
MEMORANDUM

Legislative Fiscal Office
900 Court St. NE, Room H-178
Salem, Oregon 97301
Phone 503-986-1828
FAX 503-373-7807

To: Human Services Subcommittee of the Joint Committee on Ways and Means

From: Kim To, Legislative Fiscal Office, 503-986-1830

Date: Wednesday, June 17, 2015

Subject: HB 2936 Relating to substance abuse treatment
Work Session Recommendation

House Bill 2936 requires the Oregon Health Authority (OHA) to maintain a registry of sobering facilities, and requires these facilities to adopt policies in consultation with addiction treatment programs or providers. The bill also extends civil and criminal immunity to new sobering facilities for actions taken in good faith, on probable cause and without gross negligence. In addition, the bill allows law enforcement to take intoxicated persons to sobering facilities, and protects from disclosure without consent records of admission to sobering facility.

The measure previously had hearings in the House Committee on Judiciary on 3/19/2015, 4/16/2015, and 4/20/2015; as well as the House Committee on Rules on June 3, 2015.

The – B20 amendment, the original staff measure summary, and the fiscal impact statements are attached to this memo, and available on the Oregon Legislative Information System (OLIS).

Fiscal impact

Passage of this bill is anticipated to have minimal fiscal impact on the Judicial Department, Oregon State Police, and the Oregon Health Authority. The dash B20 amendment does not change this minimal determination.

The –B20 amendment

The –B20 amendment:

- Includes Department of State Police in the definition of “police officer.”
- Specifies that “police officer” includes a member of a law enforcement unit who is employed part-time and full-time.

Fiscal impact of the – B 20 Amendment

With the inclusion of the Department of State Police, the – B20 amendment could potentially have a fiscal impact on the Oregon State Police. However, at this time, the impact is indeterminate. OSP is concerned that the mandated language in Section 3(1), bulleted below, would result in the

burden of transportation, as well determining whether an individual is incapacitated would fall solely on police officers. OSP is concerned that this language would prevent officers from contacting and consulting with other support such as emergency medical technicians:

- The person **shall** be taken by the police officer to an appropriate treatment facility or sobering facility.
- If the health of the person appears to be in immediate danger, ..., the person **shall** be taken by the police officer to an appropriate treatment facility or sobering facility.
- A person **shall be deemed incapacitated when in the opinion of the police officer** the person is unable to make a rational decision as to acceptance of assistance.

Recommendation

LFO recommends moving the – B20 amendment into the bill.

Motion

Motion: Senator/Representative _____:

I move the dash B20 amendment into HB 2936.

Motion

Motion: Senator/Representative _____:

I move HB 2936 to the Full Committee with a “do pass” recommendation as amended.

Assignment of Carriers

Full: _____

Senate: _____

House: _____

HB 2936-B20
(LC 1834)
6/9/15 (LHF/ps)

**PROPOSED AMENDMENTS TO
B-ENGROSSED HOUSE BILL 2936**

1 On page 2 of the printed B-engrossed bill, line 10, delete “full-time” and
2 insert “on a part-time or full-time basis”.

3 In line 11, delete “by the city or county and who is” and insert “, com-
4 missioned by a city, a county or the Department of State Police and”.

5

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2936 - B20

Seventy-Eighth Oregon Legislative Assembly – 2015 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Kim To
Reviewed by: Julie Neburka, Steve Bender, Linda Ames
Date: 6/16/2015

Measure Description:

Defines "sobering facility." Requires facility to adopt policies in consultation with addiction treatment program or provider.

Government Unit(s) Affected:

Oregon State Police (OSP), Oregon Health Authority (OHA), Oregon Judicial Department (OJD)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

House Bill 2936 requires the Oregon Health Authority (OHA) to maintain a registry of sobering facilities, and requires these facilities to adopt policies in consultation with addiction treatment programs or providers. The bill also extends civil and criminal immunity to new sobering facilities for actions taken in good faith, on probable cause and without gross negligence. In addition, the bill includes a sobering facility as a location alternative to a home or a treatment facility that law enforcement could take intoxicated persons. The bill also protects from disclosure without consent records of admission to sobering facility. The – B20 amendment:

- Includes the Oregon State Police in the definition of "police officer."
- Specifies that "police officer" includes a member of a law enforcement unit who is commissioned or employed part-time and full-time.

