



Oregon

Kate Brown, Governor

Psychiatric Security Review Board

610 SW Alder Street, Suite 420

Portland, Oregon 97205

Phone: (503) 229-5596

Fax: (503) 224-0215

psrb@oregon.gov

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RE: Testimony Submitted to the House Subcommittee on Civil Law in Support of SB 200

Good Afternoon Chair Power, Vice Chair Wallan and members of the House Subcommittee on Civil Law. My name is Alison Bort, and I'm the Executive Director of the PSRB.

In 2018, the PSRB was the focus of public criticism following its decision to jurisdictionally discharge an individual, who subsequently committed a violent crime. While the public interpretation at that time was that the Board should not have discharged the person, the Board's position was that it was required to discharge the person by law. It was important to the Board that any changes that would come from this tragedy were not reactionary, but rather planful and collaborative. We approached Senator Floyd Prozanski in March 2019 with an outline of our concerns, and he took swift action. At the conclusion of the 2019-21 legislative session, Senator Prozanski established the PSRB Legislative Workgroup to examine challenges and identify solutions related to the agency's role in Oregon's Forensic Mental Health System.

One of the narrower issues the Board sought to examine during this workgroup was what options it had when faced with an individual who no longer met jurisdictional criteria, by virtue of no longer having a qualifying mental disorder, but who otherwise remained a substantial danger to society. The Workgroup, which was comprised of over 40 stakeholders from multiple organizations across the State, examined this issue from a variety of angles. One angle was from what we term "the front door." Solutions to the front door looked out how the system can prevent, or at least mitigate, instances of inappropriate cases coming under the Board's jurisdiction in the first place.

It is important to emphasize here this is not the first time the system and the legislature have taken a look at the front door and that the system has improved over time. For example, during the 2009-11 legislative session, the Legislature passed HB 3100, which established a certified forensic evaluator program in the state. Among other things, this certification is now required by all psychiatrists and psychologists performing criminal responsibility evaluations. This is the evaluation that is required to be filed with the court in order for it to accept a GEI plea. The certified forensic evaluator program, which is executed by my esteemed colleagues at the Northwest Forensic Institute and whose faculty is comprised of renowned experts in the state, trains professionals in the best practices and standards associated with criminal responsibility evaluations. Better evaluations enable our judicial officers to make more informed decisions and mitigate the instances of inappropriate cases coming to the Board.

SB 200 looks at another aspect of the front door. Anecdotally, members of the Workgroup familiar with GEI cases, identified that the significant majority of GEI dispositions stem from a stipulated facts trial. The Workgroup explored the potential dangers of stipulated facts trials with regards to inappropriate cases coming before the Board. Specifically, stipulated facts trials exclude the opportunity to direct or cross-examine the certified forensic evaluator who conducted the criminal responsibility evaluation so that the content of those evaluations could be explained in depth to the court. The Workgroup contemplated whether there should be a prohibition against stipulated facts trials. This was clearly not a good solution because there are clear benefits of stipulated facts trials. The ultimate recommendation in the report was to provide training and encourage District Attorneys to review their policies related to adjudicating GEI cases. For example, DA's should consider devising strategies to detect red flags related to malingering and substance use. In addition, they should consider whether there are any situations by which a stipulated facts trial might not be considered.

In light of ORS 8.705, the statute that requires the district attorney in each county to develop and formally adopt written office policies concerning an array of subject areas, it seems this recommendation could easily be codified to include GEI cases as one of the subject areas.

The Board is in full support of this SB to the extent that achieves consensus with our colleagues at the Oregon District Attorney Association.

Thank you for your time and consideration,

A handwritten signature in cursive script, appearing to read "Alison Bort".

Alison Bort, JD, PhD
Executive Director
Psychiatric Security Review Board
