

HB 4088 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 02/15/24

Action: Do pass with amendments and be referred to Ways and Means by prior reference.
(Printed A-Eng.)

Vote: 9-1-0-0

Yeas: 9 - Andersen, Bynum, Conrad, Kropf, Lewis, Reynolds, Tran, Wallan, Yunker

Nays: 1 - Chaichi

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Jules Dellinger, LPRO Analyst

Meeting Dates: 2/13, 2/15, 2/15

WHAT THE MEASURE DOES:

The measure adds to requirements for hospitals related to hospital worker safety, makes assault of a hospital worker a felony, and establishes a hospital worker safety grant program to be administered by the Oregon Health Authority.

Detailed Summary:

Hospital Safety Requirements (Sections 2–5)

- Requires hospitals to post public signage stating that assaulting a hospital worker is a crime.
- Requires hospitals to post employee signage informing hospital workers that they cannot be discriminated against for reporting an assault and explaining that workers can report an assault by contacting law enforcement.
- Requires the relevant state agency to make available to hospitals model signage in at least the five languages most commonly spoken in Oregon.
- Requires hospitals to submit any reports on workplace illnesses and injuries to the Oregon Department of Consumer and Business Services (DCBS) that they are already required to submit to the federal Occupational Safety and Health Administration. Permits the DCBS to publish to its website an anonymized compilation of the information it receives.
- Prohibits hospitals from requiring workers to wear ID badges with their last name and requires hospitals to allow union representatives to participate in worker safety meetings and committees.

Assault (Section 6)

- Expands **assault in the third degree**, a Class C felony, to include *intentionally or knowingly causing physical injury* to another person knowing that the other person is working in a hospital and while they are acting in the course of their official duties.
- Excludes assaults committed in certain mental health and psychiatric hospitals from the new **assault in the third degree** charge.

Grant Program (Sections 7–12)

- Establishes the Hospital Workplace Violence Prevention Efforts Fund.
- Directs the Oregon Health Authority (OHA) to develop and administer a grant award program for workplace violence prevention efforts in hospitals.
- Requires grant applicants and applications to meet certain standards.
- Appropriates general funds for the biennium ending June 30, 2025, to OHA for carrying out program.
- Ends the grant program on January 2, 2030.

Effective Date (Section 15)

This summary has not been adopted or officially endorsed by action of the committee.

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Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- Impacts of assault enhancement on communities of color and marginalized and vulnerable populations
- Scope of the terms "in a hospital" and "hospital worker"
- Administrative burdens for hospitals and investigative burdens for enhanced assault crime
- Criminal mental state for assault as it relates to people experiencing a mental health crisis
- Removal of exclusion for charging the assault offense against people with certain mental conditions

EFFECT OF AMENDMENT:

Replaces the measure. The amendment modifies the signage requirements, modifies the charging requirements for felony assault of a hospital worker, and replaces the hospital worker safety pilot program with a statewide grant program administered by the Oregon Health Authority.

Detailed Summary:

Hospital Safety Requirements (Sections 2-5)

- Removes requirement but maintains ability of hospitals to post the public sign in languages other than English. Requires employee sign to be posted at least in both English and Spanish.
- Replaces hospital assault prevention and protection program reporting requirement with a requirement that hospitals also send to the Department of Consumer Business Services any report on work-related injuries and illnesses the hospital is required to submit to the federal Occupational Safety and Health Administration.

Assault (Section 6)

- Removes limitation prohibiting charging the new offense against people who, at the time of the offense, are experiencing certain mental health conditions.

Grant Program (Sections 7-12)

- Removes the pilot program for researching, analyzing, and developing recommendations for a statewide hospital workplace violence prevention training program and grant program.
- Replaces the pilot program with a grant program for hospital workplace violence prevention efforts.

BACKGROUND:

In an [analysis](#) focusing on workplace violence due to intentional injuries caused by another person to healthcare workers, the US Bureau of Labor Statistics found that private "healthcare workers accounted for 73% of all nonfatal workplace injuries and illnesses due to violence in 2018." In 2008, the Oregon Occupational Safety & Health Administration published a [report](#) on hospital assault data collected pursuant to [House Bill 2022](#) (2007), which required data collection, reporting on, and implementation of strategies to protect hospital workers from assault. The report reviewed 1,061 reported assaults in 2008 and found that:

- 57% were committed by behavioral health patients and 39% by general patients;
- 74% of the assault victims were certified nursing assistants, orderlies, aides, registered nurses, or licensed practical nurses;
- 20% of the assaults resulted in major or severe injury, with 80% resulting in minor injury; and
- 47 (approximately 4%) were reported to law enforcement.

[ORS 654.062](#) prohibits hospitals from firing or barring from employment or otherwise discriminating against an employee because the employee has in good faith reported an assault that occurred in a healthcare location.

Theories of assault (first, second, third, or fourth degree)—all of which require injuring another person physically—can differ in (1) the mental state the offender must have, (2) the severity of the resulting injury, and (3) the circumstances of the offense. A person commits **assault in the fourth degree** ([ORS 163.160](#)), generally a Class A misdemeanor, if they *intentionally, knowingly, or recklessly* cause *physical injury* to another person and commits **assault in the second degree** ([ORS 163.175](#)), a Class B felony, if they *intentionally* or *knowingly* cause

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serious physical injury to another person. The different theories of **assault in the third degree** ([ORS 163.165](#)), generally a Class C felony, cover conduct that involves both *physical injury* and *serious physical injury*, varying combinations of all three mental states mentioned above, and a variety of specific circumstances. Several of the theories classify conduct that would normally be **assault in the fourth degree** as **assault in the third degree** instead when it is committed against people doing specific jobs. For example, it is **assault in the third degree**, rather than fourth degree, when a person *intentionally, knowingly, or recklessly* causes *physical injury* to an emergency medical services provider, taxi operator, or highway worker while they are working. The maximum indeterminate sentence for a Class A misdemeanor is 364 days of imprisonment and for a Class C felony is five years of imprisonment. **Assault in the third degree** has a crime seriousness of six (except for certain vehicular acts), which carries presumptive sentences between three years of probation and 30 months of imprisonment, depending on criminal history.

The legal terms in italics above are statutorily defined in [ORS Chapter 161](#) as follows:

- *Intentionally* "means that a person acts with a conscious objective to cause the result or to engage in the conduct so described." ORS 161.085(7).
- *Knowingly* "means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists." ORS 161.085(8).
- *Recklessly* "means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists." ORS 161.085(9).
- *Physical injury* "means impairment of physical condition or substantial pain." ORS 161.015(7).
- *Serious physical injury* "means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ." ORS 161.015(8).

[House Bill 2141 \(2023\)](#) and [Senate Bill 563 \(2023\)](#) each proposed that assaults on hospital workers be added to the assault in the third degree statute. The bills primarily differed in the requisite mental state and limitations on charging related to mental illness.

The measure makes multiple references to the definition of **hospital** in [ORS 442.015](#), which is *either* "a facility with an organized medical staff and a permanent building that is capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury and that provides" specified health services, including medical, laboratory, and pharmacy, for example; *or* a "special inpatient care facility" as defined by the Oregon Health Authority in [OAR 333-071-0205](#).