



March 23, 2015

TO: Representative Mitch Greenlick, Chair
House Health Care Committee
FR: Bob Joondeph, Executive Director
RE: HB 3347

Disability Rights Oregon (DRO) is Oregon's federally-funded *Protection and Advocacy* office that provides legal-based advocacy services to Oregonians with disabilities.

DRO strongly opposes HB 3347 because it is the wrong solution for the problem it seeks to address, would undermine Oregon's efforts to create a robust community mental health system and would enshrine discriminatory and possibly unconstitutional standards into Oregon law.

In Oregon, a person may be civilly committed for mental health treatment if a court finds, by clear and convincing evidence, that a person is "a person with a mental illness." (ORS 426.130) A commitment may result mandatory inpatient or outpatient mental health treatment.

A person is considered "a person with mental illness" if, "because of a mental disorder," the person is either: 1. a danger to self or others, 2. unable to provide for basic needs and not receiving care that is necessary for health or safety, or 3. has been hospitalized twice in the last three years and is exhibiting symptoms or behavior like those occurring before the other hospitalizations.

HB 3347 would add two additional categories under which a person can be committed: 1. "Gravely disabled," and 2. "Presenting a likelihood of serious physical harm."

We assume that the purpose of these suggested additions is to facilitate the civil commitment of more people. Who would those people be?

In the definition of "gravely disabled," appears to be a paraphrase of existing standards. Read closely, however, subsection (B) of its definition would allow commitment for "deterioration in routine functioning" without a showing that this deterioration results in the inability of a person to provide for their basic needs. While this seems a very slight distinction, it could conceivably result in the commitment of a person who is not dangerous, unable to care for herself or exhibiting pre-commitment symptoms but who is found to have "an escalating loss of cognitive or volitional control over his or her actions."

Expansion of commitment is clearer, however, in the new standard of “presenting a likelihood of serious physical harm”. It would permit the government to take custody of a person and require them to undergo mental health treatment if they threaten harm to themselves, others, or property by statements or past actions.

To be clear, HB 3347 would expand commitment to a person with a “mental disorder” who is not found by a court to be a danger to themselves or others, or unable to meet his or her basic needs, but who:

- “has caused [physical] harm in the past” or placed other person in “reasonable fear” of harm, or
- “has caused substantial loss or damage to the property of others” in the past, or
- has “threatened the physical safety of another person” and “in the past committed one or more violent acts.”

If all this language is distilled, it means that a person with a “mental disorder” may be committed when he or she is not dangerous or unable to care for themselves or exhibiting symptoms that lead to earlier commitments. The person’s mental disorder would now allow them to be taken into custody purely based upon:

- Their speech, or
- Their past behavior whether or not it was related to a mental disorder, or
- The “reasonable fear” of third parties that is generated by the person’s behavior.

Civil commitment is the pre-emptive use of state power to segregate and forcibly treat a person who has not engaged in illegal or dangerous behavior. The governmental power is based upon an interest in the individual’s well-being and public safety concerns. This power is limited by the basic freedoms of adults that are guaranteed in the federal and state constitutions and laws.

To the extent that HB 3347 would result in the commitment of more people than the law presently allows, it would affect those who are not dangerous but have engaged in speech or behavior that is not necessarily connected to a mental disorder and is constitutionally protected. It would also separate out people with “mental disorders” for disparate treatment by the government. Oregonians without “mental disorders” could engage in the same speech or actions without fear of government intervention.

Oregon’s present civil commitment laws strike the correct balance between legitimate public concerns and legitimate individual rights. HB 3347 would upset that balance.

Lastly, the State of Oregon has been engaged in ongoing monitoring by the United State Department of Justice because of concerns that the state allocated to large a percentage of its mental health budget to state hospital and other institutional care settings at the expense of our community mental health services. Increasing the number of people committed to our hospitals would reverse state policy that is just getting traction to create adequate crisis and intensive case management services in our communities. Adequate

community services will avoid unnecessary commitment and criminal justice system interactions. If more people are committed and then released to a broken community mental health system, the ultimate result will be more homelessness, criminal encounters and misery for individuals who struggle with disorders, their families and our communities.

DRO urges this committee to reject HB 3347 and the backward-looking solutions it offers. Thank you for the opportunity to submit this testimony.