



TO: Senate Judiciary Committee
FROM: Beth Brownhill, Managing Attorney, Disability Rights Oregon
DATE: March 21, 2023
RE: SB 1060

Chair Chair Prozanski, Vice Chair Thatcher, and members of the Committee,

SB 1060 Would Provide Access to Justice for Victims who are Nonverbal

Oregon's assault and criminal mistreatment statutes require that the victim suffer physical injury.¹ "Physical injury" means impairment of physical condition or substantial pain.² Victims who are nonverbal are less likely to be able to prove substantial pain because of the way this statute is interpreted.

The Problem: Victims who are Nonverbal Receive Unequal Access to Justice

People with disabilities are up to 10 times more likely to be victims of violent crime, including assault and criminal mistreatment. Yet the offenders are less likely to be convicted. One reason is the challenge of proving certain elements of crimes against victims who are nonverbal.

Assault and criminal mistreatment require evidence of physical injury. Physical injury can be proven in two ways in Oregon. One is by showing impairment of a physical condition. The other is by showing substantial pain. When prosecutors are basing their charging on "substantial pain", victims who are nonverbal often are unable to receive full justice. This is because when it is not immediately obvious that the assault would cause

¹ See ORS 163.160 and ORS 163.205.

² See ORS 161.015(7).

“substantial pain,” the law requires a verbal articulation of pain. For victims who are nonverbal, this is not possible. As a result, perpetrators who target victims who are nonverbal are charged with lesser crimes, like harassment.

Bradley is a young man with severe disabilities, including cerebral palsy, traumatic brain injury, and a seizure disorder. Although 23 at the time he was attacked, he weighed only 87 pounds. He cannot verbally communicate due to his disabilities.

In April 2021 a video monitor in Bradley’s room showed his night nurse put a blanket over Bradley’s face, impairing his breathing. The nurse then smacked him repeatedly across the face with an open hand and shook him violently.

Immediately after the physical attack, Bradley’s mother noticed hand marks on both arms, and fingernail marks on his right arm. He was unable to turn his head to the left, the side that had been smacked, for a number of days after. Five days later his doctor noted that his left arm was twitching and that he appeared to be in pain. For the following months Bradley also had multiple grand mal seizures, a type more serious than he had ever had before.

The grand jury charged the nurse only with harassment. They did not charge the nurse with assault or criminal mistreatment because Bradley is nonverbal; he couldn’t testify to having experienced impairment of physical condition pain after the attack.

In another case, A.F. was in high school when his paraeducator slapped him across the face with an open hand. The sound of the slap silenced the classroom. Multiple witnesses reported seeing Anthony’s head fly back from the slap. They reported that it sure looked like it hurt.

Like many people with autism, A.F. doesn’t accurately express pain. His mother describes multiple times where he’s had visible wounds (including deep cuts) and he didn’t express that he was in pain. After the slap, A.F. said that it hurt. When pressed to describe how much it hurt, he could not.

Once again, the offender is being charged with harassment.

The Solution:

SB 1060 makes it more likely to hold an offender responsible for the crime by modifying the definition of “physical injury” to include expressed or inferred impairment of physical condition, substantial pain, or physical trauma. Physical trauma is defined to include “objective evidence associated with physical violence to a person’s body.” The bill also specifies how physical injury may be proved. These modifications clarify the evidence that may be considered in cases of assault or criminal mistreatment against nonverbal victims.

If SB 1060 had been enacted prior to the prosecution of the attack on Bradley, the jury could have been instructed to consider evidence of *inferred* impairment of his physical condition, substantial pain, and physical trauma. This evidence would have included the marks on his arms and his inability to turn his head. His doctor could have testified to how the amount of force used against Bradley, a medically fragile person, appeared to have caused him pain.

For A.F, SB 1060 could have allowed his mother to testify that when A.F. said the slap hurt, it indeed was very painful. A specialist could testify to A.F.’s altered pain responsivity.

About Disability Rights Oregon

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.³ 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”.⁴ We are also mandated to "educate policymakers" on matters related to people with disabilities.⁵

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.

³ See ORS 192.517.

⁴ See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

⁵ See 42 U.S. Code § 15043(a)(2)(L).