



Disability Rights Oregon

TO: House Committee on Judiciary
FROM: Disability Rights Oregon
DATE: February 15, 2024
RE: Opposition to Sec. 6 of HB 4088-2 – Clarifying Elements of Enhanced Felony Crime

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

Disability Rights Oregon submits testimony in opposition to Section 6 of HB 4088-2, and to clarify the record about misleading and oversimplified information on the standard of “intentionally or knowingly” and “with knowledge that a person is working in a hospital” elements of the enhanced felony crime.

While protecting nurses, doctors, and other hospital workers is important to all of us—Sec. 6 of HB 4088-2 will not accomplish that goal, it will not deter disability-related behavior, and will, in fact, criminalize disability-related behavior.

Explained: *Mens Rea*, “Intentional or Knowing,” and “With Knowledge that a Person is Working in a Hospital”

In criminal law, *mens rea* is the mental state of a defendant who is accused of committing a crime. Sec. 6 of HB 4088-2 has two elements necessary:

- “intentional or knowing”
- and
- “with knowledge that a person is working in a hospital”

“Intentionally” or “with intent” to cause physical injury means “that a person acts with a conscious objective to cause the result or to engage in the conduct so described.”

“With knowledge that a person is working in a hospital” is not defined but is generally understood to mean the person understood the injured person is working in a hospital.

There is a sense the “intentionally or knowingly” element would protect some people, or the “with knowledge that a person is working in a hospital,” element could help them. But some people with disabilities are affected by their disabilities in such a way that they would meet the requirements of the felony offense definition.

Based on Disability Rights Oregon’s legal representation of people with disabilities, relying on the mental state or culpability standard of “intentionally” or knowingly will likely result in greater discrimination and criminalization of disability-related behavior.

Problem with this Standard for a Person with Serious Mental Illness

In our work representing people with serious mental illness, lots of people will know that they are in a hospital and realize they are trying to hurt someone—they'll just be wrong about their beliefs that it is acceptable to injure a nurse, doctor, or other staff.

Imagine someone under a persistent delusion that everyone is trying to poison them, for example, who believes all the medicines at the hospital are poison. That person shouts out, "I'm not going to let you doctors poison me" and slaps at a tech bringing meds on a tray. Their statement makes it clear that they have an understanding—a flawed one—that they are in a hospital and intend to hurt the people around them. This would satisfy the "intentionally or knowingly" requirement and "knowledge that a person is working in a hospital."

This person may be eligible for a "Guilty Except for Insane" verdict—but that leads to a person being locked up in the Oregon State Hospital—often for longer than the felony sentence and at great expense to the State.

In this scenario—which is a real example—the patient would be eligible for this enhanced felony charge at the discretion of the District Attorney. No one would rationally believe this enhanced felony charge would have prevented this person from injuring a hospital worker. Sec. 6 of HB 4088-2 would only accomplish the criminalization of mental illness related behavior.

Problem with this Standard for a Person with an Intellectual or Developmental Disability, Traumatic Brain Injury, and Other Similar Disabilities

Similarly, some people with autism are absolutely unable to tolerate bright lights, loud noises, needles, etc. Imagine a young man who is very anxious coming in with his mother to get treatment for a broken wrist. Mom is comforting him and telling him the doctors want to help him, and he nods. But when the needle comes out, he gets very upset and wrenches his arm away from a nurse, and shouts, "no needle!" and swats at the nurse. He probably understands he is in a hospital (he acknowledges mom's prompts), and he knows he could hurt the nurse by swatting. He probably meets the standards for the enhanced felony charge, but he may be largely incapable of restraining his own actions because the stimuli in the hospital and anxiety about the injection flood his capacity for self-regulation.

In this scenario—also a real example—the patient would be eligible for this enhanced felony charge at the discretion of the District Attorney. No one would rationally believe this enhanced felony charge would have prevented this person from injuring a hospital worker. Sec. 6 of HB 4088-2 would only accomplish the criminalization of disability-related behavior.

Hospitals' Failures to Accommodate under the Americans with Disabilities Act Should Not Result in Felony Charges

Over the past three years, Disability Rights Oregon has documented and communicated to the legislature multiple instances of Oregon hospitals' failures to provide reasonable accommodations to people with disabilities as required under the Americans with Disabilities Act. In the context of the criminal statute, there would be no available defense regarding a hospital's refusal to accommodate a patient.

Consider the person with autism, for example, described in the previous section. Imagine that mom is explaining her son's needs: a dark room, soft voices, soothing approaches that are

successful in getting him to accept treatment. The hospital staff ignores mom's suggestions and puts him in a busy room with bright fluorescent lights and lots of beeping machines. After refusing to offer accommodations that would have helped the patient, staff pursues treatment in a manner likely to provoke a reaction that causes injury to a hospital staff member. In that case, the patient would still have potential for being charged with the enhanced felony charge at the discretion of the District Attorney.

Opposition to Sec. 6 of HB 4088-2

In this written testimony, we have provided two tangible examples of people who should not pick up a felony charge because—while they have some knowledge of where they are and what they are doing, they hold irrational beliefs and have little or no capacity to follow the law under the circumstances.

The stated goal of Section 6 and enhancing the crime is to deter injuries to hospital workers and to encourage law enforcement and District Attorneys to arrest, charge, and prosecute assaults of hospital workers. Thus, the goal is to put pressure on the criminal system in a way that will force more people with disabilities through the criminal process. Under this policy, there are three major problems:

1. People with disabilities will disproportionately face criminal arrests and charges.
2. It can be hard to prove that a person didn't have the mental state of *intentionally and knowingly* at the time they caused the injury—especially if, at other times, they could.
3. District Attorneys will turn to grand juries and trial juries to decide *mens rea*, if they can't decide the matter pre-charging. This will likely result in people with disabilities and mental illness being funneled through the criminal process.

This enhanced crime will not deter the act or increase the safety of hospital workers. An individual with disabilities in crisis will not, and cannot, change their behavior based on enhanced legal consequences.

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 Moyer at 503-432-5777 or email her at mmoyer@droregon.org.

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).