



Oregon

Kate Brown, Governor

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TO: Representative Jeff Barker, Chair
House Judiciary Committee, State of Oregon

FR: Sid Moore, J.D., Deputy Director
Psychiatric Security Review Board (PSRB)

RE: Written Comment for April 26, 2017, Hearing on SB 66-A

Thank you, Chair Barker, Vice-Chair Olson, Vice-Chair Williamson, and members of the committee. I appreciate the opportunity to comment on Senate Bill 66-A. My name is Sid Moore; I am the deputy director for the Oregon Psychiatric Security Review Board.

Senate Bill 66-A's notification requirements will ensure that those with certain mental health determinations fully understand the consequences of those determinations as they pertain to sex offender registration and firearm possession.

Sex Offender Registration

Current state law clearly requires defendants who are found "guilty except for insanity" (GEI) of certain crimes to register as sex offenders once they are living in the community. However, there is no statutory requirement directing the court to inform the defendant of this registration requirement when the GEI finding (which is not a conviction) is imposed. In contrast, ORS 163A.050 clearly requires the court to inform a defendant of the requirement to register as a sex offender if he or she is convicted. This notification can influence how a defendant pleads and/or stipulates to a crime. SB 66-A would correct this oversight by adding "guilty except for insanity" language to ORS 163A.050 so all GEI defendants who will be required to register as sex offenders are notified of this by the court. This is particularly important for those defendants who are required to register after being found GEI of crimes whose titles do not necessarily suggest a sexual component (e.g. kidnapping of a child), in which there was no sexual intent on the part of the offender, and for which a sex offender registration requirement would not be obvious to the average defendant.

The PSRB has had at least one recent GEI case in which the GEI finding was set aside, with lack of notice to the defendant cited as grounds for post-trial relief. The notification requirement in this bill would resolve potential appeal issues and avoid unnecessary litigation.

Notification of Firearm Prohibition

Under federal and state law, certain mental health adjudications prohibit the individual affected by the adjudication from later possessing or purchasing firearms (ORS 181.740). These include three broad categories: those (1) defendants and youth who are found “Guilty/Responsible Except For Insanity”; (2) defendants who are found unable to aid and assist in their own defense; and (3) those civilly committed involuntarily. Current law requires certain state agencies and Oregon State Police to submit those individuals’ names to the federal “NICS” database. The database is used for firearm purchase background checks.

SB 66-A would ensure that the court informs those individuals who are losing their firearm privileges due to a mental health adjudication of the loss of that right at the time of the court’s decision.

Since 2009, the PSRB has been the ATF-certified mental health firearm relief authority in Oregon. PSRB staff has received calls from potential relief petitioners who did not know they were barred from possessing a firearm until they attempted to purchase a firearm and were denied. This bill will ensure proper notification and mitigate the risk that someone mistakenly believes they can possess a firearm when in fact they are barred under law from doing so.

This bill has been vetted with our legislative stakeholder workgroup and there does not appear to be any opposition to this proposal.