



February 13, 2024

**TO: Rep. Jason Kropf, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Kim Wallan, Vice-Chair  
Members of the House Committee on Judiciary**

**FR: Oregon District Attorneys Association**

**RE: HB 4088 -2 Amendment – Support**

Thank you for the opportunity to offer our support for the -2 amendment to HB 4088.

The -2 amendment to HB 4088 details a variety of new protections for hospital workers including a new grant program, reporting requirements, transparency in hospital safety committees, and much more. In particular, ODAA assisted the proponents with adding the assault of a hospital worker to the existing crime of Assault in the Third Degree. Adding hospital workers to the list of occupations protected by Assault in the Third Degree recognizes the unique dangers faced in their line of work and the value that those workers provide to our communities.

### **Adding Hospital Workers to Assault in the Third Degree**

The crime of Assault in the Third Degree is often used to elevate what would be a misdemeanor assault to a felony if committed against a certain class of individuals. Classes already protected by Assault in the Third Degree are operators of public transit vehicles, staff members at youth correctional facilities, flaggers and highway workers, and emergency medical services providers.

Presently, hospital workers are not protected by this statute despite the fact that they are providing similar services to similar populations as EMTs and paramedics, both of which are already covered by this statute.

In particular, the -2 amendment to HB 4088 would add to Assault in the Third Degree an instance where a person “with knowledge that another person is working in a hospital, intentionally or knowingly causes physical injury to the working person while the working person is acting in the course of official duty.” Adding hospital workers to this statute will more appropriately recognize the risks inherent in their work as well as the value they provide to society.

## **Protecting Vulnerable Populations**

Hospitals provide care for some of the most vulnerable among us. Some folks receiving care in hospitals are there because of various conditions that reduce their ability to control their actions and impair their perception of the world around them. The language in Section 6 of the -2 amendment to HB 4088 was drafted specifically in consideration of folks in those circumstances by requiring that the individual have actual knowledge that the victim is a hospital worker as well as intentionally or knowingly causing physical injury. So, someone cannot be prosecuted under this statute if they are unaware of their surroundings or unaware that the person harmed was working in the hospital.

Additionally, the remedies available for defendants in all criminal cases still apply here. In particular, both the affirmative defense of guilty except for insanity (GEI) and the requirement that a defendant be able to aid and assist in their own defense still apply.

Under the aid and assist requirement, defendants must be able to actually help their attorneys in the defense of their case as well as understand the nature and the gravity of the charges against them. If a defendant is found unable to aid and assist and they are unable to be restored to competency within a particular timeframe, then the case must be dismissed.

The affirmative defense of GEI applies to defendants who are either unable to appreciate the criminality of their conduct or who are unable to conform their conduct to the law. So, in this context, if an individual knowingly caused physical injury to someone who they knew was a hospital worker, but they were unable to control their actions due to a qualifying mental disorder, the affirmative defense of GEI is available to them.

While the protections of the aid and assist requirement and GEI are available to all criminal defendants, the proponents of this bill built in the additional protection of attaching the knowing mental state to both the act and the status of the victim. Between aid and assist, GEI, and the unique mental state requirement, the -2 amendment to HB 4088 appropriately balances the need to protect vulnerable populations with the need to protect the hospital workers who care for them.

**ODAA urges your support of the -2 amendment to HB 4088 because the bill provides hospital workers with the protections of Assault in the Third Degree, which is one of the essential tools to prevent workplace violence in hospitals created by HB 4088.**