

March 5, 2019

Members of the Senate Judiciary Committee
Oregon Capitol

Dear Chair Prozanski and Members of the Committee:

I think we all believe that, with timely and appropriate services and support, most mental illnesses are treatable, and recovery is possible, reducing the likelihood of behavior that can lead to incarceration. However, outdated and untimely responses to mental illness in Oregon and throughout the country now block treatment and services that can prevent crime and lead to recovery. Rigid legal standards for involuntary treatment and the lack of an adequately funded community-based mental health system have led to a public safety crisis. Instead, the criminal justice system is systematically being used to criminalize mental illness and re-institutionalize persons with mental illnesses into jails and prisons.

For people suffering from serious mental illness, our court system is currently unable to order needed treatment as an alternative to incarceration. Judges and court personnel are in a unique position to describe to policymakers what they see in their courtrooms every day – a broken system, leading to compromised public safety, excessive incarceration, and damaged lives. In my view, policy makers need to provide our courts with better tools to meet this challenge. New legal standards that promote early intervention, combined with easily accessible assisted outpatient community-based treatment, will create the best opportunity to begin to reduce the use of jails and prisons as the *de facto* mental health system.

Prisoners with mental illness are more likely to have experienced homelessness and prior incarceration, and they are known to have other criminogenic risk factors, including substance use disorders. Studies of prisoners with mental illness in Texas, Utah, Maryland, Illinois, and Ohio found that the likelihood of returning to prison dramatically increased for inmates with major psychiatric disorders. Prisoners with mental illness in the criminal justice system serve longer sentences, receive more probation and parole violations, and have higher rates of recidivism. The cost for psychiatric services spent in correctional environments, combined with the increased rate of recidivism for those with mental illness who are not appropriately supported means that these societal fiscal and human expenditures must be made again and again with no measurable benefit.

SB 763 is an important part of the effort to correct this functional mismatch between conduct, capacity, and consequences in our justice and mental health systems. It includes modest reforms to allow judges handling civil commitment cases to use ordinary notions of common sense in taking into account relevant past conduct in determining whether a person is a danger to self and others. Although there will be predictably emotional and strident opposition to these modest reforms that is cloaked in the mantra of personal dignity and civil liberties, it is ultimately

misguided and not in the best interests of mentally ill persons who, instead of receiving much needed treatment in a civil context are far too often thrust into a criminal justice system that is poorly equipped to meet their needs.

I respectfully urge you to support this bill and to ensure its passage in this legislative session.

Sincerely,

David Brewer
Senior Judge