



TO: House Committee On Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 13, 2024
RE: Opposition to HB 4088

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

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 4088. This bill will not protect hospital workers, will not have a deterrent effect, will criminalize mental illness, and would send more people to prison. Our state mental health system is broken. Sadly, the criminal justice system is routinely used as a substitute. Turning mentally ill folks into felons will only exacerbate the problem. It will also make them ineligible for subsidized housing and some other government benefits that they need.

We are sympathetic to the difficult jobs of nurses and doctors in dealing with people in stressful situations. However, this bill will have no deterrent effect and will not keep hospital workers any safer. People who would be charged under this section would not know about this change in the law. **Even if they knew about the change in the law, they would not be deterred by it because these people would more than likely be suffering a mental health crisis when they are in the hospital.**

Enhancing a misdemeanor Assault in the Fourth Degree to a felony Assault in the Third Degree because the victim is a hospital worker will disproportionately affect people suffering from mental illness. **The definition of a person working in the hospital who is performing official duties includes those who do not provide medical services, such as security guards, who are often tasked with escorting people who are mentally ill out of the hospital.**

HB 4008 would have the effect of sending more people to prison and will punish more harshly those who are already struggling. HB 4008 is another way to criminalize mental

illness. The section of the bill that would have provided an exception to prosecution has been removed. That section provided an exception for people who, at the time of the alleged offense, were “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.”

The amended definition of “hospital” that provides an exception for hospitals that primarily provide “inpatient mental health treatment to adults and adolescents who are between nine and 17 years of age and emergency psychiatric care for adults 18 years of age or older” is insufficient. People who have severe and persistent mental illness that significantly impairs the person’s judgment or behavior are brought to hospitals that do not meet this exception.

Supporters of the bill have stated in previous settings 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 supporters 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 to trial. **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.

In one case, my client had mental health issues and a neurological disorder. He was experiencing a crisis when at a local hospital 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 the hospital on a misdemeanor Assault 4.

Washington County.

My client was suffering from a traumatic brain injury that made him unable to understand the criminality of his actions. The hospital worker 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.

I have had numerous cases where **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.

In a recent case, 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. **The DA 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.

In my 30 years of practice, I've had many, many cases appointed to me where clients were arrested at local hospitals 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 hospital for help. Instead of getting help, the client was arrested in the lobby.

Jackson County.

My clients who had physical altercations with hospital staff members did not know what they were doing. 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. I appreciate that we need to keep our 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.

I had a jury trial where I represented a woman accused of Assault 4 against a nurse. Prior to the alleged assault, my client had tried to kill herself and was taken to a local 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.

OCDLA urges you to vote NO on HB 4088.