



TO: House Committee on Judiciary
FROM: Disability Rights Oregon
DATE: January 25, 2023
RE: Opposition to HB 2323

Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the Committee,

Our American system of justice is built upon the foundation that in order to convict someone of a crime, they have to have committed an illegal act AND they have to have the attendant intent to commit a crime. Proponents of HB 2323 would advocate for a system that loosens the requirement of criminal intent, and will have the effect of criminalizing previously innocent behaviors. We ask that the Oregon legislature carefully consider such an extreme change to the Oregon criminal justice system, especially in the ways that it will affect those with disabilities in our State.

HB 2323 Criminalizes Otherwise Non-Criminal Acts

Currently, ORS 161.095(2) requires that every “material element” of an offense must be proven to be committed with a culpable mental state. This bill provides widespread changes to Oregon’s criminal code by loosening the State’s burden to simply require proof of culpable mental state for each “conduct element.”

The decision in *State v. Simonov* has been raised as the need for change in the Oregon Criminal Code. The defendant in *Simonov* was accused of the Unauthorized Use of a Vehicle (UUV), or “[t]he person takes, operates . . . or otherwise uses another’s vehicle . . . without the consent of the owner.” The State in that case, and proponents of HB 2323 now, would argue that “consent of the owner” is not a part of the conduct elements of the crime and should not require that the prosecution provide any evidence regarding the mental state of the person accused of a crime. As the Oregon Supreme Court held, not requiring some proof that a defendant did not know that the use was without consent makes a crime out of potentially innocent behavior. In fact, the defendant in *Simonov* had no idea that the owner of the car did not approve his use of the vehicle. Rather, he was credibly led to believe that the owner affirmatively approved him borrowing the car. This Bill would lead to the unfortunate outcome predicted by the Supreme Court that “naïve trust could subject a person to criminal liability for a felony.”

HB 2323 Will Have Disparate Impact on People with Disabilities

People with disabilities are over-represented in the criminal justice system. In fact, over 40% of prison inmates have a serious mental illness. Those with traumatic brain injuries are 2.5 times more likely to be incarcerated than those without a brain injury. And some reports place the number of people with developmental disabilities at 1 in 5.

People with psychiatric, developmental, or neurological disabilities are already more vulnerable in our criminal justice system. Lowering the threshold of criminal intent will further set these individuals up for failure in a system that is frequently unfair already. Can we imagine a situation in which a person with a traumatic brain injury might unknowingly enter a location in which they weren't aware was off limits? Could there be a situation in which a person with a developmental disability was convinced that they could just remove an item from a store? Would prosecuting these cases as felonies be fair and would this reflect the values of an equitable society for which we in Oregon aspire?

What this change will accomplish is further prosecution of the most vulnerable citizens in our State and it will put more people with disabilities in our prisons. It will put increased strain on the prison system as additional resources will be needed to treat more inmates with enhanced medical and psychiatric needs. It will place more people with disabilities at risk of injury or death as they attempt to live in a prison environment in which they are overly vulnerable and often become targets of violence and other crimes.

Conclusion

HB 2323 represents a change in the Oregon criminal justice system that is fundamentally unfair and unjust. Because of this, especially with respect to its effect on people with disabilities, Disability Rights Oregon opposes this legislation.

About Disability Rights Oregon

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.¹ We are authorized by Congress to protect, advocate, and enforce the rights of people with disabilities under the U.S. Constitution and Federal and State laws, investigate abuse and neglect of people with disabilities, and "pursue administrative, legal, and other appropriate remedies".² We are also mandated to "educate policymakers" on matters related to people with disabilities.³

If you have any questions regarding DRO's position on this legislation, please call Meghan

¹ See ORS 192.517.

² See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

³ See 42 U.S. Code § 15043(a)(2)(L).

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