Oregon State Police (OSP)

With the inclusion of the Department of State Police, the – B20 amendment could potentially have a fiscal impact on the Oregon State Police. However, at this time, the impact is indeterminate. OSP is concerned that the mandated language in Section 3(1) would result in the burden of transportation, as well as determining whether an individual is incapacitated, falling solely on police officers. OSP is concerned that this language could discourage officers from contacting and consulting with other support, such as emergency medical technicians.

Oregon Health Authority (OHA), Oregon Judicial Department (OJD)

Passage of this bill is anticipated to have minimal fiscal impact on OHA and OJD.

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2936 – B

Seventy-Eighth Oregon Legislative Assembly – 2015 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Kim To
Reviewed by: Steve Bender, Linda Ames
Date: 6/5/2015

Measure Description:

Defines "sobering facility." Extends civil and criminal immunity to sobering facilities for actions taken in good faith, on probable cause and without malice.

Government Unit(s) Affected:

Oregon Health Authority (OHA), Oregon Judicial Department (OJD)

Analysis:

The proposed legislation has been determined to have
MINIMAL EXPENDITURE IMPACT
on state or local government.

While this individual measure has a "Minimal" fiscal impact, an agency may incur a net fiscal impact greater than minimal depending on the cumulative impact of all measures enacted into law that affect the agency.

STAFF MEASURE SUMMARY**House Committee On Judiciary****Fiscal:** Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 04/20/15**Action:** Without Recommendation, With Amendments, Be Printed Engrossed And Be Referred To Rules.**Meeting Dates:** 03/19, 04/16, 04/20**Vote:**

Yeas: 9 - Barker, Barton, Greenlick, Krieger, Lininger, Olson, Post, Sprenger, Williamson

Prepared By: Jeff Rhoades, Counsel**WHAT THE MEASURE DOES:**

Extends criminal and civil immunity to sobering facilities for actions taken in good faith, with probable cause and without malice. Defines “sobering facility” as either a stand-alone facility or part of larger facility that contracts with or is affiliated with addiction treatment provider approved by Oregon Health Authority. Requires that provider must provide consultation training and advice and enter into written agreement with facility that includes plan to make referrals. Allows sobering facility employee to discharge admitted person who is danger to self or others provided person is discharged within 24 hours. Protects records disclosure without intoxicated person’s consent. Allows police to take intoxicated person to sobering facility. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- How sobering facilities operate
- The problems with providing immunity under the law
- Lack of options for law enforcement dealing with acutely intoxicated persons in small counties

EFFECT OF COMMITTEE AMENDMENT:

Defines “sobering facility” to state that it can be either stand-alone or part of larger facility that contracts with or is affiliated with addiction treatment provider approved by Oregon Health Authority. Requires that provider give consultation, training and advice, and enter into written agreement with facility that includes plan to make referrals. Modifies ORS 430.099 to add “sobering facility” to list of places acutely intoxicated person may be taken if under the influence in public place. Allows sobering facility employee to discharge admitted person who is danger to self or others provided person discharged within 24 hours.

BACKGROUND:

Chapter 430 of the Oregon Revised Statutes regulates Mental Health, Developmental Disabilities and Alcohol and Drug Treatment Programs. Under the current drafting of the law, the police may take any person who is intoxicated or under the influence of a controlled substance in a public place either to their home or a treatment facility.

“Treatment facility” is specifically defined in ORS 430.306(9) as an outpatient facility, inpatient facility and other facility that the authority determines suitable and that provides services that meet certain minimum standards for diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for alcoholics and drug dependent persons. ORS 430.401 provides civil and criminal immunity for such treatment facilities provided the actions taken are in good faith, on probable cause and without malice.

