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SENATE JUDICIARY COMMITTEE  
Senator Floyd Prozanski, Chair  
Senate Bill 214  
February 1, 2021

Testimony of Harris S. Matarazzo, Attorney at Law

Chair Prozansky and Members of the Senate Judiciary Committee:

As an attorney who has worked closely with the mental health community and individuals under the jurisdiction of the Adult Psychiatric Security Review Board (PSRB) for more than thirty years, I oppose that part of SB 214 which modifies existing case law to provide that individuals found “Guilty Except for Insanity” (GEI) be subject to restitution for damage resulting from that finding. (See State v. Thomas, 187 Or App 782, 69 P3d 814 (2003) (Restitution); State v. Gile, 161 Or App 146, 985 P2d 199 (1999) (Statutory costs and assessments))

My experience in this area of the law includes: Co-authoring each version of the Oregon State Bar’s Chapter entitled “Mental Illness and Incapacity” in its “Criminal Law” publication since 1994; Making presentations on the subject at the undergraduate, graduate, and practicing mental health professional levels; Involvement in the credentialing of mental health professionals allowed to evaluate persons alleged to be mentally ill, and facing criminal action. My appellate experience includes decisions in related mental health matters.

Unlike a finding of “Guilt”, ie a conviction, a determination of “Guilty Except for Insanity” is a recognition that the person is not criminally responsible for that person’s conduct. State v. Counts, 311 Or. App 616; 816 P2d 1157 (1991). Once so found, these individuals are placed under the jurisdiction of the PSRB. With few exceptions, this period is equal to the statutory maximum sentence which could have been awarded had there been a finding of “Guilt”. These GEI individuals are then generally sent to the Oregon State Hospital. In my experience, with few exceptions, the period of Board jurisdiction is always greater than would have been received if the person had been sent to a corrections facility.

The current statutory scheme recognizes that a GEI Defendant’s conduct is the result of a mental illness, ie a “Qualifying Mental Disorder”, and focuses on considerations of care, treatment, supervision, and public safety. In contrast, those deemed “guilty” are subject to punishment, including restitution. The distinction is one based in public policy. The longer periods of Board jurisdiction given by the Courts also reflect this. Subjecting those found GEI to restitution would be contrary to this identified, long established, policy.

Practical consequences, including the economic impact on our State, should also be considered. In my experience, with few exceptions, virtually all GEI individuals are recipients of Social Security benefits, and require them in some form to live in the community. This includes monies to help pay for group homes and mental health services while still under PSRB jurisdiction. Restitution, and related garnishments which could follow, would deplete some of these payment types, meaning that GEI individuals may not have the resources for community placement, including "conditional release" by the PSRB. Without Social Security monies to pay toward this cost of care, individuals would remain at the Oregon State Hospital. The current cost of hospitalization is approximately \$28,000 per month.

As now, the Hospital is often at capacity, and so cannot afford to keep those who are deemed ready for placement, even if it were legal to do so. By comparison, it is my understanding that "conditional release" placement costs are less than \$6,000 per month. The potential resulting economic impact of approving restitution in GEI matters could be that either a larger State Hospital may need to be built, or that the Legislature replace mandated restitution monies derived from Federal Social Security payments with State taxpayer funds, allowing for community placements. This Bill does not address what, if any, involvement the PSRB might have in restitution matters. As a citizen Board, it does not have any designated expertise in this area, and it is outside its statutory mission to "protect society". If a GEI client on "conditional release" fails to make a restitution payment, would that subject the person to "Revocation", ie return to the State Hospital? To do so would have a financial impact on State resources.

For those GEI persons fortunate enough to potentially enter the workforce, and become less or non- reliant upon community, State, and Federal resources, restitution could likely serve as a disincentive, depending on the amount owed. If the underlying foundation of GEI is to not punish, but rather restore the individual to good health, safeguard the community, and encourage self sufficiency, restitution could represent a barrier.

Finally, with few exceptions, because most all persons found GEI are indigent, and few have sustained working histories due to their illnesses, it is unclear to me what practical effect passage of this Bill will have, except to punish. The problem it is meant to address is illusive. Certainly there will be a great deal of cost, both in Court and ongoing administrative time. These costs, although indirect, would further deplete State resources.

Thank you for the opportunity to address the Committee.