



Oregon

Kate Brown, Governor

Psychiatric Security Review Board

610 SW Alder Street, Suite 420

Portland, OR 97205

Phone: 503-229-5596

Fax: 503-229-5085

Email: psrb@oregon.gov

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TO: Senator Elizabeth Steiner Hayward, Co-Chair
Representative Dan Rayfield, Co-Chair
Joint Committee on Ways and Means Subcommittee on Human Services

FR: Juliet Britton, J.D., Executive Director
Psychiatric Security Review Board (PSRB)

RE: Written Comment for May 16, 2017, Hearing on Senate Bill 65 (No Fiscal)

There are two distinct aspects of this bill: (1) establishing a Restorative Justice (RJ) Program and (2) streamlining how "Guilty Except for Insanity" (GEI) patients are supervised while at Oregon State Hospital.

Restorative Justice (RJ)

Nationwide surveys of victims and survivors routinely show that victims are not left satisfied during and after the criminal justice process. Restorative Justice focuses on addressing the needs of those most affected by the harm, as opposed to punishing the offender.

Restorative Justice is a world-wide best practice in the criminal justice system that can take many forms but the most common is "facilitated dialogue." This occurs when the victim and offender meet face to face with a trained professional facilitator to engage in healthy communication. Victims often share the impact the crime has had on their life and receive answers to questions about the incident. Offenders can tell their stories of why the crime occurred and how it has affected their life as well as share their experiences about their positive recovery journey since the crime was committed.

This is a victim-initiated process and requires a substantial amount of screening of both the victim and offender prior to meeting. Oregon Department of Corrections implemented a RJ program several years ago and has a high positive feedback both from victims and inmates. It is important to note that there are thousands of RJ programs already existing throughout the world. This is especially popular in the juvenile criminal justice system.

In 2015, the Board created a RJ Advisory Council to explore whether an RJ program would make sense in the GEI setting and if so, how the program should look. In December 2016, the Council submitted its final recommendations to the Board, including the privacy statutory protection as described in SB 65. The Council also recommended that the RJ experience and operations be conducted by an entity with mental health and clinical experience. If SB 65 were to become law, the Board envisions creating a program in which an outside provider (e.g. university with a Department of Psychology) would actually conduct the RJ services. If passed, SB 65 would preserve the integrity and purpose of RJ by prohibiting the parties from introducing later statements made during the RJ process, or from releasing them to the public. Both victims' advocates and attorneys on the Council believed that a confidential RJ program would maximize participation and candor in the RJ process. Additionally, if a letter bank were created—wherein patient letters of apology to victims were stored in a PSRB record—the statutory protection of SB 65 would keep those confidential except with respect to the victim.

Tier 2 (Non-Measure 11) GEI Patients

In 2011, the Legislature created an OHA entity called State Hospital Review Panel, or SHRP, in response to the belief that Oregon State Hospital was not adequately assessing and requesting conditional release in a timely fashion and that PSRB was not moving patients to conditional release quickly enough. SHRP was tasked with supervising Tier 2 (non-Measure 11) GEI patients residing at the Oregon State Hospital. Jurisdiction then would transfer back to PSRB as these patients were conditionally released into the community. It is important to note that a majority of GEI patients in Oregon are Measure 11, or Tier 1, patients; SHRP on average only supervises about 12% of the GEI population. This bill will assign all GEI patients to PSRB's supervision no matter their tier classification.

On January 1, 2012, PSRB transferred 124 Tier 2 patients to SHRP's jurisdiction. Since that time, the total number of new GEI patients has decreased as well as the number of patients in OSH. Currently SHRP supervises only 70 patients. Additionally, the GEI population has steadily been decreasing since 2007. There are about 580 total GEI patients currently in Oregon compared to 745 in 2009.

The PSRB attributes this decrease of the OSH census to several factors:

- Since 2007, the Legislature and OHA increased investment of general fund dollars into community programs so PSRB/SHRP could safely conditionally release patients with adequate services and supports.
- The newly renovated OSH campus has fewer beds and new leadership that has worked tirelessly with partner agencies, like the PSRB, to create an efficient process by which patients are assessed for clinical stability and risk shortly upon admission. To that end, patients are moved through the various programs and are conditionally released when ready.

- The certified evaluator requirement implemented on January 1, 2012 provides an additional screen for judges to ensure that defendants who are asserting the GEI defense are truly appropriate for the GEI defense before they are sent to OSH.

The PSRB is currently able to absorb the increased workload associated with SHRP's 70 patients without any fiscal impact as well as create a cost savings for OHA. Currently, the PSRB reviews all proposed conditional release plans considered by SHRP so some of the increased Tier 2 hearing workload will be mitigated by the fact that the Board will no longer need to conduct its SHRP reviews and instead will substitute the review for a conditional release hearing. This may have an added benefit of decreasing the processing time for the Tier 2 conditional release since one, not two, entities will review the conditional release plan.