



February 15, 2024

House Judiciary Committee
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Opposition of House Bill 4088

Dear Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the Committee:

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 supporters statewide.

The ACLU of Oregon opposes House Bill 4088, and particularly the -2 amendment, which would not keep hospital workers safe and would criminalize mental illness.

HB 4088 enhances the penalty for assaulting a healthcare worker from a misdemeanor to a felony, which would criminalize conduct in a context that would largely apply to Oregonians struggling with mental illness and in highly charged contexts where knowledge of the law or criminal penalty could not be expected to have any deterrent effect. This means that the bill can be anticipated to do little to fulfill its goal of keeping hospital workers safe; it would, however, risk serious harm to community members with disabilities.

The -2 Amendment strips vital protections from the introduced text that would limit charges against individuals who are experiencing disability, brain injury, mental illness, or other conditions that significantly impair the person's judgment of behavior. People with disabilities and mental illness face significant barriers to accessing health care, and people with mental illness may not access healthcare until they are experiencing a crisis. These situations are often stressful and can overwhelm patients, leading to outbursts and harmful conduct. This bill risks criminalizing the unintentional harms and behaviors arising from brain injuries, mental illness, and other impairment or disability and would risk making individuals felons, even when they were not fully culpable for their actions.

Jails and prisons are not the appropriate response to mental health issues. They are not equipped to treat and care for people with serious mental health conditions and it is not the appropriate societal response. Beyond humanitarian concerns, locking up individuals with mental issues is linked to increased

recidivism¹ and exacerbated mental illness.² Even if a defendant ultimately wins their case based on an affirmative defense of mental illness at later stage, they still will have endured a brutal and traumatizing criminal process that can be expected to worsen their condition and would strain our overtaxed court system for a case that never should have been charged to begin with.

Even with the protective language of the introduced text for individuals with impairments, the ACLU of Oregon would likely have concerns about application of this protection, particularly in instances where a person did not have a diagnosed condition or this was their first mental health crisis.

HB 4088 and the -2 Amendment lack the needed protections for people with disabilities, feed into a revolving door of incarceration, and do not provide deterrence intended to keep our health workers safe. The ACLU of Oregon urges you to vote no on House Bill 4088 and the -2 amendment.

Respectfully,
Emily Hawley
Senior Policy Associate
ACLU of Oregon

¹ Sam McCann, "Locking up People with Mental Health Conditions Doesn't Make Anyone Safer", Aug 25, 2022, www.vera.org/news/locking-up-people-with-mental-health-conditions-doesnt-make-anyone-safer.

² Mental Health America, Mental Health Treatment in Correctional Facilities, www.mhanational.org/issues/mental-health-treatment-correctional-facilities.