



Kate Brown, Governor

## Testimony

### HB 2306

March 20, 2017

Presenter: Lynne Saxton, Director of the Oregon Health Authority

Good afternoon Chair Barker and members of the committee. I am Lynne Saxton, Director of the Oregon Health Authority.

I am here to testify in support of HB 2306-1, which allows the courts, mental health providers and the Oregon Health Authority (OHA) to share information about defendants who are unable to aid and assist in their own defense. It also allows OHA to coordinate the best placement for defendants to receive mental health treatment. These individuals are also known as “.370” defendants, which refers to the statute governing this issue – ORS 161.370.

HB 2306-1 revises this statute to recognize that treatment for mental health is a health care decision that requires a coordinated effort between OHA, Oregon State Hospital, law enforcement agencies, courts, and county mental health programs.

HB 2306-1 authorizes these partners to share information about defendants who have been found unable to aid and assist. This is important information because OHA needs to know, not only the level of crime (Misdemeanor A or Felony C), but also about the specific crime. For example, a Felony U could be murder, contempt of court, or selling liquor without a license. One is clearly a violent crime, and the other two are not. This information will help OHA make informed decisions about treatment and safety.

HB 2306-1 also authorizes OHA to coordinate where those defendants will receive restorative services – at Oregon State Hospital, where it's the most expensive, or in the community, where it's the least disruptive to patients' lives.

Currently, Oregon's judges in 36 counties make decisions about where defendants should receive restorative services. Courts may default to sending defendants to the state hospital as the most accessible solution. The county, however, may be able to restore the defendant in the community – the better

clinical setting at a lower cost with the natural support structure of family nearby. In many cases, community treatment is the better option.

When people are sent to the state hospital for three months, they often lose their jobs, their homes or their pets, and they are separated from their friends, family and other support systems. People should only be hospitalized when absolutely necessary.

Indeed, the U.S. Supreme Court's *Olmstead v. L.C.* decision [527 U.S. 581 (1999)] which essentially says it is a violation of the Americans with Disabilities Act to institutionalize people when they could be served in the community.

The *Olmstead* decision resulted in years of discussion between the U.S. Department of Justice (USDOJ) and Oregon about steps Oregon needs to take to avoid a federal lawsuit. Last year, OHA and USDOJ agreed upon the Oregon Performance Plan, in which OHA committed to treat people with mental illness in the community whenever safely possible. Similar to how the civil commitment process works in Oregon, HB 2306-1 aligns with the USDOJ Performance Plan. It is also consistent with state and federal laws.

OHA expects HB 2306-1 provisions to free up state hospital beds and reduce emergency department psychiatric boarding for civil patients. Admissions for civil patients are often put on hold, as the hospital must admit someone under a .370 order within seven days or be held in contempt of court. Civil patients sometimes must wait longer to be admitted to Oregon State Hospital while occupying a bed in an acute care wing of a regular hospital. In turn, people waiting for an acute care bed are languishing in emergency departments. This is called psychiatric boarding.

As you will recall, the state of Washington was recently sued for its problem with psychiatric boarding in emergency rooms. This amendment will help OHA avoid that outcome in Oregon.

Most importantly, HB 2306 would allow OHA and its community mental health partners to determine where to best serve defendants who need restoration in a coordinated and collaborative manner.

One OHA budget driver is directly related to the substantial number of Aid and Assist patients at Oregon State Hospital who do not need hospital-level care. At the cost of more than \$1,000 per day, with a median length of stay of 74 days, and a daily census as high as 240 people last year, this is a significant cost to state taxpayers. We would like the opportunity to take responsibility for this budget driver. HB 2306-1 gives us the tool to do just that.

And for the record, we are very open to working with the various other stakeholders to address any concerns they have about the language or implementation of this bill. Any solution to this issue must be a collaborative effort.

The Oregon Health Authority supports HB 2306-1 and requests your support as well. Thank you.