Many smaller counties and municipalities do not have treatment facilities such as those defined in statute. As a result, police officers do not have a place for those individuals who are acutely intoxicated in public and cannot go to their homes. House Bill 2936 A seeks to remedy this scenario by extending sobering facilities the same civil and

criminal immunity given to treatment facilities with more comprehensive programs. The bill specifies that, in order for a sobering facility to be extended immunity, it must contract with or be affiliated with an addiction treatment provider that is approved by the Oregon Health Authority. This provider must give consultation and advice, as well as enter into a written agreement that allows for persons in the sobering facility to be referred to appropriate treatment. Because sobering facilities do not create doctor/patient confidential relationships, House Bill 2936 A specifies that no records obtained on the person at the facility may be revealed without the person's consent.

STAFF MEASURE SUMMARY

House Committee On Rules

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 06/03/15

Action: Do Pass As Amended, Be Printed Engrossed, And Bill Be Referred To Ways And Means.

Meeting Dates: 06/03

Vote:

Yeas: 9 - Barnhart, Gilliam, Hoyle, Kennemer, McLane, Nosse, Rayfield, Smith Warner, Wilson

Prepared By: Erin Seiler, Committee Administrator

WHAT THE MEASURE DOES:

Extends criminal and civil immunity to sobering facility and staff, registered with Oregon Health Authority (OHA) *before* January 1, 2016 for acting on probable cause in good faith without malice. Extends criminal and civil immunity to sobering facility and staff registered with OHA on or *after* January 1, 2016 for acting on probable cause in good faith without gross negligence. Defines sobering facility as one that: provides acutely intoxicated persons with safe, clean, supervised environment until sobriety improves; affiliates with OHA-approved addictions treatment program or provider; adopts comprehensive written policies and procedures incorporating best practices for safety of intoxicated persons, employees and volunteers; and is registered with OHA. Requires OHA to establish registry of sobering facilities. Permits OHA to register only facilities in operation when Act becomes effective and has submitted written request to OHA by December 31, 2015. Permits OHA to accept written requests from new sobering facilities after January 1, 2016, but prohibits registering more than three. Requires OHA to report on sobering facilities each regular legislative session beginning with 2017. Requires affiliated providers to enter into written agreement to consult, train, advise and make referrals. Allows for discharge of person who is danger to self or others within first 24 hours of admission. Prohibits disclosure of records without consent. Allows law enforcement to transport intoxicated person to sobering facility. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Inclusion of sobering facility on treatment continuum
- Limited tools and resources available to law enforcement to assist intoxicated individuals
- Ability to refer individual for additional treatment
- Reducing health care costs
- Grandfathering-in existing sobering facilities
- Limited expansion to new sobering facilities
- Assessment of sobering facilities through regular reports to legislature
- Tool to ensure safety of intoxicated individuals

EFFECT OF COMMITTEE AMENDMENT:

Defines sobering facility as one that: provides acutely intoxicated persons with safe, clean, supervised environment until sobriety improves; affiliates with OHA-approved addictions treatment program or provider; adopts comprehensive written policies and procedures incorporating best practices for safety of intoxicated persons, employees and volunteers; and is registered with OHA. Defines police officer. Requires OHA to establish registry of sobering facilities. Specifies content of written requirements for registration. Permits OHA to register only facilities in operation when Act becomes effective and has submitted written request to OHA by December 31, 2015. Permits OHA to accept written requests from new sobering facilities after January 1, 2016, but prohibits registering more than three. Requires OHA to report on sobering facilities each regular legislative session beginning with 2017. Specifies information to be included in report. Extends criminal and civil immunity to sobering facility

****CORRECTED****

and staff, registered with OHA *before* January 1, 2016 for acting on probable cause in good faith without malice. Extends criminal and civil immunity to sobering facility and staff registered with OHA on or *after* January 1, 2016 for acting on probable cause in good faith without gross negligence.

