

TO: Senate Committee on Judiciary
FROM: Elizabeth Wakefield, Mental Health attorney, Metropolitan Public Defender, on behalf of OCDLA
DATE: February 10, 2020
RE: Support for HB 1575– Relating to fitness to proceed

Chair Prozanski, Vice Chair Thatcher, and Members of the Senate Committee on Judiciary,

OCDLA has been the leading voice for public defense policy in Oregon for over 40 years representing 1,200 providers statewide. Our members work with youth in the juvenile justice system, parents whose children have been removed, children in foster care, and adults in criminal justice system, appeals, civil commitments, and post-conviction relief proceedings. We serve our membership by offering extensive continuing legal education, training and educational resources to assist and guide defense providers. OCDLA advocates for legislation ensuring the rights of the accused, those involved in the juvenile justice system, and the attorneys, investigators and others who do this difficult work. Our members include private bar providers and investigators, employees of non-profit public defender offices as well as private bar consortia providers.

OCDLA supports SB 1575. SB 1575 is the product of earnest collaboration and dialogue among the stakeholders which is expected to continue after the current 2020 session ends. SB 1575 addresses some, not all, of the unforeseen consequences that arose after the adoption of SB 24 (2019). SB 1575 will improve circumstances over the current practices for our detained clients who are unable to aid-and-assist. SB 1575 is not a comprehensive fix for the serious longstanding challenges in this area of law. OCDLA looks forward to continuing the collaboration and partnerships that have developed through this process.

SB 1575 provides definitions and clear processes. SB 1575 outlines distinct processes for felonies and for misdemeanors which allows the courts to consider appropriate available options for community restoration for each individual defendant.

SB 1575 protects the defendant’s constitutional due process rights. Defendants who did not require a state hospital level of care have been expected 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 courts 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.

SB 1575 clarifies that less restrictive options for treatment and restoration services must be considered by the court. SB 1575 reflects best practices regarding to how best to provide treatment and restoration services to an individual. Many defendants with serious mental health concerns can and do benefit from community-based services rather than an expensive and unnecessary commitment to the state hospital. SB 1575 expands and continues the legislature’s commitment that

community-based resources should be developed and utilized, thus allowing people to stabilize in their own communities and build therapeutic relationships that can continue long after a criminal case is completed.

OCDLA is committed to continuing our involvement in the work group to address unresolved important concerns. With continued collaboration and dialogue, further changes will be proposed in the 2021 session. As currently written, SB 1575 does not place any time limit on an order for community restoration services. Mandatory community restoration is an infringement upon a person's liberty and should not be imposed indefinitely. Furthermore, some conditions that impact competence may not be responsive to treatment, such as traumatic brain injury or intellectual/developmental disabilities. People with these conditions should not be subject to a lifetime of restoration treatment and an unresolved criminal charge.

Defense attorneys across Oregon see the challenges that result from a lack of available and appropriate community-based behavioral health care and housing. We see our mentally ill clients cycle from homelessness to jail to institutionalization over and over. SB 1575 continues the legislature's commitment to provide alternatives to incarceration, institutionalization, and hospitalization. **OCDLA supports 1575** and the legislature's continued attention to these important and often overlooked issues.

Respectfully submitted by,
Elizabeth Wakefield, Attorney at Law
Mental Health Attorney at Metropolitan Public Defender
On Behalf of OCDLA