

June 22, 2020

Joint Interim Committee on the First Special Session of 2020

Speaker Tina Kotek, Co-chair

President Peter Courtney, Co-Chair

House Republican Leader Christine Drazan, Co-Vice Chair

Senate Republican Leader Fred Girod, Co-Vice Chair

Members of the Committee

Re: Testimony Opposing "Judicial Proceedings Extensions" in LC 84 and LC 45

Dear Speaker Kotek, President Courtney, Co-Vice Chairs Drazan and Girod, and Members of the Committee:

My name is Mary Sofia, and you knew me previously as OCDLA's Legislative Director/Lobbyist between 2017-2019. *However, I am not claiming any tie to OCDLA in this letter.* I am now reaching out to you as simply a concerned citizen and a criminal defense lawyer (my profession of almost 10 years). My views and concerns below are representative of many practicing lawyers concerned with the due process rights of our clients. I understand respected stakeholders participated in the discussion around this concept, however I know that actual practicing defense lawyers and other community groups like Rose City Justice and The Fairshot Coalition are very concerned with the bill as the people being impacted in the jails are the community members. I am also aware that AFSCME leaders/ reps of the public defender groups also oppose this bill as written.

I am reaching out to share my concerns with the "Judicial Proceeding Extensions" Sections of the Omnibus Bill (currently LC 84, Section 6, beginning on page 9). The purpose of this section appears to be to give the courts the ability to "extend court dates," but what it is actually doing is allowing *indefinite preventative detention of people who cannot bail out of jail during this pandemic*. I absolutely understand the pressure and strain the courts are currently feeling due to the pandemic. I understand it is difficult to have trials, but this bill is getting rid of people's right to have trials for an indefinite period of time under an expanded rubric that allows a court to hold more people who can't afford bail without trial.

Current Law Is Sufficient: The current statutes in the criminal code impose pre-trial detention limits (because our state values not holding people indefinitely in jail while they await trial). Under ORS 136.290, a person being held in custody because they can't pay bail has a right to have a trial within 60 days. Currently, under ORS 136.295 the court already has the ability by law to extend the person's pre-trial detention an extra 120 days for "good cause" (such as Covid-19) meaning a person can already be held *against their will for 6 months without a trial*. Additionally, under ORS 135.240, the law already allows for the court to hold people accused of super serious offenses (ie, murder, violent felonies etc.) indefinitely. This proposal expands the types of offenses people will be held on indefinitely by giving the court permission to apply that same rubric to any crime during the pandemic, and it allows them to be held indefinitely.

This Concept Expands Preventative Pretrial Detention for ALL Crimes, Not Just Serious Offenses:

Legally, the main reason why we allow courts to hold people in jail while they await trial is not because they are dangerous, it is because the court believes people will not come back to court. Bail, a very flawed system (and a conversation for another day), is supposed to ensure people come back to court. As a general rule, it is not legal to "preventatively" hold someone in jail because the court or prosecutor thinks they are dangerous except in

very limited circumstances (like under ORS 135.240 above). But under this concept, this idea of "preventative" detention for "dangerous" people is expanded, and it loops in people who are potentially facing a serious charge even if the evidence against them is weak.

This Concept Will result in MORE people Pleading Guilty Simply to Get Out of Jail: This bill proposes that people will not be able to be held passed the statutory maximums for the crimes they're accused of, but this is not protective at all. For example, the statutory maximum for a Class C felony is 5 years in prison. The actual sentence for a class C felony under the sentencing guidelines for even a person with some criminal history is only likely to be 30 to 90 days plus probation. The VAST majority of people who will be held under this will do MORE time than if they just plead guilty to the crime. The people who will be most impacted by this will be poor people and BIPOC because they can't afford bail-- instead of exercising their right to trial, they will plead guilty to get out of jail during a global pandemic (when it is super dangerous to be IN jail). This is not justice, and these communities are the very communities who should not be bearing the burden of our criminal justice system failing to work properly. Instead, the courts, defense lawyers, prosecutors, and pre-trial release officers should be working together to determine who can be released into the community on pre-trial release to ensure their appearance in court rather than holding people in jail. We all know that 95% of people plead guilty in our current system. This is going to make that number even higher, and it will absolutely be on the backs of people who deserve a day in court.

My ultimate conclusion on this concept is that it will do more harm than good, and poor and BIPOC people should not bear the brunt of a dysfunctional system. The laws we have already allow the courts to navigate this tough time-- they are already able to hold dangerous offenders indefinitely and they are already able to extend detention up to 6 months for "good cause." Allowing indefinite detention as a salve for this trying time is not an acceptable solution.

I absolutely understand how fast the legislature needs to act during this Special Session, I absolutely understand how difficult it is to speak up against a concept in an Omnibus bill slated to pass, and I absolutely understand the Committee's desire to do good. However, I do ask you to pause on this concept and seek more feedback from others outside of the institutions and speak to the people who are going to experience the impact--the accused, their families, their communities. There are other ways to address this.

Thank you so much for your time and all of the work each of you do for Oregon. Please let me know if I can be a resource or if you have questions.

Sincerely,

Mary Sofia, OSB # 111401
Criminal Defense Lawyer