BACKGROUND:

Chapter 430 of the Oregon Revised Statutes governs mental health, developmental disabilities and alcohol and drug treatment programs. Law enforcement personnel are permitted to take any person who is intoxicated or under the influence of a controlled substance in a public place, either to their home or to a treatment facility. Treatment facilities for this purpose are defined as those that meet certain minimum standards for diagnosis and evaluation, medical care, detoxification, social services, or rehabilitation services for alcoholics and drug dependent persons. These facilities are immune from civil or criminal liability so long as they act in good faith with probable cause and without malice.

Many small jurisdictions do not have qualifying treatment facilities, leaving acutely intoxicated persons with few safe alternatives to detoxify. House Bill 2936-B extends similar civil and criminal immunity to less-comprehensive sobering facilities as provided treatment facilities. The measure establishes criteria that sobering facilities must meet to receive immunity, including affiliation with approved providers to refer individuals for appropriate treatment and develop best practices. The measure also limits the number of sobering facilities that may register after January 1, 2016 and protects the confidentiality of records of persons who are admitted.

B-Engrossed House Bill 2936

Ordered by the House June 8
Including House Amendments dated April 28 and June 8

Sponsored by COMMITTEE ON HEALTH CARE (at the request of The Grants Pass Sobering Center)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Defines "sobering facility." **Requires facility to adopt policies in consultation with addiction treatment program or provider.** Extends civil and criminal immunity to **new** sobering facilities for actions taken in good faith, on probable cause and without [*malice*] **gross negligence**. Allows police **or person deputized by law enforcement** to take intoxicated person to sobering facility. Protects from disclosure without person's consent records of admission to sobering facility.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to substance abuse treatment; creating new provisions; amending ORS 430.306, 430.399 and
3 430.401; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 430.306 is amended to read:

6 430.306. As used in ORS 430.315, 430.335, 430.342, 430.397, 430.399, **430.401**, 430.402, 430.420 and
7 430.630, **and section 2 of this 2015 Act**, unless the context requires otherwise:

8 (1) "Alcoholic" means any person who has lost the ability to control the use of alcoholic
9 beverages, or who uses alcoholic beverages to the extent that the health of the person or that of
10 others is substantially impaired or endangered or the social or economic function of the person is
11 substantially disrupted. An alcoholic may be physically dependent, a condition in which the body
12 requires a continuing supply of alcohol to avoid characteristic withdrawal symptoms, or
13 psychologically dependent, a condition characterized by an overwhelming mental desire for contin-
14 ued use of alcoholic beverages.

15 [(2) "*Applicant*" means a city, county or any combination thereof.]

16 [(3) "*Authority*" means the Oregon Health Authority.]

17 [(4)] (2) "Detoxification center" means a publicly or privately operated profit or nonprofit facil-
18 ity approved by the **Oregon Health** Authority that provides emergency care or treatment for alco-
19 holics or drug-dependent persons.

20 [(5)] (3) "Director of the treatment facility" means the person in charge of treatment and reha-
21 bilitation programs at a treatment facility.

22 [(6)] (4) "Drug-dependent person" means one who has lost the ability to control the personal use
23 of controlled substances or other substances with abuse potential, or who uses such substances or
24 controlled substances to the extent that the health of the person or that of others is substantially
25 impaired or endangered or the social or economic function of the person is substantially disrupted.
26 A drug-dependent person may be physically dependent, a condition in which the body requires a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 continuing supply of a drug or controlled substance to avoid characteristic withdrawal symptoms,
2 or psychologically dependent, a condition characterized by an overwhelming mental desire for con-
3 tinued use of a drug or controlled substance.

4 [(7)] (5) “Halfway house” means a publicly or privately operated profit or nonprofit, residential
5 facility approved by the authority that provides rehabilitative care and treatment for alcoholics or
6 drug-dependent persons.

