

TO: House Committee on Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 4, 2022
RE: Opposition to HB 4135

Chair Bynum, Vice Chairs Noble and Power, and Members of the Committee:

My name is Mae Lee Browning and I am providing this testimony on behalf of OCDLA.

The Oregon Criminal Defense Lawyers Association is a nonprofit professional association of experts, private investigators, and attorneys who represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon.

Below are some of our concerns with HB 4135:

- We are trying to go away from a mass incarceration state.
- The war on drugs disproportionately affects minorities, the poor, and the disabled.
- *Boyd's* rationale is rooted in an outdated view on drugs and drug-related crime. *Boyd* is completely at odds with the policy direction of the state the moves to treat addiction as a medical and mental health issue and people who use drugs as human. *Boyd's* only benefit is to DA's offices, who get easy convictions without having to bother to actually prove their cases.
- The law under *Boyd*¹ made it more difficult for people with substance use disorder to get treatment.
- The collateral (or more accurately put, intentional) consequences of a felony conviction reinforces the addiction cycle.
- There is no causal link between drug overdose deaths and the decriminalization of drugs. ODAA's testimony states that there are 607 overdose deaths in the first 6 months of 2021 compared to 280 in all of 2019. Could there be another reason, like the consequences of living in a global pandemic?
 - "[M]any adults are reporting specific negative impacts on their mental health and well-being, such as difficulty sleeping (36%) or eating (32%), increases in alcohol consumption or substance use (12%), and worsening chronic conditions (12%), due to worry and stress over the coronavirus."²
 - "Compared to all adults, young adults are more likely to report substance use (25% vs. 13%) and suicidal thoughts (26% vs. 11%). Prior to the pandemic, young adults

¹ *State v. Boyd*, 92 Or App 51 (1988).

² <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>

were already at high risk of poor mental health and substance use disorder, though many did not receive treatment.”³

- Under *Hubbell*⁴, a person can still be charged with the crime of attempted delivery, as opposed to a completed delivery. Boyd treated attempted delivery the same as a completed delivery.
- Overturning law that was in place for decades (like *Boyd*) is not a bad thing. What other laws were in place for decades that we would rejoice in being overturned?⁵
- The state has filed a petition for review to the Oregon Supreme Court in *Hubbell*. We should wait for the Supreme Court to make its decision.

We can't arrest our way out of Oregon's addiction crisis. Instead, support a health-based, treatment-over-punishment model of supporting individuals with substance use disorder.

We urge your “NO” vote on HB 4135.

³<https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>

⁴ *State v. Hubbell*, 314 Or App 844 (2021).