

FISCAL IMPACT OF PROPOSED LEGISLATION

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
 Legislative Fiscal Office

**Measure: SB 421 – A
 REVISED**

***Only Impacts on Original or Engrossed
 Versions are Considered Official***

Prepared by: John Terpening
 Reviewed by: Linda Ames, Steve Bender, Monica Brown
 Date: 5-9-2013

Measure Description:

Authorizes district attorney to initiate commitment proceeding when person charged with certain crimes lacks capacity to stand trial and is dangerous and in need of commitment.

Government Unit(s) Affected:

Oregon Criminal Justice Commission, Cities, Counties, Department of Justice, District Attorneys and their Deputies, Judicial Department, Oregon Health Authority (OHA), Public Defense Services Commission, Psychiatric Security Review Board

Summary of Expenditure Impact:

Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Oregon Health Authority – General Fund	\$169,571	\$174,145
Agency – Fund Type	2013-2015 Biennium	2015-2017 Biennium
Psychiatric Security Review Board – General Fund	\$72,222	\$72,222

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

This fiscal impact statement has been revised based on additional information received by the Oregon Health Authority and Psychiatric Security Review Board.

The measure authorizes a district attorney to petition the court to initiate commitment proceedings if there is reason to believe a person is an extremely dangerous mentally ill person. The measure requires the court to conduct a hearing upon receipt of a petition and allows the court to order the person under the jurisdiction of the Psychiatric Security Review Board (PSRB) under certain circumstances. The measure stipulates that a person committed must be committed to a state hospital or secure intensive community inpatient facility and that PSRB must hold a hearing six months after the commitment and then every two years to determine the status of commitment. The measure also allows the state hospital or inpatient facility to request a commitment review hearing by PSRB. If a person discharged by PSRB has unadjudicated criminal charges at the time of commitment, PSRB must notify the district attorney who may request an evaluation to determine if person is fit for criminal proceeding.

The number of commitment proceedings that may be initiated is unknown. Based on Oregon State Hospital data, over the last three years there were 12 cases where a defendant was found “never able to aid and assist” after being charged with a serious crime, and was later readmitted as a civil commitment. The average length of stay of these commitments was 190 days. The cost for a patient at the Oregon State Hospital is approximately \$20,636 per month. The Oregon Health Authority (OHA) anticipates that these 12 cases would stay on average an additional 20 days in the Oregon State Hospital as they await PSRB hearings and discharge placement. The estimated cost to OHA for the additional length of stay is \$169,571 General Fund in 2013-15.

As stipulated by the measure, these 12 individuals would fall under the oversight of PSRB. The agency estimates an additional 12 hearing days per biennium and an additional 6 appeals per biennium based

on current appeal rates. PSRB does not anticipate the need for additional staff. The total estimated cost to PSRB for Board member hearing reimbursements, Attorney General Fees and other hearings costs is \$72,222 General Fund.

These cost estimates could vary depending on the actual number of cases. If the number of cases and facility capacity exceeds these estimates, the agencies affected may need to return to the Legislative Assembly for additional resources.

There is a minimal fiscal impact to the Judicial Department, Public Defense Services Commission, and District Attorney's and their Deputies as a result of this measure.

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 0 - 0

Yeas: Close, Dingfelder, Kruse, Roblan, Prozanski

Nays: 0

Exc.: 0

Prepared By: Mike Schmidt, Counsel

Meeting Dates: 2/19, 4/18

WHAT THE MEASURE DOES: Creates new standard of civil commitment for “extremely dangerous” people. Requires, when court makes finding, that person be supervised by Psychiatric Security Review Board (PSRB) and have initial review hearing in six months, and have their status reviewed only if requested by the hospital or treatment facility, or every two years, whichever comes first. Allows prosecuting attorney to petition court for commitment hearing. Directs hospital superintendent to petition for early termination of commitment where committed person no longer suffers from disease or defect, or is no longer extremely dangerous. Instructs supervisory agency to notify parties before commitment period ends, and hold hearing determining whether or not a new period of commitment should be set. Tolls statute of limitations for the duration of the commitment if there is a pending underlying crime. Allows prosecuting attorney to request an aid and assist evaluation be done in advance of any hearing where the person may be released from the jurisdiction of the PSRB.

ISSUES DISCUSSED:

- Victims currently have to be worried every six months that the person who seriously injured or killed their loved one may be released

EFFECT OF COMMITTEE AMENDMENT: Creates new standard for civil commitment of “extremely dangerous.” People who are found to be extremely dangerous will be placed under jurisdiction of the PSRB, where they will have an initial hearing within six months, and every two years thereafter, unless the agency holding the person petitions the court for a hearing sooner because they feel that the person no longer meets the criteria for their designation. The prosecuting attorney, where any unresolved criminal charges, shall be notified in advance of any such hearing. The prosecuting attorney may request an evaluation to determine if the person is fit to proceed with the criminal proceeding in advance of the hearing to determine if the person still meets the “extremely dangerous” criteria.

BACKGROUND: In many cases, mental health services are only available to those individuals who are able to accept services voluntarily; the most severely ill are left untreated until their condition deteriorates to the point that they pose a clear and present danger to themselves or others. This raises significant issues where a person has been accused of committing a crime but is found unfit to stand trial. Oregon law currently sets a maximum time that a defendant may be held when the defendant is initially found to be unfit for trial. A defendant must be discharged at the end of a period equal to the maximum term which could be imposed if the person were convicted of the offense with which the person was charged, or three years, whichever is less. If it is determined that the person is unlikely to gain or regain capacity to stand trial, the charges must be dismissed and the defendant released, or civil commitment proceedings must begin, which only commit a person for 180 days at a time. This requires a new hearing every 180 days, unless the committed person stipulates to continue to commitment.

Two recent cases have brought this issue to the forefront in Oregon. The Spinosa case in Washington county where a man charged with murder would have been released from custody after being found “unable to aid and assist” his counsel in trial, and where the hospital stated that he received the maximum benefit through hospital involuntary civil

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

commitments that he could receive. If a person is both unable to aid and assist, and no longer meets criteria for civil commitment under an undefined “maximum benefit” standard supplied by the hospital, then there is a gap where the only other avenue is release into the community. The other case is that of Cheryl Kidd, the woman who killed Eugene Police Department Officer Chris Kilcullen, who is still in the Oregon State Hospital. Presently the state hospital is attempting to treat her into competence to aid and assist but, if unsuccessful, Ms. Kidd may fall into the same justice and community safety gap.