7 [(8)] (6) “Local planning committee” means a local planning committee for alcohol and drug
8 prevention and treatment services appointed or designated by the county governing body under ORS
9 430.342.

10 (7) **“Police officer” means a member of a law enforcement unit who is employed full-time**
11 **as a peace officer by the city or county and who is responsible for enforcing the criminal**
12 **laws of this state and any person formally deputized by the law enforcement unit to take**
13 **custody of a person who is intoxicated or under the influence of controlled substances.**

14 (8) **“Sobering facility” means a facility that meets all of the following criteria:**

15 (a) **The facility operates for the purpose of providing to individuals who are acutely**
16 **intoxicated a safe, clean and supervised environment until the individuals are no longer**
17 **acutely intoxicated.**

18 (b) **The facility contracts with or is affiliated with a treatment program or a provider**
19 **approved by the authority to provide addiction treatment, and the contract or affiliation**
20 **agreement includes, but is not limited to, case consultation, training and advice and a plan**
21 **for making referrals to addiction treatment.**

22 (c) **The facility, in consultation with the addiction treatment program or provider, has**
23 **adopted comprehensive written policies and procedures incorporating best practices for the**
24 **safety of intoxicated individuals, employees of the facility and volunteers at the facility.**

25 (d) **The facility is registered with the Oregon Health Authority under section 2 of this**
26 **2015 Act.**

27 (9) **“Treatment facility” includes outpatient facilities, inpatient facilities and other facilities the**
28 **authority determines suitable and that provide services that meet minimum standards established**
29 **under ORS 430.357, any of which may provide diagnosis and evaluation, medical care, detoxification,**
30 **social services or rehabilitation for alcoholics or drug-dependent persons and which operate in the**
31 **form of a general hospital, a state hospital, a foster home, a hostel, a clinic or other suitable form**
32 **approved by the authority.**

33 **SECTION 2. (1) The Oregon Health Authority shall maintain a registry of sobering facil-**
34 **ities.**

35 (2) **To be registered, a sobering facility must provide the Director of the Oregon Health**
36 **Authority with a written request for registration. The written request must include the**
37 **name and address of the sobering facility and a statement signed by an authorized repre-**
38 **sentative that the facility meets the definition of a sobering facility in ORS 430.306.**

39 (3) **The authority may not impose a fee or other charge for the registration.**

40 (4) **The authority shall register a sobering facility that is in operation on the effective**
41 **date of this 2015 Act if the facility submits a written request for registration that is received**
42 **by the authority on or before December 31, 2015. The authority shall provide the facility with**
43 **a written confirmation of the facility’s registration no later than 30 days after the authority**
44 **receives the written request for registration.**

45 (5) **Sobering facilities that are not in operation on the effective date of this 2015 Act may**

1 **not submit a written request for registration before January 1, 2016. The authority may not**
2 **register more than three such facilities.**

3 **(6) The authority shall register a sobering facility that submits a written request for**
4 **registration on or after January 1, 2016, if fewer than three such facilities are registered.**
5 **The authority shall provide each sobering facility that submits a request for registration**
6 **with a written confirmation of the facility's registration, or a notice denying the registration,**
7 **no later than 30 days after the authority receives the written request for registration.**

8 **(7) The authority shall report to each regular session of the Legislative Assembly, be-**
9 **ginning with the 2017 regular session, on the extent to which sobering facilities registered**
10 **with the authority under this section have provided safe, clean and appropriate environments**
11 **for police officers to take intoxicated persons. The authority may also report any other in-**
12 **formation that the authority determines may be useful to the Legislative Assembly in eval-**
13 **uating the benefits of sobering facilities.**

14 **SECTION 3.** ORS 430.399 is amended to read:

15 430.399. (1) Any person who is intoxicated or under the influence of controlled substances in a
16 public place may be *[taken or]* sent home **or taken to a sobering facility** or to a treatment facility
17 by *[the police. However,]* **a police officer.** If the person is incapacitated, **the person shall be taken**
18 **by the police officer to an appropriate treatment facility or sobering facility.** If the health of
19 the person appears to be in immediate danger, or the police *[have]* **officer has** reasonable cause to
20 believe the person is dangerous to self or to any other person, the person shall be taken by the
21 police **officer** to an appropriate treatment facility **or sobering facility.** A person shall be deemed
22 incapacitated when in the opinion of the police officer *[or director of the treatment facility]* the person
23 is unable to make a rational decision as to acceptance of assistance.

