

TO: House Committee on Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 9, 2022
RE: Opposition to HB 4142 – Stories from defense attorneys

Chair Bynum, Vice Chairs Noble and Power, and Members of the Committee:

Supporters of HB 4142 have stated that police don't arrest mentally ill people at hospitals for Assault in the Fourth Degree ("intentionally, knowingly or recklessly causes physical injury to another"), or they have been told by police or the prosecution not to pursue charges for assaults that occur at hospitals. Based on the experiences of criminal defense attorneys around the state, police arrest people at hospitals and prosecutors charge and pursue these cases. Our clients go to hospitals for help and end up in jail with criminal charges. On behalf of the Oregon Criminal Defense Lawyers Association, I submit the following stories from our members.

Multnomah County, OHSU.

I've had cases where clients with mental illness were arrested at OHSU for Assault in the Fourth Degree and the DA charged the case and pursued it. In one case, **my client had mental health issues and a neurological disorder known as Marfan's Syndrome.** He was experiencing a crisis when at OHSU and was taken there by his family. I documented all of this for the district attorney. Despite that, the district attorney's office insisted on prosecuting my client and took the case to trial. **Due to my client's neurological disorder, one juror stood up during jury selection and said that he could not convict my client of anything. The jury acquitted my client in less than 30 minutes. Everyone who was a part of the case left with less confidence in the system –** the DA wanted to dismiss it, but his boss wouldn't let him. The jurors could not believe the case was brought. My client and his family suffered. Yet despite all of that, the district attorney's office went to bat for OHSU on a misdemeanor Assault 4.

Washington County, OHSU Tuality.

I had a case where my client was arrested at OHSU Tuality for Assault in the Fourth Degree and Harassment and the DA charged the case and pursued it. **My client was suffering from a traumatic brain injury that made him unable to understand the criminality of his actions.** The security guard called the police and the medical technician who was injured opined that he believed my client had diminished mental capacity. My client lived in an adult foster care facility. He had to go to the hospital because of a seizure (a chronic condition caused by his brain injury). My client was found not able to aid and assist due to the nature of his brain injury.

Union County, Grande Ronde Hospital.

I've had cases where my client was arrested at Grande Ronde Hospital for Assault in the Fourth Degree and/or Harassment and the DA charged the case and pursued it. **In each of these instances, the named victim was employed by the hospital to provide security. Each client had been brought to the hospital to evaluate whether they were a danger to themselves or others, or unable to meet their own basic needs.** They were being considered for civil commitment and in obvious crisis. Hospital security workers, and other individuals, interact with people at a time of crisis. This is especially the case for the mentally ill. In each of these matters, I was obligated to pursue psychological evaluation regarding the competency of my clients and to evaluate whether the clients were so mentally ill that they could not form the mental state to commit the crime. I serve as court appointed counsel, so the state paid several thousand dollars for those evaluations and for the prosecution of these charges.

Clackamas County, Kaiser Sunnyside Hospital.

I've had a number of cases where my client was arrested at Kaiser Sunnyside Hospital for Assault in the Fourth Degree, Harassment, and other charges and the DA charged the case and pursued it. In these cases, the clients were suffering from mental health crises. In the most recent of these, **my client was told by his regular treating physician to go to the hospital for "tests." When he arrived, he was told he was being taken in on a "medical hold" at his doctor's direction. Since he was unaware of this directive, he resisted. When he resisted and attempted to leave, he was strapped down, medicated, and ultimately charged with multiple criminal counts. The Clackamas County DA's office sought jail time.** They have also stated that since the offense involved a physical struggle, **it is technically a violent offense and therefore not subject to mental health court as a potential resolution.** Sadly, this is not an uncommon outcome in this County.

Marion County, Salem Hospital.

In my 30 years of practice, I've had many, many cases appointed to me where clients were arrested at the either Salem Hospital, the Oregon State Hospital, or the Psychiatric Crisis Center for Assaults in the Fourth Degree. Numerous others were arrested in group homes. These cases ARE prosecuted. Mentally ill clients often get detained, arrested, and charged when they reach out and need medical attention.

These clients were suffering from a mental health crisis or active psychosis and seeking treatment when arrested. **One client suffered a breakdown and was taken to the Psychiatric Crisis Center for help. Instead of getting help, the client was arrested in the lobby first for Disorderly Conduct which escalated into an Assault arrest after he was detained by staff.** He was then transported to the jail and placed in segregation.

Our state mental health system is broken. Sadly, the criminal justice system is routinely used as a substitute. Making the mentally ill into felons will only exacerbate the problem. It will also make them ineligible for subsidized housing and some other government benefits that they need.

Jackson County, Asante Rogue Regional Medical Center.

I am criminal defense attorney practicing in Jackson County. I was a Jackson County Circuit Court Judge from 2009-2020. I have represented respondents in civil commitment cases, and I also presided over numerous of them as a judge. I have witnessed alleged mentally ill persons at Asante Rogue Regional Medical Center in Medford get into confrontations with hospital staff members. As a judge, I participated in many hearings where the alleged mentally ill person was in seclusion due to potentially harmful conduct and behaviors. **I have had clients who have been charged with Assault and Harassment for getting into physical altercations with hospital staff members. These individuals DID NOT know what they were doing. The standard to civilly commit someone in Oregon is very high, so these people are very mentally ill.** I have seen allegedly mentally ill persons refuse to eat or drink, refuse to get treatment for life threatening medical conditions, be catatonic, suffer from paranoia and delusions, exhibit extremely poor judgment and insight, and have no real sense of reality. **I know of individuals charged in a hospital setting with Assault who ultimately end up being found Guilty Except for Insanity. That means they basically don't know right from wrong. They can't conform their conduct to the requirements of the law or appreciate the criminality of their conduct.** To elevate these charges to a felony just would add to the trauma that our clients already are going through. I appreciate that we need to keep out hospital staff members safe, but I don't think making these charges a felony is going result in a safer workplace environment for them.

Multnomah County, Legacy Emanuel.

I am a public defender in Multnomah County. My first ever jury trial was representing a woman accused of Assault 4 against a nurse. My client was struggling significantly with her mental health. Prior to the alleged assault, **my client had tried to kill herself and was taken to Legacy Emanuel hospital. When a nurse there attempted to give my client an IV without consent, my client used force to protect herself. The DA's office actively pursued prosecution of this misdemeanor case and spent significant resources to prosecute it.** If this case had been charged as a felony rather than a misdemeanor, my client would have been even further penalized for trying to seek medical help in the midst of her mental health crisis. This bill will not significantly protect hospital workers, but it will further criminalize mental illness and further burden our communities most vulnerable members.