

## SB 763 STAFF MEASURE SUMMARY

### Senate Committee On Judiciary

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**Action Date:** 04/09/19

**Action:** Do pass and requesting referral to Ways and Means.

**Vote:** 5-2-0-0

**Yeas:** 5 - Bentz, Fagan, Manning Jr, Prozanski, Thatcher

**Nays:** 2 - Gelser, Linthicum

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 3/18, 4/9

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#### WHAT THE MEASURE DOES:

Defines "dangerous to self or others" for purposes of civil commitment as likely to inflict serious physical harm upon self or others within the next 30 days. Allows court to consider past behavior that resulted in physical harm to self or others and threats and attempts to commit suicide or inflict serious physical harm on others.

#### ISSUES DISCUSSED:

- Current standard for civil commitment
- Impact of dangerous behavior on individual, family, and community
- Efforts of interim work group
- Need for more persons with lived experience in development of legislation on civil commitment

#### EFFECT OF AMENDMENT:

No amendment.

#### BACKGROUND:

A person may be involuntarily committed to the Oregon Health Authority for treatment upon a court finding, by clear and convincing evidence, that the person has a mental illness and voluntary treatment or conditional release are not in the person's best interest. A "person with a mental illness" is defined as "a person who, because of a mental disorder, is one or more of the following: (A) Dangerous to self or others or (B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm. State law is silent on the definition of self or others.

Case law provides some context for what makes a person dangerous to self or other. "[T]he type of "danger" necessary to justify an involuntary civil commitment is a narrow range of serious and highly probable threats of harm." *State v. S. R. J.* (In re S. R. J.), 281 Or. App. 741, 749 (2016). Dangerousness cannot be based on an isolated threat of suicide, speculation of harm, or behaviors, that while concerning or strange, do not present a risk of serious harm. The harm must be actual physical harm of a serious nature and stem from the mental disorder. Many cases have concluded that the harm must be life-threatening or involve an inherently dangerous activity.

To uphold a commitment under the danger to others standard, the state must show that the person is dangerous to others and that actual future violence is highly likely. *State v. M. A.* (In re M. A.), 276 Or. App. 624, 2016. Specific acts of violence are not required. Past behavior may provide context or a foundation for predicting future violence, but the court is primarily concerned with the condition of the person at the time of the hearing.

Senate Bill 763 is the product of the interim work group to decriminalize mental illness. The measure provides definitions to the terms used in Chapter 426 of the Oregon Revised Statutes. Primarily, SB 763 defines "dangerous to self or others" to mean likely to inflict serious physical harm upon self or another person within the next 30

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days. Additionally, the measure allows the court to consider threats or attempts at suicide or harm to others, and any past behaviors that resulted in physical harm to self or another person. In considering prior behaviors, the court must consider the relevance of the person's past behavior, how recently the past behavior occurred, and the frequency and severity of the past behavior.