

Chair Bynum,

Thank you for the opportunity to respond to the robust discussion that occurred in today's (2/8/2022) meeting of the House Judiciary Committee. While my previous testimony focused primarily on our practical experience dealing with people in mental health crisis who have been arrested at hospitals, we are happy to provide legal analysis of the bill as it currently exists and Representative Dexter's idea of removing the "recklessly" mental state from the bill as a further protection for people with mental illness.

It has been stated by some of this bill's proponents that people with mental illness would be protected from prosecution because the crime requires the mental state of "intentionally, knowingly, or recklessly" committing the offense. What this fails to recognize is that nearly every crime in Oregon's criminal code (with a few rare exceptions such as Driving Under the Influence) has an associated mental state, and that those mental states are almost always some combination of intentionally, knowingly, and recklessly (negligently, the fourth mental state widely used in legal applications, is more rarely seen in criminal law). If it were true that having a mental state associated with a crime protected people with mental illness from being charged with that crime, there would be no people with mental illness in our criminal justice system. As anyone involved in that system will tell you, from sheriff's deputies and corrections workers to social workers and public defenders, that is tragically not the case.

While we appreciate Representative Dexter's suggestion that the law be tightened by removing the "recklessly" mental state, it is unfortunately unlikely to significantly blunt the law's negative impact. To explain why, I will briefly explain the process that one of these cases goes through. When a prosecutor is deciding whether or not to charge a case, they generally do so based only upon a police report. These reports will rarely contain detailed descriptions of the subject's mental state (which is appropriate, since it is neither the job nor the expertise of the officer to make an on-site diagnosis of a person being arrested). So when determining whether in their legal opinion a defendant had the "intentional, knowing, or reckless" mental state, the prosecutor is working only off of a description of their actions, not off of any knowledge of any mental illness, developmental disability, or other impairment that may affect their ability to control their actions.

In my experience as a prosecutor, very few cases are screened out from having charges pressed due to the potential mental illness of the defendant; rather, it is left to the defense attorney to determine if their client has a mental illness and to advocate for their potential innocence. As mentioned in our previous testimony, before the client even gets a day in court to make these arguments, they could spend weeks in jail decompensating and then months or even years in the State Hospital awaiting competency restoration. Cases in which the defendant is mentally ill can be more difficult to prosecute, since mental illness is a potential defense. If these assaults are elevated to felonies, defendants will be more likely to take plea deals in return for shorter sentences. This circumvents any opportunity for a mental illness defense to even be raised, making it far more likely that people with mental health issues will end up with felony convictions that keep them from receiving housing and other supports that they need.

I have attached a copy of DRO's report, "The Unwants: Looking for Help, Landing in Jail," which



documents the frequency with which people with mental illness end up in jail after seeking services at a hospital. People with mental illness are already regularly prosecuted after seeking out services in hospitals (or being involuntarily delivered to hospitals); if this bill passes, the consequences of those prosecutions will be far more severe and lasting. Once again, we agree that assaults on health care professionals are a serious issue that should be taken seriously, but we urge the committee not to risk the lives of our most vulnerable community members in a rush to find an answer. We stand ready to be a part of the continuing discussion.

Sincerely,
KC Lewis

Managing Attorney, Mental Health Rights Project