



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

**MEMORANDUM**

DATE: March 29, 2017

TO: Honorable Floyd Prozanski, Chair  
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 132 – Refining the aid and assist process

This testimony is presented in support of SB 132 with the anticipation that this bill will be amended.

**BACKGROUND**

When a defendant facing criminal charges is unable to aid and assist in their own defense, the process for placing a person in the Oregon State Hospital (OSH) to be restored to competency is governed by ORS 161.360-161.370. These provisions provide specific statutory protections designed to provide a defendant in this disposition with all appropriate process before they are confined in a treatment environment which they did not choose, solely for the purpose of facing a criminal prosecution. This process is very heavily informed by constitutional requirements, and these statutory provisions have been extensively interpreted by the courts. As such, frequent revisitation by the Oregon Legislature is necessary to keep the statutes functional and reflective of all developments within the case law. The Department of Justice convened a workgroup in the lead-up to the 2017 Legislative Session to discuss possible substantive and technical changes to these provisions. We worked with a wide array of stakeholders, including the Oregon Health Authority, Oregon State Hospital, Disability Rights Oregon, District Attorneys, defense attorneys, ACLU, Association of Oregon Counties, Chiefs, Sheriffs, treatment providers and others to reach consensus as to which provisions would be appropriate for legislative advancement. These concepts are expressed in an amendment which has not been released at the time of this writing.

Effective management of limited state hospital resources is more than a technical question. The rapid growth of Oregon's aid-and-assist population increasingly threatens to displace other state hospital functions, and a failure to react to changes in case law can expose the state to costly litigation.

## CONCEPT

First, SB 132 bundles together several changes to these provisions. First, the bill allows for a defendant to be treated outside of the state hospital under very limited circumstances. On very rare occasions, an individual already serving a sentence at the Department of Corrections may commit a new crime and become unable to aid and assist during the pendency of those proceedings. In this rare case, it may make sense from the perspectives of both treatment needs and public safety for the defendant to continue to be housed at the Department of Corrections while being restored to competency. This is only permitted when the treatment is in the best interest of the defendant and is necessary to protect the safety and welfare of the defendant or others.

Secondly, SB 132 addresses a standing problem where a person facing murder charges is restored to competency and then returned to a jail setting, after which they decompensate and lose competency during the often lengthy process of reaching trial and are returned to the state hospital, which delays the administration of justice and hazards placing the defendant in a revolving door between the jail and the state hospital as they decompensate upon release from the state hospital and are again made unable to aid and assist. SB 132 provides for a year of maintenance treatment to be made available in these cases.

Third, SB 132 codifies the decision of the United States Supreme Court in *Sell v. United States* 539 U.S. 166 (2003), a case imposing stringent limits on the right of a trial court to order the forcible administration of medication to a person against their will for the sole purpose of restoring them to competency to stand trial. Because of the significant liberty intrusion represented by involuntary medication, the requirements necessary to order such treatment are extremely voluminous and technically complex. SB 132 does not attempt to modify these standards, which already exist in Oregon case law, but facilitates their even-handed application by judges by codifying them in statute.

Finally, SB 132 makes a number of small, technical changes to the language of these provisions. We thank the many stakeholders involved in the process of assembling these recommendations for your consideration.

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