



OREGON PSYCHIATRIC
PHYSICIANS ASSOCIATION

Date: March 11, 2019

To: The Honorable Floyd Prozanski, Chair
The Honorable Kim Thatcher, Vice-Chair
Members of the Senate Judiciary Committee

From: Maya Lopez, MD
Oregon Psychiatric Physicians Association
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RE: Position statement on SB 378 Fitness to Proceed

Chair Prozanski, Vice Chair Thatcher, and members of the Senate Health Care Committee: For the record, I am Dr. Maya Lopez, a psychiatrist and Associate Professor of Psychiatry. I'm here to testify on behalf of the Oregon Psychiatric Physicians Association. As a Certified Forensic Evaluator with extensive experience with fitness to proceed evaluations and as a former Director of the Forensic Evaluation Service at the Oregon State Hospital, I would like to share some perspective about this work. I am here with my colleague from the Oregon Psychological Association, Dr. Michelle Guyton, who is a psychologist board-certified in forensic psychology, Director of the Oregon Forensic Evaluator Training Program, and co-owner of the Northwest Forensic Institute. She conducts fitness to proceed evaluations on a weekly basis and conducts trainings on forensic psychology locally and nationally. We hope to be helpful in providing an evaluator's perspective while also understanding the need to expedite fitness to proceed evaluations.

The OPPA and OPA support amendments to SB 378, which would replace the original bill, with a requirement that the Oregon Criminal Justice Commission conduct a study of barriers to the timeliness of the completion of accurate and reliable fitness to proceed evaluations. The study will also include admissions for inpatient evaluation services related to fitness to proceed evaluations with a report to the Legislature before September 15, 2021. We strongly recommend that this study include the expertise of Certified Forensic Evaluators from the Oregon State Hospital and the community in order to better understand the process from those familiar with the scholarship in this area and who are conducting these evaluations.

Fitness to proceed cases are the most common type of criminal forensic evaluation. Certified Forensic Evaluators (psychiatrists and psychologists) are responsible for completing court-ordered evaluations. Changes to the current process could have a significant impact on the quality of forensic evaluations and potentially render them less useful to the courts who rely upon them. Referrals for fitness to proceed are increasing both in Oregon and nationally. It makes

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sense to study this process here and in other states before making systematic changes to our current process.

In many cases, a 14-day turnaround for all cases is insufficient to conduct an evaluation and produce a written report. There are many complex tasks that need to occur within that relatively short period: an available evaluator must be identified, relevant records must be requested and received, an interview and mental status examination must be scheduled and performed, any necessary testing must be performed and interpreted, possible interviews of other people with important knowledge about the defendant must occur, and finally, the report must be written according to Oregon Administrative Rules and submitted to the court. Furthermore, jail staff may need to quickly arrange travel to the Oregon State Hospital which can be more difficult for rural and frontier counties. In some cases, a 14-day turnaround is achievable, but this should not be the expectation for all fitness evaluations.

Creating a panel of evaluators will not result in faster evaluations that are of adequate quality. There are far too few certified forensic evaluators who can be ready at a week's notice to conduct these evaluations, especially with the need to complete some of the tasks associated with the interview before the defendant is examined. Another challenge is fiscal: there is no indication how community-based court-ordered evaluations would be funded. Furthermore, there is an insufficient number of Certified Forensic Evaluators in rural and frontier counties to make this work.

A rapid timeframe to completed evaluations can result in increased numbers of defendants found unfit. Defendants withdrawing from drugs often show reduced signs of psychosis within a week or two of arrest. Also, defendants who restart psychiatric medication after evaluation in jail may appear initially quite ill but resolve symptoms within a few weeks. However, a requirement that the evaluation is done immediately means that defendants may be labeled as unfit to proceed when, if we had waited a week or so, they would be fit. We have seen this in our respective practices repeatedly. If the evaluator has no discretion to utilize clinical judgment and knowledge about this, it can paradoxically further slow down the entire fitness to proceed system, delay the defendant's criminal case for months, and increase health care costs dramatically. We have heard anecdotally from Washington that their rates of incompetency have increased since they instituted a very short turnaround for reports, likely due to the defendants still withdrawing from drug use or not yet responding to prescribed psychiatric medications.

A short timeframe for all fitness evaluations can result in having abbreviated or "drive by" evaluations where two egregious errors can occur. Finding someone unfit when they are actually fit is problematic in that the person may be mandated to lengthy treatment, lose civil rights, and other negative consequences. The other type of error may be more serious, where an abbreviated evaluation finds the individual fit when they are not. This means that a very ill individual is prosecuted without their basic constitutional rights intact. The impact of these errors increases depending on the case. For example, a 14-day turnaround in a high-stakes case such as a Measure II or murder case, is too fast to adequately conduct a comprehensive, accurate evaluation.

Amending this bill to study these issues make sense and we urge the inclusion of certified forensic psychologists and psychiatrists in the process.

Thank you for the opportunity to testify.