



Legislative Testimony

Oregon Criminal Defense Lawyers Association

March 7, 2017

The Honorable Jeff Barker, Chair
House Judiciary Committee, Members

**RE: House Bill 2620 (Assault III/ hospital workers)
House Bill 2717 (Assault III/ mass transit workers)
House Bill 2721 (Assault III/ highway worker)**

Dear Chair Barker and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and parents in juvenile dependency proceedings, juvenile delinquency proceedings, adult criminal prosecutions and appeals, and civil commitment proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments in opposition to House Bills 2620, 2717 and 2721.

1. House Bills 2620, 2717 and 2721 functionally do the same thing: each elevates what would be an A misdemeanor Assault IV to the level of C felony Assault III for physical injuries that are caused to persons of particular vocations. HB 2620 would elevate the crime for hospital workers; HB 2717 would elevate the crime for mass transit workers; HB 2721 would elevate the crime for highway workers.
2. Derived from the Model Penal Code, at one point Oregon's assault statutes were carefully structured to calibrate the seriousness level of the assault along three scales: (1) the intent of the person committing the assault; (2) the degree of injury sustained by the victim; and/or (3) the weapon (if any) employed. By way of example, a person who recklessly causes physical injury to another commits a misdemeanor Assault IV; a person who recklessly causes serious physical injury by means of a deadly or dangerous weapon commits a Class C felony Assault III; a person who recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life commits a Class B felony Assault II. [ORS 163.160(1)(a); ORS 163.165(1)(a); ORS 163.175(1)(c)]
3. The Model Penal Code did not differentiate, or calibrate, assaults based on the vocation of the person injured. To date, Oregon has done so four times: first for taxi drivers, next for public transit vehicle operator, next for EMT's, and most recently for youth correction facility staff.
4. House Bills 2620, 2717 and 2721 invite the Legislature to compound this differential for these three additional vocations. OCDLA submits that extending this practice to more and more occupations distorts the balance in the assault statutes. How is it that some vocations are more honored, more important, more "special" than another? There are scores of vocations that require an interaction with persons who are in an agitated state: teachers, public librarians, facility

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custodians, public defenders. If House Bills 2620, 2717 and 2721 were to be enacted, where will this parade of “specialness” end?

5. Admittedly, the Assault III statute already bestows special status on four vocations. OCDLA submits the practice of elevating a misdemeanor Assault IV to a felony Assault III based on the vocation of the injured person is not a legitimate basis to do so, and urges this Committee to reject further compounding the practice.

6. Finally, OCDLA submits there is little use in attempting to deter future assaults with increased penalties. A person engaged in assaultive behavior is, almost by definition, in an agitated state of mind or in a non-thinking, reckless state of mind. Penalties associated with the conduct are not contemplated and in almost every instance, not known to the offender, thereby rendering the hope of deterrence unlikely.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Gail L. Meyer, JD
Legislative Representative
Oregon Criminal Defense Lawyers Association
gmeyer@ocdla.org