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DATE: February 27, 2019

TO: Honorable Floyd Prozanski, Chair of the Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 184 – Streamlining Aid and Assist Cases

This testimony is presented in support of SB 184.

STREAMLINING AID & ASSIST CASES

Background:

When a person is accused of a crime, sometimes they are not able to participate in their trial because of a mental illness. If a court has reason to doubt that a criminal defendant is mentally fit to proceed to trial, ORS 161.365 through 161.370 provide a process for assessing the defendant's fitness, restoring the defendant to fitness if possible, and dismissing the criminal charges and providing for civil commitment in appropriate situations.

Concept:

This proposal would improve the statutory process for ensuring that criminal defendants with qualifying mental disorders are able to aid and assist their defense counsel at trial. It does so by making relatively small changes to these statutory provisions that provide internal consistency, codify the process for involuntary medication and add to the list of civil commitment statutes that a court should consider if criminal charges are dismissed.

This proposal makes three changes, all of which can be fairly characterized as housekeeping changes not designed to make strongly substantive changes in existing law.

- Replaces several instances of the term "psychiatrist or psychologist" and instead uses "certified evaluator." This is a non-substantive change for internal consistency.

- Codifies the requirements for involuntarily medicating a defendant in an effort to restore the defendant's capacity to aid and assist his defense counsel at trial. These requirements were announced by the Oregon Supreme Court in the 2014 case *State v Lopes*, 355 Or 72 (2014), and follow the requirements announced by the United States Supreme Court in *Sell v United States*, *539 US 166 (2003).* This is a sparingly used procedure already

permitted under existing law which allows the forced medication of a criminal defendant under extremely narrow circumstances. The court must find that there is no other authorized way to administer the medication, that there are important state interests at stake in the prosecution, that the medication will significantly further those interests, that there are no alternative, less intrusive treatments that would produce the same result as the medication, and that the treatment is in the defendant's best medical interests. This requires a significant amount of technical findings by the judge. In the years following *Lopes*, the Department of Justice has received consistent feedback that this provision of caselaw has been difficult to implement consistently, resulting in the remanding of cases by the appellate court for further findings, a process which can create uncertainty and delay for the person receiving the medication. By codifying the procedure in statute, SB 184 attempts to assist all parties in navigating these proceedings. It is worth emphasizing that SB 184 aspires to codify existing case law – nothing more.

- Adds "ORS 426.701" (extremely dangerous civil commitment) onto the list of commitment statutes for the courts to consider if the criminal charges are dismissed. This just updates the list of civil commitments available, because ORS 426.701 is a relatively new type of commitment created in 2013.

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