



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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March 16, 2019

The Honorable Senator Floyd Prozanski, Chair  
Senate Judiciary Committee, Members

**Re: Testimony re: SB 762**

Dear Chair Prozanski and Members of the Committee:

**Thank you for the opportunity to submit the following regarding SB 762:**

Senate Bill 762 modifies the statute governing involuntary detention in several ways. First, it extends the length of involuntary detention of an individual before a hearing on probable cause from five to fifteen days. Second, it requires an individual have their right to counsel fulfilled as soon as reasonably possible to challenge the probable cause for their detention, as well as requires the individual be informed of their right to retain counsel when they are admitted. It also permits an individual to request a hearing challenging the determination of probable cause for their detention, and upon receipt of a written request, the court shall provide a hearing within five days.

I was a public defender in Oregon for over 4 years. During this time I represented dozens of clients in civil commitment proceedings. Civil commitments tend to be regarded favorably by most people aware of the crisis in mental health treatment in Oregon. The general feeling seems to be that if we could only force the sick person into treatment we could save them from themselves and the lifetime of suffering awaiting many people with serious mental health issues.

The reality of civil commitment is actually grotesque. A person charged with no crime is detained in a locked facility, denied privacy, and sought to be excluded from decision making about their own body and mind. If the proceeding is successful, the result is a judgment that cannot be expunged, can later be used to expedite the same process in future proceedings, and may result in extravagant medical bills. Too often the voice of the actual patient in the proceeding - the person so in need of care and protection - is not heard or taken into account in decision making.

Although a judgment of civil commitment anticipates six months of treatment, it is rare that a committed individual will spend longer than a few weeks in an inpatient facility. Many are discharged within days of the commitment hearing, leaving them with the consequences of this brief hospital stint for years to come. To be sure, the interest in removing barriers to treatment for acute mental health disorders is well-placed, but the current process of commitment is not the best route to accomplish this goal. Commitment- and its permanent consequences -should be reserved for the most serious of cases - those who are truly unable to get themselves to a place of

safety and recovery without the most drastic and invasive of interventions. The current law requires commitment investigators to make a decision about a commitment hearing within 5 days of an initial hold. This is hardly enough time for medications to begin to take effect, or for any therapeutic alliance to bloom between a patient and doctor. Allowing more time for investigators to make decisions will give a clearer picture of which patients will steer themselves towards recovery with enough time and support, and which patients genuinely need the state to make treatment decisions for them.

The due process protections anticipated in this bill are crucial to the ongoing fairness of the commitment process. Allowing a patient access to an attorney and judicial review of the detention within five days will help to ensure that liberty is only deprived in meritorious cases and provide oversight of the process.

**Thank you for your consideration.**

**/s/ Allison Knight on behalf of OCDLA**

**Allison Knight**

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### **About OCDLA**

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

**For questions or comments contact:**

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