



April 30, 2025

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

**RE: Testimony in Opposition of House Bill 2471**

Dear Chair Prozanski, Vice-chair Thatcher, 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 46,000 members and donor supporters statewide.

**We strongly oppose House Bill 2471, which requires that when a person raises the guilty except for insanity (GEI) defense, they must prove that their lack of substantial capacity is primarily the result of a qualifying mental disorder. This change would impose an unduly burdensome and medically untenable standard, particularly on individuals with co-occurring disorders, and threatens to violate due process rights and federal disability protections.**

**1. HB 2471 standard is clinically unworkable**

Under current law, a person raising the GEI defense must be evaluated by a certified forensic evaluation and be determined to have a “qualifying mental disorder” (QMD).

- There is **no clinically acceptable way to determine what behavior is caused by which disorder** for a person with a co-occurring Severe and Persistent Mental Illness (SPMI) and personality disorder. Therefore, HB 2471 creates an impossible burden of proof for people with SPMI.
- The Supreme Court of Oregon has recognized that existing law provides “that the GEI defense applies if a defendant proves that they lacked the requisite capacity as a ‘consequence’ or ‘effect’ of their mental disease or defect . . . the lack of capacity need not be solely attributable to the mental disease or defect; a ‘set of conditions’ can combine to result in the lack of capacity.” *State v. Meiser*, 372 Or. 438 (2024). This standard is more fair given the reality of certain disabilities.

**2. HB 2471 undermines existing case law**

House Bill 2471 overrides the current process in Oregon and would instead require that a defendant’s lack of substantial capacity be *primarily* the result of a qualifying mental disorder. This creates an unnecessary, additional burden for our certified forensic evaluators and criminal legal system in candidly and equitably evaluating defendants. **The standard proposed by HB 2471 undermines defendants’ ability to receive a fair trial and is likely to create inequities in who is found eligible for GEI.**

- If a defendant has both a QMD and a non-QMD, and an expert ultimately establishes the non-QMD was slightly more the cause of the alleged conduct than the QMD, then the GEI defense cannot be raised per section 1(b) of the bill. **This means a defendant conceivably could be too sick to benefit from the GEI defense.**

### 3. HB 2471 disproportionately harms defendants with substance use disorders

According to SAMHSA's 2022 National Survey on Drug Use and Health, approximately 21.5 million adults in the United States have co-occurring mental health problems and substance use disorders (SUDs).<sup>1</sup>

- The language of Section 1(c) of the bill appears to foreclose a GEI defense for a defendant with a co-occurring SUD and QMD, if they were using—due to a SUD—at the time of their alleged conduct.
- This also bizarrely suggests that someone with an undeniably a QMD would be prevented from raising the GEI defense if they were also “voluntarily intoxicated”
  - Whether related to an SUD, as a symptom of their QMD, or simply to cope with their symptoms; even minor substance use would mean the law treats them as if they had capacity the whole time.
- This law may discriminate against people with protected disabilities, including those with alcohol use disorder. Stripping crucial legal protections from people with alcohol use disorder may violate the Americans with Disability Act.
  - Alcohol use disorder is a disability that the ADA protects. *See, e.g. Fuller v. Frank*, 916 F.2d 558 (9th Cir. 1990); *Williams v. Widnall*, 79 F.3d 1003, 1005 (10th Cir. 1996).
  - Title II of the ADA prohibits discrimination “on the basis of” a disability. 42 U.S.C. § 12132.
  - Excluding someone from a guilty except for insanity plea because of “voluntary intoxication” may impinge on the legal rights of people with alcohol use disorder explicitly because of a symptom of their disability.
  - This means this bill risks violating federal civil rights law and possibly leading to avoidable, costly litigation.
- Fundamentally, it is important that the criminal legal system has the ability to properly evaluate and make fair and holistic decisions on GEI claims.

### 4. HB 2471 restricts judicial and clinical discretion

HB 2471 expressly limits the right of a defendant to raise a GEI defense when they are voluntarily intoxicated. This could not only disproportionately affect defendants with a SUD, but it may limit the ability of courts and experts to assess the totality of the circumstances and determine the cause and extent of an individual's substantial capacity.

Ultimately, it is too early to revise the Supreme Court's *Meiser* decision and too great a chance of unduly prejudicing the rights of defendants. **The ACLU of Oregon urges you to vote “no” on House Bill 2471.**

Respectfully,

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<sup>1</sup> “Results from the 2022 National Survey on Drug Use and Health: A Companion Infographic,” p. 12. SAMHSA.

<https://www.samhsa.gov/data/sites/default/files/reports/rpt42730/2022-nsduh-infographic-report.pdf>