24 **(2) When a person is taken to a treatment facility,** the director of the treatment facility shall
25 determine whether *[a]* **the** person shall be admitted as a patient, *[or]* referred to another treatment
26 facility **or a sobering facility** or denied referral or admission. If the person is incapacitated or the
27 health of the person appears to be in immediate danger, or if the director has reasonable cause to
28 believe the person is dangerous to self or to any other person, the person must be admitted. The
29 person shall be discharged within 48 hours unless the person has applied for voluntary admission
30 to the treatment facility.

31 **(3) When a person is taken to a sobering facility, the staff of the sobering facility shall,**
32 **consistent with the facility's comprehensive written policies and procedures, determine**
33 **whether or not the person shall be admitted into the sobering facility. A person who is ad-**
34 **mitted shall be discharged from the sobering facility within 24 hours.**

35 *[(3)]* **(4) In the absence of any appropriate treatment facility or sobering facility, or if a so-**
36 **bering facility determines that a person should not be admitted to the sobering facility, an**
37 **intoxicated person or a person under the influence of controlled substances who would otherwise**
38 **be taken by the police officer to a treatment facility or sobering facility may be taken to the city**
39 **or county jail where the person may be held until no longer intoxicated, under the influence of**
40 **controlled substances or incapacitated.**

41 *[(4)]* **(5) An intoxicated person or person under the influence of controlled substances, when**
42 **taken into custody by the police officer for a criminal offense, shall immediately be taken to the**
43 **nearest appropriate treatment facility when the condition of the person requires emergency medical**
44 **treatment.**

45 *[(5)]* **(6) The records of a [patient] person at a treatment facility or sobering facility may not,**

1 **without the person's consent**, be revealed to any person other than the director and staff of the
2 treatment facility [*without the consent of the patient*] **or sobering facility**. A [*patient's*] **person's** re-
3 quest that no disclosure be made of admission to a treatment facility **or sobering facility** shall be
4 honored unless the [*patient*] **person** is incapacitated or disclosure of admission is required by ORS
5 430.397.

6 **SECTION 4.** ORS 430.401, as amended by section 47, chapter 45, Oregon Laws 2014, is amended
7 to read:

8 430.401. [*No peace officer, treatment facility and staff;*] (1) **A police officer**, physician, physician
9 assistant, nurse practitioner, [*or*] judge, **treatment facility, treatment facility staff member or**
10 **sobering facility that is registered with the Oregon Health Authority under section 2 of this**
11 **2015 Act based on a written request for registration received by the authority before January**
12 **1, 2016, or the staff of the sobering facility, [*shall*] may not** be held criminally or civilly liable
13 for actions pursuant to ORS 430.315, 430.335, 430.397 to 430.401 and 430.402 provided the actions are
14 in good faith, on probable cause and without malice.

15 (2) **A sobering facility registered with the authority under section 2 of this 2015 Act based**
16 **on a written request for registration received by the authority on or after January 1, 2016,**
17 **and the staff of the sobering facility, may not be held criminally or civilly liable for actions**
18 **pursuant to ORS 430.315, 430.335, 430.397 to 430.401 and 430.402 provided the actions are in**
19 **good faith, on probable cause and without gross negligence.**

20 **SECTION 5.** The amendments to ORS 430.401 by section 4 of this 2015 Act apply to causes
21 of action arising before, on or after the effective date of this 2015 Act.

22 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
24 on its passage.