problem, and with the added benefit of the democratic and constitutionally required political oversight and accountability.

Katy King of A.C.E.P provided written testimony. She writes, "These centers provide a safe and supportive environment for people who are publically intoxicated or alcohol dependent. They also decrease the number of ED visits for alcohol dependent individuals and create an alternative to booking individuals arrested for public intoxication." It is apparent that Mrs. King believes that "sobering centers" concern alcohol dependency and/or public intoxication. Alcohol dependent persons are persons in need of detoxification facilities. "Sobering centers" would not provide that service. She also seems to believe that people can be arrested and "booked" for public intoxication. Public intoxication is not a crime and a persons cannot be lawfully arrested for being intoxicated in public. Furthermore, the legislation does not require a referral to an alcohol treatment program. Such a referral might be seen by OHA as "treatment."

Representative Stark provided written testimony. It consists of a March 15, 2015, newspaper article concerning the jail bed shortage in some counties. The article has a photo of Grants Pass Chief Bill Landis standing in front a jail cell located in the basement of the Josephine County Courthouse. The Grants Pass Police is also located in the Josephine County Courthouse, just above the jail cells. This article was apparently presented to this committee to enlighten the members of the jail situation and the need for more funding for jails. Yet, the picture seems to present the solution to the real motivation for HB 2936 – the need for more places for the police to lodge people. If they need a place to put people who are intoxicated until they get sober enough to let back on the street, why not have those folk sit in those empty jail cells under the watchful eye of the local police or volunteers under the supervision of the elected official?

Alex Culyer, Intergovernmental Relations Manager of Lane County has provided written testimony. He speaks in terms of "services" and "crisis array" and a "menu of services." Reading that statement brings home what Ronald Reagan famously said: "The most terrifying words in the English language are: I'm from the government and I'm here to help." That aside, Mr. Culyer makes an interesting argument. He believes that "[w]ithout HB 2936 it will be much harder for many communities to justify investing in this intersection due to the absence of concrete policy language that will serve to protect local policing agencies. HB 2936 will provide police agencies with the equivalent protection from liability that they are currently afforded under ORS 430.401 by adding sobering facilities to that statute." That might be an interesting point to deconstruct, were it not a red herring. When, in Oregon, has there ever been a lawsuit brought against a police officer for taking a person to a treatment facility or a sobering unit?

Point to any any statement from any law enforcement person who has a sobering unit in their jurisdiction where they expressed or felt any reservation about taking an intoxicated person to a sobering center because of the lack of statutory immunity under ORS 430.401? Police officers do not need the immunity provided under ORS 430.401. They have immunity under the law that permits them to act under the community caretaking law. ORS 133.033.

Yours,

Peter Carini