



# Oregon

Kate Brown, Governor

## Psychiatric Security Review Board

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February 13, 2017

TO: Senator Prozanski, Chair  
Senate Judiciary Committee, State of Oregon

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

RE: Written Comment for February 13, 2017 on SB 64 (-2 Amendments)

Good morning, Chair Floyd Prozanski, Vice-Chair Thatcher, Senators Dembrow, Linthicum, and Manning. Thank you for the opportunity to speak to you this morning. My name is Juliet Britton; I am the Executive Director of the Oregon Psychiatric Security Review Board.

Senate Bill 64 will replace derogatory statutory language applicable to those living with mental illness and intellectual disabilities. Updating derogatory terms for those affected with mental illness is not new. Words like “mental retardation” and “mentally defective” have been updated in most states and in federal statutory language. In addition to the update, this bill codifies current case law that specifically excludes individuals with certain disorders from eligibility for the adult insanity defense. The bill has two purposes: (1) to rename “mental disease or defect” using less offensive words and (2) to clarify the current definition of mental disease or defect by having the complete definition in one place in the statutes (by including precedent-setting case law). **This bill does not seek to create a new definition of mental disease or defect.**

### “Mental Disease or Defect”

Currently, the PSRB statutory language refers to those under its jurisdiction as having a “mental disease or defect.” The Board believes—and has received feedback from medical, legal and patient advocate stakeholders—that the phrase “mental disease or defect” is offensive. Stakeholders have indicated, and the Board agrees, that the “defect” piece is particularly derogatory. This language has existed since the PSRB was created in the late 1970’s.

Consistent with other efforts to remove offensive and stigmatizing language from Oregon statutes, the Board wishes to make its statutory language more humane.

The Board vetted this bill with its legislative stakeholder group, which includes district attorneys, the criminal defense bar, patient advocates and the mental health provider/certified evaluator community. By using clinical terms directly from the Diagnostic and Statistical Manual (“DSM”), the group’s final recommended language—replacing “mental disease or defect” with “mental disorder”—satisfies the needs of prosecutors and the defense bar as well as the evaluators and clinicians who provide the court and PSRB medical opinions on diagnoses.

The Board can report near-universal support for the goal of changing the statute to include less stigmatizing language.

#### Codifying Case Law on Qualifying Conditions for “Guilty Except for Insanity”

Currently, ORS 161.295(2) defines “mental disease or defect.” This statutory language assists attorneys, judges, the medical community and PSRB in identifying what conditions qualify for the GEI defense as well as who can remain under the Board’s jurisdiction. However, this statutory definition does not include appellate case law that has clarified the meaning of “mental disease or defect.” SB 64 would incorporate the case law in ORS 161.295(2) so the complete definition will be in one location.

Over approximately the past 13 years, two Oregon appellate cases have determined that certain conditions are not “qualifying” mental diseases or defects. Current law requires the PSRB to discharge patients early from supervision (some of whom are dangerous due to their non-qualifying mental disease or defect) if they do not have a qualifying mental disease or defect. Therefore, it is important that the statutory definition be clear so inappropriate defendants are not placed under PSRB supervision in the first place.

*Tharp v. PSRB* (2005) established that alcohol dependence is not a qualifying mental illness. The Board and the medical community have interpreted this case to include psychosis that is solely caused from the voluntary ingestion of drugs or alcohol. Likewise, *Beiswenger v. PSRB* (2004) established that sexual conduct disorders (e.g. pedophilia, paraphilia) are also not qualifying mental illnesses. Appellate court dicta suggest that ORS 161.295(2) is currently ambiguous; therefore, the Board seeks to provide clarity to this statutory reference through SB 64.

The -2 amendments are a result of the collaborative work of the PSRB legislative workgroup, all of whom understand how ORS 161.295(2) is currently used in practice.