TO: **House Committee on Judiciary**
FROM: **Disability Rights Oregon (DRO) and Oregon Criminal Defense Lawyers Association (OCDLA)**
DATE: **February 14, 2023**
RE: **OPPOSITION to HB 3035**

Chair Kropf, Vice Chairs Wallan and Andersen, and members of the House Committee on Judiciary:

DRO (Disability Rights Oregon) and OCDLA (Oregon Criminal Defense Lawyers Association) write in opposition to HB 3035.

We thank Representative Neron for inviting our organizations to provide feedback on HB 3035. ACLU, DRO, OCDLA, and OJRC expressed our concerns in workgroup convened by Representative Neron and followed up with suggestions for alternative language.

We are concerned about creating yet another crime when we believe that law enforcement and prosecutors have sufficient tools to ensure public safety. We are concerned about the creation of a felony. Creating felony level crimes does not equate to increased public safety. Oftentimes, the opposite is true. Arrests and time in jail is incredibly destabilizing to individuals – they can lose their jobs, their housing, their families, be separated from loved ones, and not receive their regular medication. And jail is one of the worst places for a person experiencing mental illness. A person with a felony on their record will experience the intended consequences (such as barriers to finding housing, barriers to social services, education, and employment opportunities) that makes reintegration back into society very difficult and leads to a revolving door to the criminal legal system. These intended consequences from a felony conviction do not merely affect the individual; the consequences will have a ripple effect in the community as it impacts the person's family and loved ones. The consequences may impact future generations of the person's family as well.

HB 3035 will sweep up young people and mentally ill people and make the cycle in and out of the criminal legal system incredibility difficult to break. HB 3035 will feed the school to prison pipeline.

Our concern about specific language in the -1 amendment is outlined below.

<u>Page 1, line 5: "Fear, alarm or terror."</u>
It is unclear what the distinction is between the three words. We suggested that only one word be used, such as terror.

<u>Page 1, lines 5 and 6.</u>
There should be a second mental state requirement before "conveying" so that it reads, "intentionally causes terror in another person by *intentionally* conveying a threat . . ."

Page 1, line 7. “Two or more persons.”
Two persons does not seem to fit the concept of a “mass” injury event.

Page 1, line 11 and 13-14: “presents a reasonable likelihood of being carried out.”
The “threat” should be so unambiguous, unequivocal, and specific that it convincingly expresses the intention that it will be carried out imminently. We proposed language that reads, “A reasonable person would . . . [b]elieve that the threat was unequivocal, unconditional, and likely to be carried out imminently.”

Page 1, line 15:
Our organizations oppose the creation of a Class C felony.

Page 1, lines 16-18: Ways of conveying a threat
What about nonverbal means of doing so? E.g., what if someone made a mural that depicted them committing a mass shooting? Or took an announcement for a political event and put red targets on the face of each person appearing? Is the bill intended to sweep in only verbal conduct? If so, we would rephrase these lines as “A threat under this section **is** one that is conveyed orally, telephonically, in writing, or **is** an electronic threat as defined in ORS 166.065.”

Page 1, lines 19-21: “In a prosecution under this section, the state is not required to specifically identify the two or more persons against whom the threat is made.”
We are opposed to specifying in statute what the state is not required to prove. The state has the burden of proof to prove beyond a reasonable doubt the elements of a crime. Relieving the state of its burden is creating a fast track to prosecution and conviction. It is a very slippery slope to codify what the state need not prove, especially coupled with a measure this session to relieve the state of having to prove a culpable mental state for each material element of a crime (HB 2323).

Page 2, lines 1-6: Youth as a mitigating circumstance.
When this language is included in the statute, but not in other crimes, does it mean that youth cannot be considered a mitigating circumstance in other crimes?

DRO and OCDLA urge your NO vote on HB 3035.

About DRO: 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]

About OCDLA: Oregon Criminal Defense Lawyers Association’s 1,200 members statewide include public defense providers, private bar attorneys, investigators, experts,

and law students. Our attorneys represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon. Our mission is championing justice, promoting individual rights, and supporting the legal defense community through education and advocacy.