



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 22, 2019

The Honorable Representative Jennifer Williamson, Chair
House Judiciary Committee, Members

Re: Testimony in Support of SB 24

Dear Chair Williamson and Members of the Committee:

Thank you for the opportunity to submit the following comments in support of SB 24.

Thank You to Workgroup:

Over the course of the last year, myself and aid & assist/civil commitment lawyer Allison Knight, formerly of Lane County Public Defender's Office, participated in the most recent workgroup Oregon Health Authority brought together to address the needs of the forensic population at the Oregon State Hospital. Together, Allison and I worked closely with other stakeholders and OHA to craft legislation that seeks to address where and how, people who are suffering from mental health conditions and are unable to aid & assist in their own defense, are restored to competency.

This Legislation's Goal:

Under current law, a person cannot be prosecuted for a crime unless they are able to "aid and assist" in their own defense. This means that a person must meet a certain bar of competency before their criminal case can move forward. Often times, people accused of low-level crimes, including misdemeanors, are sent to the state hospital when community-based restoration would be more appropriate.

This legislation's goal is separate out and divert people charged with misdemeanors and felonies (who do not need a hospital level of care) to be restored to competency in the community as opposed to being sent to the state hospital in every case. The bill is crafted to explicitly direct judges, prosecutors, and defense lawyers to choose appropriate dispositions of these cases that do not necessarily include nor require hospitalization at OSH. Instead, the parties must engage with community mental health programs and choose a disposition that is narrowly tailored to the person in front of them utilizing the state hospital in some, but not all, cases. It is imperative to note that this legislation will only function if community mental health programs are appropriately funded, and we urge this body to pass the funding needed as this bill will fail without it.

Problem This Bill Seeks to Address:

Currently, large numbers of people are being ordered to the state hospital to be restored to competency so they can be prosecuted. However, due to the hospital's financial and bed

limitation, many of these people, who are often being held on very low-level misdemeanors, are left to sit in jail while the hospital waits for forensic restoration beds to become available.

The result is that people suffering from mental health issues languish in jail for weeks and weeks, and their mental health decompensates while in jail. As we know, jail is not the appropriate place to house people suffering from mental health concerns, and the hospital's inability to quickly transfer these people to OHA is a breach of peoples' constitutional rights according to the Oregon Supreme Court. As this legislative body has probably heard, there is open litigation occurring in multiple counties on this very issue, and at least one court is currently considering finding OHA in contempt for leaving people in jail when they are supposed to be transferred to OSH¹. OCDLA notes that this legislation does not codify the "Mink timeline," ([Oregon Advocacy Center v Mink](#)), although we would have preferred to see it do so, as the timeline is protective of people's rights to not be housed in jail when they instead should be in a therapeutic environment.

This legislation does build in a timeline for periodic court review hearings of people who are not found to need a hospital level of care but are not released from jail to be restored in the community. OCDLA and DRO have expressed the concern that there is a chance that some people will continue to languish in jail under this new scheme, and we are being assured that this will not be the case. Regardless, the 14-day periodic court review was put in as a safety net of sorts—if this hearing is being utilized after this legislation passes, the legislature will know that we need to revisit this legislation because people should not be sitting in jail awaiting a disposition or being restored to competency in the jail. We are hopeful that the new directions regarding appropriate steps/dispositions in the statutes are clear that courts, prosecutors, and defense lawyers must find appropriate dispositions that does not include having an ill person sit in jail awaiting forensic restoration.

Step in Right Direction:

This legislation has been a long time coming, and OCDLA urges its passage. We do note that this bill does not fix all of the problems, but we certainly believe it will bring us closer to a solution. We intend on monitoring the legislation's roll-out and will continue to engage with OHA and other partners to make this system work better so Oregonians are treated appropriately by the courts and mental health systems in this state.

Mary A. Sofia
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Oregon Criminal Defense Lawyers Association

¹ <https://www.oregonlive.com/pacific-northwest-news/2019/05/citing-moral-emergency-attorneys-seek-contempt-as-oregon-defies-mentally-ill-defendants-rights.html>

For questions or comments contact:
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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.

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