



ALEX CUYLER

Intergovernmental Relations Manager
Alex.Cuyler@co.lane.or.us

DATE: February 7, 2020
TO: Senate Committee on Judiciary
RE: SB 1575, relating to fitness to proceed

Chair Prozanski and members of the Committee:

Lane County wishes to express its support for SB 1575 if amended. We have reviewed the dash 1 amendment and find it to improve the introduced version. We ask that you schedule this measure for a work session to adopt the -1 amendment into the bill and move it to a vote of the full Senate with a DO PASS recommendation.

During the Joint meeting of the House and Senate Judiciary Committees during the December 2019 interim days, you heard much about the work underway to bring you improvements to the fitness to proceed procedures outlined in ORS Chapter 161. Defendants charged with a crime and whose ability to aid and assist in their own defense comes into question during initial court hearings may be ordered into treatment to “gain or regain” fitness. For this work to evolve most efficiently, there are a myriad of state and local stakeholders involved, each with very specific roles. SB 1575 provides guidance for each of these parties. The core goal of SB 1575 is to ensure that the most appropriate treatment is provided for each unique defendant.

Secondarily, the measure further develops the concept of community restoration. It is this tool that must be developed fully in order to reduce reliance on the Oregon State Hospital, but also may result in better outcomes if it can be adequately funded and operated.

Lane County is the Local Mental Health Authority. We run a Community Mental Health Program. It is directed by a certified Mental Health Director and is advised by a Mental Health and Drug and Alcohol Advisory Committee. As a so-termed “high-sending” county, we have long worked on this issue. We note that this work is both challenging and rewarding. For example, while 370 commitments to the State Hospital are high, data that tracks misdemeanor commitments is down a full 10% over historic 12 month averages.

Here are key points we think the Committee should be aware of:

- SB 1575 is an improvement over SB 24 (2019). Just as SB 24 was part of a longer evolution of policy and fiscal discussions and decisions, SB 1575 continues to refine the so termed “370” procedures. There is a strong group of stakeholders committed to this work, and SB 1575 should not be considered to be the final law making on this topic.
- SB 1575 removes most references to supervision. It is mentioned within the definition of “community restoration” within the dash one amendment and recognizes pretrial services may or may not exist within the jurisdiction of all courts in Oregon. We note that pretrial services may or may not be the proper provider of supervision, but importantly they do bring with them clear authority from the court, and for instance can enforce a violation of a pre-trial agreement. When supervision becomes part of statute again, it must have a very clear definition about who can sanction a defendant. It must

not be the Community Mental Health Program, as it is this entity that is working to secure the trust of the defendant, a key element in providing any kind of treatment. That trust would be impinged if the defendant were continually aware of that kind of power imbalance.

- The bill clarifies the role of the Community Mental Health Program as it pertains to interactions with the defendant and each court. It refers to these interactions as coordinating treatment within the community which is an accurate description of the role of the Community Mental Health Program as it pertains to fitness to proceed procedures. It also establishes that final decisions regarding the defendant are determined by the court.
- The bill establishes clear financial responsibilities for certain services, and in particular recognizes municipal courts for the first time.

There exist a number of issues the stakeholders continue to grapple with. Lane County continues to contemplate appropriate future policy for the following details:

- We note that pretrial services may or may not be the proper provider of supervision, but importantly they do bring with them clear authority from the court, and for instance can enforce a violation of a pre-trial agreement. When supervision becomes part of statute again, it must have a very clear definition about who can sanction a defendant. It must not be the Community Mental Health Program, as it is this entity that is working to secure the trust of the defendant, a key element in providing any kind of treatment. That trust would be impinged if the defendant were continually aware of that kind of power imbalance.
- The Community Mental Health Program's work in this arena functions through funding certain Service Elements within County Financial Assistance Agreements. County counsel's regularly review these agreements and are increasingly aware of the potential for litigation that has already impacted Lane County. To avoid future contract complications, the Legislature must address the topic of immunity. Counties already have statutory protections or enhanced insurance access within statutes concerning both Guilty Except for Insanity and Civil Commitment procedures. These could be amended to include the services provided by County Mental Health Programs at ORS 161.370.
- There remains the issue of what happens to a defendant when they are deemed never able to regain fitness, or if their presumptive sentence is completed. Treatment and community supports may end, but that also may simply create a new revolving door for these individuals, as the likelihood is high that they may simply be discharged to the streets, where their challenges may land them once again into a criminal situation.

ELECTRONICALLY SUBMITTED BY ALEX CUYLER