

HB 4142 increases the crime classification, from a Class A misdemeanor to a Class C felony, when a person is convicted of intentionally, knowingly or recklessly causing physical injury to a person working in a hospital while the worker is performing official duties. A district attorney prosecuting assault in the third degree under HB 4142 would have to prove that the person acted with one of the required mental states: intentionally, knowingly or recklessly. "Intentionally" means that "a person acts with a conscious objective to cause [a] result...". ORS 161.085 (7). "Knowingly" means that "a person acts with an awareness that the conduct of the person is of a nature so described...". ORS 161.085 (8). "Recklessly" means that "a person is aware of and consciously disregards a substantial and unjustifiable risk that [a] result will occur" and "[t]he risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." ORS 161.085 (9).

Applied specifically to HB 4142, a district attorney would need to prove beyond a reasonable doubt one of the following mental states concerning the person's actions, regardless of whether the person had a mental illness: 1. that the person acted with a conscious objective to cause physical injury; 2. that the person was aware of the assaultive nature of the person's conduct; or 3. that the person was aware of and consciously disregarded a substantial and unjustifiable risk that physical injury would occur (and the risk was of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation). Note that the district attorney would also need to prove beyond a reasonable doubt that the victim suffered physical injury and was a person working within a hospital at the time of the assault.

If a person with mental illness were charged under the new type of assault in the third degree created by HB 4142, as with any case involving a person with mental illness, the person's attorney would first determine whether the person is fit to proceed (capable to aid and assist in the person's defense). If the attorney had reason to believe the person was not fit to proceed, a fitness evaluation would likely be obtained. If the person was not able to aid and assist, the procedures described in ORS 161.355 to 161.371 would be followed in order to allow the person an opportunity to gain or regain fitness to proceed (either at the Oregon State Hospital or in the community).

Assuming that the person was fit to proceed, the same types of defenses available to any criminal defendant would be available to the person charged under HB 4142: mental defenses, such as diminished capacity under ORS 161.300 (due to mental illness, the defendant did not have the capacity to form the required mental state) or guilty except for insanity under ORS 161.295, or other defenses, such as self-defense.

Sincerely,

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