

House Committee on Judiciary, Subcommittee on Civil Law
900 Court St. NE
Salem, Oregon 97301

Re: SB 205A, Relating to extremely dangerous persons with mental illness

Dear Chair Power, Vice Chair Wallan and Members of the Committee,

My name is Nan Waller and I am a Circuit Court Judge in Multnomah County. I have presided over several ORS 426.701 Extremely Dangerous Commitment hearings. Based upon my experience in managing .701 hearings, I believe that the statute needs improvement. Together with the Oregon Judicial Department (OJD), I support the goals and aims of this legislation. Much more needs to be done, but we consider this a meaningful first step.

SB 205A is the product of a PSRB workgroup that considered the procedure and process gaps in ORS 426.701 - .702, the statutes allowing a court to commit a person found to be an extremely dangerous person to the jurisdiction of the Psychiatric Security Review Board for 24 months. I was not a member of the workgroup but understand that the SB 205A is the result of a collaborative process of a multi-stakeholder work group that included OJD I understand from my discussions with members of the work group that there may be a desire to make additional procedural improvements in the future to the Extremely Dangerous Hearing process and OJD would support those continued discussions. However, I did not hear of any disagreement that the bill fills needed procedural gaps in the current statute.

The filing of an extremely dangerous petition is usually triggered when a defendant, previously found unable to aid and assist and committed to the Oregon State Hospital for restoration, has been evaluated as unrestorable or has been at OSH for the maximum amount of time allowed by statute without being restored. ORS 426.701 allows a prosecutor to file a petition seeking commitment of a person as an extremely dangerous person if the person has, because of a qualifying mental disorder that is resistant to treatment, committed one of the enumerated acts, all of which involve serious harm.

ORS 426.701, as it now exists, does not address where a person can be held pending the “extremely dangerous” hearing. If a defendant who has been evaluated as unrestorable to competency is held in jail while an ORS 426.701 hearing is pending there are due process implications. If the defendant is released from custody pending the ORS 426.701 hearing, there are public safety implications. There is no mechanism for an individual to be held in a hospital pending a ORS 426.701 hearing under the current statute.

SB 205A authorizes a court to commit a person to the state hospital or a secure mental health facility while an extremely dangerous commitment petition is pending. In addition, SB 205A establishes deadlines for the court to hold an ORS 426.701 hearing and defines good cause for extending the time for a hearing. ORS 426.701 is silent as to these procedural factors that are necessary to keep cases on track and protect the due process rights of persons subject to an ORS 426.701 hearing while addressing public safety concerns. I believe that this will begin to address those gaps.

Thank you for your consideration of my testimony,

/s/ Nan G. Waller
Nan G. Waller
Circuit Court Judge