

February 10, 2020

TO: Senator Floyd Prozanski, Chair; Senator Kim Thatcher, Vice-Chair; Members of the Senate Judiciary Committee
FR: Sarah Radcliffe, Disability Rights Oregon
RE: Support for SB 1575

Disability Rights Oregon (DRO) is the designated Protection & Advocacy program for Oregon. Our mission is to promote and defend the rights of individuals with disabilities in Oregon.

DRO supports SB 1575, which is the product of extensive collaboration and dialogue among stakeholders. SB 1575 addresses some of the unintended consequences that arose in the implementation of SB 24 (2019). Passage of SB 1575 will improve circumstances for aid-and-assist detainees over the status quo, but is not a comprehensive fix for a serious and longstanding problem.

Details of SB 1575:

SB 1575 removes the perceived requirement that forensic evaluators opine as to a defendant's dangerousness and instead, allows the court to consider public safety concerns. SB 24's requirement of a dangerousness determination is considered professionally impossible by many forensic evaluators. It has required acrobatic workarounds by courts and community mental health programs, causing significant delays and duplicated efforts. It is imperative to address this.

SB 1575 also modifies a provision in SB 24 that undermined the defendant's constitutional due process rights by allowing defendants who did not require a state hospital level of care to wait in jail on a recurring 7-day hearing schedule pending the availability of a community option. The U.S. Constitution does not allow a defendant who has been found unfit to wait indefinitely in jail pending treatment. In *OAC v. Mink*, the 9th Circuit Court of Appeals held that a defendant must be transferred for treatment within 7 days of the court's finding of unfitness. SB 1575 makes it clear that, while the court has significant latitude in determining what happens upon a finding of unfitness (ordering community-based restoration services, dismissing the charges, commencement of civil commitment or guardianship proceedings, or commitment to the state hospital), allowing the defendant to languish in jail is not a permissible outcome.

Some important concerns remain unaddressed by SB 1575, and the work group has committed to continuing discussions in order to propose further changes in the 2021 session. A key concern is that SB 1575 does not place any time limit on an order for community restoration services. While certainly less intrusive and less isolating than the state hospital, mandatory community restoration is an infringement upon a person's liberty, and it should not be imposed indefinitely. Furthermore, some conditions that impact competence may not be responsive to treatment, such as traumatic brain injuries or intellectual/developmental disabilities. People with these conditions should not be subject to a lifetime of restoration treatment and an unresolved criminal charge.

Context for SB 1575:

The aim of both SB 24 and SB 1575 is to stem the unsustainable influx of justice-involved people into the Oregon State Hospital. Without a serious, sustained investment in community based behavioral healthcare and housing, however, neither bill will impact this trend. Both bills encourage courts to make use of an off-ramp from jails and institutions. But if that off-ramp leads to nowhere, it will not be utilized.

Oregon is facing a crisis of mass criminalization of people with behavioral health needs. Our jails are struggling to respond to acute psychiatric needs; our court dockets are clogged; there is a shortage of forensic evaluators to meet the demand, Community Mental Health Programs are scrambling to fulfill their role in this process, and the state hospital is again on the brink of noncompliance with the *Mink* order due to lack of capacity for the ever-rising volume of defendants ordered there for aid-and-assist.

Worst of all, people with serious mental health concerns in our state are either languishing in jail, where they are routinely held in solitary confinement, where they are at risk of suicide, violence, and self-harm, and where they are highly unlikely to receive adequate healthcare. Or – they are warehoused at the state hospital, at a cost of \$1,300 per person per day, only to be discharged back to homelessness.

Many people with mental illness in Oregon are trapped on a merry-go-round of dysfunction: homelessness/jail/institution; homelessness/jail/institution; homelessness/jail/institution. It's hard to imagine a more expensive or more harmful response to the dire needs in our communities for housing and behavioral healthcare.

SB 1575 is a step in the right direction. But while we stall on allocating the funding and creating the mandate for local communities to create both housing and treatment, the merry-go-round is gaining momentum and its pull on our state budget and our state's people is increasing.