

HARRIS S. MATARAZZO
ATTORNEY AT LAW
121 S.W. MORRISON, SUITE 1020
PORTLAND, OREGON 97204-3140

PORTLAND (503) 226-0306
SALEM (503) 588-3114
FAX (503) 226-4290

April 18, 2017

SENATE JUDICIARY COMMITTEE
Senator Floyd Prozanski, Chair

RE: Senate Bill 65/ Work Session

Chair Prozansky and Members of the Senate Judiciary Committee:

Late yesterday morning I was advised of your April 18, 2017 Work Session scheduled for an amended Senate Bill 65. As a "Work Session", I anticipate that no public testimony will be allowed, but am hopeful that these comments will be considered in conjunction with my February 13, 2017 testimony. As noted previously, I have almost thirty years of experience representing individuals before the PSRB, OHA, and Oregon's appellate courts in mental health matters involving criminal law. In addition, since 1994, I have co-authored each version of the Oregon State Bar's Chapter entitled "Mental Illness and Incapacity" in its "Criminal Law" publication, as well as made presentations on the subject at the undergraduate, graduate, and practicing mental health professional levels. Similarly, I am involved in the credentialing process of mental health professionals allowed to evaluate persons alleged to be mentally ill, and facing criminal action. To date, my office has represented more than two-thousand individuals under PSRB/ OHA jurisdiction in many thousands of hearings.

ELIMINATION OF OREGON HEALTH AUTHORITY HEARINGS

For the first time, the amended Bill provides for the immediate elimination of Oregon Health Authority (OHA) involvement in hearings for individuals found "Guilty Except for Insanity" of "Tier 2" offenses. OHA created the State Hospital Review Panel (SHRP) to conduct these hearings. If enacted, all individuals found "Guilty Except for Insanity" would be placed under the authority of the Psychiatric Security Review Board (PSRB). As an attorney who works closely with the mental health community and individuals under the jurisdiction of the Adult Psychiatric Security Review Board and Oregon Health Authority, I oppose this measure.

SHRP was created in 2012, following the enactment of Senate Bill 420. It divided individuals under PSRB jurisdiction into two categories, "Tier 1" and "Tier 2". "Tier 2" persons were removed from PSRB oversight, and were placed under OHA/SHRP. Although not providing any testimony in the matter, I was opposed to this change as a needless expenditure of funds, and duplicative of effort. After appearing before both PSRB and SHRP for many years, I have now reached a different conclusion.

At the time of its creation, the Oregon State Hospital was overcrowded, and populated predominantly by individuals found "Guilty Except for Insanity" (GEI). Whether valid or not, PSRB was identified as at least one of the primary causes for this condition, refusing to release individuals who either no longer met jurisdictional criteria, or could be treated in the community on "conditional release".

It is my understanding that the per person cost of care and treatment at the Oregon State Hospital is approximately \$24,000 per month. Within its first year, SHRP found that of those 109 persons transferred to it from PSRB, twelve (approximately 17 per cent) did not meet statutory criteria to be maintained under jurisdiction. In its second year, six (approximately 6 per cent) were similarly adjudicated. These persons were released, at a savings of \$432,000 per month. (18 x \$24,000)

During that same two-year period, it ordered one-hundred evaluations to determine if others could be safely monitored and treated in the community. Many of these individuals have since been placed at a monthly cost of only several thousand dollars per person. (Seventy-eight persons were "conditionally released" from the Hospital in the last three years.) Because individuals successfully employing the "Insanity" Defense generally receive the maximum sentence allowed by law, the fiscal impact of an inappropriate placement can be long lasting, and substantial.

Between 2012 and 2017, the number of Tier 2 clients has decreased from 109 to 71. Taxpayers, the community, and residents have greatly benefitted from SHRP's excellent work. I firmly believe that, without SHRP's continued presence, the GEI population at the Oregon State Hospital will again climb significantly.

In contrast to PSRB, SHRP has not sought to assign new meaning to statutory law which it knew was contrary to the Legislature's intent. (See Beiswenger v. PSRB, 192 Or App 38 (2004) and Tharp v. PSRB, 338 Or 413(2005). Recent PSRB administrative rule changes, followed by an initial draft of SB 64, have sought to thwart the 1983 Legislature's mandate that substance use and sexual disorders alone, are not conditions sufficient to employ an "Insanity" Defense, or to maintain an individual under jurisdiction. This is concerning. Similarly, unlike PSRB, SHRP has not been the subject of investigation by the Oregonian. In December 2013, that newspaper reported allegations by Board staff that its Executive Director, inter alia, was inappropriately altering PSRB member Orders. An independent investigation was requested by defense counsel, however the agency refused alleging a lack of proof.

A cost which cannot be quantified is the message sent to the legal community, ie the Oregon State Hospital can no longer be used for inappropriate placements. In my opinion,

thanks, in large part, to SHRP's efforts, the Hospital's GEI population no longer represents the majority of residents. In my opinion, it also has served to improve PSRB decision making, ie decision making and outcomes between the agencies can now be compared. SHRP has helped ensure existing law is properly executed. To eliminate a program that has worked so well, and has been proven to save money, would be unfortunate, and expensive in the long run.

RESTORATIVE JUSTICE

I continue to oppose the establishment of a "Restorative Justice" program to be overseen by the PSRB. If one is to be established, it must remain separate and outside of all Board, including staff, control. The recent release of PSRB records, including treatment related documents, to a newspaper in an ongoing, highly publicized, case is also of concern. Finally, as the Legislature is seeking to save monies, the creation of a new program, with no shown need, seems unwarranted. There will be a cost. Other, existing, entities, such as the Oregon State Hospital and Department of Corrections already provide these services.

For the reasons stated above, I oppose passage of senate Bill 65. Thank you for the anticipated opportunity to be heard in this matter.

Very truly yours,

Harris S. Matarazzo
Attorney at Law