



TO: House Committee On Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 13, 2024
RE: Opposition to HB 4135

My name is Mae Lee Browning. I represent the Oregon Criminal Defense Lawyers Association. OCDLA'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.

I urge this Committee to vote NO on HB 4135.

My testimony will include several points that were raised in my testimony on HB 3035 from 2023. Recently, there have been suggestions to amend current statutory language to achieve the same objective as HB 4135. This goes to show that a lot more thought and discussion should be had on this bill. HB 4135 is not ready to be moved out of Committee this short session.

OCDLA is concerned about creating yet another crime when we believe that law enforcement and prosecutors have sufficient tools to ensure public safety. HB 4135 will sweep up young people and people who are mentally ill and make the cycle in and out of the criminal legal system incredibly difficult to break. HB 4135 will feed the school to prison pipeline.

We are concerned about the creation of a felony. Creating felony level crimes does not equate to increased public safety. Arrests and time in jail are 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 housing, 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.

Below are some additional suggestions:

Page 1, line 6: “Fear, alarm or terror.”

It is unclear what the distinction is between the three words. We suggest that only one word be used, such as terror.

Page 1, line 6: Add mental state.

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. “Four or more persons.”

Four persons does not seem to fit the concept of a “mass” injury event. OCDLA suggests ten or more persons.

Page 1, lines 13-14: “presents a reasonable likelihood of imminently 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, “A reasonable person would . . . [b]elieve that the threat was unequivocal, unconditional, and likely to be carried out imminently.”

Page 2, lines 2-3: Ways of conveying a threat

To apply to only verbal conduct, OCDLA suggests the following change: “A threat under this section ~~may be~~ **is one that is** conveyed orally, telephonically, in writing, or ~~may be~~ **is** an electronic threat as defined in ORS 166.065.”

Page 2, lines 7-11: Age of the Person

OCDLA suggests amending the bill to provide that it can never be an adult felony if the conduct was committed as a child. We also suggest that the age of the person be more than a mitigating factor. If the person is under the age of 18 at the time of the offense, the prosecution should be required to offer a conditional discharge, and, upon the completion of an assessment and any treatment, the charge shall be dismissed.

Furthermore, there should be mitigation if the person, at the time of the alleged offense, is experiencing an intellectual disability, developmental disability, delirium, dementia, traumatic brain injury, severe and persistent mental illness or other condition that significantly impairs the person’s judgment or behavior.

OCDLA urges you to vote NO on HB 4135.