

February 23, 2026

To: Senate Committee on Judiciary
From: Eric Deitrick, Special Counsel

Re: Testimony in Opposition to Sections 7-12 in HB 4041A

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Eric Deitrick, and I work at the Oregon Justice Resource Center (OJRC) in the role of special counsel. Previously, I worked as a public defender at Multnomah Defenders; I served as counsel for this committee; and I served as general counsel for the Oregon Public Defense Commission.

I am here to testify in opposition to sections 7 through 12 of HB 4041A, which are presented as a “fix” to the *Torres-Lopez* “problem.” These sections of the bill are troubling, predicated upon suspect legal presumptions, lack guardrails or guidance, and most concerningly, ripe for abuse of power by the executive branch. I will limit my testimony to two important points that I have not yet heard discussed regarding section 7 – cruelly referred to by the proponents as the “recapture” section.

First, the bill grants district attorneys a new and unusual power over the execution of prison sentences, as it creates a court process in which district attorneys can challenge DOC’s administrative decisions regarding the assignment of credits without guardrails or limiting principles. We cannot identify any state that has a similar policy scheme, and for understandable reasons – courts order sentences, and DOC executes sentences. Prosecutors play a role in the former; they play no role in the latter.

The contemplated court process gives district attorneys a de facto oversight role over DOC’s operations as it relates to all issues surrounding eligibility for credits in sentence calculations, including credits regarding time served, earned time for good behavior, eligibility for AIP, and eligibility for short term transitional leave.

There is no foretelling how district attorneys will use this new power, but it shifts what is currently an administrative process into an adversarial process. Prosecutors use the power they have, and once they receive a power, it is hard to limit or take back. We have seen how aggressively district attorneys pressured the governor and DOC over legal and policy positions this past fall. With a plain reading of HB 4041A, they will have a legislatively authorized court process at their disposal without guardrails or limiting principles.

Second, the language regarding the court processes contemplated by section 7 is replete with ambiguities and technical issues:

Section 7(1)

- It is unclear if “material error” references “sentence computation” alone or also “legal interpretation.”

- It is unclear what is meant by “legal interpretation.” Is this a change in Oregon law, or a change in the legal advice DOC receives from counsel?

Section 7(2)

- It is unclear which authorized agents of the state are permitted to initiate legal proceedings, and if there are any jurisdictional limitations for those agents.
- The only time limitation on when a district attorney can initiate legal proceedings is “as soon as practicable.”

Section 7(3)

- It is unclear if a person’s “release” from prison is a requisite for initiating legal proceedings. Section 7(1) and (2) discuss the applicability as relating to when “a person was released from the custody of the department.” However, this section authorizes a petitioner to seek either an order for (a) arrest and detention or (b) an order to be held in custody, which presumes the person is still incarcerated at the time of the filing of the petition.

Section 7(4)

- It is unclear what evidence the court can consider in its examination of probable cause.
- There is no clear timeline for scheduling hearings if the court concludes that there is probable cause, as it’s unclear if the hearing needs to either be scheduled or occur within the vague temporal limitation of *five days, or as soon as practical*.
- There are no remedies for delays in the proceedings.
- For reasons identical to language in Section 7(3), it is unclear if release from prison is requisite for initiating the proceedings.

Section 7(5)

- Section 7(5)(b) appears to suggest the court’s authority to reimprison those previously released is discretionary, as it states that a court “*may* order the person recommitted.” If intended, additional language on what is contemplated by this permissiveness should be included (e.g. “in the interest of justice”).
- It is unclear, and continues to remain unclear, what is meant by the term “sentence lawfully imposed by the court.” Does it refer to a sentence based upon the literal terms of the judgment, which DOC applied post-*Torres-Lopez* through November 2025? Or does it refer to DOC’s current interpretation of those judgments, which ignores both (a) the literal terms of sentencing judgments from the judicial branch and (b) the authority of those courts to enter such judgments as authorized by this legislative branch in ORS 137.370?

The concepts in HB 4041A require a far more thoughtful and well considered conversation. We urge a “no” vote.

